ICAEW
REPRESENTATION 100/21

CALL FOR EVIDENCE: REVIEW OF THE UK'S AML/CFT REGULATORY AND SUPERVISORY REGIME

Issued 13 October 2021

ICAEW welcomes the opportunity to comment on the Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime consultation document published by HM Treasury on 21 July 2021, a copy of which is available from this link.

This ICAEW response of 14 October 2021 reflects consultation with the AML Project Board, a sub-committee of the ICAEW Regulatory Board. The independent ICAEW Regulatory Board has governed ICAEW's regulatory and disciplinary functions since 2015 and has a wide remit including the setting of strategy and budget, determining regulatory fees and supervision of the performance of all disciplinary and regulatory committees.

It also reflects consultation with the Economic Crime Sub-Committee, part of the Business Law Committee. The Economic Crime Sub-Committee includes representatives from public practice. The Business Law Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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ICAEW is a supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017 supervising approximately 11,000 member firms.

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SUMMARY OF MAJOR POINTS

Objectives of the regime, high impact activities and strategic priorities

1. We would agree that the primary objectives listed are appropriate. However, we consider that there is a missing objective to reflect the key purpose of the MLRs and the role of CDD at client take-on. We would suggest the following:
   a) The regulated sector acts as gatekeeper, preventing criminals and money launderers from doing business in the UK using a risk-based approach to customer take-on and ongoing relationship assessment.
2. It would be high impact to restrict the term 'accountant' such that only those accountants with a recognised qualification can call themselves an accountant. This would provide clarity that only those called an 'accountant' would be subject to rigorous Code of Ethics and CPD requirements. It would also be high-impact to include an explicit requirement within the MLRs for those individuals providing accountancy services or trust and company services to be registered with a supervisor for AML supervision.
3. We would welcome the publication of strategic national priorities for AML/CTF but we believe this should be supported by a coherent system overview and responsibility that drives the design of the MLRs, POCA and Companies House legislation. By identifying the strategic national priorities across all these frameworks, government could design a coherent approach to the fight against economic crime and, in turn, supervisors could apply their resources to the areas that are most important to the UK government. This would mean that any such document must be cross-departmental (Home Office, HM Treasury and BEIS) and be the driving document siting behind the Economic Crime Plan, National Risk Assessment and other strategic assessments. It would be inefficient to have a strategic national priorities document that failed to drive the wider landscape.
4. We also consider the phraseology of 'suspicious transactions' as problematic for the accountancy sector who take a more holistic approach and tend to focus on a range of circumstances and fact patterns that are suspicious rather than a specific transaction. Better quality information/intelligence can be shared if we shift our focus from individual transactions to a more holistic view that considers the general behaviours/circumstances of clients/businesses/individuals rather than simply the legality of a specific transaction. This is an example of where the wording of the regulations is aimed at the financial sector.

Disproportionate focus on SARs

5. We would agree that reporting of suspicious activity is an important part of the regime. However, we believe there is a disproportionate focus on the number of reports made. If firms are complying with the provisions of the MLRs then they will as a result of their risk-based approach and client due diligence work reject many of those potential clients who pose a higher risk of MLTF. In most of these cases a suspicion of MLTF will not have been formed and so no SAR is made. The importance of the gatekeeper role of the profession should be valued in addition to the value that is brought by SARs where the test for such reporting is met.

Better intelligence sharing to promote a risk-based approach

6. We agree that the Regulation 52 gateway should be expanded to allow for reciprocal protected sharing. One of the criticisms of the existing arrangement is that while supervisory authorities are improving the volume and quality of information that they share with other relevant authorities through ISEWGs, FIN-NET and the PPTGs, those same other relevant authorities are not improving the flow of information back to the supervisory authorities. Improved information and intelligence sharing is necessary to fully understand the AML risks within the sector.

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7. Professional body supervisors have a range of powers that can usefully disrupt activity or behaviours in cases where a legal case or criminal investigation has stalled – law enforcement should work proactively with PBSs to use all our tools more effectively.

Sector specific risk information

8. ICAEW has been working hard to disseminate risk messages to the firms – via the AASG Risk Outlook, the ICAEW Risk Bulletins and the quarterly AML Essentials – to assist firms in identifying the risks in their business.
9. However, the primary barrier to understanding ML/TF risk remains the limited sharing of risks between law enforcement, other government agencies, the supervisory authorities, and the firms themselves. Significant improvements have been made in this area through the ISEWGs, Public Private Threat Groups and Cells, and the sharing of more alerts and threat assessments but more must be done to ensure that the information is sufficiently granular with the risks clearly identified and explained. In particular, the risk information needs to be sector specific and not presented in the context of financial services.

Consistency of supervisory oversight

10. The key strength of the UK supervisory regime is that the sectors are supervised by those with expertise in that sector, which enables the best understanding of risk. AML supervision is embedded within those institutions that have supervisory or monitoring obligations and powers over their population under other legislation or regulations and, consequently, have the expertise to deliver robust AML supervision and monitoring as well as a sound framework and infrastructure. This reduces regulatory burdens, improves competitiveness and reduces financial impact of the regulatory regime.
11. Professional bodies bring in valuable insight and expertise into specialist activities. In the accountancy sector, firms may offer audit, insolvency, probate, tax, investment business or consultancy services and each of these is a specialism requiring significant skills, knowledge, and experience. Similar diversity will be present in the legal sector and financial sector. Supervision of the accountancy firms by professional bodies ensures that new services or markets are fully understood, and the ML/TF risks are minimised.
12. In addition, in our experience, the regulatory powers of the professional body supervisors are wider than those afforded by the MLRs meaning that they can take action to disrupt activity that may not be available to law enforcement. We have recently identified a case where law enforcement was unable to bring a case against an individual, but ICAEW has been able to use its powers to investigate and perform monitoring reviews to disrupt the activities.
13. Since 2018, OPBAs has also added a layer of oversight. Their objective to improve consistency has facilitated an improvement such that the professional body supervisors are working to the same minimum standard. However, the fact that they do not have oversight over all supervisors, particularly in areas where statutory supervisors/PBSs overlap, is a weakness in the system – supervision would be stronger if OPBAS had oversight powers over all supervisory authorities. The supervisory regime would also be more robust if OPBAS had the power to assess the effectiveness of the statutory supervisors as well as the PBSs. Currently, there is no independent ongoing assessment of the effectiveness of the FCA, HMRC and the Gambling Commission.

ANSWERS TO SPECIFIC QUESTIONS

Recent improvements to the regulatory and supervisory regimes

Question 1

What do you agree and disagree with in our approach to assessing effectiveness?

14. We would agree that the relevant tests of effectiveness should include MLRs that are well designed and drafted to support the objective of their existence, and non-compliance

proportionately and dissuasively addressed by supervisors. We also agree that the MLRs should ensure that the compliance activity of the regulated sector should be focussed towards the most significant threats to the UK system, whilst reducing administrative burdens as far as possible.

15. In our view, this last test is the most important one, as there is a danger that the regulatory and supervisory regimes focus too much on administrative compliance rather than where there are actual instances of money laundering or terrorist financing activity.

Question 2

What particular areas, either in industry or supervision, should be focused on for this section?

16. There should be a focus on how the MLRs and overall regime applies to non-financial sectors – currently much of the legislation is primarily designed and drafted for the financial sector and doesn't easily translate to the circumstances and business practices of DNFBPs.
17. The effectiveness of the supervisory model should encompass a review of whether the split between statutory supervisors and professional body supervisors impacts the supervisory landscape. Statutory supervisors are afforded additional powers, more access to sensitive information and subject to less scrutiny than their professional body equivalents, despite the 2018 FATF Mutual Evaluation review identifying weaknesses in the risk-based approach to supervision across all supervisory authorities.
18. There is an opportunity to bring real clarity to the regulations on expectations so that requirements/behaviours that are implicit become explicit – as well as areas where the guidance fill in the gaps.

