

Anti-Money Laundering

ICAS Regulatory Actions Guidance

Issued 1 April 2022



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SECTION 1: INTRODUCTION

Effective date

This version of the Anti-Money Laundering Regulatory Actions Guidance (“the Guidance”) was introduced by the Authorisation Committee on 1 April 2022.

It may be referred to in connection with the determination of any anti-money laundering (AML) regulatory issues from 1 April 2022, notwithstanding the date on which the matter(s) first came to light.

Purpose of the Guidance

As part of its commitment to be an effective supervisory body for AML, ICAS will take Regulatory Action where there is sufficient evidence of a failure by its supervised entities and individuals to adequately meet their AML obligations and requirements.

By operating regulatory processes which provide effective, proportionate and dissuasive disciplinary measures, ICAS meets its obligations under Regulation 49(1)(d) of [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) (hereafter “the Money Laundering Regulations”), and also achieves the following three aims:

- The protection of the public interest.
- The maintenance of public confidence in the profession of accountancy.
- The maintenance of proper standards of conduct and competence in relation to AML compliance.

ICAS understands that, in addition to being effective, its processes must also be consistent, fair and transparent for all parties involved.

Regulatory Actions Guidance

The Guidance has two distinct purposes:

- To provide guidance on the nature of the Regulatory Action which may be appropriate for AML non-compliance (Section 3).
- To set out the process which will be followed by ICAS when determining regulatory issues in relation to AML compliance (Section 4).

Using the Guidance promotes effective and consistent determination of AML regulatory issues. In addition, the approach in the Guidance allows individuals and entities to better understand the likely consequences for AML non-compliance.

It is important to understand that discretion will be applied when considering whether Regulatory Action is appropriate. Where outcomes are set out in this Guidance, these are indicative and not prescriptive. Decision-makers will exercise their reasonable discretion in all cases, supported by the Guidance.

Who will use the Guidance

The Guidance has been drafted for use by the following:

- The Authorisation Committee, which has the delegated authority of the Regulation Board to discharge ICAS’ regulatory functions as a Professional Supervisory Body for AML (including licensing and monitoring functions).
- The Review Panel, which is a standing sub-committee of the Authorisation Committee, tasked with determining any requests to independently review a proposed decision on Regulatory Action by the Authorisation Committee.
- Firms who are subject to AML supervision by ICAS (or who are applying for supervision). While this will mostly be Supervised Firms and the CA principals of such entities, it may also include Affiliates and Approved Persons (who are beneficial owners, officers and managers, collectively referred to as ‘BOOMS’).

SECTION 2: GROUNDS FOR AML REGULATORY ACTION

The Regulatory Framework

Further information on the AML framework that applies in the UK is set out in Appendix 1. It is important that all Supervised Firms ensure that they are aware of the key aspects of this framework.

ICAS as an AML Supervisor

ICAS is recognised as an Anti-Money Laundering (AML) supervisor under [Schedule 1](#) of the Money Laundering Regulations 2017.

The role of the Authorisation Committee

The Authorisation Committee (“the Committee”) has been appointed by the Regulation Board to discharge ICAS’ key regulatory functions as an AML supervisor.

The Committee’s remit and powers in respect of AML are set out in the [ICAS AML Regulations](#), with the main powers listed as follows:

- Considering/granting/rejecting applications from Firms for AML Supervision and Beneficial Owners, Officers and Managers (“BOOMs”) in these firms to become Approved Persons or Affiliates, as appropriate.
- Withdrawing or suspending AML supervision.
- Applying restrictions or conditions to AML supervision.
- Proposing and applying Regulatory Penalties.
- Publishing its orders or decisions, as it considers appropriate.
- Monitoring Supervised Firms and making regulatory decisions in relation to monitoring reports.

To ensure efficient decision-making, the Committee operates a scheme of delegation whereby straightforward AML regulatory matters may be dealt with by employees of ICAS who are suitably qualified, experienced and trained. Examples of such matters would include:

- Straightforward licence applications/cessations;
- Monitoring visit reports which require no follow-up action.

