



Law Society
of Scotland

Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime

Consultation Response

September 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With a key strategic aim of ensuring we are a strong regulator and powerful voice for the public, the profession, and the Scottish jurisdiction, whilst playing our part in Scotland's civic and business communities, we strive to be a modern and effective regulator - promoting and protecting the public interest and ensuring public trust in the profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through ensuring our regulation is fair, proportionate, and risk-based, exercised independently by the Regulatory Committee.

We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders, and our membership.

As the AML supervisor for Scottish solicitors, supervising c. 700 firms in Scotland, we welcome the opportunity to consider and respond to the HM Treasury Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime. We have the following comments and responses to put forward.

Specific Comments

Objectives

- 1. Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?**

We believe that these are the correct objectives for this project, and also agree with their relative priority.

In addition to the areas and topics covered under Chapter 2 of the consultation document under each of these objectives, we consider it important that any reform may also achieve:

- Enhanced supervisory effectiveness by ensuring the proactive use of intelligence is at the heart of the supervisory risk-based approach.
- Further consistency in supervisory approach, by capacity building and ensuring adequate training, expertise, knowledge, and skillset across the UK supervisory landscape.
- Better promotion and utilisation of available supervisory technologies, data analytics and innovation where appropriate (SUPTECH).
- Improved system co-ordination, co-operation and collaboration
 - internationally between supervisory authorities, law enforcement and other stakeholders
 - between public and private stakeholders

- Robust oversight and review mechanisms to monitor achievement of objectives and identify opportunities to continually improve effectiveness.

OPBAS+

2. What would the impact be of OPBAS having the FCA's rule-making power? What rules might OPBAS create with a new rule-making power that would support its aim to improve PBS supervision?

If OPBAS were to be granted the FCA's rule-making power over PBSs, it would represent a significant shift in its authority and potential effectiveness.

Should OPBAS receive such powers it could, for example, create a set of uniform rules across all professions, then a sub-set of tailored and sector-specific regulations that address the unique risks and challenges associated with anti-money laundering supervision in the various professions, and across the different jurisdictions, so as they can fit with existing legislation. This could ensure that PBS resources in each sector are focused on higher-risk areas.

If such powers were used constructively, and in a nuanced and risk-based manner - we envisage it may *go towards* achieving reform goals.

It's important to note that any expansion of OPBAS's powers, including rule-making authority, would require careful consideration and appropriate legislative changes to ensure accountability, transparency, and effective implementation.

Sufficient and transparent oversight and review mechanisms would need to be implemented along with an obligation to consult with PBSs regarding any proposed rules may affect.

3. Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?

Of the four additional powers noted we foresee the potential for adverse impacts arising from the proposed ability to restrict or reduce supervisory populations as noted below:

- The credibility of a PBS affected by such a sanction would be damaged in the eyes of its remaining supervised population. This may make ongoing supervision less effective and may impact on the supervisor's ability to achieve effective enforcement.
- Requiring another supervisor to deliver supervision to a sub-set of another PBSs supervised population possibly for a limited period has the potential to overcomplicate supervision and to make it less efficient. The replacement supervisor will be required to quickly develop an understanding of the new population they are responsible, although such an investment of time and resource is likely only to be utilised for a relatively short period until the period of "sanction" is over.

The powers suggested on the consultation focus also strongly on disciplinary/sanctioning measures. The proportional and graduated use of any additional disciplinary powers would be crucial to their effectiveness.

We suggest other powers may also help OPBAS achieve stated aims and objectives. These could include:

Coordination and Information-Sharing Powers: Strengthening OPBAS's ability to coordinate and share information with other regulatory bodies and law enforcement agencies would facilitate better collaboration and intelligence-sharing in combating money laundering. This could lead to a more holistic approach to AML supervision and a more comprehensive understanding of risks.

Promoting Use of Technology: Granting OPBAS the power to ensure the appropriate adoption of advanced technologies, such as data analytics and artificial intelligence, could enhance the efficiency and effectiveness of AML supervision across professional bodies.

