



TCSP THEMATIC REVIEW REPORT

January 2024

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1. EXECUTIVE SUMMARY

In late 2022, the Council for Licensed Conveyancers (CLC) began a thematic review of Trust or Company Service Provider (TCSP) work carried out by CLC-regulated practices.

This review sought to:

- Confirm which practices are undertaking any such kind of work as defined in the MLRs.
- Identify the scope and scale of that work.
- Assess the risk of TCSP work and any related work that is being undertaken in the CLC-regulated community.
- Identify any further actions for individual practices to mitigate risks arising from TCSP work.
- Identify any further regulatory action in terms of rule changes, guidance, monitoring and compliance activity.

The key findings of the thematic review were that:

- a. The scale of TCSP work in the CLC-regulated community is limited.

35 practices (approximately 15% of the total practices surveyed) declared to the CLC in the initial survey that they were undertaking TCSP work of some kind. The type of work and number of practices offering the service are as follows:

- 25 were offering trust or trust-related work;
- 7 were offering company formation services;
- 2 were offering a registered office service;
- 1 was receiving post for a company.

- b. The risk profile of TCSP work in the regulated community is generally low.

There are four categories of TCSP services that were identified as being offered by practices, (trust related work, company formation services, registered office services and receiving post for a company). After reviewing the nature of the work performed, we have assessed three of these services as low risk of money laundering. Trust and trust related work performed by practices is generally at low risk of money laundering, however due to some control weaknesses identified during the detailed reviews we have assessed this area as being at medium risk of money laundering.

2. SUMMARY OF FURTHER STEPS BEING TAKEN BY THE CLC

Having considered the findings of this thematic review, the CLC is taking the following actions.

Area of concern	Action to be taken
Sectoral Risk Assessment	Update the risk assessment of TCSP work in the sectoral risk assessment in January 2024.
Client and matter risk assessments	The CLC will update its client and matter risk assessment templates in 2024 and send out a reminder of responsibilities to all practices. This will include a clear indication of what work is within scope of the AML regulations and what is not.
Source of funds and PWRA	<p>The CLC will publish a source of funds compliance notice in Q1 2024 which will take into account the findings of this review and provide clear expectations for CLC regulated practices in this challenging area, taking into account this report.</p> <p>The CLC will publish a new practice wide risk assessment (PWRA) template in Q1 2024 with content relevant to proliferation financing and introducing space for practices to consider the risk of TCSP work.</p>
AML policies	<p>The CLC will publish an AML policy checklist in Q1 2024 which will create a clear guide as to what is required, including clear indications of when AML policies should be updated.</p> <p>The CLC will also update its own AML policy template in Q1/2 2024 to bring it up to date with recent developments and bring it to the attention of our regulated community.</p>
Annual Regulatory Return	The CLC will review the content of TCSP specific questions for the next Annual Regulatory Return (ARR) in light of the findings of this report.
AML reporting	The CLC will reconsider the questionnaire that was sent out to all PBSs by OPBAS and re-submit it with any further information and data now available.
Monitoring work	The CLC's monitoring processes will be reviewed in light of the findings of this report in January 2024 and changes made to the inspection form to ensure TCSP risk is being addressed. Training will be provided to CLC staff involved in practice inspections involving TCSP work.
Risk Register	TCSP work is included in the CLC's risk profile for each CLC regulated practice and will be reviewed in the light of the findings of this thematic review.

3. ABOUT THE CLC

The Council for Licensed Conveyancers (CLC) is the specialist regulator for conveyancing and probate lawyers in England and Wales. The CLC was established by the Administration of Justice Act 1985 (the 1985 Act) and is also subject to the provisions of the Legal Services Act 2007 (the 2007 Act). The CLC also has powers derived from the Courts and Legal Services Act 1990 and the Deregulation Act 2015.

As at November 2023, the CLC regulated 206 practices which are either Alternative Business Structures (ABSs), which allow non-lawyers to be involved in the ownership, or Recognised Bodies (RBs) which are owned by Authorised Persons and are bodies recognized by the CLC under s.32 of the 1985 Act to provide regulated services to the public. All CLC practices are subject to vetting and need to pass stringent tests before being issued with a licence to offer regulated services.

Trust-related work can be applied for as a permission under an established CLC licence. This permission includes acting or arranging for someone else to act as a trustee in the administration of an estate. This type of work is identified as TCSP work under Regulation 12(2)(d) of the MLRs. There is also a small number of CLC practices who offer other recognised TCSP services such as company formation services related to property.

CLC regulated practices are also involved in the creation and/or management of trusts related to property such as asset protection trusts which place assets, most typically a property, into trust. This type of work falls under Regulation 12(1)(e) which relates to "independent legal professionals". This work is not strictly classified as TCSP work but is related to the definition under 12(2)(d) and has been treated as TCSP work for this thematic review.

The CLC's authority to act as an AML Professional Body Supervisor (PBS) has been ratified in Schedule 1 of the Money Laundering Regulations (MLRs) by His Majesty's Treasury (HMT). The CLC's specific obligations and duties as a PBS are set out in the MLRs and include taking a risk-based approach to supervision and ensuring that its supervised population are provided with relevant information and guidance. The CLC's duties also involve identifying risks and proactively taking steps to address them.

The CLC is regulated by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). OPBAS was established by statute under the OPBAS Regulations 2017 and has a broad objective of reducing the harm of money laundering and terrorist financing by supervising PBSs and facilitating information and intelligence sharing amongst PBSs.

4. BACKGROUND TO THE TCSP THEMATIC REVIEW

Trust and Company Service Providers are susceptible to abuse by criminals seeking to launder money as they can, with or without their knowledge, be exploited to set up trusts, companies or partnerships to launder questionable assets. The National Risk Assessment 2020 (NRA) went further than the 2017 NRA and concluded that, in light of a better understanding of the risks involved, TCSPs are at a high risk of being exploited by money launderers.

On 13 May 2022, OPBAS sent a detailed TCSP questionnaire to all 22 of their regulated Professional Body Supervisors (PBS). The CLC considered the questionnaire and responded to OPBAS by letter in August 2022. In this letter, the CLC noted that trust work (the majority of the TCSP work offered by CLC regulated practices) by itself was found to be low risk in the NRA: *“...There is little evidence that trusts established within the UK are used for illicit purposes...Overall the risk of UK trusts being abused for money laundering is assessed to be low.”*

The CLC recognised that although TCSP work was classified as high risk overall within the NRA, *“...this may not reflect the risk of a relatively small number of CLC practices undertaking trust work under certain permissions.”* Nevertheless, the CLC considered that a further review would be useful to understand the scale and nature of the risk.