Question 3

Are the objectives set out above the correct ones for the MLRs?

19. We would agree that the primary objectives listed are appropriate. However, we consider that there is a missing objective to reflect the key purpose of the MLRs and the role of CDD at client take-on. We would suggest the following:
    a) The regulated sector acts as gatekeeper, preventing criminals and money launderers from doing business in the UK using a risk-based approach to customer take-on and ongoing relationship assessment.
20. We also consider the phraseology of 'suspicious transactions' as problematic for the accountancy sector who take a more holistic approach and tend to focus on a range of circumstances and fact patterns that are suspicious rather than a specific transaction. Better quality information/intelligence can be shared if we shift our focus from individual transactions to a more holistic view that considers the general behaviours/circumstances of clients/businesses/individuals rather than simply the legality of a specific transaction. This is an example of where the wording of the regulations is aimed at the financial sector.
21. However, the secondary objective of the regulated sector working with government to ultimately provide valuable information to law enforcement should be expanded to a two-way sharing of information. In the accountancy sector for example, there is much that could be gained from having comprehensive and timely information on emerging threats and risk areas to inform the AML work done by the sector and supervisors.

Question 4

Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

22. **Primary objective 1** – the MLRs focus on client take on (hence our point above that there should be an objective detailing the regulated sector's role as a gatekeeper) and do not place as much focus on the ongoing monitoring of the relationship and the transactions. This is

limited to Regulation 28 (11) and a limited number of provisions requiring EDD and SDD to sufficiently monitor the ongoing business relationship for suspicious activity. Similarly, the SARs regime is set out in POCA and the MLRs mention the word 'suspicious' only 9 times. Consequently, the MLRs need to consider how they support the objective to identify, prevent and report suspicious transactions. It may be that there needs to be more explicit mention of SARs within the section on training (eg, 24 1) a) ii) mentioning risk, red flags etc), or additional provisions are required for supervisors (eg, the SI and express right to access).

23. The UKFIU has, over the past 2 years, worked hard to raise the standards of SARs and DAMLs submitted. The focus, however, has been placed on the quality of the SAR and the information provided within it but it would be beneficial for there to be more examples and case studies of when a SAR should be submitted – demonstrating what constitutes suspicion. The MLRs could include a provision for the UKFIU to provide this guidance, in addition to the information required by the NCA under Regulation 104. Supervisors are currently having to fill the void, and there is a risk of inconsistency without a clear direction/message from UKFIU.

24. We note that one of the conclusions from the Law Commission review of the SARs regime was that statutory guidance should be produced on what constitutes suspicion, and we would support this as something that would be useful for the regulated sector.

25. We observe through our monitoring activity that that ICAEW members are taking action to identify, prevent and report suspicious transactions. There are concerns among law enforcement that accountants under-report, although the evidence for this is unclear and there are limited examples of where an accountant has been prosecuted, disciplined or investigated for failing to report a suspicion.

26. **Primary objective 2** – the MLRs set out a clear set of requirements and obligations on supervisors that require them to take a risk-based approach to monitoring compliance and allows them to make proportionate and dissuasive use of their powers and enforcement tools (including publishing their risk assessments). ICAEW uses its own regulatory powers as a credible deterrent and for enforcement rather than the powers provided in MLR. We make proportionate and dissuasive use of our powers and enforcement tools – as well as proactive raising of standards to prevent poor conduct from occurring.

27. However, it is important that supervisors remain that – supervisors – and are responsible for ensuring compliance with the MLRs and taking enforcement action where that isn't the case. Supervisors, and the regulated sector, cannot be an extension of law enforcement. We share information and intelligence that we have been made aware of – there should not be a requirement on supervisors to proactively investigate threats and trends.

28. **Primary objective 3** – the Call for Evidence doesn't set out a definition of competent authority and so we have assumed the reference is to supervisors within the UK. The MLRs require relevant persons to collect and maintain beneficial ownership information on a risk-based approach and retain such information so that the relevant person's supervisor may inspect it. We observe that our members are collecting beneficial ownership information for their clients to the extent this is required under the regulations. The MLRs include a requirement to compare the information they have reviewed as part of their client due diligence with that held on the PSC register but we note that the PSC register doesn't always reflect beneficial ownership – it would be helpful to remove this inconsistency. The SI has proposed changes that will require relevant persons to review the information as they are made aware of changes throughout the life of the business relationship, rather than simply at take-on. It is important that these changes are only implemented when Companies House has the appropriate powers to act on any discrepancies and with clear guidance that this does not constitute a proactive monitoring obligation. If the regulated sector is to be responsible for policing the data held by Companies House it should be entitled to rely on the register for CDD purposes. The sector can provide information that suggests the register is incorrect as they are made aware of it, but the administrative burden this creates needs to be balanced against the value of such reports until such time that Companies House is able to take adequate action to address discrepancies.

29. It is in the interests of the UK that businesses and individuals engage professionals in the regulated sector to advise them on their affairs. This contributes to higher standards of financial reporting, and tax compliance, among others. In any proposal to increase the regulatory burden on the professions, it is important that government considers the unintended consequence of increasing the cost of professional services, and therefore that many citizens will be priced out of the professional services market.

30. **Missing primary objective** – role as gatekeeper – the MLRs comprehensively cover the requirements in relation to client-take on and provide an effective tool to ensure that relevant persons do not do business with criminals and money launderers. The strength and effectiveness of these take on measures will contribute to the volume of SARs submitted by the regulated sectors – as effective CDD will lead to a reduced number of suspicious activities occurring within the client base. We observe that, generally, our members do perform effective CDD.

31. **Secondary objective** – the MLRs provide gateways for supervisors to provide information to law enforcement to help understand ML/TF threats. We welcome the proposed changes in the SI that will allow the gateway to be two-way, with law enforcement sharing information with the supervisors and the regulated sector.

High-impact activity

Question 5

What activity required by the MLRs should be considered high impact?

32. The following areas are those with the highest impact ie, those that are most effective at driving activity which most contributes to the overarching objectives of the AML/CFT regime. It is challenging to accurately identify which activities are high impact from a reporting perspective because we don't know which of the SARs submitted by our firms are high value intelligence.

33. **Risk based approach** - risk assessments required by government, supervisors and relevant persons are essential to the MLRs so that compliance activity is focussed towards the most significant threats in the UK system, while reducing the administrative burdens as far as possible. The requirements to risk assess a proposed client engagement, and to perform client due diligence that is commensurate with that assessed threat are particularly impactful.

34. The risk-based approach also supports the stance that we can't eliminate money laundering, and we won't spot every suspicious transaction, but we can make it as difficult as possible for criminals to do business here by understanding the risks and creating barriers.

35. **Ongoing monitoring** – this activity allows relevant persons to consider whether there is any information available to suggest that transactions or activity are not consistent with the knowledge of the business/ownership of that client. Effective ongoing monitoring supports the suspicious activity reporting regime.

36. The requirement for **policies and controls** has high impact as it creates the environment within which staff of relevant persons complete their day-to-day activities in such a way that they comply with the requirements of the MLRs, Terrorism Act 2000 and POCA.

37. **Supervisory** activity for compliance on a risk-based approach. Supervisors must continue to review and inspect the activities at their supervised firms to ensure that the barriers to doing business and procedures to identify suspicious activities are well-designed and implemented consistently. However, there needs to be a better understanding of what level of supervisory activity is acceptable for each risk category ie, is it appropriate to have very regular monitoring reviews for high-risk firms but to do a random sample of firms presenting low risk.

