



# Reforming Anti-Money Laundering and Counter-Terrorist Financing Supervision

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# Reforming anti-money laundering and counter-terrorism financing supervision: Response to HM Treasury consultation 2023

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# Introduction

This paper provides an overview of our submission to HM Treasury’s consultation on proposed options for reforming the anti-money laundering and counter-terrorist financing (AML/CTF) supervisory regime in the UK.<sup>1</sup> Currently, there are 22 ‘professional body supervisors’ (PBSs) for legal and accountancy firms, alongside three statutory AML supervisors: the FCA, HMRC and the Gambling Commission. The PBSs are the professional or regulatory bodies for different parts of the legal and accountancy sectors across the UK that are allocated the responsibility for AML supervision under the Money Laundering Regulations.<sup>2</sup> PBSs are themselves supervised by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), established in 2018.

Our submission was based on research carried out over several years, examining the AML regulation and supervision of legal and accountancy professionals and information and intelligence sharing within the UK’s AML regime.<sup>3</sup> The submission contained detailed answers to questions posed by the consultation. This paper draws together the key points we made in those answers.

We conclude that:

- There is understandable concern about the current number of professional body supervisors for the legal and accountancy sectors and about disparities in the effectiveness of their AML supervision. Responsibility for AML supervision was assigned to existing professional and regulatory bodies in these sectors, resulting in the 22 professional body supervisors that we currently have. It is appropriate to re-assess this system and consider if it provides the most effective approach to AML supervision.

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<sup>1</sup> HM Treasury (2023) *Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime: Consultation*, June 2023. Available at: <https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorist-financing-supervision>. From here, we will use ‘AML’ rather than AML/CTF.

<sup>2</sup> Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 7(1)(b); responsibility for supervision of the legal sector in England and Wales has been delegated from the Law Society of England and Wales and the Bar Council to the Solicitors Regulation Authority and Bar Standards Board respectively, following their establishment in 2007.

<sup>3</sup> See for example: Benson, K. ‘Money laundering, anti-money laundering and the legal profession’ in King, C., Walker, C. and Gurulé, J. (eds.), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave MacMillan, 2018); Benson, K., *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control* (Routledge, 2020); Benson, K. ‘Occupation, organisation and opportunity: theorising the facilitation of money laundering as ‘white-collar crime’ in Benson, K., Walker, C. and Gurulé, J. (eds.) *Assets, Crimes and the State: Innovation in 21<sup>st</sup> Century Legal Responses* (Routledge, 2020); Benson, K. ‘Anti-Money Laundering and the Legal Profession in Europe: Between Global and Local’ in Lord, N., Inzelt, É, Huisman, W. and Faria, R. (eds.) *European White-Collar Crime: Exploring the Nature of European Realities* (Bristol University Press, 2021).

Recent, as yet unpublished, research includes: ‘**Preventing Money Laundering Through Law Firms**’ (Benson, 2021-23; funding from University of Manchester School of Social Sciences Research Support Fund) and ‘**Anti-money laundering governance networks in the UK/Information and intelligence sharing within the UK’s AML regime**’ (Bociga, 2021-2024; funding from Economic and Social Research Council). We are very grateful to the participants from across the legal and accountancy sectors, professional bodies, regulators, law enforcement, and wider AML expert landscape for contributing to this research.

- The stated objectives for supervisory reform (increased supervisory effectiveness, improved system coordination, and feasibility) are appropriate. Improved supervisory effectiveness should be the primary objective. Measures to improve system coordination should create greater supervisory effectiveness, and reforms aimed at enhancing supervisory effectiveness and system coordination should be feasible. The definition of ‘supervisory effectiveness’ will need to be operationalised, and a baseline assessment should be developed before any changes are made to the supervisory regime, to fully understand the changes required and evaluate the impacts of any changes.
- Consolidation of supervisory functions offers potential benefits, relating to greater consistency, coordination, information sharing and accountability; smaller, less well-resourced PBSs being relieved of burden of supervision; and the ability to incorporate new sectors identified as a money laundering risk. However, the impact of these potential benefits on ‘supervisory effectiveness’ is currently unknown.
- Consolidation of supervisory functions also poses notable risks. In summary, these include (variously applicable to the different consolidation models):
  - Loss of local understanding of money laundering risks and underlying criminality, nature of supervised populations, and specific legal and regulatory systems.
  - Loss of separate PBSs for the smaller jurisdictions of Scotland and Northern Ireland, and their established relationships with supervised populations and law enforcement bodies, ability to provide specific guidance and education, and voice in shaping national policy.
  - Loss of detailed understanding of different sectors and parts of sectors, related to functions, money laundering risks, and AML considerations.
  - Loss of connection between supervisor and supervised population, which can play an important role in managing risk, promoting compliance, supporting and advising firms, and disseminating/gathering intelligence.
  - Increased size and diversity of supervised populations creating implications for staffing and resource allocation and challenges for risk assessment and monitoring.
  - Firms would be supervised for AML purposes and regulated for non-AML/general conduct issues by different bodies, creating supervisory gaps and loss of internal intelligence sharing as well as practical challenges.
  - Risks of transition to a new supervisory model, including teething problems of a new organisation (if relevant), with new staff and systems; need to learn about new supervised populations; and existing PBSs becoming unmotivated or inactive during the transition period.
  - Challenges that can exist in large multi-departmental organisations, in relation to information flows, silos, communication, coordination, prioritisation and governance. Such challenges may mitigate some of the potential consistency, coordination and information sharing benefits of consolidation.