The CLC undertook a thematic review of TCSPs to better understand the risk. The thematic review started at the end of 2022 and this final report brings together all the work that has been undertaken over the last 12 months. The review comprised of six stages with the seventh stage, a follow-up review, occurring after the publication of this report.

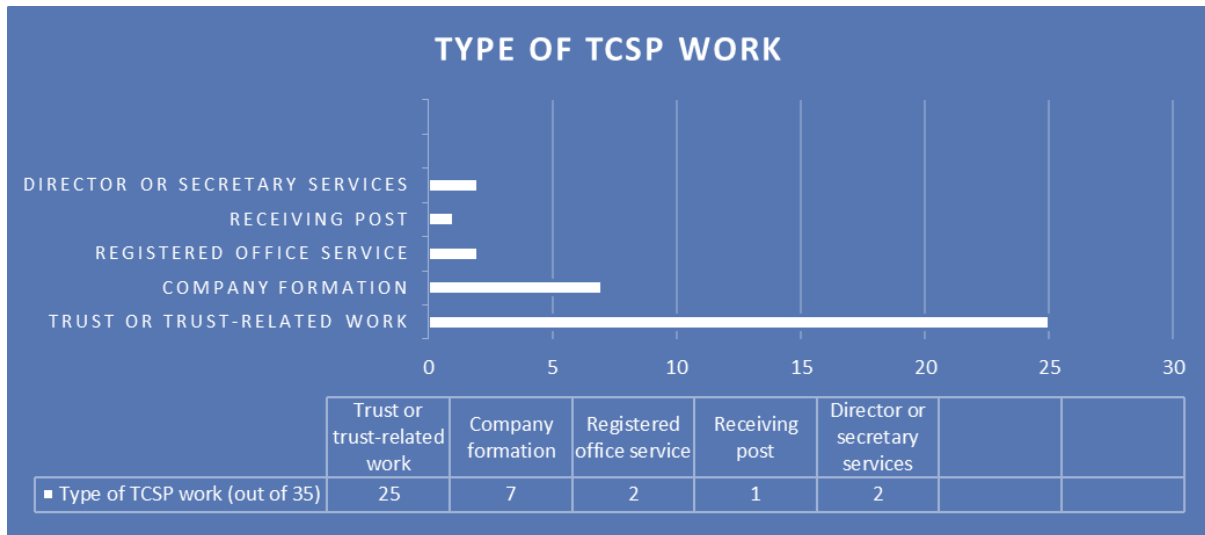
Thematic review methodology	
Stage 1: Survey of CLC practices:	<p>The CLC conducted a survey (see Appendix A) of its entire regulated population in mid-October 2022. This survey asked practices a series of questions beginning with whether the practice undertook TCSP work. 35 practices informed the CLC that they undertook TCSP work and 197 said that they did not.</p> <p>Timeframe: October 2022 to January 2023.</p>
Stage 2: Practice selection for further review:	<p>The CLC ultimately selected 7 practices from the 35 who had confirmed to us that they undertook TCSP work – this represents 20% of the practices that undertake TCSP work. This selection was based on trying to achieve a good representation of all types of CLC practices from sole practitioners to larger practices with several authorised individuals. We also selected practices that provide only probate services as well as practices that provide conveyancing and probate services. The selected practices were informed of the thematic review in mid-February 2023.</p>

	Timeframe: January to February 2023.
Stage 3: File reviews and AML documents review:	From the matter listings provided by the practices, 2 – 3 trust or trust-related files were requested for remote review alongside the practice’s AML documentation. These reviews took place in March and April 2023 and either involved hard copy file reviews or remote access to electronic case management systems. Timeframe: March to April 2023.
Stage 4: Follow up questions to the MLRO:	Based on the file reviews a number of (a) specific file review questions, alongside (b) general questions relating to TCSP risk, were sent to the practices. These follow up questions were sent to the practices in late May 2023. The final set of responses was received by the CLC in July 2023. Timeframe: May to July 2023.
Stage 5: Production of individual reports:	During the process one practice closed which led to six reports being produced although the results of the file reviews of all seven practices have been taken into account. These reports came to a conclusion on each practice’s compliance with the AML Regulations and the relevant CLC codes in relation to TCSP work. The reports were sent to each of the practices on 6 November 2023. Timeframe: August to November 2023.
Stage 6: Thematic report:	The CLC then collated the data from the survey and the file reviews and published a thematic report which considered TCSP risk in detail as it pertains to CLC regulated practices. The CLC will next review the TCSP questionnaire sent by OPBAS. Timeframe: November to January 2024.
Stage 7: Follow-up work:	The CLC will conduct extensive follow up work such as ensuring that key documents are updated in the light of the findings of this report such as the sectoral risk assessment and the risk register. The planned follow up work is contained in section 8 of this report. This work will be reported in the CLC’s Regulation 46 report for 2023 – 2024. Timeframe: January to July 2024.

