

Anti-money laundering supervisory regime: call for further information

A call for information by HM Treasury

Comments from ACCA
April 2017
Ref: TECH-CDR-1536

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Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

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ACCA welcomes the opportunity to respond to this call for further information. We consider this call for information to be crucial to the future reputation of the UK, which must be seen to have a robust AML infrastructure. A central feature of the current AML landscape in the UK is the diversity of organisations supervised under the regime, and even the diversity of accountancy practices supervised by members of the Accountants Affinity Group (AAG) of the Anti-Money Laundering Supervisors Forum (AMLSF).

It is widely agreed that it has taken too long for HM Treasury to publish this call for further information, leaving interested parties only a brief period in which to gather opinion and construct considered responses. Nevertheless, the expertise and experience of our members, in-house technical experts and members of ACCA's Global Forums for Taxation, Business Law and Ethics has allowed ACCA to provide informed opinion on a range of areas, including how the current proposals would affect a supervisor of many small and medium-sized accountancy practices (SMPs).

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GENERAL COMMENTS

We welcome the introduction of an oversight body to work with the professional bodies, namely the Office for Professional Body AML Supervision ('the Office'). HM Treasury's response to the initial call for information suggests that the relationship between the Office and the professional bodies will be one of collaboration. We welcome such an approach while recognising that the Office must have powers to publicly censure professional bodies and, ultimately, to recommend the removal of a professional body's recognition as an AML supervisor. However, for such a power to be meaningful, there must be a contingency plan for supervising a population previously supervised by such a professional body.

In the accountancy and legal services sectors, there are 23 supervisors, of which 22 are professional bodies. The diversity of the supervised population inevitably means that there are differences in approaches to supervision and, in the past, attempts to gain greater consistency have given rise to uncertainty, contradiction and inefficiency. Nevertheless, most professional bodies in the accountancy sector, for example, have been actively involved in the AAG, and have demonstrated positive engagement with HM Treasury. Although the proposed timing to update and publish guidance and to

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make the Office fully operational is ambitious, the public interest responsibilities of the professional bodies will help to achieve the necessary collaboration. Nevertheless, we have fundamental concerns with the arrangements for the Office currently being proposed and (it appears) being rapidly driven forward.

It had been anticipated that an oversight body would achieve greater consistency between supervisors, so that *all* supervisors would be operating to the same standard. This was explained within a letter from the CCAB to HM Treasury, following its meeting with Treasury officials on 29 November 2016. The required consistency will not be achieved while the coverage of the Office is limited to the professional bodies. It is widely felt that the supervisor that will find it most challenging to meet consistently high standards is the default supervisor – HM Revenue and Customs (HMRC). It is suggested that HMRC will have a relationship with the Office that is very different to that of the other supervisors. In fact, a meeting between the Financial Conduct Authority (FCA) and some of the professional bodies, on 30 March 2017, indicated that those setting up the Office had no responsibility for any such relationship.

This limitation in scope of the Office's oversight is even more significant when considering how the Office will be funded.¹ If it is to be funded by the professional bodies, then any levies on those bodies must be passed on to their members (who perceive no benefit from AML supervision, but will see disproportionate rises in practising certificate fees). This threatens to undermine the purpose of the Office - to ensure consistently *high* standards - as the logical assumption is that some members of professional bodies will cease membership and seek AML supervision by the default supervisor. Such migration would not be in the public interest.

The proposals could also give rise to professional bodies leaving the AML supervisory field.² Having fewer professional bodies to share the fixed costs of the Office would, of course, give rise to even higher fees for their members, and further migration to the default supervisor - a vicious circle. The professional bodies must be able to plan ahead and, therefore, HM Treasury's response to this call for further information must be

¹ The FCA is to consult on funding based on the assumption that its operations will be funded by the professional bodies. However, we do not accept this assumption. Further, it is difficult to respond to this call for information concerning oversight when the resources required by the Office and the costs involved are unknown.

² Page 18 of the call for further information states 'The government's primary intention is not to reduce the number of professional body supervisors. That said, if a professional body no longer wishes to fulfil the role of an AML supervisor, or the Office recommends one be removed, the Treasury stands ready to amend the list of AML supervisors in the regulations accordingly'.



transparent with regard to how it sees the future supervisory landscape, especially in light of the upcoming Financial Action Task Force (FATF) Mutual Evaluation Review.

Therefore, ACCA's fundamental objections to the oversight proposals set out by HM Treasury are simply that:

- they will not achieve the objective of raising standards where most needed;
- they will not enhance the UK's reputation in respect of AML supervision; and
- the funding arrangements are unsustainable.

While considering costs, it should be acknowledged that any oversight costs of the professional bodies (passed on to their members) would not be incurred by the default supervisor, and so would not be incurred by unqualified and unregulated accountants. Apart from providing an incentive for accountants to cease to be regulated by a professional body (which is not in the public interest, as already explained), this would create an 'uneven playing field' between relevant persons in the accountancy sector.

It is proposed that the Office will be hosted by the FCA, which itself supervises approximately 15,000 of its firms for AML. While we appreciate that the FCA will not be overseeing the supervision of its own firms, HM Treasury and the Office must expect to be challenged on the independence (as well as competence) of the FCA as an oversight body, given that it too is required to maintain (and challenge) its own standards of AML supervision.

