
Financial Institutions and Professional Advisers:

Latest Developments in Anti-Money Laundering Provisions

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Executive Summary

This Paper has been prepared for the purpose of giving an at-a-glance view of the current state of the Law and approach of the English Courts relating to the predicament often imposed on both financial institutions and professional advisers as a direct result of recent developments in anti-money laundering legislation and Common Law developments of constructive trustee obligations.

The Paper seeks both to explore the problems commonly arising and analyse possible steps that can be taken either to avoid or at least minimise the risks. This is not an area which lends itself to easy solutions but it is essential that everyone at risk is fully informed and up-to-date. The aim of this Paper is to assist in those objectives.

1. Financial Institutions

Financial institutions have recognised for some time that they can be caught between a rock and a hard place arising from the tensions between their obligations under the criminal and civil law and the development of anti money laundering legislation. This concern has clearly extended to professional advisers particularly lawyers and accountants, and in view of the proposed statutory changes, will increase rather than decrease. Is there any comfort to be had from how the Courts have treated these problems?

The Court of Appeal in **C v S [1999] 2 AER 343** set out a procedure to be followed where compliance with an order for disclosure of information in civil proceedings might disclose information which is likely to prejudice an investigation into money laundering and cause a financial institution to be in breach of tipping off provisions under Section 93D (now repealed) of the Criminal Justice Act 1988. The starting point, where possible prejudice to an investigation is suspected by a financial institution, is to inform NCIS of the Order which has been made and the material which the financial institution is required to disclose. This may result in permission for partial disclosure and consideration will have to be given to the explanation provided to the applicant. If potential disclosure is unacceptable, directions will need to be sought from the Court and it would be for NCIS (or the investigating authority) to persuade the Court that, were disclosure to be made, there would be a real likelihood of the investigation being prejudiced. Unless the applicant for the Order agrees to the Order not being complied with in whole or in part, it will be necessary for the Court to be informed and directions obtained if it is considered that the Order cannot be obeyed.

A similar procedure was suggested whereby the bank could make an application naming the SFO as respondent, in the case of **Bank of Scotland v A Limited and Others** (Serious Fraud Office, Interested Party) decided by the English Court of Appeal in a Judgment delivered on 18 January 2001 ([2001] EWCA Civ 52).

The issues in this appeal hearing arose out of the provisions of Sections 93A to C of the Criminal Justice Act 1988 (inserted by sections 29 to 31 of the

Criminal Justice Act 1993) concerning the offence of money laundering and Section 93D (as inserted by Section 32 of the 1993 Act) which was intended to prevent tipping off when the police were investigating money laundering. These sections have now been repealed and replaced by the relevant provisions of the Proceeds of Crime Act 2003.

The concern of the Bank was to identify the steps, if any, which were open to it to protect itself when, as a result of information which it had received from the criminal intelligence services, it had grounds for fearing that if it paid out money from a customer's account it would be exposed to claims for knowingly assisting a breach of trust.

The Bank became alarmed when a client company holding sterling and dollar accounts with the Bank transferred substantial sums of money into those accounts. The Bank was sufficiently suspicious to consider it should notify the transactions to the police and thus became aware that investigations were being conducted into activities closely associated with the client company. The Bank was naturally concerned that if it paid out any monies held in the account it could be liable to third parties as a constructive trustee. However if it refused to pay out any monies an action could be brought against it by the customer for breach of mandate and it would not be able to defend itself because the police objected to the Bank revealing what they had told the Bank and invoked Section 93D.

The Bank applied without notice to the High Court for directions as to what it should do. Initially the Court sought to assist the Bank by granting an injunction restraining the Bank from making any payment from the accounts. Effectively the company's accounts were frozen. The result was the Bank could not allow payment out of the account **and** could not tell the customer why. The client company was not to see anything which the Bank had put before the Court in support of the application nor the order itself nor to be informed of its existence. It is interesting to note that there was no return date requiring the Bank to return to the Court for directions and it was not expressed to be subject to any cross undertaking in damages.

