

Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors consultation

The IFA welcomes the opportunity to comment on the Financial Conduct Authority's guidance consultation GC 17/7 on The Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors published in July 2017.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small- to medium-sized enterprises or in micro and small- to medium-sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with 35,000 members and students in 80 countries.

The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter and regulator and is an awarding organisation recognised by Ofqual, the UK public body responsible for maintaining and monitoring standards for general and vocational qualifications and examinations. We offer a programme of professional qualifications and education as well as resources, events, training and seminars.

We are recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.

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Major points

General comments

1. As mentioned in our previous consultation response on the Anti-Money Laundering Supervisory regime issued on 15 March 2017, we strongly support the UK's drive to combat money laundering and terrorist financing. We are therefore committed to support and contribute to the development and implementation of the Money Laundering Regulations 2017 and robust AML/CFT regime.
2. We also believe strongly in a consistent, fair, proportionate, accountable, transparent and risk-based supervisory regime which is in the public interest. We therefore welcome the FCA's approach to developing sourcebook guidance which is "transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed" (paragraph 4.4 of this consultation).
3. However, as referred to in our previous communications to HM Treasury which are available on our website at www.ifa.org.uk/about-us/acting-in-the-public-interest/representations we and other professional bodies have some significant concerns which, whilst partially referred to in this consultation document, have not been addressed.
4. In previous consultation responses to HM Treasury, we and other professional bodies supported the concept of an oversight body to work with professional bodies and that "HM Treasury could effectively undertake this role if appropriately resourced to do so." IFA's rationale for supporting an oversight body in this area was one of public interest rather than failure by professional bodies in meeting their supervisory standards. No evidence has been provided by HM Treasury, either verbally or in writing, to support the fact that supervisors have not met the standards that are expected of them, in spite of HM Treasury having the opportunity to raise these issues when attending the Accountancy Affinity Group meetings, the Money Laundering Sector Forum meetings and the submission of an annual supervisors report to HM Treasury based on their requirements on a voluntary basis.
5. The introduction of OPBAS was justified on the grounds of having inconsistencies between supervisors which criminals may look to exploit, simplifying the amount of guidance which businesses have to follow and removing the unnecessary burdens without having a material impact on the fight against money laundering (<https://www.gov.uk/government/news/uk-tightens-defences-against-money-laundering>). However, as discussed below, we have highlighted to HM Treasury on numerous occasions, our concerns that the desired outcomes in the accountancy sector will not be achieved by introducing OPBAS since the fundamentals on which OPBAS is being created appeared to be inherently flawed, based on perception rather than evidence.
6. The significant points raised by the IFA in various consultations to HM Treasury that we would like to draw your attention to are:
 - (a) We support a collaborative approach to oversight and supervision and recognise that OPBAS must have the relevant powers in law to conduct its oversight and supervisory duties.
 - (b) IFA and other accountancy body supervisors have engaged with HM Treasury, the Home Office and other agencies in a collaborative way through the Accountancy Affinity Group, the Money Laundering Sector Forum and initiatives such as the Flag it Up Campaign. We intend to continue our collaborative approach with OPBAS and hope that this will be reciprocated.
 - (c) The Accountancy Affinity Group has invested a significant amount of time in developing consistent approaches to risk and supervision as well as contributing to the development of the CCAB Anti-Money Laundering Guidance for the Accountancy Sector. The CCAB guidance has existed since August 2008, has been updated for the Money Laundering Regulations 2017 in August 2017 and is still waiting HM Treasury approval.
 - (d) The accountancy sector is a very diverse sector in terms of size, structures, services provided and so on and the risk-based approach to supervision may at first glance appear that there are inconsistencies between supervisors. As has been raised with HM Treasury, there is no "one size fits all" approach to Anti-Money Laundering Supervision since by its very nature supervision should be risk based.
 - (e) We still have strong concerns that the desired outcome of achieving consistency in supervision across the accountancy sector will not be achieved when the statutory default regulator, HMRC, will not be included within the scope of OPBAS. If this is not addressed, this could

potentially create a “two tier” supervisory system in the accountancy sector, one for professional body supervisors and another for HMRC, with different standards, reporting lines, accountability and costs.

