ANTI MONEY LAUNDERING COMPLIANCE MANUAL

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Appendix A

This Manual explains our policies and procedures. It supplements the more general training which you have and will continue to receive. It is important that you read this manual, and refer to it when relevant issues arise.

Our **Money Laundering Reporting Officer is James Couzens**. Consult him in cases of difficulty. In his absence, consult the **Deputy Money Laundering Reporting Officer, who is Sarah Plumridge.**

WARNING

Failure to comply with the firm's policies, as set out in this manual, may be treated as gross misconduct and result in disciplinary action. Such failure may also put you at risk of prosecution under the Proceeds of Crime Act.

A INTRODUCTION

1.1 The Money Laundering Regulations 2007

These regulations are in force from 15 December 2007, replacing the 2003 regulations. They require this firm to establish and communicate procedures for:

- **"customer due diligence",**
- **reporting suspicions,**
- **record keeping and training.**

1.2 The objective is to prevent criminals from being able to use this firm to launder money, or to finance terrorism. All references in this manual to money laundering include terrorist financing.

1.3 If you are unsure how to apply the policies in this manual, consult the firm's Money Laundering Reporting Officer (MLRO - James Couzens). Note also that the Law Society has published guidance notes on money laundering issues, available on the Law Society website - www.lawsociety.org.uk/productsandservices/practicenotes/aml.page.

2 Regulated Work

The Money Laundering Regulations only apply if we are doing certain types of work (regulation 3(9)). This means that litigation work, and some other work which does not involve any financial or real property transaction are not regulated. Nonetheless **it is the policy of this firm that the procedures set out in this manual should be applied to all clients, and all matters**

3 Record Keeping

The firm is required to maintain records of client identification evidence for at least five years from the end of our business relationship with a client. We must also keep supporting records in relation to transactions for at least five years from the end of the relevant transaction, or if they relate to a business relationship, from the end of the relationship.

4 Training

The firm must ensure that you are made aware of the law relating to money laundering, and regularly give training in how to recognise and deal with transactions that may be related to money laundering. You must attend and carry out such training, and study written materials on the subject, including this manual.

5 Your Role

Your main obligations are

- To carry out "customer due diligence" and
- To recognise and report suspicious transactions.
- You must also avoid tipping off a suspect that a report has been made.

The remainder of this manual explains what you should do to comply with these obligations.

B CUSTOMER DUE DILIGENCE

1. What is "Customer Due Diligence"?

The Money Laundering Regulations require you to carry out "customer due diligence"

("CDD") and "ongoing monitoring" when you do regulated work. This involves several elements.

1.1. Client identification.

1.2. Identifying any beneficial owners.

1.3. Obtaining information on the purpose and intended nature of the business relationship.

1.4. Risk assessment. CDD and ongoing monitoring must be done on a risk-sensitive basis.

1.5. Ongoing monitoring of the business relationship.

2. The Importance of Thorough CDD

2.1. Our reputation is our greatest asset. Thorough CDD will not only ensure compliance with the law, but will tend to deter undesirable clients from instructing this firm.

2.2. When taking instructions from new clients do not be embarrassed about explaining your obligation to do due diligence, and the reason for that obligation. Where appropriate ask questions about the source of the client's wealth, and how any transaction is to be financed. Few if any honest clients will resent such questions, if they are properly explained. Our standard client care letter contains clauses explaining our CDD obligations, and you may wish to draw those clauses to clients' attention.

3. Cash

Explain to clients that the Firm's policy is that we only accept cash from a client up to a limit of £1,000 in any 28 day period. This rule is explained in our terms of business. If a client invites you to accept a sum above £1,000 in cash, consider reporting the matter.

4. The Client Due Diligence 'CDD' Form

4.1. The firm has devised a CDD Form (attached, FORM A), to help you to carry out due diligence in an organised and reliable manner. It includes detailed notes. Complete the form at the following times:

(a) when taking on a new client,

(b) when opening a new matter file for an existing client (note that whenever you send an engagement letter to a client, you should complete a fresh CDD form), and

(c) if you suspect money laundering, or doubt the veracity or accuracy of due diligence documents previously supplied (regulation 7 specifically requires you to carry out fresh CDD at such times).

4.2. The completed form, along with evidence of identity, should be should be both retained on the file and scanned by the fee earner or their secretary. The scanned copy should be deposited in the folder on the server under "client due diligence" where you should then make a new folder with the last name of the client followed by the first name and then the matter number. This is because we must keep a central record, as well as printing a copy for your own file.

4.3 You must always complete a client due diligence form because this is not a proof of identity form but confirmation of the assessment you have made of the risk of taking

on the client. sent to Julia Smith who files these in the firm's central records, and a copy should be retained on the file.

C CLIENT IDENTIFICATION

1. Identification and Verification

Identification of a client or a beneficial owner is simply being told by them who they are, or by coming to know their identifying details, such as their name and address. Verification is the more difficult and more important part which relates to obtaining **evidence which supports this claim of identity**.

2. Timing

2.1. You should normally verify the identity of the client before accepting instructions to act for him or her. But regulation 9 allows verification to be *"completed during the establishment of a business relationship if (a) this is necessary not to interrupt the normal course of business, and (b) there is little risk of money laundering or terrorist financing occurring."*

2.2. However verification must be completed as soon as practicable after contact is first established. You should not normally accept money on account until verification has been completed.

