

# A PRIVILEGED PROFESSION?

HOW THE UK'S  
LEGAL SECTOR ESCAPES  
EFFECTIVE SUPERVISION  
FOR MONEY  
LAUNDERING

by Helen Taylor and  
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## About the Authors

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# EXECUTIVE SUMMARY

From setting up complex company structures for clients to helping purchase luxury real estate and negotiate mortgages, lawyers play a critical role in facilitating and legitimising money flows. Their role as witting or unwitting “enablers” of money laundering has long been recognised.

Ensuring that lawyers stay on the right side of the fight against money laundering and alerting law enforcement to suspicious funds is essential to the integrity of the UK financial system and to the UK’s national security.

Up to now, the legal profession has largely been allowed to regulate itself when it comes to money laundering – with anti-money laundering (AML) supervision falling to nine different professional bodies in the sector. This system is broken.

In 2015, the government’s first ever National Risk Assessment of money laundering threats identified the large number of supervisors for the legal and accountancy sectors as a key driver of serious “inconsistencies” in the UK’s anti-money laundering supervisory regime. In 2018, the global AML watchdog, the Financial Action Task Force (FATF), also found “significant deficiencies in supervision by the 22 legal and accountancy sector supervisors.”

In response, the government set a target in its 2019–22 Economic Crime Plan to “strengthen the consistency of professional body AML/CTF supervision” by March 2021.

Our report, which is based on a comprehensive review and analysis of existing supervisory data over the past three years, finds that there is a long way to go in achieving this goal. The legal sector supervisors tasked with holding legal firms to account for breaches of the UK’s AML rules remain fragmented, with enforcement action uneven and inadequate. Our five main findings are listed below.

## 1. There are still significant levels of non-compliance with AML rules in the legal sector

- Almost a quarter of legal firms visited by the nine legal sector supervisors in 2019/20 were assessed as non-compliant with AML rules.
- 71% of firms visited by the biggest legal sector supervisor – the Solicitors Regulation Authority (SRA) – in 2020/21 had not put in place an independent audit function to gauge the effectiveness of their AML policies, controls and procedures.
- 60% of firms subject to a full on-site visit by the SRA in 2020/2021 were not fully compliant with requirements to have adequate AML policies, controls and procedures in place.
- 21% (50 out of 241) of files reviewed by the SRA across these firms visited under this process displayed a continued failure to do proper checks on their customers.

## 2. The legal sector benefits from unique protections when it comes to AML rules

- Defences under the UK's Proceeds of Crime Act 2002 (POCA) give lawyers a free pass to look the other way when accepting suspect funds for the payment of legal services.
- The legal sector is exempt from reporting suspicions of money laundering which come to them "*in privileged circumstances*", including in the course of litigation. While legal professional privilege has a crucial role to play in securing access to justice, its potential for abuse or misapplication may be exacerbating the low rates of Suspicious Activity Reports (SARs) filed by the legal sector. Just 0.52% of SARs filed in 2019/20 came from the legal sector – a fall of over a half since 2012/13, when legal sector SARs represented 1.24% of all SARs filed.
- Significant areas of work conducted by the legal sector fall explicitly outside of the UK's AML rules and therefore any AML oversight or supervision, including: the provision of legal advice; participation in litigation and alternative dispute mechanisms such as arbitration; will writing; and the payment of costs to lawyers.
- Lawyers who are not members of one of the legal sector supervisory bodies are effectively left unsupervised when they engage in work that falls squarely within AML rules, owing to the absence of a default supervisor for the legal profession.

## 3. Legal sector supervisors have low levels of enforcement and are imposing low levels of fines for breaches of the AML rules

- Legal sector supervisors took formal action in just a third (34.6%) of cases where they found non-compliance after an on-site visit in 2019/20. HMRC and the FCA, by comparison, took formal action in 100% of cases where they found non-compliance after both visits and paper reviews.
- Legal sector supervisors take nearly three times more informal than formal actions when they find non-compliance with AML rules, suggesting they might be taking a softer approach to non-compliance than other supervisors. HMRC and the Gambling Commission, by comparison, take roughly equal informal and formal actions, and the FCA takes more formal than informal actions.
- £621,252 – the total value of AML-related fines imposed on the legal sector in the three years from 2017 to 2020, compared with £103 million imposed by the FCA, £12.7 million by HMRC and £67 million imposed by the Gambling Commission.<sup>1</sup>
- £11,906 – the average fine issued by the SRA for AML failings in 2019/20; compared with average fines of £61,700 issued by HMRC and £3.35 million issued by the Gambling Commission.
- £232,500 – the largest fine imposed by the SRA on a law firm – which if it had been calculated on similar criteria to that used by the FCA in imposing AML fines, could have reached £5.4 million (20 times what was imposed by the SRA on the firm).
- 8 – the number of fines imposed by the Law Society of Scotland between 2017/18 and 2019/20, totalling £18,500, despite finding 63 cases of non-compliance after on-site visits.

- 1 – the number of fines imposed by the Law Society of Northern Ireland over three years, totalling just £1,750, despite finding 228 cases of non-compliance.
- 0 – the number of fines for breaches of AML rules between 2017/18 and 2019/20 issued by the Council for Licensed Conveyancers (CLC), the specialist legal supervisor for the high-risk property sector, despite the CLC finding non-compliance among 62% of its supervised firms in 2019/20.
- 0 – the number of top 25 law firms – which includes the elite “*magic circle*” firms – fined by the SRA in relation to money laundering in the last three years (while just one “*silver circle*” firm has been fined for AML breaches during this period).
- 0 – the number of law firms prosecuted for criminal breaches of AML rules.