- (f) The unintended outcome of the creation of a “two tier” supervisory system might be a reduction in the number of professional accountants as a result of increased costs and burdens being imposed on them. If OPBAS is to be funded by professional bodies, these bodies will pass on the fees to their members. Individuals may choose to cease their membership as a result of increased fees and the perception of no added value and elected to be supervised for AML by HMRC, which may be a cheaper alternative. If individuals cease their membership, they will no longer have to adhere to the ethical and technical standards expected of professionals, will not be subject to ongoing continuing professional development, disciplinary processes and practice management requirements such as professional indemnity insurance all of which protect the public.
 - (g) The OPBAS fees may also result in a reduction in the number of professional body supervisors and increase in the number of individuals and firms that HMRC may have to supervise.
 - (h) We were extremely concerned about the lack of detail, both in terms of benefits and costs, in HM Treasury’s impact assessment for the creation of OPBAS which accompanied the draft regulations for OPBAS. The decision whether or not to create OPBAS should have been supported by a robust impact assessment prior to making the decision and the proposal for its creation should have been fully consulted with individuals, businesses and supervisors. Our comments were also supported by the Regulatory Policy Committee “The quality of the assessment would have been improved by including more detailed discussion of the options considered for the creation of OPBAS. The IA should have explained more on the structures of the new institution and the design of the oversight system. The IA should have also explained more clearly why the proposed policy is likely to be most efficient way of complying with the Directive.” Our details response to this consultation is available on our website at www.ifa.org.uk/about-us/acting-in-the-public-interest/representations.
7. As a general point, it would be incredibly helpful if either HM Treasury and/or the FCA informed professional bodies of proposed timescales for future consultations, the final regulations for creating OPBAS and the creation of OPBAS itself. It is our understanding that a consultation on OPBAS fees will be imminent, the sourcebook guidance will be effective on 1 January 2018 (see paragraph 8 below) and that OPBAS is likely to be operation Q1 2018. However, no other information regarding this area has been forthcoming.

Specific questions

Question 1: Do you have any comments on the proposed sourcebook for professional body supervisors? Would greater detail or a more prescriptive approach be helpful?

Approach

- 8. The IFA supports a principles-based approach to the sourcebook which should be seen as general guidance in accordance with section 139A of the Financial Services and Markets Act 2000 (as amended).
- 9. While we support a principles-based approach to the sourcebook, at first glance, it is difficult to see how this principles-based approach using some examples of best practice and bad practice will eliminate alleged inconsistencies in supervision, particularly in areas of interpretation regarding the Money Laundering Regulations 2017. For example, guidance is needed on who should be subject to the criminality checks in a member firm in accordance with regulation 26 of the Money Laundering Regulations 2017.

Status of sourcebook and effective date

- 10. The intention is for the sourcebook to come into effect on 1 January 2018. Given that the FCA has no remit over the accountancy professional bodies and that OPBAS is not yet set up, how does the FCA propose to implement this?

11. It would be helpful if the status of the sourcebook was clearly spelt out in the sourcebook including any implications for professional bodies which may not comply with the guidance on examples of best practice and bad practice. Being principles based, there may be other examples of best practice which the FCA may not have considered. The FCA/OPBAS position regarding this area needs to be clarified as part of the status of the sourcebook.

Governance

12. We support the principles outlined in section III of the sourcebook. As mentioned to HM Treasury in previous responses to consultations, the advocacy functions of professional bodies which promotes the interests of members are kept separate from the inspection and investigatory functions.

Risk-based approach

13. We support the principles outlined in section IV of the sourcebook and would like to draw your attention to the significant amount of work that the Accountancy Affinity Group have been doing in this area with feedback from HMRC and law enforcement agencies.
14. As an oversight body, we would welcome and indeed expect OPBAS to make professional bodies aware of the domestic and international risks of money laundering and terrorist financing which the sector is subject to in accordance with regulation 17 (1) of the Money Laundering Regulations 2017.
15. We would welcome further guidance on how the impact of money laundering should be assessed on a risk-based approach. Money Laundering has no de minimis limit so assessing the impact of potential harm caused if money laundering is facilitated by a member, cluster or sector may be very hard to assess in reality.
16. We are not clear as to what the circumstances might be in which a risk-based approach cannot be applied for legal or regulatory requirements. Further guidance is needed in this area or if not relevant, we would suggest that this section is deleted.

Supervision

17. We are supportive of most of the guidance in Section V of the sourcebook. However, we have a few concerns:
- (a) Gatekeeper role: while professional body supervisors aim to ensure that members and member firms are compliant with the Money Laundering Regulations 2017 and remain part of the profession, a similar gatekeeper role is not possible for HMRC, the statutory default supervisor. Currently information is shared between professional body supervisors and HMRC regarding members who have been disciplined and/or resigned as a result of persistent non-compliance in this area. However, these individuals can still operate as accountants without necessarily law enforcement agencies being aware of this. The only way of informing law agencies regarding this matter is to submit a SAR. This is an area that OPBAS might like to review and provide some guidance.
 - (b) Supervision:
 - (i) Meeting senior management: we are unclear of what is meant by “an informal exercise to build relationships” in the context of a supervisory visit. This seems an odd approach to take in relation to regulation and compliance.
 - (ii) Thematic work: we are of the view that thematic work should be undertaken by OPBAS rather than each professional body supervisor with some of its members. It seems to us that conducting thematic work is an important aspect of an oversight body.
18. One area that the sourcebook does not address is consistency of when desktop reviews and/or visits should be undertaken as part of a risk-based approach. We would welcome further guidance from OPBAS on this area, including the types of documentation that supervisors should be requesting as part of a desktop-based review, given the increased focus on data protection considerations.

