

Anti-Money Laundering and Counter Terrorist Financing

Annual report 2021/2022



FACULTY OF ADVOCATES



Faculty of Advocates | Regulation 46A Report

Foreword

The Faculty of Advocates is the regulatory and supervisory body for more than 450 self-employed Scottish Advocates. It ensures that the people of Scotland, regardless of wealth, background or location, have access to the very best independent, objective legal advice. Faculty has been at the forefront of legal excellence since 1532 and regulates the training and professional practice, conduct and discipline of Advocates.

The maintenance of an independent referral Bar represents one of the cornerstones of the legal system in Scotland. The existence of a strong and independent Bar is paramount in promoting public confidence in the expert representation provided by Advocates. As independent professionals, Advocates are free of any external pressures or intrinsic interests other than to serve their clients to the best of their ability, whilst also serving justice and fulfilling their duties to the court. The specialist advocacy skills which they deploy are essential in helping to contribute to the high regard in which our legal system is held around the world. Faculty upholds the highest standards of regulation in all that it does.

Advocates who we regulate must comply with the Money Laundering Regulations (MLRs) if the work that they do falls within the scope of the Regulations.

This report describes Faculty's approach to determining the risk of money laundering and terrorism finance within the Bar in Scotland in the year to 5 April 2022 and why the risk profile associated with Advocates is considered to be low. It also provides an update on the work we do as a regulator in this area, including the measures carried out to monitor and enforce compliance with the Regulations.

As this report makes clear, Faculty continues to be active and vigilant in our approach to AML supervision. Several years ago, Faculty established an AML Committee to monitor our supervisory activity. Faculty's Chief Executive Officer acts as our AML Officer.

Ruth Innes KC
Chair, Faculty of Advocates AML Committee



Remit & role in AML supervision

The Faculty of Advocates is the regulatory body for all Advocates practising in the jurisdiction of Scotland – a function which it sees as a vital obligation, fundamental to maintaining the standards of and confidence in the profession.

Faculty is the recognised supervisory authority for Advocates in this jurisdiction for the purposes of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. This places an obligation on Faculty to ensure adherence with the MLRs and in doing so to work closely with OPBAS (Office for Professional Body Anti-Money Laundering Supervision), an HM Treasury body that supervises all Professional Body Supervisors.

Risk-based supervision approach

In developing its current risk assessment methodology the Faculty has taken into account examples of best practice and approaches adopted by the various sources itemised under paragraph 2 of Regulation 17 of the MLRs.

Faculty has to date and will continue to take steps to inform itself of:

- Risk factors within the UK as a whole – drawing upon information provided from sources such as HM Treasury, NCA, the Police and others;
- Risk factors within the Professional Body Supervisors across the accountancy and legal sectors that have been discussed and disseminated in particular over the past 12 months in forums such as Intelligence Sharing Expert Working Groups (“ISEWG”) and OPBAS;
- Specific risk factors within the legal sector that have been the subject of ISEWG and LSAG consideration;
- Risk factors within Scotland, drawing upon any specific guidance or awareness raising provided by devolved government departments;
- Specific risk factors within the Advocates profession taking into account the referral nature of the profession and the consequent relationship between the Advocate and instructing solicitor; and
- Information obtained directly from each of the Advocates whom we supervise by means of AML specific information obtained from annual mandatory review meetings with those subject to the MLRs.

The Government’s [National Risk Assessment](#) assesses the risk of money laundering in the legal sector as high with most of the risk of exploitation being associated with conveyancing, trust and company service providers and the handling of client accounts. None of these activities are carried out by Advocates.

Having applied our risk assessment methodology and having monitored risk factors over the period covered by this report we consider those that we supervise to be of low risk for the following reasons:

- Advocates are self-employed individuals and are sole traders. They operate with the support of shared services made available to them from our service company Faculty Services Limited.
- Advocates are generally not permitted to engage in direct access work meaning that they can only receive work from instructing solicitors who are also bound by AML/CFT supervision and regulated under the MLRs. Certain exceptions are contained in [The Guide to Professional Conduct](#), to which all Advocates are subject (“the Guide”), however the level of direct access instruction is not material.
- In terms of the Guide, Advocates are not permitted to hold or handle client money. They are paid by the instructing solicitor and are not permitted to have any financial relationship with the lay client. This prohibition also applies to direct access instructions.
- The instructing solicitor maintains the relationship with the lay client. The Guide imposes clear and strict boundaries in relation to any contact the Advocate may have with a lay client. This has a material bearing on lowering the risk presented by Advocates. Nevertheless, they must identify when the regulations apply to them and when they do, they must be authorised by Faculty to undertake



the work. They must meet their own obligations to carry out a risk assessment, undertake Customer Due Diligence (“CDD”) before acting and keep a record of their compliance with the Regulations.