Question 6

What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?

38. We have set this out in Q4.

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Question 7

Are there any high impact activities not currently required by the MLRs that should be?

39. It would be high impact to **restrict the term 'accountant'** such that only those accountants with a recognised qualification can call themselves an accountant. This would provide clarity that only those called an 'accountant' would be subject to rigorous Code of Ethics and CPD requirements.
40. A second high-impact activity/requirement would be an **explicit requirement** within the MLRs for those individuals providing accountancy services or trust and company services to be registered with a supervisor for **AML supervision**. This would push the obligation for supervision on to the individual whereas now, the obligation rests with the professional body supervisors and HMRC to police the perimeter.
41. We believe greater clarity could be provided of the need to **understand the commercial rationale** of a proposed client engagement and the wider background of a client, in addition to just their identity.
42. The MLRs could have a better understanding and, therefore, inclusion of **new technologies**. There are different types of technology that are used across a spectrum of activities eg, those that collect evidence for client due diligence, and those that provide electronic verification of identity such as facial recognition or true eID that draw upon a central database of verified documents. The MLRs are currently confused as to which technologies are permitted or encouraged and for what purposes they can be used.
43. Furthermore, it would be high impact for accountancy firms if a government body or the FCA could **centrally certify technology providers**. Currently, each firm must perform their own research and make their own judgement about the level of evidence/verification that a particular due diligence provider may give. Central certification would reduce the collective administrative burden faced by thousands of firms performing the same checks on the same software.
44. Finally, the **SARs regime** needs a clear **de minimis limit** to help focus SARs reporting on high value intelligence.

Question 8

What activity required by the MLRs should be considered low impact and why?

45. The requirement for supervisors to obtain **criminal record checks** on all BOOMs in supervised firms is an extensive administrative exercise both for us as supervisor and for our supervised population. Despite the thousands of checks undertaken we have not identified a single instance of a relevant conviction among our supervised population. The evidence demonstrates that the risk of a BOOM within our firms having a serious criminal conviction is very low, partly due to the high standards our firms set for their partners and senior employees.
46. The **non-risk-based requirements** for relevant persons are often low impact in the majority of client engagements. For example, some of the requirements under regulation 28 that require the relevant person to determine and verify the law to which a body corporate is subject, and its constitution, results in copies of certificates of incorporation and articles of association being obtained and kept on record for many thousands of companies. The information these documents provide is generally of low value and does little to address MLTF risk. Given the widespread availability of electronic providers of CDD, a more efficient approach could be taken to the requirements that relate to standard (often boilerplate) company information.
47. Within the accountancy profession, a significant proportion are small businesses, often **sole practitioners**. The risk-based approach needs to be amended to work for their client base – in many cases sole practitioners could use a more prescriptive approach.
48. The **TCSP register** is currently low impact because of the limited way in which it is used. It would be better to make the register publicly available. Furthermore, there is benefit in

having a register for each of the regulated sectors, so that law enforcement and other supervisors can check whether firms are currently supervised, and by who.

49. As we set out in Q34 and Q35, **reliance** doesn't work and is of limited use across the regulated sectors. Very few firms use it as the requirements mean that they remain liable for the quality of the CDD performed and the risk assessment and so they often perform their own procedures.

50. Discrepancy reporting remains low impact until such time that Companies House has the necessary powers to act on those matters reported to it.

National Strategic Priorities

Question 9

Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?

51. We would welcome the publication of strategic national priorities for AML/CTF but we believe this should be supported by a coherent system overview and responsibility that drives the design of the MLRs, POCA and Companies House legislation. By identifying the strategic national priorities across all these frameworks, government could design a coherent approach to the fight against economic crime and, in turn, supervisors could apply their resources to the areas that are most important to the UK government. This may be through thematic reviews or other research projects to understand the threat; or identifying training and guidance resources for their supervised population to focus the efforts of the regulated sector on these priority areas.

52. This would mean that any such document must be cross-departmental (Home Office, HM Treasury and BEIS) and be the driving document siting behind the Economic Crime Plan, National Risk Assessment and other strategic assessments. It would be inefficient to have a strategic national priorities document that failed to drive the wider landscape.

53. Such a publication should include:

    a) a consideration of the publications already in existence (NRA, HMT report, NCA's strategic etc);

    b) a concise list of areas that the AML regime can focus its efforts on for the forthcoming year, acknowledging the level of available resources within the entire AML regime;

    c) an explanation of the key focus areas within those strategic national priorities eg, 'fraud' is too wide a topic. More granularity is needed to understand the specific areas of fraud (for example) that government wants to address; and

    d) an explanation of how the priorities could manifest in each regulated sector so that each regulated sector could focus its resources in the right way. It would be equally important to highlight when a priority is not considered to manifest in a particular regulated sector so that there is a clear steer to that sector that there are no expectations for action.

54. We do note, however, that the all-crimes approach to AML within the UK may present conflict with a Strategic National Priorities document. There is no provision within the regulations for firms to ignore specific crimes or illicit activity and so they will continue to consider all risks, crimes and illicit activity as part of their CDD and ongoing monitoring.

Question 10

What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?

55. The National Risk Assessment sets out the AML/TF risk, by sector, within the UK. However, there is no benchmarking between those sectors to understand their relative importance, where the risk is accepted or whether the AML regime and other mitigating factors are strong enough. Having clarity on which areas government and law enforcement will be prioritising

would enable the supervisory authorities, and law enforcement, to allocate their resources to those areas of concern effectively.

56. The National Risk Assessment process could be improved by increased transparency including better consultation and clearer data and evidence gathering. This should result in conclusions on sector risk that are better understood and bought into by the respective sectors.

Question 11

What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

57. If it was not clear how the priorities applied to a certain sector (or they in fact were not relevant for a particular sector) then this could lead those in that sector to conclude that their area was not of as much concern as others, and lead to complacency.

Extent of the regulated sector

Question 12

What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?

58. One of the main sources of evidence to consider should be law enforcement intelligence that suggests these sectors are used by criminals for money laundering activity.

Question 13

Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?

59. We aren't aware of any.

Question 14

What are the key factors that should be considered when amending the scope of the regulated sector?

60. The extent to which the sector handles large sums of money on behalf of clients or provides advice or mechanisms that enables those clients to convert or transfer large sums of money into another asset or payment form.

Enforcement

Question 15

Are the current powers of enforcement provided by the MLRs sufficient? If not, why?

61. The current powers of enforcement set out in Part 9 only relate to the designated supervisory authorities (being FCA and HMRC). The requirements/powers of enforcement provided to professional body supervisors are limited to the wording of Regulation 46, which sets out that a supervisory authority must take necessary measures to secure compliance with the requirements of the Regulations.

62. Nonetheless, ICAEW's enforcement powers stem from our own Principal and Disciplinary Bye-Laws. We have the following available sanctions available to our disciplinary process:
    a) exclusion from membership;
    b) removal of practicing certificate;
    c) suspension (by the Fitness Committee);
    d) withdrawal of right to practice;
    e) fines (unlimited);
    f) severe reprimand;

g) reprimand;

h) unpublicised caution;

i) undertaking to comply with an action plan; and

j) condition – being a requirement to comply with an action plan.

63. Our Guidance on Sanctions provides a flexible and comprehensive framework to deal with a variety of non-compliance and poor conduct issues. There are no limits on the fines that we can impose but the sentencing guidelines do provide a 'starting point' for certain offences. We have a searchable database on the external internet for all disciplinary cases.

64. Consequently, although the powers of enforcement provided by the MLRs are limited, we do not require additional powers to effectively enforce compliance within our supervised population and consider our range of sanctions, including unlimited fines, sufficient.

