

### **Covid-19 update - What work can I do?**

Unfortunately, there are really too many different transactions for us to advise whether it is appropriate in individual cases, for you to commence work if a client approaches you in the current climate.

It is possible that the delivery methods for existing services that you would normally use will change to enable work on matters to continue. We would recommend that you regularly look at the communications that these offices produce.

However, in providing the best advice to a potential client we would suggest that you consider the following:

- what the current restrictions mean for your normal checks (ID, AML etc)
- whether any other parties to the matter will be able to comply
- whether the completion of the matter will be affected by restrictions on the ability of other legal stakeholders (other firms, courts) to carry out their normal work
- whether restrictions on other non-legal parties will delay the completion of a matter (for example, removal firms)
- whether there will be any parts of the matter where the current restrictions will cause issues (service of documents)
- whether the client is happy for you to commence work but on the understanding that the timescales for conclusion will be longer than normal or may be uncertain as to a final date

You should document the effect of the current restrictions in any client care letter that you issue to ensure that the client is fully aware that the timescales for the matter may be longer.

You should advise whether this will incur any additional cost to them and particularly if you commence work and the matter takes too long and they wish to stop, what is the position regarding costs to date.

### **What if I refuse to carry out work because restrictions mean I am unable to?**

Under the current circumstances, no one can be forced to give legal advice. If you believe that you are following the government's advice on social distancing and this means you are unable to act for a prospective client, then you are free to decline instructions.

You should keep a record of your reasons for declining to act, including any distancing and hygiene restrictions difficulties or personal circumstances such as self-isolation which apply.

### **Contacting clients**

We realise that there may be circumstances when you need to contact clients face to face but you will need to be guided by the Government advice which can be found [here](#).

For certain clients it may be possible to arrange video calls via say Skype, Whatsapp, or Zoom. However, we recognise that this will not always be possible.

If you decide that a face to face visit is the only solution, then you must consider the risk to staff and to the client. Both parties must agree to the meeting despite any risk.

We will continue to consider what further advice we can provide.

## Identity checks and AML considerations

We recognise that our firms have engaged positively with their obligations under the Money Laundering Regulations, whether or not the business that they carry out means that they fall under the definition in Regulation 12.

At this particular time, we would suggest that you consider on a case by case basis, whether the transaction you are proposing to carry out falls within the definition under Regulation 12.

To assist, the HMT-approved legal sector AML Guidance says that –

*“managing client money is more narrowly defined than handling it”.*

The guidance, which CILEx Regulation endorses, goes on to cover activities which are not covered by the regulations as follows –

- *Payment on account of costs*
- *Provision of legal advice*
- *Participation in litigation or alternative dispute resolution*
- *Will writing*
- *Work funded by the Legal Services Commission*

The following is a non-exhaustive list of actions which we do not believe amount to managing client money.

*\* Dispersal of funds as ordered by a court*

*\* When acting in a divorce, dispersal of funds derived from the sale of marital assets when that sale was conducted by another practice, e.g. dispersal to your client of monies received from a separate practice which arise from the sale by that practice of the family home, most likely in terms of a Minute of Agreement*

*\* Dispersing to your client an award arising from civil litigation e.g. a cheque received from an insurance company in connection with a personal injury claim.*

*\* Dispersing to your client an award from the Criminal Injuries Compensation Board.*

If it does not, then the obligations under the Money Laundering Regulations will not apply. You should document clearly why you believe that this is the case.

If the work falls outside of the regulations, then we would suggest adapting the following guidance on non-face to face checks. The key to you will be in assessing whether it is a low risk transaction.

### Non-Face to Face Checks

You should endeavour to obtain a copy of your clients ID which should be certified by an appropriate person. The **UK Government** website lists these persons. You should be satisfied that the person certifying the document genuinely holds the position they claim to.

In the current situation, to allow you to identify and verify your clients during this time we suggest utilising apps such as Skype or Whatsapp to ascertain who the client is and to assist with the identification and verification process.

1. Request the client to capture a clear, legible colour image of their passport / ID document and ask them to email it to you.
2. Arrange to video call the client. During this call, ask the client to hold the passport / ID document to their face. By checking the emailed copy along with capturing the

image of the client with the passport / ID document, you should be satisfied that they are one of the same before proceeding

3. In addition to the passport / ID document, ask the client to email you a copy of their valid proof(s) of address
4. Verify the information using any electronic verification software. The service provider should be a reliable, independent digital ID system with appropriate risk mitigation measures in place
5. Ensure that you document the rationale for adopting your revised identification and verification measures in the client / matter level risk assessment and to risk grade the relationship accordingly
6. Policies, controls and procedures should be revised to take into account the new process

Should the client and / or matter in question raise additional red flags and present a higher risk of money laundering, you should ensure that you are satisfied that those risks are addressed before proceeding.

It is important to note that the regulations have not been relaxed in the current situation. We hope our suggested procedure above is useful but you should remember that if you cannot complete adequate due diligence you should not proceed with the transaction.

Without exception, CDD must be completed before you have completed the matter or title of assets transferred.

The legal sector is currently preparing further guidance on what this might mean in practice to a firm.

### **Electronic**

There are various commercial providers of electronic identification/verification (including Sanctions, PEPs, Adverse Media Checkers, Company Registry Information Providers, and verification of Identification Providers), which collate information from sources such as electoral rolls and other governmental records, credit agencies etc.

You may wish to consider this as an option if there remains a demand for service. There is [helpful guidance](#) from the Financial Action Task Force (FATF) on electronic due diligence.

### **Receiving Mail**

The Royal Mail's current advice is as follows:

Public Health England (PHE) has advised that people receiving letters and parcels are not at risk of contracting the coronavirus. From experience with other coronaviruses, we know that these types of viruses don't survive long on objects, such as letters or parcels. This complements the highly publicised guidance from PHE for people to wash their hands more often than usual using soap and hot water.

### **Scams**

A number of scams related to the coronavirus have been reported. If you suspect your business has been the victim of a fraudster contact your bank immediately and then report it to [Action Fraud online](#) or on 0300 123 2040.

### **Client Accounts**

We expect you to as far as possible comply with our Accounts Rules and to keep clients' money safe and separate from the firm's own money. This would include the carrying out of reconciliations to make sure you are protecting clients' money.

For those firms where an independent accountant's report is required, under the current exceptional circumstances we would take a pragmatic and proportionate approach to any delay in preparation of an accountant's report

We are gathering further advice on the carrying out of transactions and will provide updates in the next few days.

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