



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

ANTI-MONEY LAUNDERING ANNUAL SUPERVISORY REPORT 2021

Forward from the Registrar

The Financial Action Taskforce (FATF) has confirmed in its July 2021 report on Money Laundering from Environmental Crime that criminals are making enormous profits by using front companies to mix legal and illegal goods and payments early in the resource supply chains. They also rely on corruption, trade-based fraud, and offshore corporate structures to conceal the ultimate criminals benefitting from these crimes.

Increasingly, businesses and professionals are becoming unintentionally caught up in money laundering. The result is that individuals are at risk of reputational damage, criminal prosecution and in some cases facing actions for recovery of assets. To provide services in a way that would facilitate laundering of criminal property is ethically and morally wrong.

According to the UK Government's latest national risk assessment, professional services remain attractive to criminals as a means to create and operate corporate structures, invest and transfer funds to disguise their origin, and lend layers of legitimacy to their operations.

The Faculty Office is resolute in its commitment to discharging its supervisory responsibility and forging a strong foundation between the public and private sector in the early detection of emerging threats and prevention of money laundering and terrorist financing.

By continuing to monitor and support notaries in England and Wales through supervisory activities the Faculty Office as professional body supervisor is seeking to play its part in the fight against financial crime.

Howard Dellar, Registrar
The Faculty Office

The role of the Faculty Office in anti-money laundering and counter terrorist financing

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) applies to independent legal professionals defined as a firm or sole practitioner who by way of business provides "legal or notarial services" to other persons, when participating in transactions concerning:

- the buying and selling of real property or business entities;

- the managing of client money, securities or other assets;
- the opening or management of bank, savings or securities accounts;
- the organisation of contributions necessary for the creation, operation or management of companies; or
- the creation, operation or management of trusts, companies, foundations or similar structures,
- and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction

The Faculty Office is one of 22 Professional Body Supervisors (PBSs) in the UK and has designated responsibility under the MLRs for the anti-money laundering supervision of practising notaries in England and Wales.

As a PBS the Faculty Office's role is to:

- provide AML information and guidance to notaries
- assess the money laundering and terrorist financing risks within the notarial profession
- monitor and assess compliance with anti-money laundering controls within notarial practices
- take decisions on the suitability of a notary holding a practising licence
apply appropriate enforcement measures to ensure that the reputation of the notarial sector is not undermined.

Regulation 17 of the MLRs requires supervisors to undertake a risk-based approach taking account of the risk of money laundering and terrorist financing in its own sector.

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) specifies this requirement under section 4 of the OPBAS Sourcebook in that PBS's must:

- adopt a risk-based approach, focusing efforts and resources on the highest risks
- ensure measures to reduce money laundering are proportionate to the risks
- regularly review the risks to their sector
- support their members in the adoption of a risk-based approach.

Demographic of supervised population

The MLRs do not apply to work undertaken by a notary acting solely as a public certifying officer where they have no substantive role in the underlying transaction. However, a notary may fall within the definition of an independent legal professional under the MLRs when participating in certain financial or real property transactions.

Notaries are primarily concerned with the authentication and certification of signatures, authority and capacity relating to documents for use abroad. Often a document will have been prepared by a foreign lawyer. They include powers of attorney, sworn statements, contracts, property papers and certificates of law.

Notaries may also undertake reserved legal services comprising:

- reserved instrument activities
- probate activities

- administration of oaths.

On or before 1st November in each year notaries are required to apply for a practising certificate and data regarding them is extracted annually at the start of the licencing period. This year, to fall in step with OPBAS' guidance under regulation 46A, the information contained in this report covers the tax year (April to April). However, in relation to monitoring activities where there is a seamless overlap, we have included figures in this reporting period.

As at April 2021, the Faculty Office processed and **approved 728 practising** certificate renewal applications and **158 fell within the scope** of the MLRs.

Overview of compliance measures

The Faculty Office has supervisory oversight of notaries through the training and admission process, through initial supervision and then the annual monitoring and inspection programmes and in meeting continuing professional education requirements

Inspection of AML now forms a discrete part of the checklist that Inspectors use when carrying out inspections on notaries. The scope and intensity of the selection focuses on notaries that fall within a higher risk category. Every year around twenty notaries are selected for inspection under the Notaries Inspections Regulations. Due to the pandemic we changed our approach so that **14 inspections** were carried out on a 'remote' basis, which included examination of Notaries' documents followed by either an audio-visual, or a telephone, discussion between an Inspector and the notary.

