

Response to Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime

Association of Accounting Technicians (AAT)

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About AAT

- AAT is the UK's leading qualification and professional body for technical accountants and bookkeepers. We have around 51,000 members in over 100 countries and approximately 75,000 students studying our qualifications.
- Founded in 1980, AAT is a registered charity committed to increasing the availability of high-quality accountancy education and raising professional standards. We aim to advance public education, promote the study of accountancy, prevent crime, and promote and enforce standards of professional conduct for accountants.
- Over 600,000 small businesses are supported by more than 6,000 AAT licensed members to help build the businesses' financial capabilities.
- An AAT Accountant is a qualified accounting professional with the practical and technical skills needed to support businesses with their accounting activities. Typical job roles include: Financial Accountant, Commercial Analyst, Senior Finance Officer, Payroll Manager, VAT Accountant, and Tax Supervisor.

Executive Summary

- AAT has always maintained a stance of strong support for the UK's drive to combat money laundering and terrorist financing. AAT recognises the role that the accountants play as gatekeepers to financial probity and is fully aligned with the ambition as captured in the consultation to strengthen the effectiveness of the anti-money laundering and counter-terrorism financing (AML/CTF) supervisory regime.
- Whilst it may appear more straightforward to have one supervisor it is AAT's assertion that this would inevitably be fraught with significant risk. AAT therefore contends that the OPBAS+ model is the most suitable option and would result in a demonstrable improvement in the sector. The rationale behind this view is that by granting OPBAS with broader and stronger powers it would be better able to hold those underperforming PBSs to account and best meet the government's objective to ensure greater consistency of supervision without jeopardising current performance.
- Options 2, 3 and 4 are fraught with risk in particular. The transition process, requiring the transfer of data and information from the deselected PBSs in transition to any of models 2, 3 or 4 represents a sizeable challenge which could in itself result in severe disruption to AML supervision and subsequently an increase in non-compliance.
- Given the complexities involved in supervision, and the variety in type and sizes of firms in each of the two sectors, replicating the expertise and knowledge that is currently held by the existing PBSs will be a significant challenge.
- Given that the stated aim is to be able to demonstrate improved effectiveness ahead of the next assessment of the UK's AML/CTF regime by FATF, this ignores the fact that the implementation of any significant reform in the AML/CTF supervisory landscape is likely to take a number of years to fully implement, a fact that is readily applicable to models 2, 3 and 4.

If you have any queries, require any further information or would like to discuss any of this consultation response in more detail, please contact Adam Harper, Director of Professional Standards and Policy at adam.harper@aat.org.uk

Background/introduction

AAT shares the government's ambition to reform the AML/CTF supervisory regime in a way that better tackles economic crime. We also acknowledge that retaining the existing supervisory regime with no change is unlikely to result in an improvement to effectiveness that is needed. We are concerned however that three of the models proposed in the consultation carry with them significant risks which at best could see money laundering grow in the UK and at worst could result in the collapse of the whole supervisory regime.

AAT notes that the aim of the consultation is to gain evidence in order to reach a policy decision no later than the end of Q1 2024. We are concerned that this commitment to a predetermined timeframe will restrict the capacity to carry out full consideration of any significant issues surfaced by the responses to the consultation that may need further investigation. Moreover, we are further concerned that as the stated aim is to be able to demonstrate improved effectiveness ahead of the next assessment of the UK's AML/CTF regime by FATF, this seems to take little heed of the widely held view that the implementation of any significant reform in the AML/CTF supervisory landscape is likely to take a number of years to fully implement (*as referenced in the OPBAS progress and themes report 22/23¹*), a fact that is readily applicable to some of the options contained in the consultation.

Response to consultation questions

Objectives

Q1. 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?

Taking each of the three objectives in turn, regarding supervisory effectiveness, AAT agrees with the findings of the HM Treasury's *Review of UK's AML/CTF regulatory and supervisory regime*² that seeking to attain risk-based supervision that ensures consistent and proportionate compliance with the regulations across the whole AML/CTF population is a meaningful and beneficial objective.

Similarly, delivering improved system co-ordination with more effective collaboration and accountability across the regime is appropriate, and as such AAT supports this as one of the main objectives for the review.

Feasibility is clearly crucial, and as such is an objective that is also fully supported by AAT in the context of this review of the supervisory regime. We are however significantly concerned that some of the options detailed in the consultation will present serious challenges around the feasibility of their delivery. Given this concern, AAT is strongly of the view that the consultation does not demonstrate a sufficiently thorough grasp of what is actually feasible from a delivery and impact perspective. We will expand on these concerns in more detail below.

