



Law Society
of Scotland

AML Thematic Review of Policies, Controls & Procedures

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Foreword from Diane McGiffen, Chief Executive



Welcome to our review of anti money laundering policies, controls and procedures.

In this report you will find helpful information about how a range of law practices are adapting their work to respond to anti-money laundering obligations. We hope that everyone can learn from these, and from the areas that we have highlighted could be improved.

Our focus on money laundering is part of our strategic goal to be a modern and effective regulator acting in the public interest.

Money Laundering (ML) harms individuals, communities and society. It is central to much criminal activity and is linked to crimes that cause human misery and suffering – from people smuggling and child sexual exploitation, to illegal drugs and gun smuggling.

The Law Society of Scotland (LSS) is a Professional Body AML Supervisor, and we continue to invest in this work to protect the public, and ensure our members meet the highest legal and ethical standards in this area.

This Thematic Review of a selected number of practices AML PCPs has allowed us to gain a better insight into our supervised population's compliance with the Money Laundering Regulations (MLRs) (as amended), as well the Legal Sector Affinity Guidance (LSAG). This report allows us to highlight positives aspects identified during the review, as well as areas which require further improvement and enhancement. We hope that this report is of benefit to our members, and that it highlights the importance of having fully established AML PCPs to assist partners and employees to mitigate ML & Terrorist Financing (TF) risk efficiently and effectively, as well as evidence compliance with the MLRs and LSAG Guidance.

We would like to thank the 40 participating practices for their cooperation while this review was taking place.

Going forward, it is our intention to undertake further thematic reviews, the next one most likely focusing on Enhanced Due Diligence and Politically Exposed Persons.

As we work with you to develop reviews and reports that help us to be robust in our anti-money laundering work, we would appreciate your feedback on how we can best support and regulate anti- money laundering in Scotland. It's never been more important.

Kind regards,

Diane McGiffen

Glossary

Terminology	Abbreviation
Anti-Money Laundering	AML
Customer Due Diligence	CDD
Defence Against Money Laundering	DAML
Enhanced Due Diligence	EDD
Financial Conduct Authority	FCA
High Risk Third Countries	HRTC
identification & verification	ID&V
Legal Sector Affinity Guidance	LSAG Guidance
Money Laundering	ML
Money Laundering Compliance Officer	MLCO
Money Laundering Regulations	MLR
Money Laundering Reporting Officer	MLRO
National Crime Agency	NCA
Ongoing Monitoring	OGM
Policies, Controls & Procedures	PCPs
Politically Exposed Persons	PEP
Practice Wide Risk Assessment	PWRA
Risk-Based Approach	RBA
Simplified Due Diligence	SDD
Solicitors Regulation Authority	SRA
Source of Funds	SoF
Source of Wealth	SoW
Suspicious Activity Reporting	SAR
Terrorist Financing	TF
The Law Society of Scotland	LSS
Trust and Company Service Provision	TCSP

Background

In 2018, LSS implemented a revised approach to AML supervision. To fulfil our responsibilities as an effective AML supervisor, we have adopted the use of a number of tools and resources, including onsite visits, desktop reviews, selected file audits and the requirement to submit the AML Certificate.

Another such tool is Thematic Reviews, which are also used by other AML supervisors such as the Solicitors Regulatory Authority (SRA) and the Financial Conduct Authority (FCA). These are a compulsory exercise for our membership intended to help us to identify and assess specific current and emerging AML risks and themes within the regulated population.

Robust and compliant PCPs are a cornerstone of a regulated professional's AML control environment. These are critical to influencing culture, setting "*tone from the top*" and supporting partners and staff in their AML responsibilities – and are therefore key to mitigating ML risk across the business. The principal objectives of this review were:



To work collaboratively with our supervised population to gain a better, more detailed understanding of the quality of AML PCPs within the profession.



Gain a greater insight into profession compliance with obligations under the Regulations and Legal Sector Affinity Group Guidance.



Use the data gathered to provide further information and support to members to mitigate the inherent AML risks.