3. Proof – online searhes

Wherever possible, proof of identity should be undertaken via our current online search provider. This is not only because it is swift and reliable but also because it specifically checks the Bank of England sanctions list and PEP list (see below)
Guidance on how to use this was provided when the service was set up and futher assistance can be obtained from the providers helpline.
In the higher risk areas of conveyancing, and where the client is not physically present, when you are acting for a new client, you should also obtain a copy of a passport or photographic driving licence although this does not have to be certified and can be simply copied by the client and sent in.

4. Documents

If you are relying on documents rather than an online search you should be satisfied that any documents offered to verify identity are originals, to guard against forgery. Ensure that any photographs provide a likeness of the client. Take copies of the relevant evidence, and sign and date the copies, to verify that they have been compared with the originals.
Copies of relevant evidence for clients were not present must be certified as set out below.

5. Clients Who Are Not Physically Present – and no "clear" online search

Where the client is not physically present for identification purposes and it is not possible for some reason to undertake to an online search, or that is not to be relied on, you must take specific and adequate measures to compensate for the higher risk. If it is not possible to meet your client, for example because he is not in the area, you should normally ensure that a trustworthy third party, such as a solicitor, accountant or consular official carries out the identification process on our behalf, and sends us the certified copies of the evidence of identity. In lower risk cases it will be sufficient to ensure that the first payment from the client is carried out through a bank or building society account in the client's name. Alternatively you may be able to accept a reference from

another organisation (see the following section).

6. Existing clients

It is important to appreciate that the strict identification requirements under the 2007 regime require constant vigilance.
Therefore if the client is an existing client of the firm then identification is still required, unless the client has instructed the firm less than 9 months for before you accept instructions from them in relation to the new matter.

7. Reliance

7.1 Regulation 17 states that instead of carrying out identification ourselves, we may sometimes rely on due diligence conducted by certain other regulated businesses. These are:
- banks and similar financial institutions
- law firms
- insolvency practitioners
- external accountants, auditors or tax advisers.

7.2 However we do not accept this as a standard practice and you will first need the approval of a partner of Parrott and Coales LLP before you can proceed on this basis,
In addition, to rely on the due diligence of another organisation, you need:
- the consent of the business on which you rely, and
- their agreement that they will provide you with the due diligence material upon request.

7.3 We remain liable for any failure by the other party to apply verification correctly. Accordingly you should only rely on organisations which you have reason to believe are reputable and take their responsibilities in this area seriously. In any case the regulations require that the body on which you rely is an one authorised by the FSA (in the case of a bank or financial institution) or supervised by a listed professional regulator, such as the ICAEW, ACCA or Law Society. If in doubt, check that they are so regulated.

8. Evidence Required

8.1 Detailed guidelines about the evidence required in different circumstances have been published by the Law Society, and are available on its website - www.lawsociety.org.uk/productsandservices/practicenotes/aml.page. Their effect is summarised in the notes which accompany the CDD Form.

8.2 You should apply common sense to what you require, bearing in mind the level of risk. You should also be aware that different forms of evidence have different levels of security. If in doubt consult the MLRO (James Couzens). You should not apply the guidelines in a mechanical way. In the words of the Law Society "Your firm will need to make its own assessments as to what evidence is appropriate to verify the identity of its clients." In their guidance they merely "outline a number of sources which may help you make that assessment."

9. Apparent inconsistencies in identification evidence

9.1 To an outside observer inconsistencies in identification evidence could easily be said to give rise to suspicion. However your knowledge of the circumstances and discussions with the client can clarify and explain these. However the due diligence form only contains what you have recorded on it, not what you may know that explains any inconsistencies.

The due diligence form should contain this explanation, since if the client was subject to investigation in the future your lack of a record of the explanation for the apparent inconsistency could prove to be difficult.

D BENEFICIAL OWNERS

1. The Duty to Identify

Money launderers may seek to hide their identity behind nominees, or corporate or trust structures. Accordingly regulation 5 requires you to identify any beneficial owner who is not the client, and take adequate measures, on a risk-sensitive basis, to verify his identity, so that you know who the beneficial owner is. That includes measures to understand the ownership and control structure of a company, trust or similar arrangement.

2. Definition of a Beneficial Owner

2.1. Broadly a beneficial owner is anyone with 25% ownership or voting rights. It also includes anyone who exercises control over the management of a company. In practice directors of private companies should generally be identified as beneficial owners, because they are usually substantial shareholders, and also because of the control that they exercise.

2.2. The regulation 6 definition is summarised in the notes which accompany the CDD form. In cases of difficulty, refer to regulation 6, and to the copious guidance on this subject published by the Law Society, available on its website and which appears in the Law Society practice note section 4.12.

2.3. The purpose of identifying **beneficial owners is** to understand **who is the natural person who truly owns and controls the client, and in whose interests it is operating**. It will rarely be necessary to consult the detailed definition of a beneficial owner, if you keep that principle in mind.

3. Evidence Required to Verify Identity of Beneficial Owners

3.1. Your obligation to verify the identity of beneficial owners is less onerous than the obligation to verify the identity of the client. The Law Society states "Only in rare cases will you need to verify a beneficial owner to the same level that you would a client." To assess which verification measures are needed, consider the client's risk profile, any business structures involved and the proposed transaction.