As more fully explained in Section 4, decisions may be taken by the Committee through different processes, including:

- Decisions taken by the Committee in plenary meetings.
- Decisions taken by a ‘Nominated Committee Member’.
- Decisions taken by the Review Panel.

For ease of use, this Guidance will simply refer to “the Committee”, unless the nature of the decision-making process requires clarification.

Oversight

The Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”) is the oversight body for professional body AML supervisors, including the accountancy sector. This means that ICAS’ regulatory processes for AML – including the processes set out in this Guidance – are subject to oversight by OPBAS.

OPBAS is housed within the Financial Conduct Authority. OPBAS and the professional bodies also report to HM Treasury.

In discharging its functions, ICAS pays close attention to guidance published by OPBAS in its [sourcebook](#) for professional body anti-money laundering supervisors.

SECTION 3: AML REGULATORY ACTIONS

This section explains:

- What usually causes Regulatory Action to be considered.
- What each of the Regulatory Actions involves in practice (with examples, where appropriate).
- The factors that will be considered when assessing what action (if any) is appropriate.

What usually causes Regulatory Action to be considered

There are three main triggers for consideration of Regulatory Action:

- A licence application is received by ICAS, which leads to consideration of eligibility and related issues.
- A monitoring visit to a Supervised Firm leads to a report which disclosed issues with AML compliance.
- An issue of concern is reported by the Investigation Committee, or a third party.

What each of Regulatory Actions involves in practice

The powers available to the Committee are listed in [ICAS' AML Regulations](#). The following table summarises what these powers involve in practice.

Power	Practical application / examples
Rejecting applications for Supervision	<ul style="list-style-type: none"> • The Firm is informed that it will not be supervised by ICAS for AML purposes. • The Firm will need to ensure that it is supervised by a different AML supervisor.
Rejecting applications for Approved Person status	<ul style="list-style-type: none"> • A Beneficial Owner, Officer or Manager will not be granted Approved Person status if they have been convicted of a Relevant Offence. A Relevant Offence is defined in Schedule 3 of the Money Laundering Regulations 2017. • As all individuals who meet the definition of Beneficial Owner, Officer or Manager are required by the Money Laundering Regulations 2017 to be an Approved Person, they will no longer be able to hold that specific role within the Supervised Firm.
Monitoring compliance	<ul style="list-style-type: none"> • Additional monitoring visits may be required to ensure that AML concerns are addressed. • The time between monitoring visits may be shortened if risks with AML compliance have been identified.
Imposing conditions on Supervision	<ul style="list-style-type: none"> • The Supervised Firm will require to remedy risks or deficiencies by taking a stipulated course of action, within set timescales. • Examples include training and regular reporting to ICAS.
Imposing restrictions on Supervision	<ul style="list-style-type: none"> • The Supervised Firm will be restricted from undertaking an action or actions. • An example could be a restriction from engaging new clients until AML compliance has been demonstrated as sufficiently improved.
Withdrawing Supervision or other licences	<ul style="list-style-type: none"> • The Firm is informed that it will no longer be supervised by ICAS for AML purposes (from such date as will be stated). • The Firm will need to ensure that it is supervised by a different AML supervisor. • In serious cases, the Committee could consider withdrawing a Member's Practising Certificate, meaning that they can no longer engage in public practice (using powers delegated to the Committee under other ICAS Regulations).

Withdrawing Approved Person status	<ul style="list-style-type: none"> • Approved Person status will cease to be valid if the Approved Person is subsequently convicted of a Relevant Offence. • As all individuals who meet the definition of Beneficial Owner, Officer or Manager are required by the Money Laundering Regulations 2017 to be an Approved Person, they will no longer be able to hold that specific role within the Supervised Firm.
Regulatory Penalty	<ul style="list-style-type: none"> • With the agreement of the Supervised Firm, Member or Affiliate, a financial penalty will be due to be paid within a set timescale. • A referral to the Investigation Committee will be made where a Regulatory Penalty is not accepted.

