



Anti-Money Laundering and Counter Terrorist Financing

Annual Report 2022 – 2023



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. The 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.

The Faculty upholds the highest standards of regulation in all that it does.

Advocates whom we regulate must comply with the Money Laundering Regulations if the work they undertake falls within the scope of the Regulations.

This report will describe the Faculty's approach to determining the risk of money laundering and terrorism finance within the Bar in Scotland in the year to 5 April 2023 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, the Faculty continues to be active and vigilant in our approach to AML supervision.

Several years ago, the Faculty established an AML Committee to monitor our supervisory activity. The Faculty's Chief Executive Officer acts as our AML Officer.



Remit & Role in AML Supervision

The Faculty of Advocates (Faculty) is a supervisory authority as defined under the Regulations. The Faculty is the Regulatory Body for all Advocates practising in the jurisdiction of Scotland, and we see this function as being a vital and fundamental obligation in maintaining the standards of, and confidence in the profession.

The 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 (“MLRs”). This places an obligation on the 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.

Faculty AML Structure and Team

The Faculty is led by elected office-bearers: the Dean of Faculty, the Vice-Dean, the Treasurer, the Clerk and the Keeper of the Library. The Faculty also elects the Chairman of Faculty Services Limited, a company established to provide administrative and other support services to Advocates including the services of Advocates’ Clerks.

The Faculty has a dedicated AML Officer who operates as a single point of contact (“SPOC”) for all AML matters, which is currently our Chief Executive Officer, Richard Masters. In order to assist the AML Officer with the demands of carrying out our obligation as a supervisory authority the Faculty appointed a Deputy AML Officer in January 2023, Andrew Tregoning.

The AML and Deputy AML Officer meet at least quarterly with the Faculty’s AML Committee who also assist in fulfilling our obligation as a supervisory authority. The remit of the committee is to:

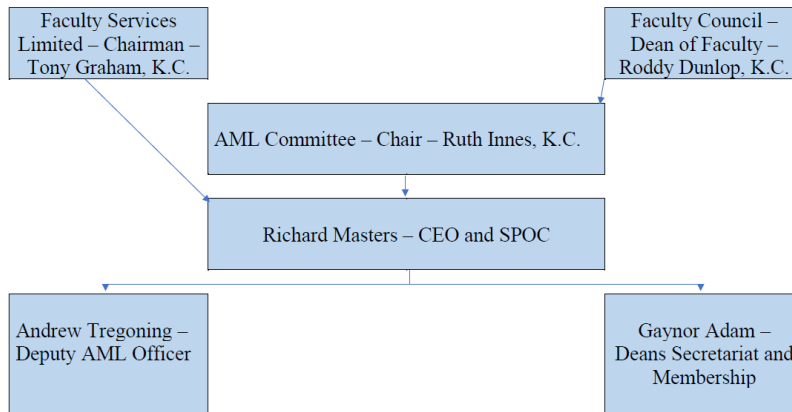
- a) Monitor the development of national and international legislation and regulations in connection with Anti-Money Laundering and assess the likely impact on the Faculty and its Members;
- b) Make recommendations to the Dean and/or Faculty Council on any changes required to the Faculty’s Guide to Professional Conduct or Training syllabus in connection with AML;
- c) Recommend an appropriate monitoring regime to allow the Faculty to meet its obligations as a supervisory body under the AML regulations; and
- d) Consider reports from the CEO regarding the Register of Members approved to carry out work covered by the AML regulations.

The current AML Committee is:

Ruth Innes, K.C. – Chair
Bryan Heaney, Advocate
Gordon Watt, Advocate
Kirsty Tyre, Advocate
Victoria Arnott, Advocate
Richard Masters – AML Officer
Andrew Tregoning – Deputy AML Officer



Faculty of Advocates AML Organisation Chart



Risk Based Supervision Approach

In developing our current Risk Assessment methodology, the Faculty has taken into account examples of best practice and approaches adopted by the various sources itemised under Regulation 17(2) of the MLRs. The Faculty’s approach is kept under review and updated in response to revised guidance or changes to the risk profiles and emerging threats.

The Faculty aims to be proportionate in our supervision of Advocates practising in Scotland who we supervise, and we regularly engage in forums including the Legal Sector Affinity Group (LSAG) and Anti Money Laundering Supervisors Forum (AMLSF) for examples on best practices.

The 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 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 receive, control, handle or manage clients' money apart from what a client pays for their services. This applies whether acting on the instructions of a solicitor or in terms of the Direct Access Rules. The prohibition extends to holding client money or other assets in person or through any agent, third party or nominee. 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. Advocates cannot act as Trust and Company Service Providers.
- 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 the 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.
- Advocates are only permitted to accept instructions under direct access in a small number of instances which are detailed in the Direct Access Rules and Guide to Conduct, and guidance has been issued to practice clerks that any instructions in relation to non-contentious tax (being the area of work that we have assessed as being most likely to be in scope of the AML Regulations) must first be discussed with the AML Officer. The majority of instructions for Advocates are received from solicitors who are members of the Law Society of Scotland (who are themselves a professional body supervisor).
- 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 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 2023

The Faculty has identified that the nature of work most likely to fall within scope of the MLRs is non-contentious tax work. Any Advocate who wishes to carry out work which brings their practice within the scope of the MLRs is required to seek authorisation from the Faculty to do so. Advocates are regularly reminded of the need to so register prior to undertaking any work falling within the scope of the MLR's, and this is done via our intranet for members, and our weekly newsletter which is sent to all practising Advocates.

In the year to 5 April 2023 OPBAS carried out a thematic review in relation to Trust and Company Service Providers ("TCSP's"). To support that review the Faculty conducted a search across its Practice Management system to identify any Advocate who may have been undertaking such work. Where information suggested that may be the case the individual Advocate was contacted to advise whether or not such work had been carried out. No Advocate had acted as a TCSP.