- There is no easy answer to the question of AML supervisory reform. The proposed models each have strengths and weaknesses and will inevitably involve trade-offs between specialism and consistency. We urge caution in moving towards a consolidated model, due to the risks outlined above.
- If a consolidated model is selected, efforts should be made to preserve jurisdiction-, sector- and specialisation-specific expertise and to mitigate the risks inherent in transitioning to a new model and, potentially, a new organisation. The chosen model must have appropriate resourcing, staffing, transition management, operation and governance processes attached.
- OPBAS should continue to play a role in professional body AML supervision – either permanently or during the transition to a single body - while strengthening and developing its approach and resources. OPBAS should have a broader range of interventions available for use against supervisors not carrying out their duties, including measures to effect change through education and guidance as well as sanctioning powers. OPBAS should continue to facilitate cooperation and information sharing between PBSs, law enforcement and government bodies (in all directions) and play a more active role in facilitating the sharing of good supervisory practice. To fulfil its role effectively, OPBAS requires the appropriate resourcing, staffing levels, knowledge and expertise.

## Objectives for supervisory reform

The first part of the consultation sets out three objectives for supervisory reform against which the evidence gathered through the consultation will be analysed: increased supervisory effectiveness, improved system coordination, and feasibility. It asks whether these are the correct objectives for the project and whether they are ordered appropriately in terms of relative priority. We broadly agree with these objectives and set out some key points that should be considered in relation to each objective and their relative priority:

### *Increased supervisory effectiveness*

Supervisory effectiveness is defined as ‘risk-based supervision that ensures consistent and proportionate compliance with the Money Laundering Regulations across the regulated population and increased effectiveness in protecting the UK economy from illicit finance’ (para. 2.2).

Risk-based supervision refers to the requirement for supervisors to understand the money laundering risk in their sector and focus their monitoring and enforcement activity on members of their supervised population that are most likely to be used to launder money. Supervisors approach this requirement by, for example, producing sectoral risk assessments; carrying out thematic reviews on specific areas of concern; risk assessing their supervised populations to identify high, medium and low risk organisations; and undertaking monitoring activities (i.e. desk-based reviews, on-site visits) targeted primarily at those identified as high risk (there are other reasons why a supervised firm may be subject to a review). The effectiveness of this approach, therefore, is dependent on rigorous and accurate assessment of money laundering risk within national and sectoral risk assessments – a process that is beset by conceptual and methodological challenges.<sup>4</sup> OPBAS reports that many PBSs have ‘not implemented a fully effective risk-based approach that prioritises their AML supervisory and enforcement work’. Unfortunately, they do not identify which PBSs this refers to, though do state that PBSs with larger supervised populations tend to be more effective in implementing a risk-based approach.<sup>5</sup> This may reflect the resources and expertise available in these supervisors.

Taking ‘necessary measures’ to ensure compliance with the Money Laundering Regulations is a requirement for PBSs under Regulation 46. Supervisors approach this requirement through monitoring (i.e. thematic reviews, desk-based reviews, on-site visits, and investigations where indicated), enforcement where appropriate, and the provision of advice, training and guidance. The extent to which different PBSs undertake these processes, and how adequately and proportionately they are carried out, will vary, depending on the expertise, priorities and resources of the PBS.

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<sup>4</sup> See, for example, Special Issue of European Journal on Criminal Policy and Research (2019, Volume 25), e.g. Savona, E. and Riccardi, M. (2019) ‘Introduction: Assessing the Risk of Money Laundering: Research Challenges and Implications for Practitioners’, *European Journal on Criminal Policy and Research*, 25: 1-4.

