

Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors

Guidance consultation GC17/7 Published by the Financial Conduct Authority

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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 have (and be seen to have) a robust anti-money laundering (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 August on the 'Anti-money laundering supervisory review' consultation, which was issued by HM Treasury on 20 July 2017 (the HM Treasury consultation). In our response (as in previous responses) we highlighted that the period of consultation was too brief, particularly in light of the range of respondents from which the consultation document claimed to be seeking views (ie not only the professional body supervisors, but also from regulated businesses). This has given the impression that HM Treasury has been undertaking the process of consultation without due regard for the responses received by interested parties at various stages of the review. We welcome the three-month consultation period offered in this case by the FCA.

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GENERAL COMMENTS

As stated in our response to HM Treasury's call for further information in March 2017, we welcome the introduction of an oversight body to work with the professional bodies. However, we have made clear – as did several other professional body AML supervisors (PBSs) – that the Office for Professional Body AML Supervision (OPBAS) is not appropriately designed, so long as its oversight is restricted to the PBSs. Other significant points made by ACCA in its response to the call for further information included 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 Anti-Money Laundering Supervisors' Forum have, to date, demonstrated positive engagement with HM Treasury,¹ 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 simply amount to a 'comply or explain' approach.²
- With the model currently being proposed, we have been concerned that the scope of OPBAS oversight would fail to give due consideration to the better regulation principles, especially those of consistency and transparency. There must be appropriate consistency in the oversight of *all* supervisors and, therefore, appropriate consistency in the supervision of professionals.
- 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 favour of AML supervision by the default supervisor, which would be contrary to the public interest, for many reasons.³
- 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.

¹ Engagement has included annual reporting by the PBSs on their supervisory activities, although we understand that there has been little or no feedback from HM Treasury to any of the PBSs.

² In principle, ACCA would not be critical of such an approach if it were adopted consistently in respect of *all* the AML supervisors.

³ Paragraph 1.11 of the guidance consultation claims that this risk has been addressed, although the costs anticipated – both acknowledged in the guidance consultation and hidden costs – would suggest otherwise.



- 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.

Our response to the FCA’s guidance consultation is provided with a view to the HM Treasury consultation, which focussed on the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 (the draft Regulations). Many of our on-going concerns centre around the need for proportionality. Therefore, we welcome the assurance provided in paragraph 4.4 of the guidance consultation that ‘in giving the guidance proposed in this consultation [the FCA is] acting in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed’.

The consultation document states, in paragraph 1.14, that the success of OPBAS will be measured by improved *perceptions* once OPBAS begins its work. We agree that perceptions are important to international observers; but focus on perceptions alone – without identifying and addressing any significant issues – risks the challenge that the measures put in place lack proportionality and even, perhaps, integrity. In fact, the National Risk Assessment (NRA) issued in October 2015 based its assessment of the PBSs largely on intelligence gaps on the part of the UK law enforcement agencies. It acknowledged that:

*“the UK designates professional bodies as supervisors. This approach benefits from the professional bodies’ knowledge of their sectors and the broader incentive their members have to meet high professional standards.”*⁴

The NRA went on to state:

*‘There is a risk that professional body supervision is compromised by conflicts of interests as these bodies represent and are funded by the firms they supervise. However, the evidence gathered through the consultation undertaken as part of this assessment, and through the annual reporting process, does not indicate that this potential conflict of interest is undermining the effectiveness of supervision.’*⁵

⁴ UK national risk assessment of money laundering and terrorist financing, October 2015, page 29

⁵ UK national risk assessment of money laundering and terrorist financing, October 2015, pages 29 and 30



In contrast, the NRA also recognised:

“There are low barriers to setting up and operating as an accountant in the UK. ‘Accountant’ is not a protected term in the UK, which can mean anyone can set up and operate as an accountant.” ... “The majority of ASP supervisors apply a ‘fit and proper’ process as part of their supervisory regime. The nature of the test varies between bodies and is a professional requirement rather than a statutory one. HMRC does not operate a ‘fit and proper’ test for ASPs as the regulations do not provide them with the legal powers to do so. They are only able to refuse registration in a limited set of circumstances.” ... “In describing themselves as ‘supervised by HMRC’, businesses may also misleadingly imply that HMRC supervises their professional competence, rather than just their AML/CFT compliance. Unlike professional bodies, which supervise their members’ professional conduct and AML/CFT compliance, HMRC only supervise the AML/CFT compliance of their supervisory population.”⁶

It would appear, given the above comments, that the setting up of OPBAS is, largely, designed to be cosmetic. It will be seen as unreasonable if HM Treasury, through the FCA, imposes costs on the population supervised by the professional bodies to address issues that may not, in fact, exist, while leaving those supervised by HMRC outside the scope of oversight. (Indications from the Financial Action Task Force would suggest that, in fact, unregulated professionals are regarded as higher risk.)

