Northumbria
University
NEWCASTLE

DOCTORAL THESIS

Beneficial ownership and the legal profession: exploring issues and challenges faced by solicitors under the UK anti-money laundering framework with respect to the identification of beneficial ownership.

Turner, Susan

Awarding institution:
Northumbria University

Award date:
2024

Theses access and use terms and conditions
Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. These terms and conditions apply to all individuals accessing or using theses available on the Northumbria Research Portal - https://researchportal.northumbria.ac.uk/.

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

UniversityLibrary

Download date: 24. May. 2025

Beneficial Ownership and the Legal Profession:

Exploring Issues and Challenges faced by Solicitors under the UK Anti-Money Laundering Framework with respect to the Identification of Beneficial Ownership.

Susan Turner

DLaw

October 2023

Beneficial Ownership and the Legal Profession:

Exploring Issues and Challenges faced by Solicitors under the UK Anti-Money Laundering Framework with respect to the Identification of Beneficial Ownership.

Susan Turner

This thesis is submitted in partial fulfilment of the requirements for the award of Professional Doctorate of the University of Northumbria at Newcastle

Research undertaken at
Northumbria Law School

October 2023

Abstract

A growing consensus connects opaque beneficial ownership structures and arrangements with financial crime, corruption and other serious and organized crime. This has driven calls from national and international policy-makers, anti-corruption NGOs and academics to improve beneficial ownership transparency of corporations, trusts and property as a means of reducing opportunities for criminals to hide or launder the proceeds of their crimes and of exposing bad actors and dodgy deals.

Solicitors are professionals whose legal expertise means that they may be involved in constructing complex (or otherwise) beneficial ownership structures and arrangements for clients; and they offer services which clients may require in order to carry out transactions such as the purchase or disposal or assets or other property, whether via beneficial ownership structure or otherwise. In this respect, they are "gatekeepers" to the financial system. As such, solicitors face obligations under the UK's anti money laundering regime intended to prevent and forestall money laundering (the UK AML Framework).

As a former practicing solicitor and current academic teaching and researching in the fields of business, finance, financial crime and anti-money laundering, it is the role of solicitors within the UK AML Framework which I have chosen to explore in this professional doctorate. Using my professional knowledge and experience of the legal sector and my understanding of the UK AML Framework, the place of solicitors within it, and the particular focus in recent years on beneficial ownership transparency, this professional doctorate aims to contribute to the understanding of the operation of the UK AML Framework with respect to beneficial ownership.

My research is based on a qualitative analysis of nine semi-structured interviews with individuals involved in AML compliance within SRA-regulated firms to explore the role of solicitors within the UK AML Framework and the issues and challenges they face with respect to the identification of beneficial ownership, considering what they do, what they know, and the information and support available to them to fulfil their compliance obligations. The aim is to enhance the knowledge underpinning policy decision-making in relation to the AML Framework in the UK and lead to practical suggestions relating to: training, support and guidance for solicitors; amendment or clarification of the UK AML Framework; and accessibility, availability or nature of beneficial ownership information and registers.

Table of Contents

Contents

Abstract i

Table of Contents ii

Diagrams and Tables ix

Diagrams ix

Tables ix

Table of Legislation and Cases x

Statutes x

Statutory Instruments x

Parliamentary Bills x

International Legislation and Treaties xi

Cases xi

European Court of Justice Cases xi

Acknowledgements xii

Declaration xiii

Chapter 1 : Introduction 1

1.1 Introduction 1

1.2 The Organisation of this Thesis 3

1.3 Conclusion 6

Chapter 2 : The UK AML Framework 8

2.1 Introduction 8

2.2 The UK AML Framework 8

2.3 The Proceeds of Crime Act 2002 8

2.3.1 The Laundering Offences 8

2.3.2 Knowledge or Suspicion 9

2.3.3 Failure to Report Offences 10

2.3.4 Tipping Off 10
2.3.5 Problems Inherent in the Legislation 10
2.3.6 PoCA 2002 and Beneficial Ownership 11
2.4 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 12
2.4.1 Money Laundering Regulations and the Private Sector 12
2.4.2 The MLR 2017 Obligations 13
2.4.3 The MLR 2017 and Beneficial Ownership 14
2.5 Other relevant provisions 18
2.5.1 People with Significant Control 19
2.6 The International AML Regime 19
2.6.1 The international AML regime 19
2.6.2 The FATF Recommendations 20
2.6.3 MLD5 and Transparency 20
2.6.4 The International AML Regime and Beneficial Ownership 21
2.6.5 FATF Mutual Evaluations 22
2.7 Conclusion 24
Chapter 3 : Beneficial Ownership and the Quest for Transparency 26
3.1 Introduction 26
3.2 Beneficial Ownership: Definitions 26
3.2.1 The FATF Definition 26
3.2.2 The EU Definition 27
3.2.3 The UK Definitions 28
3.3 Beneficial Ownership: The Concept 30
3.3.1 Beneficial Ownership Under English Common Law 31
3.3.2 Beneficial Ownership in International Tax Treaties 31
3.3.3 Beneficial Ownership: Calls for Transparency 32
3.3.4 Offshore Financial Centres 34

3.3.5 Beneficial Ownership Transparency: What is it for? 34
3.4 Beneficial Ownership: Identification 36
3.4.1 Beneficial Ownership Criteria In Practice 38
3.4.2 Beneficial Ownership: Beyond Share Ownership and Voting Rights 39
3.4.3 Beneficial Ownership Identification: Uncertainty 40
3.4.4 Beneficial Ownership Identification: Trusts and other Legal Arrangements 40
3.4.5 Beneficial Ownership Identification and Solicitors 41
3.5 Conclusion 43
Chapter 4 : The Particular Role of Solicitors 44
4.1 Introduction 44
4.2 UK Policy Background 44
4.2.1 Implications of Strategic Priorities for Practice 47
4.3 The Regulated Sector and the Legal Profession 48
4.4 Lawyers as Enablers 49
4.5 Empirical Research involving AML Compliance 52
4.6 Conclusion 57
Chapter 5 : Training and Regulation 59
5.1 Introduction 59
5.2 The Regulatory Structure and Solicitors 59
5.2.1 Relationship between the Law Society and the SRA 59
5.2.2 Regulatory Support Materials 60
5.2.3 OPBAS and Regulatory Reform 62
5.2.4 The SRA and AML Enforcement 63
5.3 Education and Training 64
5.3.1 The Statement of Solicitor Competence 64
5.3.2 The Statement of Legal Knowledge 65
5.3.3 The Solicitors Qualifying Examination 67
5.3.4 Qualifying Work Experience 68

5.3.5 The Previous Route to Qualification 69
5.3.6 Training and Education Weaknesses 70
5.4 Guidance and Support 71
5.4.1 LSAG Guidance and Beneficial Ownership 72
5.4.2 Possible deficiencies in the guidance available to solicitors 76
5.5 Conclusion 77
Chapter 6 : Methodology and Research Design 80
6.1 Introduction 80
6.2 Research Design 80
6.2.1 The "Insider" Researcher 80
6.2.2 Epistemology 82
6.2.3 Theoretical Perspective 82
6.2.4 Methodology 83
6.2.5 Methods 83
6.2.6 The Interviews 84
6.2.7 Thematic Analysis 96
6.3 Limitations 102
6.4 Conclusion 103
Chapter 7 : Solicitors' Attitude towards the UK AML Framework 105
7.1 Introduction 105
7.2 Theme 1: Reluctant Acceptance 105
7.2.1 Sub-Theme (1A): A necessary imposition 106
7.2.2 Sub-Theme (1B): Solicitors as gatekeepers 106
7.2.3 Sub-Theme (1C): Conscientious compliance 107
7.2.4 Theme 1 Discussion 108
7.3 Theme 2: Motivation and Anxiety 109
7.3.1 Sub-Theme (2A): Lack of faith that compliance reduces financial crime 109
7.3.2 Sub-Theme (2B): Regulatory Fear and Anxiety 110

7.3.3 Sub-Theme (2C): Reputation ... 110
7.3.4 Sub-Theme (2D): Practicalities ... 111
7.3.5 Theme 2 Discussion ... 111
7.4 Conclusion ... 112
Chapter 8 : Capacity and Capability for Identifying Beneficial Ownership ... 114
8.1 Introduction ... 114
8.2 Theme 3: Variable Capacity ... 115
8.2.1 Sub-Theme (3A): Significant complexity of beneficial ownership structures ... 116
8.2.2 Sub-Theme (3B): Special Knowledge Required ... 117
8.2.3 Sub-Theme (3C): Experience of Solicitor ... 118
8.2.4 Sub-Theme (3D): Options for uncovering beneficial ownership ... 120
8.2.5 Sub-Theme (3E): Changing Nature of Clients ... 122
8.2.6 Sub-Theme (3F): Beneficial Ownership as a part of the CDD Puzzle ... 122
8.2.7 Theme 3 Discussion ... 123
8.3 Theme 4: Culture ... 124
8.3.1 Sub-Theme 4(A): Uncomfortable Compliance ... 124
8.3.2 Sub-Theme 4(B): Traditional Values ... 126
8.3.3 Sub-Theme 4(C): Commercial Focus ... 128
8.3.4 Sub-Theme 4(D): Training ... 129
8.3.5 Theme 4 Discussion ... 130
8.4 Theme 5: Disillusionment ... 131
8.4.1 Sub-Theme 5(A): Underappreciated Burden ... 131
8.4.2 Sub-Theme 5(B): Knowledge and System Limitations ... 133
8.4.3 Sub-Theme 5(C): Policy Contradictions ... 134
8.4.4 Sub-Theme 5(D): Public Sector Resourcing ... 134
8.4.5 Sub-Theme 5(E): Impossible Expectations ... 135
8.4.6 Theme 5 Discussion ... 136
8.5 Conclusion ... 136

Chapter 9 : Operational Barriers to Compliance 139
9.1 Introduction 139
9.2 Theme 6: Problems Inherent in the Risk Based Approach 140
9.2.1 Sub-Theme 6(A): Risk Appetite 140
9.2.2 Sub-Theme 6(B): Awareness and Experience 141
9.2.3 Sub-Theme 6(C): “Reasonable Measures” and Getting it Wrong 141
9.2.4 Theme 6 Discussion 143
9.3 Theme 7: Lack of Regulatory Support 144
9.3.1 Sub-Theme 7(A): Lack of Support 144
9.3.2 Sub-Theme 7(C): Lack of Regulatory Expertise and Understanding 145
9.3.3 Theme 7 Discussion 146
9.4 Theme 8: Complex and Changing Rules and Guidance 147
9.4.1 Sub-Theme 8(A): Aligning with Sector-Specific Guidance 147
9.4.2 Sub-Theme 8(B): Guidance Updates 148
9.4.3 Sub-Theme 8(C): Unsatisfactory Guidance 149
9.4.4 Sub-Theme 8(D): Ideal Guidance 150
9.4.5 Theme 8 Discussion 151
9.5 Conclusion 152
Chapter 10 : Conclusions and Recommendations 155
10.1 Introduction 155
10.2 Research Question 1 156
10.2.1 Solicitors and special knowledge of beneficial ownership 156
10.2.2 The Devil is in the Detail 157
10.2.3 Lack of support and weak guidance 157
10.2.4 Knowledge and Culture 158
10.2.5 Summary 158
10.3 Research Question 2 159
10.4 Research Question 3 160

10.4.1 Amend the All-Crimes Approach 160
10.4.2 System Design 161
10.4.3 Minimise Changes to Rules and Guidance 161
10.4.4 Improve Support 162
10.4.5 Training and Legal Education 162
10.5 Conclusion 163
List of Abbreviations 165
Bibliography 166

Diagrams and Tables

Diagrams

Diagram 1: High-Level Regulatory Sequence: Compliance

Diagram 2: High-Level Regulatory Sequence: Non-ComplianceTable of Legislation and Cases

Diagram 3: Beneficial Owner: Simple Structure (source: author)

Diagram 4: Beneficial Ownership: Multiple Beneficial Owners (source: author)

Diagram 5: Beneficial Ownership: No Beneficial Owner (source: author)

Diagram 6: Beneficial Ownership: Minority Shareholders (source: author)

Diagram 7: Beneficial Ownership Investigative Possibilities (source: author)

Diagram 8: Interim Summary of Key Themes (source: author)

Diagram 9: Reviewing Themes: BO as piece of a puzzle (source: author)

Diagram 10: Research Themes and Chapter Headings (source: author)

Diagram 11: Attitude - Themes 1 and 2 (source: author)

Diagram 12: Capacity – Themes 3, 4 and 5 (source: author)

Diagram 13: Operation – Themes 6, 7 and 8 (source: author)

Tables

Table 1: Firms of Solicitors in England and Wales by size and location (source: adapted from The Law Society's Annual Statistics Report 2020)

Table 2: Details of Interview Participants (source: author)

Table 3 Phases of Thematic Analysis (source: Braun and Clarke)

Table of Legislation and Cases

Statutes

Companies Act 2006

Criminal Finances Act 2017

Data Protection Act 2018

Economic Crime (Transparency and Enforcement) Act 2022

Legal Services Act 2007

Proceeds of Crime Act 2002

Sanctions and Anti-Money Laundering Act 2018

Serious and Organised Crime Act 2005

Small Business, Enterprise and Employment Act 2015

Solicitors Act 1974

Terrorism Act 2000

Statutory Instruments

Money Laundering Regulations 1993 SI 1993/1933

Money Laundering Regulations 2003 SI 2003/3075

Money Laundering Regulations 2007 SI 2007/2157

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 SI 2017/692

Money Laundering and Terrorist Financing (Amendment) Regulations 2019 SI 2019/1511

The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 SI 2017/1301

Parliamentary Bills

Economic Crime and Corporate Transparency HC Bill (2022-23) [56]

International Legislation and Treaties

Council Directive (EEC) 91/308 of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [1991] OJ L166/77

Directive (EC) 2001/97 of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering [2001] OJ L344/76

Directive (EC) 2005/60 of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005] OJ L309/15

Directive (EU) 2013/34 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance [2013] OJ L/182/19

Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73

Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L156/43

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

Cases

R v Da Silva [2006] EWCA Crim 1654

European Court of Justice Cases

C-37/20 WM v Luxembourg Business Registers 22 November 2022

C-601/20 Sovim SA v Luxembourg Business Registers 22 November 2022

Acknowledgements

I would like to express my thanks to my supervisors. Dr Peter Sproat and Emeritus Professor Jackie Harvey have been patient and wise and have provided constructive guidance and feedback throughout. Dr Elaine Gregerson's support, in particular in the final stages, has been invaluable. I could not have done this without you.

I am grateful to all of the interview participants whose time was given so generously and without whose insights this research would not have been possible.

My thanks to Professor Elaine Hall for the encouragement and belief to begin this journey and to the many colleagues who have since offered wise words, time, support and coffee.

Thank you to my family for being with me throughout.

Declaration

I declare that all the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and approval was granted by the Faculty Ethics committee in two phases on 9 April 2019 and 1 April 2020.

I declare that the word count of this thesis is 56,834 words excluding tables, bibliography and appendices.

Name: Susan Turner

Signature: S Turner

Date: 31 October 2023

Chapter 1 : Introduction

1.1 Introduction

In recent years, a compelling narrative has emerged which connects opaque beneficial ownership structures and arrangements with financial crime, corruption and other serious and organized crime. This widely-accepted narrative has driven calls from national and international policy-makers, anti-corruption non-governmental organisations (NGOs) and academics to improve beneficial ownership transparency of corporations, trusts and property as a means of reducing opportunities for criminals to hide, or launder, the proceeds of their crimes and of exposing bad actors and dodgy deals. However, in a world of global financial flows and complex cross-border arrangements, this is far from straightforward.

One possible way of achieving greater beneficial ownership transparency is by publishing ownership data relating to companies, trusts and property via publicly-available registers. Another way of uncovering beneficial ownership data is by requiring those who handle or come into contact with them to make that information available. Outcomes may be preventative as well as investigative: by reducing opportunities for criminals to set up opaque beneficial ownership structures in the first place; or by removing the advantages of such structures being used for criminal purposes.

The role of solicitors in relation to this is as follows: they are professionals whose legal expertise means that they may be involved in constructing complex (or otherwise) beneficial ownership structures and arrangements for clients; and they offer services which clients may require in order to carry out transactions such as the purchase or disposal or assets or other property, whether via beneficial ownership structure or otherwise. The clients for whom solicitors provide such services may well be legitimate clients undertaking legitimate transactions; some clients may be carrying out illegitimate transactions, using illegitimate funds or setting up opaque beneficial ownership structures to facilitate criminal enterprises.

As such, solicitors face obligations under the UK's anti money laundering (AML) regime (the UK AML Framework as defined in Chapter 2) intended to prevent and forestall money laundering - the concealment of the proceeds of crime, often via the financial system. While the Proceeds of Crime Act 2002 (PoCA 2002) contains substantive criminal offences relating to money laundering, which may be committed by any person, including a solicitor, who uses, acquires or conceals criminal property, the mainstay of the regulatory regime is the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), which imposes obligations on solicitors and others acting within the regulated sector in the course of business. The UK's AML regime, rooted in the

iterative international AML standards issued by the Financial Action Task Force (FATF),[1] has expanded over the last approximately 25 years, part of an international effort to combat money laundering across the globe. It is the FATF which has issued the latest standards relating to beneficial ownership transparency which have made their way into the MLR 2017 with which solicitors must comply or face criminal sanctions. Very simply, the following diagram sets out this sequence:

Diagram 1: High-Level Regulatory Sequence: Compliance (source: author)

Of course, this diagram merely represents the high-level goals of the FATF which may, in practice, be much harder to achieve, if indeed they are possible to measure. Nevertheless, as a former practising solicitor and current academic teaching and researching in the fields of business, finance, financial crime and AML, it is the role of solicitors within the UK AML Framework which I have chosen to explore in this professional doctorate. Using my professional knowledge and experience of the legal sector and my understanding of the UK AML Framework, the place of solicitors within it, and the particular focus in recent years on beneficial ownership, this professional doctorate asks the following specific research questions with the aim of contributing to the understanding of the operation of the UK AML Framework with respect to beneficial ownership:

1. What are the issues and challenges faced by solicitors under the UK AML Framework with respect to the identification of beneficial ownership?
2. How do these issues and challenges impact the operation of the UK AML Framework with respect to the identification of beneficial ownership?
3. What practical recommendations can be made to address the issues and challenges identified?

This professional doctorate, which makes a contribution to both theory and practice, begins by examining the law and literature relevant to solicitors operating within the UK AML Framework and to beneficial ownership transparency and its wider context. This identifies what is currently known about the role of solicitors within the UK AML Framework and the

[1] FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023, referred to as the FATF Standards or the FATF Recommendations.

issues and challenges they face with respect to the identification of beneficial ownership. Among possible variables affecting compliance are the low threshold of suspicion, the risk-based approach underpinning the FATF standards, the complexity of beneficial ownership identification itself, and the capacity and diligence of those exercising their discretion in complying with the rules, influenced by regulatory pressure, commercial realities and reputational considerations. Each of these variables, discussed in the following chapters, could work to hamper policy effectiveness, represented very simply as follows:

Diagram 2: High-Level Regulatory Sequence: Non-Compliance (source: author)

The existing literature informs the data collection stage of this study, which explores the actions of, and information and support available to, solicitors when complying with their obligations under the UK AML Framework, by carrying out in-depth semi-structured interviews with nine individuals involved in AML compliance within SRA-regulated firms. The findings of a reflexive thematic analysis of the interview data are assimilated with existing knowledge to develop conclusions in response to my research questions. This will enhance the knowledge underpinning policy decision-making in relation to the UK AML Framework and lead to practical recommendations for better training, support and guidance for solicitors, calls for improvements to accessibility and availability of beneficial ownership information, and a re-consideration of the all-crimes basis of the UK AML Framework.

1.2 The Organisation of this Thesis

This thesis is divided into four parts following this Introduction: Part I: Background and Literature; Part II: Methodology and Research Design; Part III: Findings and Analysis; and Part IV: Conclusions and Recommendations, as follows:

Part I: Background and Literature

Chapter 2: The UK AML Framework

The second chapter sets out details of the UK AML Framework and the obligations placed upon solicitors under it, focusing particularly on those provisions relevant to the identification of beneficial ownership. The UK AML Framework is set within its international context, and it will be suggested that the expansion of the UK AML Framework to focus more specifically on beneficial ownership may exacerbate compliance challenges already faced by the profession, but that there is a gap in empirical evidence to understand the issues arising

under the latest regime and in the light of the intensifying focus on beneficial ownership identification.

Chapter 3: Beneficial Ownership and The Quest for Transparency

Chapter 3 looks in detail at what beneficial ownership is legally, technically and conceptually. It moves on to consider the rationale for calls for transparency and how this might be achieved. This chapter highlights the current importance and wider context of the research question before delving into the practicalities of identifying and verifying the identity of beneficial owners. This chapter demonstrates the significance of having a clear understanding of the role that solicitors and the wider regulated sector can and do play under the UK AML Framework with respect to the identification of beneficial ownership, which is fundamental in terms of informing policy and practice in this area.

Chapter 4: The Particular Role of Solicitors

The role of solicitors within the UK AML Framework as gatekeepers to the financial system is addressed more closely in Chapter 4, asking specifically what knowledge solicitors are deemed or expected to have in their professional capacity and what role they play in combatting financial crime and corruption. This chapter argues that, while there is much literature about a solicitor's role as a professional facilitator, there is a gap, or even a misconception, in understanding what solicitors can and do know about beneficial ownership and the contribution they can make to increasing transparency.

Chapter 5: Training and Regulation

Chapter 5 sets out the role of the solicitors' regulator (the Solicitors Regulation Authority (SRA)) under the UK AML Framework in addition to its remit in relation to solicitors' training and education. This chapter highlights the need for a deeper understanding of the relationship between solicitors and their regulator in view of the complex position of the regulator, on the one hand upholding and enforcing regulations and on the other working with solicitors to increase their capacity and capability, not least by setting knowledge thresholds relevant to training and education and by issuing statutory guidance to support solicitors in meeting their regulatory obligations.

Part II: Methodology and Research Design

Chapter 6: Methodology and Research Design

The methodology for undertaking this study is explained in Chapter 6 and includes detail about my personal reasons for undertaking this professional doctorate, and the structure and design of the study. It includes the rationale for conducting semi-structured interviews with

persons with experience of this sector and the use of inductive thematic analysis of the data. This chapter also outlines some limitations of this research.

Part III: Findings and Analysis

Chapter 7: Solicitors' Attitude towards the UK AML Framework

Chapter 7 is the first of three chapters setting forth the findings from my analysis of the semi-structured interviews conducted with those working in a compliance capacity within an SRA-regulated law firm. The first two key themes identified from a thematic analysis of the data reveal that solicitors accept their role and obligations under the UK AML Framework, albeit reluctantly, and compliance is a serious part of day-to-day practice, though they are often anxious and fearful about sanctions and are motivated in large part by a desire to avoid falling foul of the regime.

Chapter 8: Capacity and Capability for Identifying Beneficial Ownership

Building on Chapter 7, Chapter 8 explores the capacity of solicitors to uncover beneficial ownership data and to comply with their obligations in this regard under the UK AML Framework. Findings show that solicitors do not necessarily possess the specialist knowledge they are widely deemed to hold and that there is significant complexity in terms of carrying out their obligations. This chapter goes on to explore what knowledge solicitors can and do have and how this is impacted by firm culture and training. Finally, in the light of the complexity involved in complying with obligations under the UK AML Framework with respect to the identification of beneficial ownership, this research shows a significant level of disillusionment on the part of solicitors with the expectations placed upon them.

Chapter 9: Operational Barriers to Compliance

Chapter 9 is the final chapter in this Part III and explores themes relating to operational barriers to compliance. The first of these identifies the risk-based approach underpinning the UK AML Framework as a source of frustration, fear and uncertainty on the front line. Problems faced in connection with the risk-based approach and variable capacity for identifying beneficial ownership are exacerbated by a lack of support from the solicitors' regulator and complex and changing guidance which are found at times to hinder rather than help solicitors striving to meet their obligations under the UK AML Framework, feeding a sense of frustration and helplessness.

Part IV: Conclusions and Recommendations

Chapter 10: Conclusions and Recommendations

This chapter draws together conclusions of this study to answer the first two research questions regarding the issues and challenges facing solicitors when complying with their obligations under the UK AML Framework with respect to the identification of beneficial ownership and how they impact the operation of the UK AML Framework in this respect. These conclusions, which highlight difficulties with front line decision-making, variable capacity among this part of the regulated sector to undertake their obligations, and lack of guidance and support, contribute to existing knowledge about the operation of the UK AML Framework as a whole and the role solicitors are able to play within it. Finally, this chapter makes some recommendations in response to my third research question. While it is acknowledged that there are several components affecting the implementation of the UK AML Framework, solicitors' actions and compliance, it seeks to address capacity and knowledge in a pragmatic way with the intention of improving practice in this area and also enhancing the operation of an imperfect system.

1.3 Conclusion

This chapter has introduced my research and set out my research questions. It has also provided an overview of the structure this thesis will follow. This thesis now moves to Part 1: Background and Literature, made up of four chapters, the first of which defines the UK AML Framework and explores the role of solicitors within it and the source of obligations relating to beneficial ownership.

Part I:
Background and Literature

Chapter 2: The UK AML Framework

Chapter 3: Beneficial Ownership and the Quest for Transparency

Chapter 4: The Particular Role of Solicitors

Chapter 5: Training and Regulation

Chapter 2: The UK AML Framework

2.1 Introduction

Given the aim of this research is to explore the issues and challenges faced by solicitors under the UK AML Framework with respect to the identification of beneficial ownership, the starting point of this Part 1: Background and Literature is to set out some clear definitions and identify the source of relevant obligations. This Chapter 2 defines the UK AML Framework and examines the role of solicitors within it, focusing particularly on: (a) obligations falling on solicitors as a branch of the legal profession; and (b) requirements relating to beneficial ownership. The place of the UK AML Framework within the extensive international AML regime is then set out, and the chapter identifies key academic debates surrounding the framework itself, and the role of the private sector, including solicitors, within it. This chapter also addresses some known issues and challenges facing the regulated sector when fulfilling their compliance obligations within the UK AML Framework and highlights those specific to solicitors.

2.2 The UK AML Framework

The UK AML Framework in this study refers to the laws and regulations in place in the UK from time to time which have been enacted to prevent and forestall money laundering. While the UK AML Framework in its entirety consists of multiple enactments, amendments, sections and articles, key provisions are located in two principal sources: the Proceeds of Crime Act 2002 (PoCA 2002); and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), discussed in sections 2.3 and 2.4 below.

2.3 The Proceeds of Crime Act 2002

2.3.1 The Laundering Offences

PoCA 2002, an act dealing with confiscation, asset recovery, investigation and related powers, contains the three fundamental criminal AML offences of acquiring, arranging and concealing the proceeds of crime[1] which carry heavy criminal penalties of up to 14 years' imprisonment and an unlimited fine.[2] These laundering offences apply to any person who: (a) conceals, disguises, converts, transfers or removes from England and Wales criminal property;[3] (b) enters into or becomes concerned in an arrangement which he knows or

[1] Proceeds of Crime Act 2002 s 327.
[2] Proceeds of Crime Act 2002 s 334.
[3] Proceeds of Crime Act 2002 s 327.

suspects facilitates the acquisition, retention, use or control of criminal property;[4] or (c) acquires, uses or has possession of criminal property.[5] In each case, the offence relates to criminal property, which is widely defined to include a person's benefit from criminal conduct[6] - conduct which constitutes an offence in any part of the UK, or would constitute an offence in any part of the UK if it occurred there.[7] These offences therefore provide broad scope for money laundering prosecution in relation to the criminal proceeds of a wide range of underlying, or predicate, offences, from high value serious organised crime, tax evasion and corruption, to relatively minor or regulatory offences, such as benefit fraud or minor breaches of planning laws.

2.3.2 Knowledge or Suspicion

There is a crucial knowledge element to the offences: to commit one of the PoCA 2002 laundering offences, the offender must *know* or *suspect* the property is criminal property.[8] While the existence of knowledge or suspicion is subjective, there is no statutory definition of "suspicion."[9] The decision of the Court of Appeal in R v Da Silva[10] sets forth guidance that, for suspicion to exist, "*the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.*"[11] In relation to solicitors or other professional advisers, such knowledge or suspicion may arise at any time during a relationship with a client or prospective client, including as part of enquiries into understanding the identity of a client or the nature of a transaction, but the threshold is low, and intention to commit an offence, unusually within the criminal law, is not a prerequisite to a conviction.[12] There are specific defences available in connection with the PoCA 2002 laundering offences where knowledge or suspicion does arise, for example where a person makes an authorized disclosure of such knowledge or suspicion to the National Crime Agency (NCA) in the form of a suspicious activity report (SAR) or, in some cases, to a nominated officer as an internal disclosure (in either case, an authorized

[4] Proceeds of Crime Act 2002 s 328.
[5] Proceeds of Crime Act 2002 s 329.
[6] Proceeds of Crime Act 2002 s 340(3)(a).
[7] Proceeds of Crime Act 2002 s 340(2).
[8] Proceeds of Crime Act 2002 s 340(3)(b).
[9] For a discussion of suspicion, see Law Commission, 'Anti-money laundering: the SARs regime' (Law Com No 384, 2019).
[10] [2006] EWCA Crim 1654.
[11] [2006] EWCA Crim 1654.
[12] The lack of criminal intent is discussed at length in Katie Benson, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, London and New York 2020) ch 7.

disclosure).[13] Nevertheless, the ill-defined premise of suspicion brings with it uninvited and unwelcome criminal exposure to laundering offences.

2.3.3 Failure to Report Offences

PoCA 2002 also contains failure to report offences, which apply to solicitors and others operating within the regulated sector rather than society as a whole.[14] These sections, attracting criminal penalties of up to 5 years' imprisonment and an unlimited fine for breach,[15] impose obligations on those operating within the regulated sector to report knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of money laundering (an objective rather than a subjective test), which come to a person in the course of business (in this case, referred to as a required disclosure). In this context, a solicitor or nominated officer may again acquire knowledge or suspicion (or reasonable grounds for knowledge or suspicion) of money laundering at any point in a business relationship with a client which then must be disclosed.

2.3.4 Tipping Off

If a solicitor files a SAR in connection with known or suspected money laundering, that solicitor must not continue to act in respect of the related transaction until consent to do so has been received from the NCA,[16] nor may a solicitor tip off a client that a SAR has been filed.[17] Under section 335 PoCA 2002, consent will be deemed to have been granted within seven days of making the SAR unless it is refused. A solicitor may thereby be placed in the unenviable position of knowing or suspecting a client of money laundering whilst being unable to withdraw from the matter at hand or inform the client about the delay. If the NCA avail themselves of the full moratorium period on acting for or tipping off a client, this situation could persist for a rather challenging 186 days![18]

2.3.5 Problems Inherent in the Legislation

In summary, a solicitor may commit a criminal money laundering offence under PoCA 2002, at risk of a 14-year prison sentence and an unlimited fine, by being involved in a transaction on behalf of a client which the solicitor knows or suspects involves criminal property. A solicitor may protect him or herself by making an authorized disclosure and filing a SAR in accordance with PoCA 2002 and may also need to make a required disclosure. The wide range and low value of potential predicate offences, coupled with the vague and low

[13] Proceeds of Crime Act 2002 s 338.
[14] Proceeds of Crime Act 2002 ss 330 to 332 and sch 9.
[15] Proceeds of Crime Act 2002 s 334.
[16] Proceeds of Crime Act 2002 s 335.
[17] Proceeds of Crime Act 2002 s 333A.
[18] Proceeds of Crime Act 2002 s 336A as amended by Criminal Finances Act 2017 s 10.

threshold for suspecting money laundering, or having reasonable grounds to suspect in the case of a required disclosure, casts the net of exposure to a money laundering or failure to disclose offence far and wide. There is consequently a significant risk of defensive reporting by solicitors and others in respect of the laundering offences in order to avoid a criminal penalty.

Defensive reporting of this kind is addressed in a Law Commission Report of 2019[19] (the Law Commission Report 2019) and is identified as being in part responsible for the filing of high volumes of SARs, some of poor quality and little use to law enforcement.[20] The "all crimes" basis of the legislation, which ensures wide capture of underlying crimes, both big and small, goes beyond those prescribed by the international standards outlined in section 2.6 below.[21] It has been suggested that the extremely broad scope can contribute to over-reporting within the legal sector by capturing technical or regulatory breaches, which solicitors may encounter during the course of a transaction and are bound to report. Not only does this increase the compliance burden on solicitors, it may also have the effect of detracting from a focus on serious crime, drawing attention away from the most significant "real" money laundering.[22] However, the Law Commission Report 2019 recommended retaining the "all crimes" approach as a basis for SARs reporting nevertheless, as an operational alternative was not presently apparent despite the acknowledged difficulties.[23]

2.3.6 PoCA 2002 and Beneficial Ownership

Beneficial ownership is not a concept dealt with within PoCA 2002 itself,[24] and the definitions and role of beneficial ownership within the UK AML Framework are examined in detail in the following Chapter 3. However, a lack of beneficial ownership information, or a complex structure, or difficulty identifying a beneficial owner as required under the MLR 2017 described at section 2.4 below may contribute to a solicitor's "*vague feeling of unease*"[25] and prompt further enquiry. If no concrete grounds for that unease are uncovered, the solicitor should be able to proceed with the transaction, but there is an ill-defined line which may be crossed all too easily into a possibility "*which is more than fanciful*"[26] constituting knowledge or suspicion of, or reasonable grounds to suspect, money laundering, which would require a

[19] Law Commission, 'Anti-money laundering: the SARs regime' (Law Com No 384, 2019).
[20] Law Commission, 'Anti-money laundering: the SARs regime' (Law Com No 384, 2019) ch 5.
[21] The underlying FATF Recommendation, Recommendation 3, requires criminal laundering to apply to all serious offences.
[22] Sarah Kebbell, '"Everybody's Looking at Nothing" - the legal profession and the disproportionate burden of the Proceeds of Crime Act 2002' (2017) 10 Crim LR 741.
[23] See discussion at Law Commission, 'Anti-money laundering: the SARs regime' (Law Com No 384, 2019) ch 4.
[24] Save with specific reference to an interest in land at Proceeds of Crime Act 2002 s 340(10)(d).
[25] [2006] EWCA Crim 1654.
[26] [2006] EWCA Crim 1654.

solicitor to file a SAR, for failure to do so may cause a solicitor to become liable for a money laundering offence. This thesis now turns to explore the second main component of the UK AML Framework, the MLR 2017.

2.4 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Since 1993, the UK has enacted money laundering regulations[27] requiring specified firms and individuals to undertake a range of measures designed to prevent money laundering.[28] Initially, and in keeping with the underlying first EU Directive,[29] the regulation applied to credit and financial institutions only within the private sector. Since 2003,[30] such measures have extended to the legal profession and others within the private sector, and the obligations and obliged parties have continued to expand ever since. [31]

2.4.1 Money Laundering Regulations and the Private Sector

The inclusion of the private sector within the AML regime at all has long been considered controversial on the grounds that it treats the private sector as “state informants”[32] and relies upon private sector financial resources and personnel to achieve state aims.[33] Such criticisms sit alongside widespread doubts about the benefits, or at least the extent of the benefits, gained from such expansive efforts as measured (if this is indeed possible)[34] against the regulatory burden, in terms of both time and cost, imposed on private actors.[35] With respect to the inclusion of the legal profession per se, there are additional and longstanding concerns regarding the conflict between obligations imposed by the AML regime and the special role of solicitors within society,[36] and the connected legal

---

[27] The first were the Money Laundering Regulations 1993 SI 1993/1933.
[28] The current provisions are found in Parts 1 to 6 and 8 to 11 MLR 2017.
[29] Council Directive (EEC) 91/308 of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [1991] OJ L166/77.
[30] Under the Money Laundering Regulations 2003 SI 2003/3075 and subsequently the Money Laundering Regulations 2007 SI 2007/2157.
[31] For a detailed picture of the UK AML Framework, see Sue Turner and Jonathan Bainbridge, ‘An Anti-Money Laundering Timeline and the Relentless Regulatory Response’ (2018) 82(3) The J of Crim L 215.
[32] PC van Duyne, MS Groenhuisen and AAP Schudelaro, ‘Balancing Financial Threats and Legal Interests in Money-Laundering Policy’ (2005) 43 CL&SC 117, 141.
[33] Referred to as the “responsibilisation” of the private sector in Michael Levi, ‘Lawyers as money laundering enablers? An evolving and contentious relationship’ (2022) 23(2) GC 126, 134.
[34] Harvey J, ‘Just How Effective is Money Laundering Legislation?’ (2008) Security Journal.
[35] See, for example, Joras Ferwerda, ‘The Effectiveness of Anti-Money Laundering Policy: A Cost-Benefit Perspective’ in C King, C Walker and J Gurule (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan, Cham. 2018).
[36] For example in Canada: M. Michelle Gallant, Gallant, M, ‘Uncertainties collide; lawyers and money laundering, terrorist finance legislation’ (2009) 16(3) JFC 210; and in the US: Stephen Schneider, ‘Testing the limits of solicitor-client privilege: Lawyers, money laundering, and suspicious transaction reporting’ (2006) 9(1) JMLC 27.

professional privilege and client confidentiality[37] which are addressed further in Chapter 4 below. Indeed, Alldridge notes that fears about lawyer / client confidentiality placed the enactment of the 2001 EU Directive[38] at risk until they were overtaken by a more pressing desire to combat terrorism.[39]

2.4.2 The MLR 2017 Obligations

The current AML regulations are found in the MLR 2017, derived originally from the fourth EU AML Directive[40] and amended pursuant to the fifth EU AML Directive (MLD5).[41] Unlike the PoCA 2002, AML regulations apply only to those operating within the regulated sector, which now includes, amongst others,[42] financial institutions, estate agents and independent legal practitioners (including solicitors) who carry on certain activities with an increased risk of money laundering, such as financial or real property transactions relating to the buying and selling of properties or business, the management of client money and assets, or the creation, operation or management of trusts, companies or foundations.[43] The MLR 2017 require those operating within the regulated sector to undertake risk assessments,[44] staff training[45] and customer due diligence (including enquiring as to the beneficial ownership of customers).[46] They must keep records[47] and appoint a money laundering reporting office (sometimes referred to as the MLRO, or nominated officer) to assess internal disclosures[48] and, as necessary, report suspicious activities to the NCA. Beyond PoCA 2002 reporting provisions (whether required or authorized), the MLR 2017 are therefore the primary source

[37] See, for example, Stephen Schneider, 'Testing the limits of solicitor-client privilege: Lawyers, money laundering, and suspicious transaction reporting' (2006) 9(1) JMLC 27; Silcock, K, Banks, F, Plumridge, S and Haskins, N, 'AML – legal, ethical and practical issues' (2006) 27(1) Comp Law 23; and Duncan E. Osborne, 'The Financial Action Task Force and the Legal Profession' (2014) 59 NYL Sch L Rev 421.

[38] Directive (EC) 2001/97 of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering [2001] OJ L344/76, prompting the Money Laundering Regulations 2003 SI 2003/3075.

[39] Alldridge, P, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart Publishing, Oxford and Portland, Oregon 2003), 100.

[40] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73 which replaced Directive (EC) 2005/60 of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005] OJ L309/15.

[41] Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L156/43.

[42] MLR 2017 reg 8(2), others include auditors, letting agents, casinos and art market participants.

[43] MLR 2017 reg 12(1).

[44] MLR 2017 reg 18.

[45] MLR 2017 reg 24.

[46] MLR 2017 part III.

[47] MLR 2017 reg 40.

[48] MLR 2017 reg 21.

of AML obligations with which solicitors must comply under the UK AML Framework. Failure to comply with the MLR 2017 is a criminal offence, carrying a penalty of up to two years' imprisonment and an unlimited fine,[49] whether or not any money laundering takes place.

2.4.3 The MLR 2017 and Beneficial Ownership

With respect to beneficial ownership specifically, as the focus of this study, relevant obligations under the MLR 2017 fall under two specific areas: Customer Due Diligence (CDD); and Discrepancy Reporting.

2.4.3.1 Customer Due Diligence

The main provisions requiring the regulated sector to enquire as to beneficial ownership identity are those found in Part 3 MLR 2017 relating to CDD, which must be carried out in line with a risk assessment[50] on the following occasions: when a business relationship is established; where an occasional transaction with a value in excess of Eur 1000 is carried out; where there is suspicion of money laundering or terrorist financing; or in the case of doubts about the veracity or adequacy of previously-obtained ID documents.[51] CDD must be repeated on specified other occasions, such as: when complying with a duty to contact an existing customer to review beneficial ownership information; and, rather vaguely, "at other appropriate times to existing customers on a risk based approach"[52] which may capture instances where beneficial ownership has changed, for example.[53]

The CDD exercise itself involves identifying a customer and verifying a customer's identity[54] and,

> *"where the customer is beneficially owned by another person, the relevant person must:*
>
> *identify the beneficial owner;*
>
> *take reasonable measures to verify the identity of the beneficial owner so that the relevant person is satisfied that it knows who the beneficial owner is; and*
>
> *if the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement."*[55]

[49] MLR 2017 reg 86.
[50] MLR 2017 reg 28(12).
[51] MLR 2017 reg 27(1).
[52] MLR 2017 reg 27(8)(a).
[53] MLR 2017 reg 27(9)(a).
[54] MLR 2017 reg 28.
[55] MLR 2017 reg 28(4).

In the case of a body corporate where the beneficial owner cannot be identified, or the relevant person[56] is not satisfied of the beneficial owner's identity, a person may "*treat the senior person in that body corporate responsible for managing it as its beneficial owner*."[57] If this does happen, then the relevant person has to document the actions taken to identify the beneficial owner and any difficulties encountered.[58]

It is explicit in the MLR 2017 that sole reliance on the information in a register of persons with significant control of companies or LLPs is not sufficient to discharge CDD obligations,[59] meaning enquiries beyond inspecting the company register in the case of corporate clients are required. It is also clear that electronic identification from a reliable source is permitted.[60] In terms of timing, the identification and verification should take place before any transaction or business relationship begins, or as soon as practicable thereafter where the risk of money laundering is low.[61] As was the case under previous iterations of the regulations, CDD may also be "enhanced" – requiring additional customer and beneficial ownership information to be obtained – in higher-risk cases, which may involve those with complex ownership structures,[62] or customers who are PEPs,[63] or "simplified" where there is a low risk of money laundering and terrorist financing.[64]

2.4.3.2 Practical Challenges of CDD

In practical terms, the regulatory proscription against sole reliance on beneficial ownership registers, and the requirement to document measures taken and difficulties encountered, in addition to discretion surrounding "reasonable measures" to verify the identity add up to a significant burden on the regulated sector. While an inability to carry out successful CDD prohibits a solicitor or other relevant person from continuing with a transaction,[65] failure, or difficulties found, with satisfactorily identifying and verifying the identity of the beneficial owner may also give rise to reportable suspicions under PoCA 2002. Kebbell's interviews with members of the legal profession (undertaken prior to the implementation of the MLR 2017 and discussed further at Chapter 4) find that there are some significant challenges with identifying beneficial ownership among the UK's largest law firms, which one

[56] A relevant person under the MLR 2017 is someone to whom the CDD and other obligations apply.
[57] MLR 2017 regs 28(6) and (7).
[58] MLR 2017 reg 28(8).
[59] MLR 2017 reg 28(9).
[60] MLR 2017 reg 28(19).
[61] MLR 2017 reg 30.
[62] MLR 2017 reg 33.
[63] Politically Exposed Persons, MLR 2017 reg 35.
[64] MLR 2017 reg 37.
[65] MLR 2017 reg 31.

interviewee confirmed was the most time-consuming area of CDD[66] while another suggested onboarding costs might prove prohibitive.[67] Her work finds that such firms found beneficial ownership identification to be most onerous in relation to some overseas clients and for trusts and private equity clients.[68] These findings suggest that solicitors' obligations relating to beneficial ownership merit further investigation in the light of the latest MLR 2017 in the context of the increased focus on transparency discussed further below and in Chapter 3.

2.4.3.3 CDD and the Risk Based Approach

As noted earlier, CDD exists within the context of a risk-based approach and this can cause additional compliance challenges. The risk-based approach also underpins the MLR 2017 and is grounded in risk assessments, including those undertaken by firms,[69] and relies firmly upon a solicitor's judgement and discretion for interpretation. The risk-based approach guides solicitors when deciding whether to undertake a client instruction, file a SAR, undertake enhanced CDD measures or review an existing client file, and also when exercising their discretion as to taking "reasonable measures" under the terms of the MLR 2017. The stakes for decision-makers are high. Penalties for failure to make the correct judgement are potentially severe: individually, for firms or solicitors in terms of exposure to criminal conviction or regulatory sanction;[70] reputationally – for firms and individuals alike, in terms of negative coverage;[71] and commercially, in terms of the viability of a business which may turn away work deemed too risky in addition to expending cost and time in meeting compliance obligations.[72] These factors influence the risk-based decisions individuals and firms make in practice.

---

[66] Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) section 5.2.1.

[67] Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) section 5.2.1.3.

[68] Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) sections 5.2.1.1 and 5.2.1.2.

[69] Note that risk assessments are prepared at firm, supervisory and country levels and must be taken into account by relevant persons.

[70] For example of disciplinary action in relation to compliance breaches, see The Law Society, 'SRA fines small forms £20,000 for AML breaches' (The Law Society, 19 January 2023) <SRA fines small firm £20,000 for AML breaches | The Law Society> accessed 3 May 2023.