Undertaking Education and Awareness: Granting OPBAS the power to develop and implement compulsory educational programs and awareness campaigns within the professional bodies could enhance cohesion, consistency and supervisory effectiveness across the landscape.

4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

It's essential to strike a balance between granting OPBAS the necessary powers to be effective in its AML supervisory role while ensuring appropriate oversight and accountability.

We agree with all the consultation proposals regarding new accountability mechanisms for OPBAS.

The consultation document notes that PBSs "could" be given a clear "right of reply". Given the seriousness of the potential sanctions, this would be essential in the form of an appeals mechanism regarding decisions under existing and new powers.

We agree that HM Treasury should require OPBAS to explain the use of its powers in its reporting to HM Treasury. Reporting should be set against established compliance and enforcement principles and should also be communicated to PBSs. Information should be made available on how, when and in what circumstances OPBAS would exercise these powers would be exercised. Reporting between HM Treasury and OPBAS should be publicly available.

HM Treasury should also consider and publicly report on OPBAS interventions made and the effectiveness of such measures.

5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

We do not have evidence that that this is a high-risk issue in the Scottish legal market. Similar to the position of the SRA noted in the consultation document, we do become aware of limited instances where individuals hold themselves out as “solicitors” who are not on the roll – but these individuals generally do not undertake work in scope of the MLRs.

6. Do you think a “default” legal sector supervisor is necessary? If so, do you think a PBS could be designated as default legal sector supervisor under the OPBAS+ option?

The scope outlined for a “default supervisor” such as the set-up of intelligence functions to detect unsupervised firms carrying out activity within the scope of the MLRs is a significant undertaking.

Any proposal to create a “default” legal sector supervisor should therefore be carefully assessed against the identified level of perceived risk and the expected benefits. We do not have the evidence currently to state whether a “default supervisor” is necessary.

A single legal sector “default” supervisor may not benefit from the existing market knowledge with PBSs particularly in the devolved areas where PBS’s work with single police forces.

Notwithstanding the above, we would suggest that the legal sector would be more likely to benefit from a set of default supervisors, depending on the individuals/business, geographical location and business activities. This should be jurisdictionally based with one supervisor per each of the three distinct legal jurisdictions – regard for expertise and capacity in proposed default supervisors would be essential.

7. Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.

If OPBAS use any new powers under this model constructively, and in a nuanced proportionate manner- we envisage it would enhance supervisory effectiveness by promoting a risk-based and intelligence led approach to supervision. Specifically, it may be able to develop rules which are based on the differences and relative risk profiles of the various professions – thus ensuring focus by supervisors on areas of higher risk.

Additional powers would likely also ensure adequate focus and the deployment of appropriate and adequate resource across the supervisory regime, thus improving its effectiveness.

8. Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.

The OPBAS+ model and additional powers has the potential to enhance system coordination by supporting the OPBAS role as a centralised coordinating authority between all stakeholders, harmonizing AML standards, promoting cross-sector collaboration, and streamlining information sharing.

However, successful implementation would require sensitive and proportionate use of any additional powers, extensive and ongoing stakeholder engagement and cooperation, adequate and long-term knowledge building/ resourcing within OPBAS and the establishment of effective coordination mechanisms.

It should also be noted that this option (if chosen as a standalone option) may not fully address some of the fundamental concerns levied against co-ordination in the current regime (its fragmented nature, the potential for approach inconsistencies, potential supervisory gaps, potential for conflict of interests) as it would not change the overall number or profile of supervisors across the regime.

9. Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.

As a standalone option, it is likely that the OPBAS+ model would be the most viable option to implement in a short space of time, with the least disruption across the regime. That said, as a standalone measure it may not deliver further, more long-term improvements to effectiveness and co-ordination (fragmented nature of supervision, the potential for approach inconsistencies, potential supervisory gaps, potential for conflict of interests) due to its limited scope.