3.2. You may often be able to accept assurances from directors, trustees and others as to the identity of beneficial owners. But you should normally obtain such assurances in writing. Consider also asking the beneficial owner so named to confirm in writing that they agree they are the beneficial owner. If a person is reluctant to put such information in writing, that may be suspicious, and you should consider referring the matter to the MLRO (James Couzens).

3.3. If it seems the client may be a mere nominee or front for another person, insist on full and strict verification of that other person's identity. In particular, if the client is a company or LLP which is owned and controlled by three people or fewer, verify their identity just as you would for a client.

E RISK ASSESSMENT

1. What is Risk Assessment?

1.1. Risk assessment is the process of considering the circumstances of a particular client, and of a particular matter, and identifying factors that make it high or low risk for money laundering. Your risk assessment will determine the approach you take to CDD in general, and ongoing monitoring in particular.

1.2. Although you are required to make a written risk assessment when completing the CDD Form, risk assessment is something that you should also do informally throughout a client relationship.

2. **Purpose and Intended Nature of the Business Relationship.**

Regulation 5(c) says that your duty of customer due diligence includes "obtaining information on the purpose and intended nature of the business relationship." Obtaining such information is crucial to effective risk assessment and hence to proportionate due diligence. However the normal inquiries you make of any new client to understand their plans and objectives should be enough to meet your obligations under regulation 5(c).

3. High Risk Matters

3.1. It is important that you accurately identify high risk matters. The notes which accompany the CDD form identify a number of risk factors which may be particularly relevant at this firm.

3.2. In high risk matters you must take additional precautions. Regulation 14 requires enhanced due diligence and enhanced ongoing monitoring "in any situation which by its nature can present a higher risk of money laundering or terrorist financing." What is necessary will depend on the circumstances of the case. For example you may require strict verification of the identity of beneficial owners, or question your client closely on relevant issues, such as the source of his funds.

4. Politically Exposed Persons ("PEPs")

4.1. A PEP is a person who is or has at any time in the preceding year been entrusted with a prominent public function by a state other than the UK, a Community institution or an international body. It also includes immediate family members and known close associates of such a person.

4.2. If a client is a foreign national you should make enquiries to establish if s/he is a PEP. In addition to asking the client themselves, you can perform a search on the Internet by inserting their name in the search engine www.google.com. You may not accept a PEP as a client without approval from the firm's MLRO (James Couzens)

4.3 If you act for a PEP you must take adequate measures to establish the source of wealth and the source of funds which are involved. You must also conduct enhanced ongoing monitoring of the business relationship (regulation 14(4)).

5. HM Treasury Sanctions List

5.1. It is an offence to act for anyone who appears on the HM Treasury sanctions list whether you know that they are on it or not.

5.2. It is therefore vital to know whether or not your potential client may be on the list and the only way of easily and clearly establishing this is by an online search, although a list is always available on the Treasury website at http://www.hm-treasury.gov.uk/financialsanctions

5.3. The list has been set up to target particularly terrorist financing. HM Treasury targets anyone they suspect may be attempting to participate in the commissions of acts of terrorism, and anyone who works on their behalf.

5.4. This can clearly include anyone in the UK suspected of terrorism, and I do not think you need reminding that one of the July 7 bombers lived in Aylesbury and would therefore have been on this list or he or his family would have appeared on the list very shortly after 7 July 2007.

5.5. The Financial Sanctions Unit of the Bank of England administers financial sanctions in the United Kingdom on behalf of HM Treasury. It has been in operation since before 1993 when it applied sanctions against the Government of Libya.

5.6. Financial sanctions have established under a multitude of regimes, from UN Security Council Committee Established Pursuant to Resolution 1267 (1999) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities, to EC Commission Regulations, to UK Government orders enforcing trade restrictions against activities in particular countries. Often these authorities overlap so that the same candidates for sanctions are listed from different sources.

5.7 Aside from the Al-Qaida and the Taliban regimes, there are sanctions regimes against persons associated with Belarus, Burma, Democratic Republic of the Congo, the former Yugoslavia, Iraq, Ivory Coast, Lebanon, Syria, Liberia, Sudan and Zimbabwe. Previous regimes, which have been lifted, involved Angola, Haiti and Libya.

6. Low Risk Matters

6.1 If a matter is low risk for money laundering, (for example because the client is well known and reputable, or well regulated, or the value involved is small) you may take a proportionate approach to due diligence. For example you might not require documentary evidence to verify the identity of beneficial owners, and you may apply less rigorous ongoing monitoring.

6.2 Even in low risk matters, if there is reason to suspect money laundering, even of a technical nature, you must report it to the firm's MLRO (James Couzens).

7. Precautions to Mitigate Risk

In high risk cases you should identify the action you will take to mitigate the risk. In many cases merely being aware of the risk and applying enhanced ongoing monitoring will be sufficient, but consider whether any further action is appropriate.

8. Understanding Risk

Consider also the material later in this manual entitled "Detecting Money Laundering". You should familiarise yourself with the material relevant to your own practice area.

F ONGOING MONITORING

1. What is Ongoing Monitoring?

Regulation 8 requires us to undertake ongoing monitoring of business relationships. This means scrutiny of transactions, including where necessary, the source of funds, to ensure they are consistent with our knowledge of the client, his business and risk profile. It also involves keeping our due diligence documents and data up to date.