The Bank's solicitors then wrote to the client company saying that it was not allowing any further transactions on the accounts as it was unhappy about

certain aspects of the transactions on the accounts. The client company applied to the Commercial Court for an order seeking that the monies be paid over to its own solicitors. The client company became aware of the previous proceedings and therefore of the fear of tipping off by the Bank contrary to Section 93D and thus became aware of the serious criminal investigation that was underway. The Commercial Court proceedings were transferred to the Chancery Division where Laddie, J took the view that the original injunction should not have been made and ordered the Bank to pay the costs of all the defendants. On appeal by the Bank, the Court of Appeal held that whilst it was in favour of a flexible approach in relation to the granting of orders, the Court could not envisage any circumstances when it was appropriate to grant an injunction against only the party seeking relief. It recognised the Bank was in a genuinely difficult situation. It did say however that if there was a dispute with the police over whether payments could be made from an account or whether information concerning criminal investigations could be disclosed, the Bank could apply for an interim declaration under Civil Procedure Rules 25.1(1)(b) and that it should have been the SFO who were joined as an appropriate respondent to any application by the Bank rather than the client company (in the event that the Bank and the SFO could not resolve such issues by agreement).

Whilst the Court noted the extensive powers given to the police by virtue of the tipping off legislation and further that the Courts did have the power to grant interim advisory declarations to enable institutions such as banks to ensure that they were not affected adversely unnecessarily because of the existence of such police powers, nevertheless such powers as the Court now had should not be regarded as a substitute for financial institutions taking the decisions which should be their commercial responsibility (such as whether to contest proceedings brought by a customer of the Bank).

The Court of Appeal also noted that the use of the Court's power to grant interim declarations and proceedings involving the SFO would protect a Bank from criminal proceedings but it would not automatically provide protection against actions by customers or third parties. However the Court did note that if the Bank took the initiative to seek the Court's guidance it was hard to imagine the Bank subsequently being held to have acted dishonestly so as to incur accessory liability.

In summary the Court of Appeal set out its own guidelines for dealing with similar problems in the future namely:-

1. A freezing order should not be granted by the Court in similar circumstances (particularly where it was to be made against only the party seeking relief).
2. Disputes over payments or disclosure that can be made by a bank should be resolved between the SFO and the bank otherwise an application should be made for interim declaratory relief and, in the absence of unreasonable behaviour, the parties are likely to have to pay their own costs.
3. If proceedings are brought by the bank's customer, in contesting them or otherwise the bank must take a commercial decision.
4. If the proceedings are to be contested, they should be conducted as openly as possible and consideration should be given as to whether it is desirable for the Judge who hears the proceedings against the Bank to be different from the Judge from whom guidance is sought.
5. If the Bank follows the Court's guidance it will not be subject to criminal proceedings.

Similar issues were addressed in a case dealt with by the High Court (Commercial Court) in January 2003 – **Amalgamated Metal Trading Limited v 1. City of London Police Financial Investigation Unit; 2. Wavesmetco LLC; and 3. Serious Fraud Office.**

The Claimant ("AMT") was a ring dealing member of the London Metal Exchange. It provided metal trading services to the Second Defendant (Wavesmetco). AMT began to have concerns about the integrity of Wavesmetco and in particular the receipt of large sums of money from companies connected to entities known as "Allied Deals" and "RBG". These two entities collapsed with massive losses. In proceedings brought by the liquidators of RBG against its former directors, it was alleged that the collapse

came about as a result of a massive fraud involving (amongst others) Wavesmetco. AMT raised questions of Wavesmetco about its relationship with RBG and was not convinced as to the accuracy of the answers received. AMT had a balance of about US\$450,000 in favour of Wavesmetco in its books. It sought the advice of the City of London Financial Investigation Unit ("FIU") about paying out this balance to Wavesmetco. This was (without this fact being specifically mentioned) a consent sought pursuant to Section 93A (3)(b)(i) of the Criminal Justice Act 1988 as amended (now repealed). The case was not concerned with the "tipping off" provisions under Section 93B. For its part the SFO was very concerned not to do anything which would risk jeopardising actual or potential lines of enquiry. It was accepted that it was difficult if not impossible to be sure whether disclosure of a particular matter would risk doing so. The police declined to give the consent which had been sought.

In May 2002 AMT issued proceedings (following *Bank of Scotland v A*) citing only the FIU at that stage as the sole defendant and claiming a declaration that the sum of about US\$450,000 was not the proceeds of criminal conduct. At the same time AMT issued an application seeking an "interim declaration" to the same effect.