The feasibility of the OPBAS+ model would depend on whether the necessary legal and regulatory changes can be implemented in a timeous manner to grant OPBAS the additional powers. Amending existing legislation or creating new laws may require political support and a robust legislative process.

The success of the OPBAS+ model would also depend on how well OPBAS utilizes its new powers, the level of cooperation and collaboration with other relevant bodies, the engagement of the supervised professional bodies, and the allocation of adequate and skilled long-term resources to carry out its expanded functions effectively.

The OPBAS+ model's effectiveness would rely heavily on the allocation of adequate resources, both financial and human. Expanding OPBAS's powers would likely necessitate increased funding and staffing to carry out its enhanced supervisory functions effectively.

We would be concerned by potential changes to the OPBAS levy to fund any additional resource necessary under this model, if it would lead to increased charge to us, and consequentially, our supervised population. Any increase in cost must be justified and transparent. OPBAS should be compelled to demonstrate how any increase in fees is allocated and used to achieve objectives/add value to the regime.

PBS Consolidation

10. Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide remit, (b) retaining separate PBSs in the Devolved Administrations? Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both.

We comment exclusively in regard to the legal sector – although we emphasise that HMT must consider that the two sectors in question are very different in terms of populations, demographics and underlying legislative frameworks.

The provision of legal services by solicitors and law firms is defined in statute and must be carried out through authorised structures supervised by an approved regulator. The legislative regime varies materially and considerably in Scotland, compared to that in England & Wales and Northern Ireland.

In the context of legal sector supervisory reform, it is also crucial to ensure and preserve the independence of the legal profession from government, a fundamental constituent of our democracy.

We therefore think it important to consider the two sectors separately and consider the possibility of separate options for legal and accountancy - as any consolidation approach taken would encounter substantially different challenges, feasibility constraints and issues across each sectors.

In light of previous FATF appraisal of the current regime, along with critique by third sector organisations and other stakeholders regarding the fragmented nature of the current regime, we recognise why the government has included PBS Consolidation as an option for reform.

In consideration of the three stated reform objectives, we strongly believe that were PBS Consolidation to be implemented in the legal sector, this should be based around a devolved administration approach (i.e., 3 legal sector supervisors, one for each devolved administration).

We believe that the idea to keep separate regional divisions for each legal jurisdiction under a single supervisor is inherently flawed, and would not overcome the significant operational, resource and legal risks and challenges a single consolidated legal sector supervisor approach would entail. Our rationale is set out as below.

Increased supervisory effectiveness:

The Law Society of Scotland has made significant positive improvements to our model of risk-based AML supervision in recent years - tailored to the unique risks, challenges and demographics of our supervised population. This includes our governance structures, the collection of supervisory data, the recruitment and retention of specialist, skilled AML resource, risk-profiling techniques and guidance and support materials made available to the profession.

We believe this flexibility in approach has been crucial to this success and we have noted several indicators as to our supervisory effectiveness in our most recent HMT Supervisors annual return, including indicators relating to improvements in levels of compliance across our supervised population, and regular positive feedback from national and international stakeholders.

We believe that any amalgamation into a single sectoral supervisor may be a regressive step, may undermine our approach and the flexibility we currently have to respond to risks and challenges specific to this jurisdiction.

We also believe that the proximity to our supervisees, along with the positive and (where appropriate), collaborative engagement we have with our supervised population, significantly enhances supervisory effectiveness.

Furthermore, as noted in the consultation document, expertise in relation to the separate and distinct legal and regulatory systems across the devolved administrations is key to supervisory effectiveness. Having an established link to, and presence in, the legal jurisdiction is, in our view, necessary to perform effective supervision. Understanding the specific business, demographic and geographic markets (along with any associated specific risks) in which your supervisees operate is extremely important.