The Law Society states that "ongoing monitoring will normally be conducted by fee earners handling the retainer, and involves staying alert to suspicious circumstances which may suggest money laundering, terrorist financing, or the provision of false CDD material."

2. Enhanced Ongoing Monitoring

For higher risk clients, including PEPs, you must conduct enhanced ongoing monitoring. What this involves will depend on the circumstances, but it may include paying strict attention to the source of funds applied during a transaction, and questioning your client closely about relevant issues as the matter proceeds. It could also involve a discussion with the MLRO (James Couzens) if the case is proceeding for more than two months so that agreement can be reached about continuing monitoring.

G REPORTING SUSPICIOUS TRANSACTIONS

1. Why Report?

You must report anything that should give you grounds to suspect that money laundering has taken place or is being attempted, to the firm's MLRO (James Couzens). To fail to do so is a serious criminal offence, under s330 Proceeds of Crime Act 2002.

You should also note warning on the first page of this manual Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under POCA, the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasion or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary.

There are three acknowledged phases to money laundering: placement, layering and integration, which would have been extremely explained to you in more detail in your training. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering.

2. Privilege

2.1. Information received from a client, or from the representative of a client, for the purposes of legal advice may be covered by legal advice privilege. If so, that may prevent you from making a disclosure. **The law on privilege is complex and if it may apply you should discuss the issue with the MLRO (James Couzens)**.

2.2. Even if information is privileged it will still be an offence to be involved in a money laundering transaction (s327 - 329 Proceeds of Crime Act 2002). If legal privilege prevents you from making a report, you may still need to cease to act for the client, if to continue would involve you in, for example, facilitating a money laundering transaction. There will be some circumstances where you might consider making a voluntary disclosure as you might want to retain the ability to continue to act. As stated above these issues are complex and must be dealt with in consultation with the MLRO (James Couzens)

3. Renewed Due Diligence

If you have concerns you may make inquiries of your client, or a third party, to help you decide whether you have a suspicion. Regulation 7 requires you to "apply customer due diligence measures" when you suspect money laundering or terrorist financing or doubt

the veracity or adequacy of identification documents. That may include you making normal inquiries to clarify facts. These inquiries will not amount to tipping off. To quote the Law Society "There is nothing in POCA which prevents you making normal enquiries about your client's instructions and the proposed retainer, in order to remove, if possible, any concerns and to enable the firm to decide whether to take on or continue the retainer."

4. Tipping Off

Where there is a suspicion of money laundering it is important that **you should only report this to the appropriate persons within the Firm**. You must not tip off the person being reported, even if it is a client. Otherwise you may commit an offence under s333 Proceeds of Crime Act 2002, by making a disclosure likely to prejudice an investigation.

5. How to Report

5.1. If you need to report a suspicion of money laundering, a form has been designed for this purpose (attached, FORM B). It is sensible to try and complete this before reporting the matter anyway in order that you get your own thoughts and suspicions clear. When it has been completed you should take it to James Couzens the MLRO and discuss your concern with him. If he is refer the matter to Richard Sauvain, the deputy MLRO or the Senior Partner.

5.2. Upon receipt of the form, and after discussion with you the MLRO (James Couzens) will consider the problem in the light of all the circumstances and will take a decision about whether to report the matter to SOCA (the Serious Organised Crime Agency).

5.3. SOCA will consider the disclosures received and may pass all or some of the intelligence contained in the suspicious transaction report on to the enforcement agency with the power to investigate further. Where the intelligence relates to offences committed overseas, SOCA may disclose the intelligence to equivalent law enforcement agencies overseas.

6. Authorised and Protected Disclosures

You need not fear that making an erroneous report will expose you to legal or professional sanctions. S338 Proceeds of Crime Act 2002 provides that a report of suspicions of money laundering is not to be taken to breach any duty of confidentiality.

H DETECTING MONEY LAUNDERING

1. Suspicion

This part of the manual contains guidance on when you should suspect money laundering, and make a report to the MLRO (James Couzens). Note that for suspicion a person would not be expected to know the exact criminal offence or that particular funds were definitely those arising from the crime. The "reasonable grounds for suspicion" test is objective. Generic or stereotypical views of which groups of people are more likely to be involved in criminal activity cannot be the basis of the "reasonable grounds".

Sound and well-documented due diligence procedures and ongoing monitoring will enable you to demonstrate that you took all reasonable steps to prevent money laundering.

2. Grounds for Suspicion – General

In any practice area any of the following factors may make you suspicious.

2.1. **Cash**. Any party (whether our client or otherwise) proposes to pay significant sums in cash, or client who asks that the firm hold in client account a large sum of cash, pending further instructions for no purpose.

2.2. **Rapid transfers of funds**. Paying money into and out of our client account may be designed to conceal the true origin of the funds.

2.3. **No commercial purpose**. A transaction which has no apparent purpose and which makes no obvious economic sense is suspicious.

2.4. **Unusual transaction**. Where the transaction is, without reasonable explanation, out of the range of services normally requested by that client or outside the experience of the firm. A request to use a junior member of staff or one who lacks expertise in the relevant area may be suspicious. Criminals can believe that an inexperienced solicitor will be less likely to note or report unusual features.

2.5. **Lack of concern about costs**. A client who wishes matters to be done in an unduly complex manner, or who otherwise does not seem concerned to control costs.

2.6. **Secretive clients**. The client refuses to provide requested information without reasonable explanation, including client identification information, The client who is not prepared to attend at the office with no good reason for not doing so.