In addition to the listed Regulatory Powers, the Committee has wide powers to make enquiries, issue directions and determine all other matters related to its remit. Given the wide nature of these powers, it is not possible to list how they will be exercised in practice; however, some common examples include:

- Asking a Supervised Firm to provide details of its clients, MLRO, training etc.
- Asking for progress updates in respect of AML issues previously identified.
- Requiring a representative of the Supervised Firm to attend a meeting with members of the Committee.

It is important that supervised entities and individuals understand that they are obliged to cooperate – fully and promptly – with the Committee in respect of all such enquiries, directions and determinations, within such timescales as may be set.

Publicity of Regulatory Actions

The AML Regulations provide a wide power to publicise Regulatory Actions taken by ICAS. There are four main reasons why an action may be publicised:

- To promote public confidence in ICAS as a regulator.
- For transparency.
- To act as a deterrent.
- To inform, alert and educate Supervised Firms, Members, Affiliates, and members of the public.

While the decision to publish a course of action is at the discretion of the Committee, the default position is that Regulatory Penalties will be publicised.

The general position is that publicity notices include the name of the Supervised Firm concerned (and in some cases, where appropriate, the name of the Approved Person, Affiliate or Member) together with a statement of the facts, and an explanation of the Regulatory Action which has been taken.

In some circumstances, consideration may be given to publicity of the outcome on an anonymous basis, for example, where there is evidence to suggest that publicity would:

- Be disproportionate.
- Jeopardise the stability of financial markets.
- Jeopardise an ongoing criminal investigation.
- Cause disproportionate damage to any institution or individual involved.

In all instances, the notice will appear in CA Magazine and in the Disciplinary Notices & Regulatory Penalties section on the ICAS website. Notices on the website will be removed after a period of five years has passed since the date on which the Regulatory Penalty was applied. A decision may be taken to publicise the outcome through other media – including local or national press – if this is considered appropriate in the circumstances, having regard to the public interest.

Referral of concerns

In some circumstances, the Committee may decide that it would be appropriate for the AML concerns to be considered by a different body. For example:

- If the circumstances indicate that a supervised entity or individual may be liable to disciplinary action, a referral may be made to ICAS' Investigation Committee (e.g. where there are ethical issues).
- If ICAS becomes aware that there has been a breach of legislation, it may need to report matters to the relevant law-enforcement agencies and/or HMRC.

In addition to taking whatever action is deemed appropriate, ICAS may make a referral to another professional body AML supervisor, if any of the employees of a supervised entity are members of that body.

SECTION 4: APPROACH TO AML REGULATORY ACTIONS

This section provides further information on the processes followed by the Committee when considering whether Regulatory Action is appropriate.

Developmental Regulation

Whilst ICAS will use Regulatory Action where the Committee considers appropriate, it is important to understand that ICAS seeks to act as a developmental regulator, where this is deemed appropriate. This means that ICAS will try to work with supervised entities and individuals to achieve improved compliance.

In practice, this means that AML non-compliance, which has been identified on a monitoring visit, may be addressed through 'follow-up actions' (unless the circumstances are sufficiently serious to warrant stricter action). This is where the supervised entity or individual is advised of:

- The areas of AML non-compliance which have been identified.
- What action is required to address the non-compliance.
- The timescale within which such action should be taken.

Supervised Firms will be asked to confirm in writing their agreement to complete the follow-up action(s) within a set timescale. Where the Supervised Firm is able to demonstrate to ICAS that the follow-up action(s) have been completed in full within the timescales set, further Regulatory Action may not be required. However, a failure to complete the action(s) within timescales will result in further Regulatory Action being considered, including Regulatory Penalties.

The timescales for follow-up action will be set according to the level of risk created by the non-compliance which has been identified. They will be clearly stated and will be deemed sufficient by ICAS to allow the non-compliance to be addressed.