[71] For example of press coverage relating to "'serious breaches' of money laundering rules", see Haroon Siddique and Harry Davies, 'Top UK law firm fined record sum for breaching money-laundering rules' (The Guardian, 6 January 2022) <Top UK law firm fined record sum for breaching money-laundering rules | Law | The Guardian> accessed 3 May 2023.

[72] Tsingou, E, 'New governors on the block: the rise of anti-money laundering professionals' (2018) 68 CLSC 191.

According to Tsingou, compliance professionals are rule-makers in addition to rule-takers by virtue of their interpretation and implementation of the regulations on the front line, [73] and their decision-making on the ground is driven by balancing the tensions between preventative regulatory obligations and enforcement risks. It is the role of front-line professionals, operating in an increasingly professionalized compliance arena,[74] in interpreting and implementing obligations under the MLR 2017, often based on individual or departmental perceptions of risk,[75] which makes understanding the issues and challenges facing such actors critical to effective policy-making.[76] Such "*[r]isk-based decision-making in the absence of solid and precise definitions can be indeed a risky undertaking in itself*,"[77] and the existence of regulatory uncertainty lends itself to resolution by professional body guidance,[78] provided in our context by Legal Sector Affinity Group[79] (the LSAG Guidance) and discussed further at Chapter 5. However, while the regulator plays a role in issuing guidance to help solicitors to make decisions and exercise discretion under the UK AML Framework, the regulator is also required to ensure compliance with the regime[80] - a tricky balancing act between support and enforcement, discussed further at Chapter 5, which does little to ease the pressure placed on solicitors and, Benson suggests, may also feed a lack of trust between regulators and law enforcement.[81] The effect is a significant burden falling on the shoulders of solicitors, which may affect the implementation of the risk-based approach and merits empirical enquiry as to how this function operates on the ground with respect to beneficial ownership identification and verification.

2.4.3.4 Discrepancy Reporting

In addition to the Part 3 CDD measures, the MLR 2017 contains requirements relating to the reporting of discrepancies in beneficial ownership information, newly inserted in the latest

---

[73] Tsingou, E, 'New governors on the block: the rise of anti-money laundering professionals' (2018) 68 CLSC 191.
[74] Tsingou, E, 'New governors on the block: the rise of anti-money laundering professionals' (2018) 68 CLSC 191
[75] For example, the perception of a compliance department in relation to reputational risk compared to the perception of banking or marketing colleagues, as discussed in Liliya Gelemerova, 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33, 47.
[76] See, for example, Zavoli and King's research into the experiences of estate agents in Ilaria Zavoli and Colin King 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.
[77] Liliya Gelemerova, 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33, 51.
[78] Donald Nicholson and Julian Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford University Press, Oxford 1999), 116.
[79] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023.
[80] MLR 2017 reg 46.
[81] Discussed in Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020), 149 – 151.

regulations.[82] Under these regulations, a solicitor or other relevant person must consult the register – required to be kept[83] though which may not be relied upon - of companies or trusts holding relevant information about their client including beneficial ownership information, when conducting the CDD described above.[84] Any material discrepancy, which may reasonably be linked to money laundering or terrorist financing, or which may conceal details of the business of the customer,[85] between the information on the register and other information available to the solicitor or other relevant person when undertaking due diligence enquiries must then be reported to the relevant registry.[86]

The driving force behind the discrepancy-reporting regime is the FATF, lobbied by NGOs such as Transparency International and Open Ownership,[87] attempting to ensure the accuracy of information held on company and other registers in fulfilment of FATF Recommendations 24 and 25, set out in detail at section 2.6.3 below. These require countries to ensure that competent authorities have access to "*adequate, accurate and up-to-date*" beneficial ownership information.[88] This obligation is assigned to the private sector, as persons within the regulated sector, including solicitors, are deemed to have access to information by virtue of client relationships and conducting CDD which may otherwise remain hidden from public view. How far this is the case, and whether solicitors are in a position to accept this additional burden, is addressed further at Chapter 4. In the meantime, it remains an additional compliance pressure on the profession which is met with criminal consequences for failure to comply.

2.5 Other relevant provisions

In addition to the principal legislation criminalising money laundering under PoCA 2002 and establishing the AML regulatory framework under the MLR 2017, there are several other laws which combine to complete the UK AML Framework, such as the Terrorism Act 2000,

---

[82] MLR 2017 reg 30A was inserted by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 SI 2019/1511.
[83] Companies Act 2006 Part 21A and MLR 2017 reg 45.
[84] MLR 2017 regs 30A(1) and (2).
[85] MLR 2017 sch 3AZA.
[86] MLR 2017 reg 30A(2).
[87] Transparency International makes the case for access to multiple sources of beneficial ownership information, including information collected from reporting entities, and recommends a multi-pronged approach to transparency of beneficial ownership. See Maira Martini, 'Who is behind the Wheel? Fixing the Global Standards on Company Ownership' (Transparency International, 2019) <https://images.transparencycdn.org/images/2019_Who-is-behind-the-wheel_EN.pdf> accessed 19 May 2023. Also, Open Ownership advocates discrepancy reporting as an additional information verification method in Tymon Kiepe, 'Verification of Beneficial Ownership Data Policy Briefing (Open Ownership, May 2020) <https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-briefing-verification-briefing-2020-05.pdf> accessed 19 May 2023.
[88] See FATF Recommendations 24 and 25 set out in full in section 2.6.4 below.

the Serious and Organised Crime Act 2005, and the recent Economic Crime (Transparency and Enforcement) Act 2022, which requires the registration and the identification and verification of beneficial ownership information of overseas entities where such overseas entities wish to register particular land ownership.[89]

2.5.1 People with Significant Control

Of particular relevance in the context of solicitors' obligations and beneficial ownership are the Small Business, Enterprise and Employment Act 2015 and the Companies Act 2006 (as amended) which contain provisions relating to beneficial ownership, setting out relevant ownership thresholds and definitions, and provisions requiring companies to keep registers of people with significant control[90] (the UK PSC Register). These additional provisions will be discussed in Chapter 3 in connection with beneficial ownership definitions and sources of law. However, it is worth noting at this stage that the City of London Law Society jointly with the Law Society has seen fit to issue a 12-page document[91] outlining the possibilities available for identifying a PSC from a practising lawyer's perspective, highlighting the complexity involved in this exercise.

2.6 The International AML Regime

The previous sections have provided details of the source of solicitors' obligations in relation to beneficial ownership under the UK AML Framework. However, the UK AML Framework sits within a much wider international picture which informs and influences UK policy considerations and, in terms of the MLR 2017, is the root source of the legal provisions it contains.

2.6.1 The international AML regime

The AML regime exists on an international scale in line with globalised financial markets, financial systems and financial flows. This is largely attributable to the work of the FATF, whose role it is to generate and monitor the implementation of AML policy across the

[89] Economic Crime (Transparency and Enforcement) Act 2022 ss 3, 4, 12 14 and 33. Note that the date of this Act means that it falls outside of the scope of interviews conducted as part of this study, though it may have implications in the future for resources to consult when completing CDD.

[90] Note that a registerable person with significant control is not exactly the same as a beneficial owner as defined in Chapter 3. In accordance with Companies Act 2006 s 790C, a relevant legal entity (ie a non-natural person) may be registered in circumstances where it is a UK-based entity who meets the definitions set out in Companies Act 2006 Part 21A to enable the chain of beneficial ownership to be traced up to the ultimate beneficial owner.

[91] The Law Society and The City of London Law Society, 'Joint Law Society and City of London Law Society Q&A on the PSC Registers' (November 2019) <joint-law-society-clls-qa-psc-registers-november-2019.pdf> accessed 23 October 2023.

globe.[92] Established in 1989 following a commitment within the Vienna Convention[93] to tackle the international drugs trade, FATF's underlying objectives have since widened to include political and social objectives of combating terrorism and corruption and fighting organised crime, and responding to fears about cybercrime and cybersecurity.[94] Proliferation of FATF's influence continues despite fundamental concerns about the remit, validity and effectiveness of the AML regime it diffuses.[95]

2.6.2 The FATF Recommendations

Since 1989, FATF have issued three iterations of their recommendations (the FATF Recommendations),[96] which are disseminated globally, and provide the standards to be met by member nations, which include the UK.[97] Until Brexit,[98] the UK followed European Union-issued AML directives, which were based on the FATF Recommendations, and then had to be transposed into national law within a given timeframe.[99] In the UK, these were transposed into a series of AML regulations or prompted the enactment of additional domestic legislation, such as PoCA 2002, the main source of AML criminal offences in the UK as set out at section 2.3 above.

2.6.3 MLD5 and Transparency

A number of high-profile terrorist incidents and instances of tax avoidance and evasion have served to add further momentum to efforts to protect national interests under the UK AML Framework, and the MLR 2017 were updated in January 2020 in line with MLD5. MLD5, unlike previous money laundering directives, which were prompted by new iterations of the FATF Recommendations, originated within the EU in response to terrorist activity in Europe[100] and to scandals involving offshore tax evasion, including the Panama Papers[101]

[92] See <About - Financial Action Task Force (FATF) (fatf-gafi.org)> accessed 10 August 2022.
[93] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.
[94] See Who we are - Financial Action Task Force (FATF) (fatf-gafi.org), last accessed 10/8/22.
[95] Peter Alldridge, *What Went Wrong With Money Laundering Law?* (Palgrave Macmillan, London 2016) Petrus van Duyne, Jackie Harvey and Liliya Gelemerova, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths* (Palgrave Macmillan, London 2018).
[96] FATF Recommendations have been issued in 1996, 2003 and 2012 and are updated regularly.
[97] Gelemerova suggests the name "Recommendations" is misleading, being that the recommendations "proved to be no less imperative than treaty obligations" in Gelemerova, L 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33, 36.
[98] The exit of the UK from the European Union in January 2020.
[99] Since Brexit, the UK will be responsible for implementing the FATF Recommendations directly.
[100] Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L156/43 recital 2.
[101] See, for example, Luke Harding, 'Mossak Fonseca: inside the firm that helps the super-rich hide their money' (Panama Papers: a special investigation, The Guardian, 38 April 2016) <https://www.theguardian.com/news/series/panama-papers> accessed 25 June 2023.

and the Paradise Papers[102]. One of the main goals of MLD5 is to increase transparency,[103] contributing towards the prevention of the misuse of legal entities and legal arrangements, including in connection with tax avoidance.[104] The deployment of the existing AML framework to advance these goals is an example of the AML regime being used to achieve ends far greater than those originally intended. Changes to the MLR 2017 prompted by MLD5 advance FATF's Recommendations 24 and 25, set out at section 2.6.4 below.

2.6.4 The International AML Regime and Beneficial Ownership

The current FATF standards relevant to transparency of beneficial ownership of legal persons and arrangements are found at Recommendations 24 and 25 as follows:[105]

Recommendation 24: Transparency and beneficial ownership of legal persons

> *"Countries should assess the risks of the misuse of legal persons for money laundering or terrorist financing and take measures to prevent their misuse. Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities through either a register of beneficial ownership or an alternative mechanism. Countries should not permit legal persons to issue new bearer shares or bearer share warrants and take measures to prevent the misuse of existing bearer shares and bearer share warrants. Countries should take effective measures to ensure that nominee shareholders and directors are not misused for money laundering or terrorist financing. Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22."*

Recommendation 25: Transparency and beneficial ownership of legal arrangements

> *"Countries should assess the risks of the misuse of legal arrangements for money laundering or terrorist financing and take measures to prevent their misuse. In particular, countries should ensure that there is adequate, accurate and up-to-date information on express trusts and other similar legal arrangements, including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed efficiently and in a timely manner by competent authorities. Countries should consider facilitating access to beneficial ownership and control information by*

[102] See, for example, Nick Hopkins, 'Why we are shining a light on the world of tax havens again' (Paradise Papers: Tax havens, The Guardian, 5 November 2017) <https://www.theguardian.com/news/series/paradise-papers> accessed 25 June 2023.
[103] This is stated clearly in Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L156/43 recital 33.
[104] Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [2018] OJ L156/43 recital 35.
[105] Note these are the most up to date Recommendations 24 and 25, adopted in March 2022.

> *financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22."*

FATF Recommendations 10 and 22, referred to in each of the Recommendations above, contain the FATF standards relevant to CDD, the underlying source of national obligations requiring solicitors, amongst others, to identify beneficial ownership of clients. These require solicitors, as a sub-group of designated non-financial businesses and professions, or DNFBPs, to undertake CDD when establishing business relations, carrying out certain occasional transactions, or where there is a suspicion of money laundering or terrorist financing.[106] The obligation arises when they undertake work for clients which involve: buying and selling real estate; managing client money, securities or other assets; managing bank, savings or securities accounts; organising contributions for the creation, operation or management of companies; creating, operating or managing legal persons or arrangements; and buying and selling of business entities. They may also be captured as providers of trust and company services.[107] In addition to taking a risk-based approach to understand source of funds, business relationship and transaction, CDD involves identifying the customer and verifying that customer's identity, identifying beneficial ownership, and taking reasonable measures to verify the identity of the beneficial owner, including understanding the ownership and control structure of the client in the case of legal persons and arrangements.[108] These provisions have flowed into the UK AML Framework as indicated at section 2.6.2 above.

2.6.5 FATF Mutual Evaluations

Beyond issuing the FATF Recommendations, FATF undertakes mutual evaluations of member nations, which measure the effectiveness of and technical compliance with their AML standards.[109] The mutual evaluation inspections carried out by the FATF highlight areas which must be addressed by national governments to ensure they remain compliant

[106] FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023 recommendation 10.
[107] FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023 recommendation 22.
[108] FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023 recommendation 10.
[109] See FATF 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML / CFT Systems' FATF, Paris (2013-2023) < FATF Methodology 22 Feb 2013.pdf.coredownload.pdf (fatf-gafi.org)> accessed 23 October 2023.

with the latest FATF Recommendations.[110] The latest FATF inspection of the UK took place during March 2018[111] (the UK MEval) and concluded that, on the whole, the UK was fully compliant or largely compliant with the FATF 40 Recommendations on a technical basis and no areas were assessed as having low effectiveness.[112] Notwithstanding this, the FATF identified some significant AML risks, including the risk of money laundering from overseas linked to its role as a major financial centre.[113] It also noted the underreporting of suspicious transactions by those referred to as "higher risk sectors" which includes lawyers.[114]

With regard to beneficial ownership standards, the UK MEval is positive, acknowledging that the UK "*has acted as a global leader in this space, promoting the use of public registers of beneficial ownership and using a variety of fora to encourage transparency in this area*."[115] It includes reference to the "*comprehensive legal framework*"[116] with regard to the obtaining and maintenance of beneficial ownership information by financial institutions and DNFBPs and recognises the existence of the UK PSC Register, albeit with a priority action in place to "*continue to improve the quality of information available on the PSC register to ensure that the information is accurate and up-to-date.*"[117] Indeed steps have now been taken in this regard with the introduction of discrepancy reporting discussed at section 2.4.3.4 above and Companies House verification of information, which is proposed under the Economic Crime and Corporate Transparency Bill currently making its way through parliament.

---

[110] Gelemerova suggests this turns the Recommendations into "*an instrument of pressure*" in Liliya Gelemerova, 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33, 36; and Gallant discusses the impact of Canada's mutual evaluation in M. Michelle Gallant, 'Money laundering consequences: Recovering wealth, piercing secrecy, disrupting tax havens and distorting international law' (2014) 17 JMLC 296, 302.

[111] See FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022.

[112] The UK was judged to be fully compliant with 23 of the 40 Recommendations, Largely Compliant with 15 of the 40 Recommendations, and only Partially Compliant with two of the 40 Recommendations.

[113] FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022, 18.

[114] FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022, 4.

[115] FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022, para 30.

[116] FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022, para 30.

[117] FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022, priority action (c).

The complex international AML regime therefore prompts multiple national enactments which individually impose myriad obligations upon obliged parties. The structure of the regime requires[118] that top-level goals are passed down a legislative chain and are ultimately operationalized on the ground, often by those operating within the regulated sector, including solicitors. In this way, the international AML regime depends on all of the pieces of the holistic puzzle existing and fitting together. Understanding the way in which the regime works (or the extent to which it does not work) from the front line is crucial to understanding and evaluating how, and to what extent, the overall regime can succeed in its bold ambitions.

2.7 Conclusion

The UK AML Framework is made up of several varied laws and regulations, but the main provisions are focused in two key enactments: the MLR 2017 and the PoCA 2002. The relevant provisions are driven by the underlying FATF Recommendations and have been transposed via EU Directives into UK law. Since the original FATF standards were published in 1993, the regulated sector has expanded from credit and financial institutions to capture a range of DNFBPs, including solicitors undertaking regulated work. Penalties for failure to comply with obligations under the UK AML Framework are severe, and the obligations now falling on the private sector continue to grow despite questions about the validity of the regime as a whole and the role of solicitors within it. A series of specific concerns about the involvement of lawyers within the regime and the consequent compliance burden persist.

The latest iteration of the FATF Recommendations, MLD5 and the MLR 2017 place increased focus on obligations relating to beneficial ownership. Zavoli and King's empirical study of estate agents analysed the response within this wide and varied sector to their updated obligations under the MLR 2017.[119] A particular area of concern is the frustration felt by estate agents because of challenges they face, which hinders successful practical implementation of the regulations and the effectiveness of the regime as a whole. Zavoli and King suggest that "*policymakers often overlook the practical difficulties in implementing AML regulation.*"[120] With policy driven from the top down, but reliant upon actions on the ground, this is a gap which remains to be addressed. This study seeks to contribute to this knowledge from the perspective of the legal profession.

[118] Albeit on the basis of a soft-law approach.
[119] Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.
[120] Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740, 745.

While empirical research has been conducted into the role of solicitors within the AML regime, discussed further in Chapter 4, none has to date examined the issues and challenges faced by solicitors when complying with their obligations under the latest regulations or in the context of the increased focus on beneficial ownership, and none has looked at the experiences of solicitors outside of the largest firms.[121] Considering the current context of both louder calls for increased transparency of beneficial ownership (Chapter 3) and a focus on lawyers as enablers or facilitators of financial crime, discussed further in Chapter 4, this research seeks to contribute to the knowledge we have about the operation of the measures currently in place to expose beneficial ownership. Given that the focus of this study is on the particular parts of the UK AML Framework which deal with beneficial ownership, the next chapter will consider what beneficial ownership is, what it means, what solicitors are meant to know or find out, and the complexities involved in understanding and identifying beneficial ownership.

[121] See Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) in which interviews among top 50 law firms were conducted; also Karin Svedberg Helgesson, & Ulrika Moerth, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227 which focused on large and medium-sized firms; and Karin Svedberg Helgesson, & Ulrika Moerth, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216 which conducted interviews among elite city firms in London and Sweden.

Chapter 3: Beneficial Ownership and the Quest for Transparency

3.1 Introduction

Having drawn the parameters of the UK AML Framework in Chapter 2, this Chapter 3 moves on to examine beneficial ownership more closely, first considering in detail what beneficial ownership is and how and where it is defined in technical legal terms at an international level and under the UK AML Framework. The chapter moves on to explore beneficial ownership as a concept, both as a useful legal tool and as a means of disguising ownership of assets and property, and highlights the focus which has intensified upon beneficial ownership transparency in recent years. This frames the current and strategic significance of this study in the context of UK policy and international priorities. The chapter concludes with a discussion of some of the practical issues and challenges associated with beneficial ownership identification and verification and the potential implications of deficiencies in compliance for the operation of the UK AML Framework.

3.2 Beneficial Ownership: Definitions

The meaning of beneficial ownership is fundamental to this research. As the UK AML Framework outlined in Chapter 2 found its roots in international standards, so, too, the legal meaning of beneficial ownership is rooted in a high-level FATF definition, refined at EU level, then operationalised within the UK AML Framework. This sequence is mapped out in the following sections 3.2.1, 3.2.2 and 3.3.3.

3.2.1 The FATF Definition

The FATF Recommendations General Glossary[1] sets forth the following technical definition of ***beneficial owner*** of a legal person as:

> *"the natural person(s) who **ultimately owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise **ultimate effective control** over a legal person."*

The definition is clear that a beneficial owner must be one or more natural person(s).

For legal arrangements, the FATF definition of ***beneficial owner*** includes:

[1] FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023, 120-121.

> *"(i) the settlor(s); (ii) the trustee(s); (iii) the protector(s) (if any); (iv) each beneficiary, or where applicable, the class of beneficiaries and objects of a power; and (v) any other natural person(s) exercising **ultimate effective control** over the arrangement."*

The definition also stipulates that where a trustee and any other party to the legal arrangement is a legal person, the beneficial owner of that legal person should be identified, which ensures that one or more natural person(s) will be identified.

These definitions depend on understanding **ownership** and **control**, which may be via a chain of ownership or by means of control other than direct control. More precise detail, necessary to utilise the terms on the ground, is provided on these terms at EU and country level below.

3.2.2 The EU Definition

The EU definition adds the thresholds and mechanics for identifying beneficial ownership needed by those operating within the regulated sector.

At EU level, the definition of ***beneficial owner*** is found in the fourth Money Laundering Directive at Article 3(6)[2] as follows:

> *"any natural person(s) who ultimately **owns or controls** the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted."*

For corporate entities, this includes **at least** the natural person(s) who ultimately **owns or controls** a legal entity through shares or voting rights, defined as a minimum of:

- A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer (for **direct ownership**).
- A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s) (for **indirect ownership**).[3]

[2] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73, art 3(6).

[3] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73 art 3(6)(a).

Control may also be determined with reference to voting rights or influence over subsidiary undertakings (see Article 22(1) – (5) of Directive 2013/34/EU).[4]

Despite the addition of the 25% threshold and calculation mechanisms, this definition remains broad. The words **at least** leave scope for wide interpretation. Ownership and control can be achieved in multiple different ways with respect to ownership of shares, voting rights attached to shares, or control in terms of influence.

For trusts, the ***beneficial owner*** is (i) the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or class of beneficiaries; and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.[5] Again, this definition is broad and captures parties well beyond those who would be considered to benefit under a trust at common law. The words "*or by other means*" leave this open to wide interpretation. For other legal entities, the beneficial owner is the natural person with similar or equivalent position to those for trusts.[6] This means that, where an entity is neither a corporate body nor a trust, the intended capture is clear, but the precise definitions are not.

3.2.3 The UK Definitions

In order for the definitions of beneficial ownership to be useful for those tasked with implementing policy on the ground, yet more legislative detail is required. In the UK, this can be found within the UK AML Framework. The MLR 2017 define ***beneficial owner*** at Regulation 5 in respect of a body corporate (company or LLP) as:

- any individual who exercises **ultimate control** over management;
- any individual who **ultimately owns or controls** (directly or indirectly) … more than 25% of the shares or voting rights; or
- an individual who **controls** the body corporate.[7]

[4] This is the directive of the EU which relates to the provision of consolidated financial statements.
[5] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73 art 3(6)(b).
[6] Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L/141/73 art 3(6)(c).
[7] MLR 2017 reg 5(1).

Beneficial owner in relation to a partnership (other than an LLP) means any individual who:

- **ultimately is entitled to or controls** (directly or indirectly) more than 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership;
- satisfies certain conditions relating to Scottish Partnerships; or
- otherwise **exercises ultimate control** over the management of the partnership.[8]

The UK Companies Act 2006 provides the underlying definition of **control** for the purposes of the MLR 2017,[9] specifying that:

- **Control** of a body corporate may be determined with reference to voting rights or influence over the body corporate (eg by the right to appoint or remove directors or to exert a dominant influence via the articles or other contract).[10]
- A **Person with Significant Control[11]** over a company meets one or more of the following conditions:
  - Has a shareholding (direct or indirect) in excess of 25%;
  - Holds (directly or indirectly) 25% or more voting rights;
  - Has (directly or indirectly) the right to appoint or remove a majority of the board of directors;
  - Exercises, or has the right to exercise, significant influence or control;[12]

This UK definition also applies to trustees and partners if they exercise (or have the right to exercise) influence or control over a firm or trust which meets one or more of these conditions.

With regard to trusts, similar arrangements and others, a ***beneficial owner*** is: (a) the settlor; (b) the trustees; (c) the beneficiaries; (d) a class of beneficiaries; and (e) any individual who has **control** over the trust.[13] **Control** in this context would be power to take certain actions

[8] MLR 2017 reg 5(3).
[9] MLR 2017 reg 5(2).
[10] Highly detailed provisions can be found in the Companies Act 2006 s 1162 and sch 7.
[11] This is the definition underpinning the UK PSC Register.
[12] Companies Act 2006 sch 1A, Part 1.
[13] MLR 2017 reg 6(1) and this definition applies to similar or equivalent individuals in respect of foundations or other legal arrangements.

under the trust, such as apply trust property, add a beneficiary or vary or terminate the trust.[14] For other legal entities or arrangements, a ***beneficial owner*** is an individual or class of persons who benefit(s) from its property and any individual who exercises control over its property.[15]

The technical definitions set out above result in extensive capture of legal persons and arrangements, include a wide range of legal mechanisms for exercising ownership or control, and seek to reach a broad spectrum of natural persons as potential beneficial owners. The 25% threshold of ownership or control which has flowed through to the EU and the UK AML Framework follows FATF interpretative guidance to Recommendations 10 and 24[16] but may be lowered, and indeed is lowered in some jurisdictions.[17] However, some advocate a more measured approach, arguing that building from a basis of less information of better quality will be more useful than more detail of dubious quality.[18] Quibbles regarding the thresholds aside, the above definitions incorporating the 25% threshold are those in use at present under the current UK AML Framework. The technical beneficial ownership definitions, with all of their complexity, underpin relevant compliance obligations under the UK AML Framework and must be understood in order to evaluate its operation, but it is the concept of beneficial ownership and fears about its misuse which have prompted the provisions in the first place, as addressed in the following section 3.3.

3.3 Beneficial Ownership: The Concept

By their nature, international standards seek to transcend national boundaries, and the relevant provisions originating within the FATF Recommendations are transposed through EU law and into the UK AML Framework as demonstrated above in order to become operative. This process is complex, and imperfect, because the legal structures enabling

---

[14] MLR 2017 reg 6(2).
[15] MLR 2017 reg 6(7).
[16] See FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023, 65 and 92.
[17] See, for example Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds' (Open Ownership, 27 October 2020) <https://www.openownership.org/en/publications/beneficial-ownership-in-law-definitions-and-thresholds/thresholds/> accessed 18 May 2023. This notes that Nigeria has a beneficial ownership threshold of 5%, Senegal 2% and Kenya 10%, while the UK has a threshold of 25% alongside Ukraine, and there are some sector-specific thresholds depending on risk levels.
[18] Jackie Harvey and Sue Turner, 'Can Knowledge of Beneficial Ownership Assist in the Prevention of Laundering the Proceeds of Corruption?' (Global Integrity Anti-Corruption Evidence Research Programme 19 January 2022) <https://ace.globalintegrity.org/can-knowledge-of-beneficial-ownership-assist-in-the-prevention-of-laundering-the-proceeds-of-corruption/ > accessed 18 May 2023.

beneficial ownership and their uses are specific to local jurisdictions and may vary across the globe.[19]

3.3.1 Beneficial Ownership Under English Common Law

While beneficial ownership has been designated a specific and detailed definition by FATF, which has filtered down to requirements at UK level, the concept of beneficial ownership has wide and varied meaning under the common law and arises across several practice areas. In England and Wales and other common law jurisdictions, the term beneficial owner is used to describe the owner of the benefit of property or assets which will always also have a legal owner – a person (natural or legal) holding legal title to that asset. This would typically have been important to enable the holding of property or assets on behalf of third party beneficiaries, such as in the case of a trustee holding an estate on behalf of an underage beneficiary. The concept is also widely used in a corporate context to enable, for example, shares to be traded on a stock exchange by a registered party on behalf of an owner. The beneficial ownership grants the holder the right to the beneficial, or equitable, interest in the asset or property. The terms quite simply represent a legal construct which allows equity to separate legal and beneficial ownership, not necessarily as a disguise of ownership, but as a useful tool to separate legal and beneficial rights, allowing one person to hold and deal with an asset while others are entitled to its benefit. With respect to the English legal system, trust structures play a central role in the transfer of property on inheritance, enable the holding of public company shares via intermediaries, and facilitate a range of tax planning activities.[20]

3.3.2 Beneficial Ownership in International Tax Treaties

The concept of beneficial ownership also arises beyond the AML regime in an international context in relation to double tax treaties, where there is a desire for clarity about the holders and recipients of income in cross-border transactions, required in order to determine liability for tax.[21] This recognises that it is the beneficial owner, rather than the legal owner, who is liable for tax payments in respect of particular income. However, pinning down the definition

---

[19] See The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inter-American Development Bank (IBD), 'A Beneficial Ownership Implementation Toolkit' (IDB and Organisation for Economic Cooperation and Development, March 2019).

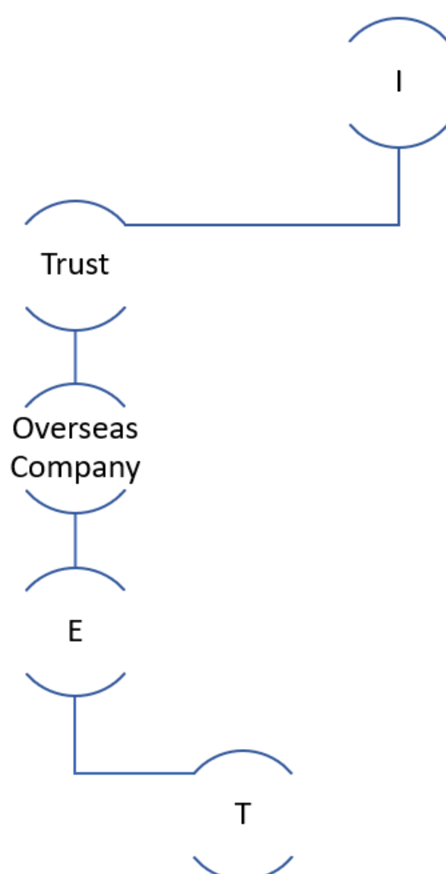
[20] For a discussion of both legitimate and illegitimate uses of beneficial ownership structures, see Andres Knobel, 'Transparency of Asset and Beneficial Ownership Information' (Tax Justice Network, 19 July 2020) <Transparency of Asset and Beneficial Ownership Information by Andres Knobel :: SSRN> accessed 11 August 2022.

[21] For example under the OECD, *Model Tax Convention on Income and on Capital 2017* (OECD Publishing, Paris, 2019) <https://doi.org/10.1787/g2g972ee-en> accessed 18 May 2023.

in this cross-border context has, at times, proven legally and conceptually tricky, and precise definitions are elusive.[22]

3.3.3 Beneficial Ownership: Calls for Transparency

Although beneficial ownership has long existed as a mechanism for achieving legitimate legal aims, there is a possibility that beneficial ownership structures, which separate legal and beneficial ownership or control, may enable underhand or secretive behaviour and may be used for criminal purposes. Separation of legal, often registered, ownership, from beneficial, often opaque, ownership, can allow corrupt and criminal actors to hide their identities, thereby profiting secretly and anonymously from their crimes. The diagram below offers some insight into how an individual (I) may sit a number of layers away from a business transaction (T) but ultimately own or control the underlying entity (E) from afar and receive the benefits of it:



[22] For an up-to-date discussion, see Schwarz, J, 'Beneficial ownership in double tax treaties' (Temple Tax Chambers, Practical Law UK 2023, Practice Note 0-541-5706) < Beneficial ownership in double tax treaties | Practical Law (thomsonreuters.com)> accessed 23 October 2023.

In addition to distance in terms of layers involving trusts or corporate entities, further opportunities for obfuscating ownership arise when corporate or trust structures, or indeed other legal arrangements, incorporate nominee shareholders (who act on behalf of the beneficial owner and are named in corporate registries (as applicable)); bearer shares (ownership of which is physical and not registered); or shell companies (which simply hold shares but do not conduct operations).[23] There is additional complexity where structures cross borders, potentially into jurisdictions with low corporate transparency standards.[24]

There are a number of NGOs whose work focuses on improving transparency in relation to beneficial ownership including Transparency International, who suggests it could "*help authorities, journalists and civil society to more effectively expose and fight corruption, money laundering and other financial crimes.*"[25] Open Ownership is "*dedicated to increasing corporate transparency across the world by making it easy to publish and access high-quality data about who owns companies*"[26] while Global Witness refers to the ability to set up "*layer upon layer of paper companies, crossing borders and jurisdictions*" as a loophole in the financial system, which enables corruption and criminal activity.[27] Global Witness is calling for the creation of public registries which show beneficial ownership as part of its campaign for increased transparency. Not only is it believed that beneficial ownership structures enable criminal concealment of the proceeds of crime, it is also believed that it will be more and more difficult for criminals to hide the proceeds of their crimes if details of transactions and ownership are publicly available. In this context, the importance of identifying beneficial ownership has become central to global AML policy in recent years, and the tightening of FATF Recommendations 24 and 25 and the establishment of multiple registers of beneficial ownership across the globe[28] evidence some significant successes for those who advocate transparency.

---

[23] For further and detailed explanation on how to obscure beneficial ownership, see The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inter-American Development Bank (IBD), 'A Beneficial Ownership Implementation Toolkit' (IDB and Organisation for Economic Cooperation and Development, March 2019).

[24] Open Ownership maintains a map demonstrating the status of beneficial ownership transparency around the globe at <The map: Worldwide commitments and action | openownership.org> accessed 25 June 2023.

[25] Transparency International in its call to reform global standards on beneficial ownership transparency in Martini, M, 'Reforming Global Standards on Beneficial Ownership' (Transparency International) <Reforming global standards on beneficial ownership... - Transparency.org> accessed 25 June 2023.

[26] Open Ownership <https://www.openownership.org/what-we-do/> accessed 30 October 2019.

[27] Global Witness, 'Anonymous Company Owners' <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/#more> accessed 30 October 2019.

[28] Open Ownership maintains a map demonstrating the status of beneficial ownership transparency around the globe at <The map: Worldwide commitments and action | openownership.org> accessed 25 June 2023.

3.3.4 Offshore Financial Centres

In the UK, and elsewhere, attention has often turned to beneficial ownership in offshore financial centres (sometimes referred to as "secrecy jurisdictions") with the aim of limiting the possibilities for hiding proceeds of crime overseas. Legislation debated within the UK to compel transparency proved controversial, as there was resistance from within certain jurisdictions to disclosure,[29] and there was also political reluctance to require the disclosure of beneficial ownership by crown dependencies for constitutional reasons.[30] However, in the face of significant pressure to overcome constitutional and privacy barriers to achieve the greater political aim of transparency, the Sanctions and Anti-Money Laundering Act 2018 (SAMLA 2018) requires all reasonable assistance to be provided to British Overseas Territories[31] to establish public registers of beneficial ownership. The UK government has since legislated to compel compliance with the requirement if measures had not been implemented within the originally-specified timeframe of 31 December 2020, but no Order in Council under s 51 SAMLA has been issued to date given commitments from relevant territories to work towards the establishment of public registers.[32] The date for completion is now set for the end of 2023. Separately, the Economic Crime (Transparency and Enforcement) Act 2022, mentioned above at section 2.5, has recently extended the scope of beneficial ownership registration to overseas entities owning land in the UK.

3.3.5 Beneficial Ownership Transparency: What is it for?

Notwithstanding policy developments to date, there remain some fundamental questions about the value of ongoing efforts to increase beneficial ownership transparency. One relates to proportionality: the expansion of the AML regime to address new threats follows a pattern seen over the years in relation to expanding AML regulation.[33] The compliance "*complex*"[34] which now exists, bolstered by enthusiastic proponents leads to gathering ever-

---

[29] For example, see George Parker, 'Crown dependencies set for transparency clash with Westminster' (Financial Times, 3 March 2019) <Crown dependencies set for transparency clash with Westminster | Financial Times (ft.com)> accessed 26 June 2023.

[30] See the Governments of Jersey, Guernsey and the isle of Man, 'Joint Statement on the deferral of the Financial Services (Implementation of Legislation) Bill (Gov.GG 2 March 2019) <Joint Statement on the proposed amendments to the Financial Services (Implementation of Legislation) Bill - States of Guernsey (gov.gg)> accessed 26 June 2023.

[31] Though not Crown Dependencies.

[32] See Foreign, Commonwealth & Development Office, *Overseas Territories: progress made no improving transparency and addressing illicit finance flows – explanatory note* (FCDO Policy Paper, 14 December 2020) <Overseas Territories: adopting publicly accessible registers of beneficial ownership - GOV.UK (www.gov.uk)> accessed 26 June 2023.

[33] Peter Alldridge, *What Went Wrong With Money Laundering Law?* (Palgrave Macmillan, London 2016).

[34] Verhage, A 'Between the hammer and the anvil? The anti-money laundering-complex and its interactions with the compliance industry' (2009) 52 CLSC 9.

more information[35] which may well be disproportionate to the threat posed, or at least to any possible solution, while the burden of compliance falls heavily and disproportionately on the regulated sector. Another relates to usefulness: for example, while the UKFIU[36] publishes an annual report on SARs statistics,[37] there is a lack of evidence about how SARs generated by the regulated sector assist existing law enforcement investigations or prompt new ones,[38] and there is no sign that there will be any evaluation of the impact additional information generated by transparency of beneficial ownership will have on asset recovery or reducing financial crime or corruption. Furthermore, in relation to corruption as a source of illicit international financial flows, there is some evidence that very simple structures to move proceeds of corruption may be common, rather than the complex structures outlined above.[39] In terms of effectiveness, this suggests that the drive towards beneficial ownership transparency may simply be an extension of the quest for information to be on hand if needed, rather than a measurable attempt to combat identifiable harm.

Indeed, the quest for a global solution to corruption and financial crime based on capturing and sharing data about beneficial ownership is hampered by many weaknesses. Some jurisdictions are way ahead of others in terms of implementation, as illustrated by the mottled adoption of registries of beneficial ownership with varying thresholds for information and varying levels of disclosure.[40] Finally, in a blow to transparency initiatives, the European Court of Justice recently found in favour of privacy over transparency, restricting access to beneficial ownership information of companies to the general public.[41] From a practical perspective, these weaknesses are likely to make the identification and verification of beneficial ownership harder for those assigned such obligations, and several further practical obstacles faced by those tasked with meeting obligations under the UK AML Framework, including solicitors, are identified in the following section.

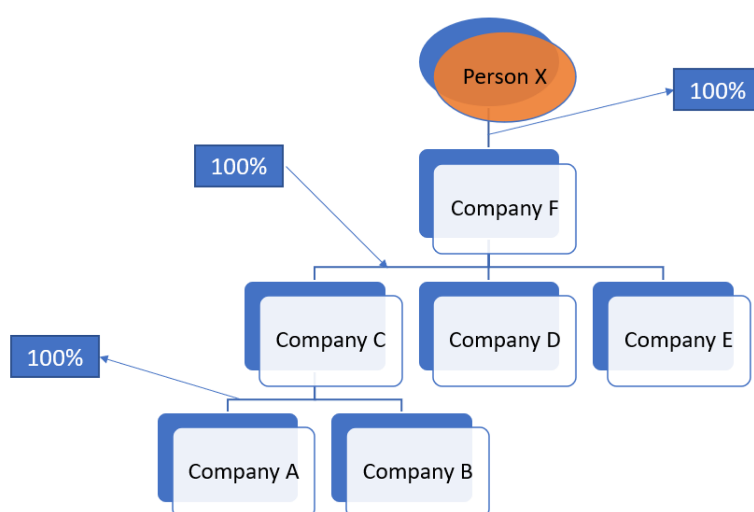
---

[35] Liliya Gelemerova, 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33.
[36] UK Financial Intelligence Unit.
[37] The latest is the United Kingdom Financial Intelligence Unit 'Suspicious Activity Reports Annual Report 2022' <https://nationalcrimeagency.gov.uk/who-we-are/publications/632-2022-sars-annual-report-1/file> accessed 5 July 2023.
[38] See, for example, Duyne PC van, Harvey, JH, Gelemerova, LY, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths* (Palgrave Macmillan, London 2018), ch 9, regarding lack of data to evaluate effectiveness.
[39] See, for example, Harvey, J et al, 'Final Report: tracking beneficial ownership and the proceeds of corruption: evidence from Nigeria' (Global Integrity, Washington, DC, USA 31 October 2021).
[40] Open Ownership, 'The map: Worldwide commitments and action' <The map: Worldwide commitments and action | openownership.org> accessed 25 June 2023.
[41] C-37/20 WM v Luxembourg Business Registers 22 November 2022 and C-601/20 Sovim SA v Luxembourg Business Registers 22 November 2022.

3.4 Beneficial Ownership: Identification

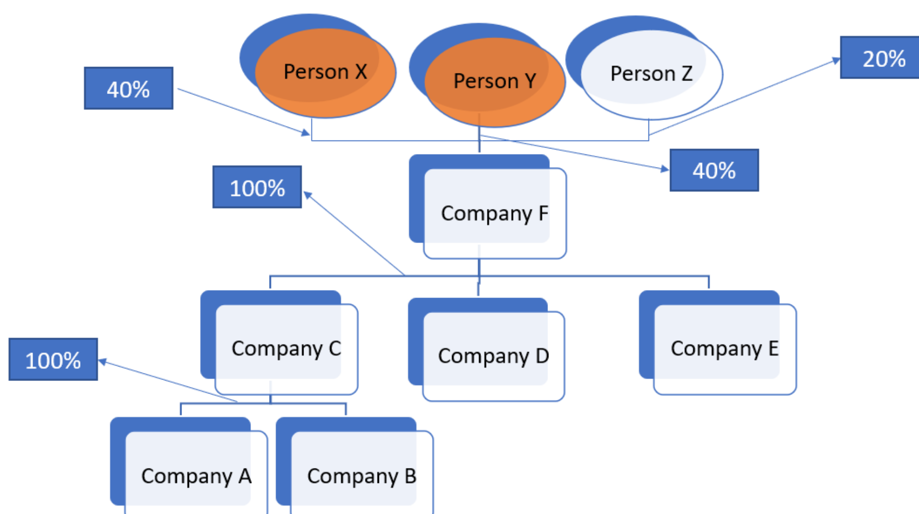
Operationalising beneficial ownership identification on the ground could be quite straightforward in cases where there is no separation of legal and beneficial ownership, for example, or where a small number of persons are involved in a straightforward structure, or where a client's structure is well-known to the solicitor. However, the objective of the beneficial ownership transparency rules is to uncover beneficial ownership based on either ownership or control by natural persons, even (or especially) in cases where such beneficial ownership may be difficult to identify, which would almost invariably be the case where a structure was designed to disguise involvement. The following are some simple examples of how beneficial ownership may be identified in relation to a corporate structure.

Diagram 3: Beneficial Owner: Simple Structure (source: author)



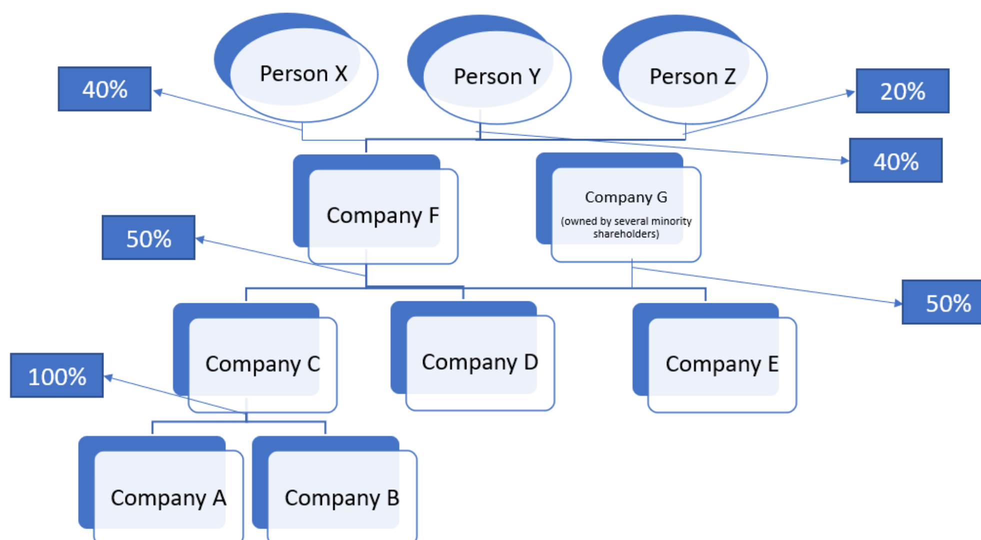
This is a straightforward example based on shareholding. Though there is a corporate structure in place, the outright ownership by each company of 100% of the issued share capital means that the natural Person X is the ultimate beneficial owner of Company A by virtue of the legal ownership of more than 25% of Company A's shares. In fact, Person X holds 100% of the beneficial ownership of the shares in Company A, albeit via a chain of ownership (indirectly).

Diagram 4: Beneficial Ownership: Multiple Beneficial Owners (source: author)



In Diagram 4, the picture is straightforward in terms of share ownership up until the level of Persons X, Y and Z. Here, Persons X and Y are beneficial owners according to the FATF definition, as they each own more than 25% of the share capital of Company A, albeit indirectly. Person Z holds only 20% of the shares indirectly, so would not be considered a beneficial owner.

