STEP Consultation Response: Reforming Anti-Money Laundering and Counter Terrorism Financing Supervision Rules

About Us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 22,000 members in over 100 countries and over 8,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

Purpose of this Paper

STEP responds to a consultation by His Majesty's Treasury (HM Treasury) on reforms to the current anti-money laundering and counter-terrorism financing (AML/CTF) supervisory system. The consultation proposes four models including the establishment of a single supervisory body and reforming the structure of the Office for Professional Anti-Money Laundering Supervision (OPBAS).[1]

Response

STEP is not a supervisor under the OPBAS regime, however many of our members will be subject to supervision through their primary professions and will potentially be impacted through amendments to this systems of oversight. In our response we have considered some of the pros and cons of each of the options presented for supervisory reform, before responding to some of the questions set.

STEP believes the OPBAS+ model would be the least costly options and the easiest to implement, due to the governance structures already in place. However, the OPBAS+ may produce limited benefits in implementing practical solutions if wider powers are not given to reach consensus on key issues. A Professional Body Supervisor (PBS) consolidation model may simplify the process of building consensus on risk

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[1] HM Treasury: https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision

assessment and information sharing with fewer PBSs. However, there is a risk that a detailed understanding of the different areas of risk associated with different sectors of the accountancy and legal professions. The main advantage of a Single Professional Services Supervisor (SPSS or Single Anti-Money Laundering Supervisor (SAS) is they eliminate the risk that different PBSs will take a different approach to risk assessment. The risks with both these models is a potential lack of detailed understanding of different professions. Both these options would further prove more costly than the first two options. A more detailed explanation of our reasoning for these four options can be found below.

Chapter 2: Objectives

Q.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?

STEP agrees with the objectives set out in this consultation. It is important that the option chosen by HM Treasury is seen as one that will continue to uphold effective anti-money laundering (AML) supervision. The option must be feasible as significant resources would be dedicated into implementing the supervisory model selected. Given that taxpayers' and professional's money would be used in implementing this policy, any change in AML supervision should continue to deliver effective supervision whilst not proving an overly costly use of public funds.

Chapter 3: OPBAS+

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

Graduation of sanctions is likely to be much more effective and provide a greater range of options. Withdrawing the mandate to supervise is draconian and leaves firms without oversight that would increase rather than decrease money-laundering risk. We need to remember the money launderers are the criminals and not the vast majority of firms being supervised. Punishing administrative gaps with the justification something might have happened has been the Financial Action Task Forces' (FATFs) response to too few AML prosecutions and a poor rate of recovery proceeds of crime recovery. A better response would be to revisit the investment in the criminal intelligence and police resources dedicated to financial crime. At present, most suspicious activity reports (SARs) are given no serious attention by the authorities.

Q.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?

To retain public confidence with the money laundering regime, OPBAS would benefit from rules requiring a percentage of the supervised population to be reviewed in any given period. There would also be benefit in rules requiring PBS to issue public statements on firms falling below the required standard, along with more detailed reports by both the PBS and OPBAS on the effectiveness of all parties in carrying out

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their supervisory duties and identifying how they monitor the identified risks within the firms which they supervise. The introduction of powers to issue fines would improve effectiveness aspects of the relationships between OPBAS and the PBSs.

Q.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 simplicity of having a ‘default’ legal sector makes sense, as practitioners in the legal sector are regulated by a range of legal regulators at present or indeed may be providing legal services which are not subject to the reserved activities and therefore are outside the scope of some form of regulation, or they may be regulated for some activities which are not considered to be legal services. In this instance, the establishment of a ‘default’ legal sector may leave practitioners being regulated by two supervisors and therefore paying two fees.

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

STEP believes the OPBAS+ model would be the best option in terms of supervisory effectiveness. Given that this option requires no structural change, there would be no requirement for a transition period in order to implement the new regime. It would be premature to consider overhauling the AML landscape when taking into account this system was introduced in 2019. The granting of additional powers to OPBAS, such as fining powers and restricting supervisory population, would maintain high standards within the structure of the current AML supervisory regime, as it would allow OPBAS to monitor PBSs closely and take action where some are not meeting standards of AML supervision. Furthermore, the strengthening of existing procedures and guidance for current supervisors would also be useful, given the differences in risk assessment and data sharing between PBSs.