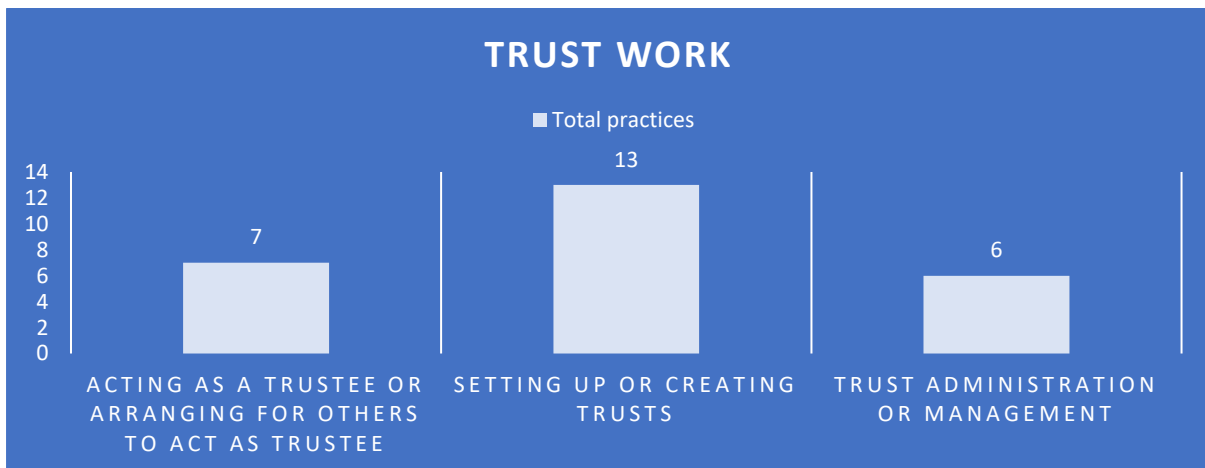
5. SUMMARY OF SURVEY RESULTS

35 practices regulated by the CLC declared in the survey that they undertook TCSP work. The breakdown of the services offered is summarised in the chart below. The most common

service provided is trust or trust-related work (25 practices) while a minority offer company formation services (7), registered office provider (2), receiving post for a company (1).



With respect to trust or trust-related work, CLC practices are engaged in acting as a trustee (7), setting up or creating trusts (13) and trust administration or management (6). Almost all these types of services are being offered in relation to trusts arising from estate administration, wills writing or standalone trust work such as property trusts involving family members.



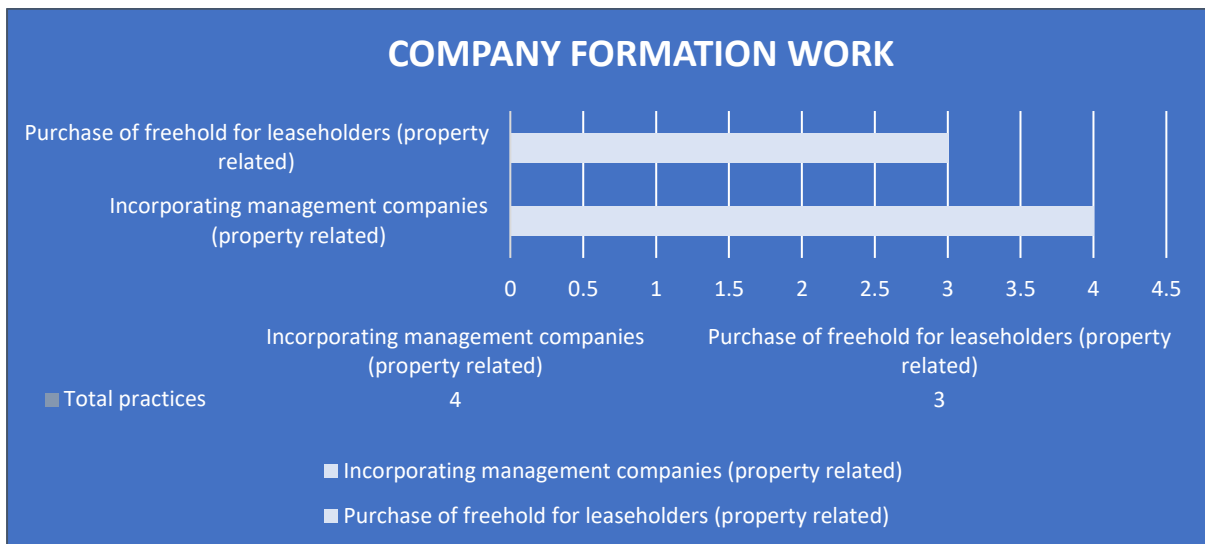
7 CLC practices act as trustees or arrange for others to act as a trustee. The context for this work is mainly in acting or arranging for others to act in express trusts related to the administration of estates. Due to the administrative burdens involved sometimes clients make the decision to appoint a professional trustee.

Trust creation or setting up trusts: 13 practices declared that they undertake this kind of work. The main types of trusts which these practices are involved in is setting up trusts as

required by wills such as discretionary trusts. Other trusts declared in the survey include lifetime trusts as part of estate planning and asset protection trusts.

Trust administration/management: 6 practices declared to the CLC that they are engaged in this kind of work which relates to similar trusts as in trust creation/setting up trusts as noted above. The work predominantly arises in the context of setting up trusts as required by wills in the administration of estates.

The **company formation** work undertaken by CLC practices can be split into two distinct categories: Incorporating management companies in new build developments (4) and forming a company for the purpose of acquiring the freehold (3). Both of these categories relate to companies specifically formed for property related purposes.



7 CLC regulated practices reported that they engaged in company formation work. The type of work undertaken relates specifically to property in either incorporating management companies in developments or forming companies in order to purchase the freehold for leaseholders.

- a. Management companies: These companies typically deal with the maintenance and upkeep of properties in a development as well as management services for shared areas. In some developments a management company will appoint an agent. Where the development is smaller, the owners of each property may opt to take a share in the management company and run it together.
- b. Freehold purchase companies: Due to the nature of leaseholding, it is common for leaseholders to decide to buy the freehold collectively through a process known as Collective Enfranchisement. As individual leaseholders cannot buy

the freehold themselves, companies are often formed to facilitate the purchase.

Other company services offered by CLC practices include a registered office service (2), receiving post (1) and director or secretary services (2). One CLC practice was found to offer interlinked TCSP services, Practice H, providing both secretarial services and a registered office address to one UK flat management company.

- a. Director/secretary services: This type of work is undertaken by two practices. One CLC practice acts as a secretary of a single company while the other declared that it would assist leaseholders become directors in collective enfranchisement matters.
- b. Providing a registered office/receiving post: three CLC practices are engaged in other relevant services for TCSP. With regard to the practices who offer a registered office, one of the practices involved, Practice A, offers a registered office service for one Scottish company which needs an office in England. The CLC practice that receives post for another company provides this service for one UK based company.

6. OUTCOME OF PRACTICE FILE REVIEWS

The Key finding of the practice file reviews are summarised in the table below.