Information sharing

19. The language used in the drafting of this section of the sourcebook appears to be more mandatory in nature than previous sections, e.g. “will” instead of “should”. Using this type of language suggests that professional bodies appear to be reluctant to share information and indeed does not recognise the range of existing channels the professional bodies use currently to share information. For example, professional bodies share information on a day-to-day basis by email and phone as well as through more formal mechanisms such as meetings of the Accountancy Affinity Group (not mentioned in the sourcebook) and the Money Laundering Sector Forum.
20. Given that there are already well established mechanisms for sharing information between professional bodies, the sourcebook could provide further guidance on how to share information to the National Crime Agency, other than by submitting a SAR, within the constraints of the legal and regulatory environment.
21. We have concerns regarding the expectation that professional bodies will share information with other supervisors and law enforcement agencies about active investigations, not just completed cases. From a disciplinary perspective, there are rigorous processes to follow and we would be reluctant to share information regarding disciplinary cases until the outcome was proved due to breaches in human rights laws and possibly data protection. We strongly suggest that this is an area that needs to be clarified.
22. In addition, HMRC does not have a legal gateway to share information to professional bodies relating to investigations until the investigation is concluded.

Information and guidance for members

23. The sourcebook states that professional bodies should provide a digest of money laundering risk to its members using various sources of information. We think it would be useful if OPBAS provided an update on this area as part of its oversight and supervisory role for the accountancy sector. Given its role, OPBAS may have information regarding money laundering and terrorist financing risks that is not readily available to professional bodies in the accountancy sector.
24. Since 2008, there has only been one guidance for the accountancy sector which has been issued by the CCAB. The latest draft which has been updated for the Money Laundering Regulations 2017 is awaiting HM Treasury approval as per the CCAB website. As has been mentioned to HM Treasury previously, we are unclear as to what is meant by “different sets of guidance” for the accountancy sector when there has only been one HM Treasury approved guidance in the sector since 2008.

Staff training

25. We are not clear as to the purpose of this section. Regulation 49 (1)(c) focuses on professional bodies employing persons with “appropriate qualifications, integrity and professional skills to carry out the supervisory functions” not on staff training.
26. It would be helpful if OPBAS could clarify how Regulation 49 (1)(c) should be interpreted and issue some guidance in this area rather than focus on staff training which we think is an operational matter for professional bodies.

Enforcement

27. The IFA has an important role to play in enforcement which includes a range of measures includes support, education and advice (prevention), action plans from monitoring visits and disciplinary action. While this enforcement approach is adopted by professional bodies, the same cannot be said of the statutory default regulator whose approach appears to be centred on regulatory fines and other sanctions rather than support, education and advice. This is an area that should be addressed in order to ensure consistency in supervision and enforcement across the accountancy sector.

28. We would encourage OPBAS to become familiar with the disciplinary processes of professional bodies. The IFA has publicly available disciplinary regulations, policies and processes and sanctions. The proven disciplinary outcomes from the independent Disciplinary Conduct Committees of the IFA are publicly available on the website and also published in the IFA bi-monthly member magazine, *Financial Accountant*.

Record keeping and quality assurance

29. We would welcome guidance on the interaction of the Money Laundering Regulations 2017 and the forthcoming General Data Protection Regulation changes, particularly in relation to the interaction of disciplinary outcomes, money laundering regulations and the right to be forgotten.
30. The quality assurance testing for a small professional body like the IFA requires further consideration and guidance, particularly in relation to the word “independent”. Being a small team, staff members at the IFA are not truly independent of one another because we discuss matters to ensure that the judgements that we make and standards of scrutiny that we apply are consistent. Would the word “objective” be more appropriate in this context?

Question 2: Do you have any comments on the FCA’s cost benefit analysis?