Question 16

Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?

65. We believe our current application of our enforcement powers is proportionate to the breaches they are used against. Our Guidance on Sanctions sets a clear, scalable set of sanctions determined by the nature of the non-compliance, whether there are mitigating or aggravating factors, and the size of the accountancy firm involved.

Question 17

Is the current application of enforcement powers sufficiently dissuasive? If not, why?

66. We believe our current application of our enforcement powers is sufficiently dissuasive. AML compliance amongst our firms is strong and our monitoring results, and conduct investigations demonstrate that AML non-compliance is limited to a very small proportion of our firms. Further evidence setting out our monitoring and enforcement results can be found at icaew.com/regulation/aml-supervision.

67. However, there may be benefit in setting a common minimum sanction standard so that there isn't regulatory arbitrage. An example of where this works well is the Insolvency Service Common Sanctions Guidance. We would be happy to participate in a discussion facilitated by HM Treasury and/or OPBAS to share our experience of how this could work in practice.

Question 18

Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

68. We don't have visibility as to why there are few criminal prosecutions brought in this area and so law enforcement, and those statutory supervisors with criminal powers, would be better placed to comment on why there may be barriers to bringing criminal prosecutions within the frameworks that they work within.

69. The impact of more prosecutions would strengthen the credibility of the regime and dissuade potential actors from becoming involved in money laundering. These prosecutions need to be taken against the criminals/money launderers themselves as well as those relevant persons who are found to money laundering.

70. We do consider that there are elements of the MLRs that place too much responsibility and focus on to the MLRO when it is those charged with governance who are responsible for creating the right culture within a firm to prevent money laundering. It is senior management who are responsible for client take-on procedures and so action should be taken against the appropriate level. The bribery and corruption regime has dealt with this well and the MLRs could include some of the same principles.

Barriers to the risk-based approach

Question 19

What are the principal barriers to relevant persons in pursuing a risk-based approach?

71. We observe that there are two principal barriers for accountants to pursue a risk-based approach.
72. The first is the limited sharing of information on risks between law enforcement, other government agencies, the supervisory authorities, and the firms themselves. Significant improvements have been made in this area through the ISEWGs, Public Private Threat Groups and Cells, and the sharing of more alerts and threat assessments. In the last 18months ICAEW has circulated over 20 risk bulletins to our supervised population to inform firms on the risks that are observed. However, more must be done to ensure that the information is sufficiently granular with the risks clearly identified and explained. In particular, the National Risk Assessment needs to have a better understanding of each of the regulated sectors and how AML risks present themselves each. There is also a continuing need to ensure that the risks identified continue to be relevant to the services provided by the accountancy sector and the clients served by the accountancy sector. Although greater sharing of information between firms would be beneficial, there are a number of barriers to this including competition law, confidentiality and data protection.
73. The second barrier is that the volume of work required by firms under the MLRs means that it is often more efficient to apply the same baseline of CDD to every client, rather than have to spend time determining a bespoke approach for each client engagement, especially where the fee for the work is small. Firms may employ complex risk-assessing software, requiring them to input significant amounts of data, and to answer a long list of questions, to generate risk scores, which in turn determine the verification processes
74. There is also an unintended consequence of the regime that there is a risk aversion among firms who want to ensure they do not fall foul of the MLR requirements, and therefore err on the side of caution in the extent of AML checks undertaken on clients or resort to a tick-box exercise to ensure that they have addressed the long list of risks.
75. By clearly explaining the AML risks to the sector we can enable firms to perform effective and efficient client due diligence procedures.

Question 20

What activity or reform could HMG undertake to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?

76. It is unlikely that National Strategic Priorities would have much impact on a relevant person's ability/capability to pursue a risk-based approach. National Strategic Priorities would provide structure and focus to law enforcement, government agencies and supervisory authorities in focussing their effort and resources. This structure and focus should result in a deeper understanding of a particular risk area – and this information would be fed down to the relevant persons.
77. We do note, however, that the all-crimes approach to AML within the UK may present conflict with a Strategic National Priorities document. There is no provision within the regulations for firms to ignore specific crimes or illicit activity and so they will continue to consider all risks, crimes and illicit activity as part of their CDD and ongoing monitoring.
78. However, simplification of the ML/CTF regime where possible would address two of the barriers outlined in our response to question 19 above. Clarification of how the regulations apply for each regulated sector, and a message from government that the regime is focussed on real areas of ML activity rather than just compliance would also help firms to focus on the riskiest areas. A de minimis for SARs would also improve the quality of the intelligence shared through the SARs regime.

Question 21

Are there any elements of the MLRs that ought to be prescriptive?

79. Currently, there are prescriptive requirements in relation to the type of information that a relevant person should collect about a client, as well as the circumstances when EDD and SDD should be performed. It is helpful to set a small number of minimum requirements so that relevant persons are clear what is the minimum required standard for CDD (including EDD and SDD) but these shouldn't detract from the need to perform EDD procedures that mitigate the AML risk identified. However, we don't think there are any additional areas that need to be more prescriptive than they are now.

Understanding of risk

Question 22

Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?

80. Our monitoring activity demonstrates that the vast majority of firms do have a good understanding of ML/TF risk. Our 2020 monitoring report explains that of the 1,725 monitoring reviews we performed in 2019, we required follow-up action for 277 of those firms (16.1%). Our most common finding is a lack of firm-wide risk assessment or inadequate documentation of the client risk assessment.
81. Where firms require follow-up action, it is often because they don't have the resources available to them to complete the requirements of the regulations. The rules are meant to apply proportionately and be reflective of the size and nature of the firm yet the prescriptive requirements mean they can be very onerous on the smallest firms. A small number of firms don't believe their firm is subject to AML risk and ICAEW has been working hard to disseminate risk messages to the firms – via the AASG Risk Outlook, the ICAEW Risk Bulletins and the quarterly AML Essentials – to assist firms in identifying the risks in their business.

Question 23

What are the primary barriers to understanding of ML/TF risk?

82. As we described in our response to Q19, the primary barrier to understanding ML/TF risk is the limited sharing of risks between law enforcement, other government agencies, the supervisory authorities, and the firms themselves. Significant improvements have been made in this area through the ISEWGs, Public Private Threat Groups and Cells, and the sharing of more alerts and threat assessments but more must be done to ensure that the information is sufficiently granular with the risks clearly identified and explained.

Question 24

What are the most effective actions that the government can take to improve understanding of ML/TF risk?

83. The most effective actions:
    a) improving and facilitating the sharing of good quality risk information between law enforcement and the supervisory authorities, so that the firms can receive clear and concise risk alerts;
    b) producing a robust and detailed National Risk Assessment that clearly justifies the risk in each regulated sector using well-researched statistics and data, rather than one-off case studies;
    c) a clear strategic direction in AML/CTF effort in the UK to focus the resources and efforts of the AML regime in the areas that matter; and
    d) driving an increased understanding of the different regulated sectors by both government and law enforcement. We see discrepancies in supervision between the

professional body supervisors who take a holistic approach to supervision via their Practice Assurance regimes, or equivalent, and include AML alongside their wider understanding of the services provided, the quality of the firm's compliance in other areas, and the skills and experience of the partners and staff. HMRC, on the other hand, only focus on AML matters and do not have the benefit of the wider holistic approach that, for example, ICAEW's Practice Assurance regime brings.

Expectations of supervisors to the risk-based approach

Question 25

How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?