⁶ UK national risk assessment of money laundering and terrorist financing, October 2015, page 40



AREAS FOR SPECIFIC COMMENT

We welcome the tone of the Government's call for further information, which stated that OPBAS should 'work closely with professional body supervisors to help, and ensure, they meet the high standards expected of an AML supervisor, as well as to facilitate collaboration ...'. We are also pleased to see the reference to this wording in paragraph 1.6 of the guidance consultation.

Nevertheless, our responses to these specific questions are provided in the context of our significant reservations concerning the remit of OPBAS. In addition, the draft Regulations suggest sweeping powers, including to require and retain information of the PBSs, to appoint a 'skilled person', to issue directions, and to recommend removal of a PBS from Schedule 1 to the 2017 Money Laundering Regulations (MLRs). Such powers appear inconsistent with the tone of the call for further information.

Question 1: Do you have any comments on the proposed sourcebook for professional body supervisors? Would greater detail or a more prescriptive approach be helpful?

The proposed sourcebook refers to 'members' throughout, which might suggest a lack of understanding, currently, on the part of the FCA regarding the way in which the accountancy bodies carry out AML supervision. A member is defined in the draft sourcebook as 'a relevant person a professional body supervisor oversees'. 'Relevant persons' are identified in regulation 8 of the MLRs, but not in the sourcebook. Misunderstandings may arise because PBSs are membership organisations. But most PBSs supervise firms, which include sole practitioners, partnerships and incorporated practices.

Where the principals of a firm are members of more than one PBS (ie a 'mixed practice'), the PBSs in the AAG follow a protocol to ensure that the firm is supervised for AML. Members of the AAG and AMLSF have demonstrated that they are willing to engage with the FCA, so that the FCA can better understand the supervisory policies and processes of the various PBSs.

According to paragraph 2.4, '[i]t is proposed this guidance will come into effect on 1 January 2018', and this is reflected in part II of the draft sourcebook itself. Given that



the setting-up of OPBAS has been the subject of wide (although brief) consultation by HM Treasury, and that the outcomes of this guidance consultation must surely have regard to a very wide range of respondents and opinions, it would seem ambitious to finalise a sourcebook within ten weeks of the close of the guidance consultation. At the same time, the UK is undergoing a further NRA, which will inform the upcoming mutual evaluation review by the Financial Action Task Force (FATF). The NRA must also feed in to the AML supervisory review in order for any changes to the supervisory regime to be seen as adequately addressing any weaknesses. Although we assume that the current atmosphere of haste is intended to give the FATF confidence that the UK has a robust supervisory framework, it clearly risks having the opposite effect. It risks giving the impression that measures are being put in place to address defects in the existing supervisory arrangements that have not yet been clearly identified.

Status and objectives of the sourcebook

Paragraph 2.3 states that the sourcebook has the status of general guidance issued by the FCA under section 139A of the Financial Services and Markets Act 2000 (as amended). We welcome this clarification, which therefore acknowledges the need for the FCA to consult on the draft sourcebook, and publish an account of the representations made and the FCA's response to them.

Section 138J of the Financial Services and Markets Act 2000 requires the draft sourcebook to be accompanied by a cost-benefit analysis and an explanation of the purpose of the proposed rules or guidance. According to the guidance consultation, the purpose of the sourcebook appears to be to set out 'expectations in relation to anti-money laundering supervision'.⁷ However, in our opinion, the sourcebook itself requires an introduction, which should clearly set out its status and purpose.

As noted in paragraph 1.6 of the consultation document, the government announced, in March 2017, 'the intention to create a new Office for Professional Body AML Supervision (the Office), hosted by the FCA, to work closely with professional body supervisors to help, and ensure, they meet the high standards expected of an AML supervisor, as well as to facilitate collaboration between professional body AML supervisors, statutory supervisors, and law enforcement'.⁸ We maintain that OPBAS

⁷ FCA, GC17/7, page 4

⁸ HM Treasury, *Anti-money laundering supervisory regime: response to the consultation and call for further information*, page 4



should be a supportive organisation that adopts a proportionate and collaborative approach to its operations, including gaining enhanced value from the PBSs' existing reporting requirements and approving guidance issued.

