ICAEW
REPRESENTATION 97/23

SUPERVISORY REFORM CONSULTATION RESPONSE

Issued 27 September 2023

We are pleased to have the opportunity to respond to HM Treasury's (HMT) consultation on The Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime (the Consultation Document) issued by HMT on 30 June 2023.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

This response has been reviewed and approved by the ICAEW Regulatory Board, which is responsible for overseeing the work of ICAEW staff and the ICAEW regulatory and disciplinary committees involved in ICAEW's AML supervision work. [Details regarding the ICAEW Regulatory Board can be found at paragraph 44 below]. We have sought views from our AML-supervised population to answer Question 29.

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INTRODUCTION

1. We are supportive of making changes where there is a strong case for reform but we are concerned about significant changes being made at this time. This concern stems from a number of factors mentioned throughout the response, including:
   a) OPBAS is only 5 years old, which is quite young in the context of regulation and oversight, and we are concerned that plans to remove OPBAS are premature. ICAEW and its firms have funded OPBAS with over £3.4m in levies over the past five years alongside contributions from other Professional Body Supervisors (PBSs) so the removal of OPBAS from the supervisory landscape would be a waste of that significant investment.
   b) We understand that FATF is likely to visit in 2025 or 2026, and we question why the UK would wish to embark on a significant programme of change that is, in the cases of Options 2, 3 and 4, unlikely to have started when they arrive. We would recommend that any further supervisory reform be based on findings from the next FATF inspection.
   c) Europe is planning to adopt an OPBAS model across the professions, to supplement the Anti-Money Laundering Authority of the European Union (AMLA EU), and we are concerned that Options 2, 3 and 4 would move us away from a model being introduced by the rest of Europe.
   d) The political landscape is subject to significant uncertainty over the next 18 months and it is unclear how quickly a legislative window will be found to enable the implementation of Options 2, 3 and 4. We have seen already in our other areas of regulation (audit/insolvency) that legislation can be postponed for many years which will create a significant period of uncertainty and exacerbate the transition risks.
2. Prior to providing the answers to the consultation questions, we thought it would be useful to provide some context for our responses and to provide some insight into how we have analysed each of the four different options through an evaluation of risks of implementation and operation. We have split this introductory section into three parts:
   a) the risks involved in implementing the four options;
   b) analysis of each option through the ‘risk lens’; and
   c) balancing the risks against issues with the current framework.

The risks involved in implementing the four options

3. While the Consultation Document asks for respondents to evaluate the four options for the future supervisory framework based on supervisory effectiveness, improved system coordination and feasibility, and the narrative does raise some risks in relation to the various options, it does not analyse the risks in any depth and also does not compare and contrast the potential impact of the risks between the different Options. We believe that the significant risks created by some of the models, both during transition periods and after launch, will completely outweigh the theoretical benefits which might be gained by implementation. The key risks we have identified and refer to throughout this response are:

Key People Risk

4. There are very few professionals within the UK who have experience and expertise in AML supervision of professional services work, whether that be devising policies, producing educational materials, identifying AML compliance risks, carrying out monitoring visits or investigating possible AML breaches. Nearly all these professionals are employed by the current PBSs. It is difficult to conceive how a Consolidated PBS, a Statutory Professional

Services Supervisor (SPSS) or a Single Anti-Money Laundering Supervisor (SAS) will be able to operate effectively if most of these Key People do not agree to transfer their employment to the new model. It may also be very difficult for a Consolidated PBS, a SPSS or a SAS to recruit replacements to identify AML risks within accountancy firms given the current severe mismatch between supply and demand of experienced accountants and the higher salaries on offer at commercial firms.

5. The Key People Risk will manifest itself in two ways. The first will be during any transition period from the publication of HMT's policy statement to the new model becoming operational. From the moment any policy statement is issued indicating that a Key Person's PBS will lose its supervisory responsibility, it will become increasingly difficult for the PBS to retain that Key Person given the more lucrative positions already on offer in the commercial sector for anyone with experience of dealing with economic crime and the PBS's inability to offer even long-term job security. Once lost, it will be difficult to lure such persons back to front-line regulatory roles.
6. The second risk is that, even if Key People remain in their roles at the PBSs during the transition period, there is a strong possibility that the remaining Key People, particularly those who carry out their AML supervision work as part of a portfolio of regulatory work at their PBSs, will prefer to remain employed by their PBSs, taking on other work to fill the hole left by the transfer of AML, rather than move to a new entity.
7. In addition to severely compromising the ability of any new model to operate effectively for a considerable period after creation, the loss of large numbers of Key People by the PBSs could lead to a significant reduction in supervisory effectiveness over professional services' firms during the transition period. This will arise, not just because of the departures, but because the PBSs will be unable to recruit replacements due to the existence of a policy statement confirming that any role may be short-lived. This will come on top of the difficulties already being experienced by the accountancy PBSs in recruiting experienced accountants in the current war for talent where demand exceeds supply.
8. We would also like to draw HM Treasury's attention to the recent feedback statement by the Department of Business and Trade on Insolvency Reform. The government concluded that it would retain the current model of the Recognised Professional Bodies (RPB) regulating Insolvency Practitioners. The feedback statement explains that one of the key reasons for this was the potential loss of expertise within the RPBs that would take time to redevelop and build from scratch. It was argued that a significant change to regulation would pose significant risk to confidence in the framework, particularly in the short term whilst a new regulator was being established.
9. There must also be a significant risk – one which is not flagged anywhere in the Consultation Document – that some of the PBSs may have to consider resigning their roles as AML Supervisors during any transition period due to lack of skilled resources to discharge their supervisory responsibilities to the standards required of them by OPBAS.