In addition, AAT would recommend that there should be a fourth objective of 'Risk', namely that any proposed solution around improvement to the supervisory regime must demonstrate a suitably risk averse approach as it relates to the integrity of the regime and the scope for further proliferation of money laundering activity.

Aside from AAT's view that this fourth objective is essential, AAT does not see the need to amend the initial three objectives but seeks assurances that any issues identified through the consultative process will be

¹ <https://www.fca.org.uk/publication/opbas/opbas-report-progress-themes-supervisory-work-2022-23.pdf>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085407/MLRs_Review_Report_-_2.5_for_publication.pdf

fully considered in the context of these objectives and that consideration around the need to add in the fourth objective of 'Risk' is undertaken.

OPBAS+

Q2. What would the impact be of OPBAS having the FCA's rulemaking power? What rules might OPBAS create with a new rulemaking power that would support its aim to improve PBS supervision?

As a principle, HM Treasury's belief that enhancements to OPBAS's powers should reflect OPBAS's increasing focus on improving the effectiveness of PBSs' supervision is something AAT fully supports.

The impact of OPBAS having the FCA's rulemaking power is that it would enable OPBAS to be better able to hold poor performing PBSs accountable. This would result in a demonstrable change in the sector and see either the number of PBSs reduce or result in a substantial improvement in the performance of those currently underperforming PBSs, thereby improving consistency of supervision.

The consultation document, at section 3.5, outlines additional powers that could be added to OPBAS's toolkit to allow for greater enforcement, a number of which appear to be proportionate in terms of supporting the drive to enhanced supervisory effectiveness and consistency.

Q3. 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?

As detailed above, AAT considers that most of the examples of new powers that OPBAS could be granted referenced in section 3.5 of the consultation document appear to be reasonable and proportionate.

Publicisation of supervisory interventions: this would provide clarity around areas where PBSs may be required to demonstrate improvement and would add a layer of accountability to the commitments the relevant PBSs have with regards to their AML/CTF supervisory obligations.

Graduation of sanctions: allowing for the implementation of proportionality in relation to its enforcement would help to establish clarity around expectations and provide scope for interventions to address and remediate shortcomings amongst those relevant PBSs.

Restrict or reduce supervisory population: it is less clear how this would be a suitable measure to add to the OPBAS toolkit. Preventing a PBS from taking on new firms for a set period or similarly requiring a PBS to 'offload' a proportion of its supervised population brings with it significant challenges in terms of the operational delivery of such measures and could have an unintentional and detrimental knock-on impact on the supervised firms to be offloaded or those newly requiring supervision. For example, it could result in the delay in an impacted firm getting approval that it was regulated and therefore able to practice. Similarly, it is likely to cause confusion with those firms impacted in terms of engaging with different bodies for what may be a temporary period of time.

At present PBSs can only supervise their own member firms and there is currently no mechanism for firms to switch supervision unless they hold membership of more than one professional body and that there is a requirement for those PBSs to agree who the most appropriate supervisor for that member firm is.

Fining power: For the reasons referenced in the consultation document on this potential measure (financial and reputational impact), this would appear to be a proportionate measure to consider and is aligned to the powers that the FCA has at its disposal in enforcing its mandate. If OPBAS is given the power to publicise supervisory interventions, then it is reasonable to assume that this would extend to the publication of details pertaining to fines issued.

Whilst it is one of OPBAS's existing enforcement powers, AAT firmly supports the ongoing inclusion of the ability to recommend the removal of a PBS's status as a supervisor should there be consistent failure to comply with its obligations.

Q4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

As referenced in the consultation document, any additional powers should be coupled with additional accountability mechanisms. Given the scope for wider awareness of the sanctions applied to any PBS as a result of OPBAS's interventions, then clarification around the rationale for those interventions is essential, both contemporaneously and in the OPBAS annual report as suggested. Similarly, the suggested inclusion of a 'right to reply' or appeals process has to be made available so as to ensure that any and all considerations that may have a bearing on the decision can be appropriately explored.

OPBAS states in its annual report on progress and themes from its 2022/23 supervisory work (April 2023)³ that there have been improvements in the effectiveness of PBSs and that PBSs show good levels of compliance. The inclusion of accountability mechanisms will help to ensure an ongoing commitment to collaboration rather than it being a more fragmented relationship between OPBAS and PBSs borne out of mistrust and power imbalance.