Methodology



The review comprised of **four** main stages:

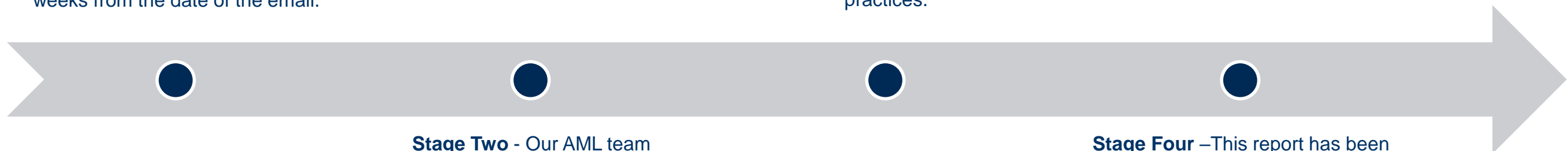
Stage 1	Stage 2	Stage 3	Stage 4
<ul style="list-style-type: none"> 40 practices were selected on a RBA. Utilising data from our latest AML certificate, assurance review history and ensuring a broad range of practices were included. Practices ranged from sole practitioners to practices with 40 partners/directors and more. They also included those who held an AML self risk rating of low, medium and high and practices with annual gross AML fees ranging between £61K to over £39m. The AML team contacted the 40 selected practices requesting that their AML PCPs be sent in by a given deadline. 	<ul style="list-style-type: none"> The AML team identified a number of the MLRs and LSAG Guidance sections to focus the review on. A marking criteria was created that included specific regulatory “<i>musts</i>” as per the MLRs and LSAG Guidance. The AML team focused this criteria on previous trends identified within assurance reviews to further add substance to these findings and also on some new regulatory requirements. Further information regarding the criteria of our review can be found throughout this report. 	<ul style="list-style-type: none"> The team collated findings in order to identify trends – both positive aspects, as well as areas requiring improvement. Given the findings, we decided it would be beneficial to issue individual feedback to the participating practices to ensure both the positive aspects and areas of improvements could be acted upon. 	<ul style="list-style-type: none"> Utilising the data from the findings and other data from the AML Certificate, the team has created this final thematic report. We hope and anticipate that this report will be useful to support to our membership. Working collaboratively with our supervised population has allowed us to gain a greater insight into compliance with the MLRs and LSAG Guidance.

Stage One - The request for documents was sent by our AML team, giving a submission date of 4 weeks from the date of the email.

Stage Three - The team issued results to individual participating practices.

Stage Two - Our AML team analysed these documents and collated findings.

Stage Four – This report has been generated highlighting our overall anonymized findings, along with key areas for improvement.



Executive Summary

The AML team was encouraged by some of the data identified through this Thematic Review, however significant deficiencies in several instances were highlighted. The team also appreciate the general willingness of practices to accommodate supervisory requests for information and to comply. It must also be noted that the sample of practices participating represent a relatively small portion of the supervised population.

Whilst we have seen examples of good and expected practice during this review we have, unfortunately, identified several consistent themes of non-compliance:

- Absence of PCPs which clearly demonstrate that customer due diligence (CDD) should be holistic in nature – and the importance of documenting the nature, background and circumstances of the client/matter.
- Inadequacy in documented and practical guidance in relation to record keeping requirements.
- A lack of practical guidance to staff on red flags in relation to the identification of ML & TF.
- An absence of documented and practical guidance in relation to the ongoing monitoring (OGM) of clients/matters.
- A gap in documented and practical guidance in relation to mandatory enhanced due diligence (EDD) requirements – including source of funds (SoF) and source of wealth (SoW).
- Scarce evidence of documented PCPs in relation to simplified due diligence (SDD), and subsequent OGM.
- Scarce evidence showing the changes made to PCPs and how they are subsequently communicated with staff.
- A shortfall in documenting the practices approach to internal controls including independent audit to test the adequacy and effectiveness of the PCPs, and employee screening (this is size and nature dependant; however, a reference should be included within the PCPs).
- A lack of reference being made to inherent risks and PCPs in relation to Trust and Company Service Provision (TCSP).
- Inadequacy in evidencing the requirement to report discrepancies to Companies House in line with r.30A.

LSS recommends that all practices in scope of the MLRs fully consider the findings of this report and that they review their AML PCPs accordingly.

Summary – Positive Aspects



Most participating practices outlined that there was training in place to ensure employees were aware of the MLRs and their duty to comply – recognising that staff are the most effective defence against ML/TF.



Almost 90% of practices documented that they apply CDD when establishing a business relationship.