As noted in paragraph 4.3 of the guidance consultation, the draft Regulations require the FCA to 'have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement' in drafting guidance. It is not clear that the draft sourcebook demonstrates this, as section IX (Enforcement) only covers the enforcement powers of the PBSs, and not the means by which OPBAS should exercise enforcement over the PBSs. This apparent inconsistency was also mentioned in ACCA's response to the HM Treasury consultation, as we believe that the change required to address this point is to the draft Regulations.

Proportionality

We are very pleased to note that the FCA recognises the risk that the financial and regulatory burdens on members of the PBSs will result in members seeking to be supervised elsewhere. Specifically the consultation document notes that accountants may choose to be supervised by HMRC, in which case, 'the broader public interest served by having those providers of professional services being a member of a profession (e.g. adherence to ethical standards, on-going training, etc.) would be lost'.⁹ We believe that the proposed 'proportionate and not unduly burdensome'¹⁰ approach to oversight designed to minimise this risk would require very little in terms of OPBAS resources, negligible set-up costs, and very little statutory underpinning by the draft Regulations.

'The sourcebook makes clear OPBAS expect professional body supervisors to participate in existing information sharing arrangements such as SIS or FIN-NET (see section VI) or work towards doing so.'¹¹ We believe that most of the PBSs already participate in these arrangements, as they see it as important in upholding the public interest. However, if OPBAS is too prescriptive in this area, it may be seen as going beyond its main purpose – oversight of how the PBSs supervise their members – and extending into how the PBSs support law enforcement agencies. This might suggest a lack of clarity and focus concerning the role of OPBAS.

⁹ FCA, GC17/7, page 4

¹⁰ Ibid

¹¹ Ibid



Governance

We would support the principles set out within section III of the draft sourcebook. In particular, we would endorse the statement that a professional body ‘should keep the advocacy functions it performs (that promote the interests of its members) functionally separate from the inspection and investigatory functions’. In practice, the regulatory operations of most (if not all) PBSs are kept at arm’s length, and are rarely threatened at all by the bodies’ representative functions.

Risk-based approach

As noted in section IV of the draft sourcebook, the MLRs require PBSs to identify and assess the international and domestic risks of money laundering and terrorist financing to which their sector is subject, taking into account various reports and guidance. This identifies a valuable role for OPBAS, regarding the analysis and communication of relevant risk factors across the PBSs. For the PBSs, this would improve efficiency, and so offset some of the costs of OPBAS oversight. This role should usefully cover communications with HMRC also (and the costs should be shared with HMRC accordingly).

We agree that the factors to consider when undertaking a risk assessment should include:

- the probability that money laundering could take place, as a result of several factors, and
- the potential (or likely) impact of such money laundering.

However, the examples provided of matters that could affect the impact assessment are simply additional probability factors. The sourcebook should explain how impact could be measured (eg the monetary value of funds that could be laundered).

There is little information about ‘clustering’ in the MLRs, and so we appreciate the attempt to explain the value of clustering in the draft sourcebook.¹² However, there remains a lack of clarity about how clustering might work in practice. The illustrative

¹² FCA, GC17/7, page 18



examples provided include 'sole-trader book-keepers catering to small businesses'. But those book-keepers may have clients covering a range of activities, locations, etc, and so the draft sourcebook fails to illustrate the benefits of clustering. It is also worth noting that members of the PBSs that provide only book-keeping services are likely to be supervised by HMRC, in which case they will be of higher risk than regulated professionals.

We believe that the paragraph headed 'The limits of a risk-based approach' adds no value to the sourcebook. The risk-based approach is always relevant to the supervision of members of PBSs, and the other supervisory requirements of the MLRs that are unrelated to risk are easily identifiable.

Supervision

We find section V of the draft sourcebook somewhat repetitious, which detracts from its clarity and value. This section should also be reviewed to remove obvious statements such as:

- 'Professional body supervisors have a number of tools to use when monitoring the adequacy of members' anti-money laundering defences', and
- 'a range of supervisory tools are available. Their use should be tailored to the scale and nature of the member'.