As part of the annual practicing certificate renewal application process the Faculty Office required notaries to submit a copy of their practice risk assessments. A desk-based review was then conducted involving analysis of **70 practice risk assessments** of which:

- 35% failed to submit a practice risk assessment.
- 19% submitted their AML policy rather than their practice risk assessment
- 3% submitted their solicitor's practice risk assessment
- 3% submitted their client or matter AML forms
- **29 informal actions and guidance letters were issued**

In addition to the above generic forms of supervision the Faculty Office performed the following checks and activities:

- Requiring notaries to annually provide independent accountant's reports for the holding of clients' money and their firmwide risk assessments and AML policies when submitting their licence renewal application – this is effective in that notaries are by default persuaded to annually evaluate their processes.
- Keeping our supervised community informed through website publications, including trends and inconsistencies identified through our inspection and desk-based review findings.
- Putting in place the changes that from 1st November 2021 will require notaries to include AML learning as part of their continuing professional education so as to provide assurance so that notaries are aware of changes to Money Laundering Regulations.

- Publishing informal enforcement guidance to dissuade non-compliance and promote consistency, transparency and fairness in our administrative and enforcement processes
- Collaborating with members of the AML Supervisors forum (AMLSF), the Legal Sector AML Affinity Group (LSAG) and the Legal Sector Intelligence Sharing Working Group (ISEWG)

Points to note and reflection

Inspections

In summary, the inspectors reported the following AML related findings:

- Notaries who had been subject to an inspection had good, and consistent, procedures for verification of the identities and addresses of private clients and the representatives of corporate clients; and for retention of copies of documents that had been inspected.
- An inconsistency was found in internal documents: a risk being shown as 'medium', whereas the corresponding comments described it as 'low'. The explanation was that a potential risk at medium level did exist but that, on the basis of the due diligence carried out and because the notary concerned was only acting as a Public Certifying Officer, the risk was in practice 'low'.
- In one instance it emerged that the notary had notarised paperwork for a corporate client's incorporation of an overseas subsidiary and, separately, for a client's overseas family trust. In these cases, this Notary had acted purely as a Public Certifying Officer, with no involvement in the underlying transactions, although he had indicated in his annual return, he was providing company formation and trust work.
- one firm of Solicitors in which a notary was a partner had published a manual on AML which – although excellent – made no specific reference to notarial work.
- None of the notaries inspected had made reports to the National Crime Agency in the last three years. All notaries were aware of the obligation to report inconsistencies that they might find in relation to PSC information filed at Companies House, but none had had cause to do so.

Desk-based reviews

The findings of the desk-based review and areas identified for improvement are summarised in the table below.

Findings	Areas for improvement
<p>Client risk</p> <p>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.</p>	<p>Notaries to further consider the impact repeat clients have on their practice when reviewing their risk assessments in the coming year</p>
<p>Geographical risk</p> <p>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.).</p>	<p>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. Notaries to continue to carry out checks on high-risk jurisdictions.</p>
<p>Service risk</p> <p>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.</p>	<p>Notaries need to clearly set 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</p>
<p>Transactional risk</p> <p>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.</p>	<p>Notaries need to be more alive to the impact of the size and complexity of transactions when assessing their practice risk levels.</p>
<p>Delivery channel risk</p> <p>A number of notaries stated in their risk assessments that they utilised video conferencing technology to reduce their money laundering risk when a face-to-face meeting was not possible. Notaries were also consistently able to identify the increased risk in accepting fees from third parties.</p>	<p>Notaries need to demonstrate awareness of the increased risk of money laundering when they are instructed in connection with other notaries or legal professionals offering a similar service.</p>

Supervisory strategy and looking ahead

To shape a culture of ongoing compliance we plan to:

- Continue our focus on high risk services and adapt our approach in response to emerging trends and threats such as virtual assets and cybercrime.

- Increase engagement with our supervised population by seeking feedback from notaries that have been inspected. The purpose of this approach is to identify what information is considered helpful and areas where there may be room for improvement.
- Share common issues facing notaries using case studies and AML/SAR scenarios.
- Refine the data we collect annually from notaries to support a more varied and agile approach to risk profiling of our supervised population.
- Continue to seek wider enforcement powers through our rules so we can take a more balanced approach when dealing with non-compliance (i.e. where appropriate, avoid disproportionate and lengthy enforcement action and ensure prompt remedial action).
- Perform targeted desk-based reviews to examine client due diligence records in respect of TSCP and Conveyancing service providers.

Useful links

[The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(revised\)](#)

[Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#)

[Money Laundering and Terrorist Financing \(Amendment\) \(EU Exit\) Regulations 2020](#)

[OPBAS Sourcebook](#)

[National assessment of money laundering and terrorist financing](#)

[HM Treasury](#)

[Home Office](#)

[Foreign, Commonwealth & Development Office](#)

[UK Counter Terrorism Policing](#)

[National Crime Agency](#)

[Notaries Code of Practice - Money Laundering](#)

[Legal Sector Affinity Group \(LSAG\) anti-money laundering guidance for the UK legal sector](#)

[New guidance POCA prosecutions \(2021\)](#)

[Inspections Report 2020 \(issued March 2021\) \(Faculty Office\)](#)

[Assurance \(Risk and Supervision\) Policy \(The Faculty Office\)](#)