Compliance Case Study

Exploring real world examples of situations that members have experienced.

It's a scenario that causes confusion and panic to set in: I think my client is making a false declaration on their tax return – should I submit a Suspicious Activity Report (SAR), a Defence Against Money Laundering (DAML), should I disengage, how do I avoid committing a tipping off offence myself?
Firstly, consider what it is you have identified and what stage of the process it is at. If a client is asking you to submit a return which you suspect contains false declarations with a view to reduce tax liability, you are identifying an attempt to evade tax – a criminal offence.

At this stage no offence has been committed. In most circumstances it is appropriate for you to raise your concern with the client – you are expected to be professionally curious and provide guidance where appropriate. Discussing an issue like this is not tipping off. In some cases, a genuine error or misunderstanding will be corrected at this stage, an no further action is required. Feel confident in challenging your client – if they are clearly trying to 'pull a fast one' then an HMRC tax inspection won't accept a brush-off answer at face value, neither should you. If you remain engaged with the client, depending on the circumstances you might consider the implication of the incident on ongoing monitoring.

If the client can't provide you with an acceptable explanation or acknowledges a false declaration and is still insistent that you submit a false return, you should not do so. This would mean you knowingly facilitate the crime. Disengaging at this stage would equally not involve tipping off – you have a clear reason for disengagement in that you are not prepared to commit a crime – a point that you can clearly make to the client. You would not mention that you are reporting this to the NCA via a SAR, however, this would be the appropriate thing to do. Although in this case the offence of money laundering has yet to occur (the return has not been submitted) you can still advise the NCA of your suspicion of it imminently occurring.

The NCA cannot give you permission to commit a crime through a DAML. You can't for example ask them for a defence for you submitting a return that you know contains false declarations and will commit the crime of tax evasion. The crime itself is not money laundering, but it will generate a proceed of crime - the funds that were due to the revenue. Thereafter, any future holding or movement of these funds will be considered as a money laundering offence. A DAML should only be used if you need a defence against the possibility of committing money laundering yourself as a professional – for example if you hold funds in a client account and have reason to suspect that they are the proceeds of crime. Equally, SAR's are not police reports – they are designed to provide intelligence to the NCA. The NCA collates intelligence from multiple sources and may disseminate relevant details to law enforcement when appropriate. If you suspect a crime is being or has been committed, you should also report this directly to law enforcement.