<sup>5</sup> OPBAS (2023) *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and themes from our 2022/23 supervisory work*. OPBAS/FCA April 2023. Available at: <https://www.fca.org.uk/publication/opbas/opbas-report-progress-themes-supervisory-work-2022-23.pdf>

The definition of ‘supervisory effectiveness’ goes beyond compliance with the Money Laundering Regulations, however, reflecting an ‘emerging global consensus’ that technical compliance with regulations is ‘a necessary but insufficient condition of AML effectiveness’.<sup>6</sup> This is to be welcomed, and ‘increased effectiveness in protecting the UK economy from illicit finance’ is a valuable downstream goal for effective supervision. The challenge is understanding what exactly that means, how it would be achieved, and how it would be measured. Much has been written about existing methods to measure ‘effectiveness’ of the AML regime more broadly, and the lack of sufficient data to do so accurately,<sup>7</sup> and while the aim here is narrower than other desired outcomes of the AML regime (e.g. reducing money laundering, reducing levels of predicate offences, or ‘strengthening financial sector integrity and contributing to safety and security’<sup>8</sup>), ‘protecting the UK economy from illicit finance’ would still need operationalising.

Work is currently underway by HM Treasury to develop metrics for ‘supervisory effectiveness’. If these are measurable and sufficient available data exists, it would be useful to develop baseline assessments before any changes to the supervisory regime are implemented in order to fully understand the need and rationale for changes and to evaluate the impacts of any changes.

The section on supervisory effectiveness within the consultation document highlights the benefits of supervisory expertise and deep understanding by supervisors of their supervised populations; for example, it refers to an ‘in-depth and up-to-date knowledge of the risks in the sectors they oversee’ (para. 2.4). It also recognises the challenging job that supervisors have (para. 2.7). These are important points and should be considered when assessing the benefits and risks of consolidating supervisory functions into a smaller number of PBSs or a single professional services supervisor. Consolidation may risk losing the in-depth and up-to-date knowledge of sectors or parts of sectors (for example, in separate parts of the UK) and the ability of supervisors to keep track of legislative and political changes in the AML landscape and their implications for different supervised populations. However, removing the significant responsibilities of AML supervision from smaller PBSs with limited resources may be of benefit to them and the system.

Inconsistency is a theme throughout this section of the consultation document, for example, identifying ‘inconsistency in supervisors’ approach to risk-based supervision’ (para 2.4). Inconsistency

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<sup>6</sup> HM Treasury (2022) *Review of the UK’s AML/CFT regulatory and supervisory regime*, June 2022. London: HM Treasury, p. 14. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1085407/MLRs\\_R\\_Review\\_Report\\_-\\_2.5\\_for\\_publication.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085407/MLRs_R_Review_Report_-_2.5_for_publication.pdf). See also Wolfsberg Group (2021) *Demonstrating Effectiveness*, June 2021.

Basel: Wolfsberg Group. Available at: <https://wolfsberg-group.org/news/8>.

<sup>7</sup> See, for example: Levi, M., Reuter, P. and Halliday, T. (2018) ‘Can the AML system be evaluated without better data?’, *Crime, Law and Social Change*, 69(2): 307-328; Pol, R. (2018) ‘Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?’, *Journal of Money Laundering Control*, 21(2): 215-230.

<sup>8</sup> FATF (2013-2023) *Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems*, updated June 2023. Paris: FATF, p.15. Available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>



in the standard of supervision across current PBSs is clearly a concern, and improving this a valid aim. However, differences in the approach PBSs take may be appropriate – differences in the risk landscape between and within sectors may require different approaches to risk assessment and management; a one-size-fits-all approach to supervision that doesn't take account of context may not be the most effective approach. Consistency could be improved without significant structural change through more effective mechanisms for sharing good practice, facilitated by OPBAS.

### *Improved system coordination*

Improved system coordination refers to 'more effective collaboration and accountability across the AML/CTF regime, including between supervisors and with law enforcement agencies' and taking account of 'crossovers with wider regulatory regimes and policies' (para. 2.2). Improved system coordination and information sharing is an important goal. There has been progress made towards better information sharing over recent years, through OPBAS's<sup>9</sup> goal to 'facilitate collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies', the development of ISEWGs, and the building of relationships between PBSs within and between sectors. In addition, a range of information management software tools, such as FIN-NET and the Shared Intelligence Service (SIS), have been integrated into the system. These software platforms have seen widespread adoption among PBSs, though their use remains comparatively limited within HMRC and law enforcement agencies.

