

CONVEYANCING **UNIT 2:** TAXATION AND REGULATORY MATTERS



UNIT 2: REGULATORY MATTERS, TAXATION AND FINANCE

Contents

- taxation in conveyancing
- fraud in conveyancing
- code for Completion by Post
- money laundering risks in conveyancing
- Anti money laundering checks (AML)
- cybercrime risks
- professional negligence and the risks of “Etridge” advice
- undertakings



UNIT 2: LEARNING OUTCOMES

- Calculate taxation due in conveyancing transactions
- Differentiate between taxation practices in England and Wales
- Summarise the range of regulatory issues which may arise in context of conveyancing transactions
- Identify some key steps practitioners can undertake to mitigate risks

ACTIVITY 1A: TAX ON LAND SALES

Ask your AI agent voice command:

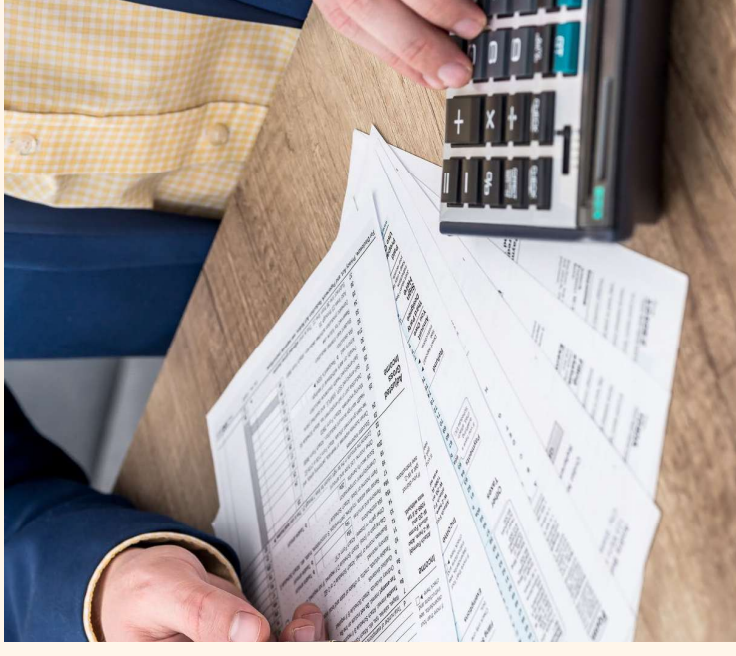
- *Please explain why there are different tax in England and Wales applicable when purchasing a residential property?*
- *Do these taxes apply to commercial property as well?*
- *Please tell me how many days after completion of a purchase does the tax have to be paid?*
- *Does the solicitor pay it on the buyer's behalf?*
- *What are the penalties on late filing?*

ACTIVITY 1B: CALCULATE FEES

- Using the fee schedule provided, calculate the fees due for a purchase of a Leasehold property for £650,000 in England as a second home, with no other interest in land and with a mortgage.