2.7. **Unusual sources of funds**. The client provides funds other than from an account in his/her own name maintained with a recognised and reputable financial institution.

2.8. **Unusual Payment methods** - Any client who requires that payments to or from them be in cash, particularly in large commercial transactions or purchases of property, or
The requirement that payment be by way of a third party cheque or some other form of money transfer

2.9. **Suspect jurisdictions**. Take particular care where the funds come from a jurisdiction with less rigorous anti-money laundering controls. Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe and the northern part of Cyprus have been criticised by the Financial Action Task Force (FATF). It issued a warning on 28 February 2008 of the higher risks of money laundering and terrorist financing posed by deficiencies in those jurisdictions. Other countries not on that list may still be suspect, since not all countries can be effectively monitored by FATF.

2.10. **'Safe jurisdictions'** On the other hand all EEA states are subject to the money laundering directive, and can be assumed to be have similar money laundering systems to our own. On 12 May 2008 HM Treasury stated that the following non-EEA states may also be considered as having equivalent anti-money laundering systems. Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, New Zealand, The Russian Federation, Singapore, Switzerland, South Africa and the USA..

2.11. **Politically Exposed Persons**. Remember that you need approval to take on a client who is a PEP.

2.12. **Terrorism**. Particular care should be taken where the client or other party to a transaction is believed to have sympathies with a terrorist group. Fund raising for apparently benevolent objects, or payments to accounts in politically unstable areas may in some circumstances give rise to suspicion.

2.13. The client who has **no discernible reason** for instructing the firm or a particular fee earner

2.14. Clients who for **no apparent reason** are not using their usual solicitor

2.15. Clients who request that a **transaction be handled in a particular way** without there being a good reason.
Clients from outside of the area

2.16. The client who is using the firm for a type of work that the firm is not generally known to handle.

2.17. Request to hold boxes, parcels, and sealed envelopes on behalf of client.

3. Grounds for Suspicion – Property

Real estate transactions are a high-risk area for money laundering. The purchase and sale of property can be used to confuse an audit trail ("layering") or an investment in property may be the long term goal of money laundering ("integration"). In addition to the general risk factors listed above, factors particularly relevant in property transactions include the following.

3.1. Transactions with no clear commercial motive.

3.2. Transactions where the source of the client's wealth is unclear.

3.3. Property purchased and sold rapidly, for no clear reason.

3.4. Insistence that a matter be completed very urgently, since this may be a tactic to distract you from making proper checks.

3.5. Cancelled transactions, particularly where the client requests that funds s/he has provided should be paid out to a fresh destination.

3.6. Properties owned by nominee companies, off shore companies or multiple owners, where there is no logical explanation.

3.7. Difficulties with identification of client or beneficial owners, including reluctance to attend for identification processes, which may suggest impersonation.

3.8. A third party providing the funding for a purchase, but the property being registered in somebody else's name. Of course third parties often assist others with purchases, e.g. relatives of a first time buyer. However if there is no family connection or other obvious reason why the third party is providing funding, further inquiries may be appropriate.

3.9. Large amounts of money provided by a client who appears to have a low income.

3.10. Irregularities in valuation of the property, which may be evidence of mortgage fraud or attempts to defeat creditors.

3.11. Transactions where the value involved is unusually large.

3.12. Transactions where the value involved is unusually large.

3.13. A misleading apportionment of the purchase price, with the intention of avoiding Stamp Duty Land Tax. If a solicitor discovers such tax evasion after it has taken place this will normally trigger an obligation to report.

3.14. Information about past tax evasion or welfare benefit fraud may also come to light in conveyancing matters, and may necessitate a report.

3.15. Payment of deposit direct to vendor (particularly where the deposit paid is excessive).

3.16. Misrepresentation of purchase price.

3.17. Individuals who claim to act for a large number of 'clients' all of whom suddenly decided to buy houses and most of whom can never find time to meet the solicitor.

3.18. Be particularly alert to signs of mortgage fraud. Any attempt to mislead lenders may indicate mortgage fraud, as may the use of shell companies or nominees, and the rapid re-sale of property. All property lawyers should read the Law Society practice note on mortgage fraud, issued 15 April 2009, and available on the Law Society website at: http://www.lawsociety.org.uk/productsandservices/practicenotes/mortgagefraud/2607.article

4. Grounds for Suspicion – Corporate

Many of the issues that relate to property transactions may also be relevant to the buying and selling of businesses. Other issues may include the following.

4.1. During due diligence it may become apparent that some or all of the assets owned by a business represent criminal property, due to tax evasion or other offences committed by the seller.

4.2. Requests for unusual structures, including offshore companies, trusts or structures in circumstances where the client's business needs do not support such requirements may be suspicious, in that they may suggest that the client is seeking to conceal the true ownership of assets.

4.3. Formation of subsidiaries in circumstances where there appears to be no commercial purpose or other purpose (particularly overseas subsidiaries).

4.4. Large payments for unspecified services to consultants, related parties, employees etc.

4.5. Long delays over the production of company accounts.

4.6. Unauthorised transactions or improperly recorded transactions (particularly where company has poor / inadequate accounting systems).

4.7. Dubious businesses often use more than one set of professional advisers. Ask 'why me?'

5. Grounds for Suspicion - Private Client

Generally, wills and probate work is relatively low risk for serious money laundering, because transferring wealth on death provides few opportunities for professional criminals to hide or enjoy criminal property. However the need to make a report may arise in a variety of circumstances.

