

# Guidance consultation

## GC17/7

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

July 2017

## 1 Summary

### Why we are consulting

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- 1.1 In March 2017, the Government announced that a new Office for Professional Body Anti-Money Laundering Supervision (OPBAS) would be created within the FCA. OPBAS will oversee the 22 professional body anti-money laundering supervisors listed in section 1.3. It will make sure these professional bodies are meeting their obligations under the Money Laundering Regulations 2017<sup>1</sup>.
- 1.2 The chart overleaf illustrates OPBAS's role.

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<sup>1</sup> Anti-money laundering measures include those to counter the financing of terrorism.



- 1.4 The consultation may also be of interest to members of those bodies.
- 1.5 For the avoidance of doubt, OPBAS will **not** supervise:
- Statutory anti-money laundering supervisors such as the Gambling Commission and HM Revenue and Customs.
  - Activity carried out by professional body supervisors outside the UK.
  - Members of professional bodies, such as accountants and solicitors, or any other type of business subject to the requirements of the Money Laundering Regulations 2017.
  - The adequacy of any functions performed by professional body supervisors unrelated to anti-money laundering supervision. This includes any oversight of their members' controls over other types of financial crime, such as those related to the prevention of fraud, improving data security, and the implementation of financial sanctions and asset freezes.

### The wider context of this consultation

- 1.6 The Government announced its intention to create a new Office for Professional Body Anti-Money Laundering Supervision<sup>2</sup> hosted by the FCA, to 'work closely with professional body supervisors to help, and ensure, they meet the high standards expected of an AML supervisor, as well as to facilitate collaboration between professional body AML supervisors, statutory supervisors, and law enforcement'.
- 1.7 The Treasury's recent call for evidence process<sup>3</sup>, a 'red tape review' performed by the Better Regulation Executive<sup>4</sup>, and the National Risk Assessment process<sup>5</sup>, all led the government to conclude that 'while there are benefits to having a range of supervisors, the effectiveness of supervision is inconsistent'.
- 1.8 The Money Laundering Regulations 2017 that took effect on 26 June 2017 set expectations for supervisory authorities, including professional body supervisors. OPBAS will be given the duties and powers to make sure professional body supervisors meet these standards by the Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017<sup>6</sup> that were published in draft by the government on 20 July 2017.

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<sup>2</sup> See: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600340/Anti-Money-Laundering-Supervisory-Regime-response-call-for-further-information.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600340/Anti-Money-Laundering-Supervisory-Regime-response-call-for-further-information.pdf)

<sup>3</sup> See: <https://www.gov.uk/government/consultations/call-for-information-anti-money-laundering-supervisory-regime> and <https://www.gov.uk/government/consultations/anti-money-laundering-supervisory-regime-response-and-call-for-further-information>

<sup>4</sup> See: <https://cutting-red-tape.cabinetoffice.gov.uk/anti-money-laundering/>

<sup>5</sup> See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_October\\_2015\\_final\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf)

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/628994/OPBAS\\_Draft\\_Regulations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628994/OPBAS_Draft_Regulations.pdf)

## Summary of our proposals

- 1.9 This consultation proposes text for a specialist Sourcebook for professional body supervisors that sets out expectations in relation to anti-money laundering supervision.

## Outcome we are seeking

- 1.10 OPBAS will seek to take steps to ensure professional body supervisors meet the standards expected of them when they pursue their anti-money laundering supervision. In addition, it will seek to encourage collaboration and information sharing between professional body supervisors, statutory supervisors, law enforcement agencies and others. The draft sourcebook in this consultation will aid this by making clear OPBAS's expectations of professional bodies.

## Unintended consequences of our intervention

- 1.11 There is a risk the creation of OPBAS may impose new burdens on a professional body supervisor that leads it to withdraw from the role of being an anti-money laundering supervisor: the supervisory expectations set out in the proposed sourcebook may be one source of these burdens. To mitigate this risk, the sourcebook codifies what the FCA understands to be existing good supervisory practice.
- 1.12 There is a similar risk the extra costs resulting from the creation of OPBAS (which will be passed on to the membership of the professional bodies through membership fees), as well as the burdens from any new supervisory work performed by professional bodies, will lead some of the membership to either withdraw from the market, or seek to be supervised elsewhere; in the case of accountants, they may choose instead to be overseen by HM Revenue and Customs. If so, the broader public interest served by having those providers of professional services being a member of a profession (e.g. adherence to ethical standards, ongoing training, etc.) would be lost. OPBAS will seek to minimise this risk by ensuring its oversight is proportionate and not unduly burdensome.
- 1.13 The sourcebook makes clear OPBAS expect professional body supervisors to participate in existing information sharing arrangements such as SIS or FIN-NET (see section VI) or work towards doing so. We are keen to ensure this widening of the membership of these bodies will not undermine information sharing among existing members, which depends on all members having trust and confidence in each other. It will do so by working to build strong relationships that facilitate information sharing.

## Measuring success

- 1.14 OPBAS can be considered a success if perceptions of the adequacy and consistency of anti-money laundering supervision performed by professional body supervisors – among

law enforcement agencies, government departments, international observers and others – improve once it begins its work. The sourcebook is a key part of how OPBAS can achieve this success, by making clear what its expectations of professional bodies are.