Q5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

AAT doesn't have any specific evidence to share in response to this question, albeit that there is an argument to suggest that any regulated activity carried out without supervision will by definition be illegal. One of the issues that AAT has been an ardent campaigner on is in relation to the risks of the accountancy sector not being fully regulated. With accountants able to practice without holding a formal qualification or professional body membership this does introduce risks around the ability to improve compliance with the AML legislation. Mandating professional body membership for all those providing paid for accountancy services would, particularly in conjunction with the OPBAS+ model, help to drive up standards and compliance.

Q6. 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?

The availability of a "default" supervisor in the accountancy sector has helped to ensure that all businesses carrying out regulated activity within that sector are provided with a supervisory solution, notwithstanding that there will be those that seek to operate outside of supervisory oversight. It is logical therefore to explore the potential to establish a similar arrangement for the legal sector. Beyond that, and the likelihood that this must have been given consideration at the commencement of the current supervisory regime, AAT has no specific comment to make other than to emphasise that shortcomings in arrangements for the legal profession should not have a bearing on the identification of changes for the accounting profession.

Q7. Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.

AAT contends that the OPBAS+ model would result in a demonstrable improvement in the sector. The rationale behind this view is that by granting OPBAS with broader and stronger powers it would be better able to hold underperforming PBSs to account. Ultimately, with more proportionate sanctions, supported by enhanced visibility around the actions taken by OPBAS, either through incentivising improvement where required, or by removing the persistently underperforming PBSs, it will achieve greater consistency and effectiveness in supervision.

Q8. Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.

In its 2022/23 supervision report OPBAS identified that all of the PBSs participate in information sharing groups such as the AML Supervisors Forum (AMLSF), the Accountancy AML Supervisors Group (AASG)

³ <https://www.fca.org.uk/publication/opbas/opbas-report-progress-themes-supervisory-work-2022-23.pdf>

and the Intelligence Sharing Expert Working Groups (ISEWGs). It also observed that some PBSs contributed to other relevant networks and have memorandums of understanding in place with other AML supervisors, law enforcement agencies and other relevant partners. There was also recognition that PBSs were engaging with information sharing platforms such as SIS and FIN-NET.

On the latter OPBAS referenced that *“the number of SIS uploads registered by PBSs in 2022 had more than doubled from the previous year, with some PBSs increasing the number of uploads of active investigations, which is key.”*

Whilst AAT acknowledges that there is clear evidence of inconsistency regarding how PBSs participate in information sharing, it is important to acknowledge that there are PBSs that are engaging effectively with this requirement. As detailed above, by enabling OPBAS to have broader and stronger powers it will allow for identification of best practice as well as taking action against those that are falling short of what is required or expected. It is reasonable to assume that the extension of OPBAS’s powers in this way would result in improvement in system co-ordination.

Moreover, this would be achieved in a more organic, proportionate and less disruptive way than under the other proposed models.

Q9. Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.

As stated in the consultation document, OPBAS+ does not include structural change and does not incur transitional risks in the way that the other three proposed models do. The feasibility objective as defined in the consultation of *“ensuring that the chosen model is practically feasible, with suitable funding and governance structures”* is clearly delivered by the OPBAS+ model. Moreover, with the desire to have a model implemented and be demonstrating improved effectiveness ahead of the next assessment of the UK’s AML/CTF regime, arguably the OPBAS+ model is the only one that has a realistic prospect of meeting that requirement.

One of the key factors that underpins the feasibility of the OPBAS+ model is that it does not require the dismantling of an existing regime to start again. The consultation appears to seriously undervalue the importance of transition and failure risk. Unlike models 2, 3 and 4, OPBAS+ will not require a significant administrative task to ensure that sufficient standards of AML supervision are maintained while the respective new supervisory arrangements are established. It similarly is not exposed to the sizeable risk of transferring data and information from the existing 22 PBSs which supervise over 42,000 entities, to the new supervisor. This also brings with it a linked risk of a collapse of the existing supervisory framework should there be any delays in the implementation of a new supervisor.

Other transition risks include the scope for data quality being compromised and AML cases being lost or overlooked during a transition process. Collectively, all these risks would clearly put the UK in a vulnerable position ahead of FATF’s 2026 MER.

PBS Consolidation

Q10. 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.

