



HM Treasury

Anti-money laundering supervisory review: response to the consultation

December 2017

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Chapter 1

Introduction

- 1.1 On 20 July 2017, the government published the '[Anti-money laundering \(AML\) supervisory review: consultation](#),' (the consultation) which sought views on:
- whether the draft Oversight of Professional Body AML and Counter Terrorist Financing (CTF) Supervision Regulations deliver on the government's intention that the Office for Professional Body AML Supervision (OPBAS) helps to ensure that professional body AML supervisors (PBSs) comply with their obligations in the MLRs
 - the impact on business from establishing OPBAS
- 1.2 OPBAS aims to address some of the risks identified in the 2015 and 2017 UK national risk assessments of money laundering and terrorist financing ([NRA15](#) & [NRA17](#)). The NRA15 found that the effectiveness of the UK's supervisory regime is inconsistent. The large number of PBSs in some sectors was found to present a particular challenge; 22 PBSs are active across the accountancy and legal sectors. Areas for improvement included supervisors' understanding and application of a risk-based approach to supervision, the providing a credible deterrent and the sharing of information both between supervisors and with law enforcement agencies. The 2017 NRA found that while there had been progress in some areas, including supervisors' cooperation with law enforcement, there remains scope for improvement. The 2017 NRA noted that OPBAS will help PBSs address these issues going forward.
- 1.3 The introduction of OPBAS reflects the findings of the government's [call for information](#), published in April 2016, and the government's subsequent [call for further information](#), published in March 2017. OPBAS will complement the government's wider reforms to strengthen the AML supervisory regime whilst reducing unnecessary costs. These include helping to clarify the obligations on all supervisors through the MLRs to tighten our defences against economic crime which is estimated to cost the UK £24 billion a year, and working with the reformed Money Laundering Advisory Committee (MLAC) to streamline and simplify the AML guidance provided to business in response to a [Cutting Red Tape Review of the UK's AML and CFT regime](#).
- 1.4 OPBAS also complements work across government to make the UK's financial system a hostile environment for illicit finance whilst minimising burdens on legitimate businesses. It delivers on the commitment made in the 2016 [Action Plan for AML and counter terrorist finance \(CFT\)](#) (the action plan), to reform the supervisory regime. Other commitments the government

has delivered include enhancing the law enforcement response through the Criminal Finances Act, which received Royal Assent on 27 April and provided new powers to protect the integrity of the UK's financial system. In addition, on 26 June, the 2017 MLRs took effect, transposing the EU 4th Money Laundering Directive (4MLD) and bringing the UK's AML and CTF regime into line with the latest international standards. OPBAS will help to ensure PBSs provide effective supervision, as required by 4MLD.

- 1.5 This is the government's response to the consultation. The government is grateful for all responses received, including from PBSs, trade bodies, civil society and regulated professionals.
- 1.6 Chapter 2 considers respondents' comments on the draft regulations, and sets out the government's response. This is complemented by frequently asked questions in Annex A.
- 1.7 This response is complemented by the final stage impact assessment, which analyses the costs and benefits of creating OPBAS.

Next steps

- 1.8 The Oversight of Professional Body AML and CTF Supervision Regulations 2017 (the OPBAS regulations) have been laid in Parliament today, and will take effect on 17 January 2018 when OPBAS will become operational.
- 1.9 The government will work with OPBAS and the PBSs to ensure OPBAS strengthens the supervisory regime. The Treasury is legally required to review whether OPBAS continues to be the most efficient and effective option to strengthen the supervisory regime by 26 June 2022.

Chapter 2

Regulations

This chapter discusses respondents' substantive comments on whether the draft regulations delivered on the government's intent that OPBAS help to ensure PBSs comply with their obligations in the MLRs, and sets out the government's response. Whilst several respondents agreed the draft regulations delivered on the government's intent, others sought clarity or stronger safeguards in some areas.

Applications

- 2.1 One PBS sought clarity around the application process for new PBSs, whilst a trade body felt that, if the OPBAS chooses not to endorse an application, this decision should be subject to an appeal.
- 2.2 The government has therefore clarified the basis on which OPBAS should make a recommendation that the Treasury consider a professional body's application to become an AML supervisor. The Treasury's decision to accept, or decline, an application will be subject to public law principles, as is the case if the Treasury chooses to accept an OPBAS recommendation to remove a PBS from its role as an AML supervisor.