Summary of areas of non-compliance identified	
Compliance area	Identified issues
AML Policies:	<p>Issues were identified with the AML policies of all six practices which received a report. The conclusion that was reached was that all six were “generally compliant” in this area. The most common finding was that the AML policy reviewed was out of date and did not include more up to date legislation such as the Fifth Money Laundering Directive (5MLD).</p> <p>Another common finding was that the AML policy lacked some key measures, such as the procedures for checking sanctions lists, and the process and the procedure for source of funds and source of wealth checks. Some policies reviewed were not relevant for trust or trust-related matters but instead focused on conveyancing transactions.</p>
Practice wide risk assessment (PWRA):	<p>Out of the seven practices reviewed, six PWRAs did not assess the risks associated with proliferation financing. However it should be noted that this requirement only came into effect on 1 April 2023 (the documents provided by the practice, including their PWRAs, were provided in February 2023). One practice’s PWRA did mention this aspect but did not come to a conclusion on the level of risk. This was the primary non-compliance identified in the PWRAs reviewed.</p>

	<p>One other PWRA that was assessed was noted to be inconsistent in that the risk rating for trusts was recorded as being high, but this was inconsistent with the content itself which suggested that the risk rating should be lower. The practice acknowledged that this was an error and has now corrected the risk rating. The PWRA reviewed did take into account TCSP related work in general.</p>
<p>Identification verification and sanctions checking:</p>	<p>The general standard of ID checking for the purposes of client due diligence was found to be good across the majority of the practices reviewed in that client ID was routinely obtained and recorded on file and/or an electronic ID system was in place. Furthermore, the beneficial owners of trusts, which can include the settlor, trustees and any named beneficiaries, were being identified appropriately.</p> <p>For one practice, however, an instance of non-compliance with the AML & CTF code was identified in that no client ID was located on one of the files reviewed. Electronic checks were run on the clients, however one of the results was “refer”. This should have prompted the practice to obtain client ID in accordance with their policy. The practice, as part of the action plan in the CLC report, has now implemented a new ID procedure to ensure this does not happen again and has provided training to fee earners.</p> <p>In relation to sanctions checking the majority of practices were routinely undertaking checks of Politically Exposed Persons (PEPs) and sanctions through electronic checking. One practice reviewed did not have a formal system in place and this is being dealt with in the follow-up action plan.</p>
<p>Source of funds/source of wealth checks:</p>	<p>In the majority of files reviewed, the assets being placed into trust (or already in a pre-existing trust) related to property. Where the practice’s client has a trust funding role, the LSAG guidance makes clear that source of funds and source of wealth checks must be carried out and this includes checking the funds used to acquire assets that are being placed into trust¹. In the majority of files reviewed the practice’s client did not have a trust funding role.</p> <p>In one file reviewed for Practice E, however, it was identified that the practice’s client, the settlor, had such a trust funding role in that a property that the client owned was being placed into a trust. A finding in the report was that there was no evidence on file of consideration of the source of funds used to purchase the property and a corresponding action was created to address this issue. The CLC will include specific guidance on this point in January 2024 year in a source of funds compliance notice.</p>
<p>Client and matter risk assessments:</p>	<p>Of the seven practices reviewed, three practices did not conduct client/matter risk assessments on this kind of work and are now working through action plans to implement this crucial aspect of the process. The CLC will be refreshing its client and matter risk assessment template in Q1 2024, as outlined in section 9 of this report, and will be taking further action in this area to make sure that practices are aware of their obligations.</p>

¹ LSAG guidance 2023: page 77.

Alongside the specific questions which arose from the file reviews, each practice was asked a series of general follow-up questions for the relevant TCSP work which are summarized below:

Question	Summary of responses
Suspicious of money laundering in trust or trust-related matters:	None of the practices reported any concerns or suspicions in relation to assets used in trust or trust related matters.
Internal suspicion reports related to trust work:	No practices reported that they had submitted any internal suspicion reports in relation to this work.
Suspicious Activity Report (SAR)s reported to the NCA:	No practices have submitted a SAR to the NCA in relation to this kind of work.
Source of funds/source of wealth checks on assets to be placed into trusts or assets in a deceased person's estate:	<p>The answers to this question varied amongst the practices. Some practices would not check the source of funds if the asset to be placed or already placed in trust was property. Others would undertake some checking on the property in question but limited to checking ownership.</p> <p>One practice informed the CLC that they would not check the source of funds as the assets in question had been derived from related estate administration work and they therefore knew the source of funds from the related work that they had undertaken in identifying assets and distributing the estate to beneficiaries.</p>
Identifying beneficiaries of trusts:	<p>The majority of practices took the approach that they would, where applicable, identify any named beneficiaries who were going to receive funds/assets according to the terms of the trust or prior to actual distribution of funds². Where beneficiaries are identified as a wider class (for example 'the children of x'), a majority indicated they would not identify them.</p> <p>One practice indicated that they would identify potential beneficiaries and another stated that they would identify this type of beneficiary only if they were administering the trust. Only two practices indicated that they would identify potential beneficiaries in total from the responses provided³.</p>
Client location for trust work:	Five of the seven practices informed the CLC that all their clients for TCSP work are based in the United Kingdom. Of the other two practices, one practice answered that

² This is in accordance with the LSAG guidance which states that, "...you must always verify the identity of the beneficiary or beneficiaries before any payment is made to them or they exercise their vested rights in the trust or legal entity/arrangement." P.77 (2023 LSAG).

³ The requirement to identify potential beneficiaries only arises in situations where the trust is a registrable one (See LSAG Guidance, page 77). Will trusts are not registrable unless the assets are held in the trust for a period in excess of two years.

	the majority of their clients were from the UK but one client, who was an executor, was a British citizen who lives in Canada. The final practice informed the CLC that some executors and beneficiaries lived overseas for trust-related work.
Registered with HMRC as a TCSP provider:	<p>None of the seven practices who took part in the second stage of the TCSP study reported that they were registered with HMRC as a TCSP provider. The reasons for not having to register were either:</p> <ol style="list-style-type: none"> 1. They were of the view that they didn't have to register as they were supervised by the CLC⁴; 2. They considered the work that they did in this area to be low risk and therefore didn't have to be registered.

7. CONCLUSIONS REACHED ON PRACTICE FILE REVIEWS

Individual reports were produced for each of the practices reviewed. Each practice was provided with specific mandatory actions to address the issues identified and to bring the practices into compliance. Each practice was given until 20 November 2023 to address the actions. The table below summarises the overall findings for each practice with respect to AML compliance.