AAT considers that option 2, the PBS consolidation model, is the most damaging of the four proposals. Whilst it may be considered that having one supervisor for each of the accountancy and legal sector with responsibility for AML/CTF supervision is more straightforward, moving to this model will be fraught with risk. Given the complexities involved in supervision, and the variety in type and sizes of firms in each of the two sectors, replicating the expertise and knowledge that is currently held by the existing PBSs will be a significant challenge.

The transition process, requiring the transfer of data and information from the PBSs being stood down to the consolidated PBS represents a sizeable challenge which could in itself result in severe disruption to AML supervision and subsequently an increase in non-compliance.

Similarly, this model greatly increases the risk associated to PBS financial failure as there would be little or no capacity left to replace it, either temporarily or permanently. If a single PBS were to fail, whether commercially or for another reason, there would be no 'safety net' to cover the supervision.

The investment in resources required of a single PBS supervisor to be able to scale up its operations sufficiently so as to be able to manage the increased demands will be significant and could see the cost to businesses under supervision being increased substantially. PBSs currently supervise over 42,000 entities, which is not an insubstantial number, and that would increase for the accountancy PBS if, as outlined in one of the variants to this model, HMRC were to cease supervising Accountancy Service Providers (ASPs) and TCSPs with these populations being transferred to the consolidated PBS. Even were the resource requirements to be suitably arranged, there is a significant chance that fewer firms would be monitored in comparison with the current model which would not represent an increase in effective oversight.

Whether the model results in one consolidated PBS for each of the accountancy and legal sector, or results in six PBSs with one for each of the three jurisdictions referenced in the consultation, the risks outlined above are similarly applicable.

One aspect of this model is the requirement for one or more of the existing PBSs to indicate a willingness to be considered for such a role. It doesn't appear that there has been any assessment on the likelihood that a consolidated PBS could be found. It is AAT's understanding that there has been limited appetite amongst the 13 PBSs from the accountancy sector for such a role at this stage, moreover, there would need to be a full evaluation of the implications for any PBS willing to consider taking this role on meaning that even were there to be initial interest the resource implications could challenge feasibility element of the proposal.

Q11. 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?

As already described in response to the questions relating to model 1, there are obvious advantages to be gained by providing OPBAS with additional powers, however what seems counterintuitive is to reduce the number of PBSs to either one or three per sector given that the powers described, through proportionate application, were aimed at improving PBS performance. Is it likely that under a combined OPBAS+ model and the PBS consolidation that OPBAS would restrict or remove a supervised population, or indeed remove PBS status from one of the few consolidated PBSs? Where would the resultant gap in supervision be picked up?

It is more logical that through the appropriate application of its new powers under the OPBAS+ model, the PBSs either all demonstrate a suitable level of improvement to their performance, or the PBS population is streamlined to only those that have demonstrated their suitability to retain the PBS status.

Q12. 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?

According to recent figures, HMRC currently supervises 17,656 ASPs and 1,724 TCSPs. Given the transition demands of onboarding all of those organisations supervised by the other PBSs, to additionally require the consolidated PBS to take on those supervised by HMRC, at least in the short-term, would seem to add further unnecessary risk to what, as we have already described, is an unnecessarily risky model.

Another potentially unintentional consequence of requiring the consolidated PBS(s) to take on supervision of non-member ASPs and TCSPs from HMRC is that it could remove any incentive for those member firms currently holding professional body membership status to continue to do so. This would present the risk of a general reduction in the commitment to broader high standards of professionalism that professional body

membership retains. This talks to the wider risk of unregulated practitioners as referenced above in our response to question 5.

Q13. 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?

AAT considers that for consolidated PBSs to have a more formal role in identifying firms carrying out unsupervised activity it would require wide-ranging investigatory powers potentially akin to law enforcement. Reflecting on the feasibility objective, if taking forward a provision for these powers was to require regulatory/statutory development, this would further challenge the ability for this model to be making a demonstrable difference ahead of FATFs 2026 MER. As further context, through engagement at the AASG forum AAT is aware of challenges that HMRC encounters in identifying high-value dealers, it isn't clear how a consolidated PBS model, for which these powers would be required, would make this any easier.

Q14. 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?

The number of current supervisors reflects the variety and complexity of the accountancy sector. As specialism in the profession has grown, so has the need for professional bodies to appropriately regulate education and professional standards in discrete areas of work. This has enabled those PBSs to gain a granular understanding of the educational requirements and working behaviours of each. To expect a consolidated supervisor to be able to develop that level of insight into such a vast supervised population is unrealistic without effectively developing whole new divisions for each of the other PBSs' populations. This would be logistically difficult, vastly expensive, and take years particularly when taking into account that some of the PBSs have been developing education and professional standards for hundreds of years.