### Equality and diversity considerations

- 1.15 We have considered the potential equality and diversity issues from the proposals in this document. We do not think the proposals adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final guidance. In the interim, we welcome any input to this consultation on this.

### Next steps

- 1.16 We are asking for comments on this guidance consultation by 23 October 2017. You can respond by e-mail to [gc17-07@fca.org.uk](mailto:gc17-07@fca.org.uk). You can also write to:

Stefanie Thorns  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Telephone: 020 7066 1332

- 1.17 We have developed the policy in this consultation in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.
- 1.18 You can download this guidance consultation from our website: [www.fca.org.uk](http://www.fca.org.uk). All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS.
- 1.19 We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

- 1.20 OPBAS will charge professional body supervisors a fee to recover its running costs. We will consult on an approach to levying fees as part of the FCA's usual consultation on fees in the autumn of 2017.

## 2 A sourcebook for professional body supervisors

- 2.1 Draft text of a specialist sourcebook for professional body supervisors is set out in Appendix 1. The sourcebook discusses how professional body supervisors should carry out their anti-money laundering supervision work.
- 2.2 It provides further details on the requirements for professional body supervisors in the Money Laundering Regulations 2017. It draws on existing resources, such as the European Supervisory Authorities' recent guidance on risk-sensitive supervision<sup>7</sup>, and material already prepared by UK anti-money laundering supervisors, such as the risk-based approach guidance agreed by Anti-Money Laundering Supervisors' Forum members in 2008<sup>8</sup>.
- 2.3 The sourcebook has the status of general guidance issued by the FCA under section 139A of the Financial Services and Markets Act 2000 (as amended).
- 2.4 It is proposed this guidance will come into effect on 1 January 2018.

### 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?

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<sup>7</sup> See: [https://esas-joint-committee.europa.eu/Publications/Guidelines/Final\\_RBSGL\\_for\\_publication\\_20161115.pdf](https://esas-joint-committee.europa.eu/Publications/Guidelines/Final_RBSGL_for_publication_20161115.pdf)

<sup>8</sup> See: [http://www.fsa.gov.uk/pages/About/What/financial\\_crime/pdf/amlsf\\_mar08.pdf](http://www.fsa.gov.uk/pages/About/What/financial_crime/pdf/amlsf_mar08.pdf)

## 3 Cost benefit analysis

3.1 This section estimates the costs and benefits of the creation of OPBAS. The proposals apply to 22 professional body supervisors that collectively oversee approximately 200,000 members' compliance with the requirements of the Money Laundering Regulations 2017.

### Costs incurred by professional body supervisors

3.2 OPBAS will charge professional body supervisors a fee to recover its running costs. We do not yet know how much OPBAS will cost to run but for the purpose of this cost-benefit analysis, we estimate it will cost £2m per year, which will be passed on to the professional body supervisors.

3.3 We think professional body supervisors will take on additional tasks as a consequence of OPBAS's new supervisory oversight. Examples include:

- liaising with OPBAS on an on-going basis, including when it undertakes inspection visits.
- reviewing supervisory procedures to ensure consistency with the sourcebook proposed in this consultation.
- participating in information sharing fora such as FIN-NET and SIS (see section VI of the draft sourcebook in appendix 1) although many professional body supervisors are already members.

3.4 Estimates for the additional average annual costs incurred by each professional body supervisor, in addition to the fees charged by OPBAS, are set out in the table overleaf.

3.5 If the average incremental additional cost to each professional body supervisor is £39,800, then the additional cost across the 22 professional body supervisors is £875,600. Note that some of the costs in the table (such as those associated with preparing the annual questionnaire, and FIN-NET and SIS membership) are already being incurred. If changes to a professional body supervisor's procedures lead to increases in the resources applied to anti-money laundering supervision then the overall costs will be higher, although we cannot predict whether this is likely. If OPBAS begins an enforcement investigation, this would lead to additional costs which are not included in the table.



Task	Average number of man-days annually	Total costs (assuming labour costs £290 per day)
Participating in OPBAS on-site inspections	20	£5,800
On-going liaison with OBPAS	15	£4,350
Preparing annual anti-money laundering questionnaire	15	£4,350
On-going data gathering supporting annual questionnaire	10	£2,900
Ongoing participation in information sharing arrangements	20	£5,800
Review supervision procedures	20	£5,800
Changes to procedures	20	£5,800
SIS/FINNET membership fees	-	£5,000
Average cost per professional body supervisor		£39,800

**The cost to professionals**

3.6 Professional body supervisors will pass the extra costs incurred as a result of the creation of OPBAS to their membership as part of their fees. Professionals may incur other costs. Some costs may be absorbed by professionals’ usual professional training and development – such as learning about new supervisory expectations. If a professional body supervisor makes substantial changes to its supervisory approach because of OPBAS’s creation, its membership may face other new costs. We cannot currently suggest how likely these costs are, or how much they will be.

**The cost to the public**

3.7 The costs discussed above will ultimately be passed on to professionals’ clients. This means that the people using the services of professionals (such as barristers, solicitors, accountants, notaries, conveyancers and book-keepers) will bear the costs of OPBAS’s creation through higher charges.