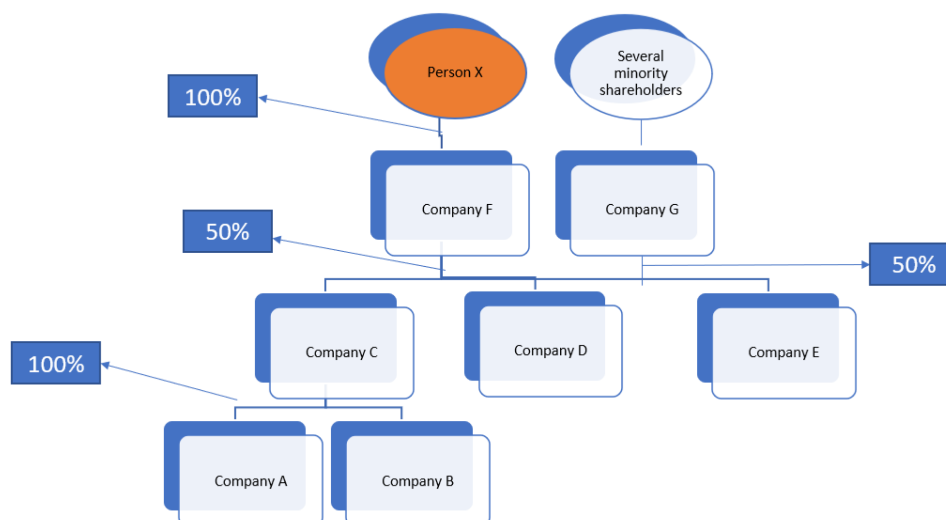
Diagram 5: Beneficial Ownership: No Beneficial Owner (source: author)



As is evident in Diagram 5, the shareholding of A may be diluted further down the chain of ownership. Although the top-level ownership of Company F here stays the same, all shareholdings ultimately fall below the 25% threshold on a straightforward share ownership measure because the ownership lower down the chain is split 50%/50% between Companies F and G. Company G's miscellaneous minority shareholders will also not

constitute beneficial owners under the direct share ownership element of the beneficial ownership definition.

Diagram 6: Beneficial Ownership: Minority Shareholders (source: author)



In this example, Person X is a beneficial owner, even though there is some dilution further down the chain, but the several minority shareholders of Company G would not meet the share ownership criteria and would not be beneficial owners based on this measure.

Although the diagrams appear simple at first sight, this disguises the complexity of the investigations which must be undertaken to uncover beneficial ownership, in particular where straightforward share ownership does not hold the answer. Even in the case of share ownership, there is further extensive guidance to consider regarding the exact combinations of shareholdings which will combine to qualify as a beneficial owner. Familiarity with the finer details of the UK definitions contained in, for example, the Companies Act 2006, are necessary to complete the task accurately from a technical perspective.

3.4.1 Beneficial Ownership Criteria In Practice

In terms of being an individual who ultimately owns or controls (directly or indirectly) more than 25% of the shares or voting rights, this single line of the definition could include any one or more of the following eight permutations:

(i) An individual who ultimately owns (directly) more than 25% of the shares;

(ii) An individual who ultimately owns (indirectly) more than 25% of the shares;

(iii) An individual who ultimately owns (directly) more than 25% of the voting rights;

(iv) An individual who ultimately owns (indirectly) more than 25% of the voting rights;

(v) An individual who ultimately controls (directly) more than 25% of the shares;

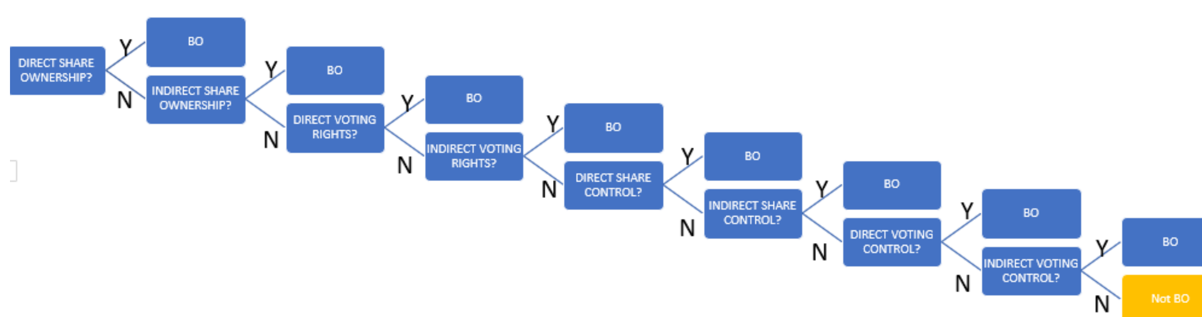
(vi) An individual who ultimately controls (indirectly) more than 25% of the shares;

(vii) An individual who ultimately controls (directly) more than 25% of the voting rights; and

(viii) An individual who ultimately controls (indirectly) more than 25% of the voting rights.

The enquiries to exhaust these possibilities are illustrated below:

Diagram 7: Beneficial Ownership Investigative Possibilities (source: author)



3.4.2 Beneficial Ownership: Beyond Share Ownership and Voting Rights

Looking at the remaining sub-paragraphs of the beneficial ownership definition, it becomes much trickier for those operating within the regulated sector to establish who the beneficial owners might be. There are multiple possibilities. The diagrams in section 3.4.1 above set out only who may be a beneficial owner based on the most straightforward means of beneficial ownership identification. Determining who may be an individual who may exercise ultimate control over management encompasses a number of further possibilities, all of which must be explored as part of CDD. First, there may be a shareholder agreement setting out a right to appoint or remove a director. Second, the articles of association may include provision for additional rights of an individual shareholder. While the articles of association of a company would be a public document, which any party could view, a shareholder agreement or other contract affecting voting rights or interests is not likely to be readily available to third parties, and would only be available to a solicitor as a matter of course in cases where that solicitor had acted for that client in the drafting of such document.

This means that, moving beyond the most obvious arm of direct or indirect share ownership in the diagrams above, it is true that any of natural persons X, Y or Z, or indeed any of the several minority shareholders, or indeed any other person, could still qualify as a beneficial

owner of Company A by virtue of any element of the remainder of the beneficial ownership definition, which makes further enquiry essential to meet MLR 2017 obligations.

3.4.3 Beneficial Ownership Identification: Uncertainty

In an indication of the complexity arising under the beneficial ownership regime relating to companies, and the lack of guidance relating thereto, The Law Society and The City of Law Society (CLLS) issued a 12-page document targeted at lawyers on interpreting the rules relating to the UK PSC Register, with an explanation that the document "*highlight[s] certain areas of complexity within the regime which are not specifically covered by primary / secondary legislation or BEIS guidance which have arisen out of practitioner experience*".[42] The Law Society and CLLS go on to express their gratitude that BEIS had considered the note and "*advised that it does not disagree with any of the statements made, but that the interpretation of the law …, and compliance with it, is ultimately for the courts*."[43] This demonstrates an attempt to fill a knowledge gap, and the response from the Department for Business, Energy and Industrial Strategy demonstrates the lack of concrete guidance that is, or is able to be, provided in support of regulated sector obligations.

3.4.4 Beneficial Ownership Identification: Trusts and other Legal Arrangements

In terms of trust structures, beneficial ownership identification also involves "*endless variety and complexity*"[44] in the context of calling for identification of all parties (including beneficiaries, donors, and settlors) as a means of holding information about all possible beneficial owners. Open Ownership acknowledges that expanding identifiable beneficiaries by additional criteria would not be endlessly possible or desirable, for example in cases where there are classes of beneficiaries still to receive their benefit, or contingent interest trusts.[45] There is a range of potential sources of information about beneficial owners of trusts, such as public registers, trust documentation from the client and, in some cases, information from documents or registers outside of the UK, which could be consulted by solicitors to meet CDD obligations. However, while this all seems possible, consideration of

---

[42] The Law Society and The City of London Law Society, 'Joint Law Society and City of London Law Society Q&A on the PSC Registers' (November 2019) <joint-law-society-clls-qa-psc-registers-november-2019.pdf> accessed 23 October 2023, 2.
[43] The Law Society and The City of London Law Society, 'Joint Law Society and City of London Law Society Q&A on the PSC Registers' (November 2019) <joint-law-society-clls-qa-psc-registers-november-2019.pdf> accessed 23 October 2023, 2.
[44] Ramandeep Kaur Chhina, 'Beneficial ownership transparency of trusts' (Open Ownership Policy Briefing, July 2021) < oo-briefing-bo-transparency-of-trusts-2021- 07.pdf (kxcdn.com)> accessed 24 October 2023, 13.
[45] Ramandeep Kaur Chhina, 'Beneficial ownership transparency of trusts' (Open Ownership Policy Briefing, July 2021) < oo-briefing-bo-transparency-of-trusts-2021- 07.pdf (kxcdn.com)> accessed 24 October 2023, 13.

the time taken to conduct investigations is necessary to appreciate the burden falling on those within the regulated sector.

According to the Inter-American Development Bank's A Beneficial Ownership Implementation Toolkit, "*[g]iven that beneficial ownership can be exercised in many different ways, determining the [beneficial owner] can be a complex process that must be undertaken on a case-by-case basis*."[46] This holds true for all legal structures and arrangements, and solicitors may encounter a range of companies, partnerships, trusts, community interest companies, charities, associations and clubs, all of which may have a range of ownership structures to be investigated and understood when conducting CDD. In the absence of clear legal provisions and complexity inherent in structures and underlying obligations, it is important to understand how solicitors are supported in undertaking their obligations and exercising risk-based discretion under the MLR 2017, which will be explored further in Chapter 5 and is taken into account in the design of the interview questions set out in greater detail in Chapter 6. First, however, it is necessary to turn to the practicalities of identifying beneficial ownership by solicitors.

3.4.5 Beneficial Ownership Identification and Solicitors

There may be some practical challenges specific to solicitors: Kebbell's research suggests a tendency for over-compliance among the legal profession in terms of having specialist transactional knowledge in relation to clients' business that would not be available to others in the regulated sector such as banks, leading to the reporting of "*technical*" as well as "*real*" money laundering.[47] This close involvement in transactions and intimate relationship with clients could present difficulties in respect of compliance with the UK AML Framework in relation to beneficial ownership, too. For example, the nature of client-based work raises the potential for having clients with a wide range of legal structures and arrangements. However, where there is a complex ownership structure, transactions may take place a number of layers away from an ultimate beneficial owner. Given the complexity involved in identifying beneficial ownership described above, the technical nature of solicitors' work, and their attention to detail, solicitors may be tempted to undertake extensive enquiries to fulfil their obligations. The requirement to identify beneficial ownership and to take "reasonable measures" to verify beneficial ownership are key areas in which solicitors must exercise their discretion using the risk-based approach, and any uncertainty potentially engaging the

[46] The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inter-American Development Bank (IBD), 'A Beneficial Ownership Implementation Toolkit' (IDB and Organisation for Economic Cooperation and Development, March 2019), 4.

[47] Sarah Kebbell, '"Everybody's Looking at Nothing" - the legal profession and the disproportionate burden of the Proceeds of Crime Act 2002' (2017) 10 Crim LR 741.

vague threshold of suspicion under PoCA 2002 exposes the solicitor to an offence and may trigger defensive reporting as identified at section 2.3.5.

In terms of undertaking CDD, identifying beneficial ownership and verifying the beneficial ownership information, there is a further challenge regarding access to good information. Despite Recommendations 24 and 25 setting standards to ensure the availability of adequate, accurate and up-to-date information, in the UK, information on the company register is not verified, which means there is uncertainty about its accuracy.[48] As PWC note in their 2016 paper, "*if the goal of the registers is to build confidence and trust, collecting information without the right controls over its accuracy is not enough. It also takes specialised skills to investigate and understand the sophisticated shareholding structures and to highlight suspicious activity.*"[49] Steps are now being taken towards improving the accuracy of information on the Companies House register with the implementation of the Economic Crime and Corporate Transparency Bill requiring Companies House to verify information held on the UK companies register and granting power to check, remove or decline information submitted or on the register,[50] though this is not yet in force.

In terms of discrepancy reporting, solicitors are required to consult and evaluate information obtained independently of registers. While useful information may be available where a company or trust has been set up by a solicitor, for example, this is far less likely to be true for solicitors taking on new clients whose business structure is already in existence. CDD must also be undertaken on a number of occasions, and does not necessarily relate to clients whose structures advisers are familiar with. Even in the case of a simple structure, time and effort must be deployed to uncover the beneficial owner's identify and then verify that identity. This is investigative work allocated to the private sector in order to increase knowledge available, and the solicitor may not, in practice, have information about a client's beneficial ownership beyond what is publicly available, and that publicly-available information may be deficient. What solicitors do to meet their obligations in the absence of a single accurate and reliable data source in order to ensure they fulfil their obligations is a topic for exploration and is incorporated into the interview questions set out at Chapter 6.

[48] Federico Mor, 'Registers of beneficial ownership' (House of Commons Library, Briefing Paper Number 8259, 24 August 2018).
[49] PwC, 'Navigating a path to trust and transparency: Can Ultimate Beneficial Ownership Registers help prevent financial crime?' (PwC, 2016) < 160718-134608-JH-OS (pwc.co.uk)> accessed 24 October 2023.
[50] Economic Crime and Corporate Transparency Bill Factsheet (UK Government Policy Paper, 20 June 2023) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-economic-crime-and-corporate-transparency-bill-overarching> accessed 5 July 2023.

3.5 Conclusion

Universal transparency of beneficial ownership is still a long way from being realised and continues to be hampered by uneven adoption of beneficial ownership registers, varying thresholds and also complex and uneven definitions. While loopholes and blind spots continue to exist, there will be ways for criminals to hide their identities and proceeds of crime, where this is even necessary to achieve their goals. Despite apparent obstacles to success, the current focus on beneficial ownership transparency, and the whole-hearted embrace of this focus into the AML regime, increases the burden of the UK AML Framework already falling on solicitors and others on the front line. As such, scrutiny of issues and challenges arising as a consequence of relevant obligations under the UK AML Framework is required at this operational level. As Zavoli and King identified in relation to estate agents, experiences, capacity and capability across even one part of the regulated sector may well be varied and influence the operation of the regime.[51] Knowledge about the issues and challenges facing solicitors is therefore needed to inform high-level policy-making in this area. The assumption that solicitors, amongst others within the regulated sector, have knowledge, or access to knowledge, about beneficial ownership which they are able to record and share requires empirical testing. The following Chapter 4 examines the role of lawyers as enablers of financial crime which is key to appreciating the potential role solicitors may be expected to play within the UK AML Framework.

[51] As discussed in relation to estate agents in Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.

Chapter 4: The Particular Role of Solicitors

4.1 Introduction

This chapter considers in greater detail the specific role of solicitors within the UK AML Framework and the specialist transactional capabilities and knowledge solicitors are deemed to have in the context of beneficial ownership. The chapter begins by considering the UK policy background which has placed an increasing focus in recent years on measures to combat financial crime, corruption and other serious organized crime and identifies lawyers as key players in this strategy. It will also consider what is known about the role solicitors play in facilitating crime and the increasingly common term by which lawyers and other professionals may be described: enablers. The chapter moves on to explore existing research into compliance by solicitors and others with AML obligations. The chapter concludes by identifying a gap in knowledge regarding the capacity and capability of solicitors to identify and verify the identity of beneficial owners and suggests further data are required in order to more fully evaluate the contribution they may realistically be expected to make to beneficial ownership identification within the latest UK AML Framework.

4.2 UK Policy Background

Alongside, and influenced by, the international AML regime (Chapter 2) and calls for beneficial ownership transparency (Chapter 3), there are several national strategic policy priorities which feed into the UK AML Framework with respect to solicitors and beneficial ownership, with laws and enactments brought forward to deliver on political promises and respond to policy loopholes and initiatives to counter financial crime and corruption amongst other concerns. The NCA calls money laundering a potential threat to security, prosperity and reputation,[1] and suggests that over £12 billion of criminal cash is generated in the UK each year, with hundreds of billions of pounds impacting on the UK annually, for example through financial institutions or corporate structures.[2] They identify that professional enablers continue to be involved in concealing and moving criminal proceeds.[3] Furthermore, the UK's latest Serious and Organised Crime Strategy (the SOC Strategy), launched on 1 November 2018,[4] identifies money laundering as one of its main categories of serious and organised

[1] National Crime Agency, 'Money laundering and illicit finance' <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance> accessed 9 August 2022.
[2] National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2021, (National Crime Agency, 2021) < file (nationalcrimeagency.gov.uk)> accessed 24 October 2023, 54.
[3] National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2021, (National Crime Agency, 2021) < file (nationalcrimeagency.gov.uk)> accessed 24 October 2023, 56.
[4] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018).

crime.[5] The SOC Strategy states that serious and organised crime is a great threat and that, in combating it, there should be a focus on tackling illicit finance and recovering the proceeds of crime.[6] It recognises challenges for law enforcement in a world of open borders and cross-border crime. With Brexit then on the horizon, the SOC Strategy identifies the necessity of a clean and secure reputation of the UK financial sector with capacity to detect and deter international money launderers.[7] It also highlights the need for greater corporate transparency.[8] Finally, the SOC Strategy aims to focus on professional enablers as "*key to moving illicit funds through the UK and global financial systems*",[9] and sets out its goal to provide a cohesive response combining public and private sector resources[10] and relying on greater international co-operation.[11]

Shortly before the launch of the SOC Strategy, the UK hosted the first ever anti-corruption summit in 2016.[12] The Global Declaration Against Corruption agreed at this summit committed to making corruption a "*top priority at home and abroad*" and to "*building capacity to tackle the problem*".[13] The consensus from the summit was to ensure that corruption would be exposed, targeting the misuse of anonymous companies to hide the proceeds of corruption; by increasing transparency; by enabling reporting of corrupt activities, and by "*driving out lawyers, real estate agents and accountants who facilitate or are complicit in corruption and denying the corrupt the use of legitimate business channels*".[14] A second goal involves pursuing, prosecuting and punishing the corrupt and tracking down and

---

[5] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018) para 16.
[6] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018) para 64 and 65.
[7] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018) para 25.
[8] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018), 67.
[9] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018) para 64.
[10] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018), 19.
[11] Secretary of State for the Home Department, 'Serious and Organised Crime Strategy' (Cm 9718, 2018) para 170.
[12] The Anti-Corruption Summit, London 2016, 12 May 2016.
[13] Cabinet Office and Prime Minster's Office, 'Global Declaration Against Corruption' (2016) <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption> accessed 9 August 2022.
[14] Cabinet Office and Prime Minster's Office, 'Global Declaration Against Corruption' (2016) <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption> accessed 9 August 2022, Goal 1, Corruption should be exposed – ensuring there is nowhere to hide.

returning stolen assets.[15] A third is to drive out corruption, in part by enhancing international cooperation and building capacity.[16]

The focus on AML, anti-corruption and transparency at a political level is also apparent from the National Risk Assessments of Money Laundering and Terrorist Financing of 2015, 2017 (NRA 2017) and, most recently, 2020 (NRA 2020).[17] These set the tone and direction of policy over the following months and years. The NRA 2020 describes serious and organized crime as "*a fundamental threat to the country's future security, resilience and prosperity.*"[18] The UK economy is highly dependent on financial transactions, with over 10% of economic output contributed by financial and related professional services[19] and it is acknowledged[20] that the role of the UK as an attractive financial centre can mean that it is attractive to illegitimate as well as legitimate funds.[21] In particular, the NRA 2017 indicated that "*Professional services are a crucial gateway for criminals looking to disguise the origin of their funds*"[22] which is key to the focus on the role solicitors, as professional services providers. This focus remains in the NRA 2020, again identifying that professional services industries may be exploited by criminals[23] and that lawyers, amongst other professional services providers, may facilitate the laundering of money through corporate structures and offshore jurisdictions to hide the true beneficiary of the criminal funds.[24]

One of the seven strategic priorities of the UK government under the Economic Crime Plan, which include understanding crime better and strengthening law enforcement capabilities

---

[15] Cabinet Office and Prime Minster's Office, 'Global Declaration Against Corruption' (2016) <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption> accessed 9 August 2022, Goal 2, The corrupt should be pursued and punished and those who have suffered from corruption fully supported.

[16] Cabinet Office and Prime Minster's Office, 'Global Declaration Against Corruption' (2016) <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption> accessed 9 August 2022, Goal 3, Corruption should be driven out – wherever it may exist.

[17] These assessments are produced pursuant to national AML regulations, most recently MLR 2017 reg 16.

[18] HM Treasury and Home Office, *National risk assessment of money laundering and terrorist financing 2020* (December 2020), 2.

[19] TheCityUK, *Key facts about UK-based financial and related professional services 2021* (March 2021) < key-facts-about-uk-based-financial-and-related-professional-services-2021-v2.pdf (thecityuk.com)> accessed 25 October 2023.

[20] See FATF 'Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report' (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022 and HM Treasury and Home Office UK, *National risk assessment of money laundering and terrorist financing 2017* (October 2017).

[21] HM Treasury and Home Office, *National risk assessment of money laundering and terrorist financing 2020* (December 2020), 31.

[22] HM Treasury and Home Office UK, *National risk assessment of money laundering and terrorist financing 2017* (October 2017), 5.

[23] HM Treasury and Home Office, *National risk assessment of money laundering and terrorist financing 2020* (December 2020), 25.

[24] HM Treasury and Home Office, *National risk assessment of money laundering and terrorist financing 2020* (December 2020), 26.

focuses specifically on beneficial ownership in that it is to "*improve our systems for transparency of ownership of legal entities and legal arrangements.*"[25] Crucially, the plan also acknowledges that failure in one area undermines "*success of other areas and the effectiveness of the system as a whole*"[26] which highlights the need to understand whether policy is working on the ground.

4.2.1 Implications of Strategic Priorities for Practice

In line with strategic policy ambitions, several laws and regulations have been enacted in the UK in recent years with a view to reducing economic crime. These include: the Criminal Finances Act 2017,[27] which, in particular, enhances investigative possibilities via the introduction of unexplained wealth orders[28] and creates new corporate offences relating to the facilitation of tax evasion;[29] and the MLR 2017, which strengthens obligations found in previous iterations of AML regulations, including those relevant to professional services providers, and require the identification and verification of beneficial owners.[30] Further measures to tackle financial crime by focusing on transparency and disclosure include the establishment of the UK PSC Register and, most recently, the Economic Crime (Transparency and Enforcement) Act 2022 referred to at Chapter 2 above.

In 2015, Middleton & Levi predicted a heightened focus on the role of solicitors as crime facilitators in the light of "*[t]he focus of the FATF and of anti-Grand Corruption campaigners against disguised beneficial ownership of business vehicles for crime.*"[31] It is indeed clear that AML measures, transparency initiatives and efforts to target "professional enablers" form key and ongoing strategic priorities for policy-makers in the UK. Given this political environment, it is in the interests of effective policy-making to seek a greater understanding of the part solicitors play in facilitating financial crime and money laundering, what role they can and do play within the UK AML Framework and what barriers to compliance there may be in the context of beneficial ownership identification. For this reason, this work turns next to consider the regulated sector and the legal profession.

---

[25] Bennett, O and Shalchi, A, 'Economic crime in the UK: A multi-billion pound problem' (CBP 9013 6 April 2022), strategic priorities.
[26] Bennett, O and Shalchi, A, 'Economic crime in the UK: A multi-billion pound problem' (CBP 9013 6 April 2022), strategic priorities.
[27] Criminal Finances Act 2017.
[28] Criminal Finances Act 2017 ch 1.
[29] Criminal Finances Act 2017 Part 3.
[30] MLR 2017 reg 24.
[31] Middleton, D, and Levi, M, 'Let sleeping lawyers lie: organized crime, lawyers and the regulation of legal services' (2015) 55(4) Brit J Criminol 647, 649.

4.3 The Regulated Sector and the Legal Profession

First, as mentioned briefly in Chapter 2, whether or not solicitors should fall within the regulated sector at all has been and remains controversial. Fundamentally, Gallant argues that the independence of legal counsel is eroded as a consequence of obligations under the AML strategy, which generates a conflict with the administration of justice.[32] Certainly, there are important questions about the morality and ethics of engaging solicitors within a regime which may conflict with long-standing professional duties of confidentiality and legal professional privilege which underpin a client's relationship with his or her legal adviser,[33] with Helgesson and Moerth identifying a cultural conflict between the role of lawyers and their obligation to report transactions and clients under the AML regime.[34] More practically, concerns extend to the practical burden of the obligations imposed upon professionals within the regulated sector which could become "*unsustainable*" and present a "*minefield of dangers and obligations*."[35] On top of this, Osborne raises concerns about FATF's lack of understanding of the significant legal differences between the role of the lawyer in civil versus common law jurisdictions, in particular in relation to trust structures[36] - particularly problematic in the context of policy-making in the sphere of beneficial ownership transparency, given the onerous and highly technical obligations imposed upon front-line actors.

Challenges on behalf of the legal profession to the validity of the AML regime and burdens imposed by it notwithstanding, solicitors do now play a key role within the UK AML Framework and it is widely accepted that *"[i]ndependent legal professionals are key actors in the business and financial world, facilitating vital transactions that underpin the UK economy. As such, they have a significant role to play in ensuring that their services are not used to further a criminal purpose*."[37] Despite practical concerns about the burden the regime imposes, Schneider acknowledges that lawyers are indeed well-placed to aid with the

[32] M. Michelle Gallant, 'Uncertainties collide; lawyers and money laundering, terrorist finance legislation' (2009) 16(3) JFC 210; see also Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216.

[33] Stephen Schneider, 'Testing the limits of solicitor-client privilege: Lawyers, money laundering, and suspicious transaction reporting' (2006) 9(1) JMLC 27; Duncan Osborne, 'The Financial Action Task Force and the Legal Profession' (2014) 59 NYL Sch L Rev 421; Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17; Silcock, K, Banks, F, Plumridge, S and Haskins, N, 'AML – legal, ethical and practical issues' (2006) 27(1) Comp Law 23.

[34] Karin Svedberg Helgesson, & Ulrika Moerth, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.

[35] Silcock, K, Banks, F, Plumridge, S and Haskins, N, 'AML – legal, ethical and practical issues' (2006) 27(1) Comp Law 23.

[36] Osborne, DE, 'The Financial Action Task Force and the Legal Profession' (2014) 59 NYL Sch L Rev 421, 427.

[37] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2018), 12.

detection of money laundering and terrorist financing.[38] Because of their role in assisting clients to carry out business and financial transactions which may involve money laundering,[39] legal professionals are variously referred to, together with other professional advisers, such as accountants, auditors and tax advisers, using umbrella terms such as "professional enablers" – a term felt by some to be *"contentious and divisive"*[40] because of the implication of wilful or complicit behaviour. Other frequently-used terms include "gatekeepers;"[41] "intermediaries;" "professional facilitators;" and "designated non-financial businesses and professions"[42] thus designating professional advisers a role within the UK AML Framework, but not defining clearly what behaviours are encapsulated by the terminology. To try and delineate more clearly what behaviours may be captured by these labels, a deeper understanding of how lawyers may be involved in money laundering transactions is set out below.

4.4 Lawyers as Enablers

The means by which crimes are facilitated by lawyers has been the subject of much research. Bell[43] has suggested their involvement can be innocent, where a solicitor is involved in a transaction by virtue of being a gatekeeper to the financial system – meaning that most launderers have to work through lawyers / other professionals to achieve their nefarious aims[44] - yet had no suspicion or knowledge or any wrongdoing. At the other extreme, lawyer involvement could be complicit, where a solicitor was involved knowingly in a money laundering activity. Relating this to beneficial ownership transparency, this would mean that solicitors may be involved in a money laundering transaction either innocently, such as by setting up a corporate structure with no awareness of any wrongdoing,[45] or complicit, such as by structuring a transaction knowing it would be used to hide criminal proceeds. The challenge here is that the underlying crime is specific to a particular

---

[38] Stephen Schneider, 'Testing the limits of solicitor-client privilege: Lawyers, money laundering, and suspicious transaction reporting' (2006) 9(1) JMLC 27.

[39] Goredema, C, 'Not above the law? The role of lawyers in combating money laundering and illicit asset flows' (The Global Initiative Against Transnational Organized Crime, Geneva, Switzerland October 2018) < Not above the law? The role of lawyers in combating money laundering and illicit asset flows. | Global Initiative> accessed 28 October 2023.

[40] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) ch 8.

[41] "Arguably a much more neutral term" according to Michael Levi in Michael Levi, 'Lawyers as money laundering enablers? An evolving and contentious relationship' (2022) 23(2) GC 126, 127.

[42] Using the language of the FATF Recommendations from FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023.

[43] Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17.

[44] Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17.

[45] Though it could be argued that they might have known had they asked the right questions.

transaction or client but the means and methods of "facilitation" are not - "*the proceeds of crime cannot be effectively laundered without them*,"[46] but the work solicitors do for legitimate clients undertaking legitimate activities does not differ from work carried out for criminal clients with criminal intent.

The role of professional enablers has increasingly become the focus of serious organised crime and anti-corruption literature, which seeks to target those intermediaries essential to the laundering process as a means of reducing crime and corruption in addition to those committing the predicate offences.[47] It is often the special and confidential relationship of lawyers with their clients identified at section 2.4.1 above which gives rise to suspicion about the role lawyers play in criminal transactions. For example, the suspicion that solicitors hold information essential to anti-corruption activities that cannot be accessed because solicitor / client relationships are shrouded in professional secrecy are particularly evident at present in relation to literature dealing with corruption and kleptocracy.[48] This suspicion has been given additional fuel by the Panama Papers and the Paradise Papers investigations noted in Chapter 2 above which uncovered transactions enabled by professional advisers which were hidden from view.[49] FATF itself identifies the presence of specialist and professional intermediaries as a common where schemes of beneficial ownership are established.[50]

Benson's empirical research into the role of legal professionals in the facilitation of money laundering addresses directly the "official narrative" which entrenches the perception that money laundering is enabled by lawyers and other professionals. She prefers a more complex and nuanced depiction of legal professionals' involvement in money laundering and terrorist financing, ranging from innocent involvement to complicit, passing through stages of

---

[46] Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17, 19.

[47] See, for example, Heathershaw, J, Cooley, A, Mayne, T, Michel, C, Prelec, T, Sharman, J and Soares de Oiveira, R, 'The UK's kleptocracy problem: How servicing post-Soviet elites weakens the rule of law' (Chatham House, London December 2021) and Taylor, H and Beizsley, D, 'A Privileged Profession? How the UK's Legal Sector Escapes Effective Supervision for Money Laundering' (Spotlight on Corruption and Global Integrity, Washington, DC, USA) < Privileged_Profession.Full_.pdf (spotlightcorruption.org)> accessed 28 October 2023.

[48] Heathershaw, J, Cooley, A, Mayne, T, Michel, C, Prelec, T, Sharman, J and Soares de Oiveira, R, 'The UK's kleptocracy problem: How servicing post-Soviet elites weakens the rule of law' (Chatham House, London December 2021) and Taylor, H and Beizsley, D, 'A Privileged Profession? How the UK's Legal Sector Escapes Effective Supervision for Money Laundering' (Spotlight on Corruption and Global Integrity, Washington, DC, USA) < Privileged_Profession.Full_.pdf (spotlightcorruption.org)> accessed 28 October 2023.

[49] See the Panama Papers special investigation in The Guardian at Harding, L, 'Mossak Fonseca: inside the firm that helps the super-rich hide their money' (Panama Papers: a special investigation, The Guardian, 28 April 2016) <https://www.theguardian.com/news/series/panama-papers> accessed 25 June 2023 and the Paradise Papers special investigation in The Guardian at: Hopkins, N, 'Why we are shining a light on the world of tax havens again' (Paradise Papers: Tax havens, The Guardian, 5 November 2017). <https://www.theguardian.com/news/series/paradise-papers> accessed 25 June 2023.

[50] Financial Action Task Force and Egmont Group, 'Concealment of Beneficial Ownership' (FATF, Paris, France July 2018), 6.

unwitting, wilful blindness and being corrupted on the way[51] closer to FATF's earlier assessment.[52] Spotlight on Corruption's A Privileged Profession[53] sets out numerous ways in which the legal profession is vulnerable to involvement in money laundering relating to corruption and adds for calls for stricter regulation, stronger enforcement, and a tightening of controls over the legal profession as a solution. While such focus encourages a doubling down on the activities of professional facilitators including solicitors in the money laundering process, the narrative tends more towards deliberate complicity, or at least carelessness, than innocent involvement and suggests that solicitors hold and have access to knowledge which they could, and should, use to combat corruption. Benson's analysis of 20 cases of solicitors convicted of money laundering in the UK finds that "*in a majority of* cases *there was no deliberate decision to offend, and no intent or active involvement*" by the legal professional, rather, offences "*resulted from errors of judgement or decisions made in relation to certain transactions* …".[54] In particular, she disputes that there is such a things as a typical professional enabler, arguing that the reality is much more complex, with individual actors being motivated by a variety of factors and being influenced by their individual contexts and circumstances,[55] and that it is "*unhelpful*" to ignore such differences when conducting analysis and developing policy[56] as this masks the underlying complexity of the situations legal professionals face and the decisions they take in the context of a client relationship or transaction.

In terms of policy, Middleton and Levi advocate "*a deterrence / disruption / incapacitation approach*"[57] to prevent lawyers acting as professional facilitators in relation to organised crime which would harness regulatory action in addition to criminal justice.[58] Regulatory action may be particularly useful where the powers of law enforcement action are lacking. As far back as 2003, Bell argued that, in addition to weak legislation (pre-PoCA 2002) law

[51] Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020), 99.
[52] FATF, 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals' (FATF / OECD, Paris, France June 2013), 5.
[53] Taylor, H and Beizsley, D, 'A Privileged Profession? How the UK's Legal Sector Escapes Effective Supervision for Money Laundering' (Spotlight on Corruption and Global Integrity, Washington, DC, USA) <Privileged_Profession.Full_.pdf (spotlightcorruption.org)> accessed 28 October 2023.
[54] Benson, K, 'The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response' (DPhil Thesis, University of Manchester 2016), 169.
[55] Benson, K, 'The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response' (DPhil Thesis, University of Manchester 2016), 70.
[56] Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020), 6.
[57] Middleton, D, and Levi, M, 'Let sleeping lawyers lie: organized crime, lawyers and the regulation of legal services' (2015) 55(4) Brit J Criminol 647.
[58] Middleton, D, and Levi, M, 'Let sleeping lawyers lie: organized crime, lawyers and the regulation of legal services' (2015) 55(4) Brit J Criminol 647, 654 – 655.

enforcement was under-resourced.[59] While he predicted that this was changing and would increase the likelihood of uncovering laundering among solicitors, pointing to a number of bodies then newly in place to enhance the law enforcement response to laundering,[60] Benson's research many years later refers to a lack of expertise within law enforcement with respect to the investigation of professional facilitators – and even money laundering itself[61] - and Middleton & Levi doubt that law enforcement will ever "*have sufficient resource to investigate and prosecute more than a tiny proportion of serious fraud and money laundering.*"[62]

There is evident complexity in the role solicitors may play in facilitating financial crime and enabling money laundering. It remains a challenge to find proportionate and effective strategies which respond to such complexity, not overburdening the regulated sector, their businesses and, in the case of solicitors, undermining the principles of client confidentiality and client privilege. Any calls for enhanced standards, increased burdens and tighter regulation should guard against creating an increasingly onerous environment for regulated parties without responding to complex operational realities. Some empirical research has already been undertaken into compliance by solicitors and others with their obligations under AML frameworks and is instructive in this regard as explored below. This study contributes further to this knowledge by focusing on beneficial ownership transparency and the most up to date UK AML Framework. The following section 4.5 explores existing empirical research in the field of AML compliance.

4.5 Empirical Research involving AML Compliance

Sarah Kebbell's 2017 research into compliance within the legal profession is based on interviews with compliance personnel and partners from Top 50 commercial UK-headquartered law firms.[63] Kebbell tells us that this is a section of the profession that is difficult to access and highlights its significance in terms of the value of deals transacted.[64] It

---

[59] Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17, 18.
[60] Bell refers to the three Money Laundering Investigation teams within the National Crime Squad, the Money Laundering Investigation Team within the Metropolitan Police Service, the focus within HM Revenue and Customs on embedding money laundering into investigations; and the Joint Money Laundering Investigation Team within the National Crime Squad and Customs in Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17, 18.
[61] Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020) ch 8.
[62] David Middleton, and Michael Levi, 'Let sleeping lawyers lie: organized crime, lawyers and the regulation of legal services' (2015) 55(4) Brit J Criminol 647, 649.
[63] Sarah Kebbell, '"Everybody's Looking at Nothing" - the legal profession and the disproportionate burden of the Proceeds of Crime Act 2002' (2017) 10 Crim LR 741
[64] See Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) s 8, referring to deals of £1,023 billion in the first half of 2017 alone.

is also a section of the profession likely to benefit from sophisticated compliance teams and above-average resources to devote to AML compliance.[65] While her research pre-dates the MLR 2017, she finds that the burden of compliance with AML obligations is disproportionate with respect to the legal profession compared to others within the regulated sector. In particular, her findings highlight concerns over "*real*" versus "*technical*" breaches[66] undermining the effectiveness of the AML regime and identify the wide net of "all crimes" reporting as the root of the problem. As noted in Chapter 2, money laundering does not distinguish between serious and less serious crimes or technical breaches of the law. Consequently, solicitors may not divert their potentially limited resource to the more serious offences. Risk assessments do not help in this regard: greater risk of money laundering does not attach to more serious crime only on a technical analysis of the law, and solicitors are well-placed to identify technical breaches because of the nature of their transactional work for clients.[67] The SRA's risk assessment explains that, in order to comply with the risk-based approach underpinning the UK AML Framework, firm resources should be targeted "*to areas or products that are most likely to be used to launder money*"[68] – but this is something of a practical challenge when the PoCA 2002 offences attach to all underlying crimes. For example, policies equating money laundering with corruption and defining corruption as synonymous with serious organised crime do not technically alter the attention which must be allocated to this type of crime by the legal profession in order to meet their day-to-day obligations.

Applying these findings to obligations under the UK AML Framework relating to beneficial ownership, problems seem likely to be exacerbated. For example, Kebbell highlights an already heavy administrative burden on the legal profession, which will not be eased by increasing obligations and expectations. She also identifies an interesting sector-specific challenge borne out of the in-depth knowledge solicitors gain when conducting transactions for clients. This special knowledge of transactions suggests solicitors may have access to inside information about clients and their operations which proponents of transparency are likely to find appealing and may perhaps use to justify solicitors' role in working towards beneficial ownership transparency.

---

[65] See Table 1 at section 6.2.6.1 for more details of the breakdown of solicitors' firms in the UK.

[66] Also raised as a concern by Silcock, K, Banks, F, Plumridge, S and Haskins, N, 'AML – legal, ethical and practical issues' (2006) 27(1) Comp Law 23.

[67] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) s 8.1.

[68] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023.

Kebbell's research identifies beneficial ownership identification specifically as "*the most prominent AML compliance issue faced by participants*."[69] Time and money dedicated to uncovering beneficial ownership were identified as key concerns by participants[70] in addition to practical difficulties of uncovering beneficial ownership where clients were based in jurisdictions with weaker beneficial ownership transparency requirements or which involved complex trust or private equity structures.[71] Kebbell's research also revealed some scepticism among participants about the usefulness of beneficial ownership provisions: participants suggested that criteria based on control were more important than those based on share ownership, that beneficial ownership could change frequently, and furthermore that a criminal could simply make a false declaration of ownership for the UK PSC Register to circumvent disclosure requirements.[72] Of course, some of these concerns are in the process of being addressed by the Economic Crime (Transparency and Enforcement) Act 2022 and the Economic Crime and Corporate Transparency Bill discussed in Chapters 2 and 3 above. In contrast to Kebbell's work, this research explores this area further among a wider group of participants working with a variety of firms regulated by the SRA and in respect of the latest UK AML Framework, now including the MLR 2017.

A separate empirical study explored how Swedish lawyers from large and medium-sized firms perceived and handled their compliance obligations under the Swedish AML regime.[73] That research suggests that lawyers in Sweden accept their role within the AML framework but simply comply with obligations rather than work actively towards a reduction of money laundering.[74] Their research also highlights the conflicting priorities facing lawyers as members of the private sector[75] as already discussed in relation to the exercise of risk-based decision-making at Chapter 2. The research also identified a sense from participants from larger firms that the types of clients dealt with by those firms were "*quite safe*" and that smaller firms were more likely to be targeted by money launderers because of their lower

[69] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) s 5.2.1.
[70] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) s 8.2.2.
[71] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) s 5.2.1.
[72] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) ss 5.2.2 and 5.2.3.
[73] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.
[74] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 229 and see also Abdullahi Usman Bello, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).
[75] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 230.

compliance standards.[76] The research findings, although not focused on the identification of beneficial ownership, are significant in the context of the contribution this research makes, as they suggest it is necessary to focus on specific factors: "*paying more attention to the everyday experience of front-line workers when devising regulatory tools may be a way to promote engagement in "true" crime prevention*"[77] rather than being just "*compliant enough in order to avoid punishment and sanctions*."[78] This is particularly important for lawyers, as the role they play within the AML regime is more complex than that of others within the regulated sector such as banks[79] and risk was consequently often assessed based on experience and gut feeling.[80] This distinguishes lawyers from banks, where red flags might be raised by an automated system identifying a pattern of unusual transactions, for example. With particular relevance to beneficial ownership as the focus of this research, participants of Hegelsson and Moerth's study observed that complexity of transaction structure in and of itself did not give rise to suspicion about a transaction, whereas unnecessary complexity would raise questions.[81] Whether or not suspicion were present would require the expertise of the lawyer to determine, and this finding is consistent with Kebbell's account of the specialist transactional knowledge and client understanding possessed by solicitors which feeds into the risk-based decision-making process.

Helgesson & Moerth's other research into the actions of lawyers concerning firms in the UK and in Sweden found that UK lawyers sought rather to manage risk actively according to their own and their clients' risk appetites, with a focus on business priorities rather than active crime prevention.[82] Fundamentally, lawyers in both jurisdictions developed their AML decision-making strategies based on a combination of "*reluctance and resistance towards breaking with the professional norm of client confidentiality, on the one hand, and the*

[76] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 241.
[77] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 227.
[78] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 245.
[79] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 229.
[80] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 239.
[81] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227, 242.
[82] Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216.

ambition of business actors to comply with the demands of the state in order to avoid sanctions, on the other."[83]

All of Kebbell and Helgesson & Moerth's studies focused on larger firms likely to have sophisticated compliance arrangements, the UK / Sweden study explaining that such firms would be most likely to be engaged in AML compliance efforts,[84] a trait avoided in this research by seeking out a range of firms undertaking a wide variety of client work, and including smaller in addition to larger firms, though all facing equivalent compliance obligations.

The ideas about being just compliant enough and protecting the self identified by Helgesson and Moerth align with Bello's 2016 empirical study into regulatory compliance outside of the legal profession. He finds that MLROs[85] within banks responded to unfair pressure from regulators by complying with AML regulations in a self-protecting manner. This involved doing just enough[86] to discharge their obligations rather than acting with the aim of preventing money laundering itself. It also involved simply communicating rather than co-operating meaningfully with the MLRO's internal organisation. His research found that unfair pressure on compliance officers could come from different sources: regulatory; and organisational. From the regulatory perspective, Bello identified naïve regulation, defective regulations, shifting regulatory expectations and reputational damage from regulatory sanctions as unfair. From the organisational perspective, unfair pressure could take the form of under-resourcing of the compliance function or managerial management. In each case, the unfair pressure undermined overarching regulatory objectives.[87]

The recent Global Shell Games investigates more closely compliance within the regulated sector in relation to the incorporation of shell companies, which may be instrumental in disguising illicit funds and obscuring beneficial ownership of companies and other legal arrangements, uncovering variable compliance standards across the globe with AML obligations in relation to customer onboarding.[88] Although the Global Shell Games does not

[83] Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216, 1228.
[84] Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216, 1219.
[85] Abdullahi Usman Bello, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).
[86] See also Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227 and Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.
[87] Abdullahi Usman Bello, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).
[88] Michael G Findley, Daniel L Nielsen, JC Sharman, *Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism* (Cambridge Studies in International Relations 128, Cambridge University Press 2014).

reveal internal processes or practices relating to decision-making, it does highlight compliance concerns and add weight to the argument that compliance could make a difference to outcome. This reinforces the need for detailed understanding of actions on the ground to inform policy-making.

Focusing on solicitors and their experiences and actions, this research seeks to provide an insight into issues and challenges faced by solicitor decision-makers on the ground in connection with their obligations relating to beneficial ownership under the UK AML Framework. In similar vein, Zavoli and King[89] conducted recent empirical research into the compliance by estate agents with their obligations under the MLR 2017 from the perspective of those working on the front line, finding significant difficulties in the practical implementation of the AML regime which, they suggest, are often overlooked by policymakers.[90] These difficulties include lacking skills and expertise necessary to carry out essential functions under the MLR 2017 such as identify a fake passport,[91] or a PEP,[92] or conduct an investigation into a client's source of funds.[93] In terms of identifying suspicions, participants had varying methods for doing this and differing levels of expertise informing their decision-making, and, where a SAR was made, difficulty filling in the necessary form, which has been designed with the banking sector in mind.[94] Participants also described a one-way street of information, with no feedback being returned by the NCA on their SARs,[95] part of a wider concern about being unsupported and lacking adequate guidance,[96] which may also fuel a lack of engagement on behalf of estate agents with the purpose of the regime as a whole.