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

It is worth noting that although the OPBAS+ model would be the least complicated model to implement, the current issues of consensus between PBSs and HMRC must also be addressed to ensure better system coordination under the OPBAS system. OPBAS notes in its 2023 report on Trust and Company Service Provider (TCSP) risk, that different PBSs take different approaches to risk, data and also have varying levels of engagement levels with stakeholders. Therefore, should the OPBAS+ model be implemented, it must also be complemented by continuing PBS engagement to build consensus on risk indicators and data analysis to provide a better baseline approach to AML supervision. There are already existing forums, such as the Intelligence Sharing Expert Working Group’s which bring together the accountancy and legal sectors. Perhaps the terms of reference for these forums could be reviewed to enhance information sharing on AML supervision.

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

As stated above, the OPBAS+ model would be the most feasible option as there is less risk in terms of the PBS losing policy expertise due to any transition period that may occur in the other models. Other models would require time to establish, recruitment of sufficiently experienced individuals in both money laundering, supervision, regulation and the differing sectors in which ML may occur. OPBAS+ would be the easiest model to implement as the governance structures are already in place, which would therefore make it the most cost-effective and proportionate model.

Chapter 4: PBS Consolidation

Q.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.

STEP supports the use of a UK-wide remit over retaining separate PBSs in devolved administrations. It would be best to remain consistent with international standards rather than introducing local variations of AML supervision.

Q.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. See our answer to the Question above.

Q.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?

STEP would support HMRC retaining supervision of accountancy service providers (ASPs) and TCSPs not currently supervised by PBSs. The issue in the current system is that PBSs take different approaches with regards to risk, including supply chain risk, which is acknowledged by OPBAS in their 2023 report on TCSP risk. Therefore, HMRC and PBSs should engage further to build a set of common risk indicators and align the approach. HMRC and PBSs could also engage on establishing a core set of data standards to allow trends to be more easily tracked and enable PBSs to make cross-sectoral comparisons.

Q.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?

This depends on whether the PBS have statutory powers to take action against firms undertaking reserved activities. Reserved activities under the Legal Services Act 2007, which are carried out without a licence to practice are likely to be subject to some form of illegal practice monitoring which regulators, such as the Solicitors Regulation Authority will have statutory powers to take enforcing action, whereas the accountancy sector may not have the same statutory powers unless the activity is being undertaken by firms or individuals deliberately misrepresenting themselves.

Q.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?

As noted in question 18, the accountancy and legal sector are both complex in terms of identifying and mitigating AML risks. As can be seen from the current range of PBs across the legal and accountancy sector the activities carried out in these fields is extremely varied. For anybody to be an effective supervisor, a clear understanding of their sector, how it operates, its practitioners, and the challenges which it faces is essential. To consolidate the legal and accountancy sectors risks creating a vacuum in that understanding, taking significant time to re-establish that knowledge and expertise, and to rebuild both public and professional understanding and trust in a single body. In the immediate short to mid-term (say five to ten years), this would pose an increased risk to the money laundering supervisory regime.

We accept that such consolidation would provide simplicity to the supervisory regime in terms of all activities operating to the same standard and provides an element of clarity for the public as to who the professional regulator is, in our opinion this benefit does not in our opinion outweigh the disruption in knowledge and expertise which would occur and therefore the aims of government would be undermined.

Consolidating the PBSs could mean there is less understanding in terms of the variety of risks that occur across different sectors of the accountancy and legal professions. Whilst it may simplify the process of finding consensus of risk indicators between PBSs, maintaining the correct level of understanding of the variety of risks both professions face is crucial to maintaining high standards of AML supervision.

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

A reduced number of PBSs should ideally result in a more consistent approach taken to risk assessment.