**Benefits**

3.8 The government estimates that serious and organised crime costs the economy £24bn annually<sup>9</sup>. OPBAS is being created to make the UK’s financial system a more hostile environment for illicit finance by ensuring professional bodies supervise to a consistently high standard and by enhancing collaboration between supervisors and law enforcement.

3.9 OPBAS aims to make it harder and more costly for criminals to benefit from their crimes. This may lead to a reduction in underlying offences and the costs associated with these crimes. While it is possible to measure a rise or fall in predicate crimes, establishing its link to the creation of OPBAS will be challenging so we cannot estimate the monetary

<sup>9</sup> See: <https://www.gov.uk/government/news/uk-tightens-defences-against-money-laundering>

value of these benefits. However, we do believe that the costs imposed by its creation are proportionate to the potential benefits from a reduction in harm caused by money laundering through the professional bodies.

### **Question 2**

Do you have any comments on the FCA's cost-benefit analysis?

## 4 Compatibility statement

- 4.1 This consultation sets out guidance for professional body supervisors for the purposes of the exercise of the functions which is to be conferred on the FCA under the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017.
- 4.2 The new responsibilities to be given to the FCA under the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 sit outside our main responsibilities under FSMA. We are therefore not required to prepare a compatibility statement in relation to those new responsibilities under FSMA.
- 4.3 However, under the draft Regulations, the FCA is required to have regard to the importance of ensuring compliance by professional body supervisors of any requirement imposed on them by the Money Laundering Regulations 2017. We are satisfied that this proposal is compatible with this obligation.
- 4.4 Under the Legislative and Regulatory Reform Act 2006 (LRRRA), we are also required to have regard to a number of high level principles in relation to some of our regulatory functions; and to have regard to a Regulators' Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). The FCA has had regard to the LRRRA principles and the Regulators' Code. We are satisfied that in giving the guidance proposed in this consultation we are acting in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

### Equality and diversity

- 4.5 We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination, promote equality of opportunity and foster good relations between persons who share a relevant protected characteristics and persons who do not share it, when carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered. This is discussed 1.15.

## Draft sourcebook text

# Office for Professional Body Anti-Money Laundering Supervision (OPBAS)

## Sourcebook for professional body anti- money laundering supervisors

### Contents

- I. Definitions and abbreviations
- II. Application
- III. Governance
- IV. A risk-based approach
- V. Supervision
- VI. Information sharing between supervisors and public authorities
- VII. Information and guidance for members
- VIII. Staff training
- IX. Enforcement
- X. Record keeping and quality assurance

## I. Definitions and abbreviations

This sourcebook uses the following terms:

AML	Anti-money laundering
AMLSF	Anti-Money Laundering Supervisors' Forum
cluster	two or more relevant persons in a sector that have similar characteristics
FCA	Financial Conduct Authority
FIN-NET	Financial Crime Information Network
FSMA	Financial Services and Markets Act 2000
member	a relevant person a professional body supervisor oversees
Money Laundering Regulations 2017	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
NCA	National Crime Agency
OPBAS	Office for Professional Body Anti-Money Laundering Supervision
sector	the relevant persons for which a professional body supervisor has oversight
SIS	Shared Intelligence Service
SPOC	single point of contact

### II. Application

Each of the professional bodies listed in Schedule 1 of the Money Laundering Regulations 2017 is the supervisory authority for the relevant persons it regulates. This sourcebook applies to all these bodies. As at 26 June 2017, they are:

1. Association of Accounting Technicians
2. Association of Chartered Certified Accountants
3. Association of International Accountants
4. Association of Taxation Technicians
5. Chartered Institute of Legal Executives
6. Chartered Institute of Management Accountants
7. Chartered Institute of Taxation
8. Council for Licensed Conveyancers
9. Faculty of Advocates
10. Faculty Office of the Archbishop of Canterbury
11. General Council of the Bar
12. General Council of the Bar of Northern Ireland
13. Insolvency Practitioners Association
14. Institute of Certified Bookkeepers
15. Institute of Chartered Accountants in England and Wales
16. Institute of Chartered Accountants in Ireland
17. Institute of Chartered Accountants of Scotland
18. Institute of Financial Accountants
19. International Association of Bookkeepers
20. Law Society
21. Law Society of Northern Ireland
22. Law Society of Scotland

This sourcebook takes effect on 1 January 2018.

## III. Governance

Regulation 49 of the Money Laundering Regulations 2017 requires a professional body supervisor to:

- make arrangements to ensure their supervisory functions are exercised independently of any of their other functions which do not relate to disciplinary matters (Regulation 49(1)(a)), and;
- provide adequate resources to carry out the supervisory functions (Regulation 49(2)(a)).

OPBAS expects a professional body supervisor to clearly allocate the responsibility for managing its anti-money laundering supervisory activity.

There should be evidence senior management is actively engaged with the body's approach to this work.

OPBAS expects to see appropriate reporting and escalation arrangements related to anti-money laundering supervisory activities. The organisational structure of a professional body should promote coordination and internal information sharing, and effective decision-making through delegation of powers to staff. It should keep the advocacy functions it performs (that promote the interests of its members) functionally separate from the inspection and investigatory functions.