Most of the PBSs are very experienced in monitoring, assessing and investigating complaints, and appropriate enforcement. They have also been accustomed to reporting annually on their supervisory activities to HM Treasury. ACCA also reports publicly on its regulatory activities, and the 2017 public report on regulation is available at <http://www.accaglobal.com/gb/en/member/standards/regulatory-board/regulation.html>. We see no reason why most of the requirements of this section of the sourcebook would not sit easily within existing regulatory frameworks.

We are concerned about the suggestion that visiting firms 'may be an informal exercise to build relationships', as this might present a threat to the governance requirements, within which a PBS's regulatory responsibilities must be separate from its representative role. Similarly, some of the suggestions set out under 'Guidance and communications' might threaten a clear distinction between the two roles. An example



of an area where caution must be exercised is that of training, which could be perceived as presenting a self-review threat to a supervisor's objectivity.

We also believe that thematic work would fall within the role of OPBAS, rather than the PBSs, as the results should inform the work of OPBAS and also form the basis for effective communications across the PBSs as part of their risk assessment.

Information sharing

We notice a different tone in section VI of the draft sourcebook. It states that PBSs 'will' take part in the Anti-Money Laundering Supervisors' Forum, although the terms of reference of the AMLSF are broad, and so the sourcebook should make clear the activities of the AMLSF that are relevant to its oversight. If the participation requirement is limited to information sharing, then the sourcebook needs to be clear about the nature of the information to be shared, and how participation in information sharing arrangements will be measured.

In this section, the draft sourcebook states:

'In order to minimise the risk of investigations clashing, intelligence should be shared about active investigations, not just completed cases.'

As already stated, 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, and OPBAS should seek to formalise this arrangement. This further suggests the need for the FCA to engage with the PBSs to better understand how they supervise their member firms. We should also point out that the conduct of an active investigation by a PBS cannot be discussed with OPBAS. This is because any criticism of the process by an oversight body might be disclosable, and so might jeopardise an investigation.

Given that the sourcebook is to govern the way in which PBSs supervise their member firms, the context of the requirements concerning the nominated officers of the PBSs reporting to the National Crime Agency (NCA) must be clearly explained. We assume that the sourcebook is to require nominated officers to report knowledge or suspicions acquired during the course of AML supervision. The sourcebook could usefully provide some guidance on what OPBAS would regard as reportable. Although the draft sourcebook states that OPBAS expects that the nominated officer will also be the



Single Point of Contact (or ‘SPOC’), as described in section VI, it does not explain the basis for this expectation.

We are concerned that the draft sourcebook has expressed compliance with MLR 46(2)(e) in terms of ‘whistleblowing’, as this term will often imply the disclosure of information outside of a process established for that purpose. In fact, each of the PBSs has a mechanism for receiving and assessing complaints, and ACCA (as with some of the other PBSs) requires members to bring promptly to the attention of ACCA any facts or matters indicating that a fellow member, firm or registered student may have become liable to disciplinary action. It is not for a PBS to require all employees within firms to blow the whistle to the PBS. While whistleblowing in the public interest is commendable, it is not an action to be taken lightly. ACCA recommends effective speak-up arrangements within firms, which promotes a proportionate response to suspected legal, regulatory or ethical breaches, and an appropriate alternative to whistleblowing.

Information and guidance for members

The draft sourcebook states that a digest of risk information for members might include ‘risks from different products, crime typologies, geographical locations, customers, distribution channels, and how these risks affect different sectors and clusters.’ This suggestion is not tailored to any sector, and it would be useful if OPBAS focused on the types of firm supervised by the PBSs, and provided guidance accordingly. This presents an opportunity to demonstrate that the costs of establishing and running OPBAS generate some benefit. We further suggest that the sourcebook should have separate sections tailored to legal PBSs and accountancy PBSs.

This section of the draft sourcebook also includes the comment that PBSs “can also gather members’ views on money laundering risks, and share an anonymised summary of members’ collective opinions”. This exercise has been undertaken as part of the evidence-gathering in preparation for the upcoming FATF review. We understand that most accountancy PBSs do not have supervised populations that encounter significant risks. The members of the AAG have been informed that the law enforcement agencies and the Home Office have evidence of the existence of specific risks and issues, but the Home Office has been reluctant to share information with the AAG.

