

Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003

The Proceeds of Crime Act became law on 5 February 2003 and the Money Laundering Regulations came into force on 1 March 2004. These pieces of legislation impose a range of obligations on solicitors who are involved in relevant transactions which include all financial or property transactions which they conduct for clients. Such transactions would include all conveyancing transactions, the managing of clients money, the managing of bank and savings account, the creating or managing of companies and the managing of trusts.

Solicitors are required, amongst other things, to take formal steps to identify their clients and to keep records. This is the area in which most clients who instruct solicitors will encounter the regulations. There are very few exceptions to the rule and when you instruct Adams Harrison to act for you in a relevant transaction you will be asked to provide evidence of identity such as a passport or a driving licence as

well as evidence of your address. You will be asked to produce this formal identification even if you are a long established client and the firm cannot accept instructions unless you have been able to do so. There are certain discretions but these only relate to the form of identification we can accept; e.g. in circumstances where you do not have a passport or a driving licence.

When you are asked to produce such identification we are not questioning your integrity or bona fides, we are simply complying with rules which have been imposed on us. The rules are designed to combat the laundering of money acquired from the proceeds of drug dealing and other crime, and also to combat the flow of money to fund terrorist organisations. The regulations are not intended to interfere with ordinary legitimate transactions but they do apply to all clients and to all "relevant transactions".

RHODRI REES
Property & Commercial Partner

Anne-Maree Robertson



Anne-Maree Robertson joined our Haverhill office as a Conveyancing Executive at the beginning of October. She has previously worked for a number of Solicitors and Licensed Conveyancers in Essex and has over 20 years of residential property experience.

Away from work Anne-Maree is a keen swimmer having qualified as an ASA Advanced Swimming Instructor. She is also a Lay Chaplain for Essex Rivers Health Care Trust.

Welcome

We hope you will find our second newsletter interesting and informative. In this edition we have included more information about the people who work at Adams Harrison in recognition of their importance to the success of the firm. Our Accounts team features on page 3 and there is also an article and some photographs covering the firms participation in this year's Chariots of Fire charity fund raising event which took place in September.

For the last couple of years instead of sending out Christmas cards to clients and contacts we have made donations to charities with either a staff or local connection. We are going to do the same this year and our Christmas charities are The League of Friends of Saffron Walden Community Hospital & St. Nicholas' Hospice Bury St. Edmunds.

Our Saffron Walden and Haverhill offices will be open until 12 noon on the 23rd December 2004. After Christmas the offices are open between 9.00am on Wednesday 29th and 1.00pm 31st December. We re-open in the New Year at 9.00am on Tuesday 4th January. Everyone at Adams Harrison wishes you a Merry Christmas and a Happy New Year.

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Adams HARRISON

What are Powers of Attorney?

Anyone who physically, or mentally, lacks capacity to deal with their own finances, who is abroad for a lengthy period or simply wishes to delegate the management of their finances to another may use a Power of Attorney.

A Power of Attorney is a legal document enabling a person (the Donor) to appoint one or more persons (the Attorneys) to manage his or her affairs. This could include dealing with property, finances, or in the future making decisions as to nursing care.

There are four different types of Power of Attorney:

1. General Power of Attorney, which gives a blanket authority to the Attorney to act on behalf of the Donor, for example to obtain information regarding the Donor's affairs and signing legal documentation on the Donor's behalf. This Power can only be used when the Donor retains mental capacity.

2. Limited Power of Attorney, where the Attorney has limited powers to carry out particular acts as authorised in the Power. For example, to buy and sell property, to receive and deposit rents. It could also be limited to a specified period, or it could expire upon a specific task being completed. Again, this is only effective while the Donor is mentally capable.

3. Trustee Power of Attorney, given by one or more joint owners of a property, or by a Trustee or a Will, or a Trust which can only last for 12 months.

4. Enduring Power of Attorney (EPA), this can authorise the Attorney to act with general or limited powers and to continue to do so if, or when, the Donor becomes mentally incapacitated, or to only act upon the Donor becoming mentally incapacitated.

