HM Treasury

Call for Evidence:
Review of the UK's AML/CFT regulatory and supervisory regime

A response by
CILEx Regulation

14 October 2021

Introduction

This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEX Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEX). CILEX Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEX is the professional body representing around 17,500 members and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEX Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEX members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEX provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice.

CILEX became an approved supervisory authority for money laundering on 6 February 2015. Its authorised entities are supervised by CILEx Regulation as the independent regulator of CILEX members, CILEX Practitioners and entities.

CILEx Regulation is a member of the Legal Sector Affinity Group and the AML Supervisors forum. We support the aims of reinforcing a risk-based approach across all sections of the anti-money laundering and counter-terrorist finance regime.

Its authorised entities and a small number of individuals working as sole practitioners are supervised for money laundering compliance.

HM Treasury – Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime

Response to the HM Treasury consultation

We are submitting a response to the Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime.

Our response is as follows:

Recent improvements to the regulatory and supervisory regimes

1. What do you agree and disagree with in our approach to assessing effectiveness?

We broadly agree with the governments approach to assessing effectiveness, given the differing sectors, their size, and the risks that they are susceptible to, and the differing sizes of the supervisors within those sectors.

We do think that in measuring effectiveness there needs to be a move away from the perception that the absence of something having happened equates naturally to a failing in that area. That is particularly relevant when the size of supervisors and their supervised populations are being considered. The risk is that otherwise there becomes an expectation that similar risks and behaviours are expected across all sectors and supervisors and therefore the measure of effectiveness is not actually risk based.

2. What particular areas, either in industry or supervision, should be focused on for this section?
Beyond the points mentioned above in Q1, we have no additional comments.

3. Are the objectives set out above the correct ones for the MLRs?
In respect of the third primary objective, we support the view that this is a key area for improvement in the UK's AML regime. We would urge the government to introduce the proposed controls set out in Companies House's recent series of consultations as soon as possible and to put Companies House central in the UK's AML regime.

We believe that the delays in implementation of the beneficial ownership register should be addressed as this will play a key role in improving effectiveness.

Collaborative efforts that involve an active, capable and appropriately resourced Companies House will yield greater success in the fight against money laundering overall through increasing quality and reliability of beneficial ownership (and other) information.

4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?
No

High-impact activity

5. What activity required by the MLRs should be considered high impact?
With a very small, supervised population we are unable to contribute to this in a meaningful manner. However, we believe the purpose of the regulations is to embed certain standards and checks in place by those who encounter criminal activity and for them to understand the risks that might impact on their business. We do think that source of wealth and funds needs to be given greater visibility with the public, so that demonstrating where the funds come from is seen as the same as complying with CDD requirements.

We understand that the exchange of information is important to combat criminal activity and therefore support the view that the SARS regime needs to remain an effective conduit for this and be as simple to use as possible, rather than becoming another oversight tool for supervisors.

6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?
We are unable to provide any examples.

7. Are there any high impact activities not currently required by the MLRs that should be?
We are unable to suggest any additions.

8. What activity required by the MLRs should be considered low impact and why?
Because we carry out checks on our regulated community as they gain qualifications, including criminality checks, and when they set up firms and assume key roles, we view the impact of r.26 as low. We are not aware of historic evidence of relevant persons with criminal records as set out in r.26 being prevalent in the legal sector, to say that these checks are effective or that they should be carried out on a more frequent basis. We believe the overwhelming majority would not have had criminal records prior to carrying out money laundering offences. We accept that this may not be the same across other sectors.

National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?
We believe that it should not be necessary to publish Strategic National Priorities for there to be a review of effectiveness of activities. There should be a continuous review of activities and their impact, as part of the risk-based approach that we should all be adopting. This is to ensure that resources are prioritised in the best possible way.

It is difficult to anticipate what the government might publish as priorities and the relevance on a day-to-day basis for supervisors and firms. It may be that these are so high level as to have little impact on activities most supervisors and firms in the legal sector carry out, so will have little impact on effectiveness.