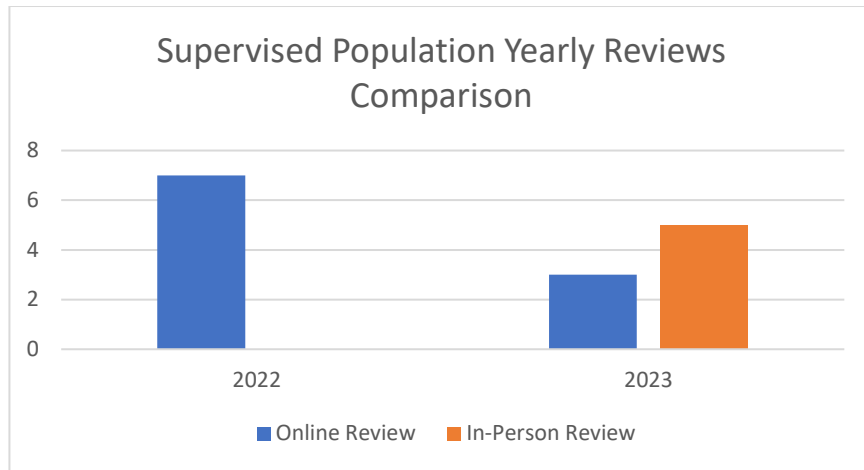
The Faculty maintains a register of those persons authorised to carry out work under the MLR’s (“the Supervised Population”).

Table 1	Number of Advocates within the Supervised Population
2022	7
2023	8

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.

The Faculty’s AML and Deputy AML Officer conducted interviews with each of the Faculty’s Supervised Population, and only one member had undertaken a matter which fell within the scope of the MLRs. Based on the interviews, 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 the Faculty to monitor it more closely. In the year to 5 April 2023, the Faculty’s AML and Deputy Officer met with each of the Supervised Population 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, and no AML issues had been identified over the reporting period. There was no requirement for enforcement action to be taken with any supervised member. However we did identify a need for members to exercise strong version control of their practice risk assessments to ensure an appropriate audit trail and demonstrate that risk assessments were up to date.



Monitoring and Enforcing Compliance During the Year to 5 April 2023

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 the Faculty monitors supervisory trends and best practice. The 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 Barristers and 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, an updated version of the guidance was released.

The Faculty also circulated guidance to members on UK Sanctions against Russia following the invasion of Ukraine, and this is available on the Faculty intranet for members under a specific AML page.

The 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 \(hot line\)](#). Since the whistleblowing hot line was set up the Faculty has not received any messages of concern regarding an Advocate. The hot line is monitored regularly and checked by the Deputy AML Officer at least once a week.

Table 2	Breaches of the MLRs reported to Faculty
2022	Nil
2023	Nil

In the reporting year to 5 April 2023 no Suspicious Activity Reports were made by the Faculty. The Faculty are aware of our responsibility to submit a SAR should we have any concerns, and both the AML and Deputy AML Officer have signed up to the National Crime Agency (NCA) SAR portal online to allow for a report to be made.

In the one-to-one meetings with the Supervised Population we enquire as to whether any SAR’s have been made. In the year to 5 April 2023 no SAR’s were made by any member of the Supervised Population. This is consistent with both the very limited number of Advocates within the Supervised Population and the low risk nature of any work undertaken. For those reasons we do not consider the absence of SAR’s to be a matter of concern.

If it was identified that a SAR had been made we would undertake a review of it to test its adequacy and effectiveness. During the year to 5 April 2024 the Faculty will formalise its methodology for undertaking such a review.

Training for Advocates and Supervised Population

The Faculty runs at least one yearly seminar which is open to all members of the Faculty to attend on Anti Money Laundering. In July 2022 we ran a virtual seminar on “Anti-money laundering and sanctions for Advocates”. This seminar was attended by 48 members online, and it was recorded for members to watch at a later date, which has been watched 65 times up to 5 April 2023.

Emerging Threats and Trends

Over the course of the reporting period the Faculty has not identified any emerging threats or trends from the interviews of the Supervised Population. The Supervised Population were reminded of the current sanctions regime in place against Russia and reminded to advise the AML Officer if they believed they were involved in any matter subject to the sanctions regime.

The Faculty circulated a detailed Sanctions Guidance document to all practising Advocates and Faculty staff in March 2023. The guidance was to help members of the Faculty of Advocates and staff of Faculty Services Limited to understand the relevance of UK Sanctions to their activities and the steps that need to be taken to avoid contravening UK Sanctions.



Our participation in the Intelligence Sharing Expert Working Groups, both nationally and regionally, is extremely helpful in keeping us informed of emerging threats. In the year to 5 April 2023 presentations we received covered topics including Trading Standards, Investment Fraud and Combatting Kleptocracy.

Future Supervisory Activity

The 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.

Following work commenced last year we undertook a review of our policies and procedures in line with the updated OPBAS Sourcebook, the Faculty will continue to review and update our AML risk assessment, policies and guidance to ensure they remain up to date, taking account of updated best practices and any new emerging threats or trends. We will ensure sufficient resource is in place to meet our regulatory obligations and anticipate an additional senior member of staff joining the AML team in Q4 2023.

In September 2023 we responded to the [HMT Consultation](#) in relation to options for reforming the supervisory regime including options to grant more powers to OPBAS or consolidate PBS's either on a national or regional basis. We are not supportive of PBS consolidation which we believe runs the risk of diluting effective risk based regulation by those with a deep understanding of the sectors that they regulate.

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](#)