This expertise and knowledge may be eroded if it were to be subsumed into any larger organisation with different hierarchies, governance structures and processes as it is likely that some staff may move roles/move into the Scottish private sector in the transition period, to avoid uncertainty or if it was felt that a place in the new organisational structure would be untenable.

These substantial (and very real) risks to effectiveness could be avoided, but the potential advantages of consolidation realised, if a devolved system of consolidated supervision is retained.

Improved system coordination:

We strongly believe that barriers to improving effective information and intelligence sharing are not so much rooted in PBS structure or landscape but are to do with building trust and relationships between stakeholders.

In Scotland, the Law Society of Scotland have fostered extremely positive, close relationships with the single Police authority, Police Scotland, regional HMRC teams along with other stakeholders – significantly enhancing information and intelligence sharing at a regional/local level, our sectoral risk assessment and building collaborative relationships and trust both with stakeholders and the supervised population.

These relationships may unnecessarily be eroded, be made more complex or difficult or put in jeopardy should a consolidation to one larger legal sector PBS be made.

Feasibility:

Consolidation of PBSs across the devolved administrations may be challenging and problematic – not least due to the differing legislative basis on which the regulatory powers of each devolved PBS regulatory powers are derived from. Any consolidation which amalgamates the devolved administrations may dramatically slow implementation times.

The AML supervisory powers of the Law Society of Scotland are granted through the Solicitors (Scotland) Act 1980 and exercised through our ability to issue Practice Rules which must be adhered to by every individual member on the Roll of Scottish solicitors.

We therefore note the substantial legislative reform/change which would be necessary to allow Scottish solicitors to be supervised for AML purposes for a body other than the Law Society of Scotland, along with the lengthy timelines which would inevitably be involved. We believe this to be a major barrier to the one consolidated legal sector PBS model. This would not be as significant an issue should devolved supervision be retained.

We also note the considerable operational, communication and privacy challenges regarding sharing requisite data with a single legal sector PBS, which again would not crystallise should devolved supervision be retained.

We also agree with issues noted in the consultation document regarding the split between general conduct supervision and AML supervision in the one consolidated legal sector PBS model - both in terms of the burden on business, gatekeeping responsibilities and data sharing/administrative issues and costs between the respective general and AML supervisors.

We also note the beneficial synergies often created when AML compliance supervision has effective linkages with other areas of supervision such as the supervision of compliance with accounts rules requirements. This can be a valuable source of information sharing and can result in more comprehensive cases being developed to support robust disciplinary decision making. . Again, the risk of losing these synergies would not crystallise should devolved AML supervision be retained.

For a PBS taking responsibility for another supervisor's population there would be cost and resource implications to be considered, and the financial model would need designed in such a way as to enable recovery of costs between organisations involved.

Although lengthier than OPBAS+, we would anticipate the timescales and transition arrangements to be far less onerous should three devolved supervisors be retained rather than either one or options three or four. (SPSS/SAS)

We do not agree with the stated consultation assumptions in regard to efficiency and lowered overhead costs – in light of the substantial implementation costs and risks associated with a transition to one larger consolidated body. Further It is not uncommon for the expected financial benefits of structural changes not to be delivered.

11. How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?

Yes, we could envisage that additional powers as described under the OPBAS+ model may be appropriate in oversight of a consolidated PBS model. As discussed in our response to Q4, additional accountability mechanisms would be essential if these powers were granted to OPBAS.

12. Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?

We do not consider it appropriate to respond to this question, given this is an issue affecting the accountancy sector.

13. What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?

The Law Society of Scotland refers cases to the Crown where unqualified individuals are identified as “holding out” as solicitors in contravention of the Solicitors (Scotland) Act 1980. A PBSs responsible for identifying and responding to firms carrying out unsupervised activity in scope of the MLRS would need to have a similar legal framework in place to enable it to require information from such businesses, inspect them and to provide it with powers to require such businesses to cease their unsupervised activities. With clearly allocated responsibilities, the PBS would also be able to report breaches or the MLRs to law enforcement.