Compliance ratings of practices reviewed	Compliant (Low Risk)	Generally Compliant (Medium Risk)	Non-Compliant (Medium /High Risk)
Practice A		x	
Practice B	x		
Practice C			x
Practice D		x	
Practice E		x	
Practice F		x	
Practice G ⁵	x		

As noted in the table above, one practice was found to be non-compliant overall in terms of AML. The practice has implemented all the required actions and is now in compliance with

⁴ Firms or practices already supervised for the purposes of money laundering by a supervisory body do not need to register with HMRC. The supervisory body is expected to pass a record of all TCSP providers to HMRC.

⁵ Practice G closed during the thematic review and therefore no individual report was produced for this practice although the findings of the file reviews have been taken into account.

the CLC AML codes. A follow-up review will be undertaken in Quarter 1 2024 to ensure that changes have been embedded.

The outcomes of the CLC's file reviews were that two practices were found to be compliant, four practices were found to be generally compliant, and one practice was found to be non-compliant. Each practice that was selected for further review is now remedying any concerns with a detailed and timebound action plan the delivery of which will be a consideration in whether any further steps are needed.

The CLC has risk assessed the TCSP services offered by its regulated population as follows (see Annex B for the detailed determination of the risk assessment):

Type of TCSP service	Adjusted risk rating
Company Formation	Low Risk
Director services	Low Risk
Secretarial services	Low Risk
Multiple TCSP services	Low Risk
Trust and trust-related services	Medium Risk
Registered office/ receiving mail	Low Risk

The review highlighted some issues in specific areas that were pervasive across the practices reviewed. The CLC has developed an action plan for each issue identified and included them in the mitigations in the table below.

Area of concern	Description and mitigation
Client/matter risk assessments:	<p>Three were identified as not conducting client/matter risk assessments routinely. This also triggers concerns about the quality of ongoing monitoring. Some practices may have concluded that the work that they did was outside the scope of the AML Regulations or was so low risk that risk assessments did not need to be conducted.</p> <p>Mitigation: The CLC has published a client/matter risk assessment for practices to use and will undertake some work in 2024 to firstly update the risk assessment and ensure that practices are aware of which work is within the scope of the AML regulations and what is not. The CLC will also use the Annual Regulatory Return (ARR) to gather further data about such risk assessments.</p>
AML policies:	<p>A consistent finding of the file reviews related to deficiencies within the practices' AML policy/procedure. These ranged in seriousness from the AML policy not being up to date in several respects to the policy lacking in specific details such as how sanctions lists are</p>

	<p>checked or the procedure for source of funds and source of wealth for trust-related work.</p> <p>Mitigation: The CLC will publish an AML policy checklist in 2024, which will clearly set out our expectations and be available for practices to use as a guide for their own AML policies. The CLC’s AML policy template will also be updated.</p>
<p>Practice Wide Risk Assessment (PWRA):</p>	<p>Another consistent finding of the file reviews was that the PWRA did not take into account the risk of proliferation financing (although it must be noted that this requirement came into force shortly after the policies were reviewed). Although most practices reviewed were taking into account TCSP work, there is a concern that some may not be, which may include practices that use the CLC’s own PWRA template.</p> <p>Mitigation: We will also aim to publish a new PWRA template in Q1 2024 which will include proliferation financing as well as space for TCSP work to be properly considered.</p>
<p>Source of funds/Source of wealth checks:</p>	<p>We noted a divergence of opinion as to when such checks should be undertaken in trust or trust-related matters. Some practices indicated that they wouldn’t check the asset being placed into a trust if it was property; however, this conflicts with LSAG guidance which states that, where the practice’s client has a trust funding role, the source of wealth of the client and the source of funds of assets contributed must be checked which would include the SOF/SOW of any assets placed into trust.</p> <p>Mitigation: The CLC will be publishing a compliance notice on source of funds and source of wealth in Q1 2024. As part of this we intend to address the question of when this aspect should be checked in these kinds of cases. Any issues on file reviews are being addressed with the practices directly.</p>

Some of the practices reviewed for the purposes of this thematic review were considered to have effective policies and procedures in place for TCSP work. This included robust risk assessment procedures that were evidenced on every file reviewed and up-to-date policies and procedures. Some of the good practice examples include the following:

- a. One practice, which undertakes wills, trusts and estate administration work, undertook three stage matter risk assessments which were evident on all of the files reviewed. Each of the stages demonstrated a consideration of the risks involved, such as where the assets came from, and was signed by the fee earner. The risk assessment also included an assessment of risk and what level of CDD would be required. The CLC considers this to be good practice as risk can alter throughout the life cycle of a transaction which a one stage risk assessment may

not be able to capture. This approach also demonstrates ongoing monitoring which is another key obligation in the MLRs.

- b. A good Practice Wide Risk Assessment (PWRA) which assesses risks relevant to TCSP work is fundamental in understanding the money laundering risks that are relevant to an individual practice or firm and enabling a risk-based approach. One PWRA that was reviewed contained a specific section on TCSP work, was regularly reviewed and took into account the following which was considered to be good practice:
- Client types and method of instruction;
 - High risk clients;
 - How screening is undertaken in relation to Politically Exposed Persons (PEPs) and sanctions for TCSP work;
 - Nature of trust work (e.g. how complex the trusts they are involved in are);
 - An assessment of the money laundering risks posed by wills and probate work;

8. OUTCOME OF THE TCSP THEMATIC REVIEW

A summary of the key themes emerging from the TCSP review are:

- a. The CLC's assessment of the risk of TCSP services is in line with expectations in that the specialist work that a small number of CLC practices undertake is generally low risk with the exception of trust and trust-related services which has been found to be medium risk.
- b. The medium risk conclusion for trust and trust-related work was in part due to the identification of three practices not undertaking client/matter risk assessments during the file reviews and also the varying interpretations of when source of funds/source of wealth checks should be carried out.
- c. The company formation work that CLC practices undertake was identified as being low risk as it relates exclusively to two property related services: incorporating management companies in new build developments and forming a company for the purpose of acquiring the freehold.
- d. The other TCSP work that CLC practices undertake, such as director/secretary services, was found to be low risk and related only to a very small subsection of CLC practices.