We understand that the government expects the number of different sets of guidance to be minimised. However, the only guidance aimed specifically at the accountancy



profession of which we are aware is that produced by CCAB.¹³ The draft sourcebook states that the PBSs should aim to minimise inconsistencies in guidance provided. While this seems sensible, if guidance is to be approved by the government, through the Money Laundering Advisory Committee (MLAC), inconsistencies should not exist, but any nuances between the different pieces of guidance would be helpful to the users.

Staff training

Although this section of the draft sourcebook starts by quoting the requirements of the MLRs, we believe the approach of dedicating a section of the sourcebook to the training of staff in the PBSs lacks proportionality. The approach to training staff is an operational matter, and it is for each PBS to determine the needs of their staff – collectively and individually – given the overriding requirements of the MLRs. Techniques such as file reviews and interviews are not new to most PBSs in the accountancy sector. These PBSs have been training and developing staff continually, in order to achieve the required outcomes.

This lack of proportionality has given rise to an omission, whereby the draft sourcebook refers specifically to the provision of ‘supervision manuals and other guidance’, but omits to consider the need for consistent methodology in monitoring – both for physical visits and desk-top monitoring. We believe this is an area in which OPBAS will have a very important role to play.

Enforcement

In this section also, the practice of cross-referencing the sourcebook to the MLRs has given rise to a lack of proportionality. Most PBSs in the accountancy sector have already embedded rules and procedures in respect of discipline and enforcement.

In accordance with the principle of transparency, ACCA (and other PBSs) publish the outcomes of their regulatory and disciplinary hearings. A more detailed understanding of the PBSs’ arrangements for investigation and discipline should be sought by OPBAS at an early stage. We strongly recommend that OPBAS exercises great care when advocating ‘restriction or withdrawal of membership’ as a sanction. In the case of accountants, while there are occasions on which this is necessary to protect the

¹³ Consultative Committee of Accountancy Bodies



reputation of the PBS and the profession, this would result in a practising accountant becoming unregulated, which would make that individual higher risk.

Record keeping and quality assurance

The PBSs are already subject to oversight in respect of certain activities reserved by statute. We consider it unnecessary to state, in guidance, the need to maintain records to allow oversight. Where the draft sourcebook includes redundant information, it detracts from the more relevant guidance.

In the area of quality assurance, the sourcebook should emphasise the need for proportionality. To some extent, OPBAS will be expected to review each PBS's quality assurance mechanisms, but it must be recognised that these will vary greatly, due to the different natures of the PBSs. The focus of OPBAS should be on the outcomes achieved (and on consistency) rather than the mechanisms. Some PBSs will have a committee to review the outcomes of monitoring, whereas others will have independent assessors, combined with internal processes. Most organisations will have an internal audit function, and its remit is an operational matter for each PBS. There cannot be a 'one size fits all' approach to AML oversight or the drafting of the sourcebook. The FCA must start with gathering information to inform its oversight of the PBSs.

Question 2: Do you have any comments on the FCA's cost-benefit analysis?

We find it surprising that an attempt to quantify the costs and benefits of the operation of OPBAS has been provided within this FCA guidance consultation concerning the proposed sourcebook. Instead, we would have expected this exercise to have been conducted by the government, whose decision it was to create OPBAS, and which has recently consulted on the draft Regulations. In this consultation document, we have, for the first time, been provided with an estimate of the running costs to be passed on to the PBSs (£2m per annum).¹⁴

It would be for each of the PBSs to determine how best to pass on these costs to their members. However, we suggest that it would not be appropriate to impose any AML supervision costs on non-practising members, who are not subject to AML supervision.

¹⁴ FCA, GC17/7, page 8



The table of costs, on page 9 of the guidance consultation, does not include any costs in respect of the appointment of ‘skilled persons’ to provide reports on specific matters, and it is unclear where those costs have been recognised, or how frequently the FCA would anticipate requiring such reports. We deduce, from the draft Regulations, that reliance on the appointment of ‘skilled persons’ would be necessary due to the lack of expertise within the FCA. But this is inconsistent with the high level of running costs referred to in paragraph 3.2 of the guidance consultation.

Neither does the table of costs include an element in respect of additional monitoring costs. We assume that the reason for this is that the costs of monitoring are already within the costs being incurred by the PBSs due to existing obligations under the MLRs. However, we should highlight the risk that any additional obligations imposed by OPBAS could give rise to disproportionately high monitoring costs (omitted from the cost-benefit analysis), and we would urge the FCA to be alert to this possibility.