The Court considered the history of interim declaratory relief under English law. It pointed out that it used to be regarded as unknown and therefore that the Court used to have no jurisdiction to make such orders. The Court were not inclined to make as such an interim declaration on the facts of this particular case and found it difficult to conceive that it would ever be prepared to grant an interim declaration of the type sought, but recognised that such power was invested in the Court to make such orders. In this particular case it took the view that either the monies held in the account were the proceeds of crime or they were not. It was not appropriate at this stage for the Court to make some provisional or interim assessment. The Court would only be prepared to make such a finding on a final basis having heard all the evidence and no doubt having such evidence tested. The Court indicated that when the matter were tried it would require evidence from the directors of Wavesmetco as to the source of these funds. To afford AMT some protection Wavesmetco was duly joined as a defendant and issued its own application against the FIU to provide full particulars of its suspicion or belief that the

monies were indeed the proceeds of crime. Subsequently the investigations were taken over the by SFO and a court order obtained that the SFO be joined in the proceedings in place of the FIU. The SFO then sought an order that the proceedings against them be stayed on the basis that they were in no position to add to the information then currently before the Court by way of various witness statements from the parties.

The Court, whilst noting that AMT was a reputable financial institution and that in principle the Court would do everything it could to properly assist it, did not feel that the proceedings taken by AMT in these circumstances came within the guidelines of *Bank of Scotland v A Limited*. One crucial difference was that this case did not involve tipping off. It was also noted that in this area of the Court's power to grant interim declarations the life of such orders would probably be short since in the majority of cases it would only be necessary to conceal the existence of the investigations for a fairly limited period. The Court took the view that the proper rationale of *Bank of Scotland* was that in cases where tipping off was not an issue it was implicit in the judgment that a bank or other financial institution would have to take a commercial decision as to whether they are to contest proceedings if they are brought by a customer.

Again the Court was not prepared to require the police (even though it recognised the extensive powers they now have), having properly refused consent, to litigate at public expense what it considered in reality were private disputes between the financial institution and its customers. Such disputes are effectively the normal commercial risk for a bank. It also ruled out the question of the Court determining a substantive question, namely whether the funds are derived from criminal conduct, on an interim temporary basis. This could only be achieved at a final hearing with all the relevant parties and when all the evidence was put before the Court.

The Commercial Court in the case of **Tayeb v HSBC Bank [5 July 2004]** considered further practical problems facing banks when funds are transferred by electronic process, in particular, the Clearing House Automated Payment System (CHAPS). In this case, a transfer was made into a customer's account with the bank by way of CHAPS giving rise to a genuine (but erroneous) suspicion in the mind of the assistant manager. He asked for

an explanation of the transfer from the customer but was not satisfied with what he was told and caused the funds to be re-transferred. The main issue for the Court was to determine whether the CHAPS transfer to HSBC followed by its authentication and the crediting to the customer's account created a debt due from HSBC to the customer or, as HSBC contended it remained in sufficient control of the funds to be entitled to cancel the transfer and then re-transfer. The Bank further contended that it was merely following good banking practice. There was an implication from the wording of the CHAPS Rules that following authentication, the transfers were irreversible. Did this create a tension with anti money laundering rules where a bank, having reviewed and authenticated funds, entertains a suspicion, makes a report to NCIS and waits for directions? The Court reviewed the principles laid down in *Bank of Scotland v A* and took the view that the bank could act within these principles without having to override the express regime of the CHAPS Rules (by re-transferring the funds). The Court took the view that there was no settled banking practice entitling banks to depart from their contracts with customers on the basis of suspicion of unlawfulness and of "general banking practice". The bank should accept the funds, comply with the contractual terms (CHAPS Rules), make a report and, if necessary, apply for an interim declaration against the SFO. This could not implicate the bank with constructive trustee liability. The Court considered that a bank now had sufficient guidelines and stated (paragraph 77) as follows:-

"What emerges from those authorities is that although the bank may be placed in a difficult commercial position vis-à-vis its customer by reason of the need to avoid criminal liability including tipping off on the one hand and liability as a constructive trustee on the other, there now exists procedures which it is entitled to deploy in order to protect its position in both respects. These procedures do not necessarily lead to the bank having to disengage from the transfer and they certainly do not normally involve the retransfer to the payer, a course which would be most unlikely to protect the rightful beneficiary of the fund and which might well involve tipping off those criminally responsible."