- e. The CLC will also carry out extensive follow-up work (as summarised in the next section of this report) and will revisit the risk assessments after the work has been completed. The follow-up work will be captured within the CLC's 2023 – 2024 Regulation 46 report.

9. REVIEW OF THE CLC RISK ASSESSMENT AGAINST THE NATIONAL RISK ASSESSMENT 2020

The foundation for any risk assessment of TCSP work is the National Risk Assessment (2020). Under the TCSP section, the NRA concluded that such work is high risk and noted that there was evidence that, "...demonstrated the laundering of millions of pounds through UK legal entities established by TCSPs." The NRA does not, however, make a particular distinction among TCSP services but instead appears to assess them collectively. A more comprehensive analysis of the risks of each kind of TCSP service is found within OPBAS' multi-PBS project on TCSP risk which was used to assess risk in each of the main TCSP areas in conjunction with the NRA.

The CLC used the NRA (2020) and the OPBAS TCSP risk assessment to determine the risk associated to the services that CLC regulated practices provide. A summary of this assessment is included below with further detailed assessments included in Annexure B.

Company formation

The NRA emphasises the risks of the formation of UK companies and partnerships and notes, with some justification, that the formation of these companies can establish a legal façade for criminals looking to launder money behind complex and/or anonymous structures, including by individuals based overseas who are looking to establish a company.

OPBAS has produced a comprehensive table of higher and lower risk indicators for TCSP services. With respect to company formation OPBAS identify complex structures and services offering anonymity as being a high-risk indicator along with weak risk assessment policies and procedures, services that cater to overseas or offshore clients and high volumes of company formations.

CLC regulated practices, as has been demonstrated by the research in this thematic review, only form companies in two situations which are expressly linked to their regulated work, forming management companies in new build developments and forming companies to enable individuals to collectively purchase the freehold (collective enfranchisement).

These kinds of companies are formed for a limited and express purpose and do not offer the kind of complexity or anonymity which certain corporate structures can offer with, for example, a number of companies/other entities in the ownership chain. The work that CLC practices undertake is also based exclusively in the UK without any overseas or offshore companies involved.

With respect to the volume of company formations, this is assessed as being relatively low. The five practices who disclosed that they are involved in this kind of work all indicated that such work is either under 1% of their total work (three practices) or under 5% of their total work (two practices). Only one of the practices who declared this kind of work has a turnover of over £1 million and they indicated this work was less than 1% of their work.

In light of the above, the CLC has concluded that the money laundering risk in relation to company formation work of CLC practices is low risk.

Related company work

Under this heading we have combined other services which a small number of CLC practices offer such as offering director/secretary services, registered office services or receiving post for companies. The NRA identifies that these services can be exploited by money launderers and notes that the provision of a registered office can be attractive to overseas individuals looking to establish companies and hide assets.

The table of risk factors created by OPBAS states that, for company secretarial services, a single high-risk indicator was identified which is whether there are services being offered to non-UK beneficial owners. With respect to director services the high-risk indicators include a lack of sector knowledge, risk assessment policies and procedures being weak, entities or trusts incorporated/established overseas and/or clients from high-risk jurisdictions, services being offered in combination with high-risk accountancy services, multiple companies with the same owner and confidentiality to protect the identity of the actual owner or controlling interests.

In relation to providing a registered office (which also includes receiving mail), the OPBAS high risk indicators are a demonstrated lack of understanding of the nature of the business/and or no documented rationale for using the firm's address, work in high-risk industries or jurisdictions, a registered office service being provided as a standalone service, regular forwarding of large volumes of mail and multiple addresses supplied to the same and/or connected businesses.

With respect to director services, the one practice involved in this kind of work sets up leaseholders as directors in collective enfranchisement matters. As with company formation,

this is for a purpose expressly linked to the practice's regulated services and, taking into account the high-risk factors noted above, is assessed as being at low risk of money laundering. Furthermore, it is noted the companies are all created in and are based within the UK.

In relation to secretarial services, one practice declared that they acted as a secretary for one UK company. They described this company as a flat management company which owns and manages the leaseholds for six flats. They assist the company with filing the confirmation statements and annual accounts as well as assisting with any queries in relation to the registration of flat transfers. The limited nature of this work, for a UK company formed for a specific purpose which is related to their main regulated work, is assessed to be low risk.

As identified in the research for this report, two practices offer a registered office service. One practice offers this service for one UK company based in Scotland (which reportedly wanted an address in England). The other practice indicated that they offered this service to a single flat management company (the same company noted above in the secretarial services paragraph above). These limited services have clearly documented rationales and all are set up in the UK. The CLC's conclusion is that they are a low risk for money laundering.

Trust and trust-related services

The majority of CLC regulated practices who declared TCSP work did so by reporting that they offer trust or trust-related services. Seven practices declared that they act as a trustee or arrange for others to work as a trustee, thirteen practices set up or create trusts and six are involved in the administration of trusts.

As noted earlier, the NRA identifies that trusts can be used to launder significant amounts of assets due to the fact that they offer complexity and some degree of anonymity. This finding is contained within the section which concludes that TCSP's themselves are at risk of being exploited by money launderers.

A relevant linked conclusion is that the NRA also assessed the money laundering of trusts by themselves. Their finding was that the exploitation of UK trusts was rare and that, *"...Overseas trusts are likely to be more attractive for illicit purposes as they can offer better levels of secrecy and tax advantages compared to UK-based trusts, while removing funds beyond the UK's AML/CTF regime and the investigatory powers of UK law enforcement."*

OPBAS' assessment of this area includes the following high-risk indicators: complex or opaque structures which shield the true beneficial ownership and/or trusts are based overseas, trusts operating in higher risk jurisdictions/high risk industries, when the source of funds is not clear

and where the settlor, beneficiary or other person(s) have significant control over the assets and/or income of the trust.

The trusts which CLC regulated practices are involved in are all based within the UK and cannot, in our view, be considered complex or opaque structures. The trusts themselves, mostly arising from wills in the context of estate administration or lifetime trusts designed to safeguard assets such as property, are low-risk, typically straightforward express trusts where the source of funds is well understood.

One relevant factor is whether the settlor retains control over the assets and/or income of the trusts involved. With respect to will trusts, the settlor does not retain any control and all such trusts will operate independently of the settlor which is a low risk factor. It is possible, however, that some lifetime trusts that CLC practices are involved in do involve an element of continuing settlor control and this is a risk indicator that has been taken into account in the risk assessment.