4.6 Conclusion

UK policy with respect to AML, anti-corruption and financial crime in recent years has focused attention increasingly on beneficial ownership transparency and on the role of lawyers and other professionals as enablers. In addition to this, there is a growing tendency within anti-corruption research to focus on the role professional enablers play in facilitating financial crime, and this focus seems to suggest complicit enabling or enabling by lack of

[89] Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.
[90] ibid 745.
[91] ibid 752.
[92] ibid 754.
[93] ibid 759.
[94] ibid 759-760.
[95] ibid 761.
[96] ibid 766 – 767.

care.[97] However, research conducted by Benson and others shows the picture to be much less straightforward: while solicitors may be involved in money laundering transactions as professional facilitators, this takes place in myriad ways and may be complicit or unwitting or something in between.

Furthermore, while there are well-documented doubts about the effectiveness of the UK AML Framework as a whole and the role of legal professionals within it, there are fewer voices asking questions directed at the ability of solicitors to comply with their obligations under the current UK AML Framework and, in particular, their obligations in connection with beneficial ownership identification specifically. Existing research into compliance with AML obligations, whether by solicitors or others, highlights several barriers facing the regulated sector and provides a valuable source of detail to be taken into account when determining policy which relies heavily on practical actions of front-line actors. The time and cost burden are amongst the practical barriers facing firms, but they also face complex pressures arising out of the very wide all crimes basis of the regime in addition to the special knowledge they have of their clients and transactions. In the case of unfair pressure, there is a tendency among bank compliance officers towards self-protection rather than a more meaningful effort to combat money laundering, and also some evidence that legal professionals and others do just enough to remain compliant. Significant practical difficulties facing estate agents colour their relationship with the AML regime as a whole and they tend towards self-protection rather than meaningful compliance, too. For these reasons, there is a need for the response to calls for better enforcement and regulation to be answered by an informed understanding of the issues and challenges of those within the regulated sector when complying with their obligations.

Finally, with evidence showing that enabling solicitors may be often be unwitting / not complicit in money laundering, the guidance, training and support available to solicitors is worthy of scrutiny and investigation. For that reason, the following Chapter 5 examines the role of the solicitors' regulators within the UK AML Framework and the part it plays in this regard in addition to its enforcement role.

[97] Heathershaw, J, Cooley, A, Mayne, T, Michel, C, Prelec, T, Sharman, J and Soares de Oiveira, R, 'The UK's kleptocracy problem: How servicing post-Soviet elites weakens the rule of law' (Chatham House, London December 2021), 35 even suggests "a sense of impunity" amongst the regulated sector.

Chapter 5: Training and Regulation

5.1 Introduction

The significance of the role of the regulator has become apparent in the previous chapters. Chapter 2 identified that regulatory guidance can assist regulated parties in the absence of legislative certainty as they exercise discretion to implement the regulatory risk-based approach underpinning the UK AML Framework. Chapter 3 examined beneficial ownership structures based on complex definitions, and regulatory support may be needed to interpret, understand and meet related regulatory obligations. Chapter 4 suggests that regulation is a key tool in upholding and enforcing the UK AML Framework. With this in mind, this chapter explores details of how solicitors are regulated and the knowledge they gain and support they have access to as members of the legal profession. It does this by first considering the regulatory structure, including AML responsibilities, resources and regulatory reform proposals. The next section examines the training and education available to solicitors who will be engaged in AML activities. The chapter moves on to look at the statutory guidance supporting the UK AML Framework within the legal profession. In addition to re-iterating well-known concerns about the AML regulatory structure in relation to DNFBPs, this chapter identifies weaknesses in the exposure of solicitors to beneficial ownership and related knowledge as part of their training, alongside lengthy, complex, frequently-changing and indefinitive LSAG Guidance. The chapter concludes by suggesting more needs to be understood about how the regulatory function and relationship operate from the perspective of solicitors as regulated parties in order to gain an insight into some of the practical issues and challenges they face when complying with obligations with respect to beneficial ownership under the UK AML Framework.

5.2 The Regulatory Structure and Solicitors

5.2.1 Relationship between the Law Society and the SRA

In accordance with the Legal Services Act 2007, solicitors are regulated by two approved regulators: the Law Society, which exercises the “representative functions” relating to the representation of the interests of solicitors; and the Solicitors Regulation Authority (SRA), which exercises the “regulatory functions” in relation to solicitors[1] overseen by the Legal Services Board.[2]

[1] Legal Services Act 2007 s 27.

[2] Legal Services Act 2007 part 2.

As the approved regulator responsible for regulatory rather than representative functions, the SRA issues the Code of Conduct for Solicitors, RELs and RFLs[3] and the Code of Conduct for Firms,[4]each underpinned by the SRA Principles, which "*comprise the fundamental tenets of ethical behaviour that we expect all those that we regulate to uphold.*"[5] The SRA's Enforcement Strategy underpins the Codes and Principles.[6]

The provision of the Code of Conduct for Solicitors requiring AML compliance stipulates simply that solicitors must "*keep up to date with and follow the law and regulation governing the way you work.*"[7] An equivalent provision is found under the Code of Conduct for Firms.[8] There are broader provisions regarding accountability and cooperation with the SRA and others in respect of regulatory matters.[9]

5.2.2 Regulatory Support Materials

As AML supervisor, the SRA states simply that it is "*responsible for the supervision of authorised firms and their anti-money laundering (AML) compliance*,"[10] going on to note that it "*owe[s] a duty to society at large, and to protect the integrity of the legal sector through tackling intentional and inadvertent enablers of money laundering.*"[11] It does this in several ways.

---

[3] Solicitors Regulation Authority *The Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 18 January 2023.

[4] Solicitors Regulation Authority *The Code of Conduct for Firms* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/> accessed 18 January 2023.

[5] See Solicitors Regulation Authority *SRA Principles* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/principles/> accessed 18 January 2023, Introduction.

[6] Available Solicitors Regulation Authority *Enforcement Strategy* < at https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/> accessed 18 January 2023.

[7] Solicitors Regulation Authority *The Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 18 January 2023 para 7.1.

[8] Solicitors Regulation Authority *The Code of Conduct for Firms* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/> accessed 18 January 2023, para 3.1.

[9] Solicitors Regulation Authority *The Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 18 January 2023 para 7 and Solicitors Regulation Authority *The Code of Conduct for Firms* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/> accessed 18 January 2023 para 3.

[10] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023.

[11] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023. It is interesting to note that the SRA now also use the term "enable". In the 2018 risk assessment, the SRA stated rather that it "must work to identify those who would willingly help money launderers, and inform and educate those who might be unwittingly used by criminals."

First, in accordance with Regulation 17 MLR 2017, the SRA issues a sectoral risk assessment (Sectoral Risk Assessment) designed to highlight risks to solicitors and be used by firms when formulating their own risk assessments.[12] The Sectoral Risk Assessment indicates that firms should "*target their resources to the areas or products that are most likely to be used to launder money*".[13] As noted in Chapter 4, this is somewhat unhelpful in the light of the all crimes nature of the PoCA 2002 offences. In similar vein, the Sectoral Risk Assessment confirms that the SRA will target their resources towards firms most likely to be used to launder money. It is not precisely clear how this is assessed, though the Sectoral Risk Assessment does refer to risks within the sector identified by the NRA 2020 in the areas of conveyancing, trust and company services and client accounts and also in connection with weak compliance or a lack of understanding of risk.[14]

In addition, the SRA provides a series of AML resources, which it organises as warnings, guidance and case studies.[15] These cover a range of topics, such as broad guidance on the MLR 2017 and more specific guides tailored to specific areas of work.[16] It also provides a Professional Ethics helpline for solicitors. In its capacity as AML Supervisor under the MLR 2017,[17] the SRA also publishes the LSAG Guidance via its website. In addition, the SRA conducts firm visits to monitor compliance, issues warning notices, which are designed to highlight obligations the SRA fears are not being complied with sufficiently, and may pursue disciplinary action in respect of firms or solicitors not fulfilling their obligations in line with its regulatory powers discussed further below.[18]

The Law Society also plays a role, as solicitors' representative, for supporting solicitors, and in this capacity produces materials to support solicitors with their obligations under the UK AML Framework. For example, the Law Society hosts an annual risk and compliance conference to aid compliance within law firms, provides online AML courses covering a

---

[12] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023.

[13] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023.

[14] Solicitors Regulation Authority 'Sectoral Risk Assessment – Anti-money laundering and terrorist financing' (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023.

[15] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/guidance/topic/money-laundering/> accessed 19 January 2023.

[16] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/> accessed 19 January 2023.

[17] The Law Society is listed as one of the 22 professional body supervisors at MLR 2017 sch 1, one of nine supervisors of the legal profession.

[18] See Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/money-laundering/how-we-regulate/> accessed 19 January 2023.

range of activities, issues guides, practice notes and a newsletter, and hosts an AML helpline to advise solicitors with a range of regulatory issues, including understanding the LSAG Guidance.[19] The Law Society also publishes an Anti-Money Laundering Toolkit.[20]

5.2.3 OPBAS and Regulatory Reform

The Office for Professional Body AML Supervision (OPBAS) is an umbrella supervisor of professional body supervisors, including the SRA and supervisors within the accounting and legal sectors. Established in 2018,[21] one of the aims of the new OPBAS was to create a more consistently effective supervisory regime to respond to a weakness identified in the National Risk Assessment of 2015[22] as a result of the existence of 22 separate professional body supervisors,[23] one of which is the SRA. As such, OPBAS does not have direct relationship with solicitors but does monitor the operation of the SRA in respect of its AML activities.

Despite the short existence of OPBAS as supervisor of supervisors, concerns about supervisory effectiveness have continued and HM Treasury is currently consulting on reform measures which could include enhancing the powers of OPBAS, consolidating professional body supervisors (for law, this would mean a single supervisor in each jurisdiction), a single professional body supervisor, or a single UK AML supervisor.[24] The overarching aims of the proposed reforms are to increase effectiveness of supervision and improve co-ordination of systems whilst choosing a practically feasible model.[25] It remains to be seen which model will be chosen and what effect this might have. For now, the SRA remains both an approved regulator for the purposes of the Legal Services Act 2007 and also the solicitors' sectoral supervisor for the purposes of AML.

---

[19] See resources available at The Law Society <https://www.lawsociety.org.uk/topics/anti-money-laundering/> accessed 19 January 2023.

[20] Alison Matthews *Anti-Money Laundering Toolkit*, (3rd edn The Law Society, London 2021).

[21] The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 SI 2017/1301 reg 1.

[22] HM Treasury and Home Office UK, *National risk assessment of money laundering and terrorist financing* (October 2015), 5.

[23] HM Treasury, 'Explanatory Memorandum to The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017' (2017). The 22 professional body supervisors are listed in listed in MLR 2017 sch 1.

[24] HM Treasury, 'Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime Consultation' (June 2023) < AML_Reform_Consultation_Document_-_FINAL.pdf (publishing.service.gov.uk)> accessed 29 October 2023.

[25] HM Treasury, 'Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime Consultation' (June 2023) < AML_Reform_Consultation_Document_-_FINAL.pdf (publishing.service.gov.uk)> accessed 29 October 2023, 18.

5.2.4 The SRA and AML Enforcement

In terms of regulatory sanctions, the SRA has powers to issue a rebuke or impose conditions on an individual solicitor or firm, or to impose a financial penalty on an individual solicitor or firm. The SRA may also refer particular matters to the Solicitors Disciplinary Tribunal to pursue financial penalties in excess of £25,000,[26] to suspend a solicitor from practice, to suspend or revoke a firm's authorisation, or to strike a solicitor off the roll.[27] This means that the maximum penalty which may be imposed upon an individual solicitor or traditional firm by the SRA in connection with a regulatory breach, including for failures in relation to AML compliance, is currently £25,000.[28] A fine of £20,000 was levied by the SRA recently against a small firm for AML breaches[29] and a much larger fine of £232,500 was imposed upon Mischon De Reya LLP in 2022[30] – permitted as an Alternative Business Structure under the Legal Services Act 2007. The £25,000 upper fining limit for some has been seen by some as an anomaly in the AML system relating to solicitors – OPBAS questions whether this meets the requirement to apply enforcement action in a fair and consistent manner[31] - and frustrates those calling for more stringent penalties to be applied to the legal sector.[32] The government is currently working to remove this maximum financial penalty in respect of firms and individual solicitors where a disciplinary matter relates to economic crime, which will include, amongst several other options, contraventions of the MLR 2017,[33] SAMLA 2018,[34] and offences under the PoCA 2002.[35] The new powers are currently being debated as part of the Economic Crime and Corporate Transparency Bill, and will allow an unlimited fine to be levied upon solicitors and traditional law firms.[36] The reasons behind this change are cited as the role of solicitors and the legal regulator in upholding the sanctions regime in

[26] Until July 2022 this limit had been set at £2,000.
[27] See Solicitors Regulation Authority *Enforcement Strategy* < at https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/> accessed 18 January 2023.
[28] Solicitors Act 1974 s 44D(2)(b).
[29] The Law Society, 'SRA fines small firms £20,000 for AML breaches' (The Law Society, 19 January 2023) <SRA fines small firm £20,000 for AML breaches | The Law Society> accessed 3 May 2023.
[30] Solicitors Regulation Authority <https://www.sra.org.uk/consumers/solicitor-check/624547/> accessed 18 July 2023.
[31] See OPBAS letter regarding its views on the SRA Consultation on Financial Penalties (March 2022) <https://www.fca.org.uk/publication/opbas/response-sra-consultation.pdf> accessed 18 July 2023.
[32] Taylor, H and Beizsley, D, 'A Privileged Profession? How the UK's Legal Sector Escapes Effective Supervision for Money Laundering' (Spotlight on Corruption and Global Integrity, Washington, DC, USA) < Privileged_Profession.Full_.pdf (spotlightcorruption.org)> accessed 28 October 2023.
[33] Economic Crime and Corporate Transparency HC Bill (2022-23) [56] sch 9 para 19.
[34] Economic Crime and Corporate Transparency HC Bill (2022-23) [56] sch 9 para 20.
[35] Economic Crime and Corporate Transparency HC Bill (2022-23) [56] sch 9 para 12.
[36] For an analysis of the likely implementation by the SRA, see Julie Norris, 'Unlimited SRA fines on the horizon' (Kingsley Napley, Law Society Gazette 9 December 2022) <https://www.kingsleynapley.co.uk/insights/blogs/regulatory-blog/unlimited-sra-nes-on-the-horizon> accessed 18 January 2023.

relation to Ukraine and also the assessment of the legal services sector as high risk of abuse for money laundering purposes and for fraud and breaches of sanctions legislation.[37] The intention is to "*ensure that legal services regulators have the powers they need to tackle economic crime*."[38]

However, despite the focus on AML enforcement and penalties, the role of the SRA involves much more than enforcement. The next two sections, much less scrutinised in connection with the UK AML Framework, address: (a) training and education; and (b) the LSAG Guidance respectively. These areas help to understand, first, the legal and practical knowledge relevant to beneficial ownership and the UK AML Framework that solicitors are exposed to as a consequence of their AML training and education; and second, the scope of the support they may receive once practising in respect of complying with their AML obligations.

5.3 Education and Training

5.3.1 The Statement of Solicitor Competence

As the solicitors' regulator, the SRA is responsible for the education and training of solicitors and upholding the standards of the profession by ensuring solicitors' "*continuing competence*." In each case, the SRA sets forth the knowledge and skills needed to practise effectively, based on the SRA's Statement of Solicitor Competence.[39]

The Statement of Solicitor Competence sets standards in relation to:

(a) ethics, professionalism and judgment;

(b) technical legal practice;

(c) working with other people; and

(d) managing themselves and their own work.[40]

---

[37] Economic Crime and Corporate Transparency Bill Factsheet (Serious Fraud Office and Ministry of Justice Policy Paper, 8 November 2022) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-the-removal-of-the-statutory-cap-on-financial-penalties-for-the-law-society-as-delegated-to-the-solicitors-regulation-authority> accessed 18 January 2023.
[38] Economic Crime and Corporate Transparency Bill Factsheet (Serious Fraud Office and Ministry of Justice Policy Paper, 8 November 2022) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-the-removal-of-the-statutory-cap-on-financial-penalties-for-the-law-society-as-delegated-to-the-solicitors-regulation-authority> accessed 18 January 2023.
[39] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/> accessed 19 January 23.
[40] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/> accessed 19 January 23.

By their nature, the standards are high-level statements, therefore do not refer specifically to any obligations in relation to money laundering, though the first standard, A1, does require solicitors to be able to "*[identify] the relevant SRA principles and rules of professional conduct and [follow] them.*"[41]

The Statement of Solicitor Competence is underpinned by a Threshold Standard - Level 3 is the standard which solicitors are expected to achieve upon qualification and around which the basic competence of a solicitor is measured[42] - and a more detailed Statement of Legal Knowledge.[43] The Statement of Legal Knowledge provides a breakdown of the basic knowledge solicitors are required to possess upon qualification, and this is assessed in accordance with the new route to qualification described further below.

5.3.2 The Statement of Legal Knowledge

The Statement of Legal Knowledge captures matters relating to AML in two places. First, it falls under ethics and professional conduct, a pervasive theme, which requires solicitors to "*act honestly and with integrity and in accordance with the SRA Standards and Regulations*"[44] – bringing into play the ability to meet regulatory standards, including AML obligations. Relevant knowledge is also prescribed under the heading of The Legal System, requiring "*application of relevant core legal principles and rules appropriately and effectively*" in the area of Legal Services.[45]

Drilling down further within the Legal Services definition, the regulatory role of the SRA captures money laundering as an "overriding legal obligation," and solicitors are required to have a basic level of knowledge of:

- money laundering
- purpose and scope of anti-money laundering legislation including the international context;
- circumstances encountered in the course of practice where suspicion of money laundering should be reported in accordance with the legislation;

[41] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/> accessed 19 January 23 para A1(c).
[42] See Level 3 Threshold Standard at: Solicitors Regulation Authority <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification> accessed 23 January 2023.
[43] Solicitors Regulation Authority <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification> accessed 23 January 2023.
[44] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/statement-legal-knowledge/> accessed 19 January 2023.
[45] Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/statement-legal-knowledge/> accessed 19 January 2023.

- the appropriate person or body to whom suspicions should be reported, the appropriate time for such reports to be made and the appropriate procedure to be followed;
- direct involvement and non-direct involvement offences, and defences to those offences under Proceeds of Crime Act 2002;
- due diligence requirements. [46]

As seen from the list above, relevant knowledge is only lightly prescribed and focuses rather on understanding the AML regime as it applies to solicitors and the obligations to report and spot money laundering rather than the significant complexities involved in conducting CDD, spotting suspicious transactions or identifying beneficial ownership.

While not specific to AML, the other content relevant to beneficial ownership identification under the SRA's Statement of Legal Knowledge falls under the areas of: Business Law and Practice; and Trusts. Required Business Law and Practice knowledge involves understanding setting up companies and keeping the company registry (Companies House) up to date. Procedures and documentation relating to incorporation and filing and disclosure are stipulated, which would include matters such as updating the UK PSC Register. An understanding of business media is also expected – companies, LLPs and sole traderships and the persons involved in such arrangements - in addition to company finance,[47] to ensure that all solicitors have a foundational technical knowledge of these relevant areas of corporate law. With respect to Trusts, the Statement of Legal Knowledge, importantly and pertinently, requires an understanding of beneficial entitlement as a core principle of trusts law. However, the SQE 1 assessment specification discussed further in the next section specifically notes in relation to trusts that "*candidates will not be required to demonstrate knowledge relating to foreign assets, foreign law or foreign taxes.*"[48]

In summary, the Statement of Legal Knowledge with reference to particular practice areas involves high-level and straightforward principles and tasks rather than closely-prescribed

[46] SRA SQE 1 assessment specifications available at Solicitors Regulation Authority 'SQE 1 Assessment Specifications' <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-assessment-specification> accessed 19 January 2023 and Solicitors Regulation Authority 'SQE 2 Assessment Specifications' <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification> accessed 23 January 2023.

[47] SRA SQE 1 assessment specifications available at Solicitors Regulation Authority 'SQE 1 Assessment Specifications' <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-assessment-specification> accessed 19 January 2023 and Solicitors Regulation Authority 'SQE 2 Assessment Specifications' <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification> accessed 23 January 2023.

[48] Solicitors Regulation Authority 'Statement of Legal Knowledge' <SRA | Statement of legal knowledge | Solicitors Regulation Authority> accessed 13 July 2023.

and detailed content. Particular complexity, such as knowledge related to foreign assets, law or taxes, is specifically carved out. There is no requirement to understand the nuances of the UK PSC Register, a complex trust or corporate structure, or the functions and uses of nominee directors or shareholders or shell companies in order to meet the SRA's Statement of Legal Knowledge, which form the foundation of the Solicitors Qualifying Examination (SQE) detailed below.

5.3.3 The Solicitors Qualifying Examination

The SRA have recently overhauled legal sector training, moving away from the requirement for formal legal training to "*a single, rigorous assessment for all aspiring solicitors*," the SQE, made up of two legal knowledge assessments of 180 multiple choice question each (SQE 1) and three consecutive days involving 12 written assessments of practical skills (SQE 2).[49] The first round of assessments under the new route to qualification (SQE 1) took place in November 2021 and the second (SQE 2) was held in April 2022.[50] The new qualification regime currently sits alongside its predecessor, detailed below, which is currently being phased out.

Rather than impose rigid CPD requirement upon solicitors, since 2016, the SRA has required solicitors to make a Statement of Solicitor Competence each year. At the time of renewing a practising certificate, a solicitor must state that he or she has "*reflected on my practice and addressed any identified learning and development needs*."[51] The stance of the SRA in relation to ongoing competence accords with the outcomes-focused nature of the SRA Codes of Conduct mentioned above, which concentrates regulation on measuring ends rather than inspecting means.

These changes to training and continuous learning (CPD) requirements were prompted by the wide-ranging Legal Education and Training Review (LETR) initiated in 2011, which reported its findings in June 2013[52] prior to further consultations and discussions led by the SRA and subsequent development and roll-out phases. The new training regime has not been welcomed universally, with criticism of whether or not the new regime meets the recommendations set out in the LETR amidst suggestions that learning will be rather

[49] Solicitors Regulation Authority <The assessment day | SQE | Solicitors Regulation Authority (sra.org.uk)> accessed 18 July 2023.

[50] SQE 1 was passed by 53% of candidates with a pass mark of 57% and 58% respectively for the two SQE 1 papers or over across the full spectrum of questions. The pass rate for SQE 2 was 77%.

[51] Solicitors Regulation Authority <SRA | Renewing your practising certificate or registration yourself (2023/24) | Solicitors Regulation Authority> accessed 18 July 2023.

[52] See Legal Education and Training Review independent research team, 'Setting standards, The Future of Legal Services Education and Training Regulation in England and Wales' (Final Report, June 2013).

superficial or "*instrumental*" and detached from reality,[53] and it focuses perhaps too closely on "*transmission and temporary retention of information and not on the development of knowledge*."[54]

While assessment standards are prescribed by the SRA in line with the Statement of Legal Knowledge and the Level 3 Threshold Standard, no compulsory teaching at all is required by the SRA to undertake the SQE, and no quality assurance of courses is provided by the SRA, which instead publishes data about the performance of training providers to inform the choices of candidates about which course or provider they may wish to attend, with almost 100 training providers included on a list compiled by the SRA[55] providing a range of face to face and online study options to full time and part time students.[56]

A review of the 90 sample SQE 1 questions[57] provided by the SRA reveals that a single question is included about CDD and beneficial ownership, which requires the candidate to identify that a solicitor is under an obligation to identify and verify the identity of the company's shareholder because the shareholder owns more than 25% of the shares.[58] There is a single further question[59] regarding beneficial interests in a trust fund requiring a straightforward understanding of contingent and vested interests under a trust arrangement. There are no discernible AML elements in any of the SQE 2 sample questions.[60] As set out in Chapter 3 above, the concepts relating to beneficial ownership are much wider and more complex than this and may involve a series of further business media, trusts and arrangements. This is also evident in the law, which defines beneficial ownership as relating to share ownership (most easily and obviously identifiable) but also with reference to control, a much more elusive concept.

5.3.4 Qualifying Work Experience

If not by way of formal assessment, solicitors also have an opportunity for pre-qualification exposure to AML training and experience of beneficial ownership via their period of

---

[53] Morrison, D, 'The SQE and creativity: a race to the bottom?' (2018) 52(4) The Law Teacher 467.
[54] Chavkin, DF, 'Experience is the *only* teacher: bringing practice to the teaching of ethics' (The Ethics Project in Legal Education, Routledge, London 2010) p 52.
[55] See Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/sqe/training-provider-list/> accessed 18 January 2023.
[56] See, for example, The University of Law <https://solicitorquiz.law.ac.uk/results/36147533-4779-44ad-a5c1-12868ed92e78>accessed 18 January 2023.
[57] SQE 1 involves two-180-question multiple choice examinations.
[58] Question 32 of the SRA's SAE 1 sample questions, available at: Solicitors Regulation Authority <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-sample-questions/question32> accessed 23 January 2023.
[59] Solicitors Regulation Authority <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-sample-questions/question32> accessed 23 January 2023, Question 55.
[60] SQE 2 involves 12 written assessments of practical skills set across legal contexts.

Qualifying Work Experience (QWE) – the required period of legal practice prior to qualification.[61] QWE may provide some experience of the UK AML Framework, but this does not have to be the case: prospective solicitors are required to develop a minimum of two competencies only. Some prospective solicitors may undertake QWE as part of an apprenticeship, which provides on-the-job training, and there are a few other less popular routes to qualification, for example for qualified barristers or chartered legal executives,[62] who will also have some practical legal experience. The only stipulation for QWE is that the "*QWE must involve providing legal services*" as defined in the Legal Services Act 2007 but could include a legal placement, work in a law clinic, work within a voluntary organisation, work as a paralegal or a traditional training contract.[63] There is no stipulation that the QWE must be undertaken within the regulated sector, therefore it is possible for a solicitor to qualify without any practical exposure to AML training or any training in relation to beneficial ownership identification within the UK AML Framework.

5.3.5 The Previous Route to Qualification

Before the advent of the SQE, AML was captured as part of Professional Conduct and Regulation elements of the Legal Practice Course (LPC),[64] with specific requirements for students to:

> *"become familiar with the legislation, including the international context;"*[65]
> *and*
>
> *"be able to recognise circumstances encountered in the course of practice where suspicion of money laundering should be reported in accordance with the legislation,"*

with particular reference to will and administration of estates, taxation, business law and practice, property law and practice, and litigation.[66]

The topic of AML was also a required element of a core module on the Professional Skills Course for Trainee Solicitors (PSC), attached to a mandatory exam, which had to be passed

[61] Solicitors Regulation Authority <https://sqe.sra.org.uk/about-sqe/what-is-the-sqe/qualifying-work-experience> accessed 23 January 2023.
[62] See Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/admission/pathways-qualification/> accessed 23 January 2023 for possible options for qualification.
[63] See Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/> accessed 23 January 2023.
[64] This also captured financial services, the Code of Conduct and SRA Principles and was expected to take up at least 8% of notional learning hours on the LPC.
[65] As stipulated by Solicitors Regulation Authority 'Legal Practice Course Outcomes 2019' (August 2019) <https://www.sra.org.uk/globalassets/documents/students/lpc/lpc-outcomes-2019.pdf?version=4a5c48> accessed 19 January 2023.
[66] Solicitors Regulation Authority 'Legal Practice Course Outcomes 2019' (August 2019) <https://www.sra.org.uk/globalassets/documents/students/lpc/lpc-outcomes-2019.pdf?version=4a5c48> accessed 19 January 2023 p 8.

prior to qualification as a solicitor and was usually undertaken during a period of recognised training with a law firm (similar to QWE). The PSC Written Standards issued by the SRA require that:

> *"[t]rainees should be able to apply the rules of professional conduct in connection with financial dealings and in particular should understand what constitutes money laundering and the steps necessary to comply with any MLR."*[67]

Trainees following this route were also required to "*have an understanding of the implications of … any Money Laundering Regulations*"[68] which will be gained by undertaking the Financial and Business Skills compulsory core module of the PSC, requiring a minimum of 18 hours of face-to-face instruction assessed by a one-and-a-half-hour exam.[69]

Under the previous training regime, solicitors were examined by individual institutions (one of the reasons for moving to SQE assessment was to ensure a single centralised assessment for entry to the profession). It is therefore not possible to know how all students were exposed to and assessed to matters relating to beneficial ownership, but there would be no need to go beyond the basic requirements set out above and it is unlikely that there would be space in any course to cover the UK AML Framework or beneficial ownership identification on more than a superficial level.

In my personal experience at Northumbria University, the LPC would teach that beneficial ownership identification and verification would take place as part of required CDD under the MLR 2017, but would not delve into details about what that might entail in practice. The PSC would cover AML in greater detail, but the half day devoted to AML is tailored to understand sources of law and their application to solicitors rather than the potential detail and complexity of a beneficial ownership investigation required in practice. On balance, considering the previous and current training regimes for solicitors, the current regime seems to offer less opportunity for exposing prospective solicitors to the complexities involved in a beneficial ownership investigation.

5.3.6 Training and Education Weaknesses

The straightforward and superficial nature of the knowledge required by the Level 3 Threshold Standard and the Statement of Legal Knowledge is to be expected in such a

[67] PSC Written Standards, Element 5, available at Solicitors Regulation Authority <SRA | Professional skills course information | Solicitors Regulation Authority> accessed 18 January 2023.

[68] Solicitors Regulation Authority <SRA | Professional skills course information | Solicitors Regulation Authority> accessed 18 January 2023, Element 3.

[69] See SRA's Professional Skills Course information at Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/legal-practice-course-route/professional-skills-course/professional-skills-course-information-pack/> accessed 19 January 2023.

wide-ranging examination which covers such a broad range of topics, and it is difficult to see how more detailed knowledge could be tested in the type of MCQ exam promulgated by the SRA or incorporated into the SQE 2 assessments. However, this, combined with the fact it is not necessary for individuals to undertake any kind of corporate practice as part of their QWE suggests that exposure to complex beneficial ownership structures on a day-to-day basis will be limited for many solicitors, in particular those who work primarily in a non-corporate area such as conveyancing. While the functioning of the UK AML Framework with respect to beneficial ownership identification is reliant upon a deep and broad understanding of the concept of beneficial ownership, this knowledge is not required to qualify as a solicitor. The next section considers the guidance and support available to those qualified and practising as solicitors, who may, regardless of their route to qualification, be required to comply with obligations under the UK AML Framework.

5.4 Guidance and Support

The LSAG Guidance[70] is the principal source of support and information available to the whole legal sector in respect of AML obligations under the UK AML Framework. It applies to firms and solicitors who are regulated by the SRA, amongst others, and is a hefty document – currently standing at 217 pages long - first approved for use in 2018 and updated several times since, most significantly in connection with the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLR 2019)[71] which implemented MLD5 in the UK, becoming more and more extensive each time.[72]

The LSAG Guidance is significant for several reasons. First, following sectoral guidance provides a good defence to an AML offence: since its approval by HM Treasury, originally in March 2018, any court considering whether or not a person has committed an offence under the MLR 2017, PoCA 2002 or other relevant legislation, or whether all reasonable steps have been taken and all due diligence exercised to avoid committing an offence, will be required to consider whether that person has complied with the LSAG Guidance.[73] Second, legal sector supervisors, including the SRA, will consider compliance with the LSAG Guidance in terms of regulatory conduct monitoring.[74] Third, where there is uncertainty regarding compliance with the underlying provisions of the UK AML Framework, guidance is

[70] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023.
[71] Money Laundering and Terrorist Financing (Amendment) Regulations 2019 SI 2019/1511.
[72] The LSAG Guidance of 2021 ran to 212 pages and the 2018 LSAG Guidance was 153 pages long.
[73] MLR 2017 regs 86(2) and (3) and PoCA 2002 ss 330(8) and 331(7).
[74] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023 p 14.

likely to be a useful function to fill the gap,[75] which may serve to inform risk-based decision-making under the MLR 2017, key to the exercise of obligations relating to the identification of beneficial ownership. Given their significance, delays to approvals of the LSAG Guidance by HM Treasury, in particular in between the effective date of the MLR 2017 (26 June 2017)[76] and approval date (March 2018) and in between the effective date of the MLR 2019 (10 January 2010)[77] and approval date (July 2022) are particularly unhelpful for the regulated sector.

5.4.1 LSAG Guidance and Beneficial Ownership

The size and shape of the LSAG Guidance and the ongoing changes to it make it tricky to pinpoint all sections relevant to beneficial ownership identification. The term comes up 181 times in an electronic search of the document![78] On further analysis, the most relevant sections to the identification of beneficial ownership include: Section 5 (AML Risk Assessments); Section 6 (Client Due Diligence); Section 7 (Technology); Section 12 (Other duties);[79] and Section 18 (Red Flags and Warning Signs). The LSAG Guidance often begins a section by simply re-stating the law. It then typically goes on to offer a level of explanation about what compliance entails and makes suggestions for meeting obligations. In brief, the most relevant sections of the LSAG Guidance are considered below.

5.4.1.1 Section 5 (AML Risk Assessments) and Beneficial Ownership

This section begins by re-stating the law regarding requirements for carrying out practice-wide risk assessments and steps to undertake assessments at a client level. The LSAG Guidance is very clear that firms may have varying levels of resources to devote to the risk-based approach but goes on to acknowledge that small firms may be targeted by money launderers because of their potential lack of resources and states clearly that multiple factors are relevant to a risk assessment and all risk factors together inform whether a matter should be deemed high risk. In this way, the LSAG Guidance remains rather vague and does not determine with any precision steps that firms should take to mitigate their risks, though there are some suggestions at the end of this section.

It is clear from this section of the LSAG Guidance that beneficial ownership information is required from the outset – a (typically written) risk assessment of a client matter will inform

[75] Nicholson, D and Webb, J, *Professional Legal Ethics: Critical Interrogations* (Oxford University Press, Oxford 1999) p 116 in relation to ethical dilemmas.
[76] MLR 2017 reg 1.
[77] MLR 2019 reg 1.
[78] Note that this will capture the governance requirements covering BOOMs – Beneficial Owners, Officers and Managers – which removes some relevant references though does not make the document any easier to navigate.
[79] This section includes details of the beneficial owners and trusts and also discrepancy reporting.

the CDD to be undertaken. The location of a client or a beneficial owner, for example, is necessary to determine whether a matter is high or low risk. PEPs are automatically deemed high risk and necessitate an enhanced due diligence review. This means that the implementation of the risk-based approach requires an in-depth understanding of a client. This is somewhat circular: while the risk-based approach is intended to inform the level of CDD, some CDD – in particular in relation to client and beneficial ownership identification – needs to be undertaken as a first step to inform the relevant risk factors. While the risk-based approach means that resources are focused on the areas of greatest risk, there is no risk-based approach without an analysis of the client.

5.4.1.2 Section 6 (Customer Due Diligence) and Beneficial Ownership

This section begins with a list of procedures firms should have in place to meet their CDD obligations and goes on to stress the holistic nature of CDD which involves more than simple identification of clients and verification of their identities. Solicitors should also understand a transaction, including source of funds and the nature and purpose of a relationship, regulated persons are told. The LSAG Guidance also reminds users that client identification and verification is essential in terms of identifying PEPs, matters which might breach sanctions, or matters which might raise suspicions and prompt a SAR filing to the NCA.

Good practice for identifying a client's identity is provided by the LSAG Guidance, including steps to take when standard documentation is unavailable, and there is a lengthy section devoted to non-natural persons. The LSAG Guidance is firm that taking "*reasonable measures*" to understand the ownership and control structure of a legal person, company, trust, foundation or similar legal arrangement means "*tracing ownership back to any ultimate beneficial ownership of the entity by a natural person(s). You must then take reasonable measures to verify the identity of the beneficial owner*. "[80] There is a very clear interpretation of reasonable measures as follows:

> *"'Reasonable measures' means risk-based, proportionate and effective in mitigation of the identified money laundering and terrorism financing risks inherent in the client or matter being undertaken. When considering this test of reasonableness, you should consider whether you are comfortable that you would be able to demonstrate and evidence the extent to which you have sought such information and verification, to your supervisor upon request. It should not be misinterpreted as an allowance to not fulfil your duty to understand the full ownership and control structure of the client."*[81]

[80] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023, p 72.

[81] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023, p 72.

The application of this test requires the solicitor to be "*comfortable*" about the steps taken and reads almost as a warning about failing to take adequate steps. There is a further warning in this section to verify the identity of a beneficial owner, in many circumstances, in the same way as you would for a client who was a natural person. The LSAG Guidance then reminds users that failure to verify the identity of a beneficial owner may suggest a SAR might be necessary. The circularity of the CDD and risk assessment provisions are highlighted once again - "*you should record all of your considerations as part of the client or matter risk assessment*"[82] – a reminder that beneficial ownership identification does not stand alone and is seen as a key part of understanding the risk of a transaction.

There are extensive details relating to trusts and partnerships and suggestions for the information which may be needed to conduct adequate CDD with respect to churches, clubs and associations and other similar organisation. Section 6.14.21 (Further Information) of the LSAG Guidance suggests referring to the JMLSG Guidance (see section 5.4.1.6 below) as a useful source of further information in relation to those entities.

There are five full pages of guidance on beneficial ownership and CDD (Sections 6.15 and 6.16) which mostly sets out details of the relevant regulations. There is a specific warning about identifying beneficial owners who are beneficial owners by virtue of control rather than shareholdings, noting that they may have power without specific authority, and that regulated persons should take "*such further enquiries as you need*" to understand the control structure. While this serves to highlight the possibility, the vagueness of the paragraph reinforces the difficulty faced by regulated parties in fulfilling this obligation.

5.4.1.3 Section 7 (Technology) and Beneficial Ownership

Section 7 deals with the technologies available to regulated parties to undertake their obligations, acknowledging that several practices may rely on technology to help them conduct CDD, though it includes a reminder that the firm and individual will remain responsible for any checks undertaken in this way and that the electronic identification or verification may need to be supplemented by information from alternative sources. In particular, at Section 7.10, the usefulness of open company registers is recognised, though regulated persons are asked to consider that corporate registries often use data provided by companies themselves, records may be limited, and data may be more or less up to date. This is another example of warnings included in the LSAG Guidance which seem to serve more to flag risks to users than provide solutions.

[82] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023, p 72.

5.4.1.4 Section 12 (Other duties) and Beneficial Ownership

Section 12.4 responds to the January 2010 amendments to the MLR 2017 which require details of relevant trusts to be registered,[83] including the full range of beneficial owners.[84] This guidance is fairly detailed in terms of what needs to be provided to HMRC and when in accordance with the underlying regulatory provisions. Section 12.6 includes provisions relevant to discrepancy reporting. Helpfully, the LSAG Guidance informs regulated persons that "*it is not tipping off to discuss the discrepancy with your client, or advise how to rectify it.*"[85] Specific examples of the type of discrepancy which may need to be reported are included here.

5.4.1.5 Section 18 (Red Flags and Warning Signs) and Beneficial Ownership

The LSAG Guidance explains that red flags and warning signs are intended to assist legal professionals in assessing their risks under the UK AML Framework, noting that those listed are not comprehensive, that they do not automatically mean that a client is high risk, that a solicitor should not act or that a SAR should be filed. The LSAG Guidance explains that further enquiries or additional context can explain the red flags or warning signs – failure to explain may be a greater indication of a problem or give rise to reportable suspicion. Beneficial ownership itself is mentioned several times among the ten pages of red flags, such as: where their repeated use suggests nominee arrangements; or where a company is incorporated in a jurisdiction without a beneficial ownership registry, and issues complicating the identification of a client or beneficial owner also feature, for example: secretive behaviour; insistence on anonymity; a complex or unusually large transaction; or a changing structure. The sheer number of considerations is vast, and serves to emphasise the number of questions and enquiries to be undertaken to adequately fulfil AML obligations. The LSAG Guidance makes suggestions but cannot provide answers, which remain subject to regulated party discretion.

5.4.1.6 The Joint Money Laundering Steering Group (JMLSG) Guidance

The LSAG Guidance suggests at the very start that solicitors involved in mainstream regulated activities should also consider the JMLSG Guidance.[86] This would apply to solicitors who, for example, were involved in financial services activities beyond the remit of

---

[83] MLR 2017 reg 45.
[84] MLR 2017 reg 6.
[85] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023, p 153.
[86] Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023, p 14.

the work normally expected of a solicitor, so would not apply generally to all (or even most) solicitors.

The main part of the JMLSG Guidance is 215 pages long and is targeted at firms regulated by the FCA[87] and JMLSG member bodies.[88] Chapter 5 deals with CDD and refers clearly at each stage to the relevant MLR. The JMLSG Guidance contains highly detailed lists of the evidence required to successfully and adequately carry out CDD in respect of a wide variety of potential customers, ranging from sovereign wealth funds[89] to partnerships[90] to independent schools,[91] other trusts and foundations[92] and clubs and societies.[93] This goes far beyond the LSAG Guidance available to the legal profession though may prove useful in relation to these types of arrangements when they are encountered in practice.

There is also a helpful additional clarification in the JMLSG Guidance regarding discrepancy reporting which explains that discrepancy reporting relates to the PSC information on the register rather than BO information as required by the MLR and further clarifies that only material discrepancies should be reported.[94]

5.4.2 Possible deficiencies in the guidance available to solicitors

The LSAG Guidance is the most comprehensive and tailored source of support and information available to the legal profession, and it covers areas relevant to all types of solicitors' practice. At times, it may be supported by the JMLSG Guidance, though the LSAG Guidance will always take precedent. It does not state definitively what steps should be taken in individual cases to meet obligations under the UK AML Framework, nor does it not cover all possible eventualities. It is a lengthy and complex document which has been updated frequently, and discretion about how to act, for whom, and what questions to ask of clients, remains firmly in the hands of the regulated parties. The LSAG Guidance is intended to help with how decision-making should be undertaken but it seems often to pose more

---

[87] See JMLSG paragraph 14. FCA-regulated firms include all of those carrying on regulated activities in the UK under the Financial Services and Markets Act 2000, including banks and other financial institutions.

[88] See JMLSG paragraphs 14 and 30. This includes UK Finance, the British Venture Capital Association and the Association of British Insurers, among others.

[89] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, paras 5.3.204-210.

[90] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, paras 5.3.177-178.

[91] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, paras 5.3.253-264.

[92] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, paras 5.3.258-266.

[93] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, paras 5.3.283-286.

[94] Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023, para 5.3.129(A), p 98.

questions than answers. Understanding just how useful the LSAG Guidance and other support provided by the SRA, Law Society and others are to solicitors complying with their obligations under the UK AML Framework will help to inform what issues and challenges they are facing and how they might be helped to meet their obligations.

5.5 Conclusion

AML compliance is an ongoing and pervasive requirement inherent to being a solicitor within the regulated sector, demonstrated by its inclusion in the Code of Conduct and endorsed by the weight placed upon this activity by the UK AML Framework and the consequences for failure to comply. While it may be tempting to double down on enforcement, enhancing penalties for non-compliant solicitors, far less attention is paid to the role of the regulator as provider of training and support resources to enable solicitors to meet their obligations in a meaningful way.

The training requirements set by the SRA under their Statement of Legal Knowledge display significant weaknesses in terms of expectations of deep knowledge and understanding and there are uneven opportunities for on-the-job learning. It is possible for solicitors to qualify to practise with a lack of knowledge and understanding of business and trust structures, coupled with only superficial understanding of complex parts of the UK AML Framework. Elements of the Statement of Legal Knowledge which are relevant to beneficial ownership appear inadequate to provide the knowledge, or even tools for acquiring knowledge, necessary to undertake the necessary tasks, lacking the necessary context and presenting as a mere series of (superficial) rules.[95] This is particularly worrisome in the context of existing research which suggests that solicitors rely on their “gut feeling” and experience when decision-making.

For qualified solicitors, help and guidance is available from the SRA and the Law Society, with the main resource being the LSAG Guidance. The LSAG Guidance is long and complex and is updated often. While it may be helpful to solicitors in parts, it frequently seems to raise more questions than answers. Where a criminal offence may be proven without intent, and the risk-based approach is backed up by guidance which is less than definitive, the possibility remains high that an offence may be committed unwittingly, particularly in circumstances where the level of a solicitor’s knowledge is deficient.

The interviews conducted as part of this study have been designed to understand the support structures and information available to those working within the regulated sector and

[95] See Chavkin’s criticism of the teaching of ethics in law schools, arguing for a more experiential delivery method, in Chavkin, DF, ‘Experience is the *only* teacher: bringing practice to the teaching of ethics’ (The Ethics Project in Legal Education, Routledge, London 2010).

to seek information from within the sector about the support and guidance available. This will shed light on the barriers and challenges facing solicitors seeking to comply with their obligations under the UK AML Framework with respect to the identification of beneficial ownership and also on the relationship between the regulator and the regulated parties. Given the criticisms levied at the regulator for lack of enforcement and compliance failings within the profession, understanding how this relationship works will be instructive in informing policy and practice.

This Part I: Background and Literature has set the parameters of the UK AML Framework and examined the role of solicitors within it. It has explored the concept of beneficial ownership and relevant technical definitions. It has also considered solicitors as gatekeepers to the financial system and the role they may be expected to play in terms of increasing beneficial ownership transparency. Finally, this Part I: Background and Literature has identified a complex relationship between solicitors and their regulators and weaknesses in training and guidance. In each case, gaps in existing knowledge and potential practical compliance challenges have been identified. This has set the scene for the following Part II: Methodology and Research Design, which explains in greater detail the rationale for this research and how it has been structured and undertaken.