In addition, there are distinctions in approaches to risk methodology across the PBSs, something that would be addressed through the OPBAS+ model, but however represents a risk under the consolidated PBS model. Dependent upon the outcome of the appointment process, given that the threshold for what some PBSs consider to be high risk not necessarily being the same for others could lead to some high-risk firms going 'under the radar'. This is particularly applicable in the context of those that are considered to be professional enablers which includes those that are not compliant with the MLR through negligence.

Q15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

The consultation document references the likelihood that some of the supervised firms, under this model, would continue to be supervised by another professional body for general conduct and other regulatory functions. It subsequently is referenced that this would potentially result in these firms having to undergo multiple instances of compliance activity, or incur additional administrative costs through the implementation of measures to avoid this duplication. This underpins another of the shortcomings of the consolidated PBS model; an impact assessment as part of the consultation would have been beneficial in enabling the evaluation of these consequential requirements.

The potential development to powers referenced at sections 4.30 and 4.31 are vague with no supporting detail. Given the desire to move quickly on these proposals and for the implementation of a new regime to have delivered material improvement ahead of the next FATF review, it is concerning that this model is being presented as an option with such limited supporting detail around what are critical elements that would need resolving ahead of implementation.

Q16. 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?

Again, as with our response to Q15, the ramifications of the options briefly summarised around the supervision of non-members are such that the lack of supporting detail makes it difficult to provide a

definitive view. In the absence of that due consideration or impact assessment, it seems that the less problematic of the two options would be to provide the consolidated PBSs with the responsibilities and powers to supervise firms according to type/activity. However, this would further increase the failure risk associated with this model, leaving no other body capable of replacing the capacity and expertise required to supervise the entire profession if the consolidated PBS failed. The far safer option would be to not consider this model at all.

Q17. 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?

The points made above are applicable to this question also. In this instance however it is difficult to see how either of the suggested solutions around enforcement actions would be feasible. There is a risk that by implementing a consolidated PBS those PBSs losing their AML/CTF status have little or no incentive to further invest in their supervisory activities, thus challenging the benefits of the option outlined at 4.33 in the consultation document. Similarly, given the transition challenges already highlighted in our response, transferring AML/CTF obligations of the scale required to the newly consolidated PBS “as soon as is possible” is so evidently fraught with risk so as to be hugely impactful on the quality of supervision.

By way of illustration, it is a likely scenario that you would have a member firm registered with a deselected PBS for professional membership purposes whilst being supervised by a consolidated PBS for AML purposes where the primary professional body receives a complaint identifying issues with their professional competence as well as their AML compliance. Which body would have primacy in terms of investigating the matter and taking appropriate enforcement action? If the complaint was to be split with the primary professional body investigating the competency issue and the consolidated PBS investigating the AML compliance matter, the member firm would then be subject to two investigations and a disconnect between the two investigations and therefore sanctions action.

Another issue to be resolved is in relation to open investigations at the point of supervisory transfer. If the primary professional body, now deselected as a PBS, is to be expected to close open AML related investigations would there be a time limit for these to be closed by?

AASG recently undertook an exercise that identified most PBSs conclude AML investigations within six months, set against an overarching target of ensuring investigations are concluded within 12 months. There was experience shared by one PBS identifying approximately 100 open cases with an average age of 545 days, indicating that there are challenges around setting time limits but also recognising that these cannot be left open indefinitely under a consolidated PBS model.

Q18. Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.

For all the reasons outlined previously, aside from the fundamental feasibility challenges, an insufficient case has been presented so as to identify that the PBS consolidation model would successfully navigate all of the inherent risks associated with its implementation. To that end there is a significant risk in the short-term of a sizeable reduction in the effectiveness of supervision. Assuming that there is an appetite to tolerate that risk, there will be a permanent risk of PBS failure, due to a variety of reasons, that would also throw supervisory effectiveness into severe disarray.

Q19. Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.

Whilst on the face of it the reduction in the number of supervisors might be expected to reduce some of the challenges around system coordination, the risks associated with the implementation of this model significantly outweigh any benefits to system coordination that it might deliver. Moreover, the deselected PBSs will continue to obtain data and receive intelligence on its member firms through ongoing membership,

disciplinary and/or complaints processes. It is undeniable that this intelligence will, in many cases, have a bearing on AML supervision and therefore the information will still need to be shared with the consolidated PBS(s). Similarly, the consolidated PBS(s) would also gather information and data through dispensing its AML supervisory duties that will need to be disclosed to the member firms' professional body. This presents a further challenge as the current gateway under Regulation 52 of the Money Laundering Regulations would not allow the sharing of this intelligence if the remaining professional bodies were not recognised as supervisory authorities under the regulations.