97% of practices provided an overarching AML PCP document(s) – demonstrating understanding of the requirement for established documented PCPs.



Most practices made it clear that the levels and type of CDD applied derived from their client and matter risk assessments – showing recognition that risk assessments should guide CDD.



25 out of 40 practices contained reference to an internal Suspicious Activity Reporting (SAR) template - evidencing understanding of internal SAR reporting requirements.



Most practices contained an accurate Politically Exposed Persons (PEP) definition with 78% of PCPs documenting that the risk level increased when dealing with PEPs – evidencing raised awareness regarding PEP risk.

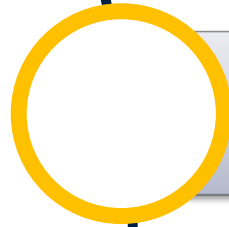
Summary – Areas to Improve



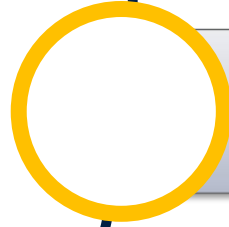
Less than a third of participating practices fully evidenced changes/reviews of their PCPs or detailed how they were communicated to relevant staff – failing to demonstrate up-to-date maintained PCPs.



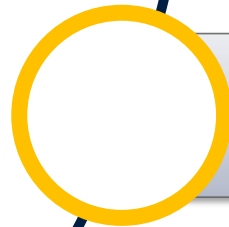
Only 15 out of 40 PCPs evidenced guidance to staff in relation to the identification of red flags and providing a holistic picture of ML/TF risks.



Less than a fifth of practices referred to their employee screening or independent audit functions – this is dependant on size & nature however, this may demonstrate an overall lack of internal control requirements.



Under half of the participating practices demonstrated that CDD should be holistic in nature – failing to evidence a fundamental element of CDD and risk assessments.



Less than 10% of practices referenced when and how to report discrepancies to Companies House in relation to r.30A – potentially alluding to a lack of keeping PCPs up-to-date with regulatory changes.



More than half of practices showed gaps relating to mandatory EDD requirements in relation PEPs and High Risk Third Countries (HRTC) – evidencing a lack of understanding of mitigating the highest of inherent ML/TF risks.

This report uses “**must**,” “**should**” and “**may**” throughout to contextualise how to understand the various directions. The terms have the below meanings:

- **Must** – a requirement in legislation or a requirement of a regulation or other mandatory provision. You must comply, unless there are specific exemptions or defences provided for in relevant legislation or regulations.
- **Should** – good practice for most situations. These may not be the only means of complying with the requirements and there may be situations where the suggested route is not the best option. If you do not follow the suggested route, you should be able to justify to supervisors why your alternative approach is appropriate, either for your practice, or in the particular instance.
- **May** – an option for meeting your obligations or running your practice. Other options may be available and which option you choose is determined by the nature of the individual practice, client or matter. You may be required to justify why this was an appropriate option to your supervisor.

Spotlight On - Regulation 19(1) & (2) Established, Maintained & Signed Off PCPs



Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Does the Practice have established, maintained and regularly reviewed PCPs?

- Has the practice provided an overarching AML PCPs document?
- Do the PCPs evidence senior management sign off?
- Do the PCPs evidence changes/review and any evidence of how these were communicated within the practice?

Considerations



97.5% of responding Practices provided an overarching PCP document(s).

62% did not evidence senior management sign off.

70% of the PCPs did not evidence regular changes/review or how they are communicated to staff.

Findings



All Practices **must** implement an overarching PCP document(s) & LSS are encouraged that only a small minority of participating practices did not.

However, within the sample reviewed, a high percentage **failed** to fully demonstrate that they complied with the requirements of R.19(1) and relevant LSAG Guidance.

This finding is a regulatory concern for LSS & all practices **should** review their PCPs in line with these MLRs.

Commentary



- In order to demonstrate that PCPs are proportionate and approved/influenced by senior management this approval **must** be documented & **should** be referenced in the overarching PCP document.
- PCPs **must** be reviewed and updated regularly, and all changes made **must** be documented and approved by senior management with an audit trail of decision-making documented recommended.
- A change table within the overarching PCPs - demonstrating these changes and including confirmation of sign off **may** be a simple solution for some practices.
- Practices **must** demonstrate and document that senior management provide their MLRO/COs with active support, and they **must** mitigate and effectively manage their ML/TF risks via implementation and approval of PCPs.
- Any decisions made by Senior Management on AML compliance **must** be documented and tracked over time.