#### 4. The body set up in 2018 to drive consistency in supervision in the legal and accountancy sectors, the Office for Professional Body AML Supervision (OPBAS), has not been able to raise standards sufficiently across the board

- In 2020/21, it found that just 15% of legal and accountancy supervisors overall were effective “*in using predictable and proportionate supervisory action.*”
- 19% of legal and accountancy supervisors “*had implemented an effective risk-based approach*” to supervision.
- 26% of legal and accountancy supervisors were using the full range of enforcement tools at their disposal effectively.

Despite these poor results, OPBAS has used its power to get supervisors in these sectors to take remedial action in just four cases in the past three years.

#### 5. Lack of transparency by legal sector supervisors in their enforcement actions and inconsistency in the collection of supervisory data are undermining the effectiveness of the UK’s AML regime

- Three out of nine legal sector supervisors do not appear to publish any information about disciplinary or enforcement actions on their websites.
- Six legal sector supervisors fail to proactively disclose full details of enforcement actions on their websites.
- The largest supervisor, the SRA, removes enforcement decisions after three years (compared to five years at HMRC and no removal policy at the FCA).
- There is a plethora of supervisory data collected by OPBAS, HM Treasury and individual supervisors, all using different reporting cycles, metrics and templates, making comparison difficult and creating incongruent information.
- OPBAS fails to provide detailed disaggregated data on individual supervisors that it reviews, meaning that failing supervisors receive inadequate public scrutiny.

## The case for reform

Calls for reform are growing. The 2022 Economic Crime Manifesto published by two all-party parliamentary groups calls for “a radical overhaul” of AML supervision. Parliament’s Treasury Select Committee similarly called during 2022 for radical reforms, including the creation of a “*supervisor of supervisors*.”

In June 2022, the government’s consultation on the UK’s AML regime concluded that there is indeed a need for reform to improve the effectiveness of AML supervision. However, it has decided further work and consultation is needed to identify what reform should look like.

We are calling for the government to work with the legal sector to consolidate and significantly improve AML supervision by taking the following actions:

- Establishing a single sectoral AML supervisor in the first instance to help deliver more robust and consistent enforcement across the legal sector;
- Following through reforms to give the SRA unlimited powers to impose AML fines on law firms and to limit the Solicitors Disciplinary Tribunal (SDT) role to appeals in these cases, as a step towards the SRA acting as the sector’s key AML enforcer more effectively;
- Strengthening OPBAS to function as a full-bodied AML “*supervisor of supervisors*” across the regulated sector, to coordinate and hold to account all AML supervisors;
- Enhancing the transparency and quality of data on AML supervision, including enforcement notices from legal sector supervisors, and supervisory data on individual supervisors from OPBAS;
- Establishing clear lines of responsibility and proactive engagement between legal sector supervisors and a specialist “*enablers cell*” in the NCA to ensure that the legal sector faces a realistic prospect of criminal investigation when criminal breaches of the MLRs occur;
- Ensuring that potential cracks in the AML framework for the legal sector are addressed by enhanced supervisory guidance on when AML rules apply to legal work and on how to avoid abuse of privilege in suspicious activity reporting, as well as an independent review of rules that allow lawyers to be paid with tainted funds.

# KEY STATISTICS

**24%** of legal firms visited by legal sector supervisors in 2019/20 were assessed as non-compliant with AML rules.

**60%** of firms reviewed on-site by the biggest legal sector supervisor – the Solicitors Regulation Authority (SRA) – in 2020/21 were not fully compliant with requirements to have adequate AML policies, controls and procedures in place.

**50%** of legal sector supervisors reviewed by the Office of Professional Body AML Supervision (OPBAS) in 2020/21 used their information gathering and investigative powers effectively.

**33%** of legal sector supervisors reviewed by OPBAS in 2020/21 were not effective in using a broad range of tools to supervise members.

**£232,500** the highest AML fine ever imposed by a legal sector supervisor, compared to £17 million by the Gambling Commission, £23 million by HMRC and £163 million by the FCA.

**£621,252** the total value of AML-related fines issued by the nine legal sector supervisors between 2017/18 and 2019/20.

**£67,500** total value of AML related fines issued in 2020/21 by the Solicitors Disciplinary Tribunal (SDT) – the body with the power to impose unlimited fines for solicitors in England and Wales and whose highest AML fine since 2017 is £30,000.

**0** the number of top 25 law firms – which includes the elite “*magic circle*” firms – fined by the SRA in relation to money laundering in the last three years.

**0** the number of fines issued by the Council for Licensed Conveyancers (CLC) – the supervisor for property sector lawyers – between 2017/18 and 2019/20.

**0** the number of law firms prosecuted for criminal breaches of the MLRs.

**2.9** times more informal than formal actions used by legal sector supervisors where they identify non-compliance with the MLRs after an on-site visit, compared to 1.7 for the accountancy sector supervisors, 1.46 for the Gambling Commission and 1.18 for HMRC.

**0.52%** of SARs filed in 2019/20 emanated from the legal sector – a fall of over a half since 2012/13, when legal sector SARs represented 1.24% of all SARs filed.





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