Decisions of the Committee

There are three main ways in which decisions are taken by the Committee:

- Nominated Committee Member – for matters considered to be straightforward, a single CA member of the Committee will be asked to decide whether Regulatory Action would be appropriate (taking account of any views expressed by ICAS employees). This will not be appropriate where Regulatory Penalties or withdrawals/suspensions might be considered.
- The full Committee – where matters are not considered to be straightforward, the decision on Regulatory Action will be taken by the full Committee (again, taking account of any views expressed by ICAS employees). This will be appropriate where the issues involve serious or repeated instances of AML non-compliance.
- The Review Panel – ICAS' AML Regulations provide that some Regulatory Actions (referred to therein as 'Adverse Decisions') must first be proposed by the Committee, with the supervised entity or individual having a right to object. If an objection is made within 10 days, the matter is passed to the Review Panel to consider. The Review Panel is a standing sub-committee of the Committee, comprised of CAs and lay members who sit separately to the Committee, and have not previously participated in the consideration of the issue. The Review Panel will consider written and oral objections (by way of a hearing), following which it will affirm, vary or withdraw the decision originally proposed by the Committee. The Review Panel enjoys the same powers as the Committee.

Appeal process

If a Supervised Firm is not happy with the decision of the Review Panel, there is a right to appeal the decision to the ICAS Appeal Panel. This represents the final right of challenge in respect of a decision.

An appeal must be made to the Tribunal Clerk within 21 days of the date on which notice of the Adverse Decision was communicated. An appeal means that the Adverse Decision does not come into force until such date as may be prescribed by the Appeal Tribunal.

Appeal Tribunals, which are appointed by the Appeal Panel to consider and determine appeals, have a legally-qualified Chair, as well as at least one Chartered Accountant and one public interest member. All appeals are determined in accordance with the [ICAS Rules and the Discipline and Appeal Tribunals Regulations](#), which ensure that the members of the Tribunals can fulfil their role independently of ICAS.

These Regulations state that while the Tribunals shall have regard to this Guidance, the decision in any individual case shall be at the sole discretion of the Tribunal. The Guidance is therefore intended to act as a point of reference for Tribunals, to help promote consistent decision making. The Guidance, Rules and all Regulations are available on the ICAS website: icas.com

Regulatory Penalties

The decision-making process for Regulatory Penalties is slightly different. Such financial penalties may only be applied by the Authorisation Committee with the consent of the Supervised Firm. They will only be offered where the AML non-compliance has been addressed in full. This is because ongoing non-compliance is likely to require more severe Regulation Action.

When the Authorisation Committee considers that a Regulatory Penalty is appropriate, it will propose the penalty in writing, with an explanation of the supporting reasons. The Supervised Firm then has ten business days to decide whether to accept the penalty. If representations are made as to why the penalty is not appropriate, these will be considered by the Authorisation Committee.

If the penalty is ultimately accepted, or if no representations are made, the penalty will be applied, and will be due on such date as has been stated by the Authorisation Committee.

If the Supervised Firm does not accept the penalty, the matter will likely be referred to the Investigation Committee for consideration.

Regulatory Penalties are set by the Authorisation Committee in accordance with the following table.

SEVERITY OF ISSUES	LOW	MEDIUM	HIGH
SIZE OF FIRM			
1-3 PRINCIPALS	£750	£1,500	£3,000
4-6 PRINCIPALS	£1,500	£3,000	£6,000
6-10 PRINCIPALS	£3,000	£6,000	£12,000
10+ PRINCIPALS	£6,000	£12,000	£24,000

When assessing the severity of the issues, the Authorisation Committee will consider all relevant factors. Where a Supervised Firm does not take steps to address the non-compliance within the set timescale, the severity of the issue is likely to escalate (low through to high), meaning that delays in securing compliance may lead to increased penalties.

Where the issues involved are sufficiently serious as to mean that a Regulatory Penalty would not be appropriate, a referral will be made to the Investigation Committee, as this will allow for more serious disciplinary sanctions to be considered.

