Issue 5: July 2017

The Key to Best Practice

01642 225 553

jrs@we-are-jrs.co.uk

Compliance matters

The quarterly digest of risk, compliance and practice management features for law firms

On the money

The new Money Laundering Regulations seem to have collectively caught the profession on the hop. Suddenly, it was the 26th June and they were in force. Everyone started to panic, thinking "I must go on a course". A calmer reflection should have been the response.

The MLR 2017 are evolutionary, not revolutionary. They build on the 2007 MLR rather than offering a root and branch reform. So hopefully everyone can start calming down.

We have studied the new Regs in some detail and whilst changes will be required, they are not huge. We expand upon these later. Perhaps the most significant change is the requirement for some form of AML risk assessment to be conducted and recorded.

Clients of JRS Consultants can relax a little more as we will be effecting all the changes required to documentation in the near future.

Dean Grindle
Editor

Extended opening hours: MoJ try again

One could be forgiven for thinking that the MoJ's extended-hours pilot scheme for Court sittings had been filed away into the 'too difficult' pile. Not so.

The MoJ has recently announced that a new pilot scheme will run for six months from this Autumn. Six courts have been selected for the trial: Newcastle and Blackfriars Crown Courts, Sheffield and Highbury Corner Magistrates' Courts and Manchester and Brentford Civil/Family Courts.

The Courts will trial different opening hours ranging from 8am until 8pm. The Law Society and Bar Council have made clear their concerns about the pilot scheme and reinforced the need for a robust evaluation of the impact of the scheme on professionals and members of the public. There was particular concern about the impact on professionals with parenting or caring responsibilities.

The major concern with proposals such as this, and we have seen it frequently in the legal sector in the past, is that public institutions become driven by a narrow cost-cutting agenda. This results in a closed mindset, deaf to the legitimate concerns raised by stakeholders. Consultation exercises, instead of being genuine, become little more than a box-ticking exercise. We hope that this will not follow that well-trodden path.

The MoJ were at pains to stress that the results will be properly analysed to see where – and if – the extended court hours work best. We will give them the benefit of the doubt for the moment.

Inside

MLR 2017

In this edition, we summarise the main impacts of the new Money Laundering Regulations which came into force on the 26th June 2017.

Ransomware

It isn't only big institutions like the NHS that get attacked. Hackers go for the most vulnerable targets. That often means small firms. Find out how to protect yourself in this edition.

JRS Consultants

Cargo Fleet Offices
Middlesbrough Road
Middlesbrough

Lexcel
Legal Practice Quality Mark
Law Society Consultant

Accounts Rules changes for 2018

SRA's final phase of reviewing Accounts Rules looks at fundamental simplification

The SRA has been looking more widely at the existing Accounts Rules and has suggested proposals for broader change.

The consultation closed in September 2016 and since then the SRA has published its response in June 2017 setting out the new draft Accounts Rules 2018.

In general, the profession's response has been warm to the thrust towards simplification. The new Rules are only 7 pages long. However, as eternal cynics, we at JRS remain to be convinced by this first flush of simplification. The SRA's response makes it clear that it intends to publish guidance to expand on the Accounts Rules. The reality is that such 'guidance' will often contain 'back door' rules and we are guessing that the end result is that the new Rules (plus Guidance) won't be too much shorter than the old Rules.

One aspect of the consultation that attracted criticism, was the proposal to change the definition of client monies.

The Rules will not come into effect before the Autumn of 2018

The SRA has therefore amended its proposal for the definition of client money in the final version of the rules, to allow firms with a client account to continue to operate as they do now. It also claims to have provided some flexibility for those firms that do not wish to operate a client account, by creating an exemption from doing so where the only client money they hold is in relation to fees and disbursements relating to expenses which they have incurred on their client's behalf (such as counsel's fees).

The SRA is to introduce a rule exempting payments from the Legal Aid Agency (LAA) from being held in client account.

The SRA has stated that the draft SRA Accounts Rules 2018 will not come into effect before the Autumn of 2018. Before then, there will be a further consultation process before the final version of the SRA Accounts Rules 2018 are presented to the SRA Board for approval.

Money Laundering Regulations 2017

It's more Evolution than revolution, but doing nothing isn't an option

The Money Laundering Regulations, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force on the 26th June 2017. We will refer to them as the MLR 2017 for obvious reasons.