5.1. A solicitor administering an estate may become aware that the deceased committed benefit fraud, for example because the estate includes assets that exceeded the relevant limits for benefits the deceased was claiming.

5.2. If the deceased was known to have committed acquisitive crimes (for example because the firm acted for him in criminal matters) it may be suspected that his estate includes criminal property.

5.3. Solicitors may suspect that a testator or beneficiaries have committed tax evasion. For example it may be discovered that beneficiaries have failed to declare gifts received from the deceased in the seven years before death.

5.4. If the estate includes assets in poorly regulated foreign jurisdictions. It may be appropriate to make further inquiries.

5.5. Some trust work may be high risk, especially if the trust was set up inter vivos and there is inadequate information about the source of the wealth used to fund the trust. Discretionary trusts and offshore trusts can be particularly useful to conceal the ownership or origin of assets. Particular care may be appropriate if the trust has

an unusual or unduly complex structure, the assets involved are high in value, or there is no logical explanation for their origin, or there is difficulty obtaining proper evidence of the identity of those involved.

6. Grounds for Suspicion – Litigation

6.1 You need not report suspicions of money laundering based on information received when undertaking litigation work, since it is not regulated business.

6.2 You may also continue with a litigation matter involving the transfer of criminal property, without being guilty of an offence. Litigation work is exempted from normal money laundering rules by the judgment of the Court of Appeal in Bowman v Fels (2005) EWCA Civ 226. That decided that s328 Proceeds of Crime Act "is not intended to cover or affect the ordinary conduct of litigation by legal professionals".

6.3 This exemption extends to settlement of a dispute "where there are existing or contemplated legal proceedings" (para 101 of the judgment). In the view of the Law Society it also extends to Alternative Dispute Resolution and to dealing with the final division of assets under a judgment or settlement, including handling "criminal property".

6.4 The protection only applies to legal professionals. Clients involved in a case involving criminal property may still be committing an offence under s327 - 329 Proceeds of Crime Act 2002, unless they make a disclosure to SOCA and obtain consent to proceed. They should be so advised.

6.5 For example, in matrimonial litigation, it may be that the assets which are the subject of an application for a property adjustment order are criminal property, most commonly due to tax evasion or benefits fraud. In any litigation involving allegations of dishonesty, it may be that money held by a party could be the proceeds of that dishonesty.

6.6 Note however that - The Bowman v Fels exemption does not apply to **"sham litigation"**. One example of sham litigation is where litigation or settlement negotiations are fabricated by the parties to launder the proceeds of an earlier crime. A more common example is where a dishonest claimant fabricates a claim or category of loss, against an innocent defendant. By acting in sham litigation we could be guilty of money laundering under POCA, if criminal property has come into existence. If you believe that a claimant may have fabricated their claim or a category of loss, consult the MLRO (James Couzens)

APPENDIX A **FORM A**

(continue on separate sheet if there is insufficient space) **FORM A**

DUE DILIGENCE FORM (*Note 1*)

1. WHAT ARE THE CLIENT'S FULL DETAILS?

Full Name:

Date of Birth / incorporation:

Address / registered office / trading address *(Note 2)*:

2. WHAT IS THE MATTER YOU ARE TAKING ON FOR THIS CLIENT?

Matter:

Matter No.: Fee Earner Ref:

3. HOW HAVE YOU IDENTIFIED THE CLIENT?

I have identified the client and verified their identity on the basis of documents, data or information from a reliable and independent source. (*Note 3*)

The client was not present and is 'remote'
I am therefore conducting this matter with enhanced due diligence ☐

I attach a copy of the completed satisfactorily SmartSearch (*Note 4*) ☐

or

I attach a copy of the verification documents (*Note 5*) ☐

or

Such evidence is unnecessary because:
We already have sufficient evidence on file (*Note 6*) ☐
The client is a listed company, public authority, or FSA regulated (*Note 7*) ☐
The following other reason: (*Note 8*) ☐

4. IS THE CLIENT OWNED OR CONTROLLED BY SOMEONE ELSE - BENEFICIAL OWNERS (*Note 9*)

There is no beneficial owner other than the client ☐

or

There is/are(an)other beneficial owner (s) ☐ namely:
and whose details are set out in the attached sheet / to follow

or

I have identified the beneficial owner (s) listed overleaf ☐

and I have taken the measures referred to overleaf, on a risk sensitive basis to verify their identity so that I am satisfied I know who the beneficial owner is (including in the case of a legal person, trust or similar arrangement, measures to understand its ownership and control structure). (*Note 10*)

5. HOW HAVE YOU ASSESSED THE RISK OF DEALING WITH THIS MATTER? (*Note 11*)

I have obtained information on the purpose and intended nature of our business relationship with the client.

I currently assess the risk of dealing with this client/matter as **LOW/ MEDIUM/ HIGH** (*delete as applicable*)

The main factors in my risk assessment are: (*Note 12*)

I have taken/ am taking the following precautions to mitigate risks identified (*to be completed in all higher risk cases*) (*Note 13*):

I have set out on a separate sheet any apparent inconsistencies in identification and my reasons for believing these still to be consistent and causing me no concern. (*Note 14*)

Signed …… Dated ……..