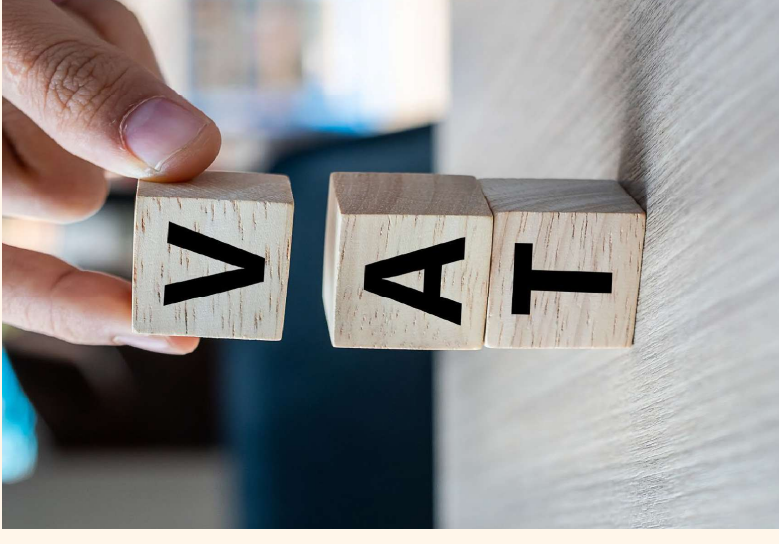
CONVEYANCING TAXATION

- Conveyancing transactions may be subject to tax
- Conveyancers are not accountants so not experts in tax limit of their advice. But need to have sufficient working knowledge to give competent advice. (Limit or quantify)
 - Value added tax (VAT)
 - **Income tax:** not typically relevant in conveyancing.
 - **Capital gains tax:** tax due when disposing of an asset which has increased in value (this includes land)
 - **Land transaction tax or stamp duty:** specific tax due on buying land
- In initial interview, should assess likely tax due and advise client (again caveat with tax rates may change)



VALUEADDED TAX (VAT)

- Standard rate = 20%
- VAT usually payable on conveyancing services and disbursements
- Default position: most interests in land exempt from VAT
- Various circumstances not exempt:
 - seller or landlord opted the property to tax
 - some disposals specifically excluded: commercial freeholds, parking, hotels, holiday accommodation
 - land element may be incidental to something else (e.g. equipment
 - some zero rated if dwelling or charitable purposes
- This module mostly concerns residential conveyancing, so will not consider VAT further.



CAPITAL GAINS TAX

- Conveyancer must assess if seller must pay CGT
- **private residence relief** (exemption):
 - up to 5,000 m² (just over 1 acre/ football pitch) **AND**
 - only/ main residence throughout ownership period
 - Some periods qualify for relief (not exhaustive):
 - seller can be absent for up to 9m before sale, as long as only/ main home
 - period of absence when working outside UK
 - absence incurred by employer requirement to live elsewhere within UK, up to prescribed limit (4 yrs)
- CGT may apply where buy-to-let or property fully/ partly used for business purpose

- seller will not have to pay CGT when selling the home if all of the following apply:
 - the seller has one home and has lived in it as their main home for all the time they have owned it;
 - the seller has not let part of it out (this does not include having a single lodger);
 - the seller has not used part of it for business only;
 - the grounds, including all buildings, are less than 5,000 square metres in total;
 - the seller did not buy the property just to make a gain.

Capital gains tax when you sell

your home

CAPITAL GAINS TAX

- After assessing liability for CGT, must calculate amount due.
- Only due on **gain** (not full value)
- Offset costs (expenses) inc renovation
- Annual exempt amount offset (£3000)
- Rate payable depends on the individual's taxable income
 - If they fall in basic rate income tax band: 18%
 - Note this requires a [calculation](#) to assess if gain remains within basic rate income tax band
 - If they fall in higher rate income tax: 24%
- Though CGT only payable on sale, may be prudent to advise prospective purchaser that they may be liable in future depending on the reasons for the property purchase



[Capital gains tax when you sell](#)

[your home](#)

CGT CALCULATIONS IN THIS MODULE

- For the purpose of this module, we will adopt a simplified formula for calculating CGT (making assumptions)
- In practice you would need to fully calculate, applying your client's circumstances
 - this includes calculating any reliefs due before discounting (we will tell you here)
- You will be told if CGT is due at lower or higher rate
- **STEP 1:** Calculate difference in value (VALUE SOLD - VALUE PURCHASED (or 1982))
- **STEP 2:** Minus deductions (ALL COSTS INCLUDING IMPROVEMENTS)
- **STEP 3:** Minus the tax free allowance (CGT ANNUAL ALLOWANCE) = Taxable gain
- **STEP 4:** Offset any relief due = Taxable amount
- **STEP 5:** Multiply taxable amount by the rate due = TOTAL TAX DUE
- **STEP 6:** Explain your answer in a sentence

ACTIVITY 2: CALCULATE CGT

- Rhian is selling a property for £400,000. She purchased this for £200,000 in October 2012. Her estate agent fees are £2900 and her legal costs are £4500. She has invested £19430 in renovation costs. She is a higher rate of taxpayer. She is entitled to a 20% relief.