However, it is often information being shared between supervisors and there appears to be a lack of actionable intelligence being fed into the sectors. In addition, concerns are often raised within the regulated sector and by supervisors about the lack of general or specific (where possible) feedback on submitted SARs and their subsequent analysis. While law enforcement may not be able to provide feedback on specific SARs, more general feedback about the quality of submitted SARs and on risks, trends, and examples of money laundering methods gained from analysis of SARs would be welcomed. The sharing of actionable intelligence may be improved by having fewer PBSs for law enforcement to work with. However, with a larger and less focused PBSs, intelligence fed into them may be more likely to get lost, less likely to be understood, or less likely to filter down to firms effectively.

PBSs often express concerns about the government's approach to risk identification in the National Risk Assessment. They argue that this risk assessment lacks clarity and detail, making it difficult for PBSs to fully understand the risk and adopt necessary measures. When PBSs seek information on the specific cases that contribute to risk determination, the government tends to be hesitant in sharing this information, often providing only general insights. The 2022 Treasury review of the AML/CTF

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<sup>9</sup> OPBAS's goals are (i) to ensure a robust and consistently high standard of supervision by the PBSs overseeing the legal and accountancy sectors, and (ii) to facilitate collaboration and information and intelligence sharing between PBSs, statutory supervisors, and law enforcement agencies. <https://www.fca.org.uk/about/how-we-operate/who-work-with/opbas>

regime highlighted the need for a ‘more granular risk understanding’, which the regulated sector suggested would show ‘where current requirements under the MLRs are disproportionate to the nuanced risks in individual sectors’.<sup>10</sup>

System coordination can be enhanced without significant institutional reforms by encouraging the use of existing information and intelligence-sharing software; encouraging law enforcement to establish a mechanism for providing feedback on quality of submitted SARs and specific and timely information on money laundering risks and trends; promoting improved communication and collaboration when carrying out national risk assessments; fostering a better understanding of the specific forms of information and intelligence possessed by each sector; and enhancing OPBAS’s activity in relation to sharing good supervisory practice.

## Feasibility

The final objective is to ensure that the chosen model is practically feasible with ‘suitable funding and governance structures and realistic timelines’ (para 2.2). This section raises a number of important points about funding, staff resources, appropriate expertise and transition risks – all of which will need to be considered when deciding on and then implementing the preferred reform option. There will be trade-offs with all options and issues of feasibility will need to play a role in the final decision made. There would be little point deciding on a reform that meets the supervisory effectiveness and improved system coordination objectives but wasn’t practically feasible. Similarly, opting for a reform that is practically feasible but doesn’t meet either of the other objectives would be a wasted opportunity.

Improved supervisory effectiveness (however that is measured) should be the primary objective. Measures to improve system coordination should create greater supervisory effectiveness, and reforms that are believed will enhance supervisory effectiveness and system coordination should be feasible and have appropriate resourcing, staffing, transition management, operation and governance processes attached. While practical challenges on their own shouldn’t be a reason to not progress with a reform option if it meets the primary objective of increased supervisory effectiveness, the difficulty is that improvements in effectiveness on the basis of structural reforms are currently theoretical and cannot be guaranteed.

It is also worth highlighting that structural reform of the supervisory system isn’t a panacea; this will not in itself solve all the challenges faced by those navigating the AML regime or trying to reduce money laundering,<sup>11</sup> and any new structure will inevitably have its own problems and challenges.

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<sup>10</sup> HM Treasury (2022) *Review of the UK’s AML/CFT regulatory and supervisory regime*, June 2022. London: HM Treasury, p. 14, para. 2.13.

<sup>11</sup> Westmore, K. (2023) *Anti-Money Laundering Supervision of the Professions in the UK: Four Key Challenges and How to Address Them*, RUSI Policy Brief, 24 October 2023. Available at: <https://rusi.org/explore-our-research/publications/policy-briefs/anti-money-laundering-supervision-professions-uk-four-key-challenges-and-how-address-them>

## Options for reform

The consultation sets out four options for reform:

**Model 1 (OPBAS+)** would involve no structural change, but would give OPBAS a range of new powers coupled with additional accountability mechanisms.