A meeting between HM Treasury and members of the AAG, on 20 March 2017, helped to explain the proposed relationship between HMRC and HM Treasury. This would not be one of oversight, but one in which HMRC would regularly report to HM Treasury on how HMRC's supervisory processes and outcomes compare with those laid down for the professional bodies. This would appear to be a 'comply or explain' approach, which would only have any value if it were founded on complete transparency by HMRC and HM Treasury. This would have to include prominent publication of the HMRC annual report, as well as HM Treasury's Annual Supervision Report, both of which should be referenced from the Office's website. We highlight this need for transparency in order to engage constructively with this call for further information. However, for reasons already explained, we consider the current proposals to be unworkable.



Throughout the call for further information, we are pleased to see appropriate references to the better regulation principles – in particular, those of transparency and proportionality. An important issue, which must be addressed in a proportionate manner, is that of possible regulatory gaps. The proposal of a single point of contact for each supervisor is a reasonable one, and would help with information-sharing in a proportionate manner. This, combined with adequate record-keeping by each supervisor, would avoid the need for an expensive central register to be maintained.

We have concerns in respect of any guidance that might be produced by the Office setting out how the professional bodies should fulfil their obligations under the Regulations.³ At the meeting on 30 March referred to above, this was described as a 'Manual for supervisors'. To an extent, certainty about approach may remove inconsistencies concerning how risk-based supervision should be conducted. However, in a risk-based supervisory environment, it would be detrimental to try to compile a 'manual' that might be seen as removing the supervisors' ability to respond appropriately to risk, especially in light of the diversity of relevant persons within the supervised populations. If the intention is, instead, to simply agree a memorandum of understanding between the Office and each of the supervisors, we would welcome such clarity.

It may be possible to apply a consistent risk assessment to each sector, and the process of agreeing a risk assessment framework has already commenced (but been put on hold) in respect of the accountancy sector. Such a framework must achieve the necessary consistency while being at a sufficiently high level to reflect the diversity of the supervised population. Even within the accountancy sector (and the legal services sector), there is diversity among the nature of firms supervised by each professional body. (This is evident from the annual returns provided to HM Treasury.)

If an oversight body were to be formed with the appropriate independence, knowledge and range of oversight, its objectives must be outcomes-based. It must have the power to monitor AML supervisors and require those supervisors to provide relevant information. However, a specific power to require staff to attend interviews⁴ would be overly prescriptive, and beyond the powers appropriate for an oversight body.

³ Call for further information, page 6

⁴ Call for further information, page 6



Members of the AAG recognise the importance of minimising the risk of regulatory gaps. But the converse is regulatory overlap (ie where a firm is supervised by more than one supervisor, due to the principals of the firm having membership of more than one professional body⁵). Regulatory overlap is inefficient and is, to a large extent, currently avoided through a protocol established between the bodies. An oversight body should seek to formalise this arrangement, as it has been seen to work. Professional bodies communicate to ensure they are aware that their members in mixed practices are being appropriately supervised. To try to improve upon the current arrangement – to strive for zero regulatory gap – would be disproportionate.

⁵ A 'mixed' firm



AREAS FOR SPECIFIC COMMENT

Our responses to these specific questions are provided despite our fundamental disagreement with the proposed remit and funding arrangements for the Office for Professional Body AML Supervision. ACCA has also responded to the HM Treasury public consultation on the proposed Money Laundering Regulations 2017.

Question 1: Are these powers to monitor supervisors' activities and penalise poor practice sufficient? If more powers should be added, which powers might be?

We believe these proposed powers to be sufficient. Given the number of supervisors and the size of the supervised population, a largely collaborative approach will be necessary. However, a properly established and resourced single oversight body will help to gain consistency and efficiency. More can be achieved by working with a single oversight body than through a network of diverse professional bodies and statutory supervisors.

Question 2: Should the Office's powers to request information or attendance at interviews be extended to supervisors' members as well as supervisors themselves?

We would not support such powers. They appear to be unnecessarily prescriptive, and could be difficult to enforce.



Question 3: Should the Office report annually on other issues, in addition to its performance against its objectives in that year, priorities for the coming year and expectations around emerging risks? If so, which issues should the Office report on?

It is difficult to respond directly to this question, as the proposed objectives of the Office are not clearly set out within the call for further information. We believe that these objectives must be expressed at a high level. The clearest indication of how HM Treasury sees the objectives of the Office is in the introduction to the consultation document, which states that it will be created to ‘work closely with professional body supervisors to help, and ensure, they meet the high standards expected of an AML supervisor, as well as to facilitate collaboration between professional body AML supervisors, statutory supervisors, and law enforcement’.⁶

The Office should remain mindful of these high-level objectives to inform its work and the exercise of its powers. In this context, we are not aware of any other issues on which it would be appropriate for the Office to report.