Q20. 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?

In spite of whether OPBAS is granted additional rule making powers to help with the implementation of the consolidated PBS model, the lack of incentive for de-selected PBSs would remain. Whilst AAT would, if it were to find itself as a de-selected PBS, endeavour to ensure that it delivered to a high standard of supervision, we cannot speak for the other bodies. The transition process therefore represents a clear risk with seemingly little realistic mitigation.

Q21. How do you believe fees should be collected under the PBS consolidation model?

This represents another aspect of Model 2 that has not been given full consideration. AAT assumes that the suggestion to appoint a third-party collection agent would be a commercial proposition whereby the third party would either be remunerated through a contract with the consolidated PBS to provide that service or take a percentage of the monies handled to cover the costs it incurs. On that basis, surely the deselected PBSs could operate on a similar basis so as to offset the administrative costs of fulfilling this service. Were that to be the case, then the option detailed at 4.27 seems the least unwelcome of the options provided.

Q22. Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

As already referenced, this option is fraught with issues from a feasibility perspective. As a recap, the constraints include:

- Consolidated PBSs being able to replicate the knowledge and expertise of the exiting PBSs for their respective supervised populations.
- Transition process that will require the transfer of data and information from the deselected PBSs to the consolidated PBS and the risk that this process could in itself result in severe disruption to AML supervision and subsequently an increase in non-compliance.
- PBS failure risk, and the lack of any 'safety net' to cover the supervision either temporarily or in the longer-term.
- The limited appetite amongst the 13 PBSs from the accountancy sector for such a role at this stage.
- Were a PBS to be willing to take in the role the investment in resources required for it to be able to scale up its operations sufficiently so as to be able to manage the increased demands will be significant and could see the cost to businesses under supervision being increased substantially.
- The timeframe for this to be implemented and making a demonstrable difference in advance of the FATF 2026 MER is unrealistic.

SPSS

Q23. 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?

AAT agrees that these are the key structural design features that would need to be considered as part of developing a new public body as described.

Q24. If an SPSS were to be created, which sectors do you think it should supervise?

By virtue of how this option is positioned, as a single professional services provider, it would therefore seem appropriate that this supervisor had oversight of the entirety of the sectors that are engaged in AML/CTF activity, including all of those that are currently supervised by HMRC that involve the handling of cash and physical goods.

Q25. Were an SPSS to be created, what powers should it have?

As detailed in the consultation document, it would be proportionate for an SPSS to have the same powers as those held by the statutory supervisors under the MLRs. AAT similarly understands the argument for an SPSS to have powers aligned to those held by the FCA under FSMA.

Q26. How should enforcement responsibility be transferred should an SPSS be created?

As with the consolidated PBS option, there is a risk that by establishing an SPSS the PBSs will have little or no incentive to further invest in their supervisory activities. The transition challenges already highlighted in our response, transferring AML/CTF obligations of the scale required to an SPSS is also fraught with risk so as to be hugely impactful on the quality of supervision.

Q27. What powers should HM Treasury have to oversee an SPSS?

AAT recognises the arrangements detailed at 5.22 in the consultation document as being proportionate and consistent with existing scrutiny arrangements for other statutory supervisors. AAT would recommend however that consideration be given to the SPSS appearing before Parliament more regularly in the first few years of its operation in order for the impact it will have been created to be properly explored. This could be reviewed were the SPSS to become fully established.

Q28. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

As with the PBS consolidation model, an insufficient case has been presented so as to identify that the SPSS model would successfully navigate all of the inherent risks associated with its implementation. There is also a significant risk in the short-term of a sizeable reduction in the effectiveness of supervision, specifically during any transitional arrangement. Given the length of time it would take to set up such a public body, there will be little incentive for PBSs to continue investing in technology and infrastructure resources given that their supervisory responsibilities were being withdrawn. There would also be a significant risk created by the loss of expertise and knowledge that is currently delivered by the PBSs and it is difficult to see how it would be possible for a single public supervisor to address that risk. Again, the acknowledgement of this risk in the consultation is not then supported by an impact assessment or fully mapped out mitigating actions.