It should also be noted that the Regulation of Legal Services (Scotland) Bill is currently going through the Scottish Parliament and which seeks to significantly change the way in which regulation of solicitors (and firms) is carried out in Scotland.

14. Under the PBS consolidation model, what would the advantages and disadvantages be of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?

We have set out our response to this question under q.10.

We stress that the overall viability and added value/ potential benefits/improvements in effectiveness and system-co-ordination associated with the consolidation option must be balanced with the mitigation of any disadvantages/feasibility issues. We strongly advocate that the viability and feasibility of the consolidation option is closely aligned to a decision to keep a devolved approach to AML supervision.

15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

HM Treasury will need to ensure that PBSs post consolidation had retained or developed effective and consistent enforcement powers over the consolidated supervised population and were able to combine their own efforts with the established disciplinary processes within the former PBSs who are no longer delivering AML supervision.

We believe that some of the further powers currently reserved for the statutory supervisors should be conferred upon any consolidated PBSs – although it should be noted that the Scottish Solicitors Discipline Tribunal (SSDT) currently has the power to impose fines (and the current Economic Crime Bill proposes to enable unlimited fines.) The SSDT also currently publishes disciplinary tribunal findings including those arising from cases of MLR breaches.

Providing the powers available to the FCA under FSMA would be a significant step and one which we would support, particularly the power to implement specific rules such as those under the FCA SYSC handbook (for example, mandate the appointment of a specific individual as an MLRO with specific obligations and responsibilities over and above simply acting as a Nominated Officer) and the appointment of a skilled person.

We note, however, that if any such changes would need to be considered and implemented in light of the current legislative and disciplinary model in place for Scottish solicitors. This model is based on the regulation of the individual solicitor (i.e. not currently at an entity level although it is noted that the Regulation of Legal Services (Scotland) Bill currently passing through the Scottish parliament may address this) and many of the more severe disciplinary powers which can be levied against Scottish solicitors for AML breaches (such as powers of complaint, fining powers) are ultimately sanctioned by the SSDT - a separate, independent body to the LSS.

Any legislative changes would be significantly more feasible, timely, and easier to implement should a devolved approach be taken to PBS consolidation.

16. Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?

We believe that the first option – giving consolidated supervisors the power to regulate firms according to the type of firm/business activities would be a more straightforward, comprehensive, and effective means of enabling the supervision of non-members.

Any such legislation must synchronise and tie with the provisions of the current Regulation of Legal Services (Scotland) Bill and legislation around the regulation of Alternative Business Structures.

17. What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?

For simplicity, transparency and to maintain both the efficiency and effectiveness of the system, it appears to us that all enforcement cases regarding AML/CTF obligations should be transferred to the relevant consolidated PBS as soon as possible – albeit clearly all necessary governance and legal arrangements (including data sharing/MoUs) along with operational/resource structures, would need to be addressed before any transfer took place. We would envisage OPBAS could have a central oversight and co-ordination role in this and may need additional temporary powers to facilitate this.

18. Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.

If implemented on a devolved basis, we believe that PBS consolidation could lead to increased supervisory effectiveness. Clearly, a smaller consolidated supervisory environment which retained and expanded upon current expertise and skillset (along with in-depth knowledge of the different sectors, sub-sectors and geographic/demographic and legislative differences between the jurisdictions) would reduce perceived fragmentation, promote supervisory efficiency, quality/consistency of risk assessment/profiling, guidance and assurance approach and outcomes, and reduce potential gaps in supervision and gatekeeping across the DNFPB sector.

We agree it could lead to increased investment and more use of SUPTECH however we disagree it would inevitably lead to a reduction of overheads/cost or economies of scale.

19. Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.

We agree that under a consolidated regime, there is potential for increased system efficiency and co-ordination in terms of information and intelligence sharing, both between supervisors and with law enforcement agencies. With improved co-ordination and consistency of supervisory communication guidance and approach we would further anticipate consolidation could have a positive impact on the quality of intelligence provided by DNFPBs under the SARs regime.