The consultation document suggests how the Office might seek to meet its objectives as follows:

‘The Office and professional body supervisors should liaise with statutory supervisors across the regime to discuss and share best practice to help ensure consistently high standards across supervisors, especially where statutory and professional body supervisors monitor the same sectors. This includes HMRC as a supervisor of accountancy and trust and company service providers.’⁷

This would appear to have the effect of bringing the Office within the AMLSF, although the dynamic of the Forum would change if the relationship between the Office and HMRC was different to that between the Office and the other supervisors. We are also concerned that the FCA personnel setting up the Office are currently unaware of any relationship it might have with HMRC.

⁶ Call for further information, page 4

⁷ Call for further information, page 17



With regard to the Office's annual reporting function specifically, we note that '[t]he Office will also have its own chapter in the FCA's Annual Report, where it will publish its progress against its objectives, its priorities for the coming year and its expectations around emerging risks'.⁸ Sharing the annual report of the FCA in this way will do nothing to address the concern expressed earlier in this response, that the objectivity of the Office may be challenged, if it is to be 'hosted' by a body that is itself an AML supervisor.

Question 4: The government envisages the Office having representation at the Money Laundering Advisory Committee, the Anti-Money Laundering Supervisors Forum and engaging with the Accountancy and Legal Affinity Groups. What role could the Office best fulfil in each forum, and are there other fora the Office should attend – if so, which?

We have commented above on the detrimental impact that the introduction of the Office into the AMLSF (as currently proposed) would have on the operation of the AMLSF. In any event, The AMLSF and the Affinity Groups are important channels of communication and information sharing between supervisors. Therefore, we would see the role of the Office in such an environment to be one of occasional observer.

Question 5: How might the AML supervisory regime evolve over the next five to ten years, especially in the legal and accountancy services sectors? What are the advantages and disadvantages to the potential options – how might government help minimise the disadvantages?

We cannot answer this question, as we do not believe that the current proposals are an appropriate point from which to move forward. Instead, the UK needs an effective supervisory regime now – one that covers all the supervisors in the accountancy and legal sectors, including the default supervisor. As already explained, we believe there

⁸ Call for further information, page 18



are risks associated with moving forward in the way set out in the consultation document.

However, if a suitably independent oversight body (or bodies) can be established – with oversight across all the supervisors within the accountancy and legal sectors – then it might be assumed that it will evolve as its new oversight responsibilities and powers start to ‘bed in’. For example, inconsistencies in standards of supervision will result in recommendations being made by the oversight body to those supervisors who are most in need of improvements. It may be assumed that such recommendations will be more impactful in the earlier years. Similarly, the need for training of staff in some of the supervisory bodies may be identified in the early years. But we would urge caution, as any such training must be based on the supervisors’ needs, and not simply a requirement to provide a certain quantity of training across all the AML supervisors.

Question 6: Are there other issues you would like government to take into account as it considers increasing the oversight of AML supervision in the accountancy and legal sectors?

ACCA and the other AML supervisors have been subject to a form of oversight by HM Treasury for some years, during which HM Treasury has been provided with annual returns by the supervisors, and been given the opportunity to comment and raise questions. However, we are not aware of any discussions between supervisors and HM Treasury as a result of the information supplied, and any issues of inconsistency have not been addressed so far. We would welcome the introduction of an oversight regime that would raise standards of AML supervision where most needed, and enhance the UK’s reputation as a place in which to do business. However, we are unclear about the rationale behind the current proposals. When final oversight arrangements have been determined, we should like to see a clear explanation by government of how the objectives of oversight have been achieved.



CONCLUSION

The National Risk Assessment identified a lack of consistency in supervision as a key vulnerability in the AML infrastructure of the UK.⁹ Consistent standards are vital, but this must not imply uniform procedures. Each sector (and, to an extent, each supervisor) must be permitted to have its own approach to supervision, given the diverse nature of the relevant persons being supervised and the risks they face. Therefore, we support the proposal of an oversight body, which would not only serve to overcome inconsistencies in standards of supervision, but also act as a conduit for sharing information (including risks arising and best practices).

If appropriately established - with the necessary resources and range of oversight – such an oversight body could be regarded as a valuable element of the UK’s AML infrastructure when the FATF Mutual Evaluation Review takes place in 2018. However, if an oversight body is regarded as ineffective – perhaps because it has been established in haste – it could be seriously detrimental to the UK’s reputation.

A properly established oversight body could represent a model for joint public/private sector efforts with consistent standards across both, but only if all supervisors are held to the same standards of supervision. The vulnerabilities highlighted in the National Risk Assessment are bound to remain if the regulated accountancy and legal sectors are held to one set of standards, while sectors such as the unqualified/unregulated accountancy sector (under the default supervisor) are held to another set of standards.

The perception that it is ‘one rule for Government’ and another for the private sector would generate a great deal of criticism, which would not be in the public interest. In contrast, a single oversight body for the accountancy sector would send a clear signal - to both the public and relevant persons – that the government is serious about implementing the Directive effectively, in order to combat money laundering and terrorist financing.

⁹ Much of the proposed change to the UK’s AML supervisory regime has been based on the National Risk Assessment, although many believe it was flawed. Inconsistency in standards of supervision is primarily between the regulated and unregulated professionals, rather than between the professional bodies.





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