



Faculty Office

Risk Assessment Review Report

Introduction

As part of the practice certificate renewal application for 2020, the Faculty Office required notaries to submit a copy of their practice risk assessment. All notaries are required to complete a risk assessment under Regulation 18 of Money Laundering and Terrorist Financing Regulations 2017 ("MLR 2017").

At the start of 2020 the Faculty Office undertook a detailed review of these risk assessments. A sample of 70 notaries was randomly selected using a risk-based approach. The sample focused on those notaries assessed as being higher risk, those in the Red and Amber categories, rather than those assessed as lower risk, in the Green category. These risk categories are based on various factors, including whether the notary concerned holds client monies.

50 notaries with a risk rating of Amber or Red were randomly selected, these included a random selection of five scrivener notaries, five probate practising notaries and five conveyancing practising notaries. The remaining 20 notaries with a green risk rating were randomly selected from the remaining pool.

The Findings

Whilst this report highlights some areas for improvement, overall the Faculty Office was pleased with the standard of the risk assessments submitted.

The Faculty Office was particularly pleased to note that across the sample notaries were consistently considering all five risk areas in their assessments.

Each of the five areas of risk considered in the risk assessments will be reviewed in more detail below.

Client risk areas

Notaries were generally very good at identifying the potential risks posed to their practice from their clients. Notaries successfully identified how many of their clients operated within high risk industries and were alive to the increased risk this could bring to their practice. Notaries were also quick to acknowledge that attracting new clients to their practice opened the notary up to an increased risk of money laundering. Notaries were also generally good at identifying whether their client base was established or not.

Areas for improvement:

Across the sample there was a general failure by many notaries to consider how many of their clients were repeat clients and the impact this might have on the money laundering risk to their practice.

The Faculty Office would encourage notaries to further consider the impact repeat clients have on their practice when reviewing their risk assessments in the coming year.

Geographical risk areas

Most of the risk assessments reviewed successfully identified how many of their clients operated in high risk jurisdictions. Notaries were also generally good on identifying the means by which they determined whether a jurisdiction was high risk, generally, citing a number of official sources (including FATF, sanctions lists, Transparency International's corruption index etc.).

The Faculty Office would like to encourage notaries to continue monitoring the geographical risks to their practice and to continue to check official sources for any changes when determining whether a jurisdiction is high risk. Without checking authoritative sources regularly there is a risk that notaries may continue to treat certain jurisdictions as high risk, while not picking up on new developments. For instance, it may have surprised many that Iceland was added to FATF's grey list in October 2019 and remains on the list at the time of publication.

Service risk areas

Notaries consistently identified dealing with property transactions as presenting a high risk for their notarial practice. Very few notaries identified any other services as presenting a high risk of money laundering to their practice. Two notaries identified probate as higher risk, three trust and company formation/insolvency and one powers of attorney.

Areas for improvement:

Across the sample notaries were inconsistent in identifying how often they performed high and low risk services for clients.

The Faculty Office would like to see notaries clearly setting out in their risk assessments how often they perform high and low risk services so that they are better able to justify the risk rating given.

Notaries were also generally poor at identifying services they provided which were regulated and those which were unregulated under the MLR 2017.

The Faculty Office would encourage notaries to identify the regulated and unregulated services they provide and consider how these affect the risk to their practice.

Across the sample notaries were generally poor at identifying how much of their practice was concerned with one-off clients and how this might impact their risk rating. One-off clients will

generally pose a greater risk to a practice than repeat clients as no ongoing professional relationship is established.

The Faculty Office would like to encourage notaries to identify how much of their practice is concerned with one-off clients and to reflect this in the risk assessment.

Transactional risk areas

Across the sample notaries were very good at identifying cash payments and cash transactions as posing a high risk of money laundering. Notaries had identified a number of different methods to reduce this risk.

Areas for improvement:

Across the whole of the sample very few notaries considered the impact of complex transactions on their practice risk assessment. More complex transactions can pose a greater risk for money laundering because there are perceived to be more opportunities for criminal proceeds to change hands or for red flags to go unnoticed.