An EPA needs to be registered at the Court of Protection when the Attorney believes that the Donor is becoming, or has become, mentally incapable of decision making regarding his or her finances. Notices of the intention to register the EPA must be given to at least three relatives in an order specified by the Enduring Power of Attorney Act 1985. Once registered it remains effective until the

Donor's death, unless the Donor recovers mental capacity and revokes the Power.

One or more Attorneys can be appointed to either act jointly (altogether), or jointly and severally (together or separately). Restrictions, or conditions, can be incorporated into the Power should the Donor wish to.

Once the EPA has been registered the Public Guardianship Office oversees that the Attorneys are acting properly.

There is, however, an Act, the Mental Incapacity Act 2003 (not yet in force), which will repeal the Enduring Power of Attorney Act 1985. The draft Mental Capacity Bill has yet to be passed. This proposes a statutory definition of what it means to be without capacity.

It defines four levels of decision makers who will have to make their decisions in the best interests of the person on whose behalf they are deciding. To determine this, a number of factors will be taken into account including:

✎ Involving the person on whose behalf the decision is being made, as far as possible.

✎ The person's past and present wishes and feelings.

✎ Views of others who have been involved in the person's care and welfare.

✎ If the person is likely to regain capacity and whether the decision should be delayed until that time.

One of the four levels of decision makers is Lasting Powers of Attorney (LPAs). This will replace existing Enduring Powers of Attorney (EPAs). An LPA will allow Donees (i.e. Attorneys) a wide scope, as they will be able to make decisions about health care and welfare in addition to financial matters, although there are limitations. There will also be changes in the LPA procedures; registration will take place when the LPA is made, although there will be further notification as and when the Donor loses capacity. The notification to relations arrangements will be changed as well. Note, however, that EPAs taken out under the old Law will still have effect.

The provisions of the Bill will clarify the rules surrounding Living Wills whereby an adult with capacity may make an advance decision to refuse medical treatment later at a time when they lack this capacity.

MELANIE PRATLETT
Partner - Wills Estates & Trusts Dept.

Chariots of Fire - September 18th 2004

This year with the help of a few friends and family members the firm managed to put together two teams of six for the Chariots of Fire race in Cambridge. One team was entered in the Mixed category and the other also mixed was entered in the Veterans category. The event is a relay race which starts on Queens Green with each runner doing a lap taking in the town centre, some of the colleges and then along The Backs to the start / finish line.



Over 400 teams took part this Year. Unsurprisingly our team of youngsters beat the veterans by a few minutes. The veteran's team is determined to reverse the result next year but as extra training is out of the question ways of bending the rules and other dubious methods will probably be needed.

Thanks to the efforts of both teams and their supporters we raised over £400 for Papworth Hospital.



The Accounts Department of a Solicitors' office is essential for the smooth running of the firm. It plays an important role in helping the partners run the office and has a pivotal role in the smooth delivery of services to clients.

The Accounts department is custodian of the firm's cash and all clients' money. It operates the Solicitors Account Rules and enforces compliance throughout the rest of the practice.

The department is an extremely busy one which deals with routine banking, invoicing and credit control and is also responsible for maintaining the firms database records. The department also has a significant and under-

appreciated role in all property transactions where it monitors and controls the transfer of funds through the firm's computer link with its bankers.

At Adams Harrison we have an excellent Accounts team of four staff lead by our Accounts Manager Alison Helbert ably supported at Saffron Walden by Charlotte Hodgetts and Kerri Mellings. Alison has been with the firm for over 23 years whilst Charlotte and Kerri both joined as school leavers within the last two years and have been trained in-house by the firm. The Accounts Department at Haverhill is policed by Tony Page who has been managing Solicitors' Accounts for over 40 years and joined the firm in 1998 when it took over the operations of his previous employer Bates Ellison and Morris.



Bereavement

Adams Harrison is always striving to improve client relations and, wherever possible, understand the needs and emotions of our clients. That is why our Wills Estates and Trusts Department requested a member of Cruse Bereavement Care to give a talk on bereavement as a way of trying to develop our personal understanding of how clients are feeling and coping at a time which can

be very hard for them. The talk was given to all members of staff within the Department from the fee earners, to the secretaries and administrative staff, and we believed proved extremely helpful.