In relation to the file reviews one example was identified where the settlor had a trust funding role and retained an element of control over the trust assets during her lifetime. The trust in question made provision for the settlor's property to be transferred to the control of her property to the specified trustees which were Person A, the daughter of the settlor and the settlor herself.

The trust provided that the settlor would have control over who the additional beneficiaries would be and also have exclusive power to appoint new trustees within the settlor's lifetime but, in general terms, the trust would have to be administered by the trustees collectively which included the power to receive additional property, sell the property at the heart of the trust or retain it as well as all of the relevant powers under the Society of Estate Practitioners standard edition.

The provisions described above do not amount to "significant control" over the assets and/or the income of the trust for the settlor as typically lifetime trusts appoint family trustees who will survive the settlor and ensure that the property is then managed in accordance with the settlor's wishes. Furthermore, if the settlor is identified appropriately and the instructions are not outside well-established purposes to ensure that family inherit property then these are likely lower risk indicators as well.

One other relevant consideration is the findings of the file reviews which identified that three of the seven practices were not properly risk assessing at the client/matter level. This is a cause for concern and also a risk factor that has been taken into account. In light of the above the CLC has concluded that trusts and trust-related work which CLC practices engage in are at a medium risk of money laundering.

Other relevant factors

a. Supply chain risk

OPBAS' multi-PBS project on TCSP work criticized the inconsistent understanding of supply chain risk which was evident in some of the responses they had received from Professional Body Supervisors (PBSs). For example, they identified that some accountancy sector PBSs found that most of their firms were sole traders with local clients and therefore supply chains were not relevant. Since the publication of OPBAS' report, a common definition of supply chain risk has been agreed by PBS' and this is as follows:

"A supply chain refers to the end-to-end activities/actions involved in the provision of a service/product to the end customer or beneficiary. A simple supply chain could involve only a few individuals / companies while a more complex supply chain could involve multiple service providers."

The definition goes on to state that firms or practices must understand the purpose or rationale of the service that they are providing and the ultimate individual or individuals who are benefitting from it. This may include looking beyond the current transaction to understand the role of other professionals in the "supply chain" and understanding their roles are consistent with firms/practices understanding.

The TCSP work which CLC regulated practices are involved in are considered to be more simple supply chains in that they typically only involve a few individuals. The example lifetime trust given on page 6 provides a reasonable illustration in that the trust involves one property and two trustees, including the settlor. Will trusts also tend to be simple in that an individual creates a will and the CLC practice is responsible for administering the estate and, where applicable, creating the relevant trust.

b. Interlinked TCSP services

Another relevant consideration is whether any of the services offered by CLC regulated practices constitute multiple linked TCSP services. OPBAS' recent report on TCSPs identifies that clients may instruct firms on lower risk non-AML work and use it as a gateway to higher risk AML work and the SRA's thematic review on TCSP work observes that a firm or practice that offers "multiple, in-scope services is more likely to be seen as a one stop shop for laundering the proceeds of crime."

Another high-risk factor or factors relates to multiple services being provided as a long-term arrangement with little commercial basis or justification, where a TCSP is being used to place "layers between the company and the beneficial owners, and/or is providing services to offshore beneficial owners or intermediaries".

The work which CLC regulated practices are engaged in does not span multiple TCSP services. In the survey conducted of our regulated population at the end of 2022, only one exception was identified. This practice, Practice H, undertakes the following kinds of TCSP work: company formation, providing a registered office and acting as a secretary of a company.

Further work was undertaken with this practice to understand the nature of this work and it was identified that only two of the TCSP services are linked: providing both secretarial services and a registered office address to one single UK flat management company. The other service they provide, company formation, relates to either forming management companies or companies set up for individuals to own the freehold.

A number of TCSP practices do offer conveyancing services alongside the TCSP services identified in this report but this can be classified under standard business practices whereby, for example, conveyancing arises from will writing work. This tends to suggest that the risk in this area is lower.

10. CONCLUSION

The TCSP thematic review has been a useful exercise as it has clearly highlighted the TCSP services that conveyancers regulated by the CLC offer. Although the risk of money laundering has been assessed as low, we will continue to monitor the services offered by practices and reassess the risk levels if we note any changes to the profile of services offered. Through this review the CLC has identified areas of focus for its TCSP monitoring and guidance efforts to further mitigate the identified risks. The CLC has started implementing the identified actions and will continue to assess their appropriateness.

APPENDIX A: TCSP SURVEY QUESTIONS

The CLC is asking all regulated entities to provide an update on whether you act as a Trust or Company Service Provider (TCSP).

For these purposes, the definition we will use is that in Regulation 12(2) of the 2017 AML Regulations:

(2) In these Regulations, “trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- (a) forming companies or other legal persons; (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) Acting or arranging for another person to act, as: (i) a trustee of an express trust or similar arrangement.

Thank you for taking the time to complete this mandatory questionnaire.

1. Does the practice undertake TCSP work as defined in Regulation 12(2) of the 2017 AML Regulations?

Please note that setting up or helping to manage a trust as part of the management of a deceased person’s estate and/or acting as a trustee in such an arrangement would fall under section 12(2)(d). If you are in any doubt as to whether certain work would fall under the scope of the 2017 Regulations then please disclose it. Please also include any ancillary services which may fall under the scope of the regulations. If you have any questions, please contact your Regulatory Supervision Manager.

Yes No

2. If yes to 1 - What kind of work does the practice undertake which qualifies as TCSP work under the 2017 AML Regulations? (please provide a list)

3. What percentage of the practice’s total current work can be defined as TCSP work?

4. How long has the practice been offering TCSP defined work?

5. How does the practice receive instructions for TCSP work?

6. If the practice is involved in setting up trusts and/or acting as trustees what kind of trusts does the work relate to?