10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?

They may provide a more forward-looking view than the National Risk Assessment does and allow for future planning of resources in a more effective way.

11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?
We believe that there might be risks that firms and supervisors would concentrate on in the Strategic National Priorities to the detriment of their other supervisory work to ensure that they are seen to be demonstrating their effectiveness. For criminals there is the possibility that this may inadvertently create gaps in the supervisory landscape which they can then exploit. As mentioned above it depends on the level at which these priorities may be set as to whether they create this risk.

We are also wary of government increasing the number of reports that are disseminated to the supervisors and their firms. Our view is that these could, if desired, be incorporated within the National Risk Assessment as an effective and concise way of communicating.

Extent of the regulated sector

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?
As the delivery of professional services has changed, so has the work that is carried out by the various sectors. From when the MLRs were first brought in, we believe that there was a presumption that all individuals were regulated and worked within regulated firms carrying out very well-defined areas of work. This meant that the work they were supervised for was very straightforward to identify.

As new products and services have developed then the work that has carried out by sectors has changed. As an example, the definition of tax advisor and the work that might be in scope of the regulations can now apply to work that an independent legal professional would have historically thought was outside of the MLRs.

Whilst a sector definition is helpful, we believe that consideration should be given as to exactly what activities are expected to be covered by the MLRs and consideration given as to whether this is a better way to decide who and what should be supervised. That may allow government to have a consideration of impact, risk and a proportionate response.

13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?
We do not have any comment to make.

14. What are the key factors that should be considered when amending the scope of the regulated sector?
We have highlighted previously to HMT that the definition of independent legal professional needs to have greater clarity now with the greater increase in unregulated providers of legal services and the absence of a default regulator for the legal sector.

We have highlighted instances where the exclusions in r.15 (3) have been incorrectly interpreted in the past and therefore they would benefit from redrafting to provide greater clarity.

Enforcement

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?
We believe that we have sufficient powers of enforcement for those individuals working within regulated firms that we supervise.

We have highlighted to HMT that our fining policy in respect of unsupervised individuals would be less than our supervised members and that we would not be able to access premises as they are not relevant persons (because they are not supervised by CILEx Regulation).

We are not sure what work OPBAS or HMT has done on a comparison to facilitate and achieve a more consistent level of enforcement powers across supervisors. If not, there may be merit in adding this to OPBAS expectations.

16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?
Yes, as we have not had any breaches where it would be proportionate to exercise our enforcement powers.

17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?
We believe that they are, as we have a Financial Penalty Range as follows:

CILEX Member	Up to £100,000
CILEX Practitioner	Up to £50 million
Approved Managers	Up to £50 million
Authorised Bodies	0.5% of annual domestic turnover up to 5% of annual domestic turnover or up to a maximum of £250 million, whichever is greater.

However, there is a clear difference between how they can be appliedto those authorised and supervised firms and those unsupervised CILEX members if they have been found to be involved in money laundering activities.

18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?
With a small number of supervised firms, we have not yet had any evidence of money laundering offences committed by our supervised population. We have ensured that examples of misconduct and the actions taken are flagged to our supervised population.

Barriers to the risk-based approach

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?
The consequences of inadvertently becoming involved in money laundering activities can mean that a firm will set a high bar of checks irrespective of the nature of the matter or client

that they are dealing with. That can be acceptable if new technologies facilitate these checks to be carried out easily without impacting on the client.

Without this there is the risk of a tick box approach and that the process becomes more important than understanding the risk. We promote the fact that considering the risks to a firm is the key starting point and therefore any technology that is used should be to aid that process.

Some firms will make the decision not to pursue work where the perceived risk is high, irrespective of whether that work can proceed on a risk-based basis. For them that relates to time cost risk analysis of whether that work is attractive, so that could be said to be a risk-based approach.

20. What activity or reform could HMG undertaken to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?
We do not have any comment to make.

21. Are there any elements of the MLRs that ought to be prescriptive?
We believe that as new technologies, such as for identity checks, become more widely used and reduce in price, then they will raise the standard of CDD checks. This will make those, by default, prescriptive in all instances to a higher standard.

Understanding of risk

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?
Clearly across widely differing relevant persons (sole practitioners to large multi-national firms) there will be a huge difference in the understanding of risk. However, by getting a relevant person to engage fully at the outset with the need to put in place a firm risk assessment, using the resources that we provide, we believe that we can ensure that they have an adequate understanding of the main risks.
The importance then is to encourage a culture so that they will refer to their supervisor if they are starting work in a new area or with new clients so that they reassess the risks that they may face. That is a strength of the current AML supervisory regime.

Whether this leads to a risk-based approach is difficult to assess, although we are aware of firms that have turned down particular work, because they believe the checks they would need to carry out would be too onerous.

As we have referenced elsewhere, understanding what the risks are related to a particular area of work is vitally important and we suspect that firms tend to rely on key markers of what risks might be – i.e., client is based overseas and not our work, so is a risk.

23. What are the primary barriers to understanding of ML/TF risk?
Most firms will consider ML/TF risk as part of the overall reputational risks that they are seeking to mitigate against. They will usually understand the risks related to their area of work and client base but not wider than that. As they are usually relatively small firms, with

one key individual, their approach will be to de-risk by not becoming engaged in work outside that limited area.

However, with legal services the work is complex, and one matter can incorporate many risks throughout the life of the business relationship. That ongoing relationship and requirement to review continually what is being presented can make understanding all the potential risks challenging.

24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?
We believe that the government can help by being clear on the scope of the regulations and what work that they apply to. In addition, they should consider whether they can close loopholes by making it a requirement that every client account held with a bank should be identifiable as being under AML supervision without exception.

Expectations of supervisors to the risk-based approach

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
As we have commented elsewhere the consequences of not complying with the MLRs for both supervisors and firms is very high due to the reputational damage that can be done, the potential loss of business, and consequent enforcement action.

Our firms do take their compliance with the MLRs seriously as they are aware of the risks. They also look to us as a supervisor to provide resources that assist them in meeting our supervisory expectations and ensure they are observing the requirements of the MLRs. So, whilst these resources don't ever dictate an approach, most firms have a tendency for to opt to try and mitigate risk – that is a simpler and safer approach for them.

26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
As a PBS we cannot comment on this.

27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
Within this consultation we are being asked to comment on increasing powers of oversight on the supervised population, including whether powers of enforcement are appropriate, should oversight of SARS be increased, are the gatekeeping requirements satisfactory, do firms really understand risk so that they can use a risk-based approach, and the appropriateness of guidance that runs to 212 pages in Part 1 of the Legal Sector guidance.

Therefore, for the types of small firms that we supervise, it is understandable that there is a natural tension between a risk- based approach and the basic requirements of meeting the MLRs. For larger firms with greater resources allocated to AML compliance then a risk-based approach is possibly easier to put in place.

If we as supervisors are being required to have greater oversight of our firms systems and activities, irrespective of whether there is evidence of any misconduct, then that creates a challenge in implementing the risk-based approach that we seek to adopt.

28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?
We are unable to comment without understanding what a definition of AML/CTF compliance programme effectiveness would look like, but as we have responded elsewhere, we do not believe see the benefit of this explicit goal around intelligence provision being added.

29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?
We are unable to comment on this without further information.

Application of enhanced due diligence, simplified due diligence and reliance

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?
We have no comment to make on this.

31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?
We believe that they are appropriate.

32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?
See Q.33 response.

33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?
As we have answered earlier, the consequences of inadvertently becoming involved in money laundering activities can mean that a firm will set a high bar of checks irrespective of the nature of the matter or client that they are dealing with. That can be acceptable if new technologies facilitate applying CDD checks easily. So, whilst they can apply SDD, for most the risk outweighs the benefit.

34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?
We believe that reliance can be a valuable tool for reducing resource impact of checks and its use should be encouraged, particularly as the cost of checks are ultimately paid by the consumer.

The key challenge is that because relying parties are still liable for the compliance of the checks done, the risk outweighs any cost-saving for many. One possibility is a restriction of liability for relying parties e.g., they are culpable for ensuring the information meets the needs of the regulations, but not of its accuracy.

We propose that reliance be expanded to allow relevant persons to rely on digital identity technology providers who meet a minimum standard set in the regulations. This will help make the portability of the results of checks much easier than is currently the case and facilitate the switch to an individual obtaining their own digital identity and sharing that with a variety of users, which is not the current arrangement.

35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?
As covered above, the key challenge is that because relying parties are still liable for the compliance of the checks done, the risk outweighs any cost-saving for many. Also, when a third party has carried out those checks it is for the benefit of the firm that it has a contractual relationship with. This may prevent this being relied upon by other parties.

36. Are there any changes to the MLRs which could mitigate de-risking behaviours?
We are unable to suggest any beyond the adoption of new technologies that can make the appropriate checks quicker and safer. These may require accreditation to gain acceptance in the market and become the default option for firms.

For those identified areas, there may be merit in the government engaging directly to understand the challenges and what is required to de-risk sectors.

How the regulations affect the uptake of new technologies

37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?
As set out below r.39 Reliance needs reviewing to allow the use of an individual's digital identity by multiple relevant persons and who bears that risk.

38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?
The MLRs currently allows for a relationship between a third party and the firm for carrying out identity checks with the onus and risk remaining on the firm for ensuring AML compliance. The government (DCMS) is looking to put in place frameworks that allow for an individual to have their own digital identity that they then share amongst many of the relevant persons who are within the scope of the MLRs.

The MLRs need to reflect this and consider the change in relationship between who the identity is being provided to. Historically it was third party to firm / relevant person; in future it will be third party to individual., who then shares it. To make this work then there needs to be absolute clarity on who is carrying the risk and responsibility for the initial identity check being carried out and what happens if it is found to be a fraud. That will facilitate greater use of reliance.

How the MLRs deal with this will be vitally important to the consumer and also to the firms in having confidence to rely upon a presented digital identity.

39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?
We believe that for smaller firms especially having the time to research which technologies are safe to use and to know that they meet the standards required is difficult. There may be merit in technology providers being accredited so that firms can know that checks that are carried out encompass all that is required within the MLRs for CDD, for example. For the firm that takes some risk out of the choice that they are making – the onus is then on the technology firm to complete the checks required – whether they should be a category under the MLRs is a possible consideration. However, this accreditation is not something that should sit with the supervisors themselves, but possibly with an organisation such as the ICO.

SARs reporting

40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?
We believe that they are effective and that there should not be any changes to the MLRs considered until following the implementation and then review of the new SARS IT system. To do so would be premature.

41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?
If there is an ongoing quality issue, which has never been raised with CILEx Regulation, then we would assume that the new SARS IT system has been designed to address any issues that the NCA have by ensuring that all sectors are able to use it easily and that it demands consistent well-presented information from the reporter.

In respect of accessing information with a SAR, there has been no discussion with the supervisors on why this needs to be addressed on an individual basis by each supervisor and what the current quality issues are that are impacting on the NCA accessing this information. The new SARS IT system should be the ideal opportunity to address this lack of information and for the NCA to better communicate with all sectors on the risks identified. There are risks that will be common across all legal supervisors and therefore having one provider of information must be more straightforward that having many different supervisors trying to access information from their own supervised population. There is also a presumption that all populations are of the same size and see the same risks, but this is clearly not the case. For CILEX Regulation we have a very small, supervised population, so would have limited access to risk intelligence compared to the SRA.

It must also be more cost effective for this information to be disseminated from the NCA (one organisation), which is in receipt of all the SARS and therefore all the intelligence, rather than the PBS (22 organisations) each having to put a system in place to gather this information from their firms and then try and disseminate that to all the other PBS. Clearly that would have resource and cost implications for all PBS.

The model being proposed also seems to imply that we will visit all the firms we supervise every year so that we can see all SARS submitted in a year. This is not the case even in smaller supervisors where we adopt a risk-based approach. On that basis each supervisor would only see a small sample of the SARS submitted. That would then require SARS to be sent to us, which neither the firms nor us would not be comfortable with.

Finally, if the proposals are to increase the number of SARS that are submitted by the legal sector because it is perceived that these are not being done, then consideration needs to be given as to how this is practically achieved. #

This could only be achieved by reviewing all the files that an individual firm has to see if they have 'missed' any opportunity to submit a SAR. This might then be subjective as to whether it was correct or not.

When we carry out a visit, a full review of every file in a firm would be disproportionate in time and cost for both the supervisor and firm. The cost of AML supervision would need to increase to a level that we do not believe firms would accept, especially as there is no evidence to back up the need for this approach.

42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?
We do not believe limitations or mitigations will address our concerns about this proposed approach and we notice that the consultation questions do not cover whether there is a negative impact on firms or supervisors of this approach.

Making SARS easier to submit through a better IT system and maintaining that SARS are to assist law enforcement and protect the firm and the public should be key. Moving them to be seen as a supervisory and therefore regulatory tool would we believe be a mistake.

43. What else could be done to improve the quality of SARs submitted by reporters?
As stated previously this has never been raised directly with us as an issue and so we would expect the NCA / law enforcement to have raised any issues they might have had to be addressed as part of the new SARS IT system.

44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?
We believe that this requirement is unfair on most law firms who have no involvement with money laundering activity, as it is implying that all firms should be able to submit high value intelligence. That would seem to reinforce the assumption that the legal sector is hugely under reporting SARS.
The risk is that this will either force firms to 'create' intelligence that is worthless to law enforcement or will imply that those that correctly don't have the need to submit a SAR are flouting the regulations.

Gatekeeping tests

45. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?
Because we carry out checks on our regulated community as they gain qualifications, including criminality checks, and when they set up firms and assume key roles, we view the impact of r.26 as low on our regulatory activities.

To that extent then having a single test would make it simpler although we acknowledge that this may be difficult with differing sectors having differing requirements/standards.

46. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?
The current requirements for information are effective for CILEx Regulation.

47. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?
We carry out checks on our regulated community as they gain qualifications, including criminality checks, and when they set up firms and assume key roles in those firms. Individuals are in addition require to provide an annual declaration of prior conduct and we do check with other supervisors if we have concerns about a particular individual who may be dual regulated.

We are not aware of historic evidence of relevant persons with criminal records as set out in r.26 being prevalent in the legal sector to say that these checks are effective or that they should be carried out on a more frequent basis. We believe the overwhelming majority would not have had criminal records prior to carrying out money laundering offences.
Our fining powers are suitable, so we believe that there is an effective gatekeeping system in place.

48. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?
This is required as an Approved Regulator under the Legal Services Act 2007. Individuals are required to provide an annual declaration of prior conduct and we do check with other supervisors if we have concerns about a particular individual who may be dual regulated. We also carry out other appropriate checks as required.

We will carry out a DBS at each key qualification and when they take on a role as a BOOM in a supervised firm. These are point in time checks but we have no evidence of us not being made aware of a subsequent criminal conviction. Invariably these relate to some form of professional misconduct, so we are made aware before the matter goes to court.
We believe that the checks are proportionate.

Guidance

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?
As has been suggested elsewhere, if there can be greater clarity on the areas that the MLRs apply to, this may assist relevant persons in understanding the relevant guidance better and meeting their obligations.

The process for changing guidance and gaining HMT approval needs to be reviewed as it currently would seem to take too long to be effective for all concerned.

50. What barriers are there to guidance being an effective tool for relevant persons?
By nature of the regulations and their complexity, we believe that the guidance that is provided will always need to be lengthy. That itself then poses a challenge to relevant persons given that there is a wide variety of users, from large firms with in-house compliance teams to a sole practitioner.

There is a frustration with the length of time to obtain HMT approval and this would only be exacerbated by a return to individual supervisor's guidance.

51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?
The legal sector has invested a large resource in the redraft of their guidance over the last few years and we have been grateful to the larger supervisors for the additional resource that they have provided. We would be loath to go back to an individual supervisor's guidance because of the time and cost implications for a small number of supervised firm and we believe that this must be replicated across other smaller supervisors.

There is little feedback it seems from HMT on the guidance provided – whether it is too much, too detailed, not enough. Perhaps HMT should complete a review of all the guidance it has received and approved, providing example of good and bad guidance to aid drafting. We would ask them to consider whether it would be possible to set out, alongside the regulations as these are approved, the rules and sections that they believe guidance needs to be given? This may also help with clarity on drafting. HMT could also consider if there are any areas of the regulations on which they believe guidance is not required?

Finally, have HMT considered reviewing what their approval adds to the guidance and if this can be delegated?

Structure of the supervisory regime

52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?
The decision for the government is really whether it believes that a more effective supervisory regime can be delivered through one supervisory body, which would struggle to replicate the detailed knowledge of the various sectors which it is supervising, and with the need to create a whole new infrastructure at significant cost to support the activities required

by that supervisor. The cost of this would then be passed on ultimately to the consumer through increased cost of services.

At present the supervisory regime, certainly for PBS, is based on existing regulatory requirements and activities, such as gatekeeping, annual regulatory checks, existing risk-based visit programmes, etc, so is delivered at a significantly reduced cost to all concerned. More importantly is the detailed knowledge that this gives PBS of their supervised populations that we believe can lead into an effective supervisory regime.

53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?
We are not able to directly comment on this, beyond that with the annual supervision returns to HMT and the work carried out for the National Risk Assessment, then we believe that these sectors or business areas should be clearly identified from the information and intelligence currently available.

54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?
We have no opinion on this.

55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?
We believe that it is unworkable to look at partial consolidation because of the potential impact on the PBS themselves. If for example you looked to consolidate the activities of a smaller PBS into a larger PBS, would they be able to deliver this at the same cost and would this have an adverse impact on the membership of the smaller PBS?

None of the smaller PBS have to date stepped back from being a PBS so this indicates a willingness to invest the resource in providing effective supervision to their members. Nor have any significant risks been identified by having smaller PBS as supervisors.

If consolidation is to take place, then we believe that the only option would be to move to one independent supervisor as that addresses all the concerns about the current regime.

Effectiveness of OPBAS

56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?
By having an oversight supervisor in place, this has naturally driven the development of AML supervision in the UK, and this has meant a greater focus of our resources on this activity. Much of the good work done by PBSs has been encouraged by the expectations of OPBAS. However, to continue this work, we now need to be provided with more visible expectations, including a more transparency on OPBAS' priorities, and their future work plan. This would allow PBSs to plan to meet these expectations, rather than currently being limited to reacting to occasional feedback.

It will also help the work of PBSs to know what to expect from OPBAS, including introducing reporting of OPBAS' strategic priorities, their success measures and their expected deliverables including how their budget is intended to be used.

We also note that OPBAS have seen significant staff turnover which has caused challenges for some PBS in maintaining a consistent understanding by OPBAS of their membership and the risks that they are likely to face and in having a consistent approach to oversight.

We believe that it would also help to move towards a more 'rag rating' reporting style so that PBS can fully understand how they are being assessed and what improvements are needed. The information gap for PBS is highlighted when OPBAS produce their annual report and it is unclear to individual PBS whether expectations are being met or not. We agree that not naming PBS is correct within the report but confidentially this rating could be shared.

Along with other legal PBS, we also advocate for reform of some repetitive aspects of PBSs work. The 2019 amendments to the regulations set a requirement for PBSs to publish an annual report, something OPBAS issued guidance on. However, PBSs already must prepare annual reports for HM Treasury, which are not published. Bearing in mind PBSs also have other reporting responsibilities, we believe the time is right to explore consolidation of the AML reporting duties on PBSs. Where information requirements overlap, this may also be directed toward helping the collection of the economic crime levy information once the parameters around that are set.

We believe that OPBAS should have new focus to its approach, towards greater sharing of best practice with AML PBSs as a group. In particular we believe a greater collaboration on the application of the Financial Action Taskforce's Guidance on Risk-Based Supervision should be a focus for OPBAS' ongoing work with PBSs.

A more collaborative approach will also help to foster more consistent communication between OPBAS and PBSs and a shared understanding of risk. A group approach would also make it easier to have more frequent contact with senior OPBAS team members, as well as officer points of contact. This will also make it easier to flag new publications (e.g., consultations) which have not previously been publicised.

Finally, as one of the smaller supervisors we believe that it is important that they should advocate for systemic changes that would help smaller PBSs be more effective in their role. This could cover communicating common supervisory issues to stakeholders who may be able to facilitate positive change, eg HM Treasury, Home Office and the NCA. This would be of particular benefit as we may not have the need to engage with other stakeholders so often.

57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

Within the legal sector there has always been a good sharing of intelligence and information because members of one regulator will often be working in firms regulated and supervised by another regulator. This is facilitated by the Framework MoU that is in place. It should also

be remembered that in England & Wales the SRA are the largest regulator, so this distorts the information and intelligence flow.

We believe that this has also been strengthened by the regulatory arms of the PBS meeting to share information and approaches to supervision. This has had the consequence of highlighting some inconsistencies in approach by OPBAS.

Outside of that, we have had little requirement to share information with other supervisors and that is dealt with on a case-by-case basis. There may be merit in OPBAS exploring more wider MoUs across the legal sector with other statutory supervisors and other bodies. We have welcomed the setting up of the LSISEWG although it needs to be recognised that there is not an equal flow of information for the reason set out above.

We believe that we have seen better engagement with NCA over the last few years and there is better communication of resources from them to supervisors. We are unable to comment on OPBAS' involvement in this.

We believe that there remains a perception that all firms across all sectors have intelligence to share irrespective of the size and nature of the sector in which they work. This is not to be complacent but needs to be remembered in judging effectiveness; the absence of something does not equate to a flaw or failing.

Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?
We believe that there are a number of strategic and operational issues that OPBAS should address, as set out above, before consideration is given to extending their powers.

59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?
We believe that there are a number of strategic and operational issues that OPBAS should address, as set out above, before consideration is given to extending their powers.

Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?
We believe that there may be businesses working within the unregulated legal sector that would fall under the scope of the regulations through the definition of an independent legal professional within r.12 or because of the work that they carry out, as a tax adviser under r.11 auditors and others.

The legal work may include those carrying out work related to estate administration and probate, where they may be seeking to rely upon exemptions under the Legal Services Act 2007 to carry this work out in a regulated firm.
We have previously raised this issue with HM Treasury so are pleased to see it being part of this consultation.

61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?
We believe that there needs to be a 'default supervisor' for the legal sector.
Firstly, to address the consequences of either OPBAS exercising its powers to recommend removal of a legal sector supervisor or for a legal sector supervisor deciding they no longer wished to be approved as such.

Secondly. because there is an established unregulated legal sector which clearly may fall under the scope of the MLRs, and to address the current of the issue where two very similar businesses both dealing with estate administration can have one fully compliant with their AML requirements and the other with no access to a supervisor.

62. How should the government best ensure businesses cannot conduct regulated activity without supervision?
As we have suggested elsewhere in our consultation response, the government should work with the supervisors to look closely at those areas of work that they believe are covered by the MLRs. This would then identify areas of work that span supervised and unsupervised populations, and if there are any key organisations within the unsupervised areas, such as membership organisations. They can then be approached to establish with their members who require supervision.

Once a default supervisor is in place then this provides a way to have a level playing field for all businesses. The government should then conduct a communications campaign based on the default supervisor being put in place.

Any questions relating to this consultation response can be directed to David Pope, Entity Authorisation & Client Protection Manager (david.pope@cilexregulation.org.uk).