The level of Regulatory Penalty varies according to the number of principals in a Supervised Firm to ensure that it acts as a reasonable deterrent.

The following is a non-exhaustive list of AML non-compliance which is likely to lead the Authorisation Committee to consider proposing a Regulatory Penalty:

- Repeat non-compliance from a previous monitoring visit.
- Failure to undertake and/or document adequate client due diligence.
- Failure to undertake a whole firm risk assessment.
- Failure to provide adequate training for all employees.

The Committee's general approach to decision-making

When considering what Regulatory Action(s) is necessary, if any, the Committee will seek to ensure that its decision is:

- Proportionate, insofar any Regulatory Action which is taken shall be no more stringent than is necessary to address the concerns which have been identified.
- Consistent, with all reasonable efforts being taken to ensure that similar examples of non-compliance receive similar Regulatory Action (taking account of previous decisions of the Committee, and, where appropriate, decisions of other professional bodies).

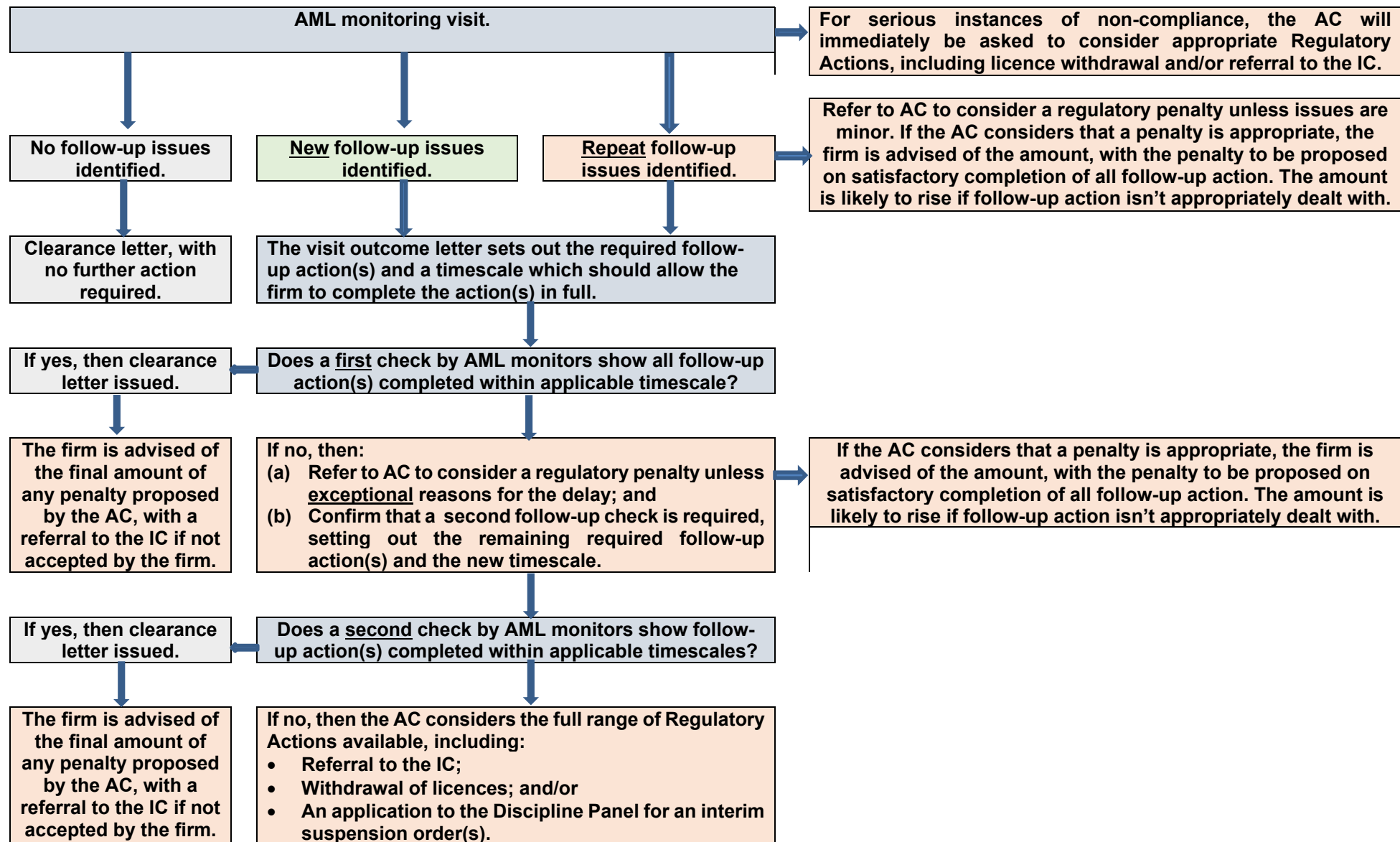
- Transparent, with the decision and supporting reasons set out in writing, accompanied by an explanation of the process which has been followed (e.g. with reference to Regulations).
- Effective in achieving the aims of the Money Laundering Regulations.