The powers to request information and skilled person's reports, and issue directions

- 2.3 Several PBSs highlighted concerns that OPBAS could impose disproportionate burdens, including through excessive requests for information, issuing multiple directions, and by requiring (potentially expensive) consultants be appointed to carry out skilled persons reports.
- 2.4 The government, and the FCA, are clear that OPBAS will adopt a proportionate approach as it works with PBSs to strengthen the supervisory regime. OPBAS may only request information it reasonably needs to fulfil its objectives and may only issue a direction in specific circumstances. Further to this, the government has clarified that OPBAS may only request a report by a skilled person where it is reasonably considered to be required to support OPBAS in its oversight of PBSs.
- 2.5 Across the board, as is the case in all FCA decisions, OPBAS will consider whether action is necessary and in the public interest prior to making a decision. In addition, OPBAS will draw on relevant areas of expertise – including other organisations with similar roles such as the Legal Services Board – to minimise duplication and disruption – and ensure a consistent approach to overseeing professional body supervision. Where a PBS wishes to challenge a decision OPBAS has taken, the regulations require OPBAS

provide opportunities to consider the PBS's concerns prior to taking action (see processes and appeals below).

Safeguards on the provision of information

- 2.6 Several legal PBSs noted that OPBAS will not have powers to request information from regulated businesses, and therefore not require information about a lawyer's client's full name and address. The government has therefore removed this provision. To provide clarity, the government has also defined the term 'excluded material' for the purposes of safeguards on the provision of information.

Admissibility of statements

- 2.7 As several respondents noted, Parts 2 – 4 of the Proceeds of Crime Act 2002 (concerning the confiscation of the proceeds of crime following a successful conviction) and Regulation 88 of the MLRs (whereby individuals intentionally provide false or misleading information in order to undermine the AML regime commit an offence) are not applicable in the context of PBSs. The government agrees, and has removed these provisions.

Disclosure by OPBAS

- 2.8 Some respondents suggested drafting changes that would clarify the circumstances in which: OPBAS may helpfully share information; the organisations that might receive information; and, the circumstances in which those organisations might further share information collected by OPBAS. The government has clarified this accordingly.
- 2.9 In addition, to ensure that information collected by OPBAS is used correctly, the government has introduced a criminal offence if an individual (including a member of FCA staff) discloses information inappropriately. This offence will be complemented by appropriate defences, including where the individual believed the disclosure of the information was lawful, and is in line with the penalty where other public organisations breach the Data Protection Act.

Sanctions

- 2.10 Some respondents suggested that OPBAS be empowered to publicly censure, or recommend the removal of, PBSs that failed to comply with OPBAS's other instructions, in addition to requests for information or directions. One respondent also proposed that there be a criminal offence where individuals intentionally provide OPBAS with misleading or incorrect information.
- 2.11 The government agrees that PBSs, and individuals, should be sanctioned if they fail to comply with a requirement imposed either by OPBAS or the MLRs. As a result, OPBAS's powers to publicly censure or recommend the removal of a PBS will apply to all relevant breaches. The government has also clarified that OPBAS may publicly censure or recommend the removal of a PBS, or both, in response to a single contravention.