Good Practice



Spotlight On - Regulation 19(3)(a) – Risk Management

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs include risk management practices?

- Including sections relating to inherent risks & have the risks been mitigated against?
- Detailing procedures relating to SDD/CDD/EDD, identification & verification (ID&V), SoF/SoW, screening & OGM?
- Do the PCPs provide relevant guidance to staff in relation to the identification of red flags and providing a holistic picture of risk?

Considerations



Over half of the PCPs did not sufficiently outline the inherent risks – or include risk mitigation procedures for the practice.

57% of practices failed to fully document and outline procedures relating to SDD/CDD/EDD, ID&V, SoF/W, screening or OGM.

62% showed gaps in evidencing practical guidance in relation to red flags or provide a holistic picture of risk.

Findings



Although the AML team found mention of most r.19(3) requirements within the participating PCPs. Further review identified significant gaps in full documented compliance of risk management procedures.

The team identified that a large portion of practices had omitted dedicated PCPs in relation to the listed risk management procedures. R.19(3) requirements are **musts** for practices to document.

Commentary



- In order to demonstrate full compliance with r.19(3), practices **should** consider LSAG Guidance Sections 5 & 6 in relation to SDD/CDD/EDD, ID&V, SoF/W, screening & OGM.
- The AML team hold a supervisory opinion that it is not enough to list risk management procedures - these procedures **should** then be followed with practical guidance for all relevant staff to enact and adhere too.
- Practical guidance **should** align instances where SDD, CDD and EDD **should** be applied, provide guidance relating to OGM and give assistance on the identification of red flags for example.

Good Practice



Spotlight On - Regulation 19(3)(b) – Internal Controls

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs include internal control practices?

- Including evidence that the practice has an appropriately appointed MLRO and where applicable – MLCO?
- Containing reference to: employee screening and/or independent/internal audit functions (where required given size and nature of the practice)?
- Detailing appropriate training measures for all relevant employees?

Considerations



82% of practices did not document that they have appointed an MLRO and/or MLCO.

The same cohort did not detail nor reference any employee screening and/or independent audit function.

Over half of the PCPs detailed appropriate training measures for all relevant employees.

Findings



While the AML team acknowledge that these internal controls are dependent on size and nature of the practice, there remains a high percentage of practices failing to acknowledge internal controls, whether they implement them or alternatively – failing to document the reason for not implementing them.

Commentary



- Practices **must** document and demonstrate why they require/do not require internal controls. The AML Team is of the supervisory opinion that the majority of the cohort chosen to participate require r.21 internal controls owing to their size and nature.
- Practices are asked to review r.19(3)(b) alongside r.21-24 and relevant LSAG Guidance Sections to ensure they are complying with these MLRs. Corresponding LSAG Guidance can be found on the reference table.
- LSS will issue additional blogs and guidance relating to training in due course to further assist practices in this area.

Good Practice



Spotlight On - Regulation 19(3)(c) – Customer Due Diligence (CDD)

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs contain sections on CDD?

- Detailing that CDD is applied when establishing a business relationship?
- Do they consider the purpose/intended nature of the business relationship as well as ID&V?
- Is there reference to OGM in relation to scrutiny of transactions and reviews of existing records?
- Do the PCPS document that the application of CDD **should** be holistic in nature?

Considerations



While most PCPs detailed that CDD is applied at the outset of a business relationship, and they largely understand and document ID&V requirements there are a large proportion of participating practices which did not detail ongoing monitoring or demonstrate that CDD **should** be holistic in nature.

Findings



These findings mirror the AML Team's findings within their ongoing assurance reviews of practices.

Practices demonstrate regularly that they do not document the **holistic approach** and nature of CDD and client and matter risk assessments.

Commentary



- When weighting risk factors, practices **should** take a holistic approach and make an informed judgement about the relevance of different risk factors in the context of a particular customer relationship or matter.
- CDD is the collective term for the checks you **must** do on your clients, which **may** differ depending on the circumstances. It is holistic in nature and is wider than simply undertaking ID&V of clients.
- A practice **must** scrutinise transactions on a matter-by-matter basis, with the objective of understanding what the underlying SoF are for transactions you undertake on behalf of a client. This is a fundamental aspect of holistic CDD and is more than simply collecting bank statements.
- Holistic CDD and risk assessing includes ID&V, purpose, nature and background of transactions/business relationships, SoF/W and screening.

