ICAS RESPONSE TO ANTI-MONEY LAUNDERING SUPERVISORY REVIEW: CONSULTATION

Submission Date: 17 August 2017
ICAS welcomes the opportunity to comment on the Government’s Consultation on the Anti-money laundering supervisory review.

Background to ICAS
ICAS received its Royal Charter in 1854 and is the oldest professional body of accountants in the world. We were the first body to adopt the designation ‘Chartered Accountant’ and the designatory letters ‘CA’ are the exclusive privilege of Members of ICAS in the UK.

ICAS is a professional body for over 21,000 Members who work in the UK and in more than 100 countries around the world. Our CA qualification is internationally recognised and respected. We are a highly respected regulator.

ICAS became approved as an Anti-Money Laundering (AML) supervisory body on 15 December 2007 and is empowered under the Money Laundering Regulations 2017 to regulate and monitor the accountancy firms and trust and company service providers associated with ICAS Members. As indicated in our 2016 Return, we supervise approximately 1,000 firms.

We are a Recognised Supervisory Body (RSB) for statutory company audit in the UK (supervised by the Financial Reporting Council (FRC)), and received similar status in relation to Local Audit on 1 November 2015. We are also a Designated Professional Body for incidental investment business and consumer credit (supervised by the Financial Conduct Authority (FCA)) and a Recognised Professional Body for insolvency licensing and regulation (supervised by the Insolvency Service).

As supervisor for AML/Counter-Terrorist Financing (CTF), we welcome the opportunity to provide information in response to the Anti-money laundering supervisory review: consultation.

While the creation of an oversight regulator will have a significant impact on the Members and Firms that we regulate, the ICAS Royal Charter requires that we act in the public interest. Our proactive projects and responses to consultation documents are therefore intended to place the general public interest first.

We consider the public interest, in this case, is to ensure that there is a consistent approach to supervision across all supervisors.

Consultation response

1. Do the draft regulations deliver the government’s intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?

From the outset ICAS has wholly supported the initiatives to create consistency within the broad spectrum of PBS. We welcomed the establishment of OPBAS and our comments in relation to the regulations are intended to be constructive. We want the UK regulatory framework to be more effective and efficient.

OPBAS Powers
We noted with interest that the regulations don’t appear to give FCA express oversight supervisory powers over the accountancy sector supervisors, and that its role as OPBAS is framed instead as “ensuring the self-regulatory organisations comply with any supervision requirement”. Perhaps because the regulations are short, the consequent focus on the FCA’s enforcement powers – as evident in the language and tone - is particularly stark. That does not mean that the regulations are deficient, only an observation that the tone being set from the very outset is one of enforcement.

To that extent, and in response to the question, the draft regulations don’t “help” the PBSs to actively comply with their obligations. They will ensure that PBSs do so, albeit through the threat of regulatory enforcement action.

Further legislative provisions
ICAS does not require legislative permission to be able to raise funds for the OPBAS fee. We have no comment to make in relation to the legal sector but clearly the sector needs to be able to contribute to the funding of OPBAS.
Whilst not expressly set out in the consultation question, we would like to make the following additional observations:-

**OPBAS Scope**

If the aim of the regulations is to ensure the highest possible standards of compliance across the accountancy and legal sectors, then there needs to be a very clear and consistent regulatory framework in the UK. Irrespective of whether or not HMRC adopts the OPBAS standards (as the government outlines in the paper), the current proposals will still encourage inconsistent levels of accountability.

The exclusion of the statutory default accountancy sector regulator from the new supervisory framework will weaken the government's overall objective as it will lead to inconsistency between PBSs and statutory AML supervisors, and that enhances the risk that the UK's AML regime is not as robust as it could be.

Any scope for inconsistent regulation is not in the public interest.

**Impact Assessment**

1. Option 2 refers to the benefits of regulated businesses being able to draw on a single piece of guidance for their sector, reducing uncertainty and unnecessary costs in the regime. The single guidance is cited as a key benefit of the Impact Assessment, but OPBAS has no jurisdiction over businesses and it our understanding the sector will produce its own guidance.