- **Calculate any CGT due**

- STEP 1: Calculate difference in value (VALUE SOLD - VALUE PURCHASED (or 1982))
- STEP 2: Minus deductions (ALL COSTS INCLUDING IMPROVEMENTS)
- STEP 3: Minus the tax free allowance (CGT ANNUAL ALLOWANCE) = Taxable gain
- STEP 4: Multiply taxable gain by the rate due = PRE-RELIEF TOTAL
- STEP 5: Offset any relief due = AMOUNT OF TAX DUE
- STEP 6: Explain your answer in a sentence

TAX DUEBY PURCHASER

- Buyers don't pay CGT, but may have to pay either:
 - Stamp duty land tax (SDT) (England)
 - Land Transaction Tax (LTT) (Wales)
- SDT is payable when someone:
 - buys a freehold property;
 - buys a new or existing leasehold property;
 - buys a property through a shared ownership scheme;
 - has land or property transferred to them in exchange for payment, for example buying a

share in a house. Note that taking on part of a mortgage debt on a property transfer could give rise to SDT liability even if no money actually changes hands – it is the assumption of the debt which is relevant for SDT.



STAMP DUTY (ENGLAND) RATES

Property or lease premium or transfer value	SDL Rate
Up to £125,000	0%
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

- April 2025 onwards rates:
- Discount for **first time buyer**:
 - no SDLT up to £300,000
 - 5% SDLT on the portion from £300,001 to £500,000
 - If the price is over £500,000, you cannot claim the relief. Follow the rules for people who've bought a home before.
- Higher rate for additional properties:
 - 5% on top of SDLT rates
 - Not if replacing main residence or main residence sold within 36 months
 - Additional 2% due for non-UK residents
- Different reliefs for corporate bodies

NO SDLT RETURNS NEEDED

- It is not necessary to pay SDLT or file a return if:
 - no money or other property changes hands for a land or property transfer;
 - property is left to someone in a will;
 - property is transferred due to divorce or dissolution of a civil partnership;
 - a freehold property is purchased for less than £40,000;
 - a new or assigned lease is purchased of 7 years or more, where the premium is less than £40,000 and the annual rent is less than £1,000;
 - a new or assigned lease is purchased for less than 7 years and the amount paid is less than the residential threshold (or non-residential threshold) for SDLT;
 - alternative property financial arrangements were used for example, to comply with Sharia law.

ACTIVITY 3: CALCULATE STAMP DUTY

1. Charlotte is purchasing a first time property for £400,000. This is her first property. Calculate stamp duty due.
2. Janice is purchasing a buy-to-let property for £490,000. Calculate stamp duty due.
3. Eliza is purchasing a property for £680,000. It will replace her current home. Calculate stamp duty due.

LAND TRANSACTION TAX (LTT)

- Replaced SDLT in relation to property purchased in Wales since 1 April 2018
- LTT is payable when someone:
 - buys a freehold property;
 - buys a new or existing leasehold;
 - takes a transfer of land or property in exchange for payment for example, taking on part of a mortgage debt or buying a share in a house.
- LTT is also a self-assessment tax and it is the responsibility of the taxpayer to complete and submit an accurate tax return and pay any tax due. It is necessary to submit a LTT return even if there is nothing to pay except for the following transactions that do not need a return:
 - property that is left in a will (and no payment is made for the transfer of);
 - property is transferred due to divorce or dissolution of a civil partnership;
 - a freehold property purchased for less than £40,000;
 - a new or assigned lease of 7 years or more is purchased and the premium is less than £40,000 and the annual rent is less than £1,000;
 - a new or assigned lease of less than 7 years is purchased, provided that the amount paid is less than the residential (or non-residential) LTT zero rate threshold.