The Law Society plans to release a Practice Note to assist firms with their compliance obligations. However, as a result of the tight timescales, allied to the fact that the Society is required to provide 'sector-wide' guidance, at the time of writing, it had not been completed.

However, the Society has produced a Quick Guide to the Money Laundering Regulations 2017 which we feel is quite useful. We have summarised below what we regard as key elements:

Risk assessment

Firms now must carry out a written risk assessment to identify and assess the risk of money laundering and terrorist financing that they face. This means looking at, for example, your clients, jurisdictions you operate in, services provided, the types of transactions and how you deliver the services.

A firm conducting legally aided criminal defence work will clearly have a dramatically lower AML risk profile than a 'factory' Conveyancing practice whose client contact is totally on-line. But it does not obviate the requirement to prepare a written risk assessment.

We have developed what we think is a neat way to conduct these assessments for our client firms.

Update your AML Policy

Your existing Policy (if you have one!) is likely to be based on the 2007 Regulations. That will not suffice, so you will need to update your Policy to correlate with the new Regs. We will be progressively updating the Policies of our retained clients. We should add that if you are Lexcel-accredited then you should update your practices before your next audit or you are likely to be non-compliant.

Agree Internal Controls

You need to appoint a person at 'board level' to be responsible for compliance with the Regulations, so make sure you have nominated someone of senior management status. This person doesn't have to be the same as the MLRO (who must also be nominated) but for most firms we cannot see any merit in nominating separate personnel.

You need to carry out screening of relevant employees prior to their appointment and during the course of their appointment.

Review your Customer Due Diligence (CDD) arrangements

The way you comply with the requirement to take CDD measures may differ from case to case, but must reflect both your firm's risk assessment and your assessment of the level of risk arising in the particular case.

The new Regulations are more prescriptive about the application of simplified CDD, enhanced CDD and those applied to corporate entities. There are also tighter controls for Politically Exposed Persons (PEP).

Records

Under Reg 40 you must keep a copy of CDD documents for a period of five years. It is recommended that changes are made to terms of business to reflect the revised requirements for record retention.

Ransomware: An increasing threat

With increases in prevalence and complexity, could you cope with an attack?

An increasingly popular and disruptive form of cybercrime is **ransomware,** which makes files and data stored on computers inaccessible unless a fee is paid.

Once a niche area for hackers, the attacks are now affecting government agencies and some of the world's biggest corporations. Most notably the NHS was recently harmed. With sophisticated ransomware software available online for hackers to use and the rise of anonymous digital currencies such as bitcoin, there are fears the attacks will only continue.

In fact a number of JRS client firms have reported ransomware attacks. The consequences for some have been massive, with major data loss and huge resources having to be committed to recover systems and get back to normal operations.

How they work

The scam works by using malware to disable the victims' computers until they pay a ransom to restore access. Cybercriminals often use social engineering tricks, such as displaying phony messages purporting to be from local law enforcement, to convince victims to pay up. Messages often include warnings such as, "You have browsed illicit material and must pay a fine".

Even if a person does pay the ransom, the cybercriminals often do not restore functionality. The only reliable way to restore functionality is to remove the malware.

How to protect your systems

There is no silver bullet; just a number of basic measures that you keep applying namely:

Backup regularly and securely

Back your data up regularly to an external source. If attacked, a computer can be reset to its factory settings and then the backed-up files can be reinstalled, essentially wiping the ransomware from the system.

Keep your software up to date

This includes the operating system, the browser and all of the plug-ins that a modern browser typically uses.

Install protection software

Have security software installed and, most importantly, up to date with a current subscription. With the thousands of new malware variants running every day, having a set of old virus definitions is almost as bad has having no protection.

Educate your staff

Most common infections are through social engineering. Educate staff to never open spam emails or emails from unknown senders. Above all else, exercise common sense. If it seems suspect, it probably is.

The General Data Protection Regulations

With the GDPR coming into effect on the 25th May, all law firms need to be prepared.

Are you?

In May next year, the Data Protection Act (DPA) will be replaced by the EU's General Data Protection Regulation (GDPR), a framework with greater scope and much tougher punishments for those who fail to comply with new rules around the storage and handling of personal data.

