

# REFORM OF THE ANTI-MONEY LAUNDERING AND COUNTER TERRORISM FINANCING SUPERVISORY REGIME

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*Transparency International UK's submission to HM Treasury, 30 September 2023*

## SUMMARY

Transparency International UK is the UK-based chapter of Transparency International, the world's leading non-governmental anti-corruption organisation. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK. We base our advocacy on robust research, and, as a UK registered charity, are independent and non-political.

We welcome HM Treasury's consultation on substantive options for anti-money laundering (AML) supervisory reform, and HM Government's recognition in its latest Economic Crime Plan that reform is needed.

It has been clear for some time now that the status quo is not working. Despite establishing the Office for Professional Body AML Supervision (OPBAS) to raise standards within the professional body supervisory community, there remain significant and deep-seated issues with this community's response to illicit finance in the private sector.

If the UK is to clamp down on the enablers of economic crime, it needs to change how it polices their conduct.

We support Option 3 in the consultation, which involves consolidating and rationalising oversight of the overwhelming majority of Designated Non-Financial Businesses and Professions (DNFBPs). This aligns more closely with the Financial Action Task Force's (FATF's) overarching approach to recommendations and mutual evaluations; recognises money laundering knows no borders or sectoral boundaries; provides a more consistent set of incentive structures for good practice within the private sector; and generates both economies of scale in having a single specialist body for DNFBPs, while increasing system accountability, which is currently too dispersed amongst 25 different bodies.

As the consultation recognises, there are crucial enablers needed to make sure these reforms are a success. To successfully consolidate supervisors, they need to be given the necessary powers, resources and transitional arrangements. This is a significant, but essential, undertaking: Russia's re-invasion of Ukraine has focussed minds on the need for a whole of government response to a range of increasing security threats across the globe. Inertia and complacency are the allies of autocrats and kleptocrats, and those who serve them.

## RECOMMENDATIONS

HM Treasury should proceed with Option 3, creating a single professional services supervisor (SPSS) which is best suited to delivering the government's objectives for reform.

To make this a success, HM Treasury should ensure the new supervisory system has key enablers of effective supervision, such as competitive remuneration packages, and flexible supervisory and enforcement powers.

To ensure as smooth a transition as possible, HM Treasury should:

- create a thorough and robust project management structure to manage the process of transformation, with a dedicated senior responsible officer and ministerial lead driving reform
- establish the new SPSS as a shadow organisation so it can prepare adequately and hit the ground running
- increase OPBAS's powers and role in the interim to prevent backsliding amongst existing PBSs
- introduce a duty to cooperate with the new SPSS during the transition period amongst existing PBSs, and a duty of candour to report any relevant issues among supervised firms to the new SPSS
- a clear transition plan for supervisory and enforcement casework that ensures continuity and consistency during the lifecycle of an investigation and subsequent action

## SYSTEM OBJECTIVES

We broadly agree with objectives set out in the consultation and their relative priority.

As we note in our report, *At your service*, enablers of corruption and associated money laundering fall on a spectrum from wilfully complicit to negligent and willing but unable to comply with their obligations.<sup>1</sup> The money laundering regulations (MLRs) set minimum standards against which these firms can be judged, with supervisors choosing appropriate interventions to get them up to this standard. Consequently, supervisors should have a range of tools to be able to target and deploy their resources efficiently and with maximum impact. The following principles should form the foundation of the UK's AML supervisory model:

- **Consistency:** providing consistent advice and guidance, compliance monitoring and enforcement functions, that are free from conflicts of interest.
- **Proportionality:** targeting resources effectively and providing a credible deterrent against money laundering.
- **Transparency:** openness over policies, actions and costs to allow external scrutiny of performance.
- **Accountability:** subjecting performance to greater independent external scrutiny.

The forms and structures outlined in the first two objectives in the consultation would help deliver greater consistency and proportionality in AML supervision. However, there could be more detail on two key elements of change:

- Transparency over policies and activity – including but not limited to publicly accessible lists of supervised entities, an enforcement policy, warning and decision notices for enforcement action,<sup>2</sup> and annual reports to HM Treasury on supervisory information.<sup>3</sup>
- A clearer picture of where performance management of supervisors sits within HM Government – given AML policy sits within HM Treasury it would be logical for AML performance to sit in that department, too.