**Model 2 (PBS Consolidation)** would retain the current system whereby professional body supervisors (PBSs) have responsibility for AML/CTF supervision of the legal and accountancy sectors, but there would be a degree of consolidation. There are currently 9 legal sector PBSs and 13 accountancy sector PBSs, based on divisions by jurisdiction, type of practice, and membership of professional bodies. The consultation proposes two options within Model 2: one accountancy sector supervisor and one legal sector supervisor, each with a UK-wide remit; or one accountancy sector supervisor and one legal sector supervisor within each jurisdiction (England and Wales, Scotland, and Northern Ireland). The aim of PBS Consolidation would be to ‘reduce inconsistency and complexity by ensuring only the highest performing supervisors remained’.<sup>12</sup>

**Model 3 (Single Professional Services Supervisor, SPSS)** would see a single public body supervising all legal and accountancy firms for AML/CTF (and, potentially, other sectors currently supervised by HMRC, such as trust and company service providers (TCSPs), estate agents, letting agents, money service businesses, art market participants, high-value dealers, and payment service providers). This public body would either be an existing body or, more likely, a new body created for this purpose. This body would be subject to oversight by Parliament, and operationally independent of any ministerial department but accountable to HM Treasury.

**Model 4 (Single Anti-Money Laundering Supervisor, SAS)** would also see a single public body responsible for AML/CTF supervision, but in this model, it would also supervise the sectors currently overseen by HMRC, the Financial Conduct Authority (FCA) and the Gambling Commission. The FCA and Gambling Commission would continue to regulate financial services firms and casinos respectively, but not for AML/CTF purposes. Again, an SAS would be expected to be operationally independent of any ministerial department, but accountable to the Treasury.

(It should be noted that while the consultation document sets out these four models and seeks views on their potential impact on supervisory effectiveness and system coordination and their feasibility, the consultation process will consider variations on the models as set out, where appropriate.)

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<sup>12</sup> HM Treasury (2023) *Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime: Consultation*, June 2023, pg. 8.

## Assessing the proposed models

This section assesses the four proposed models in relation to supervisory effectiveness, system coordination, and feasibility.

### OPBAS+

We believe that OPBAS should continue to play a role in the professional body AML supervision landscape, while strengthening and developing its approach and resources. This enhanced role would be necessary with a PBS Consolidation model. If the SPSS or SAS model was selected, an enhanced OPBAS would be important during the transition phase.

Overall, OPBAS appears to have had a positive impact on professional body AML supervision since it was established in 2017, as a mechanism for understanding the state of play across the PBSs and as a lever for driving up standards within the relevant sectors. For example, supervisors within the legal sector report that the existence of OPBAS - and the resultant visits, assessments, comparisons with peers, and publishing of those comparisons – has changed the culture within supervisors, made supervisors sit up and take note, increased supervisory focus on AML, and helped supervisors press for further resources or make changes required by OPBAS. The Sourcebook has been praised for its identification of evidence-based examples of more or less effective practices, consideration of the way relative risks occur within the legal and accountancy sectors, and consideration of the way that PBSs operate.

However, there are concerns about a high turnover of staff within OPBAS, meaning that the points of contact for supervisors change quite frequently, and concerns that the background of their staff may create a London-centric, policy-focused approach, rather than a deep understanding of what it is like to carry out AML work at the coalface of firms. It has also been suggested that OPBAS could more effectively facilitate the sharing of best practice between PBSs to improve consistency and effectiveness – giving the coordination part of their role as much emphasis as the inspectorate element.

For OPBAS+ to improve supervisory effectiveness, OPBAS would need to strengthen and develop its approach and resources. We believe the OPBAS+ model as presented in the consultation document, with a primary focus on greater powers, is not a sufficient approach for ensuring OPBAS has the greatest impact on supervisory effectiveness. OPBAS should have a broader range of interventions available for use against supervisors that are not carrying out their duties – the two enforcement powers OPBAS currently have are blunt instruments – but, as well as sanctioning powers, these interventions should include measures to effect change through education and guidance. This is particularly important for PBSs with fewer resources and less dedicated expertise. An OPBAS+ model should ensure that OPBAS has the necessary resourcing, staffing levels, knowledge, and expertise.

The OPBAS+ model could improve system coordination by continuing to facilitate cooperation and information sharing between law enforcement agencies, PBSs, and government bodies, bridging gaps and facilitating secure channels for information exchange; ensuring supervisors utilise existing software platforms for managing information and intelligence; ensuring supervisors and law enforcement are aware of each other's legal roles, tools and competences; ensuring PBSs, law enforcement and government bodies work together to fully understand and evidence the risk landscape; and taking a more active role in facilitating the sharing of best practice between PBSs.