We reiterate that in Scotland, the Law Society of Scotland have fostered extremely good, close relationships with the single Police authority, Police Scotland, regional HMRC teams, along with other stakeholders – significantly enhancing information and intelligence sharing at a regional/local level, our sectoral risk assessment and building collaborative relationships and trust both with stakeholders and the supervised population.

We would be concerned that these relationships may unnecessarily be eroded, be made more complex or difficult or put in jeopardy should a consolidation to one larger legal sector PBS be made, rather than consolidation at a devolved level.

We agree that challenges relating to information-sharing between the relevant agencies involved in more general conduct-related breaches and AML-specific breaches would need to be resolved, both as concerns cross-over, co-ordination of investigations/reviews and disciplinary actions/outcomes/remediation. These challenges would not, however, be insurmountable.

20. What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and supervision standards do not fall in the interim?

We anticipate that OPBAS would act pivotally in a central co-ordination and project management role, co-ordinating and overseeing any transition period.

We believe that the main barrier to OPBAS playing an effective role in any transition period would be a potential lack of expertise, knowledge or dedicated resource (or a combination thereof). It may be useful for OPBAS to have the power to compel appropriate and legitimate data sharing between selected and non-selected supervisors for the purposes of the transition and an ongoing basis.

21. How do you believe fees should be collected under the PBS consolidation model?

We do not believe that the payment of fees to different regulatory bodies would cause undue burden on the supervised populations, given that the members of each profession already have to pay fees to a variety of bodies/institutions and service providers. If a consolidated PBS is to issue fee invoices directly to members of deselected PBSs, they will however need to set up systems to acquire and maintain data from the deselected PBSs on their members to enable accurate billing to take place. This is an additional cost which will need to be allocated to the fee-paying population.

Requiring deselected PBSs to utilise their existing membership databases and invoicing procedures to collect fees from their members for AML/CTF purposes and transfer them to the consolidated PBSs could be the more efficient option. Under this option we would anticipate that the deselected PBS would be responsible for credit control activity to ensure that all amounts owed by their members for AML supervision are collected.

22. Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

There would be significant feasibility constraints associated with the UK-wide PBS consolidation model – we consider these constraints would be significantly reduced under the devolved administration approach.

We have set out our rationale for this position under Q.10, sub-section “Feasibility”, above.

SPSS

23. Do you agree these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?

We agree that these are relevant structural features to be considered, with the addition of the following:

Ensuring the legislative basis for the SPSS is fit-for-purpose and ties in/is complimentary to the current legislative framework for the regulation of solicitors – including (in a Scottish context) the Regulation of Legal Services (Scotland) Bill currently passing through the Scottish parliament.

Ensuring that the operational framework/mechanisms for the SPSS fits into existing frameworks in terms of disciplinary and complaint mechanisms, including (in Scotland) the referral of cases to the independent Scottish Legal Complaints Commission (SLCC) and ultimately the Scottish Solicitors Discipline Tribunal (SSDT).

The set-up and geographic distribution of operational centres/offices, resource and appropriate knowledge/skillset nationwide would also be a crucial design feature to ensure its success.

24. If an SPSS were to be created, which sectors do you think it should supervise?

We generally agree with the detailed analysis as set out in Appendix G – although we consider that AMPs and HVDs should be included within the scope of a SPSS, with appropriate information sharing protocols and cooperation between the SPSS and HMRC

25. Were an SPSS to be created, what powers should it have?

While we agree with the powers suggested on the consultation, they focus strongly on disciplinary/sanctioning measures. The proportional and graduated use of any additional disciplinary powers would be crucial to their effectiveness.

Similar to our suggestions under OPBAS+, we believe other powers may also help any SPSS achieve its aims and objectives. These could include:

Coordination and Information-Sharing Powers: Ensuring SPSS ability to coordinate and share information with other regulatory bodies and law enforcement agencies would facilitate better collaboration and intelligence-sharing in combating money laundering. This could lead to a more holistic approach to AML supervision and a more comprehensive understanding of risks.