- The Advocate places proportionate reliance on CDD also being performed by the instructing solicitor. This also mitigates the risk of the role performed by the Advocate and, where the Advocate is instructed by a solicitor, it may be possible, with their consent, to rely on the CDD that they have carried out. However, the Advocate remains legally responsible for the regulatory compliance of checks and therefore for any failings in them. The Advocate must be satisfied that they have obtained the necessary information to satisfy their own CDD obligations.

AML requirements placed upon Advocates during the year to 5 April 2022

Any Advocate who wishes to carry out work which brings their practice within the scope of the MLR’s is required to seek authorisation from Faculty to do so. Advocates are regularly reminded of the need to so register.

Faculty has identified that the nature of work most likely to fall within scope of the MLRs is non-contentious tax work. In the year to 5 April 2022 Faculty conducted a search across its Practice Management System to cross check that any Advocate who appears to be undertaking such work has registered that fact with Faculty in accordance with the Guide.

Faculty maintains a register of those who are so authorised (“the Supervised Population”).

Table 1	Number of Advocates within the Supervised Population
2021	7
2022	6

Of those who are registered many carry a registration in order to undertake work, mainly non-contentious tax advice, should they be so instructed. In reality, because instructions of that nature are not received, the registrations may not in fact be required. Based on the interviews carried out by Faculty’s AML officer (see below) it is likely the size of the Supervised Population would be materially reduced if it reflected only those Advocates who were carrying out work subject to the MLRs in a given year.

The small size of the Supervised Population enables Faculty to monitor it more closely. In the year to 5 April 2022, Faculty’s AML Officer met with each of the registered Advocates to discuss the nature of their practices, their risk assessments and any AML issues that had arisen during the year.

In each case the risk was agreed as low, no AML issues had been identified and over the reporting period no Suspicious Activity Reports were made. There was no requirement for enforcement action to be taken. There were no emerging threats or themes.

Monitoring and enforcing compliance during the year to 5 April 2022

While the risk of an Advocate becoming involved in conduct that involves money laundering or terrorist financing is low (for the reasons given above) our advice to all Advocates is that some risk remains. Advocates must therefore know how to address those risks and how and when to take the correct and necessary action when such risks arise. This assessment should take into account risk factors including those relating to the client, the countries or areas in which the Advocate practises, the nature of the services they offer, the type of transactions they advise on and the source of their instructions.

To assist Advocates in this regard Faculty monitors supervisory trends and best practice.



Faculty is a member of The Legal Sector Anti-Money Laundering (AML) Group (comprising legal sector regulators and representative bodies). This group has completed an extensive review of the guidance available for Advocates relating to the Money Laundering Regulations. Updated guidance was jointly developed and published in April 2021 which now includes a specific section wholly devoted to Barristers and Advocates. All Members of Faculty have been notified of this updated guidance. In July 2022, after the end of the period covered by this report, an updated version of the guidance was released.

Faculty maintains a whistleblowing hot line for anyone who wishes to raise a whistleblowing concern about money laundering activity that involves or is associated with an Advocate. Details of the hot line can be found on the [Faculty web site \(hot line\)](#).

Table 2	Breaches of the MLRs reported to Faculty
2021	Nil
2022	Nil

Emerging threats and trends

Over the course of the reporting period Faculty has not identified any emerging threats or trends from the interviews of registered Members referred to. The increased list of sanctions related to Russia has been considered by Faculty and all Advocates were asked to advise the AML Officer if they believe they are involved in any matter that may be subject to the sanctions regime. No such matters were identified and this area will be kept under review.

Future supervisory activity

Faculty will continue to adopt a comprehensive and risk-based approach to supervision and will participate fully in government and professional initiatives to combat money laundering and terrorist financing.

Where to find more information

- Further information is available from:
- The Faculty’s website: [Faculty of Advocates](#)
- Legal Sector Anti-Money Laundering Guidance for Barristers and Advocates: [LSAG Guidance](#)
- The Guide to Professional Conduct: [The Guide](#)
- The Office of Professional Body Supervisors: [OPBAS](#)
- The Office for Sanctions Implementation: [OFSI](#)
- The National Crime Agency: [NCA](#)
- UK National Risk Assessment: [National Risk Assessment](#)