Good Practice



Spotlight On - Regulation 19(3)(d) – Reliance(r.39) & Record Keeping (r.40)

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs refer to a reliance and record keeping policy?

- Is there mention of the use or non-use of reliance on third parties in line with r.39?
- Is there detail regarding the time period for maintaining CDD records and reference to maintenance, upkeep and disposal of records?
- Do the PCPs contain detail of the process when authorities/supervisors request information?

Considerations



62% of practices did not reference a reliance policy in line with r.39.

Over 80% of practices did not detail any record keeping procedures relating to the time period for maintaining records. This extends to procedures regarding how to maintain, upkeep and dispose of records and how to respond to authorities/supervisors' requests.

Findings



The AML team recognise that most practices likely **do not** exercise reliance in line with r.39 however, this approach **must** be documented in their PCPs.

The team also recognise that practices **may** have record keeping policies that sit separate from their AML PCPs however, this **should** be referenced within the main PCPs.

Commentary



- Procedures (including robust, easily accessible record keeping) **must** be in place to ensure comprehensive and timely reporting and submissions to relevant supervisory authorities.
- Practices **must** have procedures relating to record keeping and related data protection matters – paying particular attention to r.40(2) which requires practices to keep a copy of any documents to satisfy CDD requirements alongside sufficient supporting records to enable the transaction to be reconstructed.
- Record keeping policies **must** extend to include training on record keeping and data protection.
- Retaining accurate and comprehensive records is also important for facilitating cooperation with law enforcement and potentially defending yourself against criminal prosecution.
- Practices **must** have r.28(16) in mind which requires demonstration of the extent of measures taken to satisfy the requirements under the MLRs.
- **If in doubt, write it down.**

Good Practice



Spotlight On – Regulation 19(4)(c) - New Technology

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs reference use of AML technology?

- Do they document the role of any electronic ID&V tools used by the practice?
- If applicable, do they document the limitations and advantages of any Electronic ID&V tool employed?
- Do they mention any use of Sanctions/PEP/Adverse Media Screening technology?

Considerations



More than half of participating practices **did not document** the role of any electronic ID&V or screening tools used.

Nearly 90% of practices **did not document** the limitations or advantages of any tools or mention the use of screening/PEP/adverse media screening tools.

Findings



31 participating practices declared in their latest AML Certificate return that they utilised EID&V software.

Practices using these tools/software **should** understand and document the advantages and limitations of these.

Commentary



- Practices **must** document considerations relating to any new technology when they are adopted.
- This **must** include documented consideration of measures taken in preparation for adopting any technology.
- While technology **may** be useful and helpful, it does not guarantee a solution to ML/TF issues or risks and the responsibility always sits with the practice.
- Practices **should** document their **choice** of technology, the **reasoning** for adoption, their **understanding** of any system, any **training** and relevant **record keeping and data protection** issues.
- It is also key to document **scrutiny of any advantages and limitations** of the technology.

Good Practice



Spotlight On - Regulation 30A – Discrepancy Reporting

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs refer to discrepancy reporting?

- Regarding when and how discrepancies **should** be reported in line with r.30A?
- Containing reference to Companies House/HMRC tools?

Considerations



90% of participating practices did not reference the reporting of discrepancies to Companies House in line with r.30A.

Findings



Practices **must** stay up-to-date with regulatory changes.

The requirement to disclose discrepancies was introduced in 2019 and expanded in 2022.

Practices are failing to evidence incorporation of this requirement within their PCPs evidencing a gap in compliance.

Commentary



- Practice **must** have PCPs in place to facilitate the reporting of discrepancies between beneficial ownership information obtained through CDD checks and what is held on the Companies House register.
- If a discrepancy between information relating to the beneficial ownership of a company, and information which the practice becomes partial to whilst carrying out its duties under the MLRs, the discrepancy **must** be reported to Companies House.
- Companies House have published some guidance which can be found [here](#).
- Practices **should** be aware of the evolution of this requirement in the Statutory Instrument enacted in 2022 which saw the requirement to report discrepancies extended from new clients to an ongoing reporting obligation.