31. The FCA’s benefit and cost analysis is not comprehensive and lacks detail, perhaps because the original impact assessment by HM Treasury referred to in paragraph 6 (h) was found to be significantly lacking both in terms of robustness, detail and consultation. It is also confusing that there should be a cost-benefit analysis relating to the creation of OPBAS as part of a consultation on a sourcebook for supervisors.
32. FCA’s benefit and costs analysis assumes that they will be overseeing 200,000 members’ compliance with requirements of the Money Laundering Regulations 2017. As mentioned in our recent meeting to OPBAS, the majority of professional bodies in the accountancy sector supervise firms rather than individual members. This is an area that needs to be clarified as part of the benefit and costs analysis, the terminology used in the sourcebook and future potential discussion on OPBAS fees referred to in the consultation.
33. The cost estimates included in the document are high level, not broken down in sufficient detail and incomplete. Specific areas we would like to mention are:
- (a) there is no breakdown of running costs of £2m per annum and what this covers;
 - (b) there is no mention of set up costs and whether these costs will be passed on to supervisors as well; and
 - (c) there is no quantification of costs relating to additional tasks that supervisors may need to undertake as a result of an OPBAS oversight role. While we understand this is an area that may be difficult to quantify, the areas for improvement due to alleged inconsistencies in supervision must be known to HM Treasury whose decision it was to create OPBAS. There is no mention of this in FCA’s benefit and costs analysis nor in HM Treasury’s impact assessment referred to above.
34. In our view, the assumption that professional bodies will be able to pass on the additional costs of OPBAS oversight to its members and member firms who in turn will be able to pass on these costs to their clients is questionable. Members, and to a certain extent member firms, can choose whether to continue their membership of a professional body. Clients can choose whether they have a professional accountant providing their services or an accountant who is not a member of a professional body. Anecdotal evidence from our members suggests that their SME clients will not be prepared to incur additional costs for OPBAS oversight supervision and therefore, our members may end up losing clients if these clients go to the cheaper accountant who does not have to bear the costs of OPBAS oversight fees, i.e. those supervised by HMRC.
35. The average cost for professional bodies does not take into account the number of members and member firms that professional body is supervising. If a professional body is supervising fewer members and member firms, then we would expect that the average cost for that body of participating in OPBAS on-site inspections, ongoing liaison with OPBAS, information sharing, data sharing will be

less onerous in terms of costs per day than costs incurred by larger professional bodies which have a bigger supervised population.

36. FCA's benefits analysis lacks detail. Specific areas we would like to raise are:

- (a) *Exploitation by criminals:* FCA's analysis does not include an estimated amount of the benefits achieved by preventing criminals from exploiting the inconsistencies in supervision and by enhancing collaboration between supervisors and law enforcement. While we have estimates from the NCA on serious and organised crime of £24bn, to date, no evidence has been provided that criminals have been exploiting alleged inconsistencies in supervision or alleged lack of collaboration between supervisors and law enforcement. The lack of quantification in this area seems surprising given that this appears to be one of the main justifications for setting up OPBAS by HM Treasury in the first place.
- (b) *Inconsistencies in supervision:* One of the alleged benefits for creating OPBAS by HM Treasury is to decrease alleged inconsistencies in supervision and lack of collaboration between supervisors and law enforcement agencies. If this is a benefit, then it should have been referred to and quantified in the FCA's benefit and cost analysis but it has not been. Nor does the FCA benefit and cost analysis explain how consistency in supervision across the accountancy sector will be achieved given that the statutory default supervisor, HMRC, is not covered by the scope of OPBAS. Will this not lead to the creation of a two tier system that can be exploited by criminals?

37. Other areas not considered in the FCA's benefit and cost analysis are:

- (a) *Public:* The public may be affected detrimentally as a result of reduced numbers of professional accountants in the market. When faced with the additional costs of setting up and running OPBAS and the additional costs incurred by professional bodies for liaising with OPBAS, members may choose to cease their membership with professional bodies and become unregulated accountants providing services to the public and supervised by HMRC for AML. Under the current proposal, HMRC will not incur any of the costs of OPBAS and will therefore be the "low cost alternative" for AML supervision. This point is not considered in the FCA's benefit and costs analysis;
- (b) *Government:* The government and particularly HMRC may also be adversely affected by the reduction in professional accountants. Professional accountants have a critical role to play in HMRC's Making Tax Digital strategy and future strategy of Assured Tax Agents and their contribution in helping to minimise tax avoidance and tax evasion. Research carried out by PwC showed that the sector generated an estimated £15.5bn in tax in 2015/2016, which comprises of £6.4bn of taxes borne and £9.1bn taxes collected. This contribution makes up 2.5% of all UK tax receipts – approximately the cost of total UK spending on police services. These factors are not referred to or considered in FCA's benefit and cost analysis.