

# OPBAS

OFFICE FOR PROFESSIONAL BODY AML SUPERVISION  
FINANCIAL CONDUCT AUTHORITY



## Office for Professional Body Anti-Money Laundering Supervision (OPBAS)

### Sourcebook for professional body anti-money laundering supervisors

January 2018

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# 1 Definitions and abbreviations

## 1.1 A glossary of common terms, and terms used in this sourcebook:

<b>AML</b>	Anti-money laundering. Anti-money laundering measures include those to counter the financing of terrorism
<b>AMLSF</b>	Anti-Money Laundering Supervisors' Forum
<b>cluster</b>	Two or more relevant persons in a sector that have similar characteristics
<b>FCA</b>	Financial Conduct Authority
<b>FIN-NET</b>	Financial Crime Information Network
<b>'the Fourth Money Laundering Directive' or 'the Directive'</b>	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>member</b>	A relevant person (whether an individual or a firm as defined in Regulation 3 of the Money Laundering Regulations 2017) that a professional body supervisor oversees. Some professional body supervisors instead use the term 'regulated persons', but we use the term 'member' in this document for ease of reading
<b>'Money Laundering Regulations 2017' or 'the Regulations'</b>	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
<b>NCA</b>	National Crime Agency
<b>OPBAS</b>	Office for Professional Body Anti-Money Laundering Supervision
<b>Professional body supervisor</b>	This has the same meaning as a self-regulatory organisation as set out at Regulation 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, i.e. each of the professional bodies listed at Schedule 1 of the Regulations
<b>relevant persons</b>	This is meant in the sense defined in Regulation 3 of the Money Laundering Regulations 2017
<b>sector</b>	The relevant persons for which a professional body supervisor has oversight



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<b>senior management</b>	An officer or employee of a professional body supervisor with sufficient knowledge of the body's supervisory functions under the Money Laundering Regulations 2017, and with sufficient authority to take decisions affecting those functions
<b>SIS</b>	Shared Intelligence Service
<b>SPOC</b>	Single Point of Contact

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## 2 Application

**2.1** Each of the professional bodies listed in Schedule 1 of the Money Laundering Regulations 2017 is the supervisory authority for the relevant persons it regulates. This sourcebook applies to all these bodies. As at 26 June 2017, they are:

1. Association of Accounting Technicians
2. Association of Chartered Certified Accountants
3. Association of International Accountants
4. Association of Taxation Technicians
5. Chartered Institute of Legal Executives
6. Chartered Institute of Management Accountants
7. Chartered Institute of Taxation
8. Council for Licensed Conveyancers
9. Faculty of Advocates
10. Faculty Office of the Archbishop of Canterbury
11. General Council of the Bar
12. General Council of the Bar of Northern Ireland
13. Insolvency Practitioners Association
14. Institute of Certified Bookkeepers
15. Institute of Chartered Accountants in England and Wales
16. Institute of Chartered Accountants in Ireland
17. Institute of Chartered Accountants of Scotland
18. Institute of Financial Accountants
19. International Association of Bookkeepers
20. Law Society
21. Law Society of Northern Ireland
22. Law Society of Scotland



**2.2** This sourcebook takes effect on 1 February 2018.

**2.3** The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) does not expect professional body supervisors to be aligned with all the material in this guidance by 1 February 2018. OPBAS will discuss with each professional body supervisor its plan for meeting the standards set out in this sourcebook.

## 3 Governance

Regulation 49 of the Money Laundering Regulations 2017 requires a professional body supervisor to:

- make arrangements to ensure their supervisory functions are exercised independently of any of their other functions which do not relate to disciplinary matters (Regulation 49(1)(a))
- provide adequate resources to carry out the supervisory functions (Regulation 49(2)(a))

- 3.1** OPBAS expects a professional body supervisor to clearly allocate the responsibility for managing its anti-money laundering supervisory activity.
- 3.2** There should be evidence that senior management is actively engaged with the body's approach to this work.
- 3.3** OPBAS expects to see appropriate reporting and escalation arrangements related to anti-money laundering supervisory activities. The organisational structure of a professional body supervisor should promote coordination, internal information sharing, and effective decision making through delegation of powers to staff.
- 3.4** A professional body supervisor should keep the advocacy functions it performs (that promote the interests of its members) functionally separate from the inspection and investigatory functions. Consideration should be given to the appropriate division of responsibility between the advocacy and regulatory functions of a professional body supervisor in relation to all matters discussed in this sourcebook, including consideration of how reporting and escalation arrangements apply.
- 3.5** Where a professional body supervisor has a governing council that includes some members of the body, there should be a procedure for handling any conflicts of interest that arise as a consequence (e.g. a conflicted person withdraws from discussions).

