

# NEW CLIENT PROCESS

KYC / AML ID REQUIREMENTS

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## THINGS WHICH ARE POTENTIALLY RELEVANT WHEN WE HAVE A NEW CLIENT

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1. Identifying who the client is, and then obtaining sufficient information and documents to be comfy ourselves and also to satisfy the requirements which apply to us.

If clients are individuals then it's straightforward and we **should generally use ThirdFort** to verify their identity without needing to see originals or certified copies of documents, and without needing to meet clients either. There will be some circumstances where we should meet clients, perhaps because there's a lot of money involved, because it's not a straightforward instruction or because they haven't come to us via a known referral source. We need to exercise some common sense there.

If clients are companies, then there's more to think about. We need to establish who's making the decisions within the company, and also who owns it. Often the same individual will be director and shareholder, so they're performing all the roles:

running the company day to day as a director, and also being the owner by virtue of being the shareholder. We'd then need to follow the individual ID process for that person, and as above we can normally use ThirdFort for that.

Much of the time though, the position isn't quite that simple

## How do we check?

A good place to start is Companies House, as it has instant free information available about companies, plus their directors and shareholders.

There is a list of `Persons with Significant Control` for each company, which is supposed to show (as you might expect) a list of the people who have a meaningful ownership interest in the company. However, we shouldn't necessarily take that information at face value. A change of director is supposed to be updated quickly, but the information about shareholders/PSCs doesn't have those same time limits and so it might not be up to date.

## We can also check the position by:

- (i) carrying out a Thirdfort company check and
- (ii) asking the client themselves to confirm. There can be differences in the information.

For a recent client, the Co House information listed two PSCs but Thirdfort's report listed four or five. In that case we need to ask more questions to understand the real position.

The discrepancy might be because someone is trying to avoid being listed publicly as an owner, so shares might be held on their behalf in someone else's name.

Our job is to dig through that and find out who the ultimate `beneficial owners` are.

## When it comes to directors

- the people who are running the company on a day to day basis
- we should go through the individual ID process for the one(s) that we're taking instructions from.

That's so we know for sure that we're dealing with the person that we think we are. We don't have to ID every single director.

## When it comes to the people who own the company

- the shareholders/persons with significant control/beneficial owners

then we need to go through the individual ID process for everyone who has an ownership share of 25% or more.

This is a standard course of action.

## There can be exceptions to that.

For example, if we're instructed by a bank which has a banking license issued by the FCA then we can be much more relaxed.

That bank will have gone through a strict, thorough process to obtain the banking license, which is much stricter than our normal process, so we're allowed to rely on that license and to not have to obtain any ID.

That's provided that we're comfortable with the person that we're taking instructions from.

## Sometimes the owner of a company might be another company.

If that's the case, we need to follow the chain upwards and keep going until we've understood who the individuals are at the top.

If they have an ownership interest in our client of 25% or more then we need to ID them.

## In relation to trustee clients

We need to understand the background as well as identifying the individuals. The following information might be required, depending on the circumstances:

1. A copy of the Trust Deed/Scheme Rules;
2. ID/proof of address for the General Trustees (Individuals through Thirdfort);
3. Company checks against all companies noted in the Trust Deed;
4. Confirmation that the Independent Trustee/Scheme Administrators noted in the Trust Deed are FCA registered; and
5. The Fee Earner acting should check the Rules of the Scheme as this governs the trustees' powers including what they can and cannot do.

When generating a new client company, each contact (director/shareholder) attached to the client side for the company also needs to be attached to every matter opened for that company. This means that when you do a search against that particular person, all matters they are attached to are linked up. If they are a director of numerous companies, all those companies and matters are linked up to that individual, whether they are just a general contact or a client contact, including any individual matters.

Our overall obligation is to check that we know who our client is, we know who ultimately owns it and we know the person that's giving us instructions on its behalf.

## 2. Considering if the client and/or the specific instruction is high risk. If it is, or it could be, then it needs to be highlighted internally and signoff obtained before we do anything else.