Good Practice



Spotlight On - Regulation 33 – Enhanced Due Diligence (EDD)

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs refer to the obligation to apply EDD?

- Referencing mandatory EDD requirements? e.g., r.33(3A) for high risk third countries.
- Containing practical guidance on what EDD means in the context of the client/transaction?
- Referencing higher risk situations as per r.33(6)?

Considerations



Most participating practices failed to reference or evidence mandatory EDD requirements.

These practices are also failing to detail what EDD looks like for them practically or consider r.33(6) instances.

Findings



This is a significant regulatory concern for the AML team owing to the inherent risks present within this cohort of participating practices and more widely across the supervised population.

For example, our AML Certificate data shows exposure to multiple HRTCs, large numbers of foreign and domestic PEPs as well as exposure to higher risk sectors.

Commentary



- R.33 states that you **must** apply EDD and enhanced OGM under certain mandatory circumstances. Any EDD measures **should** be documented within the PCPs.
- Practices **may** wish to consider examining beneficial ownership thresholds below 25% as an EDD measure or increasing the frequency of OGM for example.
- They **may** wish to introduce senior management approval for higher risk circumstances – notwithstanding mandatory approval for PEPs and HRTCs.
- EDD measures will vary depending on the risks present within the individual circumstance.
- In the case of HRTCs, EDD is more stringent, and LSS has published a blog regarding this, and wider geographic risks, which can be found [here](#).
- SoF/W requirements become more stringent when EDD is required - the extent to which a practice **must** obtain, review and evidence their client's financial position is dependent upon the risk profile of the client or matter.

Good Practice



Spotlight On - Regulation 35 – Politically Exposed Persons (PEPs)

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs make reference to PEPs?

- Containing a correct PEP definition?
- Evidencing that the risk level is increased when dealing with PEPs?
- Containing a requirement for EDD measures and Senior Management approval of PEP clients/relationships?
- Containing detail on EDD measures to be applied in respect of PEPs such as: Enhanced SoW/SoF, enhanced OGM and maintaining a PEP Register?

Considerations



Although the majority of practices appear to document an accurate PEP definition and recognise that the risk level increases when a PEP is involved.

Over half did not follow this up with PEP requirements such as Senior Management approval or detailed EDD measures such as SoF/W and Enhanced OGM.

Findings



15 participating practices told us in their AML Certificate data that they don't keep a PEP register.

Exposure was also declared to over 170 PEPs in this data.

Practices have an increased awareness to the definition of PEPs and the increases risk involved, however overall, PCPs do not appear to document the mandatory EDD measures as per r.35.

Commentary



- Practices **must** have in place relevant systems and PCPS in place to determine whether a client or a beneficial owner is a PEP.
- If practices act for a PEP or an entity which may be owned/controlled by PEPs, or commonly provide services which may be attractive to PEPs, practices **should** address this directly in their Practice Wide Risk Assessment (PWRA) and client and matter level risk assessments, as well as document any mitigating steps they may take to guard against the risks.
- When mitigating the risk of a PEP, practices **must** consider their PWRA, their client and matter level risk assessment and any information published by their supervisor.
- When a business relationship is established with a PEP, them MLRs specify that practices **must** have senior management approval, take adequate measures to establish SoF/W, conduct enhanced OGM and consider any further EDD protocols that are appropriate.
- Practices **must** ask questions such as what role the PEP holds, what services they wish to use, what is the potential for misuse of that service for the purpose of laundering the proceeds of corruption.
- Practices **may** wish to consider keeping a PEP Register or a High Risk Register to assist with OGM and tracking PEPs.

Good Practice



Spotlight On - Suspicious Activity Reporting (SARs)

Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Do the PCPs reference an internal SARs process for identifying and reporting suspicious activity?

- Is there reference to an internal SAR form?
- Is there reference to tipping off as a criminal offence?

Considerations



62% of reviewed PCPs contained reference to an internal SAR form/template.

More than half of the PCPs **did not** include reference to the criminal offence of tipping off.

Findings



Of the 40 participating practices, 20 internal SARs were reported to MLRO's.

13 SARs and 7 Defence Against ML (DAML) reports were reported to the National Crime Agency (NCA) as per the latest AML Certificate submissions.

