

## Anti-money laundering supervisory review: consultation

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Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 198,000 members and 486,000 students in 180 countries, helping them to develop successful careers in accounting and business. There are approximately 8,300 ACCA accountancy practices in the UK.

We work through a network of 101 offices and centres and more than 7,200 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting, and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

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ACCA welcomes the opportunity to respond to this consultation. The outcome of the supervisory review will be crucial to the future reputation of the UK, which must be seen to have a robust AML infrastructure. A central feature of the current AML landscape in the UK is the diversity of organisations supervised under the regime, and even the diversity of accountancy practices supervised by members of the Accountants Affinity Group (AAG) of the Anti-Money Laundering Supervisors' Forum (AMLSF).

We commented in April that it had taken too long for HM Treasury to publish the call for further information, leaving interested parties only a brief period in which to gather opinion and construct considered responses. Again, the current period of consultation is too brief, particularly in light of the range of respondents from which the consultation document claims to be seeking views (ie not only the professional body supervisors, but regulated businesses). This gives the impression that HM Treasury is undertaking the process of consultation without genuine regard for the responses expected. This impression is reinforced by some of the comments in the consultation document concerning responses to the earlier call for further information. Those comments appear to be somewhat selective, and they fail to recognise the value of the in-depth knowledge and experience of the professional body supervisors (PBSs) concerning AML supervision.

Nevertheless, the expertise and experience of ACCA's members, in-house technical experts and members of ACCA's Global Forums for Taxation and Business Law have allowed ACCA to provide its well-informed opinion in response to this HM Treasury consultation.

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## GENERAL COMMENTS

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As stated in our response to the call for further information in March 2017, we welcome the introduction of an oversight body to work with the professional bodies. However, our concerns and objections centre around the need for proportionality. Although the rating of the Regulatory Policy Committee (RPC) is that the proposal is "fit-for-purpose", the RPC makes the comment that the Impact Assessment would have benefitted from a more detailed discussion of the options considered, the proposed structure of the Office for Professional Body AML Supervision (OPBAS), and the design of the oversight

system. Specifically regarding proportionality, the RPC states that the Impact Assessment should have set out the minimum EU requirements and “why the proposed policy does not include gold-plating”. We consider this point to be fundamental.

Any costs to be incurred by business must give rise to real benefits to the UK’s supervisory framework. In our response to the call for further information, we made clear – as did several other PBSs – that we fundamentally disagree with the proposed remit of OPBAS. In particular, HM Treasury will risk strong criticism should the oversight of OPBAS remain restricted to the PBSs. Other significant points made in that ACCA response include the following:

- We welcome an approach to oversight that is one of collaboration with the AML supervisors while recognising that OPBAS must have powers to publicly censure the supervisors.
- The diversity of the supervised population inevitably means that there are differences in approaches to supervision. Nevertheless, the PBSs within the AMLSF have demonstrated positive engagement with HM Treasury, and that engagement has been largely motivated by the need to uphold the public interest.
- The required consistent standard of supervision across the PBSs and other AML supervisors will not be achieved while the coverage of OPBAS excludes the default supervisor for accountants – HM Revenue and Customs (HMRC). Although we now understand that HMRC will interact with OPBAS, and seek to adopt consistent standards, it appears that HMRC’s obligations will be tantamount to a “comply or explain” approach.<sup>1</sup>
- With the model currently being proposed, we are concerned that the scope of OPBAS oversight would fail to give due consideration to the better regulation principles, especially those of consistency and transparency.
- If (as has been claimed by HM Treasury) OPBAS is to be funded by the professional bodies, then any levies on those bodies must be passed on to their members (who will perceive no benefit from the proposals). As a direct result, some members of professional bodies will, inevitably, cease membership in

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<sup>1</sup> In principle, ACCA would not be critical of such an approach if it were adopted consistently in respect of *all* the AML supervisors.

favour of AML supervision by the default supervisor (HMRC), which would be contrary to the public interest, for many reasons.<sup>2</sup>

- An appropriate risk assessment framework for the supervised accountancy sector must achieve the necessary consistency while being at a sufficiently high level to reflect the diversity of the supervised population.
- Both the risks of regulatory gaps and regulatory overlap are, to a large extent, addressed by way of an existing protocol established between the PBSs in the AAG. OPBAS should seek to formalise this arrangement, which has been seen to work. But to try to improve upon the current arrangement – to strive for zero regulatory gap – would be a disproportionate approach.

We feel that the questions being asked in the current consultation are limited in scope and presuppose that OPBAS is to be established within the FCA with a wide range of powers and statutory underpinning. We believe this position was, in fact, established prior to the call for further information in March 2017. We remain unsupportive of OPBAS in its proposed form and, given the current level of uncertainty, we are unable to address some of the consultation questions in detail. In particular, we have very limited information concerning the costs of establishing and running OPBAS, despite seeing the cost/benefit analysis produced by the FCA,<sup>3</sup> which (from the proposed sourcebook) appears to be based on a role for OPBAS that is somewhat different to that suggested by the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 (the Regulations).