Part II: Methodology and Research Design

Chapter 6: Methodology and Research Design

Chapter 6: Methodology and Research Design

6.1 Introduction

Having set the context for this research in Part 1: Background and Literature, this chapter sets out the design of the research, first considering my position as an insider researcher and moving on to explain the methodology and methods employed. The limitations of this research are identified at the end of the chapter.

6.2 Research Design

6.2.1 The "Insider" Researcher

My position in relation to this research is complex and interesting, combining both legal and academic practice interests and expertise. While my research will be based on and applied to solicitors' practice, it will also be grounded in the academic understanding I have of the UK AML Framework. As a former practising solicitor, I have first-hand experience of working in legal practice and of compliance with AML obligations. In my current role, AML features in my teaching of business and finance-related modules and as the focus of research projects I have been involved with recently.[1]

I am therefore an insider carrying out "*insider research*"[2] which "*depends upon the researcher having some experience or insight into the worlds in which the research is being undertaken*"[3] My practice background enables an understanding and awareness of context and the application of policy in practice which underpins my research design, and I am conscious throughout of potential disadvantages, seeking to benefit from the advantages:

> *"Being part of the context that one is studying has both advantages and disadvantages. One advantage to being an insider is that the researcher "knows" the context and therefore, often possesses information such as knowledge of the language, rites, symbols that the "external" researcher might not have (or, at least, not to the same fluent degree). However, prior "knowledge" and "understanding" can also be a disadvantage in that it may keep the researcher from being able to look at the context with fresh eyes, as it were, in order to gain new insights concerning what might still be hidden from understanding, yet needs to be uncovered."*[4]

---

[1] See in particular Jackie Harvey et al, 'Hiding the beneficial owner and the proceeds of corruption' <https://ace.globalintegrity.org/projects/benowner/> accessed 30 October 2023.

[2] Pat Drake, and Linda Heath, *Practitioner research at doctoral level: developing coherent research methodologies* (Routledge, London 2011).

[3] Pat Drake, and Linda Heath, *Practitioner research at doctoral level: developing coherent research methodologies* (Routledge, London 2011).

[4] Lea Kacen and Julia Chaitin, '"The Times They are a Changing" 1: Undertaking Qualitative Research in Ambiguous, Conflictual, and Changing Contexts' (2006) 11(2) The Qualitative Report 209.

Not being currently in practice allows some distance from my research, whilst still enabling the insight of an insider and the knowledge of appropriate language and relevant culture. Costley tells us that "*[p]ractice has a situated and contextual relevance to the knowledge being created and used.*"[5] This is appropriate, as I intend that my findings should be applied within a practice setting, so my insider position enables a clear focus on the purpose and context of my research. As addressed in Part I, I am aware:

(a) that the operation of the AML regime is predicated upon a series of jigsaw pieces falling into place, including solicitors complying with their obligations;

(b) of the increasing obligations being placed on the regulated sector, including solicitors, most recently with respect to the identification of beneficial ownership;

(c) that the identification of beneficial ownership is just one of many obligations facing solicitors under the UK AML Framework; and

(d) that the profession may face unique challenges and issues which may mean that:

    a. the AML jigsaw has missing pieces, which need to be identified and better understood to inform policy and practice;

    b. support could be provided to help with effective compliance to:

        i. reduce the burden on solicitors; and / or

        ii. assist with the functioning of the AML regime as a whole.

I understand that my position as insider means that I need to develop "*reliable methodological approaches that result in useful and rigorously achieved outcomes*"[6] which I am able to defend. This will require me to be both reflective and reflexive.[7] For example, my position as an insider will facilitate the selection of relevant interviewees from a wide range of practice backgrounds, and it will also inform my analysis and interpretation of data.

In designing this study to examine the law in its "*relevant context, with its special problems and conditions*,"[8] I will employ inductive qualitative methods to seek out the experiences from within the solicitors' profession. Denzin & Lincoln indicate the "*embarrassment of choice [which] now characterises the field of qualitative research*," stating: "*[t]here have*

[5] Costley, C. 'Research Approaches in Professional Doctorates: Notes on an Epistemology of Practice' in Costley, C. & Fulton, J (eds) *Methodologies for Practice Research: Approaches for Professional Doctorates* (Sage Publications Ltd, London 2019) p 18.

[6] Costley, C. & Fulton, J (eds) *Methodologies for Practice Research: Approaches for Professional Doctorates* (Sage Publications Ltd, London 2019) p xxi.

[7] Costley, C. & Fulton, J (eds) *Methodologies for Practice Research: Approaches for Professional Doctorates* (Sage Publications Ltd, London 2019) p xxi.

[8] Philip Selznick, '"Law in Context" Revisited' (2003) 30(2) Brit J Law & Soc 177, 181.

never been so many paradigms, strategies of inquiry, or methods of analysis for researchers to draw upon and utilize."[9] Crotty explains that the research process requires: an epistemology; a theoretical perspective; methodology; and methods.[10] I follow this design structure below, always ensuring that the "*framework and methods match what the researcher wants to know*."[11]

6.2.2 Epistemology

I am taking a constructionist approach to explore how the UK AML Framework is perceived and reacted to by solicitors in their practice.[12] Analysis of data based on this approach "*seeks to theorize the sociocultural contexts, and structural conditions, that enable the individual accounts that are provided.*"[13] Essentially, I am exploring what is happening on the ground in the context of solicitors operating within the UK AML Framework.

6.2.3 Theoretical Perspective

An interpretivist perspective "*provides the context for the process involved and a basis for its logic and its criteria*."[14] Analysing the data from this perspective allows the identification of latent themes within the data, going beyond its semantic content,[15] leading to an analysis which is not merely descriptive.[16] Analysis on many levels is required to elicit varying sub-layers of meaning, reasons and motivation.[17] As Straker and Hall write: "*[t]o find meaning in an action, or to say one understands what a particular action means, requires that one interpret in a particular way what the actors are doing.*"[18] This is important for my position as "insider" enabling the understanding of the context to interpret the meaning in what my interview participants are saying during interview, leading to a kind of "*empathetic*

---

[9] Denzin, NK, and Lincoln, YS 'Introduction: The Discipline and Practice of Qualitative Research' in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 18.
[10] Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Sage Publications, St Leonards, NSW, Australia 1998).
[11] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 80.
[12] Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Sage Publications, St Leonards, NSW, Australia 1998) p 9.
[13] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 85.
[14] Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Sage Publications, St Leonards, NSW, Australia 1998) p 66.
[15] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 84.
[16] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 84.
[17] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 84 – 85.
[18] Alison Straker and Elaine Hall 'From clarity to chaos and back: some reflections on the research process' (1999) 7:3 Educational Action Research 419.

identification … to understand what he or she is up to in terms of motives, beliefs, desires, thoughts, and so on."[19]

6.2.4 Methodology

My personal experience of the law, as a former practising solicitor and academic teacher and researcher, is of its multiple functions as "*a formal instrument of regulation … a body of rules and decisions … an occupational setting … and academic discipline … a form of learning and teaching*,"[20] and it is true, as for so many socio-legal researchers within law schools, that my "*primary academic reference*" is the law and its aims and aspirations[21] rather than sociology or an alternative academic discipline. Nevertheless, this study seeks to explore the law in context[22] and requires a methodological approach which moves beyond a doctrinal focus on the law towards a social placement of the law, albeit within the legal profession itself.

While the motivation for this research originates in the existing literature and practice experience, the objective of this research, exploring issues and challenges faced by solicitors under the UK AML Framework, is achieved by empirical research involving solicitors. My methodology is therefore inductive, using a qualitative design to seek out the experiences of those operating within the solicitors' profession.

6.2.5 Methods

Methods are "*always used as part of a commitment to a theoretical perspective*,"[23] and the qualitative methods employed here are:

(i) Desk review of relevant law and literature. This sets the context for the research and helps to identify gaps in knowledge and areas for further exploration.

(ii) Semi-structured interviews. This enables me to collect primary data from persons operating on the ground within the UK AML Framework.

(iii) Thematic analysis of interview data to identify patterns and themes.

[19] Schwandt, TA, 'Three Epistemological Stances for Qualitative Enquiry: Interpretivism, Hermeneutics, and Social Constructionism' in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 192.

[20] Schwandt, TA, 'Three Epistemological Stances for Qualitative Enquiry: Interpretivism, Hermeneutics, and Social Constructionism' in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 192.

[21] Reza Banakar and Max Travers, 'Law, Sociology and Method' in Banakar, R, and Travers, M (eds) *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing, London 2005).

[22] Philip Selznick, '"Law in Context" Revisited' (2003) 30(2) Brit J Law & Soc 177.

[23] Reza Banakar and Max Travers, 'Law, Sociology and Method' in Banakar, R, and Travers, M (eds) *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing, London 2005).

(iv) Synthesis of analysed data with the law and literature to produce a response to my research questions.

As background to the interviews, I spent some time becoming familiar with the most up to date UK AML Framework, as I believed this would help to "*develop and solidify rapport with participants as well as to establish effective communication patterns*"[24] given the technical nature of the UK AML Framework which would be the subject of discussion. I was conscious that "*[b]y building trust and rapport at the beginning of the study, the researcher is better able to capture the nuances and meanings of each participant's life from the participant's point of view*."[25]

My chosen methods enable me to use my insider position to establish a rapport with my interviewees. As a solicitor myself, I will be able to make sense of the data shared with me by participants using inductive strategies to make sense of the data gathered and organise the data into themes.

The following sections delve deeper into the design, structure and conduct of the interview and analysis stages of my research.

6.2.6 The Interviews

In order to access rich, detailed information for analysis, this research has been designed to interview solicitors, and others involved in compliance within solicitors' firms, based on semi-structured individual interviews. This avoids concerns regarding confidentiality which would arise if taking part in a focus group. It also does not rely on receiving responses from solicitors in practice to anonymous surveys or questionnaires. Furthermore, the nature of the research question demands detailed and considered answers and sensitivity to individual firm and solicitor practice which will be produced verbally in discussion rather than by ticking boxes or selecting from limited options.

Ethical approval for this study was sought and approved in two phases from Northumbria University's Faculty of Business and Law Research Ethics Committee in April 2019 and April 2020. The first approval allowed me to work on my desk review of law and literature. The second approval, which include details of my proposed interviews, enabled me to proceed to the next phase of the study and invite participants for interview. As part of the ethics process, I prepared a Participant Information Sheet to inform participants about the purpose

[24] Valerie J Janesick, 'The Choreography of Qualitative Research Design: Minuets, Improvisations, and Crystallization in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 387.

[25] Valerie J Janesick, 'The Choreography of Qualitative Research Design: Minuets, Improvisations, and Crystallization in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 384.

of the study and the reasons for taking part. Participants were informed about the benefits and disadvantages of taking part, how and when the interview would take place and about participant rights in relation to personal data. Participants were ensured that data would be anonymised. Each participant signed a consent form confirming agreement to taking part in the study.

The use of semi-structured interviews allows an open-ended discussion in order to elicit a situated account of practice in my research area. The interviews are structured around questions, however the specific questions do not set a fixed framework for the identification and analysis of themes, which is driven by the data. This is explained further under the Thematic Analysis heading at section 6.2.7 below.

6.2.6.1 Interview Participants

Solicitors form only one branch of the legal profession, which also includes barristers, legal executives, paralegals and the judiciary, amongst others.[26] Within the solicitors' profession itself, there are several variations in the nature of the work undertaken, the size of the solicitors' firms and also the geographic location of the businesses. As at the end of May 2022, there were 215,567 solicitors on the roll in England and Wales.[27] Geographically, as at March 2020, over 50% of solicitors were located in London and the South East, with around 40% in Wales and other regions of England.[28] 43.4% of solicitors were sole practitioners at the same date, with a further 43.5% members of 2-4-partner firms, and Greater London was home to the greatest number of firms (including sole practitioners) at around a third of the total.[29] Table 1 below shows a more detailed breakdown of the data from March 2020:[30]

[26] See The Law Society <Legal professionals – who does what? | The Law Society> accessed 27 June 2022.
[27] Solicitors Regulation Authority <SRA | Regulated population statistics | Solicitors Regulation Authority > accessed 27 June 2022.
[28] The remaining approx. 10% are located outside of England and Wales, or their location is unknown. The Law Society 'Trends in the solicitors' profession Annual Statistics Report 2020' (March 2022) <Annual statistics report 2020 | The Law Society > accessed 27 June 2022, p 15.
[29] The Law Society 'Trends in the solicitors' profession Annual Statistics Report 2020' (March 2022) p15 <Annual statistics report 2020 | The Law Society > accessed 27 June 2022, Table 3.5, p 23.
[30] The Law Society 'Trends in the solicitors' profession Annual Statistics Report 2020' (March 2022) p15 <Annual statistics report 2020 | The Law Society > accessed 27 June 2022, p 27.

Table 1: Firms of Solicitors in England and Wales by size and location (source: adapted from The Law Society's Annual Statistics Report 2020)

	Sole Owner	2-4 Partners	5-10 Partners	11-25 Partners	26-80 Partners	81+ Partners	All Firms
City of London	188	240	72	61	46	46	653
Rest of Central London	221	232	67	27	15	2	564
Rest of Greater London	1,018	734	57	20	12	3	1,844
South East	500	481	85	32	8	2	1,108
Eastern	290	259	62	21	5	0	637
South West	234	250	80	22	13	2	601
West Midlands	324	334	51	10	5	1	725
East Midlands	219	176	52	8	3	2	460
Yorkshire and Humberside	260	303	63	12	7	1	646
North West	503	617	95	10	11	4	1,240
North East	79	125	31	7	1	1	244
Wales	121	211	46	8	1	0	387
Total	3,957	3,962	761	238	127	64	9,109
%	43.4	43.5	8.4	2.6	1.4	0.7	100

In terms of the nature of the work undertaken by the profession as a whole, the Law Society's "*official database of 198,852 legal professionals*" offers a search of 99 separate practice areas[31] and the SRA's Thematic Review in relation to Preventing Money Laundering and Financing of Terrorism from March 2018 assessed 50 firms practising in areas from bankruptcy / insolvency to debt collection, employment, family, property and trust and company service providers.[32]

Given the size and scale of the profession and the wide-ranging practice backgrounds, it would be neither possible nor desirable to seek a representative sample of interviewees, nor would it be my intention to extrapolate any findings across the whole profession. Rather, my aim is to hear a rich and detailed account from those operating within the UK AML Framework as it applies to solicitors and impacted by the AML Framework in their day-to-day work, asking "[*w]hat type of interview and with which actors would be most sensible given*

[31] See The Law Society <Find a Solicitor - The Law Society > accessed 27 June 2022.

[32] See Solicitors Regulation Authority 'Preventing Money Laundering and Financing of Terrorism, A thematic review' (SRA March 2018), app 1.

the purpose of my study and the exploratory questions that guide my study?"[33] This will facilitate insights into the operation of the UK AML Framework on the profession as a whole and a deep understanding of challenges and issues faced by those operating within the regulated sector.

Previous research in this field involves large and medium sized firms only. Hegelsson and Moerth explain that such firms are likely to have more sophisticated compliance arrangements than other firms.[34] Despite larger firms having access to greater compliance teams and resources, I chose to approach firms from across the spectrum of possibilities to achieve insights from a wider base of solicitors than has previously been sought. My current position within Northumbria Law School allows me access to several solicitors' firms, and I have several wider connections with the profession to enable access to participants. I discussed my potential interview participants with colleagues and contacts within firms and solicitors operating in compliance fields. I contacted several more potential interviewees than I actually interviewed, and some participants referred me onward to others in the field. Many declined to respond to my invitation for interview, and some declined to be interviewed, which may be attributed to the pressures of work,[35] while others did take part.

In the end, I secured interviews with nine participants which took place between August and November 2021. The interviews lasted an average of around 49 minutes and produced a total of 258 pages of transcript. Further details are provided in the table below. I did not interview any sole practitioners, though R2 had previously been a sole practitioner, and R8 worked with firms across the spectrum. Apart from this, I achieved a wide-ranging sample in terms of firm size, also speaking to those from firms covering a range of practice areas, such as corporate, residential conveyancing, and commercial property, and a variety of regions. While I originally expected I would engage more participants, having conducted detailed interviews with these nine participants (more details about the interview conduct below) with a wide range of experience across the profession and from a broad base of firms, I felt that

---

[33] Janesick, VJ, 'The Choreography of Qualitative Research Design: Minuets, Improvisations, and Crystallization in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 391.

[34] Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216, 1219.

[35] The UK government introduced a stamp duty holiday in July 2020 which extended to 30 June 2021 and again from 1 July 2021 to 30 September 2021. See UK Government Guidance 'Stamp Duty Land Tax temporary reduced rates' <Stamp Duty Land Tax: temporary reduced rates - GOV.UK (www.gov.uk) > accessed 05 August 2023. This caused a surge in completions towards the end of the holiday as documented in Chloe Cheung, 'How the end of the stamp duty holiday is affecting the market' (FT Adviser 20 August 2021) <How the end of the stamp duty holiday is affecting the market - FTAdviser> accessed 05 August 2023and placed pressure on conveyancing solicitors, see Fouzder, M, 'Stamp duty guidance for conveyancers to manage client expectations' (Law Gazette, 8 June 2021) < Stamp duty guidance for conveyancers to manage client expectations | News | Law Gazette> accessed 05 August 2023.

the responses I was receiving were sufficiently consistent to draw themes and that I had sufficient in-depth and detailed data to conduct my analysis. My project had already been delayed significantly (see section 6.2.6.4 below regarding the impact of Covid-19), and I felt comfortable to proceed with the data collected.

My interview participants were drawn from the solicitors' profession and those connected with the solicitors' profession as follows:

Table 2: Details of Interview Participants (source: author)

Participant	Size of firm	Principal Work Activities	Geography	Role of participant	Date of Interview	Length of Interview (nearest minute)
R1	11-25 partners	Corporate, Commercial, Commercial Property	North East	Managing Partner and COLP[36] and MLRO[37]	2/8/21	31
R2	11-25 partners	Commercial Property, Residential Property	Eastern	Consultant, previously sole practitioner	4/8/21	51
R3	2-4 partners	Commercial, Corporate, Commercial Property	North East	Director and COLP	5/8/21	37
R4	11-25 partners	Company, Commercial, Commercial Property	North East	Risk and Compliance Officer	1/10/21	55
R5	2-4 partners	Conveyancing	North East	Partner and MLRO	7/10/21	67

[36] Compliance Officer for Legal Practice, an SRA-required role.
[37] Money Laundering Reporting Officer.

R6	26-80 partners	Full Service	North East	COLP and MLRO	19/10/21	51
R7	5-10 partners	Corporate	North East	Head of Knowledge and Risk	4/11/21	43
R8	N/A	Compliance Advice	National	Risk and Compliance Specialist	4/11/21	56
R9	81+ partners	Company, Commercial, Commercial Property	National	Compliance Specialist	9/11/21	48

6.2.6.2 Interview Structure and Design

I designed an initial set of interview questions based around topics I felt would give me an insight into the day-to-day reality of solicitors' firms to address my research questions based on existing literature. I discussed a draft of my proposed interview questions with a colleague involved in compliance, who made sensible suggestions for the logical ordering of the interview (from high-level to more specific).

In preparation for my interviews, I conducted a pilot interview (May 2020) and received feedback on the questions and structure from a colleague who had also worked in a compliance field. This experience was hugely beneficial in terms of having confidence that the questions were logical and sensible, and also in terms of demonstrating that an interview could be loosely managed and still cover the range of topics required. I had wondered about running through the questions with participants at the outset, or providing them in advance, but decided instead to explain that some questions would cover more generic topics, while some would delve more specifically into the work of the firm / solicitor to learn about what I cannot see and to explore alternative explanations of what I do see.[38]

[38] Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992) p 65.

In summary, the interview questions sought to elicit information in response to my research questions, repeated here for convenience:

1. What are the issues and challenges faced by solicitors under the UK AML Framework with respect to the identification of Beneficial Ownership?
2. How do these issues and challenges impact the operation of the UK AML Framework with respect to the identification of Beneficial Ownership?
3. What practical recommendations can be made to address the issues and challenges identified?[39]

The questions themselves are set out below in bold italics and are accompanied by my interview notes (prompts regarding information the questions are seeking to elicit and some broad concepts which I thought might be relevant and which would help me to provide guidance to participants as needed), also in bold but not italics. Each question is followed by notes explaining the rationale behind each question, and an indication of which research question(s) each is likely to address.

Question 1: ***What is your understanding of the role [responsibility / purpose?] of solicitors within the AML regime with respect to identifying beneficial ownership?***

Question 1 Notes: The role of solicitors within the AML regime (Overview - how do solicitors feel about and understand their role / "responsibility" under AML legislation / regulation with respect to beneficial ownership?)

Consider, for example:

Is it important?

Is it inevitable?

Is it burdensome?

Do solicitors face particular challenges in terms of confidentiality / ethics / Code of Conduct?

Question 1 Explanation: This question seeks to find out how solicitors understand and feel about their responsibility under the AML regime with respect to beneficial ownership. This is important as a high-level lead-in question because it helps to introduce the interview participant to the overarching interview topic and also to understand the solicitor's view of their role within the UK AML Framework and how they feel about their obligations. It is expected to pick up on some known concerns about the UK AML Framework as it applies to

[39] See also Chapter 1.

solicitors as a whole, such as cost and burden,[40] and is intended to help to answer Research Question 1.

Question 2: *With particular regard to the identification of beneficial ownership as required by MLR 2017:*

Do solicitors have "special" knowledge of client arrangements and beneficial ownership?

How?

Why?

Question 2 Notes: Solicitors and knowledge of beneficial ownership (what they actually "know" / believe they know)

Consider, for example:

Areas of work.

Special skills.

Confidentiality.

LPP.

Is it right that solicitors should have a special role to play in understanding / disclosing structures and ownership arrangements?

Do you understand what a "suspicious transaction" would look like? Can you give an example you might come across?

Question 2 Explanation: This question is still relatively high-level and deals with what participants actually know or believe they know about the beneficial ownership of their clients. This question seeks to elicit evidence about what knowledge solicitors actually possess. This helps to avoid relying on assumptions as a foundation to policy-making in respect of the UK AML Framework. Responses are intended to help to answer Research Questions 1 and 2.

[40] See Chapter 2 and Chapter 4 above for further details.

<u>**Question 3**</u>**:** ***What are you doing to comply with the MLR 2017 with respect to beneficial ownership?***

<u>**Question 3 Notes**</u>**: Solicitors and compliance with beneficial ownership requirements under MLR 2017 (what they actually "do" in practical terms)**

Consider, for example:

Customer due diligence;

"reasonable measures" [other words from regs];

Reporting discrepancies;

De-risking;

Sanctions;

Morality.

<u>Question 3 Explanation</u>: This question seeks to gather information about what solicitors do in practical terms to comply with their AML obligations with respect to beneficial ownership. While we know what solicitors are expected to be doing,[41] a greater understanding of what actually happens informs Research Questions 1 and 2 and helps to form recommendations in response to Research Question 3.

<u>**Question 4**</u>**:** ***Do you face any challenges in seeking to comply with your obligations with respect to the identification of beneficial ownership as required by MLR 2017?***

Are there any particular frustrations or practical barriers to compliance?

<u>**Question 4 Notes**</u>**: Challenges faced in seeking to comply with obligations (whether there are any particular frustrations or barriers to compliance?)**

Consider, for example:

Practical barriers (availability / accessibility of information);

Political;

Local;

Commercial;

Technical;

Discretion.

[41] See Chapter 2 for details of their obligations under the UK AML Framework.

Question 4 Explanation: Finding out what particular challenges participants face in complying with their AML obligations with respect to beneficial ownership helps to provide practical knowledge about frustrations and barriers in response to Research Question 1. This is intended to supplement knowledge from existing research into compliance with details about particular barriers and challenges faced in the context of the latest UK AML Framework with respect to beneficial ownership and helps to formulate practical and useful recommendations in response to Research Question 3.

Question 5: ***What information and support is available to help you meet your obligations?***

Is it useful?

Question 5 Notes: Information and support

Consider, for example:

Legal Affinity Group Guidance

Publicly available information

Companies House / Land Registry

Other

Question 5 Explanation: This question seeks details of the information and support available to participants to help them to comply with their AML obligations under the UK AML Framework with respect to beneficial ownership (and whether it is of use). This is designed to provide details of sources of information and also information about how useful existing support is which helps to answer Research Question 3.

Question 6: ***How could you be helped to meet your obligations with respect to beneficial ownership under the MLR 2017?***

Question 6 Notes: Suggestions

Consider, for example:

Could compliance be made easier?

What additional support / training / inspection would be beneficial for solicitors?

Could the obligations be clarified in law / regulations / guidance?

Could solicitors benefit from tailored obligations?

Question 6 Explanation: Question 6 asks how solicitors could be assisted to fulfil their AML obligations with respect to beneficial ownership. This question seeks to elicit information about how solicitors could be helped to comply with their obligations and to overcome barriers, which is intended to contribute towards answering Research Question 3.

Question 7: ***Do you have any other comments / examples or concerns?***

Are there any other questions I should have asked you?

Question 7 Notes: Any other comments / examples / concerns?

Question 7 Explanation: This final question completes the semi-structured interview, asking for any additional comments, examples or concerns which may be of relevant to the interview and enabling the participants to raise any issues not addressed so far.

6.2.6.3 Conducting The Interviews

I began the interviews by introducing myself, confirming that I had participants' consent to interview and record and then asked participants to introduce themselves to me, including some details about their firms and roles.

With introductions completed, my interviews were based around the set of questions above. As the interviews were semi-structured, I did not expect participants to neatly address questions in turn. The questions were used as a guide as to coverage. Indeed, participants moved back and forwards across the topics, and the interviews were relaxed and detailed. The questions were not provided to participants in advance and I made notes throughout the interviews and occasionally guided the discussion back towards one or other of the specific questions or interview topics, or asked questions to delve for further detail or explanation.

As an example of seeking further detail and explanation, when R9 was discussing onboarding CDD policy and procedure:

> *R9: We do full client and matter risk assessments, erm, as part of the onboarding process. So yeah we have a very detailed CDD policy which is firm facing which the solicitors can access and then we also have sort of CDD procedures which sit behind that for the business acceptance team to use and that details the the CDD you need to get for all different client types and how to track up to the ultimate beneficial owners and it very closely follows the legal sector affinity guidance. But in areas where that's not … uh, particularly detailed will go to JMLSG, which is just a bit more detailed for things like foundations and sovereign wealth funds …*

I interjected to ask about reasonable measures and how that would apply in these circumstances:

> *…*
>
> *ST: The regs say reasonable measures, they talk about taking reasonable measures.*
>
> *R9: Yep.*
>
> *ST: At what point - is there a point at which you become comfortable, or is it it, do you kind of have to take a view of the whole? What do you do about that? Or do you just say no?*

In this instance, this helped to direct the interview towards a discussion of the exercise of discretion in implementing CDD obligations as part of Question 3.

As an example of moving back and forth, R8 had covered several specifics, expected to be addressed in the later interview questions, as part of a full and extended answer to Question 1. When I asked this participant Question 2 (on page 21 of 48 pages of transcript) I had to reassure him that he had already answered several or my more specific questions and he wouldn't be speaking to me all night!

My background as teacher and (non-practising) solicitor gave me confidence as an interviewer, as I am accustomed to a role which involves interacting with (and often interviewing) others. However, I was conscious of my role as a researcher who does "*not come as an expert or authority*"[42] about the particular subject matter under discussion. Glesne and Peshkin suggest that being perceived as an expert or authority may discourage respondents from being as forthcoming as they might be,[43] which would detract from the usefulness of the data they were able to give. With this in mind, and recognising, in common with social scientists, that "*interviews are interactional encounters and that the nature of the social dynamic of the interview can shape the nature of the knowledge generated*"[44] I remained conscious of my own "insider" position. In the introduction to myself and my role, I gave information about my background but took great care to convey the purpose of the interview as a finding out experience and to ensure the interview participant understood that it was their own experiences and views which were of value to me as a researcher. Notwithstanding this, my position helped me to frame my questions in terms that my

[42] Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992) p 36.
[43] Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992) 36.
[44] Andrea Fontana and James H Frey, 'The Interview: From Structured Questions to Negotiated Text' in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000) p 647.

interview participants understood[45] to maximise their ability to respond in a useful manner to my questions.

6.2.6.4 The Impact of Covid-19

A challenge appeared in March 2020 in the form of the Covid-19 pandemic, which halted my research (and, importantly, stalled the data collection phase). At first, furlough and remote working intervened, as did the pressures of home working, to mean data collection was impractical and undesirable for me as interviewer but also for potential interviewees, who were either furloughed or home working and often facing severe commercial pressures. However, as we all learned to work online, I realised that this offered an opportunity to reach solicitor interview participants online via Microsoft Teams. In many ways, this enabled more comfortable access to participants, who did not have to leave their desks to engage with me. It also reduced the need to travel, for any party. Also, by 2021, there was a degree of comfort to being interviewed in your "natural" online workspace.[46] I was able to be flexible about the timings of interviews around work commitments, and all parties were happy and comfortable with the technology. In only one case did one party's camera not function – we settled for a recorded conversation - and in one other the resultant recording was a little difficult to hear because of background noise, which impacted only on the time and effort it took to transcribe. Transcription generally was a labour-intensive task and formed an important part of the data analysis stage of this research project. The method of analysis is addressed in greater detail in the following section.

6.2.7 Thematic Analysis

Braun and Clarke: Successful Qualitative Research and Using thematic analysis in psychology

I analyse my data thematically following Braun and Clarke's method for thematic analysis in psychology[47] to enable the identification, analysis and reporting of themes within my data.[48] While framed within the discipline of psychology, this is a qualitative method which is

[45] Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992) p 70.

[46] In Silverman, D, 'Collecting qualitative data during a pandemic' (2020) 17(1) Communication and Medicine 76, Silverman acknowledges, in fact, that minimal adjustments were necessary for many researchers whose in-person interview can be replaced by an online interview and, depending on context, the online interview could be considered a normal interaction.

[47] Braun and Clarke set out a 6-phase guide to performing thematic analysis in Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77.

[48] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 79.

compatible with a constructionist paradigm,[49] allowing the researcher to examine "*the ways in which events, realities, meanings, experiences and so on are the effects of a range of discourses operating within society*" and it is a "*flexible and useful research tool, which can potentially provide a rich and detailed, yet complex, account of data*"[50]. I found Braun and Clarke's method accessible and appropriate to my research project. Glaser and Strauss's Grounded Theory may also have been appropriate as an inductive method to generate theory,[51] but it appears more rigid and formal in its true application and, Braun and Clarke suggest, often, in its lightest, or abbreviated, form, cannot be distinguished from a thematic analysis.[52]

6.2.7.1 Step by Step Thematic Analysis

Braun and Clarke confirm that the process of analysis "*starts when the analyst begins to notice, and look for, patterns of meaning and issues of potential interest in the data*"[53] and ends with "*the reporting of the content and meaning of patterns*"[54]. In between, the analysis is flexible between the identified phases,[55] which are set out at Table 2[56] below:

Table 3 Phases of Thematic Analysis (source: Braun and Clarke)

Phase	Description of the process
1. Familiarizing yourself with your data:	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.

[49] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 78.
[50] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77c, 78.
[51] Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992) p 19.
[52] Virginia Braun and Victoria Clarke, 'Can I use TA? Should I use TA? Should I not use TA? Comparing reflexive thematic analysis and other pattern-based qualitative analytic approaches' (2021) 21 Couns Psychother Res 37, 43.
[53] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 86.
[54] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 86.
[55] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 86.
[56] From Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 87.

3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic 'map' of the analysis.
5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

6.2.7.2 Phase 1, Familiarizing yourself with your data:

Having recorded each interview within Teams, I undertook this initial phase by watching each separate interview and transcribing the data. While I transcribed the first interviews myself from scratch, for some of my later interviews, I had a Teams transcript, which eased the transcription process, by taking less time, though did not detract from my engagement with the data as I had to work through the basic transcripts multiple times to check and correct them. In the remaining cases, realising how time-consuming transcription from scratch had been, I generated a Teams transcript from the interview recording by playing the recorded interview into Teams artificially. While the initial transcript generated in this manner did not distinguish between speakers, this was easily rectified by hand, and the transcript itself was a useful starting point for producing the full data text. The ability to watch, replay and re-engage with each interview, whether transcribing from scratch or via a transcript, enabled me to immerse myself in the data from each interview, leading to deep familiarity with the data. For example, the lengthy interview with participant R2 began with a detailed background to his varied practice experience. He returned frequently to the concept of risk of exposure to money laundering facing a variety of firms because of the nature of their work and their client base. My interpretation of meaning within this interview and

understanding of evident frustration was informed by listening again and understanding the personal experiences he shared at the outset.

6.2.7.3 Phase 2, Generating initial codes:

At Phase 2, immediately after completing the Phase 1 transcription, and whilst still close to the content and tone of each interview, I generated some initial codes of interesting or significant features, by annotating the interview transcripts with comments. I undertook this phase manually and without relying on any data analysis software. This helped me to remain close to my rich and detailed data and to retain as much context as possible to aid the later phases of analysis.

As an example, a quote from the interview with R5 reads as follows:

> *R5: Because if if they say to you and by the way we're buying a, we're taking a lease in a property, er, it's going to be £100,000 per annum, er, we're funding that from some money ourselves, but we've also got a loan from Barclays or a loan from the government or … whatever, you think, well, so let's see, let's see your, let's see your accounts for the last year from your accountant and, er the letter from the bank and whatever loan you're getting or grant. Let's see it and you think, well, where's the risk there?*

My comment on the transcript reads: *BO doesn't always seem important in the context of the transaction – context is key. BO only a small part of the DD to be considered.*

In generating initial codes, I was mindful of the questions I had asked, but, as noted above, the semi-structured nature of the interviews meant that the data was not linear or closely prescribed, allowing me to interpret and theorise as I noted some of the underlying codes from each interview. I completed this Phase 2 by drawing up a diagram of initial codes from each interview, which related back to the annotations, enabling me to work backwards and forwards between the higher-level codes and the more detailed interview data.

Continuing the example above, I ended up with:

- BO part of picture (Code) – with the note "need information across transaction" as a reminder of context (from R5).

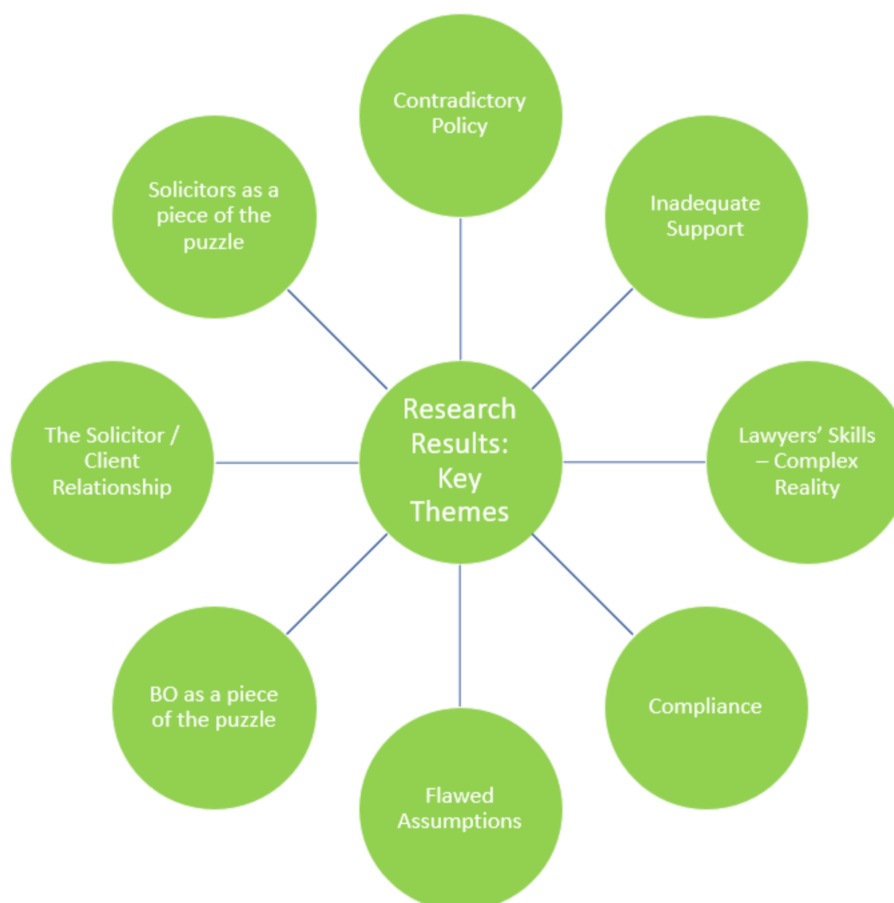
Working across the entire data set, this code appeared in various forms, for example:

- Bigger picture to consider – not just BO (from R2)
- BO part of a package, including source of funds (from R6)
- BO does not stand alone (from R9)

6.2.7.4 Phase 3, Searching for themes:

Phase 3 was taking place alongside Phase 2 of the process in terms of engaging with each data item and the whole data set. Following the completion of Phase 1 and Phase 2, I was able to focus on identifying themes from the data and drew up an initial summary of themes identified. You can see "BO as a piece of a puzzle" appears on this initial Diagram 8 below, the code having recurred sufficiently often in the Phase 2 analysis to appear important enough to constitute a theme in its own right:

Diagram 8: Interim Summary of Key Themes (source: author)



The identification of initial themes relied on my own judgement and interpretation as a researcher as I worked through my data looking for elements which "*capture something important in relation to the overall research question*."[57] To do this, I worked back and forth through the entire data set to ensure themes were sufficiently meaningful or prevalent to warrant inclusion. The idea that beneficial ownership is not a stand-alone concept is clearly highly significant in the context of my research questions, as this informs not only how

[57] Virginia Braun and Victoria Clarke 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77, 82.

solicitors view and undertake beneficial ownership investigations but also the fact that beneficial ownership cannot be separated as a concept in terms of a task to be undertaken or information to be sought from the perspective of policy-making.

6.2.7.5 Phase 4, Reviewing themes:

This Phase 4 did not take place as a distinct phase separate from the others, but flowed naturally out of the previous phases. Themes were constantly reviewed and revised and moved from beneath one overarching heading to another. I developed a separate slide with theme headings and moved less important details and codes underneath them as sub-categories as follows:

Diagram 9: Reviewing Themes: BO as piece of a puzzle (source: author)

- BO as piece of a puzzle:
  - BO one part of the question – does not stand alone;
  - Must be considered with source of wealth and source of funds

This process was repeated again and again until all of the codes had been interpreted and analysed, themes had been identified and reviewed, and I felt that all of the important elements within the data had been captured. Once a theme had been identified, I worked backwards and forwards through the entire data set to ensure the theme was indeed worthy of inclusion and all relevant codes and data extracts had been incorporated.

6.2.7.6 Phase 5, Defining and naming themes:

I started to write at this stage as themes became defined more clearly. This helped to identify which themes were worthy of being themes, and which related closely to others and belonged as sub-themes under other headings. At this point, BO as a piece of a puzzle became a (re-named) sub-theme of the much wider Theme 3: Variable Capacity[58] alongside the other sub-themes:

- Significant complexity of beneficial ownership structures;
- Special knowledge required;
- Experience of solicitor;

[58] See Chapter 8.

- Options for uncovering beneficial ownership;
- Changing nature of clients; and
- Beneficial ownership as a part of the CDD puzzle.

Each of these sub-themes feeds into the capacity solicitors have to identify beneficial ownership, so they have been grouped together in this way to enable the development of a logical and sensible report.

6.2.7.7 Phase 6, Producing the report:

This final Phase 6 proved to be the most time-consuming phase of this research and involved the final synthesis of the available data with the law and literature. The report was not produced in a linear fashion: I began this project with shorter background, introductory and literature sections, which developed during the analysis and writing phases in order to adequately frame my findings and provide context for the themes. In particular, the section on training and education was developed beyond my own experience and understanding as a teacher as its relevance to this project became obvious. The writing of the report was my final opportunity to ensure my findings were presented in a coherent and compelling manner.

6.3 Limitations

There are limitations to this study as follows. First, there are clear limitations to the generalisability of the data collected from a small number of interviewees, despite the rich and detailed data gleaned from the interviews. In addition, although the aim of this study was to gain insights into challenges and issues facing solicitors, interviews with solicitors and compliance personnel does not give voice to alternative perspectives – for example, the regulator, or law enforcement, though their views are more easily accessible from their own published data. Appreciating a range of perspectives allows a more balanced view of the problem, though does not enable the in-depth analysis of the issue from the obligated side.

Furthermore, solicitors are just a small portion of the regulated sector as a whole, and beneficial ownership is a small part of the overarching international AML regime and also the UK AML Framework. While solicitors, as enablers, and beneficial ownership, in terms of transparency, are high on the political agenda at present and the subject of discussion and debate, and for this reason are worthy of attention, analysis and consideration, they are but a small part of the AML juggernaut.

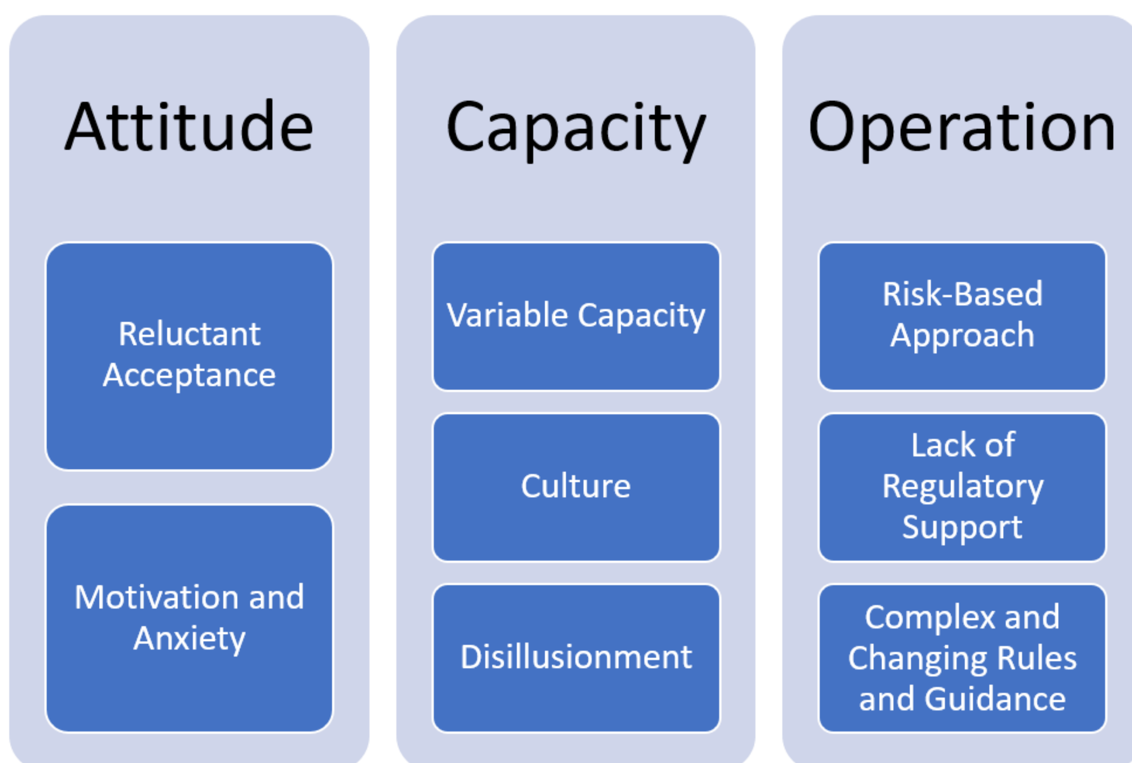
Finally, I acknowledge the use of the UK AML Framework as an overarching definition while focusing empirical research on solicitors in England only. While the main elements of the UK AML Framework, including publicly available registers, apply across England, Wales,

Scotland and Northern Ireland, there are legal differences among corporate and trust entities in each of these jurisdictions and in the common law systems which would require exploration and analysis in each of these separate contexts to provide a complete picture.

6.4 Conclusion

This chapter has set out the theoretical underpinnings of this research alongside details of the methods used. Following the methods described above, eight themes were identified from my primary research data. In the following Part III: Findings and Analysis, they have been organised into three separate chapters under chapter headings as illustrated in Diagram 10 below.

Diagram 10: Research Themes and Chapter Headings (source: author)



Chapter 7 explores solicitors' attitude towards the UK AML Framework under the heading "Attitude." Chapter 8 delves into the capacity and capability among solicitors for identifying beneficial ownership under the heading "Capacity." The operational barriers to compliance, which are addressed in Chapter 9, fall under the heading "Operation." Interview participants are referred to throughout the chapters of Part III as R1 to R9 in accordance with details provided at Table 2, section 6.2.6.1 above.