84. ICAEW reviewers gather information about the firm's procedures during the opening meeting discussions, from a brief review of the firm's AML procedures manual, from a review of the firm's own compliance reviews and from client file reviews. They check that
    - the firm has performed a firm-wide risk assessment and that this risk assessment reflects the services provided, clients served and the risks the reviewer has identified through their review of the information declared in the annual return on high-risk clients and services.
    - the firm is conducting client due diligence on a risk-sensitive basis in line with the policies and procedures it has designed to mitigate the firm-wide risks.
    - the firm has recognised clients and situations where enhanced due diligence is required in accordance with the policies and procedures.
    - the firm is monitoring its compliance with anti-money laundering policies and procedures.
    - the firm identifies 'trigger events' to update CDD on existing clients.
    - there is sufficient information on file to demonstrate that the identity of the client has been verified and suitable evidence retained.
    - a money laundering reporting officer (MLRO) is in post and aware of his / her responsibilities.
    - all relevant employees have received appropriate training relating to money laundering.
85. We ensure the firm has understood and implemented the key aspects of the regulations and, via our review of the firm's documentation and its client work, that the firm consistently applies its procedures across all business streams and that they are effective.
86. We select our own risk-based sample of client files and CDD documentation. The number of files will vary according to the size of the firm and the AML risks within the firm's client base and the services it provides.
87. This approach allows us to understand the firm's own assessment of its risk, compare that assessment with our own assessment, and consider whether the designed policies and procedures adequately mitigate that risk.

Question 26

Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?

88. No.

Question 27

What more could supervisors do to take a more effective risk-based approach to their supervisory work?

89. The risk-based approach to supervision typically refers to the amount of scrutiny a supervisor applies to a particular group of firms, based on their relative AML risk. For ICAEW, this is

delivered through identifying a cyclical approach to monitoring, with the cycles determined by the AML risk. The higher the AML risk, the more frequently the firm is reviewed.

90. The approach to high-risk is well understood and supervisory authorities have clear policies on frequency, type, scope, and depth of review. However, the amount of resources that supervisory authorities should direct to the lowest risk firms is unclear and, we suspect, inconsistent. It would be helpful if supervisors could agree a standard minimum approach to supervising this the lowest risk firms – whether that should be a long cycle, or a random sample of the group each year.

91. Supervisors should also consider whether they could apply a risk-based approach to enforcement. Should a low-risk firm and a high-risk firm, with the same non-compliance face the same enforcement action? The regulations could usefully provide a framework to supervisors to ensure that the enforcement action taken is proportionate and risk based.

Question 28

Would it improve effectiveness and outcomes for the government and/or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?

92. We don't think that this would be useful. The AML Guidance for the Accountancy Sector (AMLGAS) sets clear standards and ICAEW monitors compliance and effectiveness against this guidance. By setting a definition of AML/CTF compliance effectiveness, the regime will be pushed further towards a tick-box exercise and away from a risk-based approach with tailored policies and procedures. Relevant persons would find a two-tier approach to compliance confusing, having to follow both AMLGAS and a separate set of compliance effectiveness definitions. A solution may be to build in indications of effectiveness into the sector guidance, but a separate definition/document will be cumbersome.

93. We also don't think that effectiveness should be driven by the provision of high-value intelligence to law enforcement. The key focus of the AML regulations is preventing criminals from doing business in the UK and any effectiveness measures should be focussed on how this is achieved. We are concerned that by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, clients should be less likely to be laundering money and therefore the number of SARs submitted would be low. We do accept that clients change, situations change, and what was once a lawful business could change into something that is not – nonetheless, we think these situations are the exception, rather than the norm. Also, accounting firms are not equipped to mine data in the way banks are (and don't have access to the same levels of data that the banks have) - promoting high value intelligence in this way is another example of how the AML framework is finance/bank-focused.

94. Another concern is that some activities are subject to a reporting privilege and it is unclear how the regime will manage this privilege within the ambit of intelligence sharing.

95. We understand that there are challenges across different sectors in relation to SARs reporting – the potential over-reporting by the banks and the perceived under-reporting by the professional services sectors, for example. However, we believe that there is still work to be done on improving the information/intelligence flow relating to risks and how money laundering occurs. We haven't yet seen the benefit of the actions and workstreams implemented to date.

Question 29

What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

96. We see little benefit in such a definition – we think it would move the AML regulations down a more prescriptive tick-box approach as firms try to comply with both the regulations and an effectiveness standard.

Application of enhanced due diligence, simplified due diligence and reliance

Question 30

Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?

97. We would agree that in high-risk situations it is appropriate for enhanced due diligence to be undertaken. The current options of CDD or EDD or SDD gives firms limited options to deal with risk when AML risk presents itself on a much wider spectrum.
98. The prescriptive list of EDD measures that must be taken can turn EDD into a tick box exercise rather than encouraging relevant persons to think about the risks generated that higher-risk and identifying what procedures should be performed to mitigate that risk. There is also a challenge with keeping such a prescriptive list up to date to address the current high-risk situations – if the list was in a piece of guidance, rather than legislation, it would be possible to update it more regularly and the changing nature would encourage the regulated firms to think about the risks and how to mitigate them.
99. There is an inconsistency within the PEP requirements – the legislation requires relevant persons to perform EDD on all PEPs yet this in itself isn't a risk-based approach. Furthermore, the FCA guidance on PEPs seeks to carve out domestic PEPs as presenting a lower risk owing to their geography. We suggest that PEPs don't present the significant risk that the MLRs attributes to them and would encourage a more risk-based approach. For example, there is a different risk presented by a PEP who is a direct beneficial owner as opposed to a beneficial owner several corporate layers away. Additionally, we don't see that close associates are always high risk.

Question 31

Are the measures required for enhanced due diligence appropriate and sufficient to counter high risk of ML/TF? If not, why?

100. The measures are all actions that could potentially counter the high risk of ML/TF by increasing the chance that the relevant person will identify concerns with either the identity of the client, or the rationale for the advice they are seeking. As with all parts of the MLRs, these steps can only reduce the risk of ML/TF though, not eliminate the chance of such activity occurring.
101. In creating a prescriptive list, the regulations force the firm to perform certain procedures that may not address the risk identified and prevent them from thinking about the correct mitigating actions.

Question 32

Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?

102. While the requirements are a good starting point, they are insufficient to be of much use for relevant persons in practice. For example, the customer risk factors are limited, and the product/service/transaction/delivery channel risk factors are very financial services focussed. This means that it is rare for accountancy firms to feel they can use SDD with confidence that this judgment will not be called into question at a later point.
103. It would be helpful if there was a defined list of global regulated markets.

Question 33

Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?

104. See comments in response to question 32 above.

Question 34

Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

105. Reliance is, in theory, a good way of reducing the administrative burden of the MLRs on relevant persons – by sharing information obtained to identify the client and being ready to share underlying verification documentation. The requirements for using reliance are sensible eg, the arrangement to have access to information on demand is necessary to protect the relevant person that is relying on the work of a third party. However, there are significant barriers to this route being of much use in practice as we set out in Q35.

Question 35

Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?

106. A key challenge for the reliance regime is that it isn't clear what its objective is. It is generally assumed that the objective is to reduce the administrative burden across the regulated sectors so that only one relevant person is performing the CDD and ID checks. However, the current regulations do not allow this to happen.
107. The primary barrier for relevant persons to make use of reliance is the reticence of the third party to allow reliance upon their CDD (for liability reasons), and often a refusal by the third party to disclose copies of CDD from their client files due to data protection and confidentiality concerns. The organisation permitting reliance has to keep relevant information for five years after the relying organisation ceases to work for the client, which is difficult for the organisation permitting reliance to co-ordinate and comply with. Connected to this, the 'arrangement' to share is normally contractual, which can be time consuming and costly to set up and so performing CDD independently is often the easier route.
108. There is also the barrier that the relevant person remains liable for failure to apply appropriate CDD measures, so risk averse firms prefer to just undertake the CDD themselves and not be exposed to the risk that the third party has not undertaken sufficient CDD.
109. Finally, the risk assessment of the two firms may differ because of a difference in the nature of the services provided.

