Association of Accounting Technicians response to HM Treasury's Anti-Money Laundering supervisory review: consultation

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1. Introduction

1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Anti-Money Laundering supervisory review: consultation

1.2. AAT is an existing supervisor under the Money Laundering Regulations 2017 (MLR).

1.3. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.

1.4. AAT has added comment in order to add value or highlight aspects that need to be considered further.

1.5. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.

2. Executive summary

2.1. **AAT strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the role that accountants play as gatekeepers to financial probity.** Establishing a consistent, risk based supervisory regime in the UK is paramount. Since the publication of the National Risk Assessment 2015 (NRA 2015), AAT and the other Professional Body Supervisors (PBS) in the sector have worked hard in pursuit of that aim. AAT recognises more can be done to strengthen the regime, however AAT does not agree that government's current proposal to create the Office for Professional Body AML Supervision (OPBAS) will achieve this.

2.2. **AAT's key concern, as identified in its response to the previous consultation on the matter, is regarding the limited scope in which OPBAS is anticipated to operate.** AAT contends that this will create a two-tiered approach to supervision. This is particularly relevant to the accountancy sector where HMRC is also a supervisor for unregulated accountants. AAT maintains that this would create opportunities for criminals and contrary to public interest.

2.3. **The best approach to take in relation to creating a similar type of oversight function would be to ensure that all AML supervisors fall within its remit.** This would include statutory supervisors such as the FCA, HMRC and the Gambling Commission.

2.4. **AAT is concerned that, as referenced at 1.2 in the consultation document, that several respondents to the supervisory review consultation cautioned that OPBAS's focus on professional body supervisors could lead to inconsistent standards**. However, the current consultation does not offer anything in mitigation for persisting with this approach.

2.5. **The nature with which this consultation has been handled is a cause for concern.** Considering 2.4 above in conjunction with the timing of the issuing of this current consultation and the short timeframe for submission of responses, AAT is concerned that Government has already predetermined the outcome of this consultation irrespective of the responses it will receive.

2.6. **The questions listed in this consultation document, for professional bodies (PBs) to respond to, are largely aimed at obtaining feedback on resource implications and costs and benefits despite a complete lack of information as to how OPBAS will operate or**

what will be required. As detailed below, it is challenging for AAT to respond to these questions in detail given the absence of specific information as to how OPBAS will operate and the likely impact on the supervisory bodies. This seems to shift emphasis away from the uncertainty that exists around key elements, such as: what HM Treasury's longer-term expectations for the supervisory landscape are; how transitioning those that are currently supervised by a PB that either chooses to step back from supervisory provision or is removed as a supervisor – this is a particular concern for legal PBs; what the response is to the oft made suggestion that the creation of OPBAS will result in a two-tier dynamic of supervision and ultimately mean that supervisor shopping will take place. The absence of detail on these issues further reinforces AAT's concerns about the veracity of the Government's intentions in engaging in consultation on this matter as referenced at 2.5 above.

3. AAT's response to the Call for Further Information:

3.1. **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?**

According to the MLR's PBSs must comply with the following obligations:

- provide adequate resources to carry out the supervisory functions
- share information with:
  - Other supervisors
  - Law enforcement
  - Recognised overseas authorities
- co-operate in the development and implementation of policies and co-ordinate activities to counter money laundering and terrorist financing
- collect and report relevant information for the purpose of performing its supervisory functions

AAT is not satisfied that the Treasury has evidenced that PBSs are not complying with the above obligations to justify the creation of OPBAS as currently proposed. The level to which these obligations are being met can always be improved, but AAT does not believe that The Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017(draft regulations) assists in this.