LAND TRANSACTION TAX (WALES) RATES (MAIN)

Property or lease premium or transfer value	Main rate
The portion up to and including £225,000	0%
The portion over £225,000 up to and including £400,000	6%
The portion over £400,000 up to and including £750,000	7.5%
The portion over £750,000 up to and including £1,500,000	10%
The portion over £1,500,000	12%

- Since 10 October 2022
- No discount for first time buyer:
- In November 2022 you buy a house for £280,000. You pay the following:
 - 0% on the first £225,000 = £0
 - 6% on the final £55,000 = £3,300
 - total IIT = £3,300
- Differences between IIT and SDIT are summarised on [Welsh Gov website](#)

LAND TRANSACTION TAX (WALES) RATES (HIGHER

Property or lease premium or transfer value	Main rate
The portion up to and including £180,000	5%
The portion over £180,000 up to and including £250,000	8.5%
The portion over £250,000 up to and including £400,000	10%
The portion over £400,000 up to and including £750,000	12.5%
The portion over £750,000 up to and including £1,500,000	15%

- Since 11 December 2024

If you buy a second home for £260,000, you'll pay:

- 5% on the first £180,000 = £9,000
- 8.5% on the next £70,000 = £5,950
- 10% on the final £10,000 = £1,000
- **Total LTT = £15,950**

ACTIVITY 3: CALCULATE IT

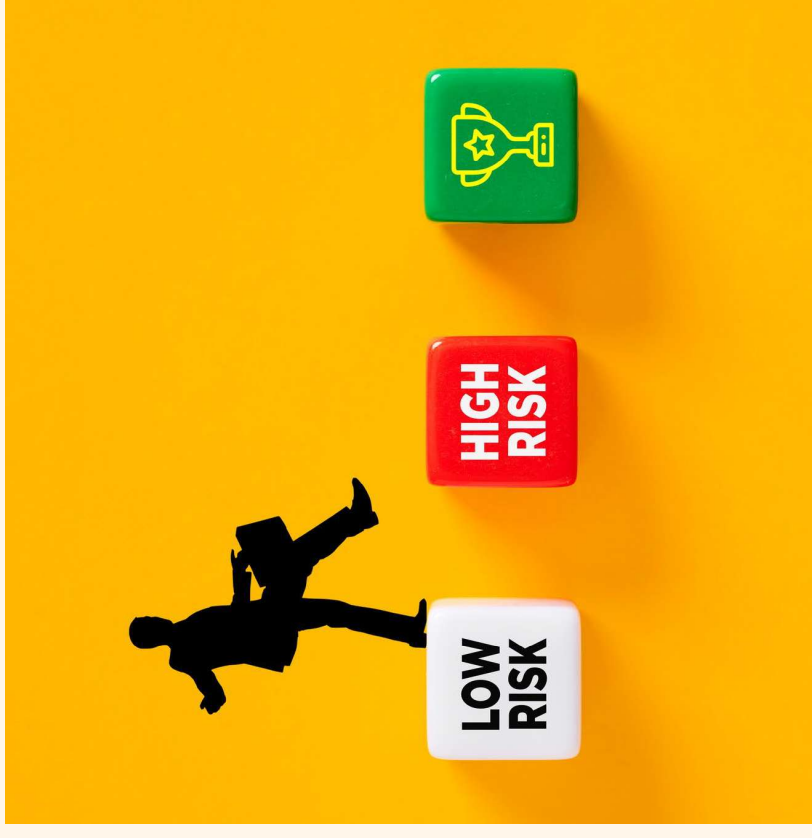
1. Charlotte is purchasing a first time property for £400,000. This is her first property. Calculate land transaction tax due.
2. Janice is purchasing a buy-to-let property for £490,000. Calculate land transaction tax due.
3. Eliza is purchasing a property for £680,000. It will replace her current home. Calculate land transaction tax due.

LENDER REQUIREMENTS

- Only authorised to release loan when you have sufficient funds to complete purchase AND pay all stamp duty, land tax, registration fees to protect the security as a first legal mortgage
- Conveyancer must have the SDLT funds in hand from the buyer prior to releasing the mortgage advance on completion. The conveyancer will have to pay the SDLT from their own funds if the money is not held on completion. The conveyancer will add the amount of the SDLT to the sum due from the client on the completion statement. This will also apply to LTT.
- **Law Society's Protocol and Core Practice Management Standards (CPMS)**