## OPTIONS FOR REFORM

Overall, **Option 3** best suits the objectives of reform, and should be housed in a new public body with a clear mandate for supervising DNFBPs. This should have powers broadly equivalent to those afforded to the Financial Conduct Authority (FCA) and HMRC currently, including:

- sharing and receiving intelligence from relevant agencies, including the UK's financial intelligence unit (FIU), the National Crime Agency (NCA), the FCA and HMRC
- the power to appoint skilled individuals to produce independent reports on a firm's practice<sup>4</sup>
- the ability to issue civil sanctions akin to those available to the FCA and HMRC currently<sup>5</sup>
- the ability to bring prosecutions or refer criminal cases under the MLRs to the relevant prosecutorial authority

A single professional body supervisor for the overwhelming majority of DNFBPs would have the advantages of:

- aligning more closely with the structure of FATF's recommendations<sup>6</sup> and evaluation frameworks for AML

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<sup>1</sup> Transparency International UK, *At your service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations* (October 2019) p.14

[https://www.transparency.org.uk/sites/default/files/pdf/publications/TIUK\\_AtYourService\\_WEB.pdf](https://www.transparency.org.uk/sites/default/files/pdf/publications/TIUK_AtYourService_WEB.pdf)

<sup>2</sup> As is already the case under Regulations 81-84 in The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <https://www.legislation.gov.uk/ukksi/2017/692/part/9/made>

<sup>3</sup> As is already the case under Regulation 51 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <https://www.legislation.gov.uk/ukksi/2017/692/part/6/chapter/1/made>

<sup>4</sup> Section 166, Financial Services and Markets Act 2000 (FSMA) <https://www.legislation.gov.uk/ukpga/2000/8/section/166>

<sup>5</sup> Chapter 2, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <https://www.legislation.gov.uk/ukksi/2017/692/part/9/chapter/2/made>

<sup>6</sup> FATF, *The FATF recommendations* (February 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>; FATF, *Procedures for the FATF fourth round of AML/CFT mutual evaluations* (February 2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/Global-Network/FATF-4th-Round-Procedures.pdf.coredownload.pdf>

- independence from the conflicts of interest that have undermined professional body supervisors' (PBS) performance to date;
- pooled intelligence covering a vast regulated community, which is currently held in silos by bodies that are unable to handle and use it effectively.<sup>7</sup>
- a wider and more flexible toolkit to create the incentives for compliance amongst businesses, which is currently limited for many PBSs
- clearer accountability, with only three AML supervisors instead of the current 25
- a clearer organisational focus on securing compliance with the MLRs and identifying potential criminal activity for referral to the NCA
- no more opportunity for firms to 'shop' for supervisors, as is currently the case, especially within the accountancy sector
- economies of scale that are not possible at the moment given these responsibilities are spread over 23 different bodies (22 PBSs and HMRC)

**Options 1 and 2** do not meet the objectives of reform. Our previous submissions elaborate in more detail, and OPBAS's annual reports make the point persuasively, but in summary it is apparent that:

- there are too many supervisors to provide meaningful system coordination
- there is a worryingly low level of understanding of AML within many bodies tasked with ensuring compliance with the MLRs
- there is a wide range of approaches to understanding and applying risk assessments, which has an impact on supervisors' effectiveness and proportionality
- there is a patchwork of powers and sanctions across supervisors, providing an inconsistent deterrent to misconduct
- there are some supervisors who have a weak enforcement posture because of inherent conflicts of interest between their commercial and supervisory functions
- while HMRC has a valuable role to play in supporting a whole-system intelligence picture of money laundering threats, it is overloaded with responsibilities and objectives, to the detriment of its supervisory performance

We consider the risks cited as defences of the status quo, or as a variant of Options 1 and 2, also do not stand up to closer scrutiny:

**Sector expertise:** We recognise that supervisors need an understanding of the kinds of products and services offered by companies in order to be able to make judgements about the appropriateness of firms' AML risk policies and procedures. However, it does not logically follow that this expertise must therefore sit within existing PBSs or sectoral-based PBSs. It is entirely feasible for a new, consolidated body under Option 3 to recruit staff from these sectors so long as they have the right culture, resources and remuneration package to attract this talent. It is also clear from OPBAS reports that the level of sector-based AML expertise is currently lacking. Therefore, the supposed loss of knowledge caused by moving away from the status quo appears over-stated.