Part III:
Findings and Analysis

Chapter 7: Solicitors' Attitude towards the UK AML Framework

Chapter 8: Capacity and Capability for Identifying Beneficial Ownership

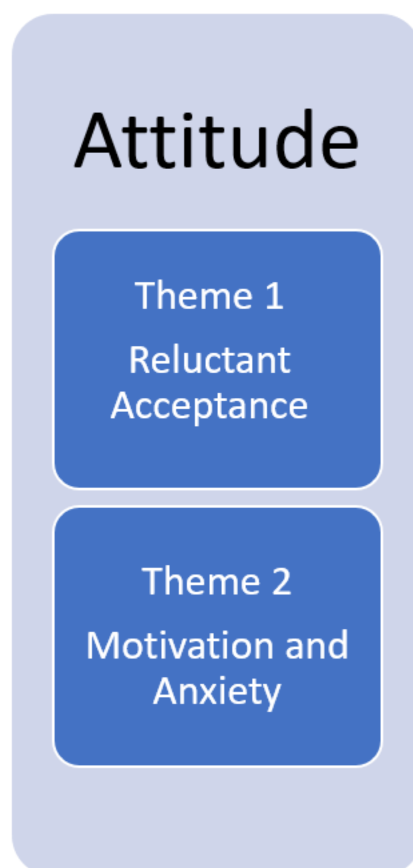
Chapter 9: Operational Barriers to Compliance

Chapter 7: Solicitors' Attitude towards the UK AML Framework

7.1 Introduction

This chapter is the first of three chapters setting out the findings of my research, discussing key themes identified from nine interviews, which inform the conclusions and recommendations in Chapter 10. In this Chapter 7, dealing with solicitors' attitude towards the UK AML Framework, two themes are discussed, starting with the reluctant acceptance by solicitors of their role within the UK AML Framework and their compliance obligations under it and moving on to consider what drives solicitors to comply with the UK AML Framework and the anxiety and fear experienced by many.

Diagram 11: Attitude - Themes 1 and 2 (source: author)



7.2 Theme 1: Reluctant Acceptance

Interview analysis reveals that there is an acceptance among solicitors of their role within the UK AML Framework and their obligations under it, though this can be reluctant as a consequence of the burden felt by solicitors and the onerous nature of compliance. Interviewees widely accept their designated role as gatekeepers to the financial system,

though obligations are seen as a burdensome imposition, and efforts to comply are relayed as troublesome but conscientious.

7.2.1 Sub-Theme (1A): A necessary imposition

Several interviewees regarded the UK AML Framework with respect to the identification of beneficial ownership as imposing upon solicitors onerous obligations, which were costly and burdensome (both in terms of time and money) and affected the way they interacted with their clients, as discussed in greater detail below. While this is widely seen as challenging and, in some ways, frustrating, by interviewees, it is also accepted as a now inevitable part of life within the regulated sector as the "*rules have clearly evolved and grown*" since the regime was initiated "*all those years ago*" (R6).

While all interviewees accepted AML compliance as necessary, acceptance seems more pragmatic than welcomed. R1 acknowledged the role of solicitors within the UK AML Framework, saying "*we're in the front line of it all, in reality*" (R1) and R6 saw solicitors as "*part of a jigsaw*" (R6). However, the unwelcome imposition felt by some interviewees was clear, with R1 describing the UK AML Framework as "*being put on us*" and R2 talking of being "*dragged into*" the regime. Most bluntly, R2 tells us that AML compliance is "*yet another thing that is being imposed on solicitors for which they are not, bluntly, paid*" and goes further to suggest that solicitors have been brought within scope of the UK AML Framework to make use of the capable and competent resource that is the legal profession in undertaking investigative work.

The often-negative language used to describe the role of solicitors within the UK AML Framework suggests a largely uneasy relationship with obligations which are imposed rather than invited. After more than 20 years, solicitors have accepted their role within the framework as an inevitable imposition and a necessary function of falling within the regulated sector, but they are conscious of the cost, time and effort that this takes. As noted below, there is also some doubt about the value of the contribution solicitors can make despite their efforts.

7.2.2 Sub-Theme (1B): Solicitors as gatekeepers

Despite some negativity towards the obligations imposed by the UK AML Framework as a whole, several interviewees accepted the position of solicitors as gatekeepers to the financial system and agreed that they could be targeted by money launderers. They also agreed generally that solicitors are in a position to understand transactions and spot money laundering to a degree (examined in further detail in Chapter 8 below), though one interviewee indicated that where a money launderer was determined and cunning, solicitors really do not believe that they could identify an elaborate or sophisticated scheme arranged

by a client intending to fool them (R2). Nevertheless, the rationale for including solicitors within the UK AML Framework was well understood. For example, R1 notes that "[*i*]*t's probably logical that the burden would be placed on us, given the role that we play in various transactions and the funds that we handle*."

Despite this broad understanding of solicitors' involvement and acceptance of obligations, R1 also suggested the regime was over-engineered and could be simplified, and it was commonly put forward that the rules regarding beneficial ownership stretch too far. As an example, by forming part of the CDD requirements, the rules extend into areas where the involvement of a beneficial owner, and of money laundering generally, is slim, such as employment work. Under the latest iteration of the MLR 2017, tax advice might form part of an employment settlement (says R7) so this area becomes newly captured by the regime. Indicating frustration present within the profession, R3 bemoans the regime for having "*gone too far*" in terms of requiring solicitors to disclose knowledge or information that they simply do not hold despite their best efforts to comply.

7.2.3 Sub-Theme (1C): Conscientious compliance

Despite multiple frustrations and difficulties, it was clear that all interviewees viewed compliance with the UK AML Framework as serious business and that efforts made not to fall foul of AML obligations were extremely conscientious in the main. In some cases, this meant dogged adherence to the rules on opening client files (R4) or firm structures involving "*a huge team of specialists*" (R9). In other firms, it meant documenting all steps taken in connection with identification of beneficial ownership (R3). For others, it meant turning away work deemed "*too risky*" (R2; R6). However, for many, compliance is simply an additional and unwelcome burden to divert precious resources to away from the main business of fee earning and billing. With reference to a previous practice, R2 notes:

> *"I was spending so much of my time just trying to deal with the rules, and keep up with the new rules, that I didn't have any time left to do any fee-earning." (R2)*

Interviewees variously identified AML compliance as a burden, an imposition, an obligation, something you "*have to do*" (R2; R3; R5; R6). This is a hugely important factor, in particular where firms are overwhelmed with fee-earning work and AML compliance can become a distraction. R5 stresses that "*we maintained our integrity*" as to AML during the difficult times of the pandemic, whilst admitting that "*coping was just beyond coping*." R7 expresses a level of frustration with the regime, saying "*there are too many hoops to get through to do work*," and R3, whilst describing a high level of compliance steps being undertaken at the firm, expresses frustration: "*one of my main issues is that we aren't the police*" (R3). R5

goes further to suggest most solicitors feel "*press-ganged*" into their role within the UK AML Framework.

R7 notes that compliance with AML rules forms part of a much greater focus by firms on risk as a whole in recent years, and identifies AML work as now forming 80% of the compliance role. While the focus on compliance signifies firms taking risk and their compliance obligations seriously, R7 also portrays this kind of work as something "*the lawyers didn't want to do*" meaning that taking care of administrative and compliance tasks can fall outside of the fee-earning remit. R7 says of AML compliance that: "*anti money laundering queries, just trying to keep on top of the policies, checklists, controls that we have … it's a never-ending job*." While this, on the one hand, evidences how seriously firms take their AML obligations, it also indicates how burdensome the regime feels to the regulated sector. The separation between legal work and the compliance function is also apparent here, with the compliance officer acknowledging specialist knowledge of and involvement with the UK AML Framework not necessarily shared by the rest of the firm, also a feature of the interviews with R4 and R9.

7.2.4 Theme 1 Discussion

While participants acknowledge that solicitors accept their role within the UK AML Framework, there is little enthusiasm for the regime and the burden of compliance falls heavily in terms of cost and time, with solicitors and firms voicing frustration with the level of resource and effort needed to meet compliance obligations. This is consistent with existing research,[1] and the burden continues to increase as obligations become increasingly onerous, most recently in relation to beneficial ownership transparency requirements under MLD5.

It is interesting, in terms of attitudes to the regime as a whole, that specific issues relating to client confidentiality or legal professional privilege were not expressly raised by participants as particular concerns. Discomfort with asking for clients for CDD information is addressed separately in Chapter 8 below, but the long-standing controversies regarding the relationship of lawyers within the regime raised in Chapter 4 seem to have been overcome by general acceptance that obligations are here to stay. The prevalent concerns identified within this research relate to the burdensome nature of obligations presenting solicitors and firms with operational challenges to overcome against the threat of criminal and regulatory sanctions or

[1] Alldridge, P, *What Went Wrong With Money Laundering Law?* (Palgrave Macmillan, London 2016) and Duyne PC van, Harvey, JH, Gelemerova, LY, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths* (Palgrave Macmillan, London 2018).

reputational damage and general frustration at being required to perform tasks as private sector actors without the capacity, knowledge or training to undertake them well.

Existing research already questions the proportionality of regulatory obligations for those working within the regulated sector, particularly among solicitors where there is a risk of highly technical compliance because of specialist transactional knowledge and intimate client relationships. [2] This research suggests that this phenomenon persists or is exacerbated under the latest UK AML Framework and is not particular to solicitors working within the largest law firms. In terms of beneficial ownership identification and verification, policy-making driven by political rhetoric and anti-kleptocratic and corruption agendas discussed in Chapter 4 leaves little room for a proportionate response and solicitors, amongst others within the regulated sector, will bear the burden. In some firms, there is an evolving compliance complex, separate from the day-to-day work of solicitors, similar to that identified by Verhage,[3] where compliance has become an undertaking in its own right, quite separate to the primary work the solicitor or firm is qualified and in business to undertake.

In summary, the burden of the AML regime is accepted reluctantly by solicitors, imposed rather than invited. As set out in greater detail in the following section, whilst compliance with the UK AML Framework is high and diligent amongst interviewee firms, significant barriers, and even some resistance, are apparent, and the motivation behind compliance is varied.

7.3 Theme 2: Motivation and Anxiety

The motivation of solicitors for complying with the UK AML Framework with respect to beneficial ownership was explored in all interviews, revealing a high level of anxiety about the regime, multiple drivers of compliance and limited faith in the outcome of the exercise.

7.3.1 Sub-Theme (2A): Lack of faith that compliance reduces financial crime

Despite widespread understanding of the rationale for the UK AML Framework and solicitors' involvement in it "*to avoid dirty money getting into the system*" (R6), there was some scepticism that AML efforts in relation to beneficial ownership contributed in a meaningful way to an actual reduction in financial crime (R5). While interviewees identified a basic willingness to uphold the UK AML Framework for the purpose of forestalling anti-money laundering, compliance incentives on the whole seems much more closely linked to the

[2] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022).

[3] Verhage, A 'Between the hammer and the anvil? The anti-money laundering-complex and its interactions with the compliance industry' (2009) 52 CLSC 9.

potential for reputational damage and the practicality of insuring the business, compounded by regulatory sanction.

7.3.2 Sub-Theme (2B): Regulatory Fear and Anxiety

Every interviewee discussed the role of the regulator, the SRA, in connection with AML compliance. "*It's top of the regulator's agenda at the moment*," said R1, while R8 suggested that the SRA was becoming more active in auditing legal firms and that this was having an impact on the activities of solicitors, who were becoming more serious about how they responded to compliance obligations and the need, in some cases, to engage compliance staff.

Several interviewees expressed a significant level of personal anxiety. R3 told me:

> *"I have a regular thing saying I can't go to prison …it's pretty much, you know, a daily saying … I would like to be able to sit here and say to you the anxiety for me is caused by actual money laundering, er, drug trafficking, and people trafficking was going on and I think it's my obligations and my duty to stop that. However, what keeps me awake at night is going to prison, because that would affect me quite personally, quite selfishly."*

This suggests that regulatory activity may drive compliance activity, and it may also have some impact on the quality of compliance if firms begin to take their obligations seriously. However, as discussed further in Chapter 9 below, the regulator is not generally seen as a supportive resource in helping solicitors and firms to comply with their obligations, rather as a source of fear and punishment. This seems to suggest that solicitors are focused more on compliance for the purposes of avoiding enforcement action than upholding the UK AML Framework in a meaningful sense. Firms may be acting in fear of the potential consequences of being found wanting in respect of compliance obligations.

7.3.3 Sub-Theme (2C): Reputation

R5 indicated that the motivation for compliance with the UK AML Framework was partially anti-crime, but mostly driven by his desire to protect his employees, his firm and his brand. R8 also suggests there is a reputational factor at play, especially for larger firms, who do not want to be the firm in the headlines for compliance failures. This is supported by R9, who describes a reputational test for proceeding with a transaction based on previous high-profile scandals, such as the Panama Papers and the Paradise Papers. While the structures in place in these cases may be legitimate, no firm wants to be making headline news for involvement in such transactions, and this is a local attempt to make the potential consequences of inadequate compliance decisions comprehensible and encourage sound (though possibly risk-averse) judgment in terms of decision-making. The competing factor

here is the commercial position of the firm, where, R3 suggests, commercial pressure to take on work may be greater despite compliance / AML risk.

One interviewee acknowledged the difficult commercial balance, saying that a firm could "*make our risk assessments cover us*" (R7) but then asked whether that would be the right or the wrong thing to do. It is certainly a commercial factor in the first instance, but, as the same interviewee acknowledges, the reputational risk of making an incorrect decision may not be immediately apparent but lurks in the background for a future and unspecified date (R7). There is always a judgement call, and there is real fear (for myriad reasons) that the call made may turn out to be incorrect.

7.3.4 Sub-Theme (2D): Practicalities

A further driver of compliance is the practical matter of insuring the business. R6 states with pragmatism that compliance:

> *"makes you more efficient, you're more profitable and … is also is important so far as indemnity insurance is concerned … It's not just complying with the law; there are other benefits to it as well."*

R6 gives positive examples of knowing the business is in good order, with LEXCEL accreditation,[4] an SRA green light and a knowledgeable, well-trained and experienced staff. R2 concurs on the point of indemnity insurance, suggesting that a firm which had fallen foul of AML obligations would have problems obtaining cover, which already comes with prohibitive costs for sole practitioners, giving an example of around 10% of annual turnover.

7.3.5 Theme 2 Discussion

The motivation of solicitors for undertaking AML compliance is a significant factor affecting their relationship with the UK AML Framework. It informs not only why they do it, but what value they place on the exercise. Findings of this research reveal that solicitors understand and appreciate their place within the UK AML Framework but are focused more on meeting regulatory outcomes than taking a more holistic approach to understanding AML measures. As set out above, they have not become party to the regime willingly, but have had significant obligations imposed upon them with the fear of significant sanctions for failure.

While obligations are taken seriously, and some participants value the operational and practical benefits compliance can bring, there is little evidence that they are undertaken with a view to controlling money laundering; rather solicitors are acting to protect themselves and their firms against financial, reputational or criminal sanction. The lack of enthusiasm for obligations under the UK AML Framework and motivation for compliance being driven by

[4] This is a Law Society accreditation reflecting quality of legal practice.

reputational concerns and anxiety regarding regulatory sanction rather than a genuine desire to meet the overarching goals of reducing criminality seems to support previous empirical studies which have found that private sector actors work towards self-protection, or do just enough to ensure compliance rather than more meaningful compliance with regulatory objectives.[5]

7.4 Conclusion

While the interviewees spoken to reported overwhelming conscientiousness in their compliance efforts, they demonstrated a huge amount of frustration at the time and energy they had to expend to identify facts and information, and verify facts and information, which were not already known to them. They do this on an unpaid and inconvenient basis with the threat of sanction for failure to comply. So, while the interviewees reluctantly accepted that they had a role to play in the AML Framework, obligations were often undertaken with a view to avoiding regulatory or criminal sanction or upholding their reputation.

Chapter 4 examined the role of solicitors as enablers of financial crime and explored earlier research which focused on compliance among solicitors and within the wider regulated sector. Attitude among the regulated sector towards AML compliance matters because of its potential to affect performance and diligence,[6] and this research shows that solicitors feel burdened and overloaded by the obligations under the UK AML Framework. The way actors within the regulated sector feel about their obligations has been found to impact upon their actions: where AML obligations are perceived as unfair, compliance is undertaken so as to preserve the self rather than to uphold the regime.[7] The manner in which solicitors undertake their obligations is also significant, with gut feeling and experience playing a role in how far solicitors participate in the regime.[8] The negativity identified by this research may therefore have a detrimental impact upon the performance of obligations under the UK AML Framework, thereby reducing its effectiveness.

Many interviewees suggested that the expanding regime imposed a significant and disproportionate burden on them within a system which is generally ungrateful and

---

[5] Bello, AU, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016), Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227 and Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740.

[6] Bello, AU, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).

[7] Bello, AU, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).

[8] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.

unsupportive for their efforts. Doubts solicitors identified about their capacity to identify money laundering run counter to the high expectations of the UK AML Framework as a whole, which impose obligations intended to prevent and forestall money laundering. This is explored further in the following Chapter 8 which identifies barriers to compliance arising out of the capacity and capability of solicitors to undertake their obligations in the manner intended, compounding frustration about the excessively burdensome impact of the UK AML Framework upon solicitors.

Chapter 8: Capacity and Capability for Identifying Beneficial Ownership

8.1 Introduction

This chapter moves beyond solicitors' attitudes towards and relationship with the UK AML Framework to examine findings relating to the capacity of solicitors to identify beneficial ownership as illustrated in Diagram 12 below.

Diagram 12: Capacity – Themes 3, 4 and 5 (source: author)

These findings contribute to the knowledge we have about the actions of solicitors as front-line actors and the barriers they face to compliance with obligations relevant to beneficial ownership under the latest UK AML Framework. The third theme considers the complexity of the identification and verification exercise itself and the impact of the capacity and experience of the regulated person undertaking CDD investigations or the related risk assessment upon compliance. The fourth theme delves into the impact of regulated firm culture and training on compliance capacity and the fifth considers the effect on capacity of apparently widespread disillusionment with the UK AML Framework amongst solicitors

created by unrealistic expectations and difficulties meeting obligations in connection with beneficial ownership.

8.2 Theme 3: Variable Capacity

The capacity of solicitors to undertake their obligations with respect to the identification of beneficial ownership is variable and depends on multiple factors, this research finds. The requirement to identify and verify the identity of beneficial owners is highly complex as discussed in Chapter 3 and it can be a technical and time-consuming undertaking. It is part of, rather than independent of, ongoing CDD and risk assessment and the successful completion of the task depends strongly on the experience and knowledge of the individuals involved.

The essence of this research is grounded in understanding the capacity of solicitors to identify beneficial ownership of clients to support political ambitions of transparency and accessibility of accurate information as explored at Chapter 4. The process of identifying beneficial ownership has been described variously by interviewees as "*straightforward in most cases*" (R1); as "*just another layer*" (R6) and as "*complex*" and "*requiring special expertise*" (R9). As part of the group of professional enablers often understood to undertake a key role in the facilitation of financial crime, as discussed earlier in Chapter 4, the practical implication is that solicitors hold information about beneficial ownership structures which they are able to disclose, or that they are responsible for establishing complex structures which disguise ownership, discussed in Chapter 3. However, what seems clear from speaking to interviewees from the legal sector is that solicitors frequently act for clients whose beneficial ownership structure was not put in place by that firm of solicitors and therefore an investigation into beneficial ownership structure needs to take place as part of a CDD enquiry. This is to be expected, as a firm carrying out corporate or personal trust structuring work is not necessarily the firm which will undertake work relating to a corporate or conveyancing transaction. R7 explains that only those who set up trust and corporate structures know "*why and how it's being done like this*" and that you wouldn't understand if you were acting for one of these clients in a matter which did not involve the structuring. This could involve a property purchase, for example, or a corporate transaction, or any number of other matters in the life of a business or trust. Because of this lack of understanding of the rationale for the structure, solicitors need to carry out their own investigations into beneficial ownership, which can be extremely onerous:

> *R7: "Sometimes we sit with big structure charts and pages and pages trying to work back the percentages, and who owns what of who, and to decide, you know, even if they are a beneficial owner any more, because the percentage has been diluted along the way."*

Whether or not the investigating solicitor or firm will be able to identify beneficial ownership in an adequate or successful manner which meets the requirements of the MLR 2017 may be affected by a variety of factors, including the nature of the client, the experience of the solicitor, or the complexity of the structure, amongst others as discussed in this section. This theme is broken down into several sub-themes which combine to provide a deep understanding of the variable capacity among solicitors to undertake their obligations with respect to beneficial ownership under the UK AML Framework.

8.2.1 Sub-Theme (3A): Significant complexity of beneficial ownership structures

One interviewee (R1) suggested that it was easy to identify beneficial ownership in around 85 – 90% of cases. In straightforward cases, there may be a single layer of ownership, or a small transaction involving known parties. However, other cases may involve much more detailed attention to an enormously complex structure, such as those described and considered in Chapter 3 above, which may also be those intended to disguise beneficial ownership for criminal purposes.

There are several elements of a transaction which may make identifying a beneficial owner more challenging. One of the complicating factors mentioned by interviewees was jurisdiction. Another was a structure with multiple layers or involving "*obscure trusts and things like that*" (R1). R9 referred to "*technical CDD queries*" which involved identifying beneficial ownership for corporate structures, offshore jurisdictions, trusts and foundations, which go far beyond the normal experience of most solicitors.

In the case of overseas enquiries, there are different corporate structures and various registries to contend with, in addition to different legal or trust arrangements. R7 suggests you "*come back to relying on the client*," as there is no way of knowing what data you will get from an overseas enquiry, and you are often simply required to rely on third party sources for information. This is hugely unsatisfactory from a compliance perspective, and from the perspective of the AML regime as a whole, too. There is no certainty of information; there is no certainty of beneficial ownership; there is no way of obtaining more certain information or knowledge in such cases. R1 tell us that, "*[w]e become very reliant on the lawyers in their home jurisdiction to basically give us what we need.*" At the same time, the complex process can become hugely time- and resource-consuming. R1 suggests that EU counterparts, by contrast, seem to "*take a very or a much more relaxed approach to AML than we do in the UK*" and R9 notes that, in some jurisdictions, there is no public information available at all.

Another area where beneficial ownership may be obscured is in relation to property transactions, where, until recently, there was no obligation to note any kind of beneficial

ownership interest on the register.[1] This means a solicitor must do their own investigations to identify who any beneficial owner might be without any prior knowledge of the client's legal structure.

By its nature, identification of beneficial ownership can be time consuming and complex. Beneficial ownership may also change if amendments are made to a corporate structure, affecting entities both up and down a chain of ownership or control. Percentage ownerships change over time as shares are bought or sold. Whether there is anything sinister at work or not, the energy required to unpick a complex corporate structure can be huge as identified in Chapter 3. Delving deeper into frustrations felt when undertaking CDD revealed a series of practical problems which hindered identification as set out below.

8.2.2 Sub-Theme (3B): Special Knowledge Required

Several interviewees reported that it was not always an easy task to identify beneficial ownership, often for the reasons set out above. Otherwise, R6 notes, as a transaction progresses, a further party may appear who then needs to be investigated, so risk assessing and due diligence are ongoing processes.[2] R7 explained that solicitors did not necessarily possess the specialist knowledge to identify beneficial ownership, expressing frustration that even the corporate team[3] might struggle to understand complex structures or the reasons for them, in particular where they had been "*put in place by a high level accountancy firm who's suggested this for tax purposes.*" A corporate or trust structure can be beyond the understanding of anyone who hasn't put it in place and has knowledge of the background. R1 suggests corporate work experience would be helpful in identifying beneficial ownership compared to other areas of expertise, saying he: "*wouldn't like to undertake that exercise if I was a general practitioner*," and R9 suggests it takes 12 to 18 months "*to get somebody fully trained on this sort of stuff, and that's at a base level, that's not even your really technical stuff.*" This suggests that knowledge about how to identify beneficial ownerships does not exist automatically and universally among solicitors in relation to either a particular transaction or a particular client.

Furthermore, interviewees suggested that the type of firm and solicitor involved in a beneficial ownership investigation has an impact on ability to understand and appreciate complex structures: more than one interviewee suggested that specialist knowledge and experience was needed on behalf of the solicitor undertaking a risk assessment. When

[1] Note the change required by the Economic Crime (Transparency and Enforcement) Act 2022 discussed in Chapter 2 in relation to overseas entities only.
[2] This is in line with the requirements of the MLR 2017 as discussed at Chapter 2.
[3] Those with corporate experience would be most likely to come across complex structuring in their day-to-day lives.

asked whether solicitors had special knowledge about complex structures or ownership or arrangements, R5 agreed that a commercial solicitor or barrister might if they "*[set] up companies and [deal] with that kind of thing*" but not "*your ordinary conveyancer*." R9 even reports that some practitioners may not have seen some complex structures before, so may not even be alert to some of the signs of disguised beneficial ownership, suggesting that it would be "*unfair*" to expect all solicitors to have the capacity to unpick a complex corporate structure. R9 also tells us that structures continue to evolve, bringing surprises even for somebody working day to day in a compliance specialist role:

> *"Just when I think I've got my head around certain banking structures for transactions, something else pops up and I think, oh, I've never seen that before."*

Evidence that a compliance specialist encounters new and challenging beneficial ownership structures which will require time to understand illustrates just how challenging understanding beneficial ownership structures may be for non-specialist solicitors who are also responsible for the fee-earning business of the firm. This is a particular worry in light of the findings set out in Chapter 7, where more than one interviewee acknowledged that it would indeed be possible, and even straightforward, for a client to deceive a solicitor and obscure beneficial ownership even where investigations were undertaken. (R7; R8; R2)

8.2.3 Sub-Theme (3C): Experience of Solicitor

Interestingly, and somewhat contradictorily, solicitors in varying types of practice demonstrate a level of suspicion, or mistrust, of the ability of other solicitors to identify beneficial ownership. Suspicions were linked, for example, to the level of personal knowledge the solicitor had of a particular client, or to the expertise of the solicitors themselves, or to the compliance structure within a firm.

In terms of knowing your client, the essence of the CDD exercise discussed in Chapter 2, the difficulties involved with identifying a beneficial owner of a client would be far greater in cases where a client were further detached from the firm, suggests R2. The implication is that there is a greater risk for firms less closely connected with their clients. An example of this might be a conveyancing firm undertaking a high volume of transactions for clients who have never been met, compared with a traditional high street firm in a small village, where a sole practitioner knows clients on a personal in addition to a professional level.

R5 supports the view that smaller firms can more easily stay on top of a transaction and also have a more meaningful understanding of risk than a larger firm with a more detached compliance function, where you may have to "*show that the person who's dealing with the case knows what's going on and knows that they've got to tell the compliance department if*

anything changes, so their compliance department can do their job" rather than being directly involved. This suggests that the compliance function being detached from the client relationship, which usually involves the solicitor, makes meaningful compliance more of a challenge.

Paradoxically, suggests R2, the burden of the AML regime might result in there being fewer high street practices with close client relationships – the "less risky" types – leading to more, larger firms who are inevitably further removed from their clients. In the larger firm, R2 suggests, client identification is harder and, it follows, the possibility of hiding beneficial ownership becomes easier. On the other hand, R9 asks how high street practitioners can be "*expected to be the expert in their area of law and the expert on AML*" in contrast to firms with specialist compliance teams, typically larger or medium sized practices.

Building on this, that there a major divergence in the capacity of different types of firm to devote resources to AML compliance is apparent from this research. R3 suggests that those firms in the middle ground face particular difficulties, with no direct personal knowledge of clients, yet at the same time without dedicated compliance resources and no capacity to provide them, explaining that: "*it does take an awful lot of time out of your day*." R5 raises a further interesting point, that solicitors' experience is coloured by their practice background, which will also influence their actions under the UK AML Framework. He reports that high street solicitors will be familiar with:

> *"the stench of the police station cell … and will think to themselves, I don't want that for me … whereas I'm not so sure commercial lawyers, who have never been inside a police station or prison … would fully understand what it's like. And they don't, won't understand what an absolute bloody lottery a jury trial is."*

This element of "realism" might lead to de-risking or gold-plating rather than, as is sometimes suggested, under-compliance by smaller firms. However, this is always balanced against the alternative reality of the commercial pressure to earn fees, which is potentially greater for smaller than larger firms (R8).

R8 suggested a great variance in the capacity and capability of smaller and larger firms to identify beneficial ownership, commenting that analyst teams in larger firms will consider multiple layers of ownership, including looking at various jurisdictions and structures, but that there are also firms "*at the other extreme*" with very weak compliance systems. He suggests this is because "*it is not something that has crossed their minds*" which is discussed further below in connection with firm culture. A further factor influencing compliance capability links to the number of staff available to actually deal with such matters who are not engaged in other activities, such as fee earning. R7 highlights the difficult balance to be struck between

requiring a solicitor to undertake CDD, including beneficial ownership investigations, with an awareness of the transaction required to assess work adequately and undertaking of onboarding and other tasks by a dedicated compliance team, always against the backdrop of the commercial reality facing firms, where solicitors only earn fees if they are willing to take work on (also R3), while R9, at a much larger national firm, would not start work for a client without satisfactory CDD enquiries being completed.

This seems to suggest that pinning down the ability of a solicitor to identify beneficial ownership is much more complex than it appears at first glance. There is a lack of uniformity across the profession: there are challenges faced by small firms in terms of lack of expertise to identify complex beneficial ownership structures, though this may be mitigated by the likelihood that they are more familiar with their client base; there are challenges faced by large law firms in terms of their exposure to complex transactions and structures and overseas work, which may be mitigated by the additional resources to undertake extended enquiries; there are challenges faced by medium-sized firms who do not know their clients intimately and have neither time nor expertise to devote to understanding transactions to a necessary level.

This is important for several reasons: first, rules and regulations under the UK AML Framework apply equally to solicitors as a homogenous group; second, the penalties attaching to solicitors under the UK AML Framework apply equally to all as a homogenous group; third, the regulator's guidance on AML compliance is issued to legal professionals as a homogenous group. However, uniformity of firm, transaction or client is not evident in practice and the tailoring of the rules, guidance and penalties happens at the individual firm level, depending on analysis of risk, though the risks, as discussed in detail in Chapter 2, are wide-ranging and based on an "all-crimes" approach, which means that exercising judgment is in itself a risky business. Even within firms, the risk appetite of individual solicitors varies, as discussed further under the following heading and in Chapter 9.

8.2.4 Sub-Theme (3D): Options for uncovering beneficial ownership

To comply with beneficial ownership identification obligations, R8 tells us that "*the vast majority of firms get Companies House information and that's it*." Given the concerns about the accuracy of Companies House information discussed at Chapter 3, this is worrying. R7 reports that "*it still doesn't give you, a lot of the time, the information that you want*." A major difficulty is also evident in that solicitors are not permitted to rely on Companies House (R8) under the MLR 2017, while the reality is that a clients may be the next best alternative source of information without undertaking a much wider and more far-reaching assessment of the client, which increases the cost and time burden faced by solicitors.

Moving beyond Companies House and solicitors asking questions directly of their clients, solicitors are now, more frequently, engaging smart searches and using electronic resources to generate further information about their clients, which add a layer of bureaucracy and also add substantially to the cost of undertaking CDD, and the interviewees indeed mentioned several of these options. Discussing the availability of electronic search technology, R3 reveals that the cost of smart searches has almost doubled in the space of approximately two years. While R3 gives the cost of a UK-based smart search as around £2 or £3, an international search may be in the region of £185. But the cost of a lawyer's time must be considered alongside the cost of undertaking smart searches when determining which avenue to pursue. Going beyond formal search packages, R9 extolled the virtues of Google for revealing information that would otherwise remain a mystery, also warning against taking information from clients at face value:

> *"I've seen [KYC][4] packs that are 350 pages" which include details of directors, shareholders and nominees, "but you can still miss things."*

Failing results from extensive searches of all kinds, a solicitor must either take information on trust from a client or determine next steps based on risk appetite. This raises questions about solicitors' ability to identify beneficial ownership using the resources available and also about the usefulness of asking all solicitors to report discrepancies to Companies House in an effort to enhance the accuracy of the register if they themselves are relying heavily on it for information. However, this supports the findings that some solicitors do not have special knowledge and understanding of beneficial ownership. Furthermore, the additional efforts they are required to spend investigating beneficial ownership may be useless, revealing nothing more than what has already been reported and, more than likely, not verified.[5] R7 repeats that companies are supposed to report beneficial ownership discrepancies and this should be enforced, but "*we know that still isn't happening in practice*" which causes problems, as discussed below, with respect to reliance.

R3 suggests that simply asking questions of your client may reveal the answer to beneficial ownership identity, but that, on occasion, the transaction in question is a relatively small matter and is so far removed from the ultimate beneficial owner that information higher up the ownership chain becomes inaccessible. Then a risk-based assessment is necessary regarding whether or not to proceed. R2 stresses that, whatever mechanisms for undertaking searches are in place, "*somebody still needs to make a decision as to whether or not we accept that client and the risk they present or not.*" This requires the exercise of

[4] Know Your Client – information about a client needed to perform CDD in accordance with the MLR 2017.
[5] As discussed in Chapter 2, this is set to change in respect of the UK PSC Register following the implementation of the Economic Crime and Corporate Transparency Bill.

risk-based decision-making, discussed at length in Chapter 2, which can be undertaken on the basis of personal knowledge of a client, or on the basis of due diligence, red flags and individual risk appetite, and is explored further in Chapter 9.

8.2.5 Sub-Theme (3E): Changing Nature of Clients

Some interviewees also suggest that the identity of clients is changing over time, which may also impact the ability of solicitors to identify beneficial ownership or conduct adequate CDD. R3 talks about the challenge of remote working and not physically seeing clients, removing the more traditional personal nature of the lawyer / client relationship. R5 suggests changes in Stamp Duty Land Tax in 2020[6] drove growth in overseas property purchasers; and R7 also identifies a change in the nature of clients, with more complex structures appearing more regularly, including offshore elements, compared to traditional small business structures. This impression is supported by R9, who reports an expansion of high value property transactions and lots more cross-border and cross-jurisdictional instructions. Now, rather than being simple and straightforward, it seems that several deals involve complex structuring, and this applies to a range of different entities: charities; sports associations; and trusts, all requiring different treatment to understand products and producing “grey areas” in terms of compliance and requiring additional time and resource to fulfil obligations.

8.2.6 Sub-Theme (3F): Beneficial Ownership as a part of the CDD Puzzle

There was an overwhelming sense from interviewees that beneficial ownership was a single factor in understanding a transaction and that it was not the only factor nor necessarily the most important. They agreed that several additional factors needed to be taken into account when assessing the risk of a transaction, such as source of funds (R1) and the nature of the transaction as a whole (R5; R6). R1 suggests that, while understanding structure is “*a big part of making your risk assessment*”, there is scepticism that complexity links to criminal activity and money laundering and that emphasising source of funds and wealth would seem more appropriate.

Several participants believed that too much focus was placed on identification of beneficial ownership, with R5 emphasising the value of context of a transaction rather than just the detail of the beneficial owner. Significantly, R6 agreed that beneficial ownership does not stand alone as a risk, though suggested that risk linked to beneficial ownership may be linked to other elements of potential risk.

[6] See Chapter 6 discussion relating to The Impact of Covid-19.

Interview participants, as discussed in Chapter 7, acknowledge that they are well-placed to identify beneficial ownership because of their engagement with clients and transactions,[7] but they do need specialist knowledge, whether that be as a corporate specialist or as an experienced senior solicitor, and they need to take a full picture of the transaction rather than look narrowly at beneficial ownership as an indicator of risk, which is addressed further below. R5 stresses that only after devoting significant effort to understanding a client and the transaction does risk become clear. R6 also advocates a holistic approach and stresses "*you don't jump*" to beneficial ownership, as a risk assessment should be "*all-encompassing*" rather than focused on a single element.

8.2.7 Theme 3 Discussion

This findings under this theme highlight that beneficial ownership cannot be seen as a stand-alone factor denoting criminality or otherwise for a solicitor which would lead them to file a SAR or stop work for a client. Beneficial ownership may or may not be obvious or straightforward to identify. Where it is not, it sits within a wider risk assessment of a whole transaction to assess suspicion. Consistent with previous empirical research into AML compliance, beneficial ownership investigations are found to be complex and challenging, in particular where overseas jurisdictions or complex ownership structures are involved.[8] However, when interviewing solicitors from a variety of practice backgrounds, it became apparent that the wide variety of experiences among practitioners alongside the nature of their work and the resources available to their firms affected the barriers they could face when carrying out their obligations. While capacity to undertake obligations is far from uniform, the law and related guidance are not tailored to account for this or for differing levels of expertise. As a consequence, solicitors must rely on their own risk assessment, experience and contextual knowledge in order to undertake their AML obligations in a manner which is satisfactory within the UK AML Framework.

Within this theme of variable capacity, experience and awareness and a holistic view of a transaction are all required to ask the right questions and take the right decisions to ensure obligations are fulfilled. Knowledge of beneficial ownership is not automatic for solicitors tasked with its identification under the UK AML Framework, and corporate and legal arrangement structures are becoming more frequently complex, involving, for example the overseas elements identified by previous research as more challenging to unpick.[9] Firms

[7] Discussed in Chapter 2 and accepted by interview participants as explained in Chapter 7.
[8] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022) as discussed in Chapter 4.
[9] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022).

may need to rely on "reasonable measures"[10] for verification of beneficial ownership, which may be too opaque to map out thoroughly and definitively, and the Google approach may succeed, or the experienced eyes may fare better in terms of making decisions, but there is little certainty involved, in particular where a client is determined to deceive. As discussed in Chapter 2, solicitors may become liable for a money laundering offence by triggering the low and ill-defined threshold of suspicion in PoCA 2002, therefore there is significant pressure involved in undertaking CDD involving this kind of complexity. The consequence of uncertainty surrounding beneficial ownership identification may be for firms to turn work away if something doesn't feel right, or to follow a self-protective tick-box approach to compliance and document all steps taken to satisfy the regulator at length where a decision is taken to proceed with a transaction, perhaps for commercial reasons.[11]

The following section explores these findings further, looking into professional culture, which also varies among firms and solicitors, and identifying some discomfort among solicitors with their obligations and, in some cases, a layer of resistance which may serve to undermine the operation of the UK AML Framework.

8.3 Theme 4: Culture

The overarching culture of a firm and the way AML obligations are embraced at all levels and across all functions within firms impacts how solicitors respond to their compliance obligations and is therefore included in this chapter regarding capacity. The changing nature of work over time identified in connection with Theme 3 above also affects established ways of working and how solicitors interact with and understand their clients, challenging the traditional role of the solicitor in society. These cultural factors create the environment in which solicitors work and experience the UK AML Framework in practice.

8.3.1 Sub-Theme 4(A): Uncomfortable Compliance

All of the interviewees identified a level of discomfort present among solicitors regarding their role within the UK AML Framework with respect to undertaking client investigations, a key part of the beneficial ownership requirements as set forth in Chapter 2. For many, the questions solicitors are obliged to ask, and the information they are obliged to seek, to meet their obligations sit uncomfortably with the role they play as advisor to their client, though, as noted in Chapter 7, specific worries about confidentiality or legal professional privilege were not mentioned by any participant in this research. Traditionally personal relationships, R9

---

[10]The threshold for identification of beneficial ownership under the MLR 2017 identified in Chapter 2.

[11] See also Harvey, J 'Controlling the flow of money or satisfying the regulators?' in *The Organised Crime Economy: Managing crime markets in Europe* (Wolf Legal, Netherlands 2005) 43.

reminds us that solicitors undertake a role which is quite different to other regulated parties such as banks who monitor transactions, often via sophisticated systems, and solicitors traditionally depend on knowing their clients and transactions rather more intimately. The special relationship, different to that of other regulated parties, is also recognised in the empirical research undertaken by both Kebbell and Helgesson and Moerth discussed in Chapter 4 above.[12]

As solicitor / client relationships are personal, the obligations imposed on solicitors feel more personal in their execution than they may for others within the regulated sector such as banks. By way of example, R6 highlights the challenges associated with filing a SAR in respect of a client, preferring to avoid this at all costs (preferably by refusing a matter at an early stage) than to face the difficulties the situation could throw up. R3 also believes that it is too difficult for solicitors to be in a situation where they may need to submit a SAR because of the solicitor / client relationship, which attracts a huge amount of pressure when it comes to not tipping off the client.[13] This is not to suggest that a SAR would not be filed in appropriate or necessary circumstances, rather that signals that a transaction might turn out to be challenging would inform a risk-based analysis of a client's transaction at a very early stage and may result in the solicitor turning down the work before ever reaching the stage of having enough detailed understanding of a client or transaction to form suspicion for the purposes of PoCA 2002 or make a SAR.

At the outset of a relationship, many solicitors acknowledge that clients do now accept enquiries into their identity, though even where the process is accepted, there can still be difficulties. R3 describes the confusion caused to clients who need to have documents certified for verification and find it hard to follow basic instructions, which leads to time delays and anxiety for clients and cost for firms. R5 also bemoans the cost and effort undertaken to get answers to CDD enquiries, particularly where a transaction is not straightforward. However, it is the digging into more personal, private information that has potential to cause greater upset to clients. Such information would include source of funds, which some clients simply do not think should be their solicitor's business. R3 says in relation to source of funds enquiries:

> *"people find it just intrusive, and you can understand that they do find it intrusive."*

[12] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022). Also, Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.

[13] As noted in Chapter 2, the time period for tipping off under PoCA 2002 has been extended under the Criminal Finances Act 2017 and may persist for up to 186 days.

R2 agrees that clients can be indignant about such matters, suggesting they may react by asking: "*how dare you ask me such a personal intimate question?*" R1 says simply of onboarding CDD that in some cases "*it's not a great start to a relationship*." These findings indicate disruption to the traditional solicitor / client relationship which are not welcomed. Investigations are now undertaken which would not have been necessary in the past, and while solicitors and clients may be accepting, some enquiries, such as those into source of funds, have the potential to cause upset and disrupt the traditional solicitor / client relationship.

In terms of beneficial ownership, further uncomfortable challenges arise when a small transaction takes place at a very low level within a corporate or trust structure and information or documentation is requested about or from persons higher up the chain. R4 reports frustration on behalf of all parties in addition to confusion about what is needed from a person who is far removed from the transaction at hand, and may have no knowledge of it, which R8 feels is not adequately dealt with in either the applicable regulations or the guidance. Where enquiries cross borders, R9 states that compliance may be awkward, culturally challenging and very time consuming.

8.3.2 Sub-Theme 4(B): Traditional Values

Some of the cultural discomfort experienced seems to be connected to the traditional values of firms and their relationships with clients and may attach to "old-school" solicitors more than those not so entrenched in those traditional ways of working. Furthermore, levels of discomfort seem to vary depending on the particular roles individuals undertake within a firm. For those undertaking roles with a greater compliance focus, for example, and perhaps not under pressure to generate client fees, getting the necessary answers to meet compliance obligations seems to outweigh any discomfort of asking difficult questions. On the other hand, for the lawyer with the client relationship, delving into personal relationships and asking for personal financial details can feel intrusive as noted above. This may be the case particularly where the solicitor feels that he / she knows the client sufficiently well, or in the case of "old-school" lawyers (R3; R5) who view AML compliance as more of an administrative task separate to the task of advising the client and the business of fee-earning.

Indeed, R4 indicates a clear difference in attitude between "younger" lawyers, who perhaps find AML compliance more acceptable and "old-school" lawyers, who regard questioning clients as intrusive. "*Some used to find it embarrassing*" to ask clients for their identification, explains R4, though she then stressed that solicitors had become more "*educated*" about requirements over time as processes became normalised. R5 also identifies what he views

as an outdated attitude among some lawyers attached to etiquette from days gone by, which reveres the traditional instinct of solicitors to trust their clients and act on their behalf rather than question their motivation and identities. While this attitude would not suggest that such solicitors were complicit in money laundering for the purposes of PoCA 2002, they may fall foul of the MLR 2017 by not fully appreciating that the solicitor / client relationship has been changed under the UK AML Framework to the extent that they are indeed personally responsible for upholding AML standards – and personally liable if they breach their obligations. Their actions could also lead to unwitting money laundering, or even wilful blindness, on the scale of money laundering enabling discussed in Chapter 4.[14]

R8 agrees that there may be a tendency within firms to trust clients and be reluctant to suspect them of money laundering activities, in particular in relation to clients who solicitors have worked with for years. This view is echoed by R7, who suggests a "*whole turn of culture is needed*" in terms of understanding clients, noting that:

> *"historically, solicitors have always trusted their clients and you always believed what your client told you. You often built long-term relationships with clients … we see that changing now. Clients come and go, they move around, we'll do certain bits for some clients, and not other bits."*

This suggests that the changing, and globalised, nature of legal work impacts on the relationships solicitors have with their clients. The traditional notion of solicitor / client relationships is evolving alongside AML risks and obligations. In order to comply adequately with obligations under the UK AML Framework, ways of dealing with and understanding clients and transactions also need to evolve.

A change in obligations may require a change in culture in terms of how firms treat and understand their clients. Solicitors are now required to ask questions and suspect activities, rather than assume transactions are above board, especially in the case of long-standing clients, where CDD should be updated on a regular basis. As R8 notes, "*it is a chore and it is paperwork, and you're not getting paid for it, but it's part of the job and you need to deal with that*." R6 believes that AML compliance is simply something that needs to be factored into a solicitor's business model, but this is (relatively) new, saying: "*once upon a time, it just never crossed our minds – it's as simple as* that." While this attitude recognises how many solicitors and their firms are adapting to their role within the UK AML Framework, this cultural shift away from traditional values reinforces the findings discussed in Chapter 7 that

[14] Also discussed in Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020).

compliance may in many instances be more forced than willing, though it may become more normal as time goes by.