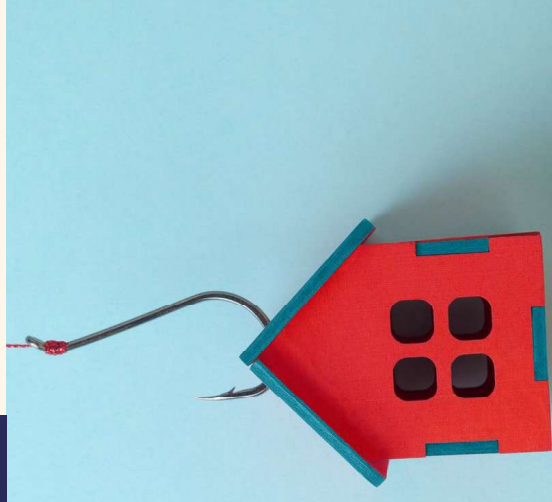
REGULATION AND RISK MANAGEMENT

- Conveyancing is risky business: large sums of money, and exchanging interests in large assets
- Risk of fraud, cybercrime, money laundering, undue influence
- Increasing amounts of due diligence required to protect against money laundering and sanctions and add to professional negligence risk



CONVEYANCING FRAUD

- Must be alert to risk of fraud throughout transaction
- Various safeguards needed: including checking client's identity
- Potential liability for conveyancer: *Penn v Bristol & West* [1997] EWCA Civ 1416
- **MLR 2017, PCA 2002** require all conveyancers to verify client identity
- HMFR - fraud prevention measures when dealing with unrepresented party (ID1 forms)
- UK Finance Mortgage Lenders' Handbook: requirements for firms acting on behalf of lenders



R I S K

Key sources: Money Laundering
Regulations 2017
Proceeds of Crime Act 2002

KEY RISKS



Vulnerable Clients

- Sole owners
- Living abroad
- Elderly/care residents
- Empty or tenanted homes
- Owners no longer living at the property because of a break up,
- Previous fraud victims,
- Deceased owners



High-Risk Properties

- Unoccupied
- Tenanted
- High-value (no charge)
- Overseas charge holder
- Redevelopment

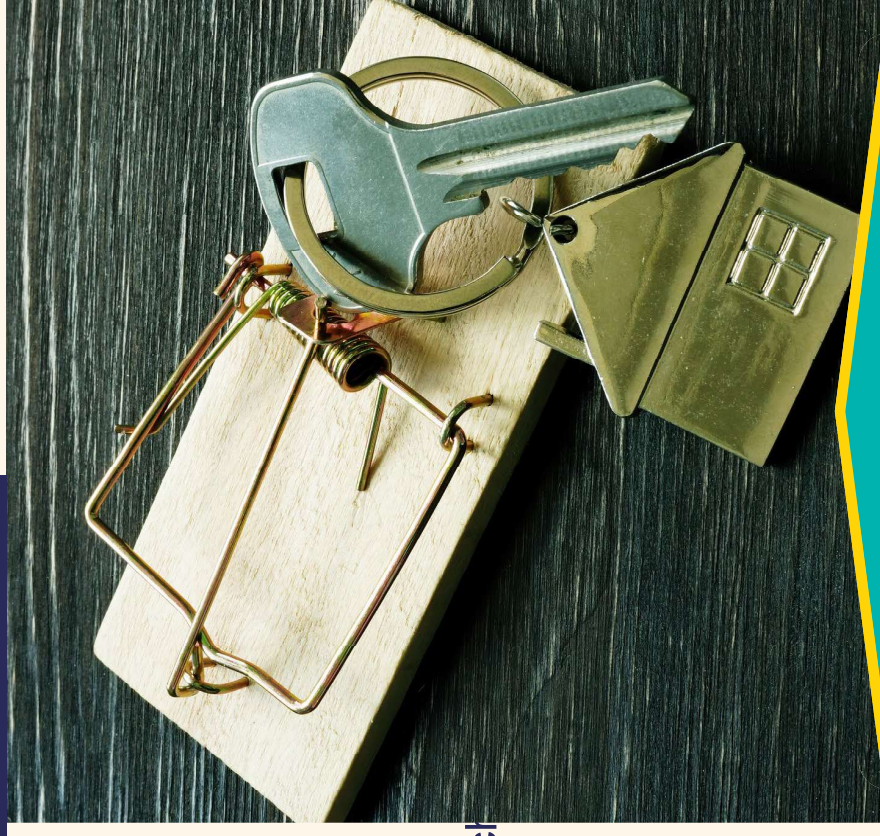


Fraud Warning Signs

- Urgent transactions
- Possible undervaluation
- Vulnerable owner/property
- Suspicious activity
- Conflicting contact details