BENEFICIAL OWNERS

Beneficial Owner No 1:
Name: Date of Birth:

Address:

Status:

Verification Evidence:

Beneficial Owner No 2:
Name: Date of Birth:

Address:

Status:

Verification Evidence:

Beneficial Owner No 3:
Name: Date of Birth:

Address:

Status:

Verification Evidence:

(*Repeat for any further beneficial owners*)

CLIENT DUE DILIGENCE FORM – NOTES

GENERAL

Note 1 Timing:

You must carry out "customer due diligence" and complete this form when you take on a new client or matter. Do not accept funds on behalf of a new client before completing due diligence.

Identification and verification should generally be completed before the establishment of a business relationship with the client. But where (1) it is necessary not to interrupt the normal course of business, and (2) there is little risk of money laundering, you may conduct verification during the establishment of the relationship, so long as it is completed as soon as practicable.

You must also carry out ongoing monitoring. You must also repeat CDD when you suspect money laundering, or doubt due diligence documents previously obtained.

Note 2 Address:

For corporate clients, give registered office and business address.

CLIENT IDENTIFICATION

Note 3 Evidence Required:

Individuals, generally undertake an online search for which purpose for you will need to ask the client full name and address plus date of birth to enable the online search to be undertaken properly

ask for either:

- current photo card driving licence (gives name, address and date of birth), or
- passport and a proof of address such as recent utility bill, council tax bill, bank statement, entry in electoral roll or phone book.

NB A driving licence includes a six digit number that gives the date of birth in coded form, as follows. The first and last numbers are the year of birth. The second and third numbers are the month of birth. For a female, '5' is added to the second number and the total used as the second digit. So for a woman born in October the second and third numbers would be 60.) The fourth and fifth digits show the day of your birth. So for a woman born on 04/03/61, the number would be 653041. For a man it would be 603041.

If a client has no photo i/d you may accept an old style driving licence, benefit book, or cheque drawn on bank account in their name as evidence of name, plus proof of address as above.

Unlisted Companies and LLPs: Do an on-line company search to confirm the existence of the company, and to obtain its registered number and registered office (this search is free).

See notes below about identifying and verifying beneficial owners.

Partnerships: For a regulated professional partnership it is sufficient to rely on information from a reputable directory or from the relevant professional body. For other partnerships, see the notes below on beneficial owners.

For trusts, verify at least two trustees. In higher risk cases obtain evidence of all. Ensure you understand the purpose of the trust and the source of its funds. Also see the notes on beneficial owners below.

Note 4 Saving searches: The completed online search should be saved and printed and both retained on the file and scanned by the fee earner or their secretary. The scanned copy should be deposited in the folder on the server under "client due diligence"

Note 5 Certified Copies:

If you inspect original documents such as a passport or bank statement, take a photocopy and sign and date a statement upon it such as "I confirm that I have inspected the original document, and that this is a true copy".

Note 6 Sufficient Evidence on File:

The fact that we have acted for a client previously does not of itself mean we need not identify. Check we hold evidence on file, and have had sufficient knowledge of the client since the original evidence was taken to ensure the evidence remains valid. If in any doubt, obtain fresh evidence of identity.

Note 7 Listed Companies, Public authorities and FSA regulated businesses.

No evidence of identity is required (save perhaps checking LSE or FSA website to confirm status). For subsidiaries of listed companies, obtain a copy of the latest annual return or comparable evidence showing the parent/subsidiary relationship.

Note 8 Other Reasons Why Evidence Not Required:

Public renown: You need not obtain formal evidence of identity if the client is an individual or business so well known nationally or internationally that such action would clearly be unnecessary and inappropriate. This exception does not apply simply because the client is known to you personally (but see note below).

Clients known to a member of the firm: In some cases our knowledge of the client and his/her affairs over a period of time will be sufficient to verify identity, even though we have never obtained formal documentary evidence for the purposes of establishing identity. Law Society guidance says that for UK resident individuals it may be sufficient to receive a statement from a member of the firm or other person in the regulated sector who has known the client for a number of years, attesting to their identity.

Reliance: We may rely on due diligence conducted by other solicitors, regulated accountants, banks and certain others. You must obtain written confirmation that they have conducted due diligence, that they consent to us relying, and that they will, if requested, make available the information the due diligence information they obtained about the client and any beneficial owner.

BENEFICIAL OWNERS

Note 9 General approach:

Identification of beneficial owners should be carried out on a risk sensitive basis. The Law Society states that "Only in rare cases will you need to verify a beneficial owner to the same level that you would a client."

In lower risk cases you may rely on written assurances (from the client or others) as to the identity of beneficial owners, but you should consider whether it is reasonable to do so. You may also wish to receive written confirmation from the beneficial owner themselves that they accept that they are a beneficial owner.

In recording particulars of beneficial owners, include their status (e.g. director and 50% shareholder") and the evidence you have obtained to verify identity. Attach a copy if you have obtained documentary evidence.

Note 10 Definition of beneficial owner, and verification guidelines:

Companies / LLPs
A beneficial owner is any individual who
(a) ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights; or
(b) otherwise exercises control over the management of the body.

In the case of simple owner-managed companies, where you have met a representative, you may accept written assurances from the client identifying the beneficial owners. However you should still consider what action is appropriate to verify the identity of the people so named. If a company or LLP is wholly owned and controlled by three people or fewer, verify their identity by obtaining the same documents as you would require from individual clients.