Promoting Use of Technology: Granting an SPSS the power to ensure the appropriate adoption of advanced technologies, such as data analytics and artificial intelligence, could enhance the efficiency and effectiveness of AML supervision across professional bodies.

Undertaking Education and Awareness: Granting an SPSS the power to develop and implement compulsory educational programs and awareness campaigns within the professional bodies could enhance cohesion, consistency and supervisory effectiveness across the landscape.

26. How should enforcement responsibility be transferred should an SPSS be created?

As indicated on the consultation document, either option creates risk. That said, we believe a phased approach would be a better option to ensure continuity and stable, consistent supervisory outcomes during the transition period.

27. What powers should HM Treasury have to oversee an SPSS?

We note the suggestion that the SPSS would be accountable to HMT and Parliament regarding its mandate and use of powers. It is imperative that structures/mechanisms are put in place, and safeguards are ensured regarding the independence of the legal profession to the state, a fundamental constituent of our democracy.

28. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

Whilst we understand the *theoretical* rationale and concept of an SPSS (for example, in terms of consistency of supervisory outcomes, interaction with law enforcement, pooling of resources, use of technology and more effective “policing of the perimeter”), we believe that these perceived benefits would be undermined by operational issues, complexities and barriers relating to scale/volume knowledge and data sharing, loss of risk knowledge, experience skillset and resource.

The split of responsibilities and accountabilities between those bodies responsible for other more general professional regulation and the AML-oriented SPSS could undermine the effectiveness of this option. We also believe that current trust, relationships and connection with the relevant supervised populations may be significantly impacted and could diminish supervisory effectiveness and achievement of required outcomes.

29. How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?

It is likely there would be a significant impact and increased regulatory burden on firms, with significant additional complexity and co-ordination considerations in terms of regulatory reporting, sets of rules, guidance and gatekeeping checks undertaken, along with inspections/assurance regimes.

There may also be a cross over with multiple supervisory authorities – many larger legal firms currently also have reporting duties to HMRC and the FCA for ancillary financial work undertaken. Any additional supervisor would add to an already complex picture and process.

We do not believe that these issues could simply be mitigated by “certificates of good standing”, the scope and legal standing of which would need carefully considered.

30. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

This is a repeated question. Please see our response to 28.

31. Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.

We foresee the feasibility constraints of an SPSS to be both prohibitive and counterproductive – certainly in the short to medium term. These restraints are particularly acute given its starting point and the current complexity and nature of the UK legal framework and regulatory mechanisms, including where applicable, specific issues and differences relating to the laws across the devolved nations.

Notwithstanding the challenges of passing and implementing a timely, fit-for-purpose legislative framework, there would inevitably be a negative impact in terms of regulatory effectiveness and co-ordination during what would be a significant, turbulent and lengthy transition period, followed by a subsequent settling in period.

From a governance and operational/ logistical perspective, the size, scale and diversity of both the organisation and supervised populations would inevitably be a challenge, would realistically be bureaucratic and overly administrative in nature and may not produce the synergies economies and efficiencies of scale sought. We could also anticipate a significant drain and loss of specific sectoral and geographical skillset knowledge and resource.

SAS

32. Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?

With the appropriate data and mechanisms in place, we do not see any unsurmountable barriers specifically in respect of gatekeeping. We consider it feasible that there could be a centrally held register of regulated businesses or “passport” scheme, which could be relied upon across the supervisory landscape, albeit the standards and checks undertaken to confirm fitness and propriety would need agreed at government/policy level in accordance with international standards.

33. Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.

We refer the reader to our response to question 28 and would note that the challenges foreseen in regard to effectiveness would be even greater given the wider scope, scale and nature of an SAS.

34. Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.

We refer the reader to our response to question 29 and would note that the impacts and burdens foreseen in regard to the separation of AML/TF supervision would be even greater given the wider scope, scale and nature of an SAS.