FRAUDULEN^SSELLERS

- Fraudsters pretending to be seller of property
- Fraud possible if inadequate identity checks and money sent to seller where no conveyance happened
- Fraud not exposed until fraudster disappeared with money
- More complex if lender involved: buyer conveyancer also in breach of trust to lender
- *Dreamvar Ltd v Mishcon de Reya* [2018] EWCA Civ 1082
 - Led to changes
 - between exchange and completion, seller conveyancer usually send TAB to buyer - information and undertakings
 - enquiries about completion arrangements
 - traditionally, completion in office of seller's conveyancer



Key sources: Money Laundering
Regulations 2017
Proceeds of Crime Act 2002

COMPLETION METHODS

Personal Attendance

Buyer attends in person

RARE

By Agent

Local firm acts for buyer

RARE

By Post

Seller acts as buyer's agent

MOST COMMON

Key Safeguards Under the Code for Completion by Post

- Written agreement between conveyancers
- TA13 confirms adoption of the Code
- Seller's conveyancer has authority from the true owner
- Seller is entitled to transfer the title
- Completion monies used only for completion
- Purchase money held on trust for the buyer
- Protects innocent buyers against fraud
- Mandatory for CQS-accredited firms

KEYSTEPS

- Code provides seller with right to withdraw using the code
- Seller's conveyancer agrees under code that they act as the buyer's conveyancer's agent on completion without fee
- When seller's conveyancer holds the completion money, the hold this on trust, and must use it only for valid completion (repaid)
- Key steps:
 - Before completion
 - On completion
 - After completion
- Remember: sellers must be able to rely on undertakings by solicitors



[Read the code!](#)

IDENTITYTHEFT BOGUSLAW FIRMS

- Factors to alert suspicion:
 - **Errors in Letter heading** – Misspelled town names or incorrect firm details.
 - **Lack of a Landline Number** – Mobile numbers (starting with 07) instead of a fixed office number.
 - **Inconsistent Contact Details** – Phone or fax numbers differing from those typically used by the firm.
 - **Call-Back Services** – Calls being diverted instead of reaching a direct office line.
 - **Use of Serviced Offices** – No permanent business location.
 - **Generic Email Addresses** – Using Gmail or similar instead of a firm-specific domain.
 - **Unfamiliar Local Presence** – A new firm appearing without community ties.
 - **Unexplained Distant Branches** – Opening an office far from the head office without a clear reason.
 - **Bank Account Location Mismatch** – A firm's bank account being in a different region than office.
 - **Overseas Client Account** – A major red flag for potential fraud.
 - **Missing SRA Clickable Logo** – All regulated firms must display this on their website.
 - **Suspicious Bank Account Name** – Accounts not matching the firm's official name/ variations

IDENTITY THEFT: MORTGAGE FRAUD

What Is It?

- Fraud used to obtain mortgage funds
- Fraud Act 2006
- Criminal property (PoCA 2002)

Examples

- Inflated valuations
- False purchase prices
- Sham transactions

Red Flags

- Unusual transactions
- Inconsistent information
- Money laundering concerns



Responsibilities

- Duty to client & lender
- Report suspicions
- Notify lender where appropriate
- Criminal liability risk

[Mortgage fraud practice note](#)

UK FINANCE MORTGAGE LENDER'S HANDBOOK

- Sets out working practices. Lender's handbook contains similar requirements to Law Society. As well as checking fraud and money laundering.