The Faculty Office would encourage more notaries to consider the complexity of the transactions which they are involved in and assess impact this has on the risk to their practice.

Notaries were also generally unsuccessful in identifying how the size of the transactions they are involved in can impact the risk of money laundering to their practice. Large transactions involving large sums will pose a greater risk for money laundering than smaller transactions.

The Faculty Office would like to see more notaries identifying and assessing the risk large transactions have on their practices.

Delivery channel risk areas

Notaries were consistently very good at identifying the importance of meeting clients in reducing their practice risk rating. A number of notaries stated in their risk assessments that they utilized video conferencing technology to reduce their money laundering risk when a face-to-face meeting was not possible. The Faculty Office was encouraged by the consistency of the profession in identifying this risk. This is particularly relevant to the circumstances of lockdown during a pandemic that prevail at the time of publication. Notaries should review the sector wide guidance advisory that is being published by the Legal Sector Affinity Group concerned with money laundering obligations and Covid-19 and adapt their risk assessments and policies and procedures accordingly.

The Faculty Office was pleased to note that notaries were also consistently able to identify the increased risk in accepting fees from third parties.

Areas for improvement:

Across the sample notaries were generally poor at recognizing the increased risk of money laundering when notaries are instructed in connection with other notaries or legal professionals offering a similar service.

The Faculty Office is alive to the fact that this may rarely happen in practice but would like to see more notaries considering this risk in their assessments.

Submission of incorrect documents

Of the sampled notaries 35% failed to submit a practice risk assessment. Of these 19% submitted their AML policy rather than their practice risk assessment, 3% submitted their solicitor's practice risk assessment and a further 3% submitted their client or matter AML forms.

This highlights to the Faculty Office that there remains some confusion within the profession regarding the differences between AML policies & procedures and AML risk assessments. Notaries are required to have both AML policies & procedures and a risk assessment of their practice.

The risk assessment requires a notary to consider their practice as a whole and make determinations as to the level of risk they face. Notaries should consider the five areas of risk considered above when drafting their risk assessments.

AML policies & procedures set out various steps and policies which are designed to mitigate the risks identified in the risk assessment. The AML risk assessment is the bedrock upon which the AML policies and procedures should be built.

The Faculty Office hopes that this report has helped to clarify to the profession what a risk assessment is and provide guidance on how notaries can improve their risk assessments over 2020.

Use of templates

The vast majority of the risk assessments that were reviewed utilised a template risk assessment. The Faculty Office believes this to be a very good way for notaries to ensure that they consider all five areas of risk in relation to their own practice. Templates are particularly useful for those notaries to whom AML is an unfamiliar area.

However, it was noted that a number of notaries had failed to properly adapt the template to their own practice. This was demonstrated in a number of ways including a failure to identify the level of risk, contradictory answers to the same identified risk and incomplete sentences.

The Faculty Office would encourage notaries to continue using template risk assessments but would urge notaries to ensure that they properly adapt the template to their own practice to ensure that the assessment is correct.

Conclusion

Overall the Faculty Office was satisfied with the quality of the risk assessments submitted. Across the sample notaries were clearly considering each of the five areas of risk in the unique context of their own practice. This report contains some suggestions for improvement which are intended assist notaries in raising the standard of their AML risk assessments above the minimum required under AML legislation.

The Faculty Office would encourage the profession to continue reviewing and updating their assessments, especially if the nature of their practice changes and the nature of the risks posed to their practices shift.

The Faculty Office will be contacting those notaries who failed to submit a risk assessment and requesting them to do so within a given period of time.

The Faculty Office is likely to request all notaries to supply their AML policies and procedures as well as their practice risk assessment when practising certificates are applied for in the autumn of 2020 and would encourage the profession to ensure their policies are up-to-date and effective.

A limit in this report is that it assumes that notaries have correctly identified the risks that apply to their practice. This can be corroborated to a certain extent through on-site inspections and through remote surveys of notaries, including reviewing notaries' websites. Risk assessment is one area which inspectors look at when they are carrying out an on-site inspection.