AAT also contends that this model would place an increased burden on businesses currently supervised by the PBSs in that it will result in less specialist and targeted support resources and could see significant delays in the processing of supervisory administration.

Q29. 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?

Whereas with the consolidated PBS model some of the supervised firms would continue to be supervised by another professional body for general conduct and other regulatory functions, under the SPSS model, the

significant majority of those firms being supervised would be. As already identified, this would potentially result in these firms having to undergo multiple instances of compliance activity. This represents another shortcoming of the SPSS model; an impact assessment as part of the consultation would have been beneficial in enabling the evaluation of these consequential requirements here too.

Q30. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

AAT assumes that as this is a carbon copy of Question 28, that this is seeking views on the impact that the SPSS model would have on systems co-ordination. It is logical to assume that the removal of the PBSs through the implementation of this model would eradicate some of the risks inherent with the current model, notwithstanding that AAT considers the implementation of the OPBAS+ model would help to remediate those areas of concern. Despite the likelihood that having one supervisor would reduce some of the challenges around system coordination, the risks associated with the implementation of this model significantly outweigh any benefits to system coordination that it might deliver.

Q31. Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.

AAT considers that the feasibility constraints would be significant. The fees are likely to be higher for the supervised population, there would also be the additional costs of being supervised by an SPSS for AML/CTF purposes whilst also having to cover their professional membership fees. There will also be an increased administrative burden on the supervised population in dealing with separate entities.

The setting up and transition challenges are substantive, and without a fully developed impact assessment, the scale of these challenges should be of significant concern. The setting up of an SPSS will be costly to the taxpayer and not proportionate to the problems that the model is seeking to address. In this difficult economic climate, these costs and bureaucratic burdens to businesses and the taxpayer cannot be justified.

SAS

Q32. 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?

Currently all of the PBSs undertake gatekeeping measures to comply with the Money Laundering Regulations. These measures are:

- A DBS check of a member applying for AML supervision for their firm.
- Verification that a DBS check has been carried out on any beneficial owners, officers or managers (BOOMs) in the firm, either at point of application for AML supervision or during AML monitoring reviews.
- SIS checks carried out at point of application for AML supervision.

AAT also considers that a single supervisor would be restricted in its gatekeeping activities if the Money Laundering Regulations were to remain unchanged. Currently, the regulations only allow a supervisor to reject approval if an applicant has been convicted of a relevant offence. Whereas PBSs have wider regulatory frameworks which allow them to remove the membership (and supervision) of any individual where their actions have either put the public or profession at risk, such as they have been convicted of other offences or have become subject to a civil sanction which could compromise their integrity.

Q33. Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.

There is little difference between option 3 and option 4, as such the impact is as outlined in response to Question 28 above.

Q34. 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.

AAT is not directly engaged with the experiences of those currently supervised by the statutory supervisors and as such unable to comment on this question.

Q35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

There is little difference between option 3 and option 4, as such the impact is as outlined in response to Question 30 above.

Q36. Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.

There is little difference between option 3 and option 4, as such the impact is as outlined in response to Question 31 above.

Sanctions

Q37. 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?

AAT has ensured that its supervised population has been made fully aware of the sanctions, their scope and potential impact on their firms and their clients.

AAT has continued to publish articles around the Russia sanctions regime and what this means for accountants:

- Red Alert: Financial Sanctions Evasion by Russian Elites and Enablers
- Clients, sanctions and the ban on accountancy services to Russia
- Prohibition on provision of accountancy services to Russia
- AML alert – watch out for Russian entities covertly acquiring goods.

The above articles were published online and highlighted in AAT's weekly member newsletter. A four-page article was also published in the Jul/Aug 2022 edition of AAT's member magazine around the Russia sanctions regime and handling clients subject to financial sanctions, with this being the main feature on the front cover.

In addition, AAT continues to provide advice to its supervised population through our AML helplines and mailbox and provided examples of the types of sanctions evasion methodologies reported to us by the supervised firms to the Public Private Threat Group (PPTG) in November 2022.

Where we receive intelligence that indicates a firm is high-risk, such as they have potentially engaged Russian clients or clients connected to persons in Russia, then the firm is included in AAT's onsite supervisory monitoring activity.

Q38. 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?

AAT has been able to ensure that the firms it supervises are conducting risk assessments, carrying out sanctions checks and performing enhanced due diligence checks where required within existing supervisory frameworks. It should be feasible for sanctions systems and controls to be monitored under the developments to the powers suggested for the OPBAS+ model.