- a. Signatures:
- b. Other side's legal rep:
- c. Details of valuation:
- d. Length of seller ownership
- e. Seller not owner:
- f. Not acting for lender if related to borrower
- g. How buyer funding purchase
- h. Price as instructed/incentives

- Financial disclosure form needs to be completed



MONEY LAUNDERING

- Practice of passing illegal money (proceeds of crime) through seemingly legitimate business or personal dealings
- Ethical conflict: usually must protect client confidentiality
- Criminal offence to assist with money laundering, so obligatory to notify

National Crime Agency if suspected

- POCA 2002 solicitor can be prosecuted for failing to report
- Legal requirements relating to anti-money laundering (AML):
 - the **Proceeds of Crime Act 2002** ; and
 - the Money Laundering and Terrorist Financing (Amendment)

Regulations 2019 (which amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer)

Regulations 2017 and implement the EU's 5th Money Laundering

Directive) aka the **Money Laundering Regulations 2017** (MLR 2017).



MLR 2017 (AS AMENDED) - KEY AML OBLIGATIONS

Firm-Wide Requirements

- Risk assessment
- Policies & controls
- MLRO appointment
- Staff training

Customer Due Diligence

- Identity verification
- Beneficial ownership
- Source of funds
- Ongoing monitoring

Enhanced Risk Areas

- PEPs
- High-risk countries
- Unusual transactions
- Proliferation financing

SARs & Reporting

- Internal reports
- SARs to NCA
- Escalation by MLRO
- No tipping off

Sanctions & Economic Crime

- Sanctions screening
- Check beneficial owners
- Asset freeze risks
- Russia-related controls

Key changes since 2017: Proliferation financing risk assessments (2022), stronger beneficial ownership checks, enhanced sanctions compliance, discrepancy reporting, and greater use of electronic verification.

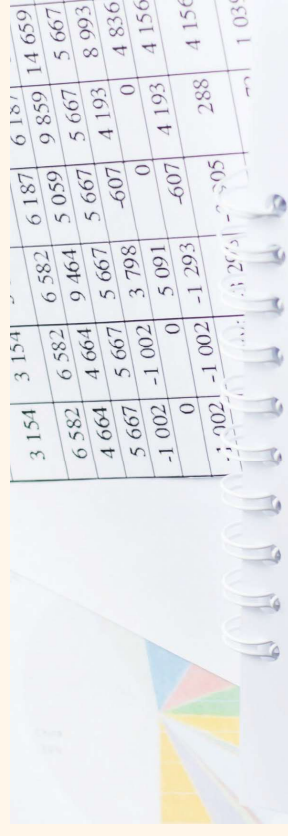
<https://www.sra.org.uk/solicitors/resources/topic/money-laundering>

PROFESSIONAL NEGLIGENCE

- Duty of care: negligence or breach of trust
- Indemnity insurance to cover such errors
- Negligence claims are undesirable: highest standard of care needed
 - appropriate and full attendance notes/ records
 - risks associated with non-standard procedure, e.g. client asks that local searches skipped - signed written instructions to a void
 - give consent if act for buyer and their lender

- Cases of undue influence: ***RBS v Etridge (No. 2)*** [2002] UKHL 44 (see mortgages lecture in Land Law)

- Must be alert where spouse wants to mortgage family home for business purposes - entering transaction not in best interest
- also arise in co-ownership: sign mortgage under false pretenses
- presumed or actual undue influence



3 154	3 154	6 582	6 187	6 187	14 659
6 582	6 582	9 464	5 059	9 859	5 667
4 664	4 664	5 667	5 667	5 667	8 993
5 667	5 667	3 798	-607	0	4 836
-1 002	-1 002	5 091	0	4 193	4 156
0	-1 002	-1 293	-607	288	4 156
					1 03

PROFESSIONAL NEGLIGENCE

RBS V ETRIDGE (NO. 2)

- Different classes of UI
 - 1) Actual UI
 - 2A) presumed UI by relationship (e.g. doctor patient)
 - 2B) claimant has to prove that confidence and trust were placed in the wrongdoer (husband and wife)
- *Etridge*- provided authoritative and detailed guidance on the obligations of solicitors and lenders which applies
 - wherever a property is jointly owned, and the owners have a non-commercial relationship (e.g. marriage, cohabitants, family, etc.)
- One owner then obtains a mortgage to finance, for example, their business affairs, from which the other does not directly benefit.