Additionally:

- money laundering does not recognise sectoral boundaries<sup>8</sup>
- both parts of the legal and accountancy sectors are branching out into multi-disciplinary practices

<sup>7</sup> OPBAS, *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and themes from our 2022/23 supervisory work* (April 2023) p.6 <https://www.fca.org.uk/publication/opbas/opbas-report-progress-themes-supervisory-work-2022-23.pdf>

<sup>8</sup> Transparency International UK, *At your service* p.15; RUSI, *Known unknowns: Plugging the UK's intelligence gaps on money laundering involving professional services providers* (April 2018) <https://rusi.org/explore-our-research/publications/occasional-papers/known-unknowns-plugging-uks-intelligence-gaps-money-laundering-involving-professional-services#:~:text=This%20paper%20sets%20out,to%20and%20from%20the%20non%2D>

- having so many supervisors covering the same activity allows supervisory shopping by those looking to evade accountability, provides a disaggregated picture of risk across key activity areas, such as trust and company service provision, and is inefficient

Together, these patterns and factors highlight how defining supervision along arbitrary sectoral lines makes little sense.

**Local knowledge:** Understanding the context in which regulated businesses operate is crucial to effective supervision. What presents as a client risk may differ greatly between firms based in London, Liverpool, Glasgow, Belfast and Swansea. Having local knowledge, especially in Scotland which has a separate legal system, is imperative in any new system. However, again, it does not follow that AML supervision should be divided between bodies based on geographical lines. There are a range of public bodies operating across all parts of the UK, with offices in the nations and regions.

**Non-AML firm insight:** In theory, there is a persuasive argument that current PBSs can draw from their knowledge of firms' compliance with non-AML standards, and that moving AML supervision into a separate body provides an organisational gap for this information transfer. However, again, there is insufficient evidence that PBSs are actually using this insight effectively in prioritising their activities. It is worth citing OPBAS's latest report at some length to emphasise this point: '*A large proportion [of PBSs] were only partially effective in developing and recording risk profiles for their sector and carrying out regular appraisals and reviews of AML risks. Many lacked an evidential basis for their risk assessments.*'<sup>9</sup>

**Competitive pay:** We question the assumption that a new public body SPSS would not be able to provide competitive rates of pay, and that a PBS's remuneration package is and would be more attractive for two key reasons.

First, from a quick review of jobs advertised currently, some supervisors appear to have salary ranges broadly equivalent with civil service pay grades. For example, the SRA are advertising a Head of AML Proactive Supervision role with a salary range of £62,500 – £75,000.<sup>10</sup> This seems broadly equivalent to a Grade 6 position within the civil service pay scales, with a salary range of £61,235 - £72,328 depending where in the country they are based.<sup>11</sup> Similarly, a non-AML Regulatory Support Advisor role at ICAEW, based in Milton Keynes, attracts an annual salary of £25,956. This seems broadly equivalent to an Executive Officer (EO) role in the civil service within a salary range of £24,836 – £32,186 depending on location.<sup>12</sup> Note this comparison does not take into account other employment benefits, such as pensions or flexible working arrangements, which could be better in the civil service. This is not to say that civil service pay grades are competitive with the private sector – the main competition for workers in this field – but to provide evidence that PBSs do not, necessarily, pay better.

Second, there are parts of the public sector that are not constrained by civil service pay grades. We recognise that this is determined largely by a classification process.<sup>13</sup> Our general position is that this body will require the powers, sanctions, specialisms, governance and funding streams similar to the FCA. Consequently, this suggests it should fall into the category of a public corporation, which can have more control over their remuneration packages.<sup>14</sup> Based on FCA pay grades<sup>15</sup> and anecdotal evidence from PBSs we could find, the new SPSS could have significantly more competitive salaries than existing PBSs. We recommend the new SPSS carry out a thorough benchmarking exercise against both existing PBS pay and private sector competitors to calibrate a reward package to attract the right talent for the job.