Question 36

Are there any changes to the MLRs which could mitigate derisking behaviours?

110. Derisking is not common within the accountancy sector.

How the regulations affect the uptake of new technologies

Question 37

As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?

111. While we support the intention of the changes to regulation 28 to include reference to electronic identification processes, we observe that this has not added sufficient clarity for practitioners. There needs to be greater explanation of the types of CDD activity it is acceptable to perform using electronic tools, and how the use of these tools can replace the established paper-based ways of performing and recording these checks. The relevance and

application of new technologies needs to be addressed throughout parts 3, 4 and 5 of the MLRs, not just in one regulation.

112. There also needs to be action taken by government against electronic CDD providers who provide misinformation to the regulated sector about the requirements to use their products, usually as part of hard-sell marketing campaigns.

113. Government could usefully 'certify' electronic CDD providers so that the compliance burden of testing and checking that a software provider meets the requirements of the MLRs is lessened across all regulated sectors.

Question 38

Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?

114. See comments in response to question 37 above.

Question 39

More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

115. We would welcome clear and consistent messaging from government about the benefits of new technologies to tackle economic crime. For example, the learnings from government's digital identity project should be disseminated in a consistent way across government departments, for onward messaging to the private sector.

SARs reporting

Question 40

Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?

116. The MLRs include several requirements that support efficient engagement by the regulated sector. Each relevant person must:

    a) perform a risk assessment of the AML risks faced by it so that it understands the types of suspicious activity it may encounter.

    b) design policies and procedures to mitigate those risks but where such transactions do occur, have a policy requiring staff who know, or suspect ML/TF has occurred complies with POCA and reports that suspicion to the nominated officer.

    c) provide regular training to staff to recognise and deal with transaction which may be related to ML/TF (Regulation 24).

117. The biggest barrier to efficient engagement by the accountancy sector relate to the ability of firms to deliver/implement these requirements:

    a) Poor information sharing between law enforcement, government agencies, supervisory authorities, and the firms on where the risks lie and what money laundering looks like. The AASG has issued several risk alerts to the accountancy sector, along with an updated AASG Risk Outlook, to help firms understand how they may encounter money laundering and how to spot it (although some of this material is produced for the financial sector and it isn't always easy to make it relevant for the accountancy sector).

    b) A belief that SARs disappear into a black hole and aren't acted upon. Accountants may think that this means the UKFIU places little value on SARs themselves. The UKFIU and ICAEW have delivered several workstreams over the past 18months to dispel this myth (webinars, thematic review and articles and guidance).

Question 41

What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?

118. By accessing SARs, supervisors would be able to assess the quality of the SARs being submitted by firms, supporting the recent work of the UKFIU to raise the standard of the SARs submitted. It is also valuable to review the contents of SARs to identify emerging risk trends to ensure that this is being fed back to the wider supervised population and is being captured in risk assessments.
119. We believe that allowing AML/CTF supervisors access to the content of the SARs is an important element of an effective risk-based approach to supervision, as supervisors use this information to understand sector risks and emerging trends. Supervisors are then able to relay this information back to firms so that they can improve and enhance their understanding of the risks they may face. However, we believe a more effective way of collecting threats and trends identified through SARs would be through working groups with firms (such as the SARs engagement groups) where firms could share information as reviewing a supervisors' review of SARs may only be of a small sample.
120. It is important to recognise that there is no legal requirement for relevant persons to use glossary codes or fill out SARs templates in a certain way. As such, supervisors will not discipline a firm for a 'poor' quality SAR unless the information omitted was fundamental to the suspicion or if the firm has deliberately omitted information to conceal the identity of the subject. 'Poor' quality SARs may result in best practice recommendations or commitments from the firm to make changes to the quality of the information they submit. Creating a gateway to view the SARs does not confer an obligation to monitor/supervise/discipline the quality of the SARs beyond making best-practice recommendations to the firm.

Question 42

If you have concerns about enhancing this role, what limitations and mitigations should be put in place?

121. We refer to our comments in Q3 that one of the primary objectives of the MLRs is for the regulated sector to act as a gatekeeper. The key focus of the AML regulations is preventing criminals from doing business in the UK and any effectiveness measures should be focussed on how this is achieved.
122. We are concerned that by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, clients should be less likely to be laundering money and therefore the number of SARs submitted would be low. We do accept that clients change, situations change, and what was once a lawful business could change into something that is not – nonetheless, we think these situations are the exception, rather than the norm.
123. An unintended consequence of defining effectiveness of the MLRs by the provision of high-value intelligence may be that firms are driven to do the opposite – they may submit SARs where the bar of suspicion has not been met or where the quality of the information on the location of the proceeds, or the person benefiting from the proceeds, is low.
124. We understand that there are challenges across different sectors in relation to SARs reporting – the potential over-reporting by the banks and the perceived under-reporting by the professional services sectors, for example. However, we believe that there is still work to be done on improving the information/intelligence flow relating to risks and how money laundering occurs. We haven't yet seen the benefit of the actions and workstreams implemented to date.
125. Any explicit legal requirement for supervisors to review SARs should be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.
126. Without appropriate mitigations, supervised firms may have concerns in respect of confidentiality and the risk of tipping off. It is important that these concerns are addressed

through appropriate mechanisms to protect the confidentiality of important elements so that, for example, it is not possible to identify the reporter or subject of the SAR from documents retained by the supervisor. Or that reviewers/inspectors are trained on the importance of keeping the content of SARs confidential. Protections should be set for supervisors against subject access requests under data protection legislation as well as maintaining the client's privilege (where appropriate).

Question 43

What else could be done to improve the quality of SARs submitted by reporters?

127. Firstly, we need to clearly define what 'quality' means. Currently, quality is being driven by how firms should use glossary codes, how to complete certain fields within the SARs reporting system, and the narrative text provided in relation to the suspicion itself. Instead, we should focus on guidance on what is suspicion and the bar of suspicion met. Firms need more case studies of scenarios of when to report and when not to report, using services and/or transactions that they are likely to come across in their day-to-day work. Currently, there isn't one body responsible (or who feels sufficiently well-equipped) to write this type of guidance.
128. We understand that there are different challenges across different sectors in relation to SARs reporting – the potential over-reporting by the banks and the perceived under-reporting by the professional services sectors, for example. For the accountancy sector, we believe we can build on our work so far on improving the information/intelligence flow relating to risks and how money laundering occurs. We haven't yet seen the benefit of the actions and workstreams implemented to date.

Question 44

Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?

129. As we set out in our response to Q42, we are concerned that by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, clients should be less likely to be laundering money and therefore the number of SARs submitted would be low. We do accept that clients change, situations change, and what was once a lawful business could change into something that is not – nonetheless, we think these situations are the exception, rather than the norm.
130. An unintended consequence of defining effectiveness of the MLRs by the provision of high-value intelligence may be that firms are driven to do the opposite – they may submit SARs where the bar of suspicion has not been met or where the quality of the information on the location of the proceeds, or the person benefitting of the proceeds is poor quality.

Question 45

To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?

