



The Specialist
Property Law
Regulator

CLC Response to
HM Treasury's Call for Information
Anti-Money Laundering Supervisory Regime
June 2016

About the CLC

1. The CLC was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board. It licenses and regulates licensed conveyancers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
2. The CLC currently regulates 233 practices (54 of which are ABS) and 1,280 licensed conveyancers.

CLC's Approach to AML Regulation

3. The CLC has published its AML Code¹ and Guidance² as an integral part of our Regulatory Arrangements, which support the CLC's Code of Conduct³.
4. As reported in our Annual Report 2015⁴, we published a consultation paper in July 2015 setting out amendments proposed to the CLC's AML/CTF Guidance updating the previous version by incorporating changes introduced by the Fourth Money Laundering Directive. A summary of the responses to the Consultation has been posted. HMT have asked the AML Legal Affinity Group to peer review the draft Guidance before it determines whether to approve the Guidance.

Overview

5. The CLC reviews AML policies and compliance of the practices it regulates as part of its monitoring and supervision activity. There will be an additional administrative burden on practices if they are required to carry out additional AML reporting activities.

Approach to Supervision

6. Lawyers (and other professionals) are responsible for ensuring that they and their clients are AML compliant and report non-compliance (as Suspicious Activity Reports). The CLC's approach has been to embed assessments of AML within its monitoring programme, and to require practices whose processes are inadequate to take the steps necessary to be AML compliant.
7. The CLC would be reluctant to take disciplinary proceedings without specific agreement of law enforcement to avoid the risk of compromising any criminal investigation. Our experience is that disciplinary proceedings must almost invariably be adjourned until after the conclusion of any criminal proceedings.

¹ <http://www.clc-uk.org/CLCSite/media/PDFs/Anti-Money-Laundering-and-Combating-Terrorist-Financing-Code-CiF-161214.pdf>

² http://www.clc-uk.org/CLCSite/media/PDFs/Anti-Money-Laundering-and-Combating-Terrorist-Financing-Guidance-161214_2.pdf

³ <http://www.clc-uk.org/CLCSite/media/PDFs/Code-of-Conduct-Code.pdf>

⁴ <http://www.clc-uk.org/CLCSite/media/Corporate-Docs/CLC-Annual-Report-2015.pdf>

8. The CLC is able to carry out inspections of practices at short notice based on intelligence received and is looking to co-operate more actively with law enforcement. For example, it has entered a Memorandum of Understanding (MoU) with one enforcement agency. Whilst the agency welcomes information from the CLC, to date there has been no reciprocation. The requirements of the Data Protection Act may explain some of the barriers to the exchange of information. Despite efforts for one touch contact the lack of reciprocity inhibits fuller co-operation. This suggests that MoUs need to be supplemented with processes designating a Single Point of Contact (SPOC) whose role, in addition to managing the receipt and dissemination of information, should be to encourage colleagues to share information through the SPOC at appropriate stages in any investigation for circulation to supervisors who have an interest in that information. This will encourage collaboration.
9. Although it is not part of the Call for Information, the CLC believes that improvements could be made to the Suspicious Activity Report process which makes it easier for practices to manage their continuing relationship with clients whilst providing the necessary assistance to law enforcement. We would be happy to discuss this in more detail.
10. As mentioned in the Call for Information, FIN-NET already acts as a forum for the exchange of information. Whilst the information circulated provides some interesting case studies, to date the CLC has not obtained any specific intelligence which appears to be relevant to the practices it regulates. The CLC would welcome a more targeted approach to the circulation of intelligence.
11. Generally, the questions suggest a view that more resources should be committed to supervisory activities. This is likely to lead to an increase in costs for supervised entities in doing business both in terms of regulatory fees and in terms of resources they will require to comply with the additional AML requirements. Setting up an additional AML regulator (whether as an oversight supervisor or as a single supervisor) will add to the complexities of the current regulatory landscape. This suggestion should be seen in the light of other (apparently conflicting) government agendas, such as Deregulation and Cutting Red Tape Challenge. The Regulatory Impact of such a requirement would need to be measured together with an assessment of what regulations would come out under the one in: one out, one in: two out, and one in: three out principles.
12. To answer the main questions raised under the headings in the Call for Information:

Identification of Risks (Questions 1-5)

In the CLC's view, it should be relatively easy to formulate an overarching methodology. However, the risks and priorities are likely to vary significantly for the different sectors. The Affinity Fora could act as a starting point for breaking down the risks for their particular sector. Ultimately it will be for the individual supervisors to determine their risk methodology and profile within the overarching methodology.

The CLC is willing to put in place bilateral MoUs to encourage the exchange of information supplemented by SPOCs (see paragraph 8 above).

Supervisors Accountability (Questions 6-9)

The CLC agrees that supervisors should provide an annual report. Ultimately, it should be open to government to assess the effectiveness of supervisors. We would wish to understand how such an assessment would fit into the current regulatory oversight regime eg of the LSB.

Penalties and Enforcement (Questions 10-12)

The CLC is able to take disciplinary proceedings against practices, licensed conveyancers and managers for breach of its Codes which include failure to comply with AML requirements. Disciplinary proceedings are determined by the Adjudication Panel whose powers include the removal of licences and fining up to £50 million for an individual and £250 million for a practice. As part of its supervisory function the CLC carries out inspections at CLC practices (see paragraphs 6 and 8 above).

Ensuring high standards in supervised populations (Questions 13-15)

The CLC already obtains data from practices. When it carries out inspections it views AML records. Managers are required to ensure that they have up to date AML training and that all members of staff have AML training appropriate to their role within the business. Staff at the CLC also undergo AML training.

The role of professional bodies in AML/CTF supervision (Questions 16-18)

The CLC's views remain as set out in the extract from Sir David Clementi's report of 2004 quoted in the Call for Information. The CLC has no specific knowledge as to the approach to professional body supervision in other countries' regimes.

Guidance (Questions 19-21)

The CLC has consulted on revised AML guidance and has asked HMT to approve that guidance. The CLC would welcome clarity about the process for approval. The CLC is satisfied that the draft Guidance is appropriately targeted at CLC practices and will be a useful point of reference for them.

Transparency (Questions 22-24)

The CLC agrees that further information should be published about details of enforcement action and enforcement strategy by all parties involved in the AML regime. It has no specific view whether this should be in a report published by HMT or by the CLC.

Information Sharing (Questions 25-27)

See comments at paragraph 8 above.

Ensuring the Effectiveness of the FCA (Questions 28-30)

The CLC does not express a view. However, it is suggested that general points to bear in mind are:

- Openness
- Reporting back
- Information exchange
- Prioritisation in their business agenda.

The number of Supervisors (Questions 31-32)

The CLC considers that no decision should be made at this stage, that the number of supervisors should be kept under review and that the supervisors should be encouraged to work with each other. If individual supervisors are unable or unwilling to continue as supervisors their functions can be transferred to HMRC, which we understand is the default supervisor.