## *PBS Consolidation*

There are potential benefits for supervisory effectiveness and system coordination from a degree of PBS consolidation. It is likely that it would create greater consistency in AML supervision and would remove the responsibility of supervision from smaller, less well-resourced PBSs. There is clearly a need for improved AML supervision in some of the existing PBSs.<sup>13</sup> The current structure of 13 PBSs for the accountancy sector and 9 for the legal sector may create barriers to effective information sharing and coordination (between PBSs and/or with law enforcement), and potential confusion regarding information requirements, roles, and responsibilities. There are also measures that could be implemented to improve information sharing and coordination alongside, or outside of, consolidation that should be considered.

However, there are also potential downsides to PBS consolidation, depending on the nature of the consolidation. In summary:

### *UK-wide model (legal sector)<sup>14</sup>*

- Supervisors based in individual jurisdictions will have a greater understanding of the specific legal and regulatory systems in which they operate.
- Differences in the nature of the supervised populations in different jurisdictions, and in the nature of the predicate criminality in different local areas, will create differences in money laundering risk. Supervisors focused on a single jurisdiction will have a more detailed, nuanced understanding of these risks and on the nature of their supervised population than could likely be achieved by a PBS for the whole of the UK, and will be able to direct their activity accordingly.
- The supervised populations are much smaller in Scotland and Northern Ireland than in England and Wales, and so the supervisors can take a different approach to supervision in these jurisdictions. Smaller supervised populations can enable improved relationships between

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<sup>13</sup> Beizsley, D. (2023) *Regulating the accountancy profession for money laundering – is business as usual working?* Spotlight on Corruption <https://www.spotlightcorruption.org/regulating-the-accountancy-profession/>

<sup>14</sup> The current accountancy sector PBS structure is more complex, with AML supervision being linked to professional membership and less clear, and more varied, jurisdictional separation. Therefore, this section has focused on the legal sector, though some points may also apply to the accountancy sector.

supervisors and supervised populations, and greater outreach for education. In addition, supervisors in Scotland and Northern Ireland have developed effective working relationships with law enforcement. These benefits may be lost if consolidation led to AML supervision across the UK being moved to the SRA, the current PBS for England and Wales.

- England and Wales contains the global financial centre of London, which already distorts perceptions of, and narratives around, money laundering risk across the UK. This could have a further distorting effect if there was a single supervisor for the whole of the UK, based in England and Wales. Furthermore, the smaller jurisdictions may lose their voice in shaping national policies if they do not have separate PBSs.
- The increased size and diversity of supervised populations created by consolidation would create challenges for effective supervision.

#### *One PBS for each of accountancy and legal sectors in each jurisdiction*

- While a single PBS for each sector in each jurisdiction (the 6 PBS model) is likely to improve information and intelligence sharing – for example, by having fewer PBSs for law enforcement to work with – intelligence fed into more consolidated PBSs from law enforcement may be less relevant or context-specific and may be less likely to filter down to firms effectively (where this was appropriate).
- While this model may create increased consistency of supervision within sectors, this consistency may be associated with a lack of nuance due to the different functions of different parts of each sector. For example, in the legal profession, solicitors and barristers/advocates carry out different forms of legal work, operate within different structures, have different money laundering risks, and require different AML considerations. There may, however, be a case for the other legal sector PBSs (CILEx Regulation; Council for Licensed Conveyancers; Faculty Office of the Archbishop of Canterbury) to have their AML function brought under one of the larger PBSs if there is evidence that their AML supervision is inadequate, or they lack appropriate resources.

Similarly, in the accountancy sector, consolidating PBSs could potentially lead to a partial loss of expertise and knowledge about the supervised population. The accountancy sector encompasses diverse areas, each functioning differently and carrying distinct money laundering risks. For instance, the risk profile for large firms offering a wide range of accountancy services differs from that of medium or small firms providing more limited services. Likewise, firms specializing in taxation, bookkeeping, or TCSP services have unique risk characteristics.

- In para 4.29, the consultation document highlights that ‘Under this model, some firms would continue to receive supervision for general conduct and other regulatory functions from a PBS which loses its AML/CTF function, and then simultaneously be supervised by a consolidated supervisor for AML/CTF purposes.’ It is important to remember that AML supervision is not the

only role of the regulators/professional bodies that act as PBSs. In a consolidated model, alignment between the AML supervisory function and non-AML supervisory and regulatory functions, which would continue to be split across multiple entities, would be reduced.