131. We are not sure what this question is asking. ICAEW does monitor our supervised population on an ongoing basis for meeting the requirements for continued participation in the profession. As we mention in Q27, we perform cyclical monitoring on our firms based on their risk profile (including the review of SARs during onsite reviews) and where we find issues or non-compliance, we have a wide range of enforcement action that we take against firms (Q15).
132. Specifically in relation to SARs, currently, we would raise a best practice finding against a firm that submits poor quality SARs encouraging them to submit SARs in line with the current guidance. We are unable to take any further disciplinary action because there is no legal

requirement on the 'standard' of a SAR and we can't use the SAR itself as part of disciplinary proceedings. However, if we identified that the firm had omitted information that was fundamental to the suspicion or if the firm has deliberately omitted information to conceal the identity of the subject, we would take enforcement action. We would also take enforcement action if we identified that a firm had failed to report a SAR – our Guidance on Sanctions has a starting point of exclusion.

Gatekeeping tests

Question 46

Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?

133. We believe it is ineffective to have two separate regulations, applying to different parts of the AML regulated sector, with no reference to the relative risks within those sectors. One concise and consistent set of requirements will make a common entry standard across the AML regulated sector and ensure consistent approaches between supervisors.

Question 47

Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?

134. We assume the question is referring to Regulation 58 and the list of factors set out in paragraph (4). These require the supervisor to consider the firm's compliance history, the ML/TF risk within the firm, the skills/knowledge/experience of the applicant or BOOMs and whether they act with probity, as well as whether there are any relevant criminal convictions.
135. We agree that these are an effective basis for which to draw gatekeeper judgement but that this could be considered as a minimum to allow for the additional factors that sectors may also consider (potentially because of legal obligations resulting from other legislation). As the Call for Evidence notes, professional body supervisors consider a wider range of factors for its supervised population and they also have their own fit and proper requirements.
136. ICAEW only supervises ICAEW member firms – ie, those that have a majority of the control and ownership in the hands of ICAEW members. We also place strict obligations on our firms under the ICAEW Code of Ethics and we encourage our firms to use our template Fit and Proper form to assess fitness and propriety, independence, and confidentiality.
137. However, the regulations should also consider ongoing monitoring of the fit and proper status of the AML regulated sector. This may be through some form of self-declaration with spot checks on a risk-based approach.
138. We encourage the removal of Regulation 26 from the MLRs. Regulation 58, if applied to all AML regulated sectors achieves the same objectives of preventing any individual with a relevant criminal conviction from being a BOOM within a supervised firm. Regulation 26 is cumbersome and poorly drafted, causing confusion as to the obligations placed on the individual, firm and supervisor.

Question 48

Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

139. The only area where we find that the gatekeeper role is undermined is that there is no explicit obligation placed on relevant persons to register for supervision with a supervisory authority.
140. Currently, the MLRs state that they apply to the listed regulated sectors and then go on to say that, for example, the accountancy professional body supervisors are the supervisors for the accountancy sector. They do not include a provision that firms providing the listed services must register with the relevant supervisory authority to take on that work. This would

push the obligation for supervision on to the individual whereas now, the obligation rests with the professional body supervisors and HMRC to police the perimeter.

Guidance

Question 49

In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

141. We believe it is crucial for there to be comprehensive sector-specific guidance that explains to each relevant sector how the MLRs should be applied in the context of their sector. However, the current process does not support a timely update to the guidance, nor a consistent interpretation of new parts of the MLRs.

Question 50

What barriers are there to guidance being an effective tool for relevant persons?

142. It is important that all of the government departments, supervisory authorities and organisations work together to make the guidance an effective tool. We observe that there are several barriers:
    a) The guidance drafting process is complicated by the way in which changes to the MLRs are drafted and often there is no consolidated version of the updated MLRs, only the statutory instrument itself.
    b) The accountancy sector guidance is drafted by a large working group of specialist volunteers from the sector which results in high quality and well considered guidance but makes the guidance itself lengthy and the drafting process time consuming.
    c) There are insufficient resources within HM Treasury meaning that the time taken by HM Treasury to review and approve the redrafted guidance is substantial and may exceed six months for a first review. We understand this is due to other items of work for the relevant team which take priority over review of the sector guidance. The delay in review is also exacerbated by frequent staff changes within the HM Treasury team which removes continuity from the process.
    d) We have identified inconsistencies in the guidance issued by the accountancy sector and JMLSG, which may result in more work being required by the accountancy sector on the verification of directors.
143. To address two of these barriers (consolidated MLRs and inconsistencies in guidance) HM Treasury could host one webpage that holds the latest regulations and all sector guidance.

Question 51

What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

144. As the main barrier to the process is the time that is taken for review and approval of the guidance, a set timetable for each stage of the process should be put in place, and as far as possible for there to be dedicated points of contact within HM Treasury who will lead the review and approval process from start to completion. It would also be helpful for a consolidated version of the amended regulations to be available at the outset, and for some form of project management lead from HM Treasury to co-ordinate the interpretation being taken by different sectors on changes which are subjective in intent.
145. A second barrier is trying to interpret the law to fit the activity of an accountancy firm. Clearer, specific provisions, relevant to each of the regulated sectors would remove the need for interpretative guidance in some places.

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Structure of the supervisory regime

Question 52

What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?

146. The key strength of the UK supervisory regime is that the sectors are supervised by those with expertise in that sector, which enables the best understanding of risk. AML supervision is embedded within those institutions that have supervisory or monitoring obligations and powers over their population under other legislation or regulations and, consequently, have the expertise to deliver robust AML supervision and monitoring as well as a sound framework and infrastructure. This reduces regulatory burdens, improves competitiveness and reduces financial impact of the regulatory regime.
147. Professional bodies bring in valuable insight and expertise into specialist activities. In the accountancy sector, firms may offer audit, insolvency, probate, tax, investment business or consultancy services and each of these is a specialism requiring significant skills, knowledge, and experience. Similar diversity will be present in the legal sector and financial sector. Supervision of the accountancy firms by professional bodies ensures that new services or markets are fully understood, and the ML/TF risks are minimised.
148. In addition, in our experience, the regulatory powers of the professional body supervisors are wider than those afforded by the MLRs meaning that they can take action to disrupt activity that may not be available to law enforcement. We have recently identified a case where law enforcement was unable to bring a case against an individual, but ICAEW has been able to use its powers to investigate and perform monitoring reviews to disrupt the activities.
149. Despite there being 25 supervisors, there is close cooperation between them – with the AMLSF acting as a forum to share views and best practice and the ISEWG forums providing an opportunity to share tactical and strategic intelligence about relevant persons as well as developing understanding about risk.
150. The legal and accountancy sectors also have their own supervisory groups (LSAG and AASG) which facilitates consistency and shared best practice. AASG works very closely and has regular meetings (sometimes monthly) to share information and best practice between themselves, shape views and representations, and identify areas where additional guidance or effort is needed to support firms comply with the MLRs.
151. Co-operation between law enforcement agencies and the supervisors (particularly the professional body supervisors) has improved over the past few years, partly through the actions set out in the Economic Crime Plan that have facilitated better information sharing. More can be done in these areas, and we welcome the proposed changes in the Statutory Instrument 2022 consultation that will create better gateways for law enforcement agencies and the NCA to share information with the supervisory authorities.
152. Since 2018, OPBAs has also added a layer of oversight. Their objective to improve consistency has facilitated an improvement such that the professional body supervisors are working to the same minimum standard as can be seen in the positive, and improved, outcomes described in their most recent report. However, the fact that they do not have oversight over all supervisors, particularly in areas where statutory supervisors/PBSs overlap, is a weakness in the system – supervision would be stronger if OPBAS had oversight powers over all supervisory authorities.

Question 53

Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?

153. We are not aware of any.

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Question 54

Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?

154. The UK should maintain the status quo. The regime is not broken, although there are areas that could be improved. The FATF Mutual Evaluation Review found that the supervisory system was moderately effective with the main weaknesses being in the delivery of a risk-based approach by all supervisors (except the Gambling Commission). Significant improvements have taken place since Winter 2017/2018 including the Economic Crime Plan, which was written in response. All supervisors have made changes to their risk-based approach and monitoring activity.