   Interestingly, the chartered accountancy bodies, acting collectively as the CCAB\(^1\), have published and adopted a single piece of guidance since the 2004 Regulations came into force for the sector. Revised CCAB Guidance was published on Friday 11 August 2017 and is to be adopted by all accountancy sector supervisors. Consistency of approach has therefore been achieved without any legislative oversight.

2. The Impact Assessment suggests that micro entities will be outwith scope. There is no de-minimis for accountancy firms, therefore all our micro entity firms will be caught by the increased regulation that ICAS will need to adopt, under the MLRs and OPBAS enforcement provisions. Many professional body micro entities could be left more heavily regulated compared to their larger HMRC supervised counterparts. This creates additional pressures on small professional businesses.

**Terminology**

Could we encourage consistent terminology. ICAS has been described as follows:-

<table>
<thead>
<tr>
<th>MLRs 2017</th>
<th>Consultation Paper</th>
<th>Draft Regulations</th>
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<tbody>
<tr>
<td>Supervisory Authority</td>
<td>Professional Body AML Supervisors (PBSs)</td>
<td>Self-regulating organisation</td>
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6. Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings. Please round your answer to the closest £100.

In general, there is no doubt that oversight will lead to enhanced regulatory costs.

Based on our experience of engagement with existing oversight regulators such as the FRC and the FCA (in other areas), it is certain that we will have to increase our resources to support such engagement. We are currently considering the immediate financial impact of the MLRs, and OPBAS regulation. OPBAS has separately consulted on an indicative budget of £2m. That consultation suggests staff engagement with OPBAS will be 120 days per annum. Like many of the chartered accountancy bodies, ICAS is subject to multiple layers of oversight regulation and drawing on this experience, we consider that 120 days is likely to be a conservative estimate.

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\(^1\) The Consultative Committee of Accountancy Bodies
It is difficult to quantify accurately the time, resource and direct costs of the government’s proposals until we have a better understanding of what such engagement will look like and what may be expected of us.

As you are aware, the draft OPBAS sourcebook has only just been issued for consultation and it will take the duration of the consultation period (closes 23 October 2017) for us to fully reflect on how the OPBAS guidance maps against our existing procedures. We would have been in a stronger position to respond if the consultation periods had been more closely aligned. Both consultations were also issued during the main holiday period which has reduced the time available for consideration.

Whatever the direct and indirect costs of such engagement (which will be in addition to the extra regulatory costs associated with the MLRs 2017), we would expect to have to pass this cost on to our supervised population. HMRC will not incur these same costs. We expect that the increasing costs which could be associated with professional body supervision may make HMRC a more attractive regulatory option for some firms.

OPBAS costs are likely to be fixed, and not directly related to the size of the supervised population. Taking a cost/benefit approach, smaller PBSs could look to surrender supervision in time, which would lead to OPBAS costs being shared among a smaller pool.

On the whole, we doubt there will be savings to business through the consistency of supervision approach - the streamlining of AML guidance has no economic impact on firms. OPBAS will issue guidance for the PBSs and this will not create any savings.

7. Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS’s guidance going forward? If more or less, please provide the estimated annual additional cost or saving. Please round your answer to the closest £100.

As outlined in our answer to question 6, we would expect to invest in resources.

8. In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for businesses you would like the government to take into account? If yes, please outline these and provide estimated costs or savings. Please round your answer to the closest £100.

Again, it is very difficult to answer this question pending review of the OPBAS draft sourcebook, and the preparation of the full business case for ICAS AML regulation, taking into account the impact of both OPBAS and the MLRs. If anything, there are aspects of the MLRs that will lead to increased costs for ICAS and our supervised population, such as the extension of requirements relating to beneficial owners and PEPs, and the new application/disclosure checks that have been mandated for an existing population.

It is perhaps to be noted that OPBAS has no role in relation to the delivery of simplified AML guidance for business, beyond outlining in its sourcebook the importance that government has placed on the supervisors adopting consistent guidance. As noted above, guidance is now already published in draft, pending future submission for approval by MLAC.