### Examples of good practice:

- there is evidence of issues related to anti-money laundering supervision being escalated appropriately
- the professional body supervisor can identify the population they supervise who are subject to the requirements of the Money Laundering Regulations 2017
- decisions related to anti-money laundering supervision (such as the approval of risk assessments or the initiation of enforcement investigations) take place at an appropriate level of seniority



**Examples of poor practice:**

- there is little evidence of senior management interest in the performance of anti-money laundering supervision
- the judgments of anti-money laundering supervisors are overruled because they may conflict with the commercial or advocacy functions of the body
- there is no management information about the performance of anti-money laundering supervision



## 4 A risk-based approach

**4.1** The Money Laundering Regulations 2017 require anti-money laundering supervisors to adopt a risk-based approach. This section aims to contribute to the creation and maintenance of a coherent and effective risk-based approach to anti-money laundering supervision by professional body supervisors.

Regulation 46(2)(a) of the Money Laundering Regulations 2017 requires a professional body supervisor to adopt a risk-based approach to the exercise of its supervisory functions, informed by the risk assessments carried out under Regulation 17.

Regulation 17(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to identify and assess the international and domestic risks of money laundering and terrorist financing to which its own sector are subject. In doing so, it must, under Regulation 17(2), take into account:

- reports published by the European Commission under the Fourth Money Laundering Directive
- guidelines issued by the European Supervisory Authorities under the Fourth Money Laundering Directive
- the report prepared by the Treasury and the Home Office under Regulation 16(6)
- information made available by the Treasury and the Home Office under Regulation 16(8)

Regulation 17(4) requires a professional body supervisor to develop, and record in writing, risk profiles for each relevant person in its own sector. Regulation 17(5) says this may be a single risk profile for a cluster of its members, although, if so, Regulation 17(6) requires the appropriateness of that clustering to be kept under review. When preparing risk profiles, a professional body supervisor is required to:

- take account of the risks that relevant persons will not take appropriate action to identify, understand and mitigate the risks (Regulation 17(7))
- review the risk profiles developed at regular intervals and following any significant event or developments which might affect the risks (Regulation 17(8), where examples are listed)

### Features of a risk-based approach to anti-money laundering supervision

**4.2** A risk-based approach means focusing efforts where the risks are highest and considering the likelihood of unwanted outcomes. This helps to identify situations where additional measures and controls may be appropriate.

**4.3** Consequently, a risk-based approach to anti-money laundering aims to make sure measures to reduce money laundering are in proportion to the risks. For supervision, this applies to the way professional body supervisors allocate their resources. Professional body supervisors should also act in a manner that supports the application of a risk-based approach by their membership.

## Allocation of supervisory resources

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**4.4** Adopting a risk-based approach to supervising a professional body's members' anti-money laundering policies, controls and procedures allows the professional body supervisor to shift resources to areas with a higher money-laundering risk. This means professional body supervisors can use their resources effectively.

**4.5** An effective risk-based approach to anti-money laundering will require a regular appraisal and review of the risks. This will be provided by an assessment of where the money-laundering risks are greatest. This assessment will take in to account:

- a.** the UK's National Risk Assessment (produced under Regulation 16 of the Money Laundering Regulations 2017)
- b.** material published by bodies such as the UK government, the Financial Conduct Authority (FCA), OPBAS, the European Commission and the European Supervisory Authorities

The assessment may also take in to account:

- c.** adverse media coverage
- d.** sector guidance and alerts
- e.** the professional body supervisor's own judgments about the risks posed by a member, clusters of members, or sector
- f.** liaison with industry and with other supervisors (including through the Anti-Money Laundering Supervisors' Forum and its affinity groups)
- g.** intelligence sharing by law enforcement, including the National Crime Agency

**4.6** This assessment should not be static. It will change as circumstances develop and threats evolve. Professional body supervisors' resourcing model and approach should be reflective of this.