7. How many matters does the practice currently have which fall under the definition of TCSP work?

APPENDIX B – CLC DETERMINATION OF RISK RATING

Table 1: RISK ASSESSMENT OF COMPANY FORMATION WORK AND DIRECTOR/SECRETARIAL SERVICES

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/ Aggravating factors	Adjusted risk rating
Company formation	High Risk	<p>Strong CDD, ongoing monitoring and ultimate beneficial owner identification.</p> <p>Clearly documented rationale behind the company formation.</p> <p>UK based client.</p> <p>Retail sales to UK based owner-managers.</p> <p>Robust risk assessment policies and procedures.</p> <p>Service offered by itself (not in combination with other TCSP services).</p>	<p>Weak risk assessment policies and procedures.</p> <p>Supply offshore and outside of the UK.</p> <p>Complex structures and/or the provision of the service would further cloud the beneficial owner structures.</p> <p>Wholesale/volume type sales ie high number of company formations.</p>	<p>Only offered in connection with property services in forming management companies or setting up companies for collective enfranchisement.</p> <p>These property related companies are non-complex and do not offer anonymity or complex corporate structures.</p> <p>The work undertaken is for companies and clients that are established within the United Kingdom.</p> <p>The volume of work per practice is relatively low and relates to a low number of single one-off company formations.</p>	Low Risk

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/ Aggravating factors	Adjusted risk rating
Director services/ secretarial services	High Risk	<p>Not for profit sectors (secretarial services)</p> <p>Provision of services to public limited companies (PLCs) (secretarial services)</p> <p>Provision of services to large private companies with multiple shareholders/subsidiaries (secretarial)</p> <p>Services are provided to large private companies or public limited companies (Director services).</p> <p>Used as an administrative tool to act until all legal requirements are completed and the company is handed to the customer (Director services).</p>	<p>Services to companies with non-UK beneficial owners (secretarial services)</p> <p>Entities or trusts incorporated/established overseas and/or clients form high risk jurisdictions (Director services)</p> <p>Offered in combination with higher risk accountancy services (Director services)</p> <p>Multiple companies with the same owner (Director services)</p> <p>Confidentiality to protect identity of actual owner or controlling interests (director services).</p> <p>Lack of sector knowledge demonstrated by individual (director services).</p>	<p>Secretarial services are provided by one CLC practice for a single UK based company.</p> <p>Director services are linked to specific property work (Collective enfranchisement) with a clear rationale.</p> <p>Director services do not relate to overseas entities and relate to single companies for a specific purpose.</p> <p>Director services offered alongside conveyancing services (higher risk⁶).</p>	Low Risk

⁶ Although this work is offered alongside conveyancing services, a relevant consideration is that the director services do not relate to funds from the property transaction and do not, in the CLC's view, raise the overall risk profile.

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/ Aggravating factors	Adjusted risk rating
		Neutral party to provide separation from interested parties eg. During merger negotiations (Director services).	Firm's risk assessment policies and procedures are weak (both).		

TABLE 2: RISK ASSESSMENT OF OTHER COMPANY SERVICES (PROVISION OF REGISTERED OFFICE AND RECEIVING MAIL) AND MULTIPLE TCSP SERVICES

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
Provision of a registered office/ receiving mail	High risk	Strong CDD, ongoing monitoring and ultimate beneficial owner identification. Provided with other services. Regular contact with customer(s), Collection of mail by known person(s).	Demonstrated lack of understanding of the nature of the business and/or no documented rationale for using the firm's address. Work in high-risk industries or jurisdictions.	Clearly documented rationale for the provision of an office/receiving mail. All the companies concerned are based in the United Kingdom and the number of companies involved is limited.	Low Risk

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
		<p>Sole contact address.</p> <p>Uses premises for meetings with clients.</p>	<p>Provided as a standalone service.</p> <p>Regular forwarding of large volumes of mail.</p> <p>Multiple addresses supplied to same and or connected businesses.</p>	<p>The volume of mail is relatively low and only one address is involved.</p>	
Multiple TCSP services	High risk	<p>The combined services do not enable anonymity or complex structures.</p> <p>A low volume of clients which means that the practice/firm has greater knowledge of existing clients.</p> <p>The clients are from lower risk industries (eg not cash based).</p>	<p>A practice/firm that offers multiple TCSP services such as helping to set up companies and trusts.</p> <p>A high volume of clients engaging the TCSP in multiple services.</p> <p>Clients who are from high-risk industries or based in high risk overseas jurisdictions.</p>	<p>Only one CLC practice offers more than one TCSP service and that relates to secretarial services and a registered office to one UK property management company.</p> <p>The company involve was established in the United Kingdom and is well known to the practice.</p>	Low Risk

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
		The reasons for using multiple TCSP services are well documented and consistent with what is known about the client.		The services offered do not enable anonymity or complex structures.	

TABLE 3: RISK ASSESSMENT OF TRUST AND TRUST-RELATED WORK

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
Trust and trust-related services	High risk	Clearly documented rationale for the trust. Provided alongside other services. Trust only operates within the UK only and/or no PEPs, High Net	Complex or opaque structures shield the true beneficial ownership and/or trusts are based overseas. Operating in higher risk jurisdictions, high risk industries.	Low risk, non-complex trusts with clearly documented rationale typically arising from other services such as wills or estate administration. Trust and trust-related work only within the UK and not in high risk jurisdictions.	Medium Risk

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
		<p>Worth individuals or foreign clients.</p> <p>Operate independently of the settlor.</p> <p>Services to low risk trusts when source of funds is clear, disabled persons, life interest, charities, share schemes and company pension funds.</p> <p>Robust client/matter risk assessments that consider relevant risks.</p> <p>Robust beneficial owner ID procedures and sanction checking.</p> <p>The NRA 2020 assesses UK trusts as at low risk of being exploited by money launderers.</p>	<p>When the source of trust funds is not clear.</p> <p>Where settlor, beneficiary, or other person(s) have significant control over the asset and/or income of the trust.</p> <p>Lack of risk assessments or risk assessments which are not robust enough.</p>	<p>The source of funds is typically well understood either through related estate administration work or through scrutiny of trust assets.</p> <p>The majority of trusts (Will trusts) operate independently of the settlor while lifetime trusts typically do not offer “significant control” for the settlor.</p> <p>Three of the six practices selected for stage 2 did not have matter risk assessments in place but are now addressing these issues directly.</p>	

Type of TCSP work	Initial risk rating (NRA 2020)	Low risk indicators	High risk indicators	Mitigating/Aggravating factors	Adjusted risk rating
		The practices reviewed for this report all indicated they had not had any suspicions of money laundering.		The general practice questions revealed varying interpretations of when assets in trusts should be checked.	