Association of Accounting Technicians response to the FCA Guidance consultation GC17/7: Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors

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1. Introduction

1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the FCA consultation paper on Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors, published in July 2017.

1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit.

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

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

1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by AAT's 4,250 licensed accountants.

2. Executive summary

2.1. **AAT strongly supports the UK's drive to combat money laundering and terrorist financing and recognises that establishing a consistent, risk based supervisory regime in the UK is paramount.** AAT agrees with the principle of the creation of an oversight function in pursuit of that aim, however AAT is of the opinion that the government's current proposal to do so through the creation of OPBAS is inadequate to successfully achieve its aim.

2.2. **AAT is extremely concerned that the risks of continuing with the implementation of OPBAS, as proposed, have not been sufficiently managed by either the government or FCA.** AAT notes that the FCA has acknowledged these risks in the consultation document under the section headed '*Unintended consequences of our intervention'*, but AAT is not satisfied that the measures put in place will effectively mitigate against them.

2.3. **The proposed regime will lead to a destabilisation of the regulated sector.** The additional charges for PSBs will likely be passed to on to each body's respective members and in turn subsequently to members' clients. This will provide an unfair advantage to unqualified, non-professionals who are not required to hold Professional Indemnity insurance, abide by a Code of Professional Ethics, be subject to robust 'fit and proper' checks or disciplinary process, or undergo quality review activities and be required to engage in ongoing continuous professional development. This does not support the public interest nor does it support the government's aim of making the UK's financial system a hostile environment for illicit finance. It is clearly not in the public interest if professional service providers leave their highly regulated membership body environments and/or their clients move to non-professional providers in order to avoid paying higher fees.

2.4. **The creation of OPBAS has been justified in order to address the inconsistencies in the supervisory regime and the risk that conflicts of interest could compromise professional body supervision as these bodies represent and are funded by the firms they supervise.** No evidence has been presented of inconsistencies between PBSs, although AAT is aware they exist with PBSs and public sector bodies who supervise the same sector, nor has any evidence been produced to show where conflicts of interest have arisen. AAT is of the opinion that

inconsistencies within the accountancy sector only arise by virtue of there being an unregulated population, who are supervised by HMRC. OPBAS will not address these issues and does not have the ability to ensure that such inconsistencies are addressed.

2.5. **In terms of the content of the sourcebook, AAT is disappointed to note that the success measures are based on improving 'perceptions' rather than standards.** The sourcebook lacks detail and does not set a clear sense of direction in terms of what is expected of PBSs.

3. AAT response to the consultation paper

3.1. 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 guidance consultation questions to the best of its abilities.

3.2. AAT's primary concern is in relation to the limited scope in which OPBAS is proposed to operate. AAT is strongly of the view that this will create a two-tiered supervisory system which will undermine the UK's supervisory regime unless changes to the current proposals are made. Furthermore, the creation of OPBAS will undoubtedly increase 'unnecessary burdens on legitimate, law-abiding businesses', which was precisely what The Cutting-Red Tape review of the UK's AML/CTF Regime sought to identify and remove. The potential resultant shift from regulated to non-regulated accountants as identified in the guidance consultation as a possible unintended consequence of OPBAS will have a negative impact in professional standards and the benefits that brings to the profession and wider society as a whole.

3.3. AAT is conscious of the impending Mutual Evaluation Review, due to be undertaken in 2018 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. AAT is aware that FATF has previously denounced regimes where multiple supervisors exist[1] and fears that the creation of oversight is a means by which the government hopes to deflect similar criticisms with regards to the UK regime. However, as proposed OPBAS will do little to address these issues. Instead, AAT would recommend that HM Treasury adopt a consolidated approach which encompasses all supervisors[2], such as that which exists in Spain[3].

3.4. Approximately 33,000 firms are supervised as qualified accountants by 13 professional body supervisors (PBSs). Around 13,000 unregulated firms are supervised by HMRC, representing over a quarter of the sector. The disparity in approach taken with monitoring and ensuring compliance with AML requirements between the PBSs and HMRC 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. AAT is of the opinion that the only way to ensure a consistent approach for the sector would be by either ensuring that HMRC falls within OPBAS' remit. However, due to the legal implications of the Commissioners status, it might be that consideration should instead be given to regulating the accountancy sector.

3.5. Since the 2015 NRA the accountancy sector has worked very hard to address the weaknesses identified. A joint initiative ('Flag it up'[4]) 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 new 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 Service (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 all PBS members are advised to refer to the CCAB guidance.

