



Wales Safer Communities Network response to: Reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime Response submitted electronically 29 September 2023

Consultation Questions

Objectives

- 1. Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?**

We agree in principle that the three objectives would appear to be relevant and of relative priority. We do think that when it comes to coordination there is a missing opportunity to incorporate coordination and collaboration with outside agencies which may enable early identification and intervention.

OPBAS+

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

As suggested in the consultation document it would provide the same abilities to hold PBSs to account as the FCA holds in its arenas, this would enable consistency between the regulatory bodies and provide accountability and transparency. We do not have any suggestion for what rules they might create as we do not work directly in these fields.

- 3. Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?**

We think that all of the powers mentioned in the consultation would be appropriate. It might be worth considering how the Charity Commission reports where it has been involved in ensuring compliance with legislation but which may also allow for best practice promotion which may be an appropriate approach for the OPBAS.

The four powers all appear to potentially leave an opening for repeat offending which could form part of the illegal financial activities themselves, so within the tiered and fines mentioned we think these should escalate to removal rather than relying on enough users withdrawing from a PBS to make it unsustainable as appears to be suggested in the consultation document.

4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

We have no comment on any possible new accountability mechanism.

5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

None specifically, especially as we are aware that when a regulated activity is higher risk and is targeted that when this is identified then the illegal movement of money is likely to move into another area, sector or activity. The continuous change in county lines provides such an example of the constant evolution taken to remain ahead of regulation and the criminal justice system.

6. Do you think a “default” legal sector supervisor is necessary? If so, do you think a PBS could be designated as default legal sector supervisor under the OPBAS+ option?

It may be necessary to have a default legal sector supervisor, however whether this should be under OPBAS or one of the other regulators or a change of powers for the Solicitors Regulatory Authority we do not hold an opinion on.

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

We hope that any change to the OPBAS+ model would improve the effectiveness especially if they hold additional tools and powers to take action. However, until any change is implemented and how they work in practice we are not able to provide or have more confidence that they will have a positive impact especially as there is no structural change as part of the changes proposed.

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

We do not have a comment on this at this time.

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

Costs across all services are increasing due to the cost of living and with changes in working practices which may have a direct impact on feasibility constraints which are likely already increasing without additional responsibility and activity.

PBS Consolidation

10. Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide remit, (b) retaining separate PBSs in the Devolved Administrations? Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both.

As a membership body operating in Wales we do not note any particular difference in the two options. We note that in the devolved administrations there is only specific

mention in regard to Scotland and Northern Ireland. Whilst Wales as a devolved administration has a different relationship with many laws applying in England and Wales, as an independent devolved administration with areas of devolved legislation and regulation it may be appropriate to identify Wales as a devolved administration which would need to be taken into consideration. One of the areas that this may apply would be around the use of the Welsh language.

11. How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?

We refer to our previous answers and that to enable effective oversight that enhancing the powers of OPBAS as suggested in the OPBAS+ model may be the most effective and efficient option.

12. Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?

The suggestion appears to be that there will be no additional resources provided under the new regime, and therefore it may not be appropriate to add in additional functions currently provided by HMRC without additional resources and resource implications being taken into account. HMRC are also potentially in a better position to identify ASPs and TCSPs due to the nature of their role, being a public body and already have practices in place. We also agree that the detail included in the consultation document also provides evidence for HMRC continuing with this role.

13. What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?

The consultation document focuses the section before this on the legal activity businesses and individuals. In that context it may be appropriate for consolidated PBSs to work alongside the SRA to identify and either encourage registration with the SRA or to come under the consolidated PBSs, but through working in partnership with the SRA for there to be consistency and transparency in the expectations on businesses and individuals.

14. Under the PBS consolidation model, what would the advantages and disadvantages be of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?

Please note the answers to the previous questions and to our opinion that accountancy already has an existing system within a public body, whilst the legal sector does not.

15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

Improved best practice sharing, transparency and jargon free information which can be understood would be useful. Training for supervisors and acknowledgement that those with specialist knowledge in sectors are more likely to be able to identify more nuanced activity which may be a sign of money laundering or financing of terrorism or extremism but which may be undetected by those with only general knowledge or a specialism in another area. If the PSBs are being consolidated then it may be appropriate for either all specialisms to be represented or for different PSBs to carry different specialisms, which could provide a competitive advantage for some and reduce options for those requiring the PSBs support.

There should be a clear reporting process for escalation where there is non-compliance. There should also be a process for any rogue supervisor to be reported and managed. The role of supervisor may enable money laundering activity, as they are in a position to notice or identify organisations, businesses or individuals who may be more open to the opportunities being sought by criminal and terrorist individuals and groups.

16. Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?

We think it would be appropriate for the existing public bodies to oversee the PBS and administer any powers including the gathering of any fines or financial compensation which should then be invested in the public sector who provide the policing and criminal justice systems.

17. What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?

We think there should be a clear transition period during which time, how elements should be transferred or where they can be finished should be laid out. The complication may come where a PBS is no longer continuing in the role. Gaps in service delivery may become apparent such as specialist knowledge, corporate history or perhaps they were carrying out enforcement action. It is difficult to legislate or provide powers for cooperation for those taking on additional responsibilities and those who are losing them and making staff redundant or going through other human resource implications and legislation.