35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

We could foresee significant *theoretical* benefits in system coordination at a national/international level and with law enforcement, should and if all other challenges, complexities and feasibility constraints could eventually be overcome. We do not however believe that these potential benefits would outweigh the

potential risks of embarking on such an approach, particularly where significant benefits could be derived through other, less complex and risky options.

We further note that the creation of SAS may risk negatively impacting co-ordination at a supervisory level (i.e., between the SAS and non-AML regulators).

36. Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.

We refer the reader to our response to question 30 and would note that the impacts and burdens foreseen in regard to the feasibility constraints of a SAS would be even greater given its wider scope, scale and nature.

Sanctions

37 Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?

We refer HMT to our full response to similar questions on our latest supervisory annual return however, specifically in terms of oversight of sanctions systems and controls we have undertaken supervisory assurance to assess our supervised population's specific exposure to Russia and Belarus. This work is limited given the limited nature and extent of our powers in relation to sanctions supervision, as further described in our response to question 38, below.

Our assurance work has allowed us to assess and to gather a clearer picture of sanctions exposure, the potential impact of increasing sanctions regimes on the Scottish legal sector and extent, nature and strength of mitigation/controls implemented by legal firms. We continue to review this exposure on an ongoing basis – both within our supervisory assurance framework and annual compulsory supervisory returns process.

We also continue to provide guidance to the supervised population where we can, in the form of updated sanctions FAQs found on our website.

38. Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?

The LSS would need additional powers should it become a "sanctions supervisor". We currently have limited powers in respect of monitoring sanctions systems and controls, generally confined to the scope and terms of the Money Laundering regulations r.19, r.33 (6) , and therefore only in respect of those legal firms undertaking work defined by r.12.

To be a fully effective sanctions supervisor, further powers and duties would need conferred upon us to issue guidance, share information, request and review information from firms who undertake legal work out with the scope of r.12, and to provide specific powers in relation to sanctions systems controls in their own right, independent of the Money Laundering Regulations. Further we would require sufficient sanctions enforcement/disciplinary powers.

As has been the case for AML supervision, under our current legislative basis requisite changes would then need made to our practice rules for these changes to become effective. Legislative change would

also be required to provide the Law Society of Scotland with the power to suspend member practicing certificates as a result of sanctions breaches – to mirror existing powers covering AML breaches.

39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

Such a change would be a significant undertaking particularly for small and medium sized supervisors, who may not gain from scale economies available to larger organisations. Supervisors would need to be able to recover these additional costs from their supervised populations. A key challenge for supervisors would be the attraction and retention of knowledgeable, skilled resource to undertake effective sanctions supervision.

40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

Yes, we consider this would be appropriate and also future proof in respect of any new sanctions types or regimes the UK government may wish to implement.

Options Comparison

41. How would you expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

We are not aware of the detailed nature of other PBS' financial models.

PBSs often collect fees to cover the costs of AML supervision as part of their general fee income collection from members. The extent to which the loss of AML/CTF supervision impacts on PBS' financial models will depend on the extent to which PBSs decide to reduce fees to reflect the saving of AML supervisory costs.

It is possible that the loss of AML/CTF supervision for deselected PBSs may be cost neutral for those organisations if the saving of the costs they incur in delivering AML supervision simply results in a corresponding reduction in fees charged to their members.

42. Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness and (b) improved system coordination.

Our detailed responses are set out across this document however, in summary – we foresee OPBAS+ and/or PBS Consolidation on a devolved basis leading to significant enhancements in supervisory effectiveness and system coordination.

For the reasons set out above, we believe that PBS consolidation down to one single AML supervisors for each of the professions, a SPSS or SAS would not, *in practice* lead to significant improvements across these two objectives given feasibility constraints, possible loss of skilled resource and other legal, operational and logistical challenges which would arise.

Public Sector Equality Duty

43. Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?

No comment