Conclusion

It seems clear that in cases where tipping off is not an issue, financial institutions cannot rely on the Bank of Scotland case as giving a right to apply to the Court for declaratory relief just simply by bringing the criminal investigation body into the proceedings as a defendant. If tipping off is an issue, the Bank of Scotland case does give a procedure for determining how to resolve the question of what information can be disclosed to avoid or to defend proceedings by a customer for breach of mandate. Once that issue is resolved (or if it does not arise) the emphasis is being placed on a bank having to take its own commercial decision as to whether to contest proceedings or not. The burden is going to be on the financial institution to take all steps “as are reasonable in all the circumstances”. The Bank should make all necessary notifications to NCIS and, where appropriate, liaise with the criminal investigation authorities concerning the information, if any, which it can provide to its customer but ultimately (but not particularly helpfully) every case will depend on its own facts.

2. Professional Advisers

Dame Elizabeth Butler-Sloss sitting in the Family Division of the High Court had to address certain related questions in the case of **P v P** – a judgment delivered on 8 October 2003.

The problems for the Court in this case arose out of disputed application for ancillary relief in divorce proceedings. During the course of preparing the Wife’s case, her legal advisers became suspicious that part of the matrimonial assets might be “criminal property” within the meaning of the Proceeds of Crime Act 2002 (“POCA”) and were concerned that issues under Part 7, POCA, arose for them (and their client) in acting in the ancillary relief proceedings and in relation to any settlement of the financial dispute. The concern was that the legal advisers (and their client) might fall foul of section 328 of the Act because they might become concerned in an arrangement which might facilitate “the acquisition, retention use or control of criminal property” by the Wife.

The legal advisers therefore applied to the court seeking the protection offered under Section 328(2)(a) and wrote to NCIS making disclosure (on behalf of themselves, Counsel and their client) of certain financial information

about the Husband's business interests citing that their client did have suspicions that the assets might comprise criminal property and indicating that their client would be seeking a substantial sum in the ancillary relief proceedings which took the form of Financial Dispute Resolution proceedings. They also sought guidance from NCIS as to whether the letter could be disclosed to the Husband's solicitors bearing in mind the "tipping off" rules. An answer was requested within 7 days. NCIS did not respond to the letter but eventually an NCIS officer gave advice in response to a telephone call putting the burden back onto the solicitors that it was a "business decision" for them as to how they conducted themselves. The NCIS officer also gave admittedly wrong advice to the effect that if any of the "criminal property" did not actually pass through the solicitor's hands then that formal report might not be necessary. Finally the NCIS officer advised that they must not make disclosure of the letter to the other side or even their own clients. Subsequent letters to NCIS were also not responded to by the time the solicitors made their without notice application to the Court for guidance. All this was described in **Bowman v Fels**¹ (see below) as "a great deal of either useless or wrong advice".

The legal advisers therefore made application to the Court and there is little doubt that they received rather more sympathetic support from the Court than in the cases mentioned above.

Two main issues arose for consideration by the Court:-

- a) Whether and in what circumstances it is permitted to act in relation to an arrangement;
- b) Whether and in what circumstances a legal adviser, having made an authorised disclosure, is permitted to tell others of the fact that he has done so.

Much turned on the issue of legal professional privilege and the obligations of the legal profession under parts 7 and 8 of POCA. The Judgment referred to

¹ Since originally drafting this Paper, the Law Society have confirmed that they intend to challenge this ruling in the Court of Appeal which will provide an opportunity for that Court to rule upon the extent of legal advisers' duties under the provisions of Part 7 of POCA, particularly Dame Elizabeth Butler-Sloss' comments in P v. P concerning the prohibition on a person taking any further steps in relation to an "arrangement" once a report or disclosure had been made to NCIS at least until consent had been given, deemed to be given or refused.

the case of **R v CCC ex-parte Francis and Francis [1989] AC 346** in which the House of Lords when considering the issue of “intention” in the context of furthering a criminal purpose held the relevant intention did not have to belong to the particular person holding the evidence, documents, items etc. It was sufficient if the intention of furthering a criminal purpose was held by anyone then the items, evidence, documents would lose their privilege. The example given being of the drug trafficker with criminal intent who could not protect himself by placing his documents in the hands of a solicitor – privilege belonged to the client not the solicitor and that criminal intent had disentitled the client to privilege. This conclusion was drawn on the interpretation of Section 10 of the Police and Criminal Evidence Act 1984 which in itself was simply the statutory form of common law principles (eg **R v Cox and Railton 14 QBD 153**).

