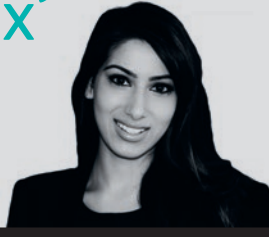


## Anti-money laundering

# 'The key is to adopt a risk-based approach rather than just obtaining confirmation of identity and bills to tick a box'

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**Q: I'm in a new job and under pressure to complete a property deal quickly, but I want to take the time to do the proper checks for money laundering. How do I convince my colleagues of the need to do this?**

**A:** Lawyers and law firms are constantly being pressured to win new work, meet targets and obtain repeat instructions. With ever-increasing competition, real-estate lawyers may be unable to turn work away.

The nature of modern property transactions, coupled with developing economies and enhanced technology that enables communication anywhere in the world, means there is no excuse for delays.

At the same time, the Solicitors Regulation Authority (SRA) has been cracking down on breaches of anti-money laundering regulations, so it's important for professionals to know what they should be doing, and what issues will require an enhanced due diligence (EDD) review. Law firms and other regulated sectors are extremely susceptible to so-called high-end money laundering.

On 15 May 2018 in the High Court, law firm Mishcon de Reya was held liable for breach of trust as the buyer's solicitors, even though it was the seller's solicitors that had failed to carry out their obligations under the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([bit.ly/MLTFTFregs17](http://bit.ly/MLTFTFregs17)).

Since 2015, the SRA has referred 49 lawyers to a disciplinary tribunal, resulting in 12 being struck off, the suspension of 13, and more than £800,000 in fines for cases linked to potentially improper movement of money ([bit.ly/SRAupdate](http://bit.ly/SRAupdate)).

The Law Society of England and Wales says signs of money laundering can include:

- clients with no obvious reason to instruct you, or a transaction with no obvious commercial purpose
- secretive clients who may be reluctant or evasive, or who refuse to share information
- clients who provide all required information without being prompted, perhaps attempting to rush the process
- a client using third-party funding or last-minute changes to funding

arrangements, leaving insufficient time to do proper due diligence on the third party.

In the past 18 months, the SRA has also prosecuted 20 solicitors and three firms for breaching SRA Accounts Rule 14.5 of 2011, which prohibits the use of a firm's accounts as a banking facility for clients. Three solicitors were struck off and two more suspended, while £763,000 in fines was levied, including a record fine of £500,000.

Some lawyers may never meet or even speak to their clients, though, so how can meaningful due diligence be undertaken? The key is to adopt a risk-based approach rather than simply obtaining confirmation of identity and bills to tick a box. So, if a client tells you their money represents the proceeds from a business, but this isn't immediately obvious, you would want some information on the business. The same goes for savings.

Lawyers are not forensic accountants, but they should nonetheless undertake a reasonable analysis of a client's identity and finances, unless there are any red flags that would immediately require EDD. Reasonable grounds for EDD include:

- property transfers made at very high or low prices
- a direct transfer of deposits, perhaps exceeding ten per cent of sale price by a buyer to the seller
- the use of offshore structures
- transaction coming through and from parties in high-risk countries ([knowyourcountry.com](http://knowyourcountry.com)).

The maximum penalty for a principal money laundering offence is 14 years' imprisonment, an unlimited fine, or both. Similarly, failing to disclose or report money laundering can result in unlimited fines and up to five years' imprisonment.

In 2006 a solicitor was sentenced to three months imprisonment as he was found to have allowed £66,000 to pass through his client account during conveyancing work for a convicted criminal ([bit.ly/EWCACrim2155](http://bit.ly/EWCACrim2155)). Conveyancers must be wary of committing an offence through involvement in their clients' activities.

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