In fact it was after this talk that I decided I wanted to know even more and enrolled in a 10 week course with Cruse headed "a Study of Bereavement". The course is held one evening a week and covers all subjects on bereavement such as loss of spouses or adults, loss of a child, bereavement by suicide, customs and rituals and the work of Cruse as a whole. It is hoped that the course will prove invaluable to our firm and to our clients.

Once the 10 week course is completed a further three day training course can be undertaken to become a Cruse volunteer. With a greater understanding of bereavement our aim is to provide a better service to our clients.

KIM DALBY - Legal Executive
Wills Estates and Trusts Department

Employment Law:

NEW RIGHTS AND RESPONSIBILITIES IN THE WORK PLACE

As a result of new legislation that came into force on 1st October 2004 employees receive new rights at work relating to grievances, dismissal and disciplinary action. It automatically follows that employers now have new responsibilities.

The law, as contained in the Employment Act 2002 and the Dispute Resolution Regulations, is aimed at making the work place fairer. Failure to properly implement the new law could count against an employer. Employees must also comply with certain new requirements.

Many employers, particularly those with a large number of employees, will already have in place procedures for employees to raise any concerns about their job, terms and conditions, the way they are treated or problems with management. Regardless of the size of their business all employers must now by law have a grievance procedure and are obliged to tell their employees about it within two months of them starting work, together with written details about their job and terms and conditions.

An employee who has a grievance is now required to follow the three-step statutory minimum grievance procedure. Employers must put in place a procedure that at least includes these three steps. They are:

1. A written statement detailing the grievance must be sent by the employee.

An employee will not be able to make a claim to an Employment Tribunal unless they have done this and provided their employer, with at least 28 days to respond.

2. The employer must arrange a meeting to discuss the grievance.

The employer can take time to look in to the complaint before holding a meeting but should not delay for an unreasonable period of time.

The employee has a duty to attend the meeting and has the right to be accompanied by someone from work or a trade union official.

3. The appeal meeting.

If the meeting finds against the employee's grievance/complaint then he or she is entitled to appeal and the employer must arrange a further meeting to discuss the appeal.

There will be financial consequences for both employer and employee if they should fail to comply with the new procedures. Failure to comply could result in the Tribunal deciding to reduce the award of compensation to a successful employee by as much as half or, in the case of a defaulting employer, the compensation can be increased.

Failure to attend a meeting, or to use the employer's appeal procedure, are examples of situations where an employee, if successful could have their compensation reduced by at least 10%.

Employees will be expected to follow the procedure even if they are raising a grievance after they have left their job. This is certainly the case if the employee is making a claim for constructive dismissal.

There are certain circumstances, detailed in the legislation, when the formal grievance procedure need not be followed. This includes, for example, where the employee has suffered harassment and believes they would suffer further harassment if they followed the procedure; or if either the employee or employer are seriously ill.

The employer must follow the three stage process for disciplinary matters, except where the employee's gross misconduct warrants an immediate dismissal. If the employer does not follow the procedure and dismisses an employee the Tribunal will automatically deem the dismissal to be unfair, except where the dismissal was for gross misconduct.

Complaints to an Employment Tribunal must be made within three months of the date of the act complained of. The new legislation has made the time limits different for certain cases, however. For example, claims for equal pay now have a time limit of six months.

Both employees and employers are going to need to know and understand the procedure to avoid the various pitfalls.

JENNIFER CARPENTER - Solicitor

DEFRA Public Enquiry

We have just received the decision of the DEFRA Inspector upholding our objections to a proposed by-way open to all traffic (B.O.A.T) between Calford Green and Sturmer.

We represented local landowners, Eric and Margaret Chapman from Calford Green who opposed a Modification Order made by Suffolk and Essex County Councils seeking to add a by-way open to all traffic running from their home at Calford Green south to Sturmer.

After a three day Public Enquiry at which Mr. and Mrs. Chapman were represented by Partner, Tom Harrison, the Inspector concluded that there was insufficient evidence to confirm the modification orders.

Adams Harrison has now been involved in challenging all the B.O.A.T modification orders in the Haverhill/Kedington area over the last twelve years. Our objections have been successfully upheld now at two of the three public enquiries. We are the only firm of Solicitors to be involved in these enquiries.

A delighted Mr. and Mrs. Chapman are planning a celebration party next month for all the local residents who joined in the objection at the Inquiry.