While **Option 4** is attractive in its simplicity, this risks overloading the FCA with supervisory responsibilities and undermining its effectiveness.

<sup>9</sup> OPBAS, *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors* (2023) p.5

<sup>10</sup> <https://sra.tal.net/vx/mobile-0/appcentre-SolicitorsRegulationAuthority/brand-0/candidate/so/pm/1/pl/3/opp/3063-Head-of-AML-Proactive-Supervision/en-GB> [accessed 28 September 2023]

<sup>11</sup> <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/oncivilservantgradesandsalarybands> [accessed 28 September 2023]

<sup>12</sup> <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/oncivilservantgradesandsalarybands> [accessed 28 September 2023]

<sup>13</sup> <https://www.gov.uk/government/publications/classification-of-public-bodies-information-and-guidance> [accessed 28 September 2023]

<sup>14</sup> HM Treasury, *Managing public money*, Annex 7.3 (May 2023)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1174979/Managing\\_Public\\_Money\\_-\\_May\\_2023\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1174979/Managing_Public_Money_-_May_2023_.pdf)

<sup>15</sup> FCA/PSR, *Our new employment offer: Changes to grading, pay structure and benefits* (March 2022)

<https://www.fca.org.uk/publication/corporate/fca-employment-offer.pdf>

## ENABLERS OF REFORM

Achieving this ambitious set of reforms requires three key enablers:

**Adequate financial and human resourcing** including activity-specific knowledge and capability to handle sensitive intelligence (e.g. suspicious activity reports) and criminal evidence appropriately. Securing the right talent will likely involve providing remuneration at a rate that is competitive enough with alternative employers in the private sector, which includes large accountancy and legal firms. We recognise the ability to offer pay above standard civil service pay rates depends in part on the categorisation of this new entity.

**Phased transition** to reduce the risk of a supervisory gap during the consolidation process. This should include:

- a thorough and robust project management structure within HM Treasury to manage the process of transformation, with a dedicated senior responsible officer and ministerial lead driving reform
- establishing the new SPSS as a shadow organisation, so it has time to recruit and prepare the relevant policies, resources, systems and processes necessary to hit the ground running, such as migrating relevant data from existing PBSs, and establishing intelligence sharing gateways with other relevant agencies, such as the NCA, FCA, HMRC and Companies House
- increasing OPBAS's powers and roles in the interim to prevent backsliding amongst existing PBSs
- introducing a duty to cooperate with the new SPSS during the transition period amongst existing PBSs, and a duty of candour to report any relevant issues among supervised firms to the new SPSS
- a clear transition plan for supervisory and enforcement casework that ensures continuity and consistency during the lifecycle of an investigation and subsequent action

**Political will** to drive these reforms forward in the face of likely heavy lobbying by professional bodies and their members. We note that current PBSs have a strong incentive to maintain the status quo, which is to the detriment of the public interest.

## SANCTIONS

We see the attraction of giving AML supervisors a formal responsibility to supervise businesses' systems and processes for complying with sanctions. This is similar to their existing role in doing the same for AML/CFT requirements, such as know-your-customer checks and money laundering risk assessments. However, there are two immediate challenges that need further consideration before moving this forward.

Firstly, responsibility for sanctions policy and implementation is already spread across a range of bodies, including the FCDO, OFSI, and the NCA. It is not clear from the consultation document whether HM Treasury is proposing to move some responsibility from OFSI to AML supervisory bodies, or give supervisory bodies powers and responsibilities in addition to OFSI's. Either way, given the issues with the UK's fragmented AML supervisory system, awarding a formal sanctions role to the existing 25 AML supervisory bodies would not likely help with the coherence of the UK's sanctions regime.

Secondly, the scope of sanctions are much broader than the MLRs, which could result in a two-tier system whereby regulated businesses under the MLRs receive more help and scrutiny than those who are not. Similarly, it raises questions as to who should do this work for businesses outside of the scope of the MLRs. There may be sound arguments for this two-tier system – regulated businesses may pose a higher sanctions-related risk than un-regulated businesses – however this is not clear in the consultation document.

Overall we are not opposed to this proposal but think it needs further development.

## CONTACT

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