### **Examples of good practice:**

- there is evidence of issues related to anti-money laundering supervision being escalated appropriately.
- the Professional Body can identify which of its members are subject to the requirements of the Money Laundering Regulations 2017.
- decisions related to anti-money laundering supervision (such as the approval of risk assessments or the initiation of enforcement investigations) take place at an appropriate level of seniority.

### **Examples of poor practice:**

- there is little evidence of senior management interest in the performance of anti-money laundering supervision.
- the judgments of anti-money laundering supervisors are overruled because they may conflict with the commercial or advocacy functions of the body.
- no management information about the performance of anti-money laundering supervision is prepared.

## IV. A risk-based approach

The Money Laundering Regulations 2017 require anti-money laundering supervisors to adopt a risk-based approach. This section aims to contribute to the creation of a coherent and effective risk-based approach to AML supervision by professional body supervisors.

Regulation 46(2)(a) of the Money Laundering Regulations 2017 requires a professional body supervisor to adopt a risk-based approach to the exercise of its supervisory functions, informed by the risk assessments carried out under Regulation 17.

Regulation 17(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to identify and assess the international and domestic risks of money laundering and terrorist financing to which its own sector are subject. In doing so, it must, under Regulation 17(2), take into account:

- reports published by the European Commission under Article 6.1 of the fourth money laundering Directive;
- guidelines issued by the European Supervisory Authorities under Articles 17, 18.4 and 48.10 of the fourth money laundering directive;
- the report prepared by the Treasury and the Home Office under regulation 16(6);
- information made available by the Treasury and the Home Office under regulation 16(8).

Regulation 17(4) requires a professional body supervisor to develop and record in writing risk profiles for each relevant person in its own sector. Regulation 17(5) says this may be a single risk profile for a cluster of its members, although, if so, Regulation 17(6) requires the appropriateness of that clustering to be kept under review. When preparing risk profiles, a professional body supervisor is required to:

- take full account of the risks that relevant persons will not take appropriate action to identify, understand and mitigate the risks (Regulation 17(7)), and;
- review the risk profiles developed at regular intervals and following any significant event or developments which might affect the risks (Regulation 17(8), where examples are listed).

### Features of a risk-based approach to AML supervision

A risk-based approach means focusing efforts where the risks are highest and considering the likelihood of unwanted outcomes. This helps to identify situations where additional measures and controls may be appropriate.

Consequently, a risk-based approach to AML aims to make sure measures to reduce money laundering are in proportion to the risks. For supervision, this applies to the way professional body supervisors allocate their resources. Professional body supervisors should also act in a manner that supports the application of a risk-based approach by their membership.

### Allocation of supervisory resources

Adopting a risk-based approach to supervising a professional body's members' anti-money laundering systems and controls allows the professional body supervisor to shift resources to areas with a higher money-laundering risk. This means professional body supervisors can use their resources effectively.



An effective risk-based approach to AML will require a regular appraisal and review of the risks. This will be provided by an assessment of where the money-laundering risks are greatest. This assessment will be based on:

- the professional body supervisor's own judgments about the risks posed by a member, clusters of members, or sector;
- liaison with industry;
- intelligence sharing by law enforcement;
- the UK's National Risk Assessment;
- material published by bodies such as the UK government, the Financial Conduct Authority, Office for Professional Body AML Supervision, European Commission, European Supervisory Authorities, etc.

This assessment should not be static: it will change as circumstances develop and threats evolve.

### **A supervisory approach that supports industry adopting a risk-based approach**

Professional body supervisors should use their powers in a way that supports the adoption of a risk-based approach by their members. The following features facilitate the adoption of a risk-based approach to AML by members:

- A principles-based supervisory approach that encourages a professional body's membership to aim for achieving positive outcomes related to reducing money laundering, rather than exclusively concentrating on compliance with prescriptive and detailed rules. Principles can be more adaptable to different circumstances than detailed rules and are more likely to foster innovation and imaginative approaches in industry.
- An acceptance that, as a result of the adoption of a risk-based approach, a professional body's member's AML systems and controls can differ from those of a comparable business. The risk-based approach to AML means that there will be more than one 'right' answer to the same problem.
- Acceptance that money laundering can never be entirely eliminated. Criminals will always try to make use of the proceeds of crime. A professional body's members will not always be able to prevent this. There should therefore be reasonable supervisory expectations about what a member with sound controls aimed at preventing money laundering is able to achieve. To attempt to design a zero-failure regime would be damaging and counterproductive. It would place excessive burdens on professional body supervisors and their members and act against the interests of the general public.

### **Designing and implementing a risk-based approach to AML supervision**

Professional body supervisors will need to consider a number of issues when designing and implementing a risk-based approach to supervision. This approach relies on a sound understanding of the nature of the risks but a regular risk assessment can help this. The professional body supervisor can then judge which supervisory tools work for the risks that have been identified.

