



The Faculty Office

The Code of Practice 2016

This is the second of a series of briefing notes.

Anti-money Laundering (Chapter 10)

This Note is important to all notaries but notaries who are engaged on transactions involving the sale and purchase of property both in the UK and overseas must be particularly aware of the stringent requirements around anti-money laundering and have proper processes and risk assessment measures in place.

Relevant Business

The authentication work undertaken by a notary as a public certifying officer is distinguished from any work undertaken by a notary which involves playing a "substantive role" in the transaction. When a notary plays a substantive role in the transaction this is called "Relevant Business" in the Official AML Guidance.

A notary should, therefore, have carefully considered procedures to distinguish between ordinary authentication work and Relevant Business.

Know Your Client

The Faculty Office Inspectors reported (2017):

"All the notaries we inspected told us that they saw people outside office hours and, when relevant, at their homes or places of work."

Identification procedures and record keeping is critical. Notaries might be asked to attend at the client's premises (where, for example, a photocopier may not be available) and notaries should anticipate that circumstance. Notaries should not agree to undertake authentication work where full records cannot be kept (for whatever reason).

Risk Assessment

Each practice needs to have assessed its own risk. This will, at the very least, enable the notary to be alert to instructions of an unusual nature.

For example, authentication work should not require client monies to be held or transferred by the notary. A notary should not permit use of their client account as a "bank account" for any of the parties who are engaged in the substantive transaction.

Chapter 10 of the Code of Practice contains more detail:

<http://www.facultyoffice.org.uk/chapter/anti-money-laundering/>

Anti-Money Laundering Guidance for the Legal Sector

The AML Legal Supervisors have agreed **Legal Sector Anti-Money Laundering Guidance** taking account of the changes introduced by the Money Laundering Regulations 2017 which came into force on 26 June 2017.

<http://www.facultyoffice.org.uk/wp-content/uploads/2018/03/AML-Guidance-Final-Approved-Versional-Updated-06-03-2018.pdf>

Issues highlighted by the Inspectors included:

"In some practices' records of the address of the appearor and client, sometimes different, had not been recorded nor had details of identification documents e.g. all that was recorded was 'passport' without number or nationality".

This is not acceptable practice.

The role of the Faculty Office

In its Assurance Policy (Risk Assessment and Supervision) the Faculty Office:

- sets out its assessment of risk within the profession; and
- describes the checks and activities which the Faculty Office has established to address these risks.

<http://www.facultyoffice.org.uk/wp-content/uploads/2018/11/Faculty-Office-Assurance-Risk-Supervision-Policy-updated-October-2018.pdf>

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The Code of Practice

The Code of Practice is designed to help notaries to comply with their professional obligations, to safeguard the interests of their clients and the interests of all persons placing legitimate reliance on notarial acts, and to enhance professional

Notaries must have regard to the Code at all times. This means that whilst the guidance and statements of best practice contained in this Code are not obligatory, a notary must be aware and take account of the Code and the statements of best practice contained in the Code when providing notarial services.

Failure to have regard to the Code can constitute notarial misconduct.