Among many new conditions, one of the biggest changes law firms will face concerns consent. Under the new regulations, firms must keep a thorough record of how and when an individual gives consent to store and use their personal data.

Consent will mean ***active*** agreement. It can no longer be inferred from, say, a pre-ticked box. Firms that control how and why data is processed will have to show a clear audit trail of consent, including screen grabs or saved consent forms.

Individuals also have the right to withdraw consent at any time, easily and swiftly. When somebody does withdraw consent, their details must be permanently erased, and not just deleted from a mailing list. GDPR gives individuals the right to be forgotten.

In the event of a data breach, GDPR forces firms to inform relevant authorities within 72 hours, giving full details of the breach and proposals for mitigating its effects.

These new conditions alone – and there are many more – show just how demanding the new regulations will be for companies of all sizes.

The ICO website is a useful resource for guidance on the GDPR. It includes a self-assessment toolkit along with a 12 Steps to Take Now document.

IMO, EPF and FCA

No it's not a regulatory acronym quiz round. These are all acronyms related to the provision of financial or quasi-financial services by law firms.

Any firm undertaking 'insurance mediation' activities must register with the Financial Conduct Authority (FCA) on their Exempt Professional Firm (EPF) register. They will also need to appoint an Insurance Mediation Officer (IMO) whose details will be made known to the FCA and who will be responsible for the firm's insurance mediation activities.

But what is 'Insurance Mediation'?

Basically, it is assisting in the administration and performance of a contract of insurance. If you typically arrange ATE insurance for your litigation clients or, say, provide defective title insurance for your conveyancing clients, then you are involved in insurance mediation and you need to be registered. Ergo, most Conveyancing practices will need to be registered as an EPF and appoint an IMO.

What next?

To check if you are registered go to the FCA website and search for your firm. The SRA have been showing an increased interest in investigating insurance mediation activities so don't delay.

To register as an EPF contact the SRA by email to operations@sra.org.uk giving your firm's SRA number and the name and contact details of your firms FCA Compliance Officer, requesting that you be added.

Legal Aid *matters*

Welcome aboard

The LAA Welcome Pack gets a thumbs up from a surprising source

March 2017 saw the LAA release a 'Welcome Pack' to improve awareness of Contract requirements for Criminal practitioners securing a 2017 Crime Contract.

The Welcome Pack comprises:

- An overview of the 2017 Standard Crime Contract with key contract terms and obligations;
- Key LAA contacts;
- Information for new providers;
- Guidance on online submissions for LGFS and AGFS claims.

We must admit that the title 'Welcome Pack' had us initially feeling a little disorientated, with its hint of warmth from an organisation not exactly noted for that characteristic.

Those warm feelings continued as we delved into the documentation. It was pleasing that the LAA was acknowledging the complexity of contract compliance, particularly for new providers who may never have had any responsibility for that aspect in their previous firms.

New entrants have already had a very challenging set of tasks in setting up their firms within a short timescale and meeting all the requirements of the Regulator. LAA compliance is a huge burden on top of that.

The Pack was well thought out, comprehensive and easy to digest. Simon Pottinger even regarded it as one of the best publications to emerge from the LAA in years. So a hearty 'well done' to the LAA.

2018 Civil Legal Aid Tender: Still waiting

Keen legal aid watchers will recall that the LAA originally announced its tenders for 2018 Civil Contracts would commence as early as April 2017. Since then the LAA has performed what Private Eye magazine would describe as a 'double reverse ferret' with regard to the timescales.

January and February 2017 announcements by the LAA kept the faith that the tender process would commence in 'April 2017'. In March that was revised to 'May 2017'. Then, as we were all girding our loins for the challenges ahead, the LAA announced on the 2nd May that "We will provide further information on timescales for the procurement process as soon as possible."

We must admit that we were surprised by the LAA's initial reference to a specific month for the start date. The LAA has hitherto referred to implementation timescales in terms of seasons, rather than months. After this we're predicting that seasons will be back in, err, season at the LAA.

In our continuous quest to assist the profession, we sought to instruct Mystic Meg to see if she could elicit a timescale, but she declined the commission stating the assignment was 'too difficult'.

Having delved into the JRS Archives for similar situations, our best guess is that the tender will commence just as our very own Tender Guru Simon Pottinger goes on his annual leave.