### **Methods for assessing risk**

Professional body supervisors should develop a means of identifying which members or clusters of members are at the greatest risk of being used by criminals to launder proceeds from crime. Factors to be considered when undertaking a risk assessment may include the following:

**Probability:** the likelihood of money laundering taking place as a consequence of the activity undertaken by a member (or cluster of members) or the environment they operate in. This risk can increase or decrease depending on other indicators:

- product and service risk (the likelihood that products or services on offer can be used for laundering money);
- client risk (the likelihood that customers' funds may have criminal origins);
- the nature of transactions (e.g. frequency, volume, counterparties);
- geographical risk (does the member, its clients or agents trade in riskier locations);
- other indicators of risk are based on a combination of objective factors and experience. These can be drawn from various sources, including a supervisor's wider work with a member, a member's compliance history, complaints about members or about the quality of the member's internal controls, and intelligence from other sources (e.g. consumers, whistleblowers), other supervisory authorities and law enforcement agencies.

**Impact:** The potential harm caused if money laundering is facilitated by the member, cluster or sector. This can, among others, depend on:

- a member's size (turnover, number and type of customers, number of premises, value of transactions etc.);
- links with other businesses (susceptibility to being involved in 'layering' activity).

This assessment should be updated on an ongoing basis. The result from this risk assessment will help determine the quantity of resources the professional body supervisor will allocate to the supervision of the member or cluster of members.

### Clustering

The Regulations do not require the risks posed by each member to be individually assessed by the professional body supervisor. Assessment can be performed at the level of a 'cluster.' The Regulations say clustering is appropriate if members share similar characteristics, and the risks of money laundering and terrorist financing affecting those relevant persons do not differ significantly.

Illustrative examples of clusters may include:

- solicitors specialising in commercial property law;
- sole-trader book-keepers catering to small businesses.

When assessing clusters, the professional body supervisor should review whether the clustering remains appropriate. A cluster could contain a large number of individual members.

### The limits of a risk-based approach

There are circumstances in which a risk-based approach cannot be applied, or the scope for its application may be limited. These are usually the result of legal or regulatory requirements that mandate certain actions to be taken.

**Examples of good practice:**

- risk assessment is a continuous process based on the best information available from internal and external sources.
- the professional body supervisor assesses where risks are greater and concentrates resources accordingly.

**Examples of poor practice:**

- some understanding of the main areas of risk, but efforts to assess risk are piecemeal and lack coordination.
- risk assessment is a one-off exercise.

## V. Supervision

Regulation 46(1) of the Money Laundering Regulation 2017 requires a professional body supervisor to effectively monitor its own sector and take necessary measures for the purpose of securing compliance with the requirements of these Regulations.

Regulation 46(2)(c) requires a professional body supervisor to base the frequency and intensity of its on-site and off-site supervision on the risk profiles prepared under regulation 17(4).

Regulation 46(3) requires a professional body supervisor determining its approach to the exercise of its supervisory functions to take account of:

- any guidelines issued by the European Supervisory Authorities under the fourth money laundering directive, and;
- the degree of discretion permitted to relevant persons in taking measures to counter money laundering and terrorist financing.

Regulation 46(4) requires a professional body supervisor to, in accordance with its risk-based approach, take appropriate measures to review:

- the risk assessments carried out by relevant persons, and;
- the adequacy of relevant persons' policies, controls and procedures, and way they have been implemented.

Regulation 49(1)(b) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure sensitive information relating to the supervisory functions is appropriately handled within the organisation.

Professional body supervisors have a number of tools to use when monitoring the adequacy of members' anti-money laundering defences. These tools allow the supervisor to make sure a member is complying with anti-money laundering legislation and has policies, procedures and systems in place that are being effectively applied and subject to appropriate quality assurance testing. This includes the member's procedures to make suspicious transaction reports to authorities. Some tools will be used as remedial or punitive measures where irregularities have been uncovered. Generally, systemic breakdowns, or evidence that controls have proved to be inadequate for some period of time, will result in the most severe supervisory response.

The use of these tools should enable professional body supervisors to compare a member's anti-money laundering arrangements with those of its peers, with a view to informing its judgment of the quality of the member's controls. However, it is important to bear in mind that under the risk-based approach, there will often be valid reasons why members' controls differ. Where deficiencies are identified, professional body supervisors should make sure members take proper and timely action to correct these. Throughout the process, professional body supervisors should maintain an open and cooperative dialogue with their membership.

The choice of supervisory tool, and how it is applied, will change depending on the professional body supervisors, the type of member, cluster or sector supervised, and the specific situation. Many will be used only rarely. Tools available may include the following:

- **gatekeeper role:** Professional body supervisors will consider whether a member meets the ongoing requirements for continued participation in the profession. This will include whether the member meets expectations related to anti-money laundering compliance.