When the Committee assesses what Regulatory Action may be appropriate, there are a range of factors that will be considered. While it would not be practical to provide a definitive list of such issues, the most common examples are:

- Statutory requirements for Regulatory Action (e.g. in respect of eligibility issues).
- The number and seriousness of the concerns which have been identified.
- The level of risk to clients and other third parties.
- The previous compliance history of the Supervised Firm, including any repeat issues which have been identified.
- The level of cooperation of the Supervised Firm, together with any insight which has been demonstrated.
- Any mitigating factors, including self-reporting, ill-health and other personal circumstances.
- The need to deter other supervised entities or individuals from such non-compliance.
- Previous decisions of the Committee and other professional bodies.

Consideration of such factors should enable the Committee to determine what form of Regulatory Action is appropriate in the circumstances.

The following flow-chart sets out the process that the Committee will follow where AML non-compliance is identified on a monitoring visit. It should be understood that the flow-chart is illustrative, with the Committee retaining its discretion to treat non-compliance as it considers appropriate, assessing matters on a case-by-case basis.



APPENDIX 1: UK AML FRAMEWORK

The regulatory framework

The key Anti-Money Laundering (AML) legislation in the UK is, as follows:

- The Proceeds of Crime Act 2002 (POCA) as amended by the Serious Organised Crime and Police Act 2005 (SOCPA) and relevant statutory instruments.
- The Terrorism Act 2000 (TA 2000) (as amended by the Anti-Terrorism Crime and Security Act 2001 (ATCSA) and the Terrorism Act 2006 (TA 2006)) and relevant statutory instruments.
- The Money Laundering Regulations 2017.
- Criminal Finances Act 2017.

POCA and TA 2000 contain the offences that can be committed by individuals or organisations. The Money Laundering Regulations 2017 set out the systems and controls that businesses are obliged to possess, as well as the related offences that can be committed by businesses and key individuals within them.

In addition, the Consultative Committee of Accountancy Bodies (CCAB) has issued accountancy sector guidance called the "[Anti Money Laundering Guidance for the Accountancy Sector](#)". Appendices are included to cover insolvency and taxation. Further sector guidance in relation to audit is issued by the Financial Reporting Council (FRC) via International Standard on Auditing 250A (ISA 250A), which replaces the previous Practice Note 12.

AML Supervision by ICAS

Regulation 8 of the Money Laundering Regulations 2017 requires compliance with the Regulations where "relevant persons" are acting in the course of a business carried out by them in the United Kingdom and providing services as an:

- Auditor;
- External accountant;
- Insolvency practitioner;
- Tax adviser; or
- Trust or company service provider (TSCP).

Regulation 26(1) requires that:

"No person may be the beneficial owner, officer or manager of a firm within paragraph (2) ("a relevant firm"), or a sole practitioner within paragraph (2) ("a relevant sole practitioner"), unless that person has been approved as a beneficial owner, officer or manager of the firm or as a sole practitioner by the supervisory authority of the firm or sole practitioner."