For example, in the legal sector, there are currently aspects of concern that could be considered ‘AML adjacent’ but are not currently under scope of the Money Laundering Regulations, such as issues around sanctions, SLAPPs, and wider questions of professional ethics. In addition, AML issues within firms may be identified initially in relation to other work carried out by the professional or regulatory body. Therefore, you may lose the connection between the AML supervisory work and wider work being done in relation to the regulation/supervision and education/training/guidance of firms within these sectors. There will be similar issues in the accountancy sector. Money laundering and the flow of illicit finance is intrinsically linked to the other activities, business functions and processes of regulated sectors, and anti-money laundering is not separate to the wider risk and governance systems and obligations of regulated sectors. (Anti-)money laundering is inherently connected to wider sectoral and organisational contexts. Therefore, we should be careful about measures that act to separate AML from these wider contexts.

We do not believe that the argument in favour of consolidation related to efficiency – that ‘larger organisations would have lower overhead costs than multiple smaller organisations and therefore would be able to achieve more’ (para 4.8) - stands up to scrutiny. The various professional bodies would still exist even if their AML functions were consolidated, as their remit is wider than AML, and there would be costs associated with transition to a single supervisor. The statement that ‘Consolidation of PBSs is expected to lead to improvements in the risk-based approach of supervisors’ (para 4.21) and assumptions about improvements in supervisory effectiveness because ‘UK-wide supervisors would be able to make a risk-based resource prioritisation across a larger population’ (para 4.6) lack evidence.

## *Single Professional Services Supervisor (SPSS)*

Again, there are prima facie benefits for supervisory effectiveness and system coordination from the development of a new body acting as an SPSS (which we believe would be a more feasible option than using an existing PBS to act as an SPSS). An SPSS would have similar potential benefits as the PBS Consolidation option in terms of greater consistency. It could be more flexible in terms of supervising a wider range of sectors, and incorporating new sectors if needed, and would allow oversight by HM Treasury and parliament. There *should* be improved information sharing within a single organisation and between a single organisation and law enforcement, and improved system coordination, which *should* improve supervisory effectiveness. However, these aren’t guaranteed due to problems that often exist in organisations in relation to information flows, silos, tensions between departments and problems with diffusion of responsibility, and that may be created by

transition processes, new staff and new systems. In addition, system coordination and information sharing with non-AML regulatory functions may be reduced due to the reduced alignment discussed above.

Alongside the potential benefits, there are potential downsides to the SPSS model that should be considered:

- Losing jurisdiction-specific and sector-specific knowledge, understanding, context and prioritisation, as highlighted in relation to the PBS Consolidation model. This may be mitigated by having local offices and specialist departments, but these would be unlikely to fully compensate for what was lost.
- Losing the important connection between a supervisor and their supervised population. An AML supervisor's role relies on relationships with their supervised populations. Their role should not just be about enforcement; they also have a role to play in supporting firms to meet their AML obligations and to manage the AML risk to which they are exposed, and in providing guidance and training to their supervised population. Supervisors also rely on the intelligence they receive from their regulated populations. Therefore, while there will always be arguments about the risks of this relationship being too close and negatively influencing supervisors' enforcement activity, there is – again – a balance needed. Losing those relationships between supervisor and supervised population in a consolidated SPSS model, and in the transition to a consolidated model, could be problematic.
- Losing the education and guidance role of supervisors. Education and guidance needs to be specific, relevant, timely and targeted effectively at the supervised population. The more general/less specific it is, the less useful it will be for a population that operates under an ever-increasing volume of guidance, rules, and legislation. This role should remain key in any consolidated model.
- Losing the link between supervisors' AML functions and other functions. PBSs are able to identify issues outside of their specific AML remit that they will understand and be able to act on/pass to the right people. Similarly, other parts of PBSs are able to work with AML functions when identifying relevant issues.
- The size and diversity of the supervised population under an SPSS model – this would have implications for staffing and resource allocation (for example, having sufficient resources to conduct on-site visits), effectiveness across such a diverse population, and risk assessment.
- Problems related to transition to an SPSS – for example, the likely teething problems of a new organisation, with new staff, new systems etc; the need to learn about and fully understand their



supervised populations; and the potential for existing PBSs to become unmotivated or inactive during the transition period.

- The feasibility constraints related to the development of an SPSS are potentially significant. The scale and complexity of such a body, and the size and diversity of its supervised population, has a number of potential implications for its effective management, governance and operation. The transition to such a body would have numerous challenges and risks, as discussed. While these challenges and potential difficulties should not be a reason for not progressing with a reform that would meet the ultimate objective of more effective AML supervision in the UK, it is not guaranteed that such a body would meet this objective.