**supervision:** a range of supervisory tools are available. Their use should be tailored to the scale and nature of the member:

- Meeting senior management: supervisory staff may visit a business, or use telephone interviews or teleconferencing. This may be an informal exercise to build relationships, or part of a formal review. The depth and frequency of visits will reflect the risk the member poses.
- questionnaires: requesting information from a member about its anti-money laundering arrangements.
- periodic information returns: members can be required to regularly submit information that the professional body supervisor considers necessary to aid the performance of its supervisory functions.
- Ad hoc information requests: a member might be asked to submit internal documents for review by the supervisor. Examples may include some of the following, particularly in the case of larger organisations:
  - organisation chart;
  - legal entity chart;
  - job descriptions of senior management;
  - composition of committees;
  - documents setting out internal procedures and controls;
  - internal audits of compliance with internal procedures and controls;
  - external auditor's reports;
  - compliance reports;
  - data on suspicious activity reports and other engagement with law enforcement agencies;
  - breach logs;
  - review of information from other sources: information and alerts could come from law enforcement, other supervisors, employees, other businesses, or the public.
- Thematic work: professional body supervisors might look to involve a number of members in a project to consider a particular aspect of anti-money laundering arrangements. This could use a number of the tools listed here.
- Review of a member's case files (covering customer due diligence checks or decisions related to the submission of suspicious activity reports): this can allow analysis of past decisions made while implementing anti-money laundering controls.

**Guidance and communications:** Professional body supervisors can take a range of steps to make their expectations clear to the membership:

- general guidance: professional body supervisors can provide or support guidance addressed to their membership (see next section).
- industry training: professional body supervisors can provide training to their membership that supplements or contextualises guidance.
- communication: professional body supervisors can engage in a dialogue with membership, send messages to members via mailings, the trade press, discussion with trade bodies, etc.
- individual guidance: professional body supervisors can offer membership guidance about their individual queries and concerns. This may be by correspondence, a helpline, or meetings.

**Examples of good practice:**

- supervisory activity is underpinned by an evidence-based understanding of the different types of business the professional body supervises.
- supervisory activity is adequately-resourced, including the use of appropriate technology, to allow consistent, good-quality, timely decisions.
- the choice of different supervisory tools is tailored to each situation, with due consideration given to the cost-effectiveness and proportionality of the different options.

**Examples of poor practice:**

- supervisory activity is predominantly reactive.
- the level of scrutiny received by an individual member is unrelated to the body's assessment of the risks it may pose (including through clustered assessments).

## VI. Information sharing between supervisors and public authorities

Regulation 50(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to take such steps as it considers appropriate to:

- co-operate with other supervisory authorities, the Treasury and law enforcement authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing;
- co-ordinate activities to counter money laundering and terrorist financing with other supervisory authorities and law enforcement authorities;
- co-operate with overseas authorities (as defined in Regulation 50(4)) to ensure the effective supervision of a relevant person where that person is established either a) in the UK with its head office in another country or b) in another country but with its head office in the UK (as is set out in Regulation 50(2)).

Regulation 50(3) says such co-operation may include the sharing of information which the supervisory authority is not prevented from disclosing.

Regulation 50(5) requires a professional body supervisor to, on request, provide a European Supervisory Authority with information reasonably required by the Authority to enable it to carry out its duties under the fourth money laundering directive.

### Information sharing

Professional body supervisors will take part in information-sharing arrangements such as the Anti-Money Laundering Supervisors' Forum that meets regularly to share good practice and information.

### Intelligence sharing

Professional body supervisors will actively share intelligence with other supervisors and with law enforcement agencies. In order to minimise the risk of investigations clashing, intelligence should be shared about active investigations, not just completed cases.

Professional body supervisors will achieve this by participating in existing information inter-organisational sharing arrangements, or working towards doing so; in the latter case, OPBAS will discuss with a professional body supervisor their plan for meeting the criteria for participation in existing information sharing arrangements.

Membership criteria of existing arrangements (such as FIN-NET and SIS) include:

- willingness to respond promptly and fully to referrals and enquiries from others;
- adequate physical and electronic security to ensure that all documentation received is held securely;
- a commitment to input intelligence flags;
- access to, or willingness to install, an accredited secure means of communication;
- agreement to pay costs.

### A Single Point of Contact

Regulation 49(2)(b) of the Money Laundering Regulations 2017 requires a professional body supervisor to appoint a person to monitor and manage the organisation's compliance with its duties under the Regulations. Under Regulation 49(3), that person is responsible for liaison with other supervisory authorities, law

enforcement authorities or overseas authorities, and for ensuring that the professional body supervisor responds fully and rapidly to requests for information about any person it supervises.

A person must be nominated as a Single Point of Contact (SPOC) at each professional body supervisor. Appropriate cover arrangements should be in place during usual office hours. Up-to-date contact details of this person must be provided to OPBAS. Where a law enforcement agency wishes to contact a professional body supervisor, they can get its contact details from OPBAS via their usual FCA contact.

### Reporting to the authorities

Regulation 46(5) of the Money Laundering Regulations 2017 requires a professional body supervisor which, in the course of carrying out any of its supervisory functions or otherwise, knows or suspects, or has reasonable grounds for knowing or suspecting, that a person is or has engaged in money laundering or terrorist financing must as soon as practicable inform the National Crime Agency. Regulation 46(6) says such a disclosure is not to be taken to breach any restriction, however imposed, on the disclosure of information. Regulation 46(7) says, where such a disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

Professional body supervisors will appoint a nominated officer to report knowledge or suspicions to the National Crime Agency. OPBAS expects this to be the same person as the SPOC discussed above.