1. Bank should ensure that the surety receives legal advice and bank receives confirmation that implications of the mortgage have been explained
2. Solicitor should advise of any potential liability at a face-to-face meeting in absence of mortgagor.
3. Solicitor must explain nature of the documents, their practical consequences and the seriousness of the risks
4. Bank should provide solicitor with the necessary financial information to enable the solicitor to advise.
5. Not for solicitor to veto the transaction, although if it is glaringly obvious the surety is being grievously wronged, the solicitor should decline to act further.
6. Solicitor may also act for the mortgagor or the bank provided that they are satisfied it is in the surety's best interests and there is no conflict of interest.
7. Normally, bank can rely upon the solicitor's certificate confirming the discussions, but it will not be protected if it knows, or ought to have known, that the solicitor's advice was either not given or was inadequate.

MITIGATING RISK

- Significant number of risks related to conveyancing practice
- Firms must have relevant policies, controls and procedures
- Also steps which conveyancers can suggest that their clients take to diminish the risk of property fraud:

- **Property Alert Service:**

- can monitor via HMLR any property thought at risk of fraud: email alerts after requests for searches/ applications made

- **Register a restriction:**

- Can register with HMLR a restriction, preventing sale or mortgage being registered unless a conveyancer certifies that the disposition was made by the registered proprietor by putting a Form IL restriction on the register of title
- can be registered to title by owner who does not live in property



UNDERTAKINGS what are they?

The SRA Glossary defines an undertaking as:

“A statement, given orally or in writing, whether or not it includes the word ‘undertake’ or ‘undertaking’, to someone who reasonably places reliance on it, that you or a third party will do something or cause something to be done, or refrain from doing something.”

**A promise that another person
can reasonably rely upon.**

Why They Matter

- Essential to conveyancing
- Professionally binding
- Enforced by courts & SRA

Common Examples

-  Title deeds
-  Exchange of contracts
-  Mortgage discharge on completion

SMART

**Specific • Measurable
Achievable • Realistic
Time-bound**

UNDERTAKINGS & Effect

Courts enforce undertakings strictly
Hole & Pugsley v Sumption [2001]

SRA 2019

Perform undertakings within agreed or reasonable timescales

Good Practice

- Use written undertakings
- Confirm verbal undertakings in writing
- Record given, received & discharged undertakings

Consequences of Breach

- ⚠ Court order
- ⚠ SRA discipline
- ⚠ Contempt proceedings

UNDERTAKINGS DRAFTING

Authority

- Am I authorised?
- Can I perform it?

Clarity

- Precise wording
- Measurable obligation

Risk

- Do we need it?
- Firm policy?

Supervision

- Should a partner approve?

Harcus Sinclair LLP v Your Lawyers
Ltd [2021]

Not every promise is a
professional undertaking.

Checklist: Clear • Specific • Realistic • Within your control • Time-limited

See guidance [SRA \(2022\)](#)

UNIT 2: LEARNING OUTCOMES

- Calculate taxation due in conveyancing transactions
- Differentiate between taxation practices in England and Wales
- Summarise the range of regulatory issues which may arise in context of conveyancing transactions
- Identify some key steps practitioners can undertake to mitigate risks

How confident are you that you can demonstrate these Learning

Outcomes in your assessments?

Probably not fully after today alone. As you plan your independent study for this week, focus on these learning outcomes. Plan your reading and notes against these and work on building your confidence in achieving them before we start the next unit.

RECAP

UNIT2: READING

- You should draw on the following materials to deepen your understanding of the topics discussed in this unit.
- Harris *et al.* (2024) chapters 6, 20
- Law society (2019) '*The Law Society Conveyancing Protocol*'. Available at: <https://www.lawsociety.org.uk/topics/property/conveyancing-protocol>
- Law Society (2019) 'Code for completion by post'. Available at: <https://www.lawsociety.org.uk/topics/property/code-for-completion-by-post>
- Law Society (2020) 'Mortgage fraud'. Available at: <https://www.lawsociety.org.uk/topics/property/mortgage-fraud>
- SRA (undated) 'Money Laundering'. Available at: <https://www.sra.org.uk/solicitors/resources/topic/money-laundering>
- Read further about VAT on property - overview on lexis plus practical guidance