The Law Society and the Bar Council were invited by the Court to make submissions in relation to the provisions of Part 7 and Section 342 of POCA given the increasing concern of these provisions within the legal profession. Both organisations gave written submissions to the Court. The Law Society’s main concern related to the effect of Section 328 which was widely drafted and appeared to cover non transactional matters. The Law Society noted the requirement in ancillary relief applications of full and frank disclosure of the assets of the spouses and that tax evasion by one of the parties might well be disclosed or revealed in the family proceedings. The Law Society was concerned that there should be no uncertainty as to the extent of a solicitor’s duties in relation to money laundering and that there was also urgent need for guidance about circumstances whereby a solicitor could tell a client or third party about an authorised disclosure of which the clients activities were the subject.

The Bar Council similarly noted the problems in family law cases that all that was required was full and frank disclosure and could not see how there was any alternative to disclosure to all sides when a report was made.

The Judge noted that it was not submitted to her that the offence under S.328 could only be committed at the point of execution of the arrangement and that none of the parties before her had disagreed with the submission made on

behalf of NCIS that the act of negotiating an arrangement would equally amount to becoming “concerned” in the arrangement.

The Judge stated that in her view the duties of a Barrister or a Solicitor under Section 328 were straightforward. They are not restricted from taking instructions from the client and if having taken such instructions the legal adviser knows or suspects that the client will become involved in an arrangement that might involve the acquisition, retention, use or control of criminal property then an authorised disclosure should be made and the appropriate consent sought under Section 335. Thus if it seems to the legal adviser that there are grounds for suspicion that any arrangement being sought from the Court or negotiated between the parties is contrary to the requirements of Section 328(1) authorisation should be sought. The same applies to Section 327 and 329. The question of legal professional privilege does not arise under Sections 327 to 329 and therefore there is no legal professional privilege exemption in respect of those sections; if the Solicitor makes an authorised joint disclosure on behalf of himself, Counsel and his client (and has the appropriate consent) then all three will be protected from prosecution.

A much greater concern to the Legal Profession is the circumstances in which a legal adviser, having made an authorised disclosure, is permitted to tell others of such disclosure. This concern stems from Sections 333 and 342 which prevent a person from “tipping off” or “prejudicing an investigation”. The Court considered that *Bank of Scotland v A Limited* lent support to the protection given to members of the legal profession in carrying out their duties to clients. The Court distinguished **Francis (a firm) v CCC [1988]** (see above) where the Court was concerned with the attachment, and loss, of legal professional privilege to items held by a solicitor on a client’s behalf. The Court noted that the present case raised the issue of the right of a solicitor to make disclosure to a client or another and that the question of privilege did not arise. The Court took the view that the legal advisers exemption would not be lost on making disclosure to his client or opponent unless such disclosure was made for an improper purpose – namely with the intention of furthering a criminal purpose. The client may well have criminal intention which would disqualify him from claiming privilege but it did not disqualify him

from his entitlement to be consulted fully by his lawyer without falling foul of the tipping off rules.

Accordingly, unless the requisite improper intention is present, a solicitor should be free to communicate such information to his client or opponent as is necessary and appropriate in connection with the giving of legal advice or acting in connection with actual or contemplated legal proceedings. The Court recognised that this would give some difficulties to investigating authorities.

Finally the court did give guidance on how procedurally such an application could be made following in the steps of *C v S* and *Bank of Scotland v A Limited*. It did not consider that any obligation could be imposed on NCIS to be the applicant. The court considered it would be appropriate for the legal advisers to make the application in private without notice to the other side making NCIS the respondent.

P v P has given rise to much concern within the legal profession and much debate as to its consequential effects in other areas of legal practice. The Law Society's website now contains a specific section of guidance notes for lawyers as a result of the judgment. The circumstances which may or may not give rise to an "arrangement offence" under Section 328 POCA and when a solicitor should withdraw from acting or can continue to act for a client are likely to be the subject of further debate.