### Whistleblowing

Regulation 46(2)(e) of the Money Laundering Regulations 2017 requires a professional body supervisor to take effective measures to encourage its own sector to report breaches of the provisions of the Regulations to it.

As well as standard supervisory engagement, this will include whistleblowing arrangements, allowing concerns to be disclosed by any person to an independent channel able to protect the whistleblower's confidentiality.

#### Examples of good practice:

- a professional body supervisor actively participates in information sharing with other organisations.
- a professional body supervisor works to meet the membership criteria for arrangements such as FIN-NET and SIS.

#### Examples of poor practice:

- a professional body supervisor only shares information about completed investigations, thereby failing to contain the risk of different organisations' active investigations conflicting.
- it has no arrangements in place for handling disclosures from whistleblowers.



## VII. Information and guidance for members

Regulation 17(9) of the Money Laundering Regulations 2017 says that, if information from the risk assessment performed under Regulation 17(1), or provided by the Treasury or Home Office under regulation 16(8), would assist relevant persons in carrying out their own money laundering and terrorist financing risk assessment, a professional body supervisor must, where appropriate, make that information available to those persons, unless to do so would not be compatible with restrictions on sharing information imposed by or under the Data Protection Act 1998 or any other enactment.

Regulation 47(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to, in any way it considers appropriate, make up-to-date information on money laundering and terrorist financing available to its own sector. Regulation 47(2) says this information must include:

- information on the money laundering and terrorist financing practices considered by the supervisory authority to apply to its own sector;
- a description of indications which may suggest that a transfer of criminal funds is taking place in its own sector;
- a description of the circumstances in which the supervisory authority considers that there is a high risk of money laundering or terrorist financing.

Regulation 47(3) requires that this must also include information from the following sources which a professional body supervisor considers is relevant to its own sector:

- reports drawn up by the European Commission and joint opinions and guidelines issued by the European Supervisory Authorities under the fourth money laundering directive;
- recommendations made by the European Commission under that directive unless the Treasury and the Home Office notify the professional body supervisor that a recommendation will not be followed;
- high-risk third countries identified in delegated acts adopted by the European Commission under that directive;
- the report prepared by the Treasury and the Home Office under regulation 16(6);
- any relevant information made available by the Treasury and the Home Office under regulation 16(8);
- any relevant information published by the Director General of the NCA under section 4(9) (operations) or 6 (duty to publish information) of the Crime and Courts Act 2013(a).

### Information for members

The Money Laundering Regulations 2017 require professional body supervisors to provide information to members about the money laundering risks the membership faces. This may take the form of a digest of information that the professional body supervisor receives from the public bodies, as well as the professional body supervisor's own judgments about the risks their membership faces. This might include risks from different products, crime typologies, geographical locations, customers, distribution channels, and how these risks affect different sectors and clusters.

A professional body supervisor will need to consider how best to pass this information on. Methods might include:

- newsletters;
- oral updates during supervisory visits;
- an annual report covering anti-money laundering issues distributed to members, or made public.

They should also think about how to balance giving practical assistance to members, with the need to protect sensitive information and intelligence. However, in most cases, the information will be open-source data published by public bodies, and not sensitive in nature.

Money laundering is an illicit activity, designed to disguise money's links with other illicit activity. There will often be large gaps in the intelligence picture and a weak evidence base on which to form judgments about risks. It is accepted this means good-quality detailed intelligence for professional body supervisors to pass onto members may not exist. We expect professional body supervisors to demonstrate that, within those limitations, they are seeking to take such steps as are practical and appropriate to circulate information to members that can assist members' own understanding of the risks.

Professional body supervisors can also gather members' views on money laundering risks, and share an anonymised summary of members' collective opinions.

### **Guidance for members**

Guidance to Professional Bodies' members on how to meet their high-level legal obligations in the area of AML forms an important part of the risk-based AML regime. Guidance offered by professional body supervisors should help members understand their responsibilities and supervisory expectations. Without clear guidance, professional body supervisors' actions can be seen as disproportionate, unpredictable, or arbitrary. Professional body supervisors should consider how to communicate transparent messages to members.

The Government has made clear it expects the number of different sets of guidance to be minimised. Guidance can be approved by the Government through the Money Laundering Advisory Committee, which means that courts must take account of the guidance when determining whether a person subject to the requirements of the Money Laundering Regulations 2017 has complied with their obligations.

Professional body supervisors should liaise with other relevant supervisory authorities to ensure a coherent interpretation of the legal obligations, and to minimise inconsistencies. It is important to make sure different types of guidance do not create unnecessary confusion among professional body members.

**Examples of good practice:**

- guidance aimed at members supports members' implementation of a risk-based approach.
- professional body supervisors cooperate to minimise the number of different sets of guidance that are in place.
- professional body supervisors regularly share information with members about money laundering risks within their respective sectors.

**Examples of poor practice:**

- guidance is prescriptive and inflexible, and fails to adapt to changes in industry practices, technology, regulations, etc.
- guidance is confusing and inconsistent.
- members are not provided with any insight into a professional body supervisor's view of money laundering risk.

## VIII. Staff training

Regulation 49(1)(c) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure they employ only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions.