## A supervisory approach that supports members' adoption of a risk-based approach

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**4.7** Professional body supervisors should use their powers in a way that supports the adoption of a risk-based approach by their members. The following features facilitate the adoption of a risk-based approach to anti-money laundering by members:

- a.** A principles-based supervisory approach that encourages a professional body's membership to aim for achieving positive outcomes related to reducing money laundering, rather than exclusively concentrating on compliance with prescriptive and detailed rules. Principles can be more adaptable to different circumstances than detailed rules and are more likely to foster innovation and imaginative approaches in industry.

- b. An acceptance that, as a result of the adoption of a risk-based approach, the members of a professional body supervisor may have anti-money laundering policies, controls and procedures that differ from those of comparable businesses. The risk-based approach to anti-money laundering means that there will be more than one 'right' answer to the same problem.
- c. Acceptance that money laundering can never be entirely eliminated. Criminals will always try to make use of the proceeds of crime. A professional body's members will not always be able to prevent this. There should therefore be reasonable supervisory expectations about what a member with sound controls aimed at preventing money laundering is able to achieve. To attempt to design a zero-failure regime would be damaging and counterproductive. It would place excessive burdens on professional body supervisors and their members and act against the interests of the general public.

## Designing and implementing a risk-based approach to anti-money laundering supervision

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- 4.8 Professional body supervisors will need to consider a number of issues when designing and implementing a risk-based approach to supervision. This approach relies on a sound understanding of the nature of the risks but a regular risk assessment can help this. The professional body supervisor can then judge which supervisory tools work for the risks that have been identified.

### Methods for assessing risk

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- 4.9 Professional body supervisors should develop a means of identifying which members or clusters of members are at the greatest risk of being used by criminals to launder proceeds from crime. Factors to consider when undertaking a risk assessment may include the following:
- a. **Probability:** the likelihood of money laundering taking place as a consequence of the activity undertaken by a member (or cluster of members) or the environment they operate in. This risk can increase or decrease depending on other indicators:
    - product and service risk (the likelihood that products or services on offer can be used for laundering money)
    - client risk (the likelihood that customers' funds may have criminal origins)
    - the nature of transactions (e.g. frequency, volume, counterparties)
    - geographical risk (does the member, its clients or agents trade in riskier locations)
    - other indicators of risk are based on a combination of objective factors and experience. These can be drawn from various sources, including:
      - a supervisor's wider work with a member

- a member's compliance history, complaints about a member or about the quality of a member's internal controls
- intelligence from other supervisory authorities and law enforcement agencies, and from other sources (e.g. consumers, whistleblowers)

**b. Impact:** the potential harm caused if money laundering is facilitated by the member, cluster or sector. This can, among others, depend on:

- a member's size (turnover, number and type of customers, number of premises, value of transactions etc.)
- links with other businesses (susceptibility to being involved in 'layering' activity)

**4.10** This assessment should be updated on an ongoing basis. The result from this risk assessment will help determine the quantity of resources the professional body supervisor will allocate to the supervision of the member or cluster of members.

## Clustering

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**4.11** The Money Laundering Regulations 2017 do not require the risks posed by each member to be individually assessed by the professional body supervisor. Assessment can be performed at the level of a 'cluster'. The Regulations say clustering is appropriate if members share similar characteristics, and the risks of money laundering and terrorist financing affecting those relevant persons do not differ significantly.

**4.12** Illustrative examples of clusters may include:

- a.** solicitors specialising in commercial property law
- b.** sole-trader book-keepers catering to small businesses in East Anglia

**4.13** When assessing clusters, the professional body supervisor should review whether the clustering remains appropriate. A cluster could contain a large number of individual members.

## The limits of a risk-based approach

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**4.14** There are circumstances in which a risk-based approach cannot be applied, or the scope for its application may be limited. This may be the result of legal or regulatory requirements that mandate certain actions to be taken. For example, the Money Laundering Regulations 2017 requires a relevant person to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject; the person cannot take a risk-based decision to not comply with this requirement.

**Examples of good practice:**

- risk assessment is a continuous process based on the best information available from internal and external sources
- a professional body supervisor assesses where risks are greater and concentrates resources accordingly

**Examples of poor practice:**

- some understanding of the main areas of risk, but efforts to assess risk are piecemeal and lack coordination
- risk assessment is a one-off exercise

## 5 Supervision

Regulation 46(1) of the Money Laundering Regulation 2017 requires a professional body supervisor to effectively monitor its own sector and take necessary measures for the purpose of securing compliance with the requirements of the Regulations.