[1] 'Supervision remains siloed and divided, with individual agencies focussed on their sector' - http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf
[2] HM Treasury's call for information on the UK's anti-money laundering (AML) supervisory regime submission from Transparency International UK (June 2016)
[3] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf
[4] https://accountancysupervisors.co/flagitup/

3.6. 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 consultation response 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.

3.7. Linked to the above point, in order for an independent review to be able to establish the effectiveness of OPBAS after a couple of years in operation there is a need for clearly identified measures for success. The guidance consultation document is very light in identifying success measures apart from referencing improvements in the perceptions of the adequacy and consistency of AML supervision performed by the PSBs. Given the steps that the profession has already put in place as detailed at 3.5 above, AAT would be interested in receiving further detail on how it will be possible to identify the causality of improvement that can be specifically identified as a direct result of the creation of OPBAS. This issue notwithstanding AAT would expect to see greater detail around success measures to further help understand the rationale for implementing OPBAS in the first place.

3.8. The following paragraphs outline AAT's response to the specific questions asked in relation to the proposed sourcebook.

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

Measuring success

3.9. As detailed at 3.7 above, AAT is concerned that success, as provided for in the guidance consultation document, will be measured *'if **perceptions** of the adequacy and consistency of anti-money laundering supervision performed by professional body supervisors – among law enforcement agencies, government departments, international observers and others improve once it begins its work.'* This is insufficiently clear, and moreover AAT is of the view that success should not be measured by the perception of maintaining high standards but instead by ensuring that high standards exist and are maintained.

Definitions

3.10. Member is defined as 'a relevant person a professional body supervisor oversees'. It is not clear whether 'relevant person' is the same definition as detailed in the MLR 2017.

3.11. There is mention of 'senior management' in the sourcebook, but this is not clearly defined (see paragraph 3.14 below).

Governance

3.12. The sourcebook expects evidence of senior management engagement with the performance of AML supervision. AAT would like clarification of what *'senior management'* means and what an appropriate level of seniority (as referenced in the examples of good practice) is in this context. Does this reflect what is defined in the MLR2017 – i.e.: 'a person will meet the definition of senior management if they have sufficient knowledge of your firm's money laundering and terrorist financing risk exposure and sufficient authority to take decisions affecting your firm's risk exposure'?

3.13. AAT conducts its AML supervisory function as part of its wider regulatory framework. This sits separately to AAT's promotional functions to ensure there is no conflict of interest. Furthermore, AAT is taking steps currently to ensure that further provisions for independence and objectivity resides as part of its own regulatory oversight framework.

3.14. AAT supports the expectations set out in this section. AAT recognises failing to ensure the promotional and supervisory functions of professional supervisory bodies creates the risk of conflicts of interest and how this could be perceived to undermine the UK's AML system

Risk-based approach

3.15. AAT has long since applied a risk based approach to its AML supervision and wider practice assurance process. AAT agrees with the basis on which these should be assessed (probability and impact) as detailed in section IV and this is the approach AAT currently takes. AAT recommends that OPBAS provides more detail around the specific indicators for probability, such as what services are considered high risk. Guidance around how to measure impact would also be welcomed. Accountancy PBSs have worked hard to ensure that this is consistent among their supervised populations, however it is noted that such approaches, although similar in principle, varies from other supervisors of which OPBAS does not have oversight – i.e.: statutory supervisors such as HMRC. OPBAS should ensure that such approaches are in line with that adopted by statutory supervisors.

3.16. It is reassuring to note that the FCA has identified the need to have a pragmatic approach when assessing risk and that this will differ from firm to firm and PBS to PBS.

3.17. AAT does not utilise the cluster level approach to assessing risk. Although, AAT can see the advantage of using such an approach, the FCA should be cautioned that adopting different risk assessment models may add to inconsistencies within the sector.

3.18. AAT has identified the need to measure the effectiveness of its risk framework and does this in part by conducting random selection of members for monitoring/assurance reviews. This tests risk parameters and hypothesis, however AAT notes that such measures are not included in the sourcebook.

Supervision

3.19. This section of the sourcebook lacks detail and is more a description of how PBSs currently monitor their supervised populations. AAT would prefer this section to be structured so as to clearly set out the expectation of what tools should be available to supervisors and when they should be utilised in order to ensure that this aligns across the sector. Although the section headed *'good practice'* lists that this should be done in a cost effective and proportionate manner, clarity on what that is would be useful.