The regulations do not provide provisions around the following:

a) How the FCA will process the appointment of a new supervisory authority
b) Further clarity around process of removal of a PBSs
c) what happens in the event that a PBS wishes to resign as a supervisory authority

AAT is particularly concerned about the removal and resignation process. There is no clarity about how the responsibilities of the departing supervisor would be handed over to another AML supervisor and what implications this may have for the supervised population. This is a criticism that Transparency International have made in their most recent submission to the government, cautioning that, *"…clear procedures and mechanisms need to be in place to ensure that consolidating AML supervisors under these arrangements does not have a material impact on operational capabilities."*

3.2. **Section 2 - questions applicable to regulated businesses only**
Simplifying and consolidating the quantity of AML guidance available to businesses

AAT supervised members are provided with a copy of AAT's Money Laundering Toolkit. This is a practical guide, which assists members with their obligations under the MLR's. For comprehensive guidance on the MLR's, AAT points its members to use sector wide guidance created by the Consultative Committee of Accountancy Bodies (CCAB), which has existed since 2008.

CCAB guidance states, "*Courts must consider relevant guidance when determining whether an accountant's conduct gives rise to certain offences under either the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2007. It is this guidance which practitioners should consider as authoritative when implementing and complying with anti-money laundering requirements."*

AAT has cascaded these consultation questions to its members for response. However, it should be noted that the answers provided by individual AAT members will be dependent on the size and nature of their firms in determining the level of training and resources that these members provide for their staff.

3.3. **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. Please round your answer to the closest £100.**

AAT predicts that resources will need to be increased in order to facilitate the engagement obligations detailed in the proposed regulations. However, at present there is no detail around the frequency of engagement and further clarification would be required before any exercise in estimating costs could be undertaken. Furthermore, the phrase 'going forward' is vague and it is not clear whether this means engagement regarding the initial set-up of OPBAS, long-term engagement or both.

3.4. **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. Please round your answer to the closest £100.**

The FCA has recently launched a consultation in regards to its sourcebook, which appears to set out the basic framework of OPBAS' approach. Therefore without having been given the opportunity to review the finalised guidance, given it is not yet in place, it is an impossible task to predict whether AAT will need to make changes to align its approach, and if so to what degree, or how much it will cost.

3.5. **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 round your answer to the closest £100.**

The Treasury has confirmed that the updated CCAB guidance will remain the accountancy sector guidance, subject to ministerial sign off. In which case, we are not clear what 'simplified AML guidance for businesses' means.

These consultation questions appear to be premature in the absence of supporting detail and it is therefore impossible for supervisory bodies to be able to answer them appropriately.

4. Further comments and observations:

4.1. Despite AAT's opposition to the creation of OPBAS as proposed, and the significant threat it presents to the public interest, AAT has sought to answer the consultation questions to the best of its abilities.

4.2. A two-tiered supervisory system, which will undermine the UK's supervisory regime, is going to be created unless changes to these proposals are made. Furthermore, it would go against what The Cutting-Red Tape review of the UK's AML/CTF Regime sought to identify and remove, by creating 'unnecessary burdens on legitimate, law-abiding businesses'.

4.3. AAT is conscious of the impending Mutual Evaluation Review, due to be undertaken by FATF on the UK's supervisory regime. AAT is concerned that if the issues highlighted are not appropriately dealt with, this may result in a negative rating. This would be catastrophic for the UK's financial markets, particularly with future Brexit negotiations.

4.4. Approximately 33,000 firms are supervised as qualified accountants by 13 professional body supervisors. Around 13,000 unregulated firms are supervised by HMRC, representing over a quarter of the sector. The disparity in monitoring and ensuring compliance with AML requirements between the two is vast. This distinction was not made in the 2015 NRA, which subsequently resulted in the conclusions being drawn on the sector as a whole.

4.5. Article 48 of the Fourth Money Laundering Directive (4MLD) specifies that all supervisors should, '…have adequate financial, human and technical resources to perform their functions'. PBSs have raised numerous issues with regards to the supervisory performance of HMRC and the lack of resources and transparency in regards to its enforcement activity. The government has done nothing to address these concerns and this will continue to undermine effective AML supervision in the UK.

4.6. The creation of OPBAS will therefore create an opportunity for criminals to exploit the UK's financial system. This will enable relevant persons to engage in 'supervisor shopping' and choose HMRC as a 'softer' supervisory option. The potential related shift from regulated to non-regulated accountants will also likely see a negative impact in professional standards and the benefits that brings to the profession and wider society as a whole.