In higher risk cases, such as international businesses, or those with a complex corporate structure, or if you do not meet a representative, take steps to be certain you have identified the true beneficial owners. That may involve an additional company search, or seeing the statutory books, or an accountants' reference, to confirm names and addresses of the directors, and 25% shareholders. Obtain suitable evidence to verify the identity of the people so named on a risk sensitive basis.

Partnerships
The definition includes any individual who
(a) ultimately is entitled to or controls (whether directly or indirectly) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights; or
(b) otherwise exercises control over the management of the partnership.

In higher risk cases, or if you do not meet the client, obtain the partnership deed to establish who are beneficial owners. Obtain evidence to verify the identity of at least two partners, including the partner instructing you.

Trusts:
Beneficial owner defined thus.
(a) Any individual who is entitled to a specified interest in at least 25% of the trust capital;
(b) As respects any trust other than one which is set up or operates entirely for the benefit of
individuals falling within (a), the class of persons in whose main interest the trust is set up or operates;
(c) Any individual who has control over the trust.
[*For more detail, see regulation 6.*]

Trusts vary from very low risk to very high risk for money laundering, and your approach to identifying and verifying beneficial owners should vary accordingly.

Estates in course of administration:
(a) In England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;
(b) In Scotland, the executor for the purposes of the Executors (Scotland) Act 1900(d).

Other:
The individual who ultimately owns or controls the client or on whose behalf a transaction is being conducted.

Note 11 Ongoing Monitoring:
Your assessment of risk may change. You must conduct ongoing monitoring during the client relationship, including scrutiny of transactions (including where necessary the source of funds) to ensure transactions are consistent with your knowledge of the client, his business and risk profile. Repeat due diligence when you suspect money laundering, or doubt the veracity or adequacy of due diligence documents.

Note 12 Risk Factors:

Relevant factors may include the following:

Client or beneficial owner is a Politically Exposed Person ("PEPs") If a client is a foreign national you should make enquiries to establish if s/he is a PEP. **You may not accept a PEP as a client without approval from the firm's MLRO.**

Client was not present when identified: If so you must apply enhanced due diligence to compensate for the higher risk. For example ensure a trusted third party certifies the identification documents or vouches for the client, or ensure the first payment is made through an account in the client's name.

Nature of the work Property work generally carries the highest risk of money laundering. Factors which may make property work higher risk include

- rapid purchase and sale of property
- property bought without a mortgage, by clients whose wealth is unexplained
- transactions with irregularities or inconsistencies which may be consistent with mortgage fraud or other dishonesty
- transactions with price apportionments with possible purpose of avoiding SDLT

Each matter should be judged on its merits. Some property work will be lower risk, particularly owner-occupier transactions for clients with a stable salaried income, and letting work.

Other risk factors may include these:

- Difficulties in obtaining information about client or beneficial owners.
- Complex corporate or trust structures especially if involving corporations registered abroad, for no apparent reason, or bearer shares or similar devices.
- Convictions or criminal associations on the part of the client or beneficial owner.
- Cash handled by the client in the course of his business.
- Invitations to accept cash into client account.
- Source of funds unusual or implausible.
- Value involved out of proportion to client's known income or legitimate assets
- Unusually high value transaction.
- Matter outside our normal experience
- International money transfers involved.
- Lack of a plausible commercial or other purpose for the transaction or structure.
- Client has sympathies for terrorism.
- Third parties believed to be suspect.

Some circumstances reduce risk, for example the fact that the client is known to be honest or is highly regulated, or that the nature of the work provides few opportunities for money laundering. A matter may be low risk, despite the presence of one or more risk factors.

Note 13 Precautions:
The precautions taken must reflect the risk(s). Action may include

- additional evidence to verify the identity of the client and/or beneficial owners
- enhanced awareness and ongoing monitoring
- reviewing the matter with the MLRO to ensure risk level is acceptable
- setting period review dates at which fresh risk assessment will be carried out.

Note 14- Apparent inconsistencies
To an outside observer inconsistencies in identification evidence could easily be said to give rise to suspicion. However your knowledge of the circumstances and discussions with the client can clarify and explain these. However the due diligence form only contains what you have recorded on it, not what you know that explains any inconsistencies. The due diligence form should contain this explanation, since if the client was subject to investigation in the future your lack of a record of the explanation for the apparent inconsistency could prove to be difficult..

FORM B

MONEY LAUNDERING REPORT FORM (INTERNAL)

IMPORTANT If you suspect money laundering or terrorist financing submit this report without delay to the firm's MLRO (James Couzens). Also telephone to advise that a report is being made. Do not inform anyone else. It may be an offence to disclose that this report has been made.

CLIENT DETAILS

Name …… Date of Birth: ……
Aliases / Trading / Business Name……..
Address ……
…….. Telephone No. ……

If beneficial owner exists who is not the client:
(a) Name of beneficial owner ……
(b) Address of beneficial owner ……
……

Evidence of identity of client / beneficial owner attached: YES/NO (give details):
……

Name and Address of Introducer (if any) ……

INFORMATION/SUSPICION

Details of Transaction, (including value, source of funds, other parties, etc)

……

……

Reason for Suspicion (continue on separate sheet as necessary)
……

……

……

Other Comments ……

REPORTER

Name …… Dept …… Extension ……

Signed …….. Date ……..

MLRO USE

Date / time received ……