Processes and appeals

- 2.12 Most respondents suggested that PBSs have opportunity to appeal any sanction issued by OPBAS. Several also suggested that PBSs be given more opportunity to engage with OPBAS and share information/take action to address OPBAS's concerns, prior to the decision being taken to issue a sanction, or before the OPBAS request a court find an individual in contempt of court. One PBS suggested that OPBAS be required to take into account a PBS's understanding of risk.
- 2.13 The government notes that PBSs should incorporate the OPBAS's sourcebook and European Supervisory Authority guidelines into their supervisory approach as best practice. Within this context, provided OPBAS is content a PBS's approach meets the requirements in the MLRs, OPBAS will not sanction that PBS. The government also recognises that there may be circumstances where a PBS cannot comply with OPBAS's requirements, and agrees a PBS should have opportunities to discuss and justify their position prior to a sanction being issued.
- 2.14 Consequently, if OPBAS is of the view that a PBS has not complied with a requirement, OPBAS will be required to:
- not publicly censure, or recommend the removal of, the PBS if OPBAS is satisfied the PBS took all reasonable steps to comply with the requirements. Therefore, OPBAS will seek to understand why a PBS has not complied with a requirement prior to taking action, it may then
 - issue a warning notice, if it is content the PBS did not take all reasonable steps to comply with the requirement. This provides a formal opportunity for the PBS to explain how it has met OPBAS's expectations, or why it considers OPBAS has acted unreasonably. If OPBAS has considered the PBS's explanation and continues to feel a sanction is justified, it may then
 - issue a decision notice. At this stage, if OPBAS has:
 - publicly censured the PBS, then the PBS may appeal to the Upper Tribunal. Whilst the appeal is ongoing, the published notice must be updated to reflect the nature and progress of the appeal
 - recommended the Treasury remove a PBS as an AML supervisor, then the PBS may approach the Treasury directly. The Treasury's decision to accept OPBAS's recommendation will be taken in line with public law principles
- 2.15 Separately, if an individual fails to comply with a requirement, the penalties include safeguards. If an individual has sought to undermine the regime inappropriately disclosing confidential documents, the regulations include defences where the individual believed their actions were lawful. Similarly, if an individual fails to provide information requested by OPBAS, the court will determine whether that individual's reasons provide a reasonable defence as it considers whether to hold the individual in contempt.
- 2.16 In addition, the government notes that all decisions by OPBAS, or the Treasury, will be taken in line with public law principles.

Costs of supervision

- 2.17 OPBAS will be provided with a specific power to request information necessary to calculate the distribution of the fee, complementing OPBAS's power to request information it reasonably needs to fulfil its objectives.

A consequential amendment to the Solicitors (Scotland) Act 1980

- 2.18 In its response to the consultation, the Law Society of Scotland confirmed it required a new power to raise funding from its members to pay the OPBAS fee. The government will legislate to provide this power.

Review

- 2.19 One PBS suggested that the Treasury review OPBAS two years after implementation, whilst a trade body respondent indicated the review date should be aligned with the 2017 MLRs so the regime is reviewed as a package.
- 2.20 Consequently, the government will be required to review OPBAS before 26 June 2022, as is the case for the MLRs. In addition, as above, the government intends to work with OPBAS to review its objectives annually. OPBAS will publish its objectives annually, as well as performance against its objectives, its priorities for the coming year and emerging risks, in the FCA's Annual Report. This report will be complemented by information published on OPBAS's website.

Annex A

Frequently asked questions

This annex considers questions that respondents raised in their submissions to the Treasury on the draft regulations, and sets out how these issues are being, or will be, addressed through guidance or government policy.

What are OPBAS's objectives?

- A.1 The government agrees that OPBAS's objectives should be transparent and add value to the supervisory regime, but notes these should be flexible to support an evolving supervisory regime.
- A.2 Initially, OPBAS will focus on addressing the risks identified in NRA15 & NRA17, strengthening the regime by:
- Helping to ensure PBSs provide high standards of AML supervision, meeting the requirements in the MLRs
 - Liaising with the three statutory supervisors (HMRC, the Gambling Commission and the FCA teams responsible for the supervision of financial institutions), and the Treasury where appropriate, to discuss cross-cutting issues, best practice and help ensure high standards across the regime
 - Engaging with law enforcement to help facilitate the flow of information across the law enforcement and the professional bodies
- A.3 Going forward, the Treasury will keep these objectives under review. From time to time, it will seek views from the Affinity Groups and OPBAS on whether these objectives should be updated.
- A.4 OPBAS will publish these objectives on its website. OPBAS will also publish progress against these key objectives through the FCA's Annual Report.

Does OPBAS address perceived risks?

- A.5 The NRA15 highlighted areas for improvement in the AML supervisory regime, including around supervisors' understanding and application of a risk-based approach to supervision, providing a credible deterrent and facilitating the sharing of data. This is especially the case where multiple supervisors operate in the same sector. In practice, this primarily refers to the accountancy and legal services sectors where 23 supervisors are active, including 22 PBSs and HMRC.
- A.6 Ensuring PBSs provide high standards of supervision will help tighten the UK's defences against money laundering and terrorist financing, delivering

on the government's aim that the UK's financial system is a hostile environment for illicit finance.

- A.7 NRA17, published in October, confirmed that, whilst some supervisors have made some progress in some areas, there remains scope for improvement.
- A.8 OPBAS will work with PBSs to help ensure they comply with their obligations in the MLRs, providing a high standard of supervision. OPBAS will deliver a step change in PBSs' understanding and management of ML/TF risk, especially by sharing best practice and strengthening collaboration with law enforcement.