Some work types are going to be higher risk by their nature – for example, acting for clients who are buying newbuild residential apartments because there are increased financial risks and the SRA have issued formal warnings to solicitors. In other cases there might be higher risk because what we're being asked to do is unusual.

We need to demonstrate that we're thinking about it constantly, not least because our PI insurers are really focused on making sure that we fully understand the risks involved in the work that we undertake. If we accept instructions without properly considering it then they'll jump on us.

Nick spends a lot of time with them (and our insurance brokers) each year explaining all of our internal processes and safeguards, and this is part of it.

We need to know what work we're doing and to go into it with our eyes open.

## 3. If it's relevant to the particular instruction, obtaining sufficient information about the source of the funds which are to be involved.

The Residential team are the experts here, because most clients buying a house obtain finance and those lenders are increasingly strict about the checks to be carried out. It isn't just a case of accepting an explanation at face value although if a lender isn't involved, our duty is carry out `proportionate` enquiries so we need to ask the right questions but don't necessarily go to the ends of the earth.

Some people have asked about third parties. Yes, we sometimes need to ID and source of funds check people who are not our clients. As an example, we act for a bridging lender whose money comes from wealthy investors. We don't act for those investors, but they send us their money and don't have their own lawyers. We therefore need to be comfy about those investors and their money as though they were clients.

When it comes to our legal fees, their payment basically falls outside the scope of the anti-money laundering rules. As a result, if a client or a third party is paying our bill then we can be quite relaxed about it in normal circumstances. We still need to think about it sometimes though. If a third party is paying significant costs of ours for no obvious reason then we should question that – perhaps anything over £5k.

On rare occasions we might even have a client paying large bills that we haven't done source of funds checks on, and might want to think about where the money's coming from. That is unlikely to be a regular event though.

4. Carrying out an internal conflict search on the system against the other parties involved to make sure that we don't put ourselves in an awkward position.

The main point here is to check other names associated with the instruction. It's a small world and we often find that we have connections to other parties involved. Being aware of that at the start is critical, so we can flag anything relevant with our client.

5. Carrying out a credit search against the client and, potentially, individuals connected with that client. That's relevant to the question of whether we're comfy acting in the first place, and whether we offer any credit to the client or need money up front.

It's not going to be compulsory in every case but the firm's money is often at risk, which includes the value of the WIP on a file before it's billed. We're solicitors, not overdraft providers, and our normal approach should be to ask for money on account for any new client. We want to make sure we get the benefit of the work that you all carry out. If we're doing work and not going to get paid for it, we'd rather you went home early rather than wasting your time.

## Other points

Please also note:

- these AML/ID requirements need dealing with before we start doing any substantive legal work. They aren't optional in how they apply to us, so we don't have the flexibility to ignore them or to not treat them as a priority task. We're all human and we know how much of a pain they can be – especially when we've got an impatient client in one ear or an urgent task that really needs completing quickly.
- if we can't do one of the checks immediately, for example, because we await information from the client about the identity of another party, then we need to remember that and make sure we do them as soon as possible.
- all these steps need to be recorded on the system against the client.
- these are ongoing obligations and we need to think about them each time we open a new matter. For example, we might have a longstanding client but one that has received only employment advice. If that same client then wants to buy a property or a company, then we'd need to ask about source of funds as it's the first time that it's come up. We might also need to refresh ID because the information on the file is old, or because the ownership of the client might have changed.

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- from a commercial point of view, these tasks will take time and it does impact on what we charge clients. It might prompt some consideration of how much we charge, any bigger picture angles, and also it could mean in some cases that a potential piece of work just isn't worth it for us. We shouldn't be apologetic about that. We're a high quality, city centre firm and we're not going to be the best choice for everyone. If we want to grow in the right way as a firm, and to all benefit personally, then part of that is making sure that we're doing the right kind of work. We only have so many hours in the day so we should spend it doing valuable, interesting work that clients will appreciate.



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