3.20. AAT is concerned that HM Treasury has failed to address the disparity in powers available to supervisors under MLR 2017. The FCA and HMRC have statutory enforcement powers as designated supervisory authorities, whereas PBSs do not have access to equivalent powers. This is a potential area where OPBAS could plug such gaps by referring non-compliance to the FCA or the HMRC for recovery.

Information sharing

3.21. AAT attends both the AAG and AMLSF. It is also a member of SIS. AAT is wary that if some bodies are signed up to SIS and others to FIN-NET, this presents a challenge in terms of consistency. AAT would seek clarification as to whether there will be an expressed preference or whether all PBSs will be expected to sign up to both.

3.22. AAT is aware that The FCA houses the SIS system, but once again it is unclear whether HMRC will be using this or FIN-NET. This presents another inconsistency in standards and opens the door for 'relevant persons' to 'supervisor shop' and choose HMRC as a 'softer' supervisory option.

3.23. It would be useful if OPBAS ensures that the NCA and HM Treasury is more engaging and less reluctant to share information. For example, during the work undertaken to complete the NRA 2015 it was reported that the accountancy sector is high risk, despite the AAG identifying the contrary. Law enforcement agencies and HM Treasury reported alternative evidence of risks, but have not shared this information with accountancy PBSs to analyse or communicate to members.

Information and guidance for members

3.24. CCAB guidance has been established for the accountancy sector since 2008 and it is unclear what value this section adds to the current supervisory regime. Again, there is a lack of detail within the sourcebook and guidance is vague.

Staff training

3.25. The Money Laundering Regulations 2017 requires PBSs to make arrangements to ensure they employ only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions. AAT agrees with this requirement, however, it is unclear how OPBAS will determine the adequacy of such training. AAT would like to point out that the level of training and qualification will be dependent on the supervised population and PBSs should be afforded the opportunity to evaluate and assess this so that it is in line with resources and proportionate to risk.

3.26. AAT would also like to point out that such requirements should be replicated for statutory supervisors, such as HMRC to ensure that standards are consistent across the regime as a whole. However, as OPBAS will not have the authority to ensure this and it is questionable as to whether there are sufficient resources to ensure this for statutory supervisors. AAT is concerned this will cause further inconsistencies within the regime and will provide a means for criminals to exploit such weaknesses with the regime.

Enforcement

3.27. AAT agrees with the proposals set out in this section, however it should be pointed out that such measures are already carried out and embedded by most PBSs.

Record keeping and QA

3.28. AAT has submitted returns on an annual basis to HM Treasury. The MLR 2017 ensures that this is a statutory requirement for PBSs and it is unclear how this adds to guidance.

3.29. AAT would seek clarification on the frequency of 'periodic review' in the context of internal audit. It is also unclear whether this would apply to all PBSs.

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

3.30. HM Treasury has undertaken little work and has not sought to engage with PBSs to ascertain the cost implications of setting up OPBAS. It is noted a more detailed exercise will be conducted as part of the FCA's wider fee consultation in the Autumn, this would seem to obviate the scope for detailed consideration around the brief analysis provided on the likely costs in the guidance consultation document. Given the potential impact of the fee implications on the supervisory bodies, to invite comments at this stage therefore is, in the absence of more detailed information, less beneficial than would be preferable. AAT will therefore be looking to the wider fee consultation as the opportunity to engage more comprehensively on this matter which is appropriate given that the impact of the related costs could result in PBSs resigning their supervisory status or as a knock-on effect, see members resigning their professional membership. AAT also notes that although the wider consultation is to take place in the Autumn 2017, very little time has been given to PBSs to budget for such costs as they will be expected to be pay the fees by the time OPBAS is up and running, in the first quarter of 2018.

3.31. AAT is confused as to the calculation of the average incremental additional cost per supervisor of £39,800 given that there is reference to the running costs being £2m per year. There is little detail on costs and benefits. It is noted that the consultation states it is difficult to estimate the monetary value of the benefits at this point, however considering the impact OPBAS will have on PBSs and their members it is important to get a sense of what measures for success will be put in place.

3.32. AML activities are integrated in PBSs wider regulatory framework and professional standards as a whole. It appears that the current cost estimate for OPBAS will be highly disproportionate and does not recognise the need to ensure PBSs conduct intervention on a risk basis depending on the size and activities of its supervised population.

4. About AAT

4.1. 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.

4.2. 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.

5. Further information

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

E-mail: consultation@aat.org.uk Telephone: 020 7397 3088

Association of Accounting Technicians
140 Aldersgate Street
London
EC1A 4HY