### *Single Anti-Money Laundering Supervisor (SAS)*

A single AML supervisor for all regulated sectors (including the legal and accountancy sectors, financial sector, gambling sector, trust and company service providers (TCSPs), estate agents, letting agents, money service businesses, art market participants, high-value dealers, and payment service providers) would be expected to have the same potential benefits as an SPSS in terms of consistency and systems coordination, but for a wider population.

An SAS would also have the potential downsides associated with the SPSS model. In addition, the consultation document highlights further concerns:

- The creation of an SAS would mean that ‘all firms designated under the Money Laundering Regulations but also supervised for other matters, such as general conduct would have multiple regulators’ (para 6.2). The regulatory burden and challenges for information sharing that this could create would be ‘more pronounced due to the inclusion of financial services and gambling’ (para. 6.3).
- The creation of an SAS could ‘risk creating silos of knowledge’ – ‘creating a new body which carries out only AML/CTF functions could lead to a reduction in understanding of cross-cutting aspects of financial crime, and the insights this provides’ (para. 6.7).
- The ‘significantly larger number of firms transferring to an SAS [compared to the SPSS model] would increase implementation difficulties and costs’ (para. 6.19) and the ‘transitional risk of this option would be heightened compared to an SPSS by inclusion of the financial services sector, casinos, and [money service businesses] supervised by HMRC within the scope of an SAS’ (para. 6.20).

## Conclusion

There is understandable concern about the current number of professional body supervisors for the legal and accountancy sectors and about disparities in the effectiveness of their AML supervision. Responsibility for AML supervision was allocated by the Money Laundering Regulations to the professional and regulatory bodies that exist for different parts or different memberships of the legal and accountancy sectors across the UK.<sup>15</sup> These are diverse sectors, and so there are a number of different professional and regulatory bodies, leading to the 22 PBSs for AML that we currently have. It is appropriate, therefore, to re-assess this system and consider if it provides the most effective approach to AML supervision.

While consolidation of supervisory functions offers potential benefits – including greater consistency, coordination, information sharing and accountability, and the ability to incorporate new sectors identified as a money laundering risk – it also poses notable risks, such as the potential loss of specialised knowledge and expertise and of valuable relationships with supervised populations, and the separation of AML supervision from other regulatory functions. If a consolidated model is selected, therefore, efforts should be made to preserve jurisdiction-, sector- and specialisation-specific expertise and to mitigate the risks inherent in transitioning to a new model and, potentially, a new organisation. The chosen model must have appropriate resourcing, staffing, transition management, operation and governance processes attached.

OPBAS should continue to play a role in professional body AML supervision – either permanently or during the transition to a consolidated body, if that option is chosen. However, OPBAS can be strengthened to enhance its effectiveness in overseeing the professional body supervisors. OPBAS should have a broader range of interventions available for use against supervisors not carrying out their duties, including measures to effect change through education and guidance as well as sanctioning powers. Such measures are especially important for PBSs with limited resources and expertise. OPBAS should also continue to facilitate cooperation and information sharing between PBSs, law enforcement and government bodies, bridging gaps and ensuring secure channels for information exchange and playing a more active role in facilitating the sharing of good supervisory practice. To fulfil its role effectively, OPBAS requires the appropriate resourcing, staffing levels, knowledge and expertise.

There is no perfect option for AML supervisory reform. The proposed models each have strengths and weaknesses and will inevitably involve trade-offs between specialism and consistency. Increased effectiveness in preventing money laundering and terrorist financing through the professions is an important aim, but will be challenging to measure. We welcome HM Treasury plans to develop

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<sup>15</sup> The 2007 Money Laundering Regulations designated the Law Society of England and Wales and the Bar Council as the AML supervisory authorities for solicitors and barristers, respectively, in England and Wales. However, this responsibility has been delegated to the Solicitors Regulatory Authority and the Bar Standards Board, following their establishment by the Legal Services Act 2007 to separate the representative and regulatory roles of the Law Society and Bar Council.

metrics to measure supervisory effectiveness. AML supervisory effectiveness should also be balanced with the other roles and responsibilities that legal and accountancy professional and regulatory bodies hold. It is also important to note that changes to supervisory structures alone will not address all the challenges faced by those navigating the AML regime or trying to reduce money laundering and terrorist financing.