### Impact assessment

Costs are a significant concern of the PBSs, as they will impact their supervised members and, ultimately, their clients. The public interest is impacted not only in those clients' fees, but also in the detrimental impact on competition, which is almost certain to result in practising accountants surrendering their practising certificates and professional body memberships, in order to be supervised instead by HMRC. A consequential certainty is that some of those practising accountants will cease to:

- hold professional indemnity insurance,

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<sup>2</sup> The FCA's consultation on an OPBAS sourcebook for PBSs (GC17/7) claims to address this risk, although the costs anticipated – both acknowledged in that consultation and hidden costs – would suggest otherwise.

<sup>3</sup> Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors (GC17/7)

- undertake relevant continuing professional development (CPD),
- follow a code of ethics,
- have regard for the shared document *Professional conduct in relation to taxation*,
- fall within a regulatory and disciplinary framework,
- etc.

We assert this without knowing the full extent of fees to be levied on the PBSs by the FCA. However, we note that the FCA's estimated running costs of £2m per annum, when combined with the compliance costs of the PBSs and businesses, would be sufficient to have that very negative impact, which clearly opposes the public interest.

The OPBAS Impact Assessment (which we assume is incorrectly dated 01/01/2016) has been produced in the context of only two options: to do nothing, or to legislate to provide powers to the FCA "to help, and ensure, professional body AML supervisors comply with their obligations".<sup>4</sup> In considering the options, the evidence base for the Impact Assessment summary sheets asserts that "there is currently no formal and systematic mechanism for assessing supervisors' performance...".<sup>5</sup> However, we would remind the government that HM Treasury has been requiring annual reports from the PBSs for a number of years and, therefore, we suggest that this should form a solid base on which to build. The information in those annual reports, requested by HM Treasury each year, has tended to vary, and yet we are not aware of any concerns ever being expressed by HM Treasury, to any of the PBSs, arising out of those annual reports.

The Impact Assessment states that micro organisations are not in scope,<sup>6</sup> although many professional firms are sole practitioners, which would be impacted by the costs of OPBAS oversight, and might find it particularly difficult to pass on costs to their clients. Moreover, the list of groups affected by the proposed Regulations, on page 5 of the Impact Assessment, omits:

- clients of the PBSs' members (to whom costs will be passed on), and

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<sup>4</sup> OPBAS Impact Assessment (IA), page 1

<sup>5</sup> OPBAS Impact Assessment (IA), page 4 and pages 5 to 6

<sup>6</sup> OPBAS Impact Assessment (IA), page 1

- clients (and future clients) of those accountants who will cease to be supervised and regulated by professional bodies due to the increased costs of supervision.

With regard to any fee payable by the PBSs to fund OPBAS, the Impact Assessment states “As this fee is a transfer within the system, it will be included as a cost and a benefit in this Impact Assessment.” This appears to be claiming that the operating costs of OPBAS would be “cost neutral”. While this is, in itself, a surprising claim, it would be undermined by any disproportionately burdensome oversight activities of OPBAS.

### **FCA consultation on an OPBAS sourcebook for PBSs**

OPBAS in its proposed form appears to be designed to address a *perception* of professional body supervision, rather than clear threats supported by evidence.<sup>7</sup> From reviewing the two current consultations – from HM Treasury and the FCA – their views of the role of OPBAS do not appear to be aligned.

ACCA intends to respond to the FCA’s consultation concerning the proposed sourcebook for PBSs. Generally, the FCA’s proposals suggest a light touch, although the estimated funding requirement would suggest otherwise. We would strongly recommend that OPBAS take incremental steps that demonstrate that each of its oversight activities adds value to the AML supervision framework.

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<sup>7</sup> The PBSs have consistently argued that the evidence arising from the National Risk Assessment (NRA) in 2015 does not support the NRA’s conclusion that the supervision of professionals (accountants in particular) presents a high risk.



## AREAS FOR SPECIFIC COMMENT

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Our responses to these specific questions are provided, where possible, below. ACCA will also be responding to the FCA's guidance consultation (GC17/7) on the proposed OPBAS sourcebook for professional body supervisors, which closes on 23 October 2017.

**Question 1: Do the draft regulations deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?**

In the Regulations, there is no provision for those PBSs that may wish to cease to be included in the list of professional bodies in Schedule 1 to the MLRs.

Draft Regulation 3 requires the FCA to "have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement ...". It is not clear that the draft OPBAS sourcebook is compatible with this requirement, which suggests a difference in understanding between the FCA and HM Treasury. We strongly recommend that the draft Regulations are amended to describe a more collaborative and helpful approach by OPBAS, while its effectiveness is to be achieved through transparency.

**Question 2: On average, how many hours do staff in your business currently spend interpreting and applying different pieces of AML guidance per year?**

This question presupposes that businesses are currently required to consider guidance from a number of different sources. We are not aware of guidance used by our supervised population – practising accountants - other than that prepared by the CCAB.<sup>8</sup> This guidance has been in issue since 2008, and has been regularly updated

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<sup>8</sup> Consultative Committee of Accountancy Bodies



and approved by HM Treasury. Nevertheless, we have invited our members to respond directly to HM Treasury in respect of questions 2 to 5.