Currently, the Money Laundering Regulations require supervisory bodies to effectively monitor their supervised population's compliance with the legislation. However, the requirement for firms to report sanctions breaches to OFSI sits outside the MLR. It would therefore be helpful to have some clarification in the Money Laundering Regulations as to the consolidated PBS's role in respect of dealing with sanctions breaches.

There is also no specific requirement for firms to undertake sanctions checks under the Money Laundering Regulations - instead firms are expected to comply with any sanctions legislation that comes into force under the *Sanctions and Anti-Money Laundering Act 2018*⁴. It would be helpful therefore if the Money Laundering Regulations could be expanded to include the scope of sanctions checks by firms as a possible CDD measure and include the requirement for firms to report sanctions breaches to OFSI.

Q39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

Aside from legislative powers AAT considers that a lack of clear guidance on what constitutes 'effective' would be a potential barrier.

Q40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

In the consultation document it references that the MLRs do not explicitly require firms to have in place sufficient systems and controls to safeguard against breaching non-CT and non-(proliferation financing) PF sanctions, though sanctions screening is a recommended fundamental part of risk assessment. On that basis AAT would recommend that new powers should be made sufficiently broad so as to accommodate any ongoing change or developments in sanctions guidance and implementation. This should extend to financial and trade sanctions.

Options Comparison

Q41. How would expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

As stated in the consultation, there are currently 33,391 firms supervised by the PBSs, some with a sizeable percentage of that supervised population. One of the key considerations is as to how the transition to models 2,3 and 4 will be managed given that the PBSs will continue to incur costs of supervision during that period. As detailed in AAT's annual AML/CTF Supervision Questionnaire 2022/23, AAT supervises approximately 20% of the supervised firms figure quoted above. If AAT were to be deselected as a PBS, a proportion of the annual licensing fee that is attributable to AML supervision will need to be reviewed. There will still be existing regulatory oversight activities undertaken, nevertheless AAT's members will expect to see a resultant reduction in their AAT fees. In time there would be scope to review internal resource commitments currently apportioned to AML/CTF supervisory activity, however this would similarly be subject to transitional arrangements as the activity is tapered.

Q42. 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.

AAT does not support continuing the status quo and recognises the need for reform. As such, AAT believes Model 1 (OPBAS+) is the only solution of the four which meets the consultation's three objectives and addresses the concerns we have expressed above. We would respectfully disagree with the consultation that this would only see "incremental" change as it depends entirely on the new powers given to OPBAS.

⁴ <https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>

If OPBAS were to be given more robust powers to hold PBSs accountable this would improve supervisory effectiveness. Its new powers could also be used to improve system co-ordination (another consultation objective) to ensure PBSs are sharing timely and accurate information with OPBAS and other bodies. As already acknowledged in the consultation, OPBAS+ already meets the final objective as it is “*the most immediately feasible, requiring no structural change*”.

OPBAS+ would also build on significant progress that has been made since OPBAS was created. In its April 2023 report, OPBAS stated that PBSs continue to deliver iterative improvements in effectiveness under the current regime and OPBAS has also made strides to improve the regime, setting up ISEWG, getting all PBSs on SIS/FIN-NET, and improving supervisory systems. Furthermore, OPBAS is continually raising the standards on the outcomes they expect from PBSs to improve supervision. OPBAS+ is the only model that can build on this progress, deliver meaningful change, and improve consistency of supervision without substantial risk. It would be far more effective than dismantling the regime and starting again.

While OPBAS+ would not solve the lack of a default supervisor in the legal sector, this issue should be addressed separately. The accountancy sector has a well-structured regime in place for AML supervision and it would be counterproductive to choose a different model that is unsuitable for one profession just to meet a specific gap in the other.

The consultation severely undervalues the importance of transition and failure risk. Models 2, 3 and 4 will require an enormous administrative task to ensure money laundering supervision is maintained while the respective supervisor is set up. The lack of an impact assessment of this consultation is very regrettable as it could properly evaluate the severe risks of transferring data and information from 22 PBSs to a new single supervisor.

Other transition risks include the quality of the data itself being compromised, existing supervisory collapse if the implementation of the three options is prolonged, and money laundering cases could be ignored or lost during the transition. All of these risks would put the UK in a vulnerable position ahead of FATF’s 2026 MER.

Public Sector Equality Duty

Q43. 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?

AAT has no evidence to provide in response to this question.