One such example is the case of **Bowman v Fels** before His Honour Judge Cowell in March 2004. In this case, the claimant's lawyers applied to vacate a trial date a few days before it was due. It was clear to everyone in Court that the reason behind this was because some authorised disclosure under POCA had been made. The claimant relied upon the fact that in *P V P* the Court agreed to vacate the date fixed in that case for an FDR. In reliance upon this, the claimant's lawyers effectively "downed tools" immediately stopping any work on preparing a trial bundle, case summary or anything else required for the trial. The Court held that they were not entitled to do this. Whilst in *P v P* it was held that the person making the disclosure "must take no further steps in relation to the arrangement until ..." (paragraph 51) that did not mean they should take no further steps at all. In *Bowman*, the Court

noted it was concerned with vacating a trial date fixed for many months (as opposed to the FDR in P v P) and in such circumstances it was proper for the lawyers to leave it to the trial judge to consider whether there were suspicions justifying a report to NCIS and an adjournment of the trial. The solicitors will have committed no offence. Similarly if all that is done by the solicitors is to continue with the preparation for trial with a view to either making an authorised disclosure and informing all the parties and the Court about the matter, or with a view to alerting the Court during the trial.

3. Summary

1. Financial Institutions and professional advisers inevitably will find themselves in situations where they have grounds for suspicion regarding funds held with them.
2. Following making the appropriate report to NCIS they may well be in a position where:-
 - (i) Even if they have the appropriate consent, to allow monies to be paid out of the account according to the mandate could potentially expose them to claims for knowingly assisting a breach of trust;
 - (ii) Refusing to allow monies to be paid out of the account according to the mandate could expose them to criminal liability under the tipping off provisions;
 - (iii) It may not be possible for practical reasons to obtain the appropriate consent from NCIS within the time available or at all;

- (iv) They need to seek the Court's guidance by way of interim declaratory relief providing the relevant criminal intelligence agency was joined as a respondent;
- 3. However, there remain limitations on the type of orders available by way of interim relief;
- 4. In particular, the Court will not make an order at the interim stage where there are requested to be determined issues of fact on which evidence needs to be heard and tested;
- 5. Unless "tipping off" considerations apply, commercial decisions will have to be taken – particularly in deciding whether to contest proceedings brought by the customer;
- 6. Courts are not prepared to become involved in what they regard as private disputes between a financial institution and its customer;
- 7. Professional advisers such as lawyers, accountants and insolvency practitioners may well find themselves in a situation where:-
 - (a) They are negotiating or otherwise acting in a situation where funds are to be distributed from one party to another for example:-
 - (1) Matrimonial disputes;
 - (2) Distribution of estates under probate
 - (3) Distribution of insolvent estates
 - (b) They acquire (or ought to acquire) knowledge or a suspicion that such funds (or part of them) are or may be "criminal property;"
- 8. Legal Advisers have potentially conflicting duties of :-
 - (i) Not withholding information from their own client;

- (ii) (In matrimonial cases) duty of full and frank disclosure to the other side – conflict with tipping off provisions;
 - (iii) Confidentiality and legal professional privilege.
9. Legal advice retains the exception of disclosure of legal privilege providing the documents/information arises whilst advising clients in course of proceedings or in contemplation of such proceedings.
10. Legal advisers will not be guilty of prejudicing a criminal investigation or of “tipping off” by disclosing to clients they are making a report to NCIS providing such disclosure is made without any “improper intent” (a subjective test).
11. The “arrangement offence” under POCA (Section 328):
- (i) This can be committed by the professional adviser who enters into an arrangement which he knows or suspects facilitates (by whatever means) the requisition, retention, use or control of criminal property by or on behalf of another person.
 - (ii) This offence can be committed even if no money passes through the professional advisers client account.
 - (iii) Legal advisers can commit the offence from the moment they know or suspect that assets involved in ancillary relief proceedings (or purported proceedings) include “criminal property” and carry on acting which facilitates its acquisition, retention, use or control.
 - (iv) The professional adviser should promptly notify his client that if they continue to act both they and the client may commit a money laundering offence unless an authorised disclosure is made to NCIS.
 - (v) The professional adviser must ensure that such notification to the client does not of itself, involve the offences of tipping off or prejudicing an investigation.
 - (vi) If the client does not consent to disclosure to NCIS, the adviser should immediately withdraw from acting.
 - (vii) If, following the guidelines of P v P, the adviser concludes that he must make a report to NCIS and communicate this fact to

the client/opponents then good practice will permit a delay of 7 days in most cases before telling the client/opponent.

12. In the event that NCIS refuse consent within 7 days and the 31 day moratorium is imposed, the legal adviser and NCIS must seek to agree the level of information to be disclosed.
13. In the absence of such agreement, the legal adviser will need to seek declaratory relief from the Court.

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