8.3.3 Sub-Theme 4(C): Commercial Focus

Firm culture affecting capacity to undertake AML obligations is affected not only by values but also by commercial pressures and realities. R7 suggests that equity partners (senior management) absolutely wish to do the right thing regarding their obligations under the UK AML Framework, but that their main focus is business rather than compliance. While R3 emphasises that attitudes are changing over time and with encouragement and education, she confirms that commercial pressures can still get in the way. R4 tells us that "*beneficial ownership enquiries can [tend] to sort of just go into the ether somewhere*" if left to solicitors undertaking fee earning work and need to be picked up by the compliance team. This re-emphasises that the main focus of solicitors remains on fee-earning rather than compliance, which many prefer to leave to a separate function to clear up and ensure compliance obligations are met.

Transactions may be pressured in terms of time, too, and this places an additional burden on solicitors. Firms have to find an efficient way of dealing with this tension between commercial pressure and compliance, says R7, though she acknowledges that this may or may not be what the regulator intends, implying expectations of gold-plated compliance standards from the regulator. Commercial pressure notwithstanding, R6 suggests a pervasive culture of well-trained solicitors who know what they are looking for can meet compliance needs alongside their day job, though at the same time he acknowledges that there can be some resistance and that "*people are busy*." R9 believes that the key to successful compliance is cultural, with the most important factor being people, backed up by processes, and suggests that this is best achieved by "*tone from the top*." Nevertheless, R9 notes that it is easy for AML compliance to play second fiddle or be delegated to support staff because of commercial "*pressure on junior lawyers to perform.*" By way of example, R9 goes on to say:

> *"If you know that you have to record a minimum of 8 hours of chargeable time today, and you can't record chargeable time for completing CDD, that's going to be very low down your list of priorities."*

Despite the commercial pressures, R4 believes that AML compliance:

> *"is just a process, though, isn't it? It's just a process and provided everybody goes through the process then everything should be in its place … and where everyone can find it."*

The same interviewee provides an insightful example of detection of cyber-crime by a PA at the firm, which she likens to AML compliance, saying:

> *"luckily because everybody is so aware and we do cyber security courses, you know, breakfast, lunch and dinner … everybody was very aware."*

With that in mind, the following section explores the training culture within firms with respect to the UK AML Framework and its impact on firm culture.

8.3.4 Sub-Theme 4(D): Training

Several interviewees highlight the special knowledge and skills required to adequately understand beneficial ownership structures discussed as part of Theme 3 above. There were interesting views about whether solicitors had the knowledge and skills required to understand beneficial ownership structures depending on their background and experience, and capacity to undertake obligations has been found to be variable for a number of reasons. In the context of the expansion of the AML regime and related compliance obligations which did not formerly concern solicitors, R6 acknowledges that "*the awareness that we're expected to have has increased as well*." Where there was a compliance team, it was felt there was adequate training and knowledge within that team to undertake the necessary investigations (subject to particularly complex cases and cases where information could not be found). In one firm, R1 explained that the more complex matters were investigated by the corporate team on behalf of other departments, given the knowledge and understanding required of business types and structures.

However, more than one interviewee highlighted a significant weakness in solicitor training in relation to AML compliance. In the largest firm with the most sophisticated compliance team, R9 estimated that even basic training would take 12 to 18 months to complete. While newly-qualified solicitors were seen to have been adequately trained in terms of reporting (which would avoid individual and firm sanctions under the MLR 2017 and PoCA 2002) they were seen to be far less well aware of how to understand a complex beneficial ownership structure.

R7 identified different levels understanding of obligations under the UK AML Framework across the firm, which makes compliance tricky. For example, some solicitors have the experience to know what to ask, whereas others will need to approach a client more than once for further information if they have not asked the right questions the first time round. R7 says, "*I think if we had a team that knew exactly what questions to ask, it would be a lot easier*." This chimes with the view of R6, who believes that experience is needed in order to understand trickier transactions. R6 also commented that people start to ask questions at the initial investigation stage "*if you've trained them sufficiently*" and stresses that "*it's all*

based on training." While R5 acknowledges that some new solicitors and trainees have some understanding of AML issues from their training, he suggests that solicitors should be trained "*so that when they come into the office, they understand*" compared to undertaking a tick-box exercise, to ensure that new solicitors are immersed in the necessary way of thinking so they are able to spot suspicious transactions and have a practical and contextual awareness of a client and a transaction. How far this level of knowledge can be achieved outside of the workplace is doubtful, and, as set forth in Chapter 5, the current training regime does not mandate on-the-job training within the regulated sector.

Conversely, R2, a former sole practitioner, commented that being able to identify beneficial ownership hinged absolutely upon knowing your client, and that the best way to know your client was to actually know them personally. He suggests that this becomes more and more difficult the larger the transaction and the greater the distance between solicitor and client, believing that if a client is determined, they can obscure their identity, even getting around software designed to raise red flags. In a world where fewer and fewer clients are known personally to their solicitors, further knowledge and training may be key to providing the awareness solicitors need to undertake their obligations with respect to beneficial ownership under the UK AML Framework in the necessary manner.

8.3.5 Theme 4 Discussion

Each of the interviewees in this study indicated that firms had developed compliance policies which largely aimed at asking questions and keeping records and satisfying any SRA investigations.[15] But each practice is managed in a different way, and the engagement of solicitors with the firm's compliance function also varies culturally from firm to firm. In many instances, it appears that solicitors' main focus is – understandably – on the commercial transaction itself rather than on compliance, and, for some, traditional working practices mean that there is still significant discomfort with asking clients for information necessary to fulfil compliance obligations. In line with previous research, these findings show that the relationship between solicitors and clients is vastly different to the relationship between clients and others within the regulated sector, such as banks.[16] Knowledge and understanding of clients and transactions is more personal, and investigations are therefore more sensitive. This also suggests that a deeper level of personal involvement, and more experienced personnel, are required to conduct the investigations needed to fulfil compliance obligations in relation to uncovering beneficial ownership under the UK AML

---

[15] As noted in Chapter 7, compliance is more about self-protection than a meaningful effort to prevent and forestall money laundering.

[16] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.

Framework, which may also be particularly time consuming. Interviewees suggested that a high level of training and knowledge, not always available to new solicitors, is needed to undertake obligations adequately, though it is acknowledged that "newer" solicitors, not so entrenched in old-school ways of working, may be more open to conducting client investigations and asking more personal questions, thereby overcoming traditional cultural barriers facing some firms and solicitors.

Beyond the cultural nuances of the solicitors' profession, and the rapidly changing nature of client relationships leaving some lawyers struggling to catch up, a further, and potentially more significant, compliance barrier was the disillusionment with the functioning of the UK AML Framework, which contributes to disengagement with compliance efforts and may undermine the capacity of solicitors to fulfil their obligations.

8.4 Theme 5: Disillusionment

A clear theme present across the interviews was a sense of disillusionment with aspects of the UK AML Framework as it relates to solicitors when it comes to identifying beneficial ownership. There is disillusionment with the system as a whole; there is disillusionment borne out of unsupportive interactions with the SRA; there is disillusionment when the SAR system fails; there is disillusionment when the rules keep changing; there is disillusionment when the role is unrewarded and solicitors are vilified for AML failings; there is disillusionment when beneficial ownership data is difficult to obtain. In addition to these frustrations, general disillusionment seems to arise because of the time and energy required to be devoted to compliance with obligations under the UK AML Framework, which R3 suggests is exacerbated for solicitors, who are in a profession which pays minute attention to the details of the law and to compliance obligations.[17]

8.4.1 Sub-Theme 5(A): Underappreciated Burden

Interviewees conveyed a sense that the burden on solicitors is simply too high and saps other valuable firm resources. While the SRA does now permit a firm to charge for the time it takes to undertake CDD, for example, this does not appear to be a step that firms are embracing. This could increase substantially the cost of delivering a particular piece of work, in particular in the case of a complex investigation, and is seen as falling outside of the commercially-acceptable remit of client fees. Indeed, several interviewees indicated that

[17] This is similar to Kebbell's suggestion of over-compliance by solicitors in relation to obligations – going beyond what is really intended by the UK AML Framework in order to ensure absolute compliance with obligations.

there was a significant cost burden to compliance, and R9 told us that there was no way this kind of work could be charged to a client.

R5 describes how transactions are often not clean and simple and how solicitors exercise judgment and do their part properly, but they "*are not the police*" – a sentiment echoed by others (R1; R3). R5 illustrates this frustration with an example of an overseas client whose transaction required additional enquiry involving translation of CDD documentation – all additional time and cost which is not compensated and therefore eats into business profit margins. Highlighting the burden felt, R7 says:

> *"… the regulations have become so complex that your general day-to-day lawyers don't have the capacity to take all that knowledge in, alongside everything else they've got to know in their specialism areas."*

This indicates a barrier not only in relation to being able to identify beneficial ownership but also connected with what the most up to date UK AML Framework mandates.

A number of interviewees also indicated that they were frustrated with the system which they felt like they complied with in minute detail while estate agents and banks were much more likely to have relevant information about the clients, yet somehow came under less pressure regarding AML compliance (R2; R5). R7 also shared this frustration, saying:

> *"the banks seem to get away with it … there's so many examples of banks allowing money laundering to happen, and I think, as a profession we've historically felt that we can trust finance companies and banks and FCA-regulated structures because they'll be doing the same checks as us. But if they're not doing their checks properly, then that filters through to our profession."*

This is significant, as it suggests that high profile examples of non-compliance on behalf of the banks undermine the motivation of solicitors to comply with the regime and enhances general disillusionment within the profession, as do interactions with estate agents displaying weak compliance, such as by not making any attempt to meet with clients, even online, in order to conduct CDD (R5).

Given the significant cost and time burden involved in compliance, the undercurrent of it being pointless or a waste of time (beyond satisfying the regulator) is concerning. Interviewees certainly did not seem to feel a "*sense of impunity*" about enforcement.[18] On the contrary, they were generally extremely conscious of not falling foul of SRA regulation as seen in Chapter 7.

[18] Heathershaw, J, Cooley, A, Mayne, T, Michel, C, Prelec, T, Sharman, J and Soares de Oiveira, R, 'The UK's kleptocracy problem: How servicing post-Soviet elites weakens the rule of law' (Chatham House, London December 2021) p 35, as discussed at Chapter 4.

8.4.2 Sub-Theme 5(B): Knowledge and System Limitations

Solicitors identify limitations in what they can possibly know about beneficial ownership, or find out with confidence, as discussed in greater detail in relation to Theme 3 above, but also with the way AML systems interact with the legal profession. R3 highlights a case where the firm attempted to comply with the letter of the law by raising a SAR to the NCA after suspicious red flags were raised in the course of conducting CDD. On being unable to provide further information about the criminality of the funds to aid the NCA, R3 was told that the NCA could pursue the matter no further. R3 expresses great frustration: "*From my point of view, I think, what is the point?*"

R9 also reports that the SARs system is not fit for purpose in that it is not aligned properly to the work of a solicitor. NCA forms are generic across the regulated sector, though have been drafted to align with the work of a bank (the source of well over 90% of SARs[19]). There are consequently parts of the form that solicitors cannot complete, because they do not monitor transactions in the same way as banks. The information that can be provided from within the legal sector is therefore felt to be less useful and efforts therefore unappreciated and worthless. R5 also gave examples of work which had been turned down because of uncertainty, but reiterated that a SAR could not be filed because it was not possible to know whether funds constituted criminal property – the feeling of unease would not be enough to form a suspicion adequate to form the basis of a report. In this way, the MLR 2017 is not tailored to solicitors who may have suspicions but have no adequate means of reporting them if they do not meet the NCA's information threshold.

While the NCA may be highly interested in significant sums of money or extremely high-profile or high-risk transactions, lower-value and lower-risk transactions may be reported by solicitors, by the nature of their client interactions, for example where a transaction uses the proceeds of crime resulting from a small amount of unpaid tax, perhaps Kebbell's "technical" rather than a "real" breach.[20] However, from a regulatory perspective, these transactions are still captured by the "all crimes" underpinning of the regime in the UK, which does not distinguish between transactions based on value or seriousness of crime. This may result in solicitors feeling unsupported and unsure and vulnerable while being bound to report and risk-assess for fear of SRA reprisals.

[19] See the United Kingdom Financial Intelligence Unit 'Suspicious Activity Reports Annual Report 2022' <https://nationalcrimeagency.gov.uk/who-we-are/publications/632-2022-sars-annual-report-1/file> accessed 5 July 2023.

[20] Discussed in Chapter 2 and Chapter 4.

The problem here is that if solicitors are being asked to do more than they reasonably can, and if the systems they are working within receive a negative response, the energy and effort poured into internal systems are undermined and feel rather hopeless. This adds to the sense that the regime is nothing more than a tick-box exercise which doesn't use information gathered by solicitors to effect.

8.4.3 Sub-Theme 5(C): Policy Contradictions

A further source of disillusionment and disengagement with the system was identified around a perceived conflict between AML and other government policies. For example, where policy enables investment in the UK from overseas, or the use of complex trust structures, this may seem to conflict with obligation placed up on solicitors and others to uncover dirty money by conducting beneficial ownership investigations and meeting reporting obligations under the UK AML Framework. For this reason, some solicitors may feel unfairly burdened with the responsibility of AML compliance against the broader context of other policies which seem to encourage conflicting activities. This feeds into the sense of dissatisfaction and indignation that solicitors can be fined for not stopping something that there are other means of preventing. R7 questions whether the complexity of corporate structures should be limited to enhance transparency rather than asking the regulated sector to uncover beneficial ownership. R5 offered a number of suggestions for policy changes to relieve the burden felt by solicitors in relation to conveyancing, for example: by preventing overseas clients from investing in UK property; by establishing a de minimis transaction level; or by requiring property to be purchased by a natural persons only.

8.4.4 Sub-Theme 5(D): Public Sector Resourcing

The operation of the Companies House registry was a key frustration identified by this research. R8 calls for additional resourcing of Companies House to enable verification at the point of registration by undertaking identity checks, which, he suggests, would be preferable to relying on solicitors doing it (see further below), a suggestion supported by R9. Indeed, steps have now been taken in this direction by the UK government under the forthcoming Economic Crime and Corporate Transparency Bill mentioned in Chapter 2.

While many interviewees felt that they could access relevant information, several felt enormous frustration that they could not rely on what they found, with R8 asking how a solicitor can know whether or not to trust Companies House information. Others were frustrated that policy-makers seemed to be relying on the private sector to uncover beneficial ownership, both by reporting discrepancies and undertaking CDD, whereas the government should be focused on ensuring transparency at the registry to support private sector

investigations. The sense of frustration at having to carry out enquiries without inadequate information and with the threat of a hefty penalty in the background certainly seems to feed disillusionment and dissatisfaction with the system as it currently stands.

The new discrepancy-reporting within the UK AML Framework designed to improve information to enhance transparency of beneficial ownership, as discussed at Chapters 2 and 3, is still in its infancy, and falls to the private sector. However, no solicitor interviewed had reported any discrepancies to the registry, R7 saying it is still a "*bit of a grey area.*" Part of this problem may lie in the nature of the register, which was originally designed as an information repository, so may not necessarily be out of date or incorrect for any sinister reason. Working with clients, the legal profession may feel it more sensible and constructive to ensure the register be corrected rather than make a discrepancy report as envisaged by the latest MLR 2017. Indeed, steps towards achieving this aim have been made since these interviews were conducted: as discussed in Chapter 2, it is now clear from the MLR 2017 and the LSAG Guidance that discrepancy reporting is necessary only where the discrepancy is material and may reasonably be linked to money laundering or terrorist financing, or which may conceal details of the business of the customer.[21]

8.4.5 Sub-Theme 5(E): Impossible Expectations

A recurrent theme in the interviews which feeds into disillusionment is the expectation that solicitors can spot things they really do not have knowledge of, discussed in Chapter 3 and as part of Theme 3. Compounding this frustration is the scant or unwieldy availability of information to solicitors to undertake their compliance obligations. One interviewee (R7) suggests that it would be helpful to have all of the information needed to undertake CDD enquiries in one place, rather than having to consult separate sources for data regarding PEPs, beneficial owners, sanctions and high-risk countries.

To ease this burden, many firms are relying on various electronic search software, as noted in relation to Theme 3 above, and are buying in systems to support their onboarding efforts. Part of this is to make systems more efficient; part of this is to feel more confident that CDD is undertaken in a satisfactory manner; part of this is to pick up on the details of PEPs and other sanctioned parties, given the changing details and lists that are additionally burdensome for firms to stay on top of.

However, despite the availability of this technology, several interviewees remain concerned about reliance. R8 suggests that firms seeking to comply well with their obligations under the UK AML Framework are concerned to go beyond Companies House checking and rely

[21] MLR 2017 sch 3AZA and MLR 2017 reg 30A(2).

on electronic software, in particular in an effort to identify PEPs and sanctions, but options are limited, with slim likelihood that a solicitor (other than a formation agent) would elicit different information from a client than that already visible at Companies House. With respect to software itself, it is seen as a time-saving measure (though expensive) and interviewees were keen to use software where possible to help them conduct CDD exercises, though R6 emphasises that any kind of electronic verification "*doesn't get you off the hook, it just streamlines things*."

8.4.6 Theme 5 Discussion

There are several grounds for frustration and disillusionment with the UK AML Framework in its current form, from feelings that costly and time-consuming efforts are undervalued and unsupported, while conflicting policies exacerbate compliance challenges. The perception of troublesome requirements and a lack of reward feed the sense that the UK AML Framework imposes an excessive burden and that the efforts of solicitors are hopeless. This leaves solicitors feeling demotivated and even vilified for weaknesses within the profession (R9).

The potential consequence of disillusionment is that solicitors do not make the contribution they acknowledge they may be well-placed to make to the AML regime from the front line of engagement with potential money launderers. Rather than engage meaningfully with the AML regime, disillusionment may drive tick-box compliance to avoid regulatory sanction and undermine the operation of the UK AML Framework as a whole.

8.5 Conclusion

The findings set forth in this Chapter 8 support previous research that beneficial ownership identification can be complex and challenging for solicitors fulfilling their obligations under the UK AML Framework. The extensive enquiries necessary to meet obligations in complex cases, which often include overseas jurisdictions or complicated structures add to the well-documented cost and time burden of AML compliance discussed in Chapter 2. In addition, intricacy and uncertainty are likely to make the decision-making process to be undertaken by solicitors on the front line of AML compliance more challenging. As explained in Chapter 2, a solicitor has to determine whether a matter is suspicious for the purposes of laundering offences under PoCA 2002, and an inability to understand a beneficial ownership structure may give cause for suspicion, or require further investigation to alleviate any suspicions, before a transaction can proceed. Operational challenges in this regard are discussed further at Chapter 9.

Beneficial ownership transparency is an area of the UK AML Framework subject to high expectations and scrutiny as discussed at Chapters 2 and 3, and solicitors are seen as

parties who have the capacity not only to identify and verify beneficial ownership but also to report any material discrepancies they find on public beneficial ownership registers. This research finds that the capacity of solicitors to undertake their obligations in the manner intended under the UK AML Framework is variable, impacted in particular by the knowledge and experience of individuals. Helpful knowledge and experience may be gained as the result of years of practice, particular exposure to relevant practice areas (such as corporate work), or the result of intensive practical and contextual training. The research of Helgesson and Moerth finds that solicitors often rely on experience and gut feelings about a transaction or client as a whole when exercising their discretion under the AML regime,[22] therefore it seems crucial that solicitors have the necessary knowledge and experience to undertake their obligations in a meaningful way. However, this research finds, supporting what we know from the discussion in Chapter 5, that not all solicitors do have the necessary exposure, either from their education and training, or from on the job training, upon qualification, to understand complex beneficial ownership issues, as gaining this knowledge is not a prescribed part of solicitors' education.

Features particular to solicitors also affect the capacity of solicitors to undertake their obligations with respect to beneficial ownership under the UK AML Framework. Although no solicitor raised concerns about legal professional privilege or client confidentiality, as discussed in relation to Theme 1, there is discomfort arising out of the close relationship a solicitor has with clients when asking intimate questions, in particular regarding source of funds, and this discomfort is felt more acutely amongst solicitors compared to compliance officers and "old-school" solicitors rather than those who are not as wedded to more traditional ways of working, which would involve trusting clients and not enquiring beyond necessary into the client's business. Given the findings of earlier research into how solicitors enable money laundering discussed in Chapter 4, this suggests that some solicitors may continue to be unwitting, or even wilfully blind, in their actions. This may be a particular challenge where client relationships continue to change, with transactions involving ever more complex structures and fewer clients well known to their advisers.

Finally, in complying with obligations relating to beneficial ownership under the UK AML Framework, solicitors express disillusionment borne out of the significant challenges they face. The compliance workload is expanded; the level of reward is low; the risk of breaching obligations is exacerbated; the sources available to help undertake obligations are not streamlined or necessarily easy to use or reliable. Negative feelings towards obligations

[22] Helgesson, KS & Moerth, U, 'Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention' (2018) 69 CLSC 227.

may reduce the capacity of solicitors to comply in a meaningful way with their obligations, and they may do "just enough" to comply whilst focusing their attentions more closely on commercial pressures, consistent with the research of Helgesson and Moerth discussed at Chapter 4.[23] This finding also aligns with existing research which tells us that a perception of unfairness amongst compliance officers in banks undermine the operation of the AML regime as a whole.[24]

Supplementing these findings relating to capacity, Chapter 9 examines in greater detail particular operational challenges facing solicitors seeking to comply with their obligations relating to beneficial ownership under the UK AML Framework, including in terms of exercising the risk-based approach to decision-making, a lack of support from the SRA, and changing and complex AML guidance.

[23] Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216.
[24] Bello, AU, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016).

Chapter 9: Operational Barriers to Compliance

9.1 Introduction

The final themes identified by this research consider particular operational barriers to compliance which arise in connection with: the risk-based approach (Theme 6); the actions of, and relationship of solicitors with, the regulator (Theme 7); and the complex and changing rules and guidance available to solicitors (Theme 8). These themes are set out in Diagram 13 below.

Diagram 13: Operation – Themes 6, 7 and 8 (source: author)

These operational barriers capture challenges and frustrations facing solicitors with respect to compliance with the UK AML Framework, and their identification helps to address each of research questions 1, 2 and 3. First, evidence from interviewees involved in compliance by solicitors from a diverse range of backgrounds enhances knowledge, not captured by previous research in this field, about operational difficulties faced on the ground across the profession. Second, the greater knowledge regarding these challenges supports the discussion in Chapter 10 relating to the operation of the UK AML Framework as a whole with respect to the identification of beneficial ownership. Finally, the deeper understanding of

particular operational challenges, together with the findings discussed in Chapter 8 regarding solicitors' capacity to identify beneficial ownership and the themes relating to solicitors' attitude towards the UK AML Framework as a whole discussed in Chapter 7, inform the contribution to practice made by this research in the form of recommendations presented in Chapter 10.

9.2 Theme 6: Problems Inherent in the Risk Based Approach

The risk-based approach underpinning the UK AML Framework discussed in detail in Chapter 2 places decision-making firmly in the hands of those on the front line within the regulated sector.[1] While this undoubtedly provides for flexible decision-making, enabling solicitors to adapt and respond to a range of day-to-day issues, it also leads to variable application of the AML regime and compliance standards, as they are affected by the risk appetites of individual firms and solicitors facing unclear boundaries. R9 explains that it may also encourage solicitors to go above and beyond, or gold-plate, their approach to decision-making to ensure they do not fall short of regulatory expectations. This is an extension of the findings explored at Theme 2 regarding the motivation for compliance by those on the front line.

9.2.1 Sub-Theme 6(A): Risk Appetite

There is widespread agreement across interviewees that risk appetite varies across firms and individuals and for a variety of reasons – R8 says simply that "*everyone is different*" while R2 puts risk appetite down more pragmatically to the size of the firm and availability of insurance. Also pragmatic, R5 believes that the stakes for small to medium sized firms are too high to take risks, suggesting larger firms can factor a fine into their cost of doing business, an approach unavailable to many within the sector.

For R7, every individual has a different attitude to risk, and she felt that this can be affected by where an individual sits within the organisation of the firm: fee-earning equity partners, she suggests, are more commercially-focused, whereas a compliance team member faces the conflicting priority of "*following regulations and making sure everyone has covered themselves.*" Balancing the tension between commercial pressures and compliance can be difficult in these circumstances, and R7 suggests that the risk-based approach itself is risky on the basis that individual risk appetites vary enormously. R5 goes so far as to acknowledge that work may be lost by smaller firms to larger firms with more established

[1] Tsingou, E, 'New governors on the block: the rise of anti-money laundering professionals' (2018) 68 CLSC 191 and Gelemerova, L 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33.

compliance departments and with a greater risk appetite. In this way, one firm's risk may be another firm's commercial opportunity.

9.2.2 Sub-Theme 6(B): Awareness and Experience

Not only are the role and position of the decision-maker within a firm significant, but the awareness and experience of the decision-maker is also influential. This concept was explored in relation to capacity to undertake obligations as part of Theme 3 in Chapter 8 and is highly relevant to this discussion, too. R8 suggests risk-based decision making is more about "*thinking*" than ticking boxes. For R6, it is ongoing awareness and alertness that is required to see the big picture, with experience a key factor in being able to make risk-based assessments, saying:

> *"It's a judgement call, but it isn't always a tick-box exercise."*

This is important, highlighting that reducing the risk-based approach to ticking boxes could mean losing sight of the bigger transactional and client picture, or that making a judgement based on ticking boxes alone could lead to the wrong decision. R2 also refers to the "*judgement call*" which invariably must be made by an individual on the front line, regardless of the size of the firm or the sophistication of any software or systems, and R6 goes on to stress that "*there is never a right answer*."

A further flaw identified with regard to the risk-based approach, also raised in relation to Theme 3 above and in Chapter 4, was that it required a solicitor to undertake CDD on the basis of a risk assessment. R1 and R6 both stressed that assessing risk involves consideration of a range of factors, including beneficial ownership, which can make this a burdensome process. R5 questioned the requirement of risk-assessing before conducting CDD as unrealistic, given that some information is required about a client before a risk assessment can be undertaken, given that myriad factors, including beneficial ownership structure, may affect whether a client or transaction is, in fact, judged to be high or low risk. As a consequence, it is difficult to see how the CDD process may be in any way straightforward or assisted by the risk-based approach. On the contrary, the risk-based approach means that extensive engagement with each and every client is required for even an experienced solicitor to understand and assess risk in an adequate and compliant manner.

9.2.3 Sub-Theme 6(C): "Reasonable Measures" and Getting it Wrong

Uncertainty surrounding the risk-based approach is burdensome in that it requires in-depth analysis of clients and transactions, and it is fraught with difficulty for the regulated sector, who may, given that there is never a "right" answer, come to the "wrong" conclusion from a

regulatory perspective. The "*reasonable measures*" threshold offered by the MLR 2017, as set out in Chapter 2, fails to satisfy many of the participants, as reliance on this inevitably means there is something which cannot be found out, which in itself may give rise to suspicion, also discussed in Chapter 2 in relation to PoCA 2002. R5 prefers to treat everything in his field which falls outside of a "*normal*" transaction as high risk, even where the value of the transaction is low, which is hugely burdensome. R3's view that boundaries are "*woolly*" enhances the feeling of unease when you have to make a decision but don't know what the regulator's own view, or the view of law enforcement, might be. Others are more sanguine about the process and the necessity to take a view (R1; R6) but nevertheless acknowledge the opportunity for getting it wrong.

Several interviewees (R8; R3; R6; R9) felt that knowing the right thing to do from a regulatory perspective is not always clear to them. While most interviewees do not advocate a tick-box approach, which would undermine the flexibility afforded by the risk-based approach, most would welcome clearer guidance as to what is enough to meet obligations and when to stop enquiries. R5 shared anecdotal evidence of lawyers who treat everything as high risk to eliminate potential failure, despite the likelihood of "*99.9%*" will be ordinary people undertaking ordinary, non-suspicious transactions.

R3 acknowledges she would find ticking boxes a preferable way of knowing if regulatory expectations had been met, given that the regulator is ultimately responsible for sanctions where decision-making is deemed after the event to have been "wrong". Alongside R5, R3 had a clear lack of faith in the risk-based approach in terms of outcome and consequences for solicitors involved in a regulatory investigation by the SRA who might determine a different approach should have been taken. While suggesting that a degree of discretion must be retained, R9 suggests that a complete lack of prescription within the current system means that "*you don't know what the regulators are expecting you do to*," delegating almost all decision-making to the solicitors and firms on the front line. The risk-based approach is particularly unhelpful in the context of beneficial ownership investigations. R8 says many solicitors are uncertain about how many layers they are supposed to uncover in order to meet their obligations. This regulatory uncertainty, it is suggested, also creates a significant degree of variance in the approaches of firms and individual practitioners in terms of interpreting their obligations on the ground.

According to the blunt assessment of R5, the risk-based approach does not work because risk-based decision-making can still lead to a regulatory breach, where the consequences are a fine or imprisonment. He states that no solicitor can afford to rely on the risk-based approach given the severity of outcome for failure. R5 suggests that, far from being a risk-

based approach, solicitors face the reality of a "*100%-guarantee-that-there's-nothing-wrong approach*" and are heavily sanctioned where the decision they have taken turns out to be "wrong" from a regulatory or law enforcement perspective when they scrutinise the on the ground decision with the benefit of hindsight. Such views display a lack of confidence in the risk-based approach on behalf of solicitors and a lack of trust in law enforcement and the SRA, to whom solicitors may not be able to justify difficult decisions where it turns out their risk assessment of a matter turned out to be "wrong."

As discussed in Chapter 2, the UK's "all crimes" AML regime is vast and captures crimes ranging from human trafficking and corruption to technical breaches of regulation. R5 bemoans the uniformity of application of the UK AML Framework across all work regardless of value or location. He suggests, for example, that there should be more of a distinction made under the UK AML Framework between a small residential conveyancing transaction in the UK regions compared to a high value property purchase in the South East. As a consequence of this lack of tailoring within the UK AML Framework, R3, R5 and R8 suggest that solicitors feel broadly exposed to sanction where the regulator may not agree with their risk-based interpretation of a client or transaction. Some interviewees suggested that specified transactions, based on value, location or other criteria, could fall outside of the regulated arena, and R5 suggested specifically that "*ordinary transactions*" such as UK-based conveyancing with a 10% deposit and a 90% mortgage, or those falling below a value threshold value, could be exempted, to relieve the pressure on the regulated sector.

9.2.4 Theme 6 Discussion

Decision-making on a risk-based approach is perceived to be tricky, burdensome and uncertain. Solicitors face difficult decisions on a day-to-day basis, balancing commercial realities and pressures with reputational considerations and compliance obligations. There is a lack of certainty about the regulator's approach to risk-based decision-making, and the findings of this Theme 6 indicate that there is significant discomfort within the solicitors' profession about what the actions of the regulator might be in cases where they determine that a different risk-based decision should have been taken. This creates a feeling or wariness and mistrust of the regulator, which is seen as a threat rather than a source of support. The woolly boundaries of the risk-based approach mean that every decision is a judgement call made by individuals with varying risk appetites, more or less experience, and each time facing a different set of commercial circumstances. In these ways, the risk-based approach is found to be operationally challenging. As noted in Chapters 2 and 5, a high level of regulatory uncertainty lends itself to resolution by clear guidance and support. Regulatory support (or a lack thereof) is considered under Theme 7 below; and the guidance

and support of solicitors complying with obligations relating to beneficial ownership identification under the UK AML Framework is captured at Theme 8.

9.3 Theme 7: Lack of Regulatory Support

In connection with exercising the risk-based approach, several interviewees referred to compliance angst or a fear of regulatory sanction. While this may seem positive in terms of driving compliance – and indeed one interviewee (R7) wondered whether additional sanctions might serve to focus the minds of solicitors whose priorities lay elsewhere– it also means that the relationship between regulator and the regulated party is one of fear rather than support. Indeed, R8 reported that many solicitors view the SRA as a body to avoid rather than as a resource. For R1, driving compliance is at the "*top of the regulator's agenda at the moment*" which leads to significant regulatory pressure upon individual solicitors and firms.

9.3.1 Sub-Theme 7(A): Lack of Support

Feeding the uneasy relationship between solicitors and their regulatory body discussed in relation to Theme 2 in Chapter 7, this research finds evidence that solicitors have found that neither the SRA, as solicitors' regulator, nor the Law Society, as solicitors' representative, is able or willing to help the profession with its compliance obligations under the UK AML Framework. R5, discussing a query relating to source of funds and bank statements, complained that:

> *"I rang the Law Society, and I still haven't heard back from them on this."*

R7 describes another instance of contacting the regulator for advice and being directed towards the Law Society's Anti-Money Laundering Steering Group (LSAMLSG). After contacting five individuals from a list of suggested contacts, she concluded there was no help available, as no member of the LSAMLSG returned either her calls or her emails. With great disappointment, R7 recounted how she would contact the regulator for guidance and support and be met with a response telling her to use her discretion on a risk-based approach. R7 also recalled that the Law Society used to be a great help of support:

> *"just to talk through things, sometimes just clarified what I was thinking in my mind and help me on the right track."*

However, this has now changed, says R7:

> *"I find now if you try and call them, they caveat everything. Everything they say, they just go back to a risk-based assessment but don't really give you any guidance."*

In terms of timing, R7 suggests that this frustrating change in attitude took place in around 2017. The timing here is interesting: this follows the findings of weaknesses in AML supervision in the UK in the National Risk Assessment of 2015 and subsequent establishment of OPBAS to oversee professional body regulators, as discussed earlier in Chapter 5. Effectively, the lack of regulatory support ensures the burden remains firmly with the solicitor who has sought help, fuelling a sense that solicitors are not adequately supported in undertaking their obligations under the UK AML Framework.

While the regulatory response now appears to focus solely on executing the risk-based approach, this differs enormously from the earlier regulatory approach where the discussion, according to R7, would "*actually come down to the reality of money laundering happening in that transaction*." Some interviewees (R1; R6) suggest that sight can easily be lost of the reality of a transaction, which seems to undermine the regulatory risk-based approach. On the other hand, taking a technical approach, as Kebbell suggests solicitors might,[2] with the thresholds of suspicion within the PoCA 2002 low and ill-defined and definitions of criminal proceeds so wide, discussed in detail in Chapter 2, the possibilities for committing a money laundering offence remain vast. Rather despairingly, R8 suggests that the boundaries are no more clear to the regulators than to solicitors because of opaque regulations, therefore the regulator is unwilling to give a view about what is or is not sufficient to meet regulatory obligations.

9.3.2 Sub-Theme 7(C): Lack of Regulatory Expertise and Understanding

R5 reports that any training courses provided by the SRA or Law Society have the effect of terrifying solicitors into compliance, but at the same time offer no practical day-to-day guidance. R8 believes that FATF, the standard-setter, and the regulator, the enforcer, are not at the coal face, so they:

> *"don't really have the experience of knowing what firms can and can't do and whether what they're asking you to do really makes sense."*

R8 also notes that it "*doesn't do [the SRA] any credit*" if they gold-plate obligations and make things more difficult for the profession, elevating standards beyond those set within the UK AML Framework. R9 gives weight to the view that the SRA itself is lacking the necessary knowledge and experience to support solicitors struggling to meet their obligations, describing an SRA regulatory inspection which involved a detailed consideration of AML records following which the SRA offered no comments at all in relation to beneficial

[2] Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022).

ownership documentation in a complex chain. R9 casts doubt upon the knowledge and capacity of the SRA in this area, which she says may be missing entirely.

In terms of alternative sources of support, one participant believed collaboration among solicitors and sharing experiences might serve to assist with some decision-making, but that it was an unrealistic goal, particularly in smaller markets, where confidential clients and transactions could be easily identified and in the face of a competitive legal market. Several interviewees referred to third party support in the form of private compliance advisers, who they recommend highly as having a thorough awareness of relevant issues and giving good, clear advice.

R8 suggests that the additional regulatory scrutiny and pressure experienced in recent years derives from the oversight of the SRA by OPBAS. The raises interesting questions about whether OPBAS is effective as part of the regulatory structure or whether it is diminishing the ability of the SRA to act as adviser rather than enforcer in relation to AML, which may ultimately undermine the operation of the UK AML Framework if solicitors remain unsupported in their efforts to comply with unwieldy and uncertain regulation. The success of OPBAS remains under debate, as discussed at Chapter 5, and it remains to be seen what regulatory model will be pursued as a consequence of the current review of regulatory structure. However, the effect of OPBAS is to impose a further layer of rules and obligations with which the SRA must comply. While this is intended to eliminate discrepancies between professional body regulators and close loopholes in the AML system, it may have the effect of focusing the regulatory spotlight on enforcement, causing the regulator to be viewed from within the profession rather with suspicion and fear than as a useful and supportive resource.

9.3.3 Theme 7 Discussion

The lack of regulatory support is a huge source of frustration and presents operational challenges to front-line actors within solicitors' firms on a day-to-day basis. The findings of Theme 1, discussed in Chapter 7, indicated that efforts among solicitors to comply with their AML obligations were high, if causing an unwelcome burden. Where compliant solicitors work hard to meet their obligations, but stumble across uncertainty in the form of risk-based decision-making and a lack of clarity in undertaking complex obligations such as identifying beneficial ownership, regulatory support would seem essential. As discussed at this Theme 7, solicitors are frustrated by the lack of regulatory support available to them, and this research finds a lack of trust of the SRA is present in terms of believing the SRA will support their risk-based decision-making if it is scrutinised after the event. As discussed at Chapter 5, the role of the regulator is not confined to enforcement, and the SRA is also the main

source of regulatory resources in relation to AML, and also sets standards for the training and education of solicitors. Doubts about the knowledge and understanding within the professional regulatory body, and fear and mistrust inhibiting solicitors from accessing the support they need, suggest significant weaknesses in the ability of the SRA to undertake their role as intended under the UK AML Framework.

9.4 Theme 8: Complex and Changing Rules and Guidance

Interviewees identified a wide range of sources used to help them to meet their AML obligations. Of the resources available: the SRA website; Law Society publications; Companies House; private compliance advisers; and smart searches, amongst others, interviewees most frequently reported reliance upon the LSAG Guidance, discussed in detail in Chapter 5. The LSAG Guidance is the subject of this Theme 8.

9.4.1 Sub-Theme 8(A): Aligning with Sector-Specific Guidance

The LSAG Guidance was widely viewed as the most useful and tailored guidance available to the sector, with sensible and practical examples and suggestions. R3 says that the LSAG Guidance is the clearest resource available:

> *"sensibly written and a bit of a comment. I do think it has some good, useful stuff in there."*

R1 described being "*aligned with the guidance*," using it as intended as a way of informing processes and procedures to ensure the firm acted in accordance with the UK AML Framework, though even then admitting the firm was "*probably … more cautious*" than the guidance required. R9 also referred to processes and procedures being set in accordance with the LSAG Guidance, indicating that it is used and relied upon across the solicitors' profession.

Despite its usefulness in terms of setting processes and procedures, several interviewees were realistic about the limitations of the available support and guidance, with R6 acknowledging that:

> *"no member of the government or the Law Society or the Legal Affinity Action Group will say, if you do this, you will be alright."*

He noted that the LSAG Guidance was more helpful than no guidance "*when it eventually surfaced*" (a reference to the significant and unhelpful delay in publishing guidance referred to in Chapter 5 above).

For R7:

> *"it's not the most helpful in some ways, still has gaps, but it's, it's the best we've got."*

Despite wide reliance on the LSAG Guidance and acknowledgement that this was the best available option, there were still major frustrations about the resources available to those seeking to undertake beneficial ownership investigations, with practical weaknesses identified by several interviewees.

R1 notes that there is no source "*to answer all the questions than arise in practice, obviously*." R3 reports that training and guidance can be useful but goes on to state that information is not always helpful and can be detached from front line reality. R5 finds the LSAG Guidance unwieldy, describing it as "*long and thick*" and "*wishy-washy in many ways*."

In terms of alternative resources, there was a general sense of dissatisfaction. R8 describes the Law Society practice notes as "*not great*" and the SRA website as "*pretty poor*" despite having some decent resources if you know what you want and how to find it. R8 suggests that solicitors often want to do the right thing but explains it is not entirely clear what the right thing is and they could do with better guidance.

9.4.2 Sub-Theme 8(B): Guidance Updates

Several interviewees describe frustration and difficulty not only with the obligations under the evolving UK AML Framework becoming more onerous, but also with obligations changing frequently, which has a knock-on effect upon compliance and behaviour among solicitors. Adding to this frustration, the LSAG Guidance does not keep up to speed with changes to the UK AML Framework, so those on the front line feel the pressure of uncertainty and change when exercising their risk-based discretion. R2 described that:

> *"the rules and regulations […] frankly change as often as I change my socks […] and it just becomes more and more and more difficult, and more and more and more complicated."*

R7 suggests that a fundamental problem is that the AML regime is added to and added to, becoming more and more cumbersome, though it would benefit from being stripped back and re-built. She describes barely coming to terms with the new LSAG Guidance when it is amended and updated to reflect changes to the law. While amendments and updates are useful, keeping on top of lengthy and complex guidance is burdensome and time-consuming for firms and solicitors and requires time and focus, which is not readily available to practitioners.

R7 shares her frustration that:

> *"no sooner the 284 page guidance … comes out and I've worked through it, the next 284-page version has been released."*

For even the most diligent and engaged compliance team, this is a burden, but for lawyers undertaking the day-to-day fee-earning within a firm, for whom AML is an additional administrative burden which cannot be billed, this is hugely significant.

9.4.3 Sub-Theme 8(C): Unsatisfactory Guidance

To add to the burden of rules and guidance which change regularly, there are some elements of the LSAG Guidance which remain unsatisfactory. R5 provides a specific example of the LSAG Guidance being contradictory in relation the risk assessment of a client involving source of funds. While the LSAG Guidance advocates a risk-based approach in line with essence of the UK AML Framework, the LSAG Guidance says separately that the actual source of funds must be known. While this does not seem unreasonable in the context of understanding a transaction, R5 identifies a practical conflict with GDPR[3] compliance, as bank statements do not expressly reveal a source of funds. This is problematic for solicitors: they think they know where money is going to come from; then it arrives as expected; but then they discover there is no actual trail back to the client. Even in low-risk conveyancing cases, this would not be sufficient to comply satisfactorily with AML obligations. This means that, even where solicitors believe they are in full compliance with AML legislation, they may actually be falling foul of the provisions unknowingly, because of banks' compliance with GDPR. This inevitably exposes solicitors to the possibility of sanction for failure to meet their obligations under the UK AML Framework. This conflict arises out of the presentation of the LSAG Guidance in this area, but the problem is magnified by a lack of understanding by regulators who are unwilling to offer advice or guidance on how to resolve these matters if contacted. Solicitors, on the front line and responsible for risk-based decision-making, are left to determine the best way forward for the firm without any clear guidance, either in written form or by contacting the regulator directly, about what might suffice in these particular circumstances to satisfy the risk-based approach.

The interviews conducted for this research led to identification of a further weakness in the LSAG Guidance specifically in relation to the identification of beneficial ownership. The LSAG Guidance is found to be detailed and useful in terms of straightforward structures and cases but far less useful where structures became complex and multi-layered. This is

[3] General Data Protection Regulation, implemented in the UK by the Data Protection Act 2018, governing the ways in which data may be held and processed.

unfortunate, as it is in the most complex cases where additional guidance would be most appreciated, with the simpler cases both more common and more routine to deal with, and the more complex cases the ones which may present the greatest risk of money laundering, as discussed at Chapter 3. In the view of R7, the lack of clarity is because "*they've realised there's way too many types of organisation and structure*." R7 highlights sports associations and the education sector as a particular area where LSAG Guidance is lacking in terms of information. Practically, each organisation needs to be treated in a different way, and the LSAG Guidance is found to be unclear, providing no checklists to follow, which can lead to solicitors "*wast[ing] hours of their time asking questions that are absolutely not relevant because they don't know the structure in the first place*." R9 also identifies specific gaps in the LSAG Guidance relating to complex matters of beneficial ownership, in particular involving structures such as foundations and sovereign wealth funds, noting that the firm then needs to consider the JMLSG Guidance for more detail. She also feels that it is not satisfactory to suggest in the LSAG Guidance that "*you might consider getting additional information*" to satisfy enquiries relating to a beneficial ownership structure without making any suggestion as to what that "*additional information*" might be.

R7 reports that the LSAG Guidance is too complex, and criticised the part which states you can take on work without understanding a beneficial ownership structure. This appears to be contradiction, she says, compared to previous guidance which has required a full understanding of beneficial ownership structures in order to proceed with work. A further unhelpful gap in the LSAG Guidance identified by R9 relates to discrepancy reporting, and she calls for more detail to be provided in relation to CDD and beneficial ownership, saying it is crucial to understand the boundaries of "*reasonable measures*" and know what the regulator expects.

9.4.4 Sub-Theme 8(D): Ideal Guidance

There were mixed views about what helpful guidance should look like, though R3 does not want rules to be "*woolly and grey*" and would prefer the security of being able to point to exact steps to remove uncertainty. While some interviewees would welcome a more tick-box approach, almost all agreed that this did not sit well with the risk-based approach and, as discussed in relation to Theme 6 above, would remove flexibility and also remove the opportunity for exercising judgement. However, R8 did suggest that greater regulatory clarity would make life easier for those within the regulated sector.

While standards remain uniform across the profession (and this research found little support for variance) it was felt that the LSAG Guidance should be more nuanced to meet the varying needs within the profession, often arising because of the size of the firm or the

nature of the work undertaken. For R3, tailoring of obligations would be a great help, not just within the regulated sector, but also within the legal profession for different practice areas. R5 suggests that tailored guidance is vital to ensuring that the system works across the profession, rather than relying on what the policy-makers think is or should be happening, which often may not be the case on the ground.