Does the government intend that all PBSs adopt a uniform approach to supervising their members?

- A.9 The government recognises that different PBSs fulfil their obligations in the MLRs in different ways, due to the nature of their relationship with their members, the sectors they each supervise and their statutory underpinning amongst other reasons.
- A.10 Therefore, OPBAS will focus on outcomes. OPBAS's draft sourcebook sets out the outcomes it expects PBSs to meet, and OPBAS is currently considering responses to the consultation.
- A.11 The government expects PBSs to meet the standards set out in the MLRs and the sourcebook, fulfilling the role the public expect of them.
- A.12 OPBAS will work with a PBS to ensure this is the case, and where necessary has powers to investigate and penalise non-compliance with the MLRs.

How will the government avoid the risk that OPBAS creates a two-tier supervisory regime?

- A.13 OPBAS will focus on helping to ensure that PBSs comply with their obligations in the 2017 MLRs. It will also engage across the regime with statutory supervisors and law enforcement to discuss emerging and cross cutting risks as well as share best practice.
- A.14 OPBAS and the three statutory supervisors, including HMRC, are considering how to best share best practice and common issues going forward. This engagement will complement OPBAS's attendance at the Anti-Money Laundering Supervisors Forum, and at the Accountancy and Legal Sector Affinity Groups on request.
- A.15 In addition, HMRC, as a fellow supervisor of accountancy and trust and company services providers, intends to adopt OPBAS's standards to ensure it provides the same standards of supervision as PBSs. HMRC and OPBAS will meet regularly, in addition to the engagement planned above, to discuss best practice.
- A.16 Going forward, HMRC will also publish an annual report on its effectiveness as an AML supervisor, and this will set out how HMRC's supervisory teams have drawn on OPBAS's guidance as well as justify any deviations from it. Where appropriate, OPBAS will work with HMRC to help draft and review

this report, and will support HMRC in disseminating its findings amongst PBSs.

How will OPBAS operate in practice – in particular, how will it engage with PBSs and utilise its powers?

- A.17 OPBAS has written to PBSs setting out how it intends to engage with them going forward – this letter is available [here](#).
- A.18 OPBAS stands ready to answer further questions, and will publish more guidance if appropriate.

How much will OPBAS cost/how will the fee be distributed?

- A.19 The FCA is considering the best resourcing model for OPBAS, and has published a consultation on how the fee might best be distributed ([available here](#)). The FCA intends to finalise the resourcing model and distribution mechanism by the spring.
- A.20 The FCA will monitor OPBAS’s performance against its objectives as part of its ongoing processes, and adjust its resourcing model as necessary to ensure it delivers its objectives efficiently and effectively.

What is the process if a PBS wishes to step down as a supervisor?

- A.21 OPBAS will publish guidance clarifying the process for PBSs that wish to step down from their role as an AML supervisor. This will set out the approach PBSs should follow as they request to step down, or expect to be removed, and how the PBS should support its members through the transition.
- A.22 The government expects the PBS to continue to help ensure their members play their role in safeguarding the UK from criminals and terrorists until it leaves the regime.
- A.23 In addition, the government notes that the MLRs are legally binding on all PBSs until a PBS is removed from Schedule 1.

Could public censure undermine confidence in the UK’s regime?

- A.24 The government recognises that transparency builds public confidence in the UK’s AML regime, provides an effective sanction where PBSs do not comply with their obligations and can be a useful educational tool in drawing attention to areas of poor practice and potential improvement.
- A.25 That said, the government recognises that, in some circumstances, public censure could pose disproportionate damage.
- A.26 Consequently, OPBAS will defer publicly censuring a PBS where it could jeopardise the stability of financial markets or an ongoing investigation, and if public censure could cause disproportionate damage to the persons involved, until a time that these concerns no longer apply.

Will OPBAS endorse an incomplete application by a prospective PBS?

- A.27 The government recognises there may be some situations where a prospective supervisor submits an incomplete application to OPBAS, and it

may be in the public interest for OPBAS to work with that prospective supervisor to help complete its application.

A.28 That said, OPBAS will not recommend the Treasury endorse a prospective supervisor's application if there is insufficient evidence to support it.

HM Treasury contacts

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If you require this information in an alternative
format or have general enquiries about
HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk