Legal Sector Affinity Group Response – AML Call for Evidence

The Legal Sector Affinity Group (LSAG) is made up of:

- Each professional body listed in Schedule 1 of the Money Laundering Regulations 2017 and where different
- Each body undertaking anti-money laundering (AML) supervision of independent legal professionals in the UK

The purpose of the group is to cooperate and collaborate to support the achievement of the UK's risk-based AML objectives through:

- Facilitating sector wide monitoring of risk.
- Developing and maintaining AML Guidance for the UK Legal Sector.
- Promoting consistency in the achievement of the supervisory duties of supervisors and self-regulatory organisations and sharing of best practice.
- Co-ordinating communication with HM Government, the Office of Professional Body AML Supervision (OPBAS), the National Crime Agency (NCA) and other key stakeholders, and influencing AML strategy.

In order to highlight some key issues that are seen as important by all member of LSAG, we have collaborated on this response to the HM Treasury call for evidence. Members may also submit their own individual responses.

Q3 Are the objectives set out above the correct ones for the MLRs?

We would like to highlight the third objective:

"Accurate and up-to-date Beneficial Ownership information is collected, maintained and made available to competent authorities so as to prevent the exploitation of UK corporate vehicles and other forms of legal personality."

Our view is that this has the potential to be a key area of improvement in the UK's AML regime. We strongly welcome the recently proposed developments regarding Companies House, as a part of the larger programme of ensuring the UK's corporate records regime is fit for purpose.

We would encourage the relevant parties to urgently introduce the proposed controls set out in Companies House's recent series of consultations in order to embed the benefits of these as soon as possible. We also would welcome the greater incorporation of Companies House into the wider discussion on AML as their broader significance for the UK's AML regime has previously been underestimated.

While the objective mentions "competent authorities" we believe that this should be clarified to include AML professional body supervisors (PBSs) as we serve a key role in collecting and distributing useful intelligence and information. 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.

Q8. What activity required by the MLRs should be considered low impact and why?

We believe that the controls of regulation 26 are relatively "low impact" because they establish a limited and rigid test for who can be approved as a beneficial owner, officer or manager (BOOM).

The requirement to obtain disclosure and barring service (DBS), Disclosure Scotland or AccessNI checks from all prospective BOOMs was introduced in 2020. The current wording of regulation 26 requires PBSs to consider only criminal history when deciding whether to approve a BOOM.

A possible improvement would be to expand the fit and proper tests (regulation 58) legal sector PBSs use for Trust or Company Service Providers (TCSPs) to also be applicable to Independent Legal Professionals (as defined in regulation 12(1)) rather than limiting checks to Schedule 3 offences as per regulation 26. This would allow PBSs to be able to have reference to a broader set of information when deciding whether individuals are appropriate to serve as BOOMs, expanding its value as a control.

While we understand the aim of ensuring there is a minimum level of checking of supervised populations, the DBS, Disclosure Scotland and AccessNI checks are blunt instruments, focusing on a point in time check. The more nuanced and complex systems legal sector PBSs have developed for TCSPs may be better tailored to address the propriety and appropriateness of individuals and firms than a simple criminality check.

Q34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

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 and for the Bars and notaries they may not have or be allowed to have a direct relationship with lay clients. We have observed that while members of the Bar and notaries use it frequently, solicitors and law firms currently do not. 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.

To address this, we propose the exploration of ways to encourage its use. One possibility is a restriction of liability for relying parties eg they are culpable for ensuring the information meets the needs of the regulations, but not of its accuracy.

We also believe it is necessary to future-proof the regulations for the new advantages and opportunities that digital identification is creating. 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.

Possible standards could include the good practice guide 45 set out by the department for digital culture, media and sport (DCMS) or the safe harbour standard set by Land Registry. This will help to reduce low value repetitive checks on the same client or company by multiple parties eg during the residential conveyancing process. At the very least, recognition of a common standard will give relevant persons a clear decision making framework for choosing which services to use or not.

Current restrictions to the usage of identification verification results due to common features of the contracts and service agreements between digital identity providers and the relevant persons that use them will remain a challenge for some time. However, we believe these challenges can be addressed with continued engagement.

Q40. 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?

There are two common criticisms of the legal sector's role in engaging with law enforcement on suspicious activity reports (SARs), shortcomings in quantity and quality of SARs.

The legal sector faces several challenges in addressing these issues:

- Legal services involve lengthy and detailed pieces of work, which can be more challenging to describe comprehensively than simple financial transactions. This can also make it more challenging for law enforcement to review them.
- Legal services often take a long time to deliver and will lead to fewer actual distinct instances of service provision to clients as opposed to a bank which may process many transactions for a client in a day.
- If the duty to report suspicious activity is triggered at an early stage in a legal matter, the reporter may not have all the details law enforcement may look for, giving the unavoidable impression of a poor quality report despite no alternative being possible
- Legal professional privilege needs to be weighed against the duty to report suspicious activity.

The framework for submitting suspicious activity reports (SARs) is undertaking significant transformation at present with a new consultation on the Proceeds of Crime Act due to be published in late 2021 and the new SARs IT system set to go live in early 2022. While there may be a role for PBSs on the issue of SARs quality, we believe it would be best to allow the already significant changes in this area to bed in, and benefits to be realised before any further changes are made to the role of PBSs.

As well as the transformative changes which are ongoing, there is a significant information gap around exactly what the quality issues are that need to be resolved. PBSs have no direct access to SARs information held centrally so we cannot analyse information to see what the quality issues are in SARs submitted. We believe the NCA can work closer with PBSs to provide insight on SARs quality issues seen in our supervised population. Without greater insight of this kind, efforts to address SARs quality are unlikely to be effective.

The NCA has already collaborated directly with some LSAG members to share relevant guidance with our supervised entities and we will continue to work in a collaborative way with all relevant partners.

Q57. 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?

OPBAS has helped positively develop AML supervision in the UK, but money laundering is a dynamic problem and continued improvement is needed in order to address the challenges it presents. We would welcome a new focus in OPBAS' approach, towards greater sharing of best practice with AML PBSs as a group. This would be in addition to the continued provision of any specific pieces of advice they may provide PBSs on a one to one basis. 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 (eg consultations) which have not previously been publicised.

The existence and work of OPBAS has helped PBSs to prioritise AML internally within their organisations, directing resource to AML that may not have materialised otherwise. Much of the good work done by PBSs has been encouraged by the expectations of OPBAS. In order to continue this good work, PBSs need to be provided with more visible expectations, including a more transparent articulation of 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 and a key way of addressing this would be to introduce reporting of OPBAS' strategic priorities, their success measures and their expected deliverables including how their budget is intended to be used.

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.

Finally, we believe that it is appropriate for an element of OPBAS' ongoing mission to be an expectation that they advocate for systemic changes that would help PBSs be more effective in their role. We would foresee this would involve communicating common supervisory issues to stakeholders who may be able to facilitate positive change, eg HM Treasury, Home Office and the NCA. This will be of particular benefit to smaller supervisors who may not have the need to engage with other stakeholders so often.