The risk-based approach, feels R7, is not supported by the regulatory guidance, which leaves too many elements unspecified. For example, the failure of the regulator to set some risk guidelines, for example in relation to sector, means that there is more discretion left to individuals and firms. R7 suggests this discretion could be limited by the regulator determining practice area risk and minimising the discretionary elements. She believes this would also reduce the need for such extensive guidance as is produced by the Legal Sector Affinity Group.

Supporting the suggestion of R7, R3 also believes specific guidance for high-risk areas such as property or trusts, focused on day-to-day reality, using examples, would be helpful, though she acknowledges the high burden or work this would create because of the wide range of possible scenarios. However, offering a contrasting view, R6 suggests that the "*generic*" rules just have to be applied "*as we see fit*" saying "*there is never going to be a template that fits every firm of solicitors, or one template across the board for everybody … it simply can't happen given what we're dealing with*."

9.4.5 Theme 8 Discussion

Operationally, solicitors are hindered in complying with their obligations under the UK AML Framework by rules and guidance, which change often and can be unwieldy, vague and, in the worst cases, contradictory. The LSAG Guidance has been found, without surprise, to be the source of support most relied upon across the solicitors' profession, yet there remain significant frustrations with the complexity of it, the time it takes to produce, the frequency with which it is amended, and the lack of tailoring it contains in relation to specific practice areas and detail in relation to the most complex matters relating to beneficial ownership. Solicitors use the LSAG Guidance to help them to navigate the UK AML Framework and to exercise the underpinning risk-based approach. However, there are gaps in the most complex areas which serve to highlight the difficulties faced by solicitors when complying with their obligations. At its worst, the LSAG Guidance is found to offer guidance which contradicts GDPR.

The challenge of producing good guidance is recognised by participants: checklists are not an option because the myriad day-to-day eventualities could not possibly be covered. However, requiring solicitors to pursue a vast number of additional enquiries as they seek to

identify beneficial ownership is an unwelcome strategy, too. Working within vague and changing boundaries raises frustration among solicitors and enhances their feeling of vulnerability to sanction by a regulator unable to provide the support needed to comply with obligations imposed by the UK AML Framework.

9.5 Conclusion

Solicitors face operational challenges on a day-to-day basis as they seek to comply with their obligations relating to beneficial ownership under the UK AML Framework. The risk-based approach may be applied in any number of different ways depending on the risk appetite of the firm or solicitor taking decisions, commercial pressures, reputational concerns, and the knowledge and experience of the individual taking decisions, and solicitors regularly seek support or guidance to help them make risk-based judgements. However, the support and guidance available to solicitors is felt to be severely lacking and this feeds a sense of mistrust of the regulator, and even suspicion about the regulatory understanding about the day-to-day realities facing solicitors in practice.

Several interviewees reported that solicitors wanted more certainty of guidance to help them to make decisions, and most reported some level of dissatisfaction with the advice contained in the LSAG Guidance, with it criticised variously as being too long, too late, too complex, too woolly and too vague. Despite these frustrations, solicitors overwhelmingly look to the LSAG Guidance as the main source of support in making risk-based decisions, and there was recognition that greater clarity might not be possible to provide in the light of the sheer number of practical realities facing a wide variety of firms undertaking an unquantifiable combination of transactions for an unspecified number of clients.

In the absence of clear guidance, solicitors who sought advice from regulatory bodies found that regulators are not able or willing to offer advice beyond telling solicitors to take a risk-based approach. This means that solicitors are faced with a void of guidance and support to help them exercise their risk-based discretion. Given the uncertainty facing solicitors in meeting their obligations without adequate support or guidance and the anxiety this provokes, this research finds that solicitors are taking some steps to protect themselves. This may be by turning away higher-risk clients or transactions, which may in some cases benefit firms or solicitors with a greater risk appetite. It may involve a reluctance to rely on the vague "*reasonable measures*" threshold and try and all costs to conduct comprehensive CDD. In some cases, it drives a desire for certainty in the form of checklists or boxes to tick to comfort those on the front line, though there is widespread recognition that this would undermine the purpose and flexibility of the risk-based approach to decision-making.

Several participants described the burden of compliance in terms of time and anxiety in the face of uncertainty about the application of the UK AML Framework and where specific boundaries lie in terms of making enquiries and conducting CDD. Self-protective decisions reflect a mistrust of the solicitors' regulator who does not provide adequate guidance or support. The lack of adequate guidance and support is felt to be highly unsatisfactory where it is the solicitors themselves who are exposed to sanction at the hands of a regulator whose guidance is weak, who will not (or is unable to) provide answers to specific, particularly complex, queries, yet has the power to sanction on the basis that a "wrong" decision was reached by those responsible for applying the risk-based approach.

The findings and analysis of this Part III feed into the conclusions and recommendations of Part IV in answer to the research questions driving this research project:

1. What are the issues and challenges faced by solicitors under the UK AML Framework with respect to the identification of beneficial ownership?
2. How do these issues and challenges impact the operation of the UK AML Framework with respect to the identification of beneficial ownership?
3. What practical recommendations can be made to address the issues and challenges identified?

Part IV:
Conclusions and Recommendations

Chapter 10: Conclusions and Recommendations

Chapter 10 : Conclusions and Recommendations

10.1 Introduction

Part I: Background and Literature of this thesis began by examining the law and literature relevant to this research and identified several knowledge gaps which this research project, conducted in the manner set out in Part II: Methodology and Research Design, has sought to inform. The analysis of interview data presented in Part III: Findings and Analysis forms the basis for the conclusions and recommendations in this Chapter 10.

There were several known challenges facing solicitors complying with obligations under the UK AML Framework, ranging from the uncertainty surrounding the possibility of triggering the low threshold suspicion under PoCA 2002, to the heavy compliance burden falling on the private sector, including the time-consuming and uncertain nature of conducting CDD. However, there was a gap in knowledge about the ways in which these challenges may be exacerbated under the MLR 2017 and in the context of the increased focus on beneficial ownership transparency, and there was also a gap in empirical research relating to compliance which had so far focused on large and medium-sized firms rather than firms from across the spectrum of solicitors' practices. In addition, what solicitors are meant to know and understand and find out in relation to beneficial ownership is well-documented, though there was little information about how they go about doing this in practice, how they exercise the risk-based approach in relation to beneficial ownership obligations and how successful their investigations may be. Finally, while regulation forms a key component of the UK AML Framework, there was a gap in knowledge and understanding of what support and information is available to solicitors operating within the regulated sector as they seek to meet their obligations.

Analysis of interview data, as presented in Chapter 7 of this thesis, has identified that solicitors accept their obligations under the latest UK AML Framework reluctantly though conscientiously, motivated primarily by anxiety about sanctions and reputational concerns. This drives compliance to preserve self rather than to meet the underlying purpose of the UK AML Framework. As discussed at Chapter 8, this research also finds variable capacity across the profession to undertake obligations as intended and, considered in Chapter 9, a series of operational difficulties facing those charged with compliance. The barriers to capacity and operational challenges feed the feeling among solicitors of negativity towards the AML regime and a sense of mistrust towards the regulator. These findings are discussed in sections 10.2 and 10.3 below specifically in answer to research questions 1 and 2, recognising always that the findings are drawn from a small, though detailed, interview base as addressed at section 6.3 above.

Given the intricacy of the law surrounding beneficial ownership, there are no simple solutions to the issues and challenges faced by solicitors undertaking obligations under the UK AML Framework. Beneficial ownership itself is much more complex to uncover in practice than is apparent from high-level definitions and thresholds, as discussed first at Chapter 3 and examined in detail in Chapters 8 and 9, and obligations regarding compliance have been attached to a clunky and burdensome set of regulations backed up by the threat of serious regulatory and criminal sanctions. Following the discussion of research questions 1 and 2 at sections 10.2 and 10.3 below, this Chapter 10 makes some recommendations grounded in this research and building on those conclusions, addressing research question 3 at section 10.4.

10.2 Research Question 1

Research Question 1 asks: what are the issue and challenges faced by solicitors under the UK Anti-Money Laundering Framework with respect to the identification of Beneficial Ownership?

10.2.1 Solicitors and special knowledge of beneficial ownership

Interview data demonstrates that solicitors understand that they are on the front line of the UK AML Framework and act as “gatekeepers” to the financial system. However, this research does not find that solicitors necessarily have automatic, or special, knowledge about the beneficial ownership structures of their clients. They must pursue a series of complex and uncertain enquiries to fulfil their compliance obligations under the UK AML Framework in cases where beneficial ownership structures are not straightforward.

A large proportion of solicitors are not engaged with business or trust structuring work. For these solicitors and firms, beneficial ownership is something they have to investigate anew as part of their CDD obligations. To do this, they rely on all of the same resources as any person might, most frequently Companies House, supplemented by smart search technology. In addition, solicitors have access to their clients of whom they may ask questions about beneficial ownership identity and transactional details, and they may request additional documentation in accordance with their risk assessment or the LSAG Guidance where red flags are raised.

For solicitors, as others, significant resources must be allocated to undertaking investigations, both in terms of time and money. Furthermore, some solicitors are better placed to conduct successful investigations than others based on their practice background and expertise. Compliance across the solicitors’ profession is therefore variable, affected not only by the knowledge, expertise and experience of those conducting beneficial

ownership enquiries, but by other factors, too, such as commercial pressures facing individual decision-makers in the context of particular transactions, or the reliability of data held on public registers.

For these reasons, this research finds that the capacity of solicitors to undertake their obligations under the UK AML Framework with respect to beneficial ownership is variable. Barriers facing some solicitors may not be present for others. The picture, especially across the range of firms with differing resources available to devote to compliance, facing different commercial pressures, and exposed to highly varied clients and transactions, is complex.

For solicitors, rather than a stand-alone exercise, the obligation to identify beneficial owners is part of a client risk assessment. Nevertheless, the current focus on beneficial ownership transparency and the lack of certainty in the MLR 2017 combined with the all-crimes approach and the low threshold of suspicion from the PoCA 2002, creates an additional, unpaid burden and is a source of significant anxiety.

10.2.2 The Devil is in the Detail

The requirement to identify beneficial ownership presents a particular challenge to solicitors where business or trust structures are complex or where they cross borders. Capacity to identify beneficial ownership and verify identities is variable depending on a number of factors. In particular, the lack of availability of beneficial ownership information in many overseas jurisdictions, or difficulties obtaining reliable documentation from clients or advisers, mean that solicitors who have not been involved in setting up a particular structure are likely to face significant uncertainty about the identities of beneficial owners and must therefore decide whether or not to pursue a particular transaction in individual cases based on unique circumstances and individual judgements about risk. Rather than complex investigations being confined to larger firms undertaking large and complex transactions, this research suggests that involved structures are becoming more frequent in general, so more solicitors are being faced, with greater frequency, with complex investigations they have greater or lesser capacity to undertake.

10.2.3 Lack of support and weak guidance

In practice, solicitors are therefore frequently faced with difficult decisions which they are required to determine in line with the risk-based approach underpinning the UK AML Framework. Given the complexities beneficial ownership investigations may throw up and the lack of reliable data solicitors may be able to access in terms of satisfying their obligations, there is a great deal of uncertainty about how far a beneficial ownership investigation should extend. The most frequently-used resource available to solicitors working out how to meet their obligations and take risk-based decisions is the LSAG

Guidance. However, the LSAG Guidance has been found to be lengthy, frequently amended, woolly, complex and vague. It is lacking particularly in relation to CDD guidance involving complex structures or less-usually encountered business media and legal entities. Identifying beneficial ownership in such cases is therefore a complex undertaking which is under-supported by the LSAG Guidance, which may increase the time needed to be devoted to these investigations or the risk-based decision about whether a firm should proceed to work for that client.

Where solicitors contact the regulator for additional support, they may be met with advice to take a risk-based approach, or, in the worst cases, no response at all. There is no specialist regulatory advice available to support solicitors with their obligations. It has been suggested that the regulator does not have the knowledge required to support complex investigations and does not fully understand the challenges faced by solicitors on a day-to-day basis. This additional uncertainty feeds a sense of dissatisfaction and mistrust of the regulator, who has the power to impose sanctions upon solicitors for failings relating to compliance with the UK AML Framework.

10.2.4 Knowledge and Culture

Knowledge and capacity underpin the ability of solicitors to undertake their obligations within the UK AML Framework with respect to beneficial ownership. Gut feeling and experience are relied upon heavily to exercise risk-based discretion in the context of difficult and challenging decisions about beneficial ownership. In some cases, there are cultural barriers to undertaking extensive CDD, in particular for “old-school” lawyers who value traditional client relationships which rely heavily upon trust and shrink from asking intimate questions of their clients. This is a challenge in a world of changing client profiles, with more personally unknown or overseas clients presenting with complicated beneficial ownership structures to be unwound and investigated by solicitors.

10.2.5 Summary

In summary, the requirements of the UK AML Framework with respect to beneficial ownership identification are burdensome and time-consuming. Solicitors, in general, across the spectrum do not have information at their fingertips about the beneficial ownership of clients and, in complex or cross-border cases, significant time and resource must be devoted to carrying out investigations. Where there is any uncertainty, solicitors take decisions about whether to proceed with a transaction by applying the risk-based approach. There is inadequate guidance or support to give them comfort when exercising their judgment, and there is significant anxiety attached to decision-making where sanctions for reaching the wrong decision in the regulator’s eyes are severe.

10.3 Research Question 2

Research Question 2 asks: how do these issues and challenges impact the operation of the UK AML Framework with respect to the identification of Beneficial Ownership?

As set forth in the Introduction and Chapter 2, the operation of the UK AML Framework relies upon the actions of regulated persons, including solicitors, acting within it, in order to prevent and forestall money laundering. As such, it is important that obligations imposed on such regulated persons are informed by a good understanding of the challenges faced by those responsible for front-line compliance. This research contributes to this knowledge and understanding by exploring the capacity of solicitors within a variety of firms to undertake their obligations under the UK AML Framework with respect to the identification of beneficial ownership and the operational barriers they face.

As discussed at section 10.2 above, this research show that solicitors have variable capacity to undertake their obligations under the UK AML Framework and face a range of operational challenges in practice. As a consequence of variable capacity and operational challenges, there is a lack of uniformity of application of the UK AML Framework and, in particular, the exercise of the risk-based approach.

As identified in Chapter 7, widespread anxiety and disillusionment with the UK AML Framework and uncertainty of application of the risk-based approach mean that solicitors may take decisions to protect themselves from regulatory sanction, including by over-compliance with obligations, for example by extensive record-keeping, or by turning riskier business away. Complex and challenging obligations, coupled with weak support and guidance, exacerbate uncertainty and anxiety and mean that obligations may not be fulfilled in the manner anticipated by policy-makers.

Beneficial ownership, whilst the focus of much attention from policy-makers and, in particular, the anti-corruption literature discussed in Chapter 4, is but part of an overarching client or transaction risk assessment for solicitors, and is not a stand-alone exercise. Efforts made by solicitors are intended within the regime to inform a risk-based assessment of a transaction, not solely to improve beneficial ownership data and transparency in a wider sense. However, the efforts of solicitors are being relied upon to contribute to the accuracy of beneficial ownership registers, for example by registering discrepancies. The capacity of solicitors to contribute to these objectives may be over-estimated. In terms of adequately fulfilling the objectives of the UK AML Framework to prevent and forestall money laundering in a meaningful way, solicitors may be more likely to do this in the anticipated manner with support and guidance, which is lacking within the current regulatory system.

10.4 Research Question 3

Research Question 3 asks: what practical recommendations can be made to address the issues and challenges identified?

Many of the issues and challenges facing solicitors result in frustration, disillusionment and anxiety, causing variable compliance with the UK AML Framework, feeding mistrust of the solicitors' regulator, and leading to compliance which prioritises self-protection rather than meaningful attempts to prevent or forestall money laundering.

10.4.1 Amend the All-Crimes Approach

The challenges inherent in the UK AML Framework, in particular the low threshold of suspicion and the all-crimes approach of PoCA 2002, create a burden on solicitors. This research, conducted across the spectrum of solicitors' practices, supports the findings of Kebbell that solicitors have in-depth knowledge of clients and transactions which may, against the current legislative backdrop, cause them to be cautious in reporting technical in addition to real breaches of AML provisions. Solicitors are frustrated by policy expectations which place a burden on them to prevent and forestall money laundering across this broad range or crimes when there are apparently conflicting policies allowing international transactions and overseas investment in the UK property market. These frustrations will be difficult to overcome for as long as the UK economy relies heavily on financial activity in the city of London, and the UK will remain vulnerable to dirty money for as long as its financial institutions are at the forefront of global finance and the global economy. While robust AML systems are to be expected, loopholes will not be eradicated, and the burden on solicitors will continue. Without changing the all-crimes basis of the UK AML Framework, it is difficult to see how this could change.

A renewed focus on beneficial ownership transparency places solicitors under a spotlight regarding compliance with their obligations relating to beneficial ownership. However, as addressed in Chapter 8 above, capacity to uncover beneficial ownership is variable and the work undertaken by solicitors is far from uniform. Regulatory instruction to focus resources based on risk does not make sense in the context of the all-crimes approach. Enabling resources to be focused on the areas of greatest risk of the most serious crime would reduce the burden on solicitors and help to avoid a disproportionate burden on those involved in less serious (though technically no less risky) areas of work. This would require amendment of the all-crimes basis of the regime as a whole.

10.4.2 System Design

The design of the AML regime and elements relating to it, in particular SAR forms, are not designed with solicitors in mind, given that they form but a small part of the regulated sector. This enhances feeling of frustration as compliance is difficult and feedback from the NCA disappointing. Other resources relied upon by solicitors, such as Companies House, may be unreliable and contain unverified information, which solicitors are then obliged to take further steps to investigate.

Recent steps have been taken towards improving information held at Companies House, and there is now a register of beneficial ownership in relation to overseas property owners. However, this does not address problems faced when conducting overseas enquiries with variable availability of public information and uneven AML standards. Further steps to improve the quality of information available to regulated parties would be helpful, but the scale of this exercise is global and should not be underestimated, and significant improvements, for example in Europe where access to registers has been limited, should not be expected any time soon. To the extent that loopholes in information remain (which may be for an indefinite period) the challenges of identifying beneficial ownership will remain.

10.4.3 Minimise Changes to Rules and Guidance

Frequent changes to regulations and guidance are made with a view to improving the UK AML Framework as a whole. A good example of this is in relation to the beneficial ownership provisions added to the UK AML Framework as a consequence of 5MLD. However, while these changes are intended to improve the UK AML Framework as a whole, or to enhance the response to a new underlying threat, they may serve more to confuse, confound and complicate than to improve where compliance with new obligations is hampered by weak and late guidance and where the underlying provisions are complex and challenging. In the worst cases, new provisions may conflict with other existing regulations, as highlighted in this research by the solicitor facing difficulties in proving source of funds information because of bank compliance with GDPR. Fewer changes and simpler and less extensive rules may be better from a compliance perspective. Continually tweaking and amending and adding to the UK AML Framework and related guidance exacerbates the heavy burden on all of those within the regulated sector and compounds frustration felt by those charged with compliance. The impact of the changes on meaningful compliance needs to be factored into any evaluation of the proposed changes.

10.4.4 Improve Support

Legal professionals will be better able to comply with the UK AML Framework if they are supported to do so. Providing training for busy legal professionals with conflicting commercial priorities is not enough. When a solicitor has a problem, there must be a supportive forum in which concerns can be addressed. This would not be a substitute for disclosing suspicion or an excuse for failing to carry on adequate due diligence, but there must be support for the efforts of solicitors to undertake their obligations properly without fear or favour. Effective enforcement can be one arm only of an effective regulator; support and education must play at least an equal part.

Solicitors are required to comply with the risk-based approach in exercising their compliance obligations. At present, there are too many elements of the guidance which are vague or unclear to the extent that the regulations cannot be upheld with certainty. This leads to potential de-risking or over-compliance, both with negative consequences for the legal businesses themselves and their clients. Clarity and certainty are needed, and regulatory support is essential to ensure this can happen.

10.4.5 Training and Legal Education

As discussed at Chapter 4, most solicitors are not wilful enablers of money laundering, and this research support the notion that solicitors, for the most part, comply in a conscientious manner with their obligations under the UK AML Framework. While there may be some solicitors who are complicit in money laundering, it is more likely that there are solicitors who are naïve as to money laundering activity, solicitors who are yet to adapt to the changing nature of clients or the need to ask uncomfortable and difficult questions, and solicitors who lack the specialist skills needed to undertake beneficial ownership investigations into sophisticated and complex business and trust structures and arrangements. For each of these, with the exception of the complicit, better training and support goes some way to supporting the operation of the UK AML Framework by enhancing the knowledge and capacity of those tasked with compliance.

At present, solicitors' training and education in relation to beneficial ownership compliance is weak as discussed at Chapter 5 above which hinders their capacity to carry out their obligations under the UK AML Framework. A review of solicitors' training is recommended to add capacity to the sector, where not all solicitors have come across beneficial ownership structures or complex transactions as part of their on-the-job training or as part of their superficial SQE training. In-depth and practical training is more likely to raise awareness among solicitors of the types of transactions they may encounter rather than relying on high-level definitions which do not reflect a solicitor's day-to-day reality. Raising awareness from

an early stage may also help to produce the cultural environment necessary to accept the increased burden involved in AML compliance. Given that many of the barriers and challenges faced by solicitors feed disillusionment, anxiety and mistrust of the regulator, which in turn push solicitors to protect themselves rather than seek to comply in a more meaningful way with the UK AML Framework, attempts to achieve meaningful change may need to focus more on support, information, education and training than on enforcement and sanction.

10.5 Conclusion

This research set out to explore issues and challenges faced by solicitors under the UK AML Framework with respect to the identification of beneficial ownership and to answer three specific research questions. The research began with a desk review of relevant law and literature. Using my professional knowledge and experience of the legal sector and my understanding of the UK AML Framework, and guided by issues arising from the review of existing law and literature, I then designed and conducted in-depth semi-structured interviews with nine individuals involved in AML compliance within SRA-regulated law firms. I have drawn eight themes from a thematic analysis of the resulting data.

Drawing together the findings and analysis of my eight themes, this Chapter 10 has provided answers to the three original research questions in the form of conclusions and recommendations. I have concluded that solicitors face several issues and challenges when complying with obligations under the UK AML Framework with respect to the identification of beneficial ownership. In addition to obligations being burdensome and time-consuming, solicitors do not have information about beneficial ownership at their fingertips and rely heavily on risk-based decision-making, which attracts significant anxiety. Furthermore, the capacity of solicitors to identify beneficial ownership is variable and they face several operational challenges. Guidance and support are often weak and inadequate and therefore insufficient to alleviate the anxiety borne out of burdensome compliance obligations backed up by serious sanctions for compliance failures.

While acknowledging that my findings are drawn from a small interview base, my conclusions contribute to existing knowledge by providing new insights into the experiences of solicitors from a range of firms, large and small, as they seek to comply with more stringent obligations under the latest MLR 2017 in the context of a regime focused increasingly on beneficial ownership transparency. Given that the AML regime is made up of several parts, insights from the front line are crucial to policy-makers in terms of understanding any barriers or challenges which exist and may contribute to or hamper its operation with respect to the identification of beneficial ownership.

The recommendations at section 10.4 contribute to practice as they respond to issues and challenges identified by this research. Some of the recommendations involve the fundamental design or workings of the UK AML Framework. For example, re-consideration of the all-crimes basis of the regime is suggested, alongside a simplification of the rules and guidance followed by the regulated sector to aid compliance. An ongoing review of systems in place to support the regulated sector, such as Companies House and the SAR regime, is also recommended, with a view to reducing frustration, saving time and enhancing capacity.

Finally, the support and training available to solicitors from regulators has been identified as weak and should be reviewed. Improved training, education and support, rather than simply strict enforcement, has the potential to enhance the operation of the UK AML Framework by improving the knowledge and capacity of solicitors tasked with compliance. This requires the availability of specialist advice and guidance to the sector and a positive relationship with a regulator who appreciates the complexity and intricacy involved in carrying out obligations. As noted at section 6.3, this research has focused on views from within the regulated sector. A next step may be to present the findings of this research to the regulator and investigate the skills, capacity and resources needed from that side to ensure the provision of much-needed specialist support and guidance.

List of Abbreviations

AML	Anti-money laundering
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Business or Profession
FATF	Financial Action Task Force
GDPR	General Data Protection Regulation implemented by the Data Protection Act 2018
LSAG Guidance	AML guidance for the legal sector published by the Legal Sector Affinity Group
MLR 2017	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 SI 2017/692
NCA	National Crime Agency
NGO	Non-governmental organisation
OPBAS	Office for Professional Body AML Supervision
PoCA 2002	Proceeds of Crime Act 2002
PSC	Person with Significant Control
SAR	Suspicious Activity Report
SQE	Solicitors Qualifying Examination
SRA	Solicitors Regulation Authority
UK AML Framework	The AML Framework defined in Chapter 2

Bibliography

Alldridge, P, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart Publishing, Oxford and Portland, Oregon 2003)

Alldridge, P, *What Went Wrong With Money Laundering Law?* (Palgrave Macmillan, London 2016)

Banakar, R and Travers, M 'Law, Sociology and Method' in Banakar, R, and Travers, M (eds) *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing 2005)

Bell, RE, 'The prosecution of lawyers for money laundering offences' (2003) 6 JMLC 17

Bello, AU, *Improving Anti-money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies in Risk, Crime and Society, Palgrave Macmillan, London 2016)

Bennett, O and Shalchi, A, 'Economic crime in the UK: A multi-billion pound problem' (CBP 9013 6 April 2022)

Benson, K, *Lawyers and The Proceeds of Crime: The Facilitation of Money Laundering and its Control* (The Law of Financial Crime, Routledge, Oxon and New York 2020)

Benson, K, 'The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response' (DPhil Thesis, University of Manchester 2016)

Braun V, Clarke V, 'Can I use TA? Should I use TA? Should I not use TA? Comparing reflexive thematic analysis and other pattern-based qualitative analytic approaches' (2021) 21 Couns Psychother Res 37

Braun, V and Clarke, V 'Using thematic analysis in psychology' (2006) 3(2) Qualitative Research in Psychology 77

Cabinet Office and Prime Minster's Office, 'Global Declaration Against Corruption' (2016) <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption> accessed 9 August 2022

Chavkin, DF, 'Experience is the *only* teacher: bringing practice to the teaching of ethics' (The Ethics Project in Legal Education, Routledge, London 2010)

Cheung, C, 'How the end of the stamp duty holiday is affecting the market' (FT Adviser 20 August 2021) <How the end of the stamp duty holiday is affecting the market - FTAdviser> accessed 05 August 2023

Chhina, RK, ‘Beneficial ownership transparency of trusts’ (Open Ownership Policy Briefing, July 2021) < oo-briefing-bo-transparency-of-trusts-2021-_07.pdf (kxcdn.com)> accessed 24 October 2023

Costley, C. ‘Research Approaches in Professional Doctorates: Notes on an Epistemology of Practice’ in Costley, C. & Fulton, J (eds) *Methodologies for Practice Research: Approaches for Professional Doctorates* (Sage Publications Ltd 2019)

Crotty, M, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Sage Publications, St Leonards, NSW, Australia 1998)

Denzin, NK, and Lincoln, YS ‘Introduction: The Discipline and Practice of Qualitative Research’ in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000)

Drake, P, and Heath, L, *Practitioner research at doctoral level: developing coherent research methodologies* (Routledge, London 2011)

Duyne PC van, Groenhuisen MS and Schudelaro AAP, ‘Balancing Financial Threats and Legal Interests in Money-Laundering Policy’ (2005) 43 CL&SC 117

Duyne PC van, Harvey, JH, Gelemerova, LY, *The Critical Handbook of Money Laundering: Policy, Analysis and Myths* (Palgrave Macmillan, London 2018)

Economic Crime and Corporate Transparency Bill Factsheet (UK Government Policy Paper, 20 June 2023) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-economic-crime-and-corporate-transparency-bill-overarching> accessed 5 July 2023

Economic Crime and Corporate Transparency Bill Factsheet (Serious Fraud Office and Ministry of Justice Policy Paper, 8 November 2022) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-the-removal-of-the-statutory-cap-on-financial-penalties-for-the-law-society-as-delegated-to-the-solicitors-regulation-authority> accessed 18 January 2023

FATF <About - Financial Action Task Force (FATF) (fatf-gafi.org)> accessed 10 August 2022

FATF ‘Anti-money laundering and counter-terrorist financing measures, United Kingdom Fourth Round Mutual Evaluation Report’ (FATF, Paris December 2018) <MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)> accessed 10 August 2022

FATF, *International Standards on Combating Money Laundering and The Financing of Terrorism and Proliferation*, FATF, Paris (2012-2023) < http://www.fatf-gafi.org/recommendations.html > accessed 23 October 2023

FATF 'Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML / CFT Systems' FATF, Paris (2013-2023) < FATF Methodology 22 Feb 2013.pdf.coredownload.pdf (fatf-gafi.org)> accessed 23 October 2023

FATF, 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals' (FATF / OECD, Paris, France June 2013)

Ferwerda, J, 'The Effectiveness of Anti-Money Laundering Policy: A Cost-Benefit Perspective' in C King, C Walker and J Gurule (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan, Cham. 2018)

Financial Action Task Force and Egmont Group, 'Concealment of Beneficial Ownership' (FATF, Paris, France July 2018)

Findley, M, Nielsen, D, and Sharman, JC, *Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism* (Cambridge Studies in International Relations 128, Cambridge University Press 2014)

Fontana, A, and Frey, JH 'The Interview: From Structured Questions to Negotiated Text' in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000)

Fouzder, M, 'Stamp duty guidance for conveyancers to manage client expectations' (Law Gazette, 8 June 2021) <: Stamp duty guidance for conveyancers to manage client expectations | News | Law Gazette> accessed 05 August 2023

Foreign, Commonwealth & Development Office, *Overseas Territories: progress made no improving transparency and addressing illicit finance flows – explanatory note* (FCDO Policy Paper, 14 December 2020) <Overseas Territories: adopting publicly accessible registers of beneficial ownership - GOV.UK (www.gov.uk)> accessed 26 June 2023.

Gallant, M, 'Money laundering consequences: Recovering wealth, piercing secrecy, disrupting tax havens and distorting international law' (2014) 17 JMLC 296

Gallant, M, 'Uncertainties collide; lawyers and money laundering, terrorist finance legislation' (2009) 16(3) JFC 210

Gelemerova, L 'On the frontline against money-laundering: the regulatory minefield' (2009) 52 CLSC 33

Glesne, C and Peshkin, A, *Becoming Qualitative Researchers: An Introduction* (Longman Publishing Group, New York, USA 1992)

Global Witness, ‘Anonymous Company Owners’ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/#more> accessed 30 October 2019

Goredema, C, ‘Not above the law? The role of lawyers in combating money laundering and illicit asset flows’ (The Global Initiative Against Transnational Organized Crime, Geneva, Switzerland October 2018) < Not above the law? The role of lawyers in combating money laundering and illicit asset flows. | Global Initiative> accessed 28 October 2023

Governments of Jersey, Guernsey and the isle of Man, ‘Joint Statement on the deferral of the Financial Services (Implementation of Legislation) Bill (Gov.GG 2 March 2019) <Joint Statement on the proposed amendments to the Financial Services (Implementation of Legislation) Bill - States of Guernsey (gov.gg)> accessed 26 June 2023

Harding, L, ‘Mossak Fonseca: inside the firm that helps the super-rich hide their money’ (Panama Papers: a special investigation, The Guardian, 28 April 2016) <https://www.theguardian.com/news/series/panama-papers> accessed 25 June 2023

Harvey, J ‘Controlling the flow of money or satisfying the regulators?’ in *The Organised Crime Economy: Managing crime markets in Europe* (Wolf Legal, Netherlands 2005) 43

Harvey, J, ‘Just How Effective is Money Laundering Legislation?’ (2008) Security Journal

Harvey, J et al, ‘Final Report: tracking beneficial ownership and the proceeds of corruption: evidence from Nigeria’ (Global Integrity, Washington, DC, USA 31 October 2021)

Harvey, J, et al, ‘Hiding the beneficial owner and the proceeds of corruption’ <https://ace.globalintegrity.org/projects/benowner/> accessed 30 October 2023.

Harvey, J and Turner, S, ‘Can Knowledge of Beneficial Ownership Assist in the Prevention of Laundering the Proceeds of Corruption?’ (Global Integrity Anti-Corruption Evidence Research Programme 19 January 2022) <https://ace.globalintegrity.org/can-knowledge-of-beneficial-ownership-assist-in-the-prevention-of-laundering-the-proceeds-of-corruption/ > accessed 18 May 2023

Heathershaw, J, Cooley, A, Mayne, T, Michel, C, Prelec, T, Sharman, J and Soares de Oiveira, R, ‘The UK’s kleptocracy problem: How servicing post-Soviet elites weakens the rule of law’ (Chatham House, London December 2021)

Helgesson, KS & Moerth, U, ‘Client privilege, compliance and the rule of law: Swedish lawyers and money laundering prevention’ (2018) 69 CLSC 227

Helgesson, KS & Moerth, U, 'Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-money Laundering and Terrorism Financing' (2016) 54(5) J Common Mkt Stud 1216

HM Treasury, 'Explanatory Memorandum to The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017' (2017)

HM Treasury and Home Office UK, *National risk assessment of money laundering and terrorist financing* (October 2015)

HM Treasury and Home Office UK, *National risk assessment of money laundering and terrorist financing 2017* (October 2017)

HM Treasury and Home Office, *National risk assessment of money laundering and terrorist financing 2020* (December 2020)

HM Treasury, 'Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime Consultation' (June 2023) < AML_Reform_Consultation_Document_-_FINAL.pdf (publishing.service.gov.uk)> accessed 29 October 2023

Hopkins, N, 'Why we are shining a light on the world of tax havens again' (Paradise Papers: Tax havens, The Guardian, 5 November 2017) <https://www.theguardian.com/news/series/paradise-papers> accessed 25 June 2023

Janesick, VJ, 'The Choreography of Qualitative Research Design: Minuets, Improvisations, and Crystallization in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000)

Joint Money Laundering Steering Group Guidance <Current Guidance – JMLSG> accessed 30 October 2023

Kacen, L and Chaitin, J, '"The Times They are a Changing" 1: Undertaking Qualitative Research in Ambiguous, Conflictual, and Changing Contexts' (2006) 11(2) The Qualitative Report 209

Kebbell, S, *Anti-Money Laundering Compliance and the Legal Profession* (The Law of Financial Crime, Routledge, Oxon and New York 2022)

Kebbell, S, '"Everybody's Looking at Nothing" - the legal profession and the disproportionate burden of the Proceeds of Crime Act 2002' (2017) 10 Crim LR 741

Kiepe, T, 'Verification of Beneficial Ownership Data Policy Briefing (Open Ownership, May 2020) <https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-briefing-verification-briefing-2020-05.pdf> accessed 19 May 2023

Kiepe, T, and Low, P, 'Beneficial ownership in law: Definitions and thresholds' (Open Ownership, 27 October 2020) <https://www.openownership.org/en/publications/beneficial-ownership-in-law-definitions-and-thresholds/thresholds/> accessed 18 May 2023

Knobel, A, 'Transparency of Asset and Beneficial Ownership Information' (Tax Justice Network, 19 July 2020) <Transparency of Asset and Beneficial Ownership Information by Andres Knobel :: SSRN> accessed 11 August 2022

Law Commission, 'Anti-money laundering: the SARs regime' (Law Com No 384, 2019)

Legal Education and Training Review independent research team, 'Setting standards, The Future of Legal Services Education and Training Regulation in England and Wales' (Final Report, June 2013)

Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2018)

Legal Sector Affinity Group, 'Anti-Money Laundering Guidance for the Legal Sector' (March 2023) <SRA | Guidance and support | Solicitors Regulation Authority> accessed 23 October 2023

Martini, M, 'Who is behind the Wheel? Fixing the Global Standards on Company Ownership' (Transparency International, 2019) <https://images.transparencycdn.org/images/2019_Who-is-behind-the-wheel_EN.pdf> accessed 19 May 2023

Martini, M, 'Reforming Global Standards on Beneficial Ownership' (Transparency International) <Reforming global standards on beneficial ownership… - Transparency.org> accessed 25 June 2023

Matthews, A, *Anti-Money Laundering Toolkit*, (3rd edn The Law Society, London 2021)

Levi M, 'Lawyers as money laundering enablers? An evolving and contentious relationship' (2022) 23(2) GC 126

Middleton, D, and Levi, M, 'Let sleeping lawyers lie: organized crime, lawyers and the regulation of legal services' (2015) 55(4) Brit J Criminol 647

Mor, F, 'Registers of beneficial ownership' (House of Commons Library, Briefing Paper Number 8259, 24 August 2018)

Morrison, D, 'The SQE and creativity: a race to the bottom?' (2018) 52(4) The Law Teacher 467

National Crime Agency, 'Money laundering and illicit finance' <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance> accessed 9 August 2022

National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2021, (National Crime Agency, 2021) < file (nationalcrimeagency.gov.uk)> accessed 24 October 2023

Nicholson, D and Webb, J, *Professional Legal Ethics: Critical Interrogations* (Oxford University Press, Oxford 1999)

Norris, J, ‘Unlimited SRA fines on the horizon’ (Kingsley Napley, Law Society Gazette 9 December 2022) <https://www.kingsleynapley.co.uk/insights/blogs/regulatory-blog/unlimited-sra-nes-on-the-horizon> accessed 18 January 2023

OECD, *Model Tax Convention on Income and on Capital 2017* (OECD Publishing, Paris, 2019) <https://doi.org/10.1787/g2g972ee-en> accessed 18 May 2023

OPBAS letter regarding its views on the SRA Consultation on Financial Penalties (March 2022) <https://www.fca.org.uk/publication/opbas/response-sra-consultation.pdf> accessed 18 July 2023

Open Ownership, ‘The map: Worldwide commitments and action’ <The map: Worldwide commitments and action | openownership.org> accessed 25 June 2023

Open Ownership <https://www.openownership.org/what-we-do/> accessed 30 October 2019

Osborne, DE, ‘The Financial Action Task Force and the Legal Profession’ (2014) 59 NYL Sch L Rev 421

Parker, G, ‘Crown dependencies set for transparency clash with Westminster’ (Financial Times, 3 March 2019) <Crown dependencies set for transparency clash with Westminster | Financial Times (ft.com)> accessed 26 June 2023

PwC, ‘Navigating a path to trust and transparency: Can Ultimate Beneficial Ownership Registers help prevent financial crime?’ (PwC, 2016) < 160718-134608-JH-OS (pwc.co.uk)> accessed 24 October 2023

Schneider, S, ‘Testing the limits of solicitor-client privilege: Lawyers, money laundering, and suspicious transaction reporting’ (2006) 9(1) JMLC 27

Schwandt, TA, ‘Three Epistemological Stances for Qualitative Enquiry: Interpretivism, Hermeneutics, and Social Constructionism’ in Denzin, NK, and Lincoln, YS (eds) *Handbook of Qualitative Research* (2nd edn, Sage Publications, Inc., California 2000)

Schwarz, J, ‘Beneficial ownership in double tax treaties’ (Temple Tax Chambers, Practical Law UK 2023, Practice Note 0-541-5706) < Beneficial ownership in double tax treaties | Practical Law (thomsonreuters.com)> accessed 23 October 2023

Secretary of State for the Home Department, ‘Serious and Organised Crime Strategy’ (Cm 9718, 2018)

Selznick, P, ‘”Law in Context” Revisited’ (2003) 30(2) Brit J Law & Soc 177

Siddique, H and Davies, H, ‘Top UK law firm fined record sum for breaching money-laundering rules’ (The Guardian, 6 January 2022) <Top UK law firm fined record sum for breaching money-laundering rules | Law | The Guardian accessed 3 May 2023

Silcock, K, Banks, F, Plumridge, S and Haskins, N, ‘AML – legal, ethical and practical issues’ (2006) 27(1) Comp Law 23

Silverman, D, ‘Collecting qualitative data during a pandemic’ (2020) 17(1) Communication and Medicine 76

Solicitors Regulation Authority *Enforcement Strategy* < at https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/> accessed 18 January 2023

Solicitors Regulation Authority ‘Legal Practice Course Outcomes 2019’ (August 2019) <https://www.sra.org.uk/globalassets/documents/students/lpc/lpc-outcomes-2019.pdf?version=4a5c48> accessed 19 January 2023

Solicitors Regulation Authority ‘Preventing Money Laundering and Financing of Terrorism, A thematic review’ (SRA March 2018)

Solicitors Regulation Authority ‘Sectoral Risk Assessment – Anti-money laundering and terrorist financing’ (SRA 28 January 2021) <https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/> accessed 11 July 2023

Solicitors Regulation Authority <SRA | Professional skills course information | Solicitors Regulation Authority> accessed 18 January 2023

Solicitors Regulation Authority <SRA | Regulated population statistics | Solicitors Regulation Authority > accessed 27 June 2022

Solicitors Regulation Authority <SRA | Renewing your practising certificate or registration yourself (2023/24) | Solicitors Regulation Authority> accessed 18 July 2023

Solicitors Regulation Authority ‘Statement of Legal Knowledge’ <SRA | Statement of legal knowledge | Solicitors Regulation Authority> accessed 13 July 2023

Solicitors Regulation Authority ‘SQE 1 Assessment Specifications’ <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-assessment-specification> accessed 19 January 2023

Solicitors Regulation Authority 'SQE 2 Assessment Specifications' <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification> accessed 23 January 2023

Solicitors Regulation Authority *SRA Principles* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/principles/> accessed 18 January 2023

Solicitors Regulation Authority <The assessment day | SQE | Solicitors Regulation Authority (sra.org.uk)> accessed 18 July 2023

Solicitors Regulation Authority *The Code of Conduct for Firms* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/> accessed 18 January 2023.

Solicitors Regulation Authority *The Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers* (SRA 25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 18 January 2023.

Solicitors Regulation Authority <https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-sample-questions/question32> accessed 23 January 2023

Solicitors Regulation Authority <https://sqe.sra.org.uk/about-sqe/what-is-the-sqe/qualifying-work-experience> accessed 23 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/admission/pathways-qualification/> accessed 23 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/> accessed 23 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/sqe/training-provider-list/> accessed 18 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/consumers/solicitor-check/624547/> accessed 18 July 2023

Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/guidance/topic/money-laundering/> accessed 19 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/> accessed 19 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/statement-legal-knowledge/> accessed 19 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/> accessed 19 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/solicitors/resources/money-laundering/how-we-regulate/> accessed 19 January 2023

Solicitors Regulation Authority <https://www.sra.org.uk/become-solicitor/legal-practice-course-route/professional-skills-course/professional-skills-course-information-pack/> accessed 19 January 2023

Straker, A and Hall, E, 'From clarity to chaos and back: some reflections on the research process' (1999) 7:3 Educational Action Research 419

Taylor, H and Beizsley, D, 'A Privileged Profession? How the UK's Legal Sector Escapes Effective Supervision for Money Laundering' (Spotlight on Corruption and Global Integrity, Washington, DC, USA) < Privileged_Profession.Full_.pdf (spotlightcorruption.org)> accessed 28 October 2023.

TheCityUK, *Key facts about UK-based financial and related professional services 2021* (March 2021) < key-facts-about-uk-based-financial-and-related-professional-services-2021-v2.pdf (thecityuk.com)> accessed 25 October 2023

The Law Society <Find a Solicitor - The Law Society > accessed 27 June 2022

The Law Society <https://www.lawsociety.org.uk/topics/anti-money-laundering/> accessed 19 January 2023

The Law Society <Legal professionals – who does what? | The Law Society> accessed 27 June 2022

The Law Society, 'SRA fines small firms £20,000 for AML breaches' (The Law Society, 19 January 2023) <SRA fines small firm £20,000 for AML breaches | The Law Society> accessed 3 May 2023

The Law Society 'Trends in the solicitors' profession Annual Statistics Report 2020' (March 2022) p15 <Annual statistics report 2020 | The Law Society > accessed 27 June 2022

The Law Society and The City of London Law Society, 'Joint Law Society and City of London Law Society Q&A on the PSC Registers' (November 2019) <joint-law-society-clls-qa-psc-registers-november-2019.pdf> accessed 23 October 2023

The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inter-American Development Bank (IBD), 'A Beneficial Ownership Implementation Toolkit' (IDB and Organisation for Economic Cooperation and Development, March 2019)

The University of Law <https://solicitorquiz.law.ac.uk/results/36147533-4779-44ad-a5c1-12868ed92e78>accessed 18 January 2023

Tsingou, E, 'New governors on the block: the rise of anti-money laundering professionals' (2018) 68 CLSC 191

Turner, S and Bainbridge, J, 'An Anti-Money Laundering Timeline and the Relentless Regulatory Response' (2018) 82(3) The J of Crim L 215

UK Government Guidance 'Stamp Duty Land Tax temporary reduced rates' <Stamp Duty Land Tax: temporary reduced rates - GOV.UK (www.gov.uk) > accessed 05 August 2023

United Kingdom Financial Intelligence Unit 'Suspicious Activity Reports Annual Report 2022' <https://nationalcrimeagency.gov.uk/who-we-are/publications/632-2022-sars-annual-report-1/file> accessed 5 July 2023

Verhage, A 'Between the hammer and the anvil? The anti-money laundering-complex and its interactions with the compliance industry' (2009) 52 CLSC 9

Zavoli, I, and King, C, 'The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis' (2021) 84(4) MLR 740