However, as discussed above given the scope of the accountancy and legal sectors creates complexity for AML supervision. As identified there is a risk under a PBS consolidation system there would be a loss to sector specific knowledge and expertise hindering the ability for effective risk assessments and identifying emerging trends. The ICAEW notes in its response to this consultation that it is crucial that consolidated PBSs should retain expertise found in the current PBSs, and STEP supports this view.

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

As noted above, the main advantage of a consolidated PBS model would be fewer discrepancies in guidance and risk assessment that have been observed under the current system, due to there being fewer PBSs to coordinate. This should suggest greater consistency within the standards and assessment for compliance being carried out by the supervisor. However, given the range of sectors covered by accountancy and legal professions, a consolidated PBS system risks observing a limited range of firms' business when analysing risks and trends from firm audits if there are fewer PBSs covered in the new system. There is also the risk that the consolidated PB will not have the depth of knowledge and expertise to fully understand the sector in which they operate thereby enabling the potential for missed understanding of information being reviewed.

Q.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?

OPBAS should maintain the powers that are set out in the current regime. Funding will need to be provided to enable OPBAS to recruit sufficient policy, operations and compliance personnel to deliver the added provisions required by the OPBAS+ model.

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

We would support the most cost effective option to administer.

Q22: Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

The PBS consolidation model would be the second most feasible option behind the OPBAS+ model.

Chapter 5: Single Professional Services Supervisor (SPSS)

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

A SPSS should contain the same supervision powers found under the current regime.

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

HM Treasury should maintain the same powers as under the current regime when supervising a SPSS. STEP supports the ICAEW's position that a SPSS should be required to publicly report its activity annually to ensure greater accountability.

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

STEP believes that the establishment of an SPSS poses potential risks to the level of supervisory effectiveness, due to the time needed to implement the new body. HM Treasury would be required to maintain the level of expertise that was present before the transition to ensure that high standards in AML supervision are maintained. There is a risk that a SPSS would lack the detailed understanding of each profession that would be more likely under an OPBAS+ or consolidated PBS given that each PBS contains the policy expertise related to its industry.

However, an advantage of this model would be that an SPSS would potentially remove the risk that different PBSs would take a different approach to identifying AML risks. OPBAS' 2023 review on TCSP risk showed that PBSs had different views on high-risk and low-risk indicators of TCSP services, and encouraged further collaboration between PBSs to build consensus on these risk indicators.[2] The establishment of an SPSS would remove the need for PBSs to work towards this consensus as an SPSS could possess a uniform set of risk indicators under one umbrella.

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

The SPSS model would be a less feasible than the OPBAS+ and PBS consolidation models due to the extra costs and structural changes involved in implementing the new model.

Chapter 6: Single Anti-Money Laundering Supervisor (SAS)

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

The establishment of a SAS would pose similar risks to supervisory effectiveness that a SPSS would, in that a transition period would be required to set up the new body. The risk is that this new body would require significant policy expertise to uphold high standards of AML supervision and there is less of a guarantee that this expertise would be transferred from the current regime over to the new one. This would further create the risk that a new SAS would lack the detailed understanding of each profession currently contained within the PBSs. Firms that are currently regulated by the Financial Conduct Authority (FCA) and Gambling Commission (GA) have their own set of risks, and the removal of the FCA and GA from supervising AML compliance would risk the same level of understanding for different sectors and their risks not being transferred over to the new body.

Furthermore, like the SPSS, the new SAS would have the opportunity to establish a consistent set of risk indicators to eliminate any inconsistencies in approach currently seen by PBS. A clear set of guidance on risk assessment would assist firms in picking up AML-related risks within their sector and increase standards in AML supervision. As noted above, this system will take time to implement and does not guarantee that financial criminals will not exploit the system while under transition.

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

Like the SPSS model, STEP believes that the SAS would also be a less feasible option compared to the OPBAS+ and PBS Consolidation models. The establishment of a SAS would be costly and likely increase the costs of regulating each profession.

[2] Office for Professional Body AML Supervision: *Multi-PBS Project on TCSP Risk*

Q.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?

We have not identified any matters affecting those with protected characteristics.

If you have any questions regarding our response please contact Matt Stephenson, STEP Government Affairs Executive at policy@step.org

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