155. The current regime has developed over the past 15 years, with all the supervisory authorities investing significant resources and money into developing the model to the standard we currently have. There is also a significant amount of skills, knowledge and experience across government agencies, law enforcement and supervisory authorities that would be lost if the model were to change.

156. This Call for Evidence is seeking to identify where there are gaps or weaknesses in the current model so that these can be addressed. This is the best course of action for the UK – identifying the ways we can continually improve our AML supervisory regime such that it makes it as difficult as possible for criminals to do business here. This requires the involvement of a wide range of government departments (BEIS, Home Office and HM Treasury) and other organisations.

157. A single supervisor model would require significant investment and resource. Creating a single supervisor from scratch would be expensive and take several years to operate efficiently, creating the risk that criminals would exploit the UK system while the supervisor operated fully. The capabilities of a single supervisor would have to stretch across several areas and functions including:

    a) an application regime tailored for each of the 11 sectors captured by the MLRs.

    b) risk assessment of all the entities within the AML regulated sector.

    c) monitoring staff with the skills, knowledge, and experience across the 11 sectors such that they can perform monitoring reviews competently and effectively.

    d) Intelligence unit to capture information from law enforcement and professional bodies across all sectors.

    e) disciplinary functions to investigate instances of non-compliance or actual ML/TF.

158. Creating this organisation would be costly and would push an additional financial burden onto the regulated sector (currently many accountancy and legal firms pay for their AML supervision through our practice fees and registration fees) – resulting in an increased cost base when the UK is trying to reduce the regulatory burden. It would also be a challenge to source staff with the necessary skill set and sector experience. The regime would lose many of the benefits we have set out in Q52 – a professional bodies' holistic approach to supervision with a deep knowledge of the firms and their activities.

159. Such an organisation would also go against the Hampton principles that businesses should not have to give unnecessary information, nor give the same piece of information twice (which it would have to do to its professional body and its AML supervisor) and that regulators should be of the right size and scope, and no new one should be created where an existing one can do the work.

Question 55

What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

160. See Question 54.

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Effectiveness of OPBAS

Question 56

What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?

161. The factors that should be considered are:
    a) whether all PBSs are consistently meeting the requirements of the OPBAS Sourcebook (and we would take this to be 'effective' or 'largely effective').
    b) success against other KPIs set internally, or by HM Treasury, such as the number of monitoring reviews performed each annum or whether OPBAS' cyclical plans are met.
    c) feedback from supervisors as to the quality and nature of engagement between OPBAS and the supervisors.
162. In terms of point c) – feedback from ICAEW as a PBS on the quality and nature of engagement between OPBAS and the supervisors is as follows:
    a) OPBAS risk-based approach to oversight seems appropriate and a review every two years feels well-balanced – giving PBSs time to implement any changes, whilst maintaining a level of oversight that ensures the risks are mitigated.
    b) However, OPBAS must be more transparent. This is in the public interest and good public regulatory practice. Examples of where OPBAS have not been transparent are:
        i. While they explained their move to effectiveness, there was no explanation of what 'effective' meant or how they judged certain activities to be effective. The PBSs need more transparency of OPBAS' work (scope, nature and how they conclude matters or findings) and how our performance has been assessed within their framework with a clear framework of what 'effective' means.
        ii. OPBAS could have shared an advance copy of the public report so that PBSs can comment on factual inaccuracies – the embargoed email circulated prior to publication did not provide sufficient granularity to allow the PBSs to identify how their own findings had been presented or where they fell within the spectrum of effectiveness and compliance. We note that all our other oversight bodies share copies of the final report, including HM Treasury with its own annual report.
        iii. The OPBAS report only set out the percentage of PBSs that were effective implying that everyone else was ineffective despite there also being the categories of largely effective and partially effective. The findings and conclusions of the report would be significantly different if the PBSs falling in each category were published.
        iv. It is not possible to identify our own findings within the public report as, in its private report, OPBAS' concluded effectiveness at the overall category level (eg, governance) and not the sub-categories listed in the public report.
        v. We are aware that a small number of PBSs did not receive their own private report/scoring before the public report was published.
        vi. OPBAS sought to benchmark the legal and accountancy sector against each other. However, the use of statistics is misleading – the charts on page 20 suggest visually that the legal sector has done more than the accountancy sector, yet the accountancy sector has issued 259 fines compared with 19 in the legal sector. A similar issue is noted on page 21 where the bar charts appear to be the same size, yet the tables demonstrate that the accountancy performed almost 3.5x the number of monitoring reviews. The report could usefully provide relative

metrics, indicating that the sectors had reviewed x% of their supervised populations, for example.

c) Regular engagement with OPBAS is a positive and the quarterly update meetings are a good format to maintain an open dialogue. However, we would like more access to those senior individuals within OPBAS at those meetings as well as greater two-way discussion of the challenges faced at the time.

d) OPBAS must not be afraid to state an opinion – often, OPBAS indicates that the PBS needs to do 'more' but can't explain what actions the PBS needs to take. OPBAS also needs to take care not to gold plate the recommendations.

163. We would welcome the opportunity to publish our own results and findings within our annual report so that we can demonstrate that we are continually improving our supervisory strategy and the significant investment we have made.

Question 57

What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

164. The factors that should be considered are:

a) whether information and intelligence sharing is considered to be more efficient and effective by law enforcement.

b) whether information and intelligence sharing is considered to be more efficient and effective by the supervisors.

c) success against other KPIs set internally, or by HM Treasury, such as the number pieces of information that is shared or the number of risk alerts published by supervisors/law enforcement.

Remit of OPBAS (58-59: MG)

Question 58

What if any further powers would assist OPBAS in meeting its objectives?

165. We have always argued that OPBAS should have oversight powers over all supervisors, particularly where statutory supervisors supervise the same sectors as the PBSs. It is difficult to demonstrate how there can be consistency within the supervision of the accountancy sector, when OPBAS' remit doesn't include HMRC, who are responsible for the supervision of approximately a quarter of the accountancy firms. HMRC is accountable to other government bodies with oversight powers eg, the Information Commissioners Office and the Health & Safety Executive, and so we believe that it must be possible for OPBAS to have oversight over HMRC.

166. By being excluded from OPBAS oversight, unqualified accountants (ie, those that are supervised by HMRC) continue to benefit from their unqualified status and, in particular, aren't subject to the OPBAS levy that firms supervised by PBSs must pay.

167. It is also unfair that the PBS's supervisory effectiveness is assessed in the public domain when the same is not published for the statutory supervisors.

Question 59

Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

168. See Q58.

Supervisory gaps (60-62: MG)

Question 60

Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?

169. We are not aware of any such businesses.

Question 61

Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?

170. No comment.

Question 62

How should the government best ensure businesses cannot conduct regulated activity without supervision?

171. If government created an AML regulated business list – including all business regulated across all sectors, and this list was made publicly available, it would make it easier to identify which businesses are registered for supervision. To be of maximum benefit, this list could also be used for HMRC tax agents (ie, to be a tax agent you must be on the AML regulated business list) and Companies House proposed new third-party agents.
172. It would be helpful for clear principles to be established and publicised for determining which particular activities should be regulated rather than basing it on the type of entity performing the activities eg, remove definitions such as 'accountancy firm' but include 'inspection of financial records'.
173. A second high-impact activity/requirement would be an explicit requirement for those individuals providing accountancy services or trust and company services to be registered with a supervisor for **AML supervision**. This would push the obligation for supervision on to the individual whereas now, the obligation rests with the professional body supervisors and HMRC to police the perimeter.

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