**Question 3: Considering your answer to question 2 above, what proportion of the time your staff currently spend interpreting and applying AML guidance could be saved if the guidance were easier to understand?**

We are not sure of the basis for this question. Please refer to our comments under question 2 above. The CCAB guidance has always been approved by HM Treasury.

**Question 4: Putting the cost of staff aside, does your business incur additional costs to help your staff understand AML guidance, for example expenditure on consultants? If so, how much does this cost a year on average?**

Please see our comments under question 2 above. In addition, we should highlight the risks associated with posing this question. All firms within the supervised population are required by the MLRs to provide adequate training for their staff. Any “additional costs” will depend upon the firm’s size and risk profile. However, the diversity of firms within the supervised population, coupled with the brief consultation period, will almost certainly give rise to data from regulated businesses that cannot be extrapolated to provide statistically based evidence.

**Question 5: Do you expect your collaboration with other businesses to increase once AML supervisors’ expectations are aligned? If so, how much might this save your business a year, on average?**

We are not clear about the driver for this question. In view of the anticipated cost to businesses of the proposed oversight arrangements, it is somewhat surprising that those businesses are being asked about resultant cost savings. We are concerned that any responses to this question from our supervised firms will be interpreted in a way



that is unhelpful, as it will not be possible to extrapolate from the responses to reach a meaningful conclusion.

**Question 6: Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings.**

The consultation document requests that PBSs considers the FCA draft guidance in their responses to questions 6 to 8. In view of the brief consultation period, it is unrealistic to consider this in detail, especially as the FCA consultation does not close until 23 October 2017. As we are fundamentally not in agreement with the proposed scope of OPBAS, we are not in a position to respond to the question posed. However, we believe it would be very challenging to find cost savings arising out of our engagement with OPBAS, given the level of engagement implied by the draft Regulations and sourcebook.

**Question 7: Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS's guidance going forward? If more or less, please provide the estimated annual additional cost or saving.**

We are not in a position to answer this question. Given the ongoing consultation – by both HM Treasury and the FCA – we have no basis on which to measure the increased costs of compliance. Our first impression is that the draft sourcebook appears very principles-based, and it is difficult to identify where the added value might be, given the extensive experience of the PBSs in AML supervision.

**Question 8: In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for businesses you would like the government to take into account? If yes, please outline these and provide estimated costs or savings.**

Please see our responses above. We are unclear about the “simplified AML guidance” to which the question refers.

## CONCLUSION

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ACCA would support a more proportionate means of addressing any inconsistencies between the PBSs, if it is determined that it is impossible to include HMRC within the scope of OPBAS oversight. The achievement of consistently high standards of supervision must not be sought through requiring identical processes across the PBSs. We would encourage HM Treasury to draw comparisons between its current proposals and the supervisory structure in the Republic of Ireland, where there are nine professional accountancy bodies acting as Competent Authorities for anti-money laundering and counter-terrorist financing compliance. Each accountancy body reports to the Department of Justice and Equality, which publishes an annual report.

We propose that a proportionate approach to PBS oversight would entail an office, which would report to HM Treasury on its activities, and add value to the supervisory regime by reviewing guidance issued by the PBSs, helping to share information, and receiving and calibrating information provided by the PBSs in their annual reporting. This would create a supportive environment – as described in parts of the consultation and in previous calls for information – while requiring relatively little in terms of resources. Such a collaborative environment would also serve to develop the FCAs understanding of the supervised population in an effective and transparent manner.

If OPBAS is to fill the role of such an office, its work plan should be reviewed and updated annually. The principle of proportionality would suggest that its work load in the early years would be higher, as it identifies any relevant inconsistencies in the

supervisory approaches of the PBSs. In doing so, it should build on the mechanisms already in place, including the annual reporting process to HM Treasury.

Of course, as the oversight organisation for professional bodies, OPBAS would not be well placed to identify individuals who are practising unsupervised, ie without registering with HMRC. It may be assumed that this population (and the fundamental threat that it represents) would increase in size following the introduction of OPBAS, to the extent that qualified accountants may elect to practise without membership of a PBS.

Therefore, it is important that HMRC is given the resources to investigate suspicions of accountants practising without supervision. It is also important that the procedures of the PBSs are informed by the interactions between HMRC and OPBAS (referred to above as a “comply or explain” approach), and vice versa. Consequently, some of the costs of establishing and running OPBAS must be borne by HMRC and its supervised population.

It is likely that the costs of running such an office - with due regard for proportionality as suggested above - would be relatively low, and the costs of establishing it minimal. The funding of it might, therefore, be greatly simplified, and could (it is hoped) be more easily absorbed by the PBSs. If so, the risk of migration of accountants to an unregulated environment would be significantly reduced.