Regulation 46(2)(c) requires a professional body supervisor to base the frequency and intensity of its on-site and off-site supervision on the risk profiles prepared under Regulation 17(4).

Regulation 46(3) requires a professional body supervisor determining its approach to the exercise of its supervisory functions to take account of:

- guidelines issued by the European Supervisory Authorities under the Fourth Money Laundering Directive
- the degree of discretion permitted to relevant persons in taking measures to counter money laundering and terrorist financing

Regulation 46(4) requires a professional body supervisor to, in accordance with its risk-based approach, take appropriate measures to review:

- the risk assessments carried out by relevant persons
- the adequacy of relevant persons' policies, controls and procedures, and way they have been implemented

Regulation 49(1)(b) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure sensitive information relating to the supervisory functions is appropriately handled within the organisation.

**5.1** Professional body supervisors have a number of tools to use when monitoring the adequacy of members' anti-money laundering defences. These tools allow the supervisor to make sure members are complying with anti-money laundering legislation and have policies, controls and procedures in place that are being effectively applied and subject to appropriate quality assurance testing; this includes members' procedures to make suspicious activity reports to authorities. Some tools will be used as remedial or punitive measures where irregularities have been uncovered. Generally, systemic breakdowns, or evidence that controls have proved to be inadequate for some period of time, will result in the most severe supervisory response.

**5.2** The use of these tools should enable professional body supervisors to compare a member's anti-money laundering arrangements with those of its peers, with a view to informing its judgment of the quality of the member's controls. However, it is important to bear in mind that under the risk-based approach, there will often be valid reasons why members' controls differ. Where deficiencies are identified, professional body supervisors should make sure members take proper and timely action to correct these. Throughout the process, professional body supervisors should maintain an open and cooperative dialogue with their membership.

**5.3** The choice of supervisory tool, and how it is applied, will change depending on the professional body supervisors, the type of member, cluster or sector supervised, and the specific situation. Some will be used only rarely. Tools available may include the following:

**a. Gatekeeper role:** professional body supervisors should consider whether a member meets the ongoing requirements for continued participation in the profession. As well as assessments of competence and of fitness and propriety, this will include whether the member meets expectations related to anti-money laundering compliance. This will take place both when a member joins the profession, and on an ongoing basis thereafter.

**b. Supervision:** a range of supervisory tools are available. Their use should be tailored to the scale and nature of the member:

- **Meeting senior management:** supervisory staff may visit a business, or use telephone interviews or teleconferencing. This may be an update dialogue as part of ongoing management of the relationship, or part of a formal review. The depth and frequency of visits will reflect the risk the member poses.
- **Desk-based reviews:** supervisors may consider information about a business (see below) without going on-site.
- **Questionnaires:** requesting information from a member about its anti-money laundering arrangements.
- **Periodic information returns:** members can be required to regularly submit information that the professional body supervisor considers necessary to aid the performance of its supervisory functions.
- **Ad hoc information requests:** a member might be asked to submit internal documents for review by the supervisor. Examples may include some of the following, particularly in the case of larger organisations:
  - organisation chart
  - legal entity chart
  - job descriptions of senior management
  - composition of committees
  - documents setting out internal procedures and controls
  - internal audits of compliance with internal procedures and controls or other independent reviews
  - external auditor's reports
  - compliance reports
  - data on suspicious activity reports and other engagement with law enforcement agencies

- breach logs
  - records related to training or continuing professional development
  - review of information from other sources: information and alerts could come from law enforcement, other supervisors, employees, other businesses, or the public
  - **Thematic work:** professional body supervisors might look to involve a number of members in a project to consider a particular aspect of anti-money laundering arrangements. This could use a number of the tools listed here.
  - **Outreach work:** engagement with Money Laundering Reporting Officers' membership groups to discuss findings, concerns and challenges in the sector.
  - **Review of a member's case files:** (covering customer due diligence checks or decisions related to the submission of suspicious activity reports) this can allow analysis of past decisions made while implementing anti-money laundering controls.
- c. Guidance and communications:** professional body supervisors can take a range of steps to make their expectations clear to the membership:
- **General guidance:** professional body supervisors can provide or support guidance addressed to their membership (see next section).
  - **Industry training:** professional body supervisors can provide training to their membership that supplements or contextualises guidance.
  - **Communication:** professional body supervisors can engage in a dialogue with membership, send messages to members via mailings, the trade press, discussion with trade bodies, etc.
  - **Individual guidance:** professional body supervisors can offer membership guidance about their individual queries and concerns. This may be by correspondence, a helpline, or meetings.

**5.4** A member may be selected for supervisory work based on a risk-based sampling exercise in order to target members who pose a greater risk. A professional body supervisor may also wish to consider some level of random sampling, which helps to validate whether the professional body supervisor's risk assessment is reasonable, or whether it requires further refinement.

**Examples of good practice:**

- supervisory activity is underpinned by an evidence-based understanding of the different types of business the professional body supervises
- supervisory activity is adequately-resourced, including the use of appropriate technology, to allow consistent, good-quality, timely decisions
- the choice of different supervisory tools is tailored to each situation, with due consideration given to the cost-effectiveness and proportionality of the different options





**Examples of poor practice:**

- supervisory activity is predominantly reactive
- the level of scrutiny received by an individual member is unrelated to the body's assessment of the risks it may pose (including through clustered assessments)

## 6 Information sharing between supervisors and public authorities

Regulation 50(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to take such steps as it considers appropriate to:

- co-operate with other supervisory authorities, the Treasury and law enforcement authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing
- co-ordinate activities to counter money laundering and terrorist financing with other supervisory authorities and law enforcement authorities
- co-operate with overseas authorities (as defined in Regulation 50(4)) to ensure the effective supervision of a relevant person where that person is established either a) in the UK with its head office in another country or b) in another country but with its head office in the UK (as set out in Regulation 50(2))

Regulation 50(3) says such co-operation may include the sharing of information which the supervisory authority is not prevented from disclosing.

Regulation 50(5) requires a professional body supervisor to, on request, provide a European Supervisory Authority with information reasonably required by the Authority to enable it to carry out its duties under the Fourth Money Laundering Directive.

### Information sharing

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- 6.1** Professional body supervisors will take part in information-sharing arrangements such as the Anti-Money Laundering Supervisors' Forum, and its affinity groups<sup>1</sup>, that meet regularly to share good practice and information. This dialogue will include conversations to ensure gaps and overlaps in supervision are identified and avoided.

### Intelligence sharing

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- 6.2** Professional body supervisors will actively share intelligence with other supervisors and with law enforcement agencies. In order to minimise the risk of misconduct investigations clashing, intelligence should be shared about active misconduct investigations, not just completed cases, where the law does not prevent this. When sharing information, a professional body supervisor will observe the protocols and safeguards maintained by the information sharing mechanisms designed to protect sensitive information.

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<sup>1</sup> E.g. the Legal Sector Affinity Group and Accountancy Sector Affinity Group

- 6.3** Professional body supervisors will participate in existing information inter-organisational sharing arrangements, or work towards doing so; in the latter case, OPBAS will discuss with a professional body supervisor their plan for meeting the criteria for participation in existing information sharing arrangements. Two existing information sharing arrangements are the Financial Crime Information Network (FIN-NET) and the Shared Intelligence Service (SIS).
- 6.4** Membership criteria of FIN-NET and SIS include:
- a.** willingness to respond promptly and fully to referrals and enquiries from others
  - b.** adequate physical and electronic security to ensure that all documentation received is held securely
  - c.** a commitment to input intelligence flags
  - d.** access to, or willingness to install, an accredited secure means of communication
  - e.** agreement to pay costs
- 6.5** If a professional body supervisor does not believe FIN-NET and/or SIS are appropriate for their circumstances, it will need to be able to demonstrate to OPBAS's satisfaction that it is nonetheless able to share information effectively with other supervisors and with law enforcement agencies through other mechanisms.

### A Single Point of Contact

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Regulation 49(2)(b) of the Money Laundering Regulations 2017 requires a professional body supervisor to appoint a person to monitor and manage the organisation's compliance with its duties under the Regulations. Under Regulation 49(3), that person is responsible for liaison with other supervisory authorities, law enforcement authorities or overseas authorities, and for ensuring that the professional body supervisor responds fully and rapidly to requests for information about any person it supervises.

- 6.6** A person must be nominated as a Single Point of Contact (SPOC) at each professional body supervisor. Appropriate cover arrangements should be in place during usual office hours. Up-to-date contact details of this person should be provided to OPBAS. Where a law enforcement agency wishes to contact a professional body supervisor, they can get its contact details from OPBAS via their usual FCA contact.

## Reporting to the authorities

Regulation 46(5) of the Money Laundering Regulations 2017 requires a professional body supervisor which, in the course of carrying out any of its supervisory functions or otherwise, knows or suspects, or has reasonable grounds for knowing or suspecting, that a person is or has engaged in money laundering or terrorist financing, must as soon as practicable inform the National Crime Agency. Regulation 46(6) says such a disclosure is not to be taken to breach any restriction, however imposed, on the disclosure of information. Regulation 46(7) says, where such a disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

- 6.7** Professional body supervisors will appoint a nominated officer to report knowledge or suspicions to the National Crime Agency. OPBAS expects this to usually be the same person as the SPOC discussed above, although other arrangements may be appropriate provided a sound rationale can be provided.

## Whistleblowing

Regulation 46(2) of the Money Laundering Regulations 2017 requires a professional body supervisor to take effective measures to encourage its own sector to report breaches of the provisions of the Regulations to it.

- 6.8** As well as standard supervisory engagement, this will include whistleblowing arrangements, allowing concerns to be disclosed by any person to an independent channel able to protect the whistleblower's confidentiality.

### Examples of good practice:

- a professional body supervisor actively participates in information sharing with other organisations
- a professional body supervisor works to meet the membership criteria for arrangements such as FIN-NET and SIS

### Examples of poor practice:

- a professional body supervisor only shares information about completed investigations, thereby failing to contain the risk of different organisations' active investigations conflicting
- a professional body supervisor has no arrangements in place for handling disclosures from whistleblowers

## 7 Information and guidance for members

Regulation 17 of the Money Laundering Regulations 2017 says that, if information from the risk assessment performed under Regulation 17(1), or provided by the Treasury or Home Office under Regulation 16(8), would assist relevant persons in carrying out their own money laundering and terrorist financing risk assessment, a professional body supervisor must, where appropriate, make that information available to those persons, unless to do so would not be compatible with restrictions on sharing information imposed by or under the Data Protection Act 1998(a) or any other enactment.

Regulation 47(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to, in any way it considers appropriate, make up-to-date information on money laundering and terrorist financing available to its own sector. Regulation 47(2) says this information must include:

- information on the money laundering and terrorist financing practices considered by the supervisory authority to apply to its own sector
- a description of indications which may suggest that a transfer of criminal funds is taking place in its own sector
- a description of the circumstances in which the supervisory authority considers that there is a high risk of money laundering or terrorist financing

Regulation 47(3) must also include information from the following sources which a professional body supervisor considers is relevant to its own sector:

- reports drawn up by the European Commission and joint opinions and guidelines issued by the European Supervisory Authorities under the Fourth Money Laundering Directive
- recommendations made by the European Commission under the Directive unless the Treasury and the Home Office notify the professional body supervisor that a recommendation will not be followed
- high-risk third countries identified in delegated acts adopted by the European Commission under the Directive
- the report prepared by the Treasury and the Home Office under Regulation 16(6)
- any relevant information made available by the Treasury and the Home Office under Regulation 16(8)
- any relevant information published by the Director General of the NCA under Section 4(9) (operations) or 6 (duty to publish information) of the Crime and Courts Act 2013(a)

### Information for members

- 7.1** The Money Laundering Regulations 2017 require professional body supervisors to provide information to members about the money laundering risks the membership faces. This may take the form of a digest of information that the professional body supervisor receives from the public bodies, as well as the professional body

supervisor's own judgments about the risks their membership faces. This might include risks from different products, crime typologies, geographical locations, customers, distribution channels, and how these risks affect different sectors and clusters.

- 7.2** A professional body supervisor will need to consider how best to pass this information on. Methods might include:
- a.** within sectoral guidance material
  - b.** newsletters, web-based information, webcasts, webinars
  - c.** oral updates during supervisory visits
  - d.** member group meetings and training events
  - e.** an annual report covering anti-money laundering issues distributed to members, or made public
- 7.3** They should also think about how to balance giving practical assistance to members, with the need to protect sensitive information and intelligence. However, in most cases, the information will be open-source data published by public bodies, and not sensitive in nature.
- 7.4** Money laundering is an illicit activity, designed to disguise money's links with other illicit activity. There will often be large gaps in the intelligence picture and a weak evidence base on which to form judgments about risks. It is accepted this means good-quality detailed intelligence for professional body supervisors to pass onto members may not exist. We expect professional body supervisors to demonstrate that, within those limitations, they are seeking to take such steps as are practical and appropriate to circulate information to members that can assist members' own understanding of the risks.
- 7.5** Professional body supervisors can also gather members' views on money laundering risks, and share an anonymised summary of members' collective opinions.

## **Guidance for members**

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- 7.6** Guidance to professional bodies' members on how to meet their high-level legal obligations in the area of anti-money laundering forms an important part of the risk-based anti-money laundering regime. Guidance offered by professional body supervisors should help members understand their responsibilities and supervisory expectations. Without clear guidance, professional body supervisors' actions can be seen as disproportionate, unpredictable, or arbitrary. Professional body supervisors should consider how to communicate transparent messages to members.
- 7.7** The government has made clear it expects the number of different sets of guidance to be minimised. Guidance can be approved by the government through the Money Laundering Advisory Committee, which means that courts must take account of the guidance when determining whether a person subject to the requirements of the Money Laundering Regulations 2017 has complied with their obligations.

- 7.8** Professional body supervisors should liaise with other relevant supervisory authorities to ensure a coherent interpretation of the legal obligations, and to minimise inconsistencies. It is important to make sure different types of guidance do not create unnecessary confusion among professional body members.

**Examples of good practice:**

- guidance aimed at members supports members' implementation of a risk-based approach
- professional body supervisors cooperate to minimise the number of different sets of guidance that are in place
- professional body supervisors regularly share information with members about money laundering risks within their respective sectors
- a professional body supervisor considers how to share intelligence about money laundering threats in a manner that protects sensitive aspects of the information

**Examples of poor practice:**

- guidance is prescriptive and inflexible, and fails to adapt to changes in industry practices, technology, regulations, etc.
- guidance is confusing and inconsistent
- members are not provided with any insight into a professional body supervisor's view of money laundering risk

## 8 Staff competence and training

Regulation 49(1)(c) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure they employ only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions.

Regulation 46(2)(b) requires a professional body supervisor to ensure its employees and officers have access, both at its offices and elsewhere, to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector.

- 8.1** Professional body supervisors should encourage members' adoption of a risk-based approach to anti-money laundering supervision. Professional body supervisors therefore should take steps to ensure their staff members are equipped to take decisions on whether a member's policies, controls and procedures are appropriate in view of the risks identified.
- 8.2** It is not possible for a professional body supervisor to specify measures that members must take to meet their obligations in all circumstances. Supervisory staff should therefore judge each case on its merits, considering, for example the risks faced by the member, and good practice found elsewhere in the industry. The aim is to make sure supervisory actions are predictable and proportionate.
- 8.3** This will be aided by the recruitment and retention of staff with relevant experience and through the ongoing professional development of supervisory staff (including by providing training, on-the-job experience, and supervision manuals and other guidance). Training can cover topics like the role of audit, compliance and risk management functions, and what appropriate practice looks like. Where staff members use techniques such as file reviews or interviews, specific training may prove to be of benefit.
- 8.4** Formal qualifications related to anti-money laundering may also be appropriate. OPBAS does not intend to endorse particular qualifications.

### Examples of good practice:

- training has a strong practical dimension (e.g. case studies) and some form of testing
- ongoing professional development related to anti-money laundering is relevant to the person's role and addresses any identified gaps in their skills or technical knowledge

### Examples of poor practice:

- training dwells unduly on legislation and regulations rather than practical examples



## 9 Enforcement

Regulation 49(1)(d) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure that contravention of a relevant requirement by a member renders the member liable to effective, proportionate and dissuasive disciplinary measures under the professional body's rules.

- 9.1** Professional body supervisors should be able to, and also have the readiness to, take appropriate action against relevant persons where they have failed to meet their anti-money laundering obligations. Enforcement action should be effective and proportionate, and applied in a fair and consistent manner.
- 9.2** Professional body supervisors should have sufficient information gathering and investigative powers to effectively monitor and assess compliance with applicable anti-money laundering standards and to take appropriate action for non-compliance. These could include powers to require the production of documents or the provision of information, to interview members and carry out onsite inspections.
- 9.3** Enforcement action should seek to remove the benefits of non-compliance and deter future non-compliance, but may also be remedial and preventive. Professional body supervisors should therefore have a broad range of enforcement tools at their disposal and should use these tools in appropriate cases. Enforcement powers could range from administrative sanctions, including censures and financial penalties, to suspension, restriction or withdrawal of membership and the ability to direct members to take action to remedy non-compliance and promote future compliance.
- 9.4** It is for the professional body supervisor to satisfy itself, and OPBAS, that its powers are adequate and that they are used in appropriate cases to advance their functions as anti-money laundering supervisors. Records of enforcement action should be maintained. The documentation should be sufficient to allow **ex-post** understanding of the action taken and its justification, for the purpose of quality assurance testing by, for example, OPBAS or internal auditors.
- 9.5** Professional body supervisors should make public, as appropriate, enforcement activity related to anti-money laundering.

### Examples of good practice:

- enforcement powers, and their use, incentivise compliant behaviour
- published statements about enforcement activity are written in plain language to ensure wider lessons can be disseminated
- procedures for hearing cases are fair and consistently applied, and allow member representation and appeals
- enforcement outcomes are, unless there are good reasons for not doing so, publicised to inform and dissuade



**Examples of poor practice:**

- enforcement process is unduly lengthy
- enforcement powers are inadequate
- enforcement process is unclear and difficult for members to understand

## 10 Record keeping and quality assurance

### Record keeping

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Regulation 46(2)(d) of the Money Laundering Regulations 2017 requires a professional body supervisor to keep a record in writing of the actions it has taken in the course of its supervision, and of its reasons for deciding not to act in a particular case.

Regulation 17(3) requires a professional body supervisor to keep an up-to-date record in writing of all the steps it has taken under Regulation 17(1). Regulation 17(4) requires a professional body supervisor to record its risk profiles in writing.

- 10.1** A professional body supervisor will maintain records of significant decisions related to its anti-money laundering supervision, documenting the reasons for action. The documentation should be sufficiently thorough to allow **ex-post** understanding of the justifications behind the decision to be taken as part of quality assurance testing by, for example, OPBAS or internal auditors.
- 10.2** Moreover, professional body supervisors will document their supervisory action (e.g. notes for record of meetings, file review logs) to ensure an adequate record is maintained.

### Quality assurance testing

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- 10.3** Professional body supervisors should subject supervisory work and decision-making to quality assurance testing in order to ensure judgments and the standard of scrutiny are consistent. This would be in addition to standard managerial oversight. Different approaches will be suitable for different professional body supervisors depending on, for example, the scale of their supervisory operations. Checks would differ between those looking at routine supervisory work and scrutiny of decision-making related to, for example, enforcement action. Some checks would be on an **ex-post** sample basis. Methods might include:
- subjecting the results of file reviews or recommendation letters to members to internal cross-checks by internal independent persons (for example, by staff from separate inspection teams or independent managers)
  - review by independent assessors
  - scrutiny by decision-making committees and councils
  - internal audit review (see below)

## Internal audit

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- 10.4** Where an internal audit function exists, the quality of anti-money laundering supervision should be subject to periodic review.

## Annual questionnaire submission

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Regulation 51(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4 to the Regulations. Regulation 51(2) requires a professional body supervisor to provide this information to the Treasury on request. Regulation 51(4) says such disclosure is not to be taken to breach any restriction, however imposed, on the disclosure of information. Regulation 51(5) says, where such a disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

- 10.5** Professional body supervisors will submit an annual questionnaire<sup>2</sup> response to OPBAS using the template OPBAS provides. The timetable for the submission will be set by OPBAS.

### Examples of good practice:

- quality assurance checks on anti-money laundering supervision activity are risk-sensitive in nature

### Examples of poor practice:

- records of supervisory work are patchy
- no quality assurance testing takes place

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<sup>2</sup> Prior to the creation of OPBAS, this questionnaire was submitted to HM Treasury by professional body supervisors. OPBAS will now collect the information from professional body supervisors on behalf of HM Treasury.