Generally, additional costs of operating OPBAS set out in section 3 of the guidance consultation appear to be based on somewhat unsound estimates. For example, the inclusion of labour costs of £290 per day would seem rather conservative, and the cost-benefit analysis does not explain the basis for this estimate.

Although the estimated costs of each PBS (in addition to the running costs of OPBAS) have been itemised in the table on page 9 of the guidance consultation, a similar breakdown of costs has not been provided in respect of the OPBAS running costs of £2m (and there is no mention of how the FCA will be accountable for the costs it incurs). The reason for this lack of transparency has not been explained.

Page 9 of the guidance consultation states:

‘If a professional body supervisor makes substantial changes to its supervisory approach because of OPBAS’s creation, its membership may face other new costs. We cannot currently suggest how likely these costs are, or how much they will be.’

While we recognise that the purpose of OPBAS is to assess the standard of supervision by the PBSs, we should like to emphasise that differences in supervisory practices between the PBSs do not necessarily imply that one practice is superior or inferior to another. For example, although a PBS may routinely monitor firms by way of physical visits, for another PBS, a mixture of physical visits and desk-top monitoring will be a proportionate and risk-based approach. Each PBS will have a number of obligations relating to statutory recognitions or established policy, including different monitoring cycles for activities such as audit, investment business, insolvency, reserved legal



activities, etc. AML supervision must be integrated with other monitoring activity, and we are keen to receive assurances that onsite monitoring, for example, will not become a requirement imposed simply in order to 'equalise' the approaches adopted by different PBSs.

We note the final paragraph in the summary of the consultation document (1.20), which states that a consultation in respect of fees to be levied on the PBSs will take place in the autumn of 2017. We now understand that the process will commence in December. The lack of information currently available to the PBSs impedes our ability to respond fully to this guidance consultation.

Against the various costs, the benefits are discussed in paragraphs 3.8 and 3.9 of the guidance consultation in relatively vague terms. Having stated that OPBAS '*may* lead to a reduction in underlying offences and the costs associated with these crimes' (emphasis added), and that it will not be possible to attribute any cost savings to the creation of OPBAS,¹⁵ it goes on to state 'we do believe that the costs imposed by its creation are proportionate to the potential benefits from a reduction in harm caused by money laundering through the professional bodies [sic]'.¹⁶ There is no basis for this statement.

We believe that the above reference to 'the professional bodies' should refer to 'the supervised population'. However, as stated earlier, we have not been provided with the evidence of specific issues that we understand is held by law enforcement agencies and the Home Office.

In summary, it is extremely difficult to quantify the costs relating to the creation and operation of OPBAS, and it is also difficult to identify any benefits beyond the possible efficiencies that will arise through better information sharing and the *perception* of maintaining high standards of AML supervision. We believe that the guidance consultation does not provide a sense of how OPBAS and the proposed sourcebook will have a meaningful impact such that existing AML arrangements are strengthened. The value of any benefit relating to improved perceptions must be weighed against the risk of criticism should the operation of OPBAS be seen as having no practical impact.

¹⁵ FCA, GC17/7, page 9

¹⁶ FCA, GC17/7, page 10



CONCLUSION

OPBAS must be seen to add value, which requires due regard for the principle of proportionality. It should start by seeking to better understand the work of the PBSs and their practitioners, and the environment in which they operate. OPBAS should then seek to identify any relevant and significant inconsistencies in supervisory approaches. In doing so, it should build on the mechanisms already in place, including the annual reporting process to HM Treasury.

We believe it is more important, at this stage, for the FCA to consult on OPBAS's work plan than its draft sourcebook. It should seek a better understanding of how the PBSs operate, and the differences between them (and between their supervised populations). In time, guidance produced by OPBAS – perhaps in the form of a sourcebook – should focus on the areas of greatest need. These might include areas of unnecessary inconsistency, instances identified of best practice, and possible areas of unidentified risk.

We welcome the principles-based approach evident from this guidance consultation. However, we believe that, if OPBAS does not add value to the UK's AML infrastructure – identifying relevant inconsistencies and weaknesses, and building on existing arrangements – then the creation of OPBAS will fail to provide the confidence in the UK AML supervision framework that HM Treasury's supervisory review is seeking. In short, we propose that the work plan of OPBAS must not be over-ambitious.





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