All practices **must** have an internal reporting process in place and all relevant employees **must** be aware of the criminal offence of tipping off.

Reporting SARs **must** be at the forefront of an MLRO/MLCO's duties and responsibilities.

Commentary



- All persons within the regulated sector have obligations under the Proceeds of Crime and the Terrorism Acts, to disclose any suspicions of ML/TF to the NCA via the [SARs reporting process](#).
- **Any/all** individual(s) working within the regulated sector **must** make an internal disclosure to their MLRO if they have reason to know or suspect ML/TF is taking place. MLRO's then have the additional specific obligation to review these reports and conclude whether to report to the NCA or not.
- Practices **should** have a process for staff to make the MLRO aware if they have knowledge or a suspicion of ML/TF and **may** find it helpful to have a standard internal disclosure form/template for employees to use.
- MLRO/MLCO's **must** be aware of the difference between a SAR and a DAML and all practices **should** obtain NCA log in credentials to enable the reporting of any SARs or DAMLs.
- The NCA has recently issued further guidance on submitting SARs within the regulated sector which can be found [here](#). The NCA also have a plethora of guidance regarding what to include in a SAR and FAQs etc. which can be found [here](#).

Good Practice



Spotlight On – Trust & Company Service Provider (TCSP) Risk



Please refer [here](#) for a Reference Table containing Relevant MLRs, LSAG Guidance and Key Compliance Principles.

Where practices engage in TCSP activity – have they considered and documented the inherent risks involved?

- Do the PCPs detail risk management practice – CDD, OGM, screening, with regards to TCSP activity?
- Do the PCPs detail the requirements of OGM for TCSP Services provided in line with r.28(11)?

Considerations



Almost 90% of applicable practices did not evidence the inherent risks and associated controls involved in TCSP activity within their PCPs.

This included failure to detail ongoing monitoring requirements for TCSP services in line with r.28(11).

Findings



40% of the participating practices declared in their latest AML Certificate submission that they offer TCSP services.

[Our 2020 thematic review](#) which focused on TCSP services concluded that participating practices were failing to acknowledge TCSP risks in their PCPs.

This Thematic Review, 2 years on, continues to identify this gap in compliance.

Commentary



- Practices **must** document that they consider the inherent risks involved in TCSP work.
- This is often seen as more challenging to identify than in other in scope work areas and we often see this information omitted through our assurance. This may be owing to the work being incorrectly seen as a piece of **ancillary work** on another related matter (in or out of scope), rather than a distinct piece of in scope TCSP work.
- The Legal Sector Affinity Group released [Part 2b](#) of the guidance. This relates to specific guidance for TCSP providers and all TCSP providers **must** take this guidance into account, as well as relevant sections within Part 1 of LSAG guidance.
- Practices providing these services **should** provide training specific to these services and the risks they carry. This training should include TCSP Red Flag training, for example.
- Practices **must** consider supervisory guidance and material such as the above mentioned [LSAG Guidance](#), [LSS' Sectoral Risk Assessment](#) and the [TCSP Thematic](#) conducted in 2020. Other materials such as [FATF's Mutual Evaluation Report](#) **must** also be considered.

Good Practice



Reference Table – Relevant Regulations, Regulatory Requirements, LSAG Sections and Key Compliance Principle(s)



These references are non-exhaustive and Practices must complete their own research.

Relevant Requirement & Regulations	<u>Legal Sector Affinity Group Guidance</u>	Key Compliance Principle(s)
<u>19(1) & (2)</u>	4.6 & 4.8	6
<u>19(3)(a)</u>	4.8, 5 & 6	10-13 & 15-28
<u>19(3)(b), 21 & 24</u>	9	3, 34 & 35
<u>19(3)(c), 27 - 38</u>	6	15-28
<u>19(3)(d), 28(16), 39 – 40</u>	6 & 10	9, 22 & 36
<u>19(4)</u> - New Technology	7	30 & 31
<u>30A</u>	6 & 12	18
<u>33</u>	6	19
<u>35</u>	5, 6 & 7	28
Suspicious Activity Reporting (SARs)	11, 16 & 17	2 & 29
Trust & Company Service Provider (TCSP) Risk	5, 6, 18 & <u>LSAG Part 2b</u>	N/A – See Part 2b



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