All firms conducting accountancy-related and TCSP services (called "Supervised Firms") must be supervised by a supervisory body and the Beneficial Owners, Officers and Managers ('BOOMs') of firms conducting must be approved as Approved Persons.

The [ICAS AML Regulations](#) set out how ICAS regulates individuals and entities in response to the Money Laundering Regulations 2017.

Enforcement

Regulation 49(1)(d) of the Money Laundering Regulations requires that a professional body supervisor makes arrangements to ensure that: "contravention of a relevant requirement by a relevant person renders that person liable to effective, proportionate and dissuasive disciplinary measures under their rules."

As part of its oversight regime, OPBAS has issued a [Sourcebook](#) which sets out the requirements that each professional body AML supervisor must adhere to. This includes enforcement action requirements:

"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.

“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. “

“Professional body supervisors should make public, as appropriate, enforcement activity related to anti-money laundering.”

Therefore, ICAS is required to have a range of Regulatory Actions to address the range of Regulatory Issues dealt with by the Committee.

Accountancy Affinity Group (“AAG”)

The approach to certain aspects of AML Supervision in the accountancy sector is determined in consultation between the accountancy sector supervisors (in a forum called the AAG), HMT and OPBAS. Appendix 2 to this Guidance includes the AAG’s Compliance Guidance which has formed the basis of the enforcement approach adopted by ICAS.

APPENDIX 2: AAG COMPLIANCE GUIDELINES

Nature of non-compliance	Behaviour	Looks like	Level	Likely follow-up action
Satisfactory compliance	Makes every effort to comply. Good awareness of legal responsibilities which are taken seriously	Effective and proportionate risk-based policies/ procedures in place and updated regularly. Well maintained transaction records with visible audit trails to satisfactory evidence of CDD held.	1	None
Generally appropriate systems and controls in place, but would benefit from support to bolster effectiveness	Willing and wants to comply. Takes legal responsibilities seriously	Proportionate risk-based policies/ procedures but minor or careless mistakes found in systems/ CDD records examined. High probability that recommended improvements will be expedited.	2	Advice letter based on agreement with the firm that they will make the required changes
Insufficient evidence to demonstrate robust and effective application of systems and/ or where serious defects in systems and controls have been identified	Negligent in meeting legal responsibilities by way of knowledge and understanding	Absence of, or inadequate risk-based policies/ procedures and/ or disorganised records with breaks in audit trails. Level of failures identified make business vulnerable to money laundering. Unusual or suspicious activity may go undetected. Medium probability that recommended improvements will be expedited.	3	Warning letter and follow-up action to ensure that the required action has been undertaken (with evidence to support)
Framework insufficient to mitigate against the risk that the firm will be used by criminals to launder the proceeds of crime and/or serious omissions or errors in application	Demonstration of wilful disregard and/ or recklessness for responsibilities under the MLR.	Policies/ procedures are insufficient or ineffective to mitigate the assessed risk. Serious weaknesses/ failures identified or continue. Little or no improvement since previous warning letter. High exposure/ threat from money launderers. Unusual or suspicious activity may be ignored. Low probability that recommended improvements will be expedited.	4	Appropriate proceedings initiated
Facilitating Money Laundering	Demonstration of wilful disregard and/ or recklessness for responsibilities under the MLR and evidence to suggest that firm is being use by criminals.	Serious failures identified or evidence of imprudent/ irregular commercial practices. Concerns of wilful misinterpretation of the rules/ bogus attempts to comply. High risk of collusion with money launderers. Suspicious activity may knowingly be facilitated or concealed. High probability that recommendations will go unheeded.	5	SAR and liaise with law enforcement

Examples of aggravating factors	High risk business environment
	Pattern of behaviour
	Falsehoods in affirmations

Examples of mitigation	Training
	Poor advice received for legitimate source

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