4.7. AAT is concerned with the lack of evidence that has been produced to support the policy decision to create OPBAS and that PBSs are not complying with their obligations under the MLR's. Treasury's March 2017 consultation response justified the creation of such a body to address 'perceived risks' rather than identifying risks that are backed up with robust evidence.

4.8. The governments Impact Assessment (IA) states the creation of OPBAS 'intends to ensure all supervisors provide a consistently high standard of supervision, by providing the FCA with a new oversight role.' This will certainly not be the case, as statutory supervisors will not fall within its remit.

4.9. The IA also states that the proposed legislation ensures compliance with the requirements of the Fourth Money Laundering Directive, yet as already mentioned, no evidence has been provided to support this. The IA also does not explain why the proposed policy is not gold-plating. AAT would like to point out that no such measure has been taken in any other jurisdictions where multiple supervisors exist in one sector.

4.10. AAT has also noted that only two options were considered by Treasury:

1. Do nothing. There will be no changes to the supervisory regime
2. Legislate to provide FCA with new powers to help, and ensure, professional body AML supervisors comply with their obligations under the MLRs 2017

4.11. Although rated as ‘fit for purpose’, the Regulatory Policy Committee’s opinion on the creation of OPBAS identifies that there is a lack of detail in respect to other options considered (if any), there is little information on the structure of the new institution and the design of the oversight system; and there is no explanation as to why the proposed policy is likely to be the most efficient way of complying with the Directive. These are fundamental issues that the government must address and should include in the final stages of the IA.

4.12. The IA document also mentions that “…*the operational cost of OPBAS is a transfer within the system.”* This is incorrect as the funding of supervisors will be an additional cost to PBSs and their members. It is unclear what the costs will be and AAT understands this will form part of a wider fee consultation to be undertaken by the FCA, which is to be finalised in the summer of 2018. PBSs are concerned that following the consultation an annual fee will be invoiced very shortly afterward in the autumn. There is no discussion of how this fee will work or impact PBSs, their members, or their ability to remain supervisors. Should costs faced by supervisors be excessive, there is a danger that supervision becomes uneconomic for some PBS’s and their members, which could result in attrition.

4.13. Since the 2015 NRA the accountancy sector has worked very hard to work on weaknesses identified. A joint initiative (Flag it up) was established, working with the government, to launch a campaign raising awareness of AML issues within the sector. CCAB guidance has been updated in line with the MLR 2017 to form sector guidance on AML. All accountancy PBSs have agreed a sector-wide risk assessment framework and this has been submitted to the NCA for testing. The sector has also signed up to become members of the FCA’s Shared Intelligence Sharing (SIS) system to ensure that intelligence sharing between supervisors is effective and efficient. It is unclear what further benefits OPBAS will therefore bring to the sector. The only benefits mentioned in the IA document are “…*benefits to businesses as professional body AML supervisors adopt more consistent approaches to supervision, and as AML guidance is streamlined.”* Again, it should be pointed out, that the accountancy sector guidance is already streamlined as members are advised to refer to the CCAB guidance.

4.14. HM Treasury has acknowledged in its most recent consultation outcome that *“OPBAS’s focus on PBSs could lead to inconsistent standards between professional body and statutory supervisors, especially where both professional body and statutory supervisors are active in the same sector.”* However, no further consideration has been made in relation to addressing this inconsistency.

4.15. Despite warnings from both the public and private sector of the risks of creating OPBAS and the availability of various more robust alternatives, HM Treasury has chosen not to explore any further options. Taking this together with both the limited consultation questions and short time-frame provided to respond, AAT is sceptical as to whether HM Treasury is genuinely interested in analysing and taking on board any of the feedback provided in responses.

4.16. AAT believes that as proposed, OPBAS will add no more value to supervision than an adequately resourced HM Treasury able to use its existing powers to revoke the approval of supervisors. If the government fails to heed the warnings detailed in submissions made to date and persists with implementing OPBAS against all industry and affected parties advice, then AAT would recommend an independent review of its operation after two years in order to measure the effectiveness of the OPBAS. This review should also detail whether OPBAS has created further inconsistencies by comparing outcomes with those of statutory supervisors.

5. About AAT

5.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,250 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

5.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Adam Williamson, Head of Professional Standards, at:

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