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

In the medium to long term the consolidation model could improve quality, consistency and enforcement. However, in the short term it is likely to cause potential gaps and opportunities for those who may be enabling or those carrying out money laundering style activities hidden in other businesses etc.

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

Similarly to our answer to question 18 the system coordination is likely to be disrupted in the short term before potentially being improved. It is another reason why the transition period is going to be so important to ensure that standards and quality is not lowered which allows poor practice or illegal elements to slip through.

20. What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and supervision standards do not fall in the interim?

It may not be appropriate or needed for additional powers or tools but for consistency and increased monitoring during the transition period, with the possibility of adjustments to the transition planning being able to be made.

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

We do not hold any comment on how fees should be collected.

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

The cost of living is likely to increase any negative impact and potentially prevent the investments that is hoped to be stimulated by the changes.

SPSS

23. Do you agree these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?

We agree that the three proposed key features appear appropriate, we would also suggest including an element around independence similar to how the Charity Commission, HMRC and FCA are independent of government but remain within the public sector.

24. If an SPSS were to be created, which sectors do you think it should supervise?

We do not have an opinion as we would require a more detailed analysis of risks to mitigations to be able to make an informed decision. If a SPSS were created we would anticipate that it would cover at least the equivalent of PBSs.

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

We think it would be appropriate to allow the SPSS to have similar powers to regulators such as the FCA so that there is consistency across the public bodies.

26. How should enforcement responsibility be transferred should an SPSS be created?

There should be a transition plan which is agreed by those involved, with a strong emphasis on mitigating of any risk-transferring ongoing cases may jeopardise their outcomes. It may mean early transfer in some instances and others never being

transferred due to the critical point and potential risk. The management of this risk will be needed whichever model is taken forward.

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

The need for independence as mentioned previously is important, but as with the other independent public body regulators they should be able to answer questions when raised and which do not jeopardise any current investigations, enforcements or criminal justice processes.

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

As with our answers to questions 18 and 19, the impact on the short term is likely to be greater than the medium and long term, with the transition period being of particular concern.

29. How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?

Please see our answer to question 28.

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

Please see our answer to question 28.

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

The current economic climate makes these particularly challenging times to be able to provide a full response with issues of public pay and increases in other cost areas not yet being fully visible. In addition, it is impossible to identify if there may be cost savings due to advances in technology such as AI which could assist and reduce resource requirements or possibly increase them. The SPSS would be non-profit and therefore may not be subject to the same constraints as private bodies who need to deliver a profit.

SAS

32. Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?

We do not work specifically in this area so have no opinion on if there will be any major challenges and as such any mitigations that may be required.

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

As with previous answers we would anticipate a greater impact in the short term but then for there to be benefits in the medium to long term with greater consistency, transparency. The transition phase if this option were to be taken forward would be important just as for the other options.

34. Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.

We do not see this as a major issue as organisations and businesses frequently work across multiple regulators, however as we are representing a network of community safety members we are not likely to be impacted by a decision on this.

35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

Please see our answer to question 33

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

As with the SPSS, the current economic climate makes these particularly challenging times to be able to provide a full response with issues of public pay and increases in other cost areas not yet being fully visible. In addition, it is impossible to identify if there may be cost savings due to advances in technology such as AI which could assist and reduce resource requirements or possibly increase them. The SAS would be non-profit and therefore may not be subject to the same constraints as private bodies who need to deliver a profit.

Sanctions

37. Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?

We do not hold any information in regard to changes in approaches to sanctions following the Russian invasion of Ukraine, and so have no comment to make to this question.

38. Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?

We do not have an opinion on this matter.

39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

There is a risk of technology advancements removing more and more human elements which may reduce the opportunity for supervisor activities, therefore it is important that the supervisory regime is able to adapt to developments in technology

and for how supervisory tasks are able to still be carried out to protect individuals, businesses and communities from money laundering.

40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

In principle, this would appear to be fitting, however there may be exceptions or unplanned consequences that need to be considered and therefore it may be more appropriate to review each circumstance as a precaution.

Options Comparison

41. How would expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

As we have no specialised knowledge in regard to PBS' financial models we are unable to provide a relevant response.

42. Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness and (b) improved system coordination.

All four options carry risk and in some instances very similar risk, but the opportunity for improved data sharing and coordination may mean that the public body options may provide more consist join up with other criminal justice elements who are engaged in tackling organised crime and terrorism and extremism.

Public Sector Equality Duty

43. Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?

Whilst we have no specific comment on those with protected characteristics at this time, we would like to raise the importance of the Welsh language and that for provision for individuals, households and businesses in Wales that the opportunity to use the Welsh language should be reflected irrelevant of which option is selected. Welsh Language legislation stipulates that Welsh should be treated no less favourably than the English language.

45. If you wish to, please enter details of the business or body you represent

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The Wales Safer Communities Network was established in January 2021 following the recommendations of the Welsh Government's Working Together for Safer Communities Review. The Network aims to become the strategic voice for community safety in Wales, working collaboratively to champion and support community safety partnership working, and influence the shaping and development of national policy and local practice.

Community Safety partners include Fire and Rescue Services, Public Health, Councils, Police, Probation and the third sector.