Regulation 46(2)(b) requires a professional body supervisor to ensure its employees and officers have access, both at its offices and elsewhere, to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector.

Professional body supervisors should encourage members' adoption of a risk-based approach. Professional body supervisors therefore should take steps to ensure their staff members are equipped to take decisions on whether a member's systems and controls are appropriate in view of the risks identified.

It is not possible for a professional body supervisor to specify measures that members must take to meet their obligations in all circumstances. Supervisory staff should therefore judge each case on its merits. The aim is to make sure supervisory actions are predictable and proportionate. This will be helped by training for supervisory staff, including the provision of supervision manuals and other guidance.

Training should help supervisory staff to form sound judgments about members' anti-money laundering controls. Supervisory staff should consider the risks faced by the member, and practice elsewhere in the industry, when making judgments about the adequacy of controls. Training can cover topics like the role of audit, compliance and risk management functions, and what appropriate practice looks like. Where staff members use techniques such as file reviews or interviews, specific training may prove to be of benefit.

### **Examples of good practice:**

- training has a strong practical dimension (e.g. case studies) and some form of testing.
- training is relevant to the person's role and addresses any identified gaps in their technical knowledge.
- training contributes to the person's professional skill and knowledge.

### **Examples of poor practice:**

- training dwells unduly on legislation and regulations rather than practical examples.

## IX. Enforcement

Regulation 49(1)(d) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure that contravention of a relevant requirement by a member renders the member liable to effective, proportionate and dissuasive disciplinary measures under the professional body's rules.

Professional body supervisors should be able to, and also have the readiness to, take appropriate action against relevant persons where they have failed to meet their AML obligations. Enforcement action should be effective and proportionate, and applied in a fair and consistent manner.

Supervisors should have sufficient information gathering and investigative powers to effectively monitor and assess compliance with applicable anti-money laundering standards and to take appropriate action for non-compliance. These could include the powers to require the production of documents or the provision of information, to interview members and carry out onsite inspections.

Supervisors should have a broad range of enforcement tools at their disposal and should use these tools in appropriate cases. Enforcement action should seek to remove the benefits of non-compliance and deter future non-compliance, but may also be remedial and preventive. Enforcement powers could range from administrative sanctions, including censures and financial penalties, to suspension, restriction or withdrawal of membership and the ability to direct members to take action to remedy non-compliance and promote future compliance.

It is for the supervisor to satisfy itself, and OPBAS, that its powers are adequate and that they are used in appropriate cases to advance their functions as anti-money laundering supervisors. Supervisors should maintain records of enforcement action relating to its anti-money laundering supervision. The documentation should be sufficient to allow *ex-post* understanding of the action taken, and its justification, for the purpose of quality assurance testing by, for example, OPBAS or internal auditors.

### Examples of good practice:

- enforcement powers, and their use, incentivise compliant behaviour.
- published statements about enforcement activity are written in plain language to ensure wider lessons can be disseminated.

### Examples of poor practice:

- enforcement process is unduly lengthy.
- enforcement powers available to a body are inadequate.
- enforcement process is unclear and difficult for members to understand.

## X. Record keeping and quality assurance

### Record keeping

Regulation 46(2)(d) of the Money Laundering Regulations 2017 requires a professional body supervisor to keep a record in writing of the actions it has taken in the course of its supervision, and of its reasons for deciding not to act in a particular case.

Regulation 17(3) requires a professional body supervisor to keep an up-to-date record in writing of all the steps it has taken under Regulation 17(1). Regulation 17(4) requires a professional body supervisor to record its risk profiles in writing.

A professional body supervisor will maintain records of significant decisions related to its anti-money laundering supervision, documenting the reasons for action. The documentation should be sufficiently thorough to allow ex-post understanding of the justifications behind the decision to be taken as part of quality assurance testing by, for example, OPBAS or internal auditors.

Moreover, professional body supervisors will document their supervisory action (e.g. notes for record of meetings; file review logs) to ensure an adequate record is maintained.

### Quality assurance testing

Professional body supervisors should subject supervisory work – such as the results of file reviews or recommendation letters to members – to internal cross-checks by internal independent persons (for example, by staff from separate inspection teams or independent managers). This can take place on an ex-post sample basis, and will be in addition to standard managerial oversight. These checks make sure that judgments and the standard of scrutiny are consistent. The professional body supervisor should also expect periodic inspection visits by OPBAS.

### Internal audit

Where an internal audit function exists, the quality of AML supervision should be subject to periodic review.

### Annual questionnaire submission

Regulation 51(1) of the Money Laundering Regulations 2017 requires a professional body supervisor to collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4 to the Regulations. Regulation 51(2) requires a professional body supervisor to provide this information to the Treasury on request. Regulation 51(4) says such disclosure is not to be taken to breach any restriction, however imposed, on the disclosure of information. Regulation 51(5) says, where such a disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

Professional body supervisors must submit an annual questionnaire response to OPBAS using their standard template. The timetable for the submission will be set by OPBAS.

**Examples of good practice:**

- quality assurance checks on anti-money laundering supervision activity are risk-sensitive in nature.

**Examples of poor practice:**

- records of supervisory work are patchy.
- no quality assurance testing takes place.