Dependency Risk

10. There will be a Dependency Risk in all models which create one entity to supervise all firms within a defined supervised population. For example, even if future legislation provides for the Consolidated PBSs to be locked into their supervisory role in perpetuity (an unlikely scenario), none of the current PBSs are likely to agree to an arrangement which does not provide them with an exit route. As soon as there is an exit route, there is a Dependency Risk because all other PBSs have exited the supervisory system and there will be a need to create another entity to take over the supervisory responsibilities if any other Consolidated PBSs are incapable of assuming additional responsibilities. The Dependency Risk would

also colour the way in which any continuing oversight regime might work over Consolidated PBSs as any oversight action considered heavy-handed or unfair by a Consolidated PBS could lead to that body serving notice to terminate its role.

11. There will also be a Dependency Risk in the creation of a SPSS or a SAS although this will be of a different nature. Both of those models are designed to produce just one regulator for the legal and accountancy sectors. However, there is no mention in the Consultation Document as to whether the activities of a SPSS or a SAS will be overseen or how they will be held accountable to demonstrate that they are discharging their supervisory responsibilities to a high standard. If there is no oversight and no accountability, this will create a Dependency Risk because there is no alternative model to switch to and there will be no sanctions which can be used to encourage an improvement in performance.

Intelligence Risk

12. Effective AML supervision depends on the identification and sharing of intelligence so that the risk profiles of firms are properly calibrated for monitoring/enforcement activity and information can be shared with law enforcement agencies to enhance their work. The majority of intelligence PBSs receive comes from sources other than the PBS's own AML monitoring activities. We have multiple touchpoints with our supervised population and gain lots of additional information through these touchpoints to help inform our risk profile of a firm. Any step taken to separate AML supervision from the bodies with those other valuable touchpoints may result in less information being circulated and poorer risk profiles.

13. To mitigate against the full impact of this Intelligence Risk if all or most PBS lose their supervisory roles, it will be necessary for any legislation introducing the models proposed in Options 2, 3 and 4 to create information sharing gateways between the new supervisor and the former PBSs so as to ensure that the same amount of information is gathered on each firm within the supervised population. However, it is difficult to see how the former PBSs will be expected to maintain their own intelligence units to gather and transfer this information when they have lost their supervision role and the benefit of funding which goes with it. Any attempt to impose an obligation on the former PBSs without providing for funding - which will force them to levy additional charges on their affiliated firms - may result in those firms deciding to end their affiliation with the former PBS particularly if they do not require the former PBS to regulate them for any other service[1]. At this point, all this external intelligence will be lost to the system since no body will be collecting information and intelligence from the wider accountancy activity that is relevant to AML risk. This would be a significant loss.

Education and Competency Risk

14. An increasingly important aspect of work carried out by the PBSs is a significant investment of time and money in producing educational material and running educational initiatives to improve our supervised firms' levels of AML compliance. For example, we produced in 2022 a drama film, All Too Familiar, which highlighted the way in which Chartered Accountants could inadvertently advise clients who were engaging in money laundering. That film has since been streamed over 30,000 times and is being used by thousands of firms in their training.

15. Given that nearly all the current educational material is produced by the Key People within the PBSs, we consider that there is a significant Education and Competency Risk in removing supervisory responsibilities away from the PBSs. This is because there will be little incentive and no funding for the former PBSs to continue to produce good educational

[1] **Taking ICAEW as the example, only 20-25% of our 11,000 supervised firms rely on ICAEW to licence them for work that requires specific registrations such as audit or insolvency.**

material after they lose their AML supervisory responsibilities. Furthermore, any material the PBSs do produce may conflict with the standards expected by the SPSS or SAS, creating confusion within the sector. The competency of accountancy firms will be impacted significantly, which will have an impact on the compliance rates of the sector.

16. We believe that the Education and Competency Risk is likely to manifest itself in two ways. Firstly, if Key People do not transfer to any new supervisor, that supervisor will be short of the AML supervisory experience and expertise it requires to become operationally effective and will need to allocate 100% of the time of the Key People it has managed to attract to recruitment, training and front-line regulatory activity rather than on producing educational material. The second Education and Competency Risk is that, even when a SPSS or a SAS is operating at full capacity with the right level of resource, our experience in other regulatory sectors has shown that public body or governmental regulators prefer to remain at arm’s length from their regulated populations to maintain their independence.
17. There will, in addition, be an Education and Competency Risk during the transition period from the announcement of the policy statement to a new model becoming operational as, if Key People leave their PBSs during the transition, the PBSs will have no option but to prioritise their front-line supervision activities (monitoring, enforcement etc.) and this will put a squeeze on time for educational activities if not curtail them completely.

Analysis of each of the four options through the risk lens

18. We have set out below our evaluation of each of the four options in the Consultation Document through the lens of the risks we have identified above:

Option 1: OPBAS+

19. While there is a Dependency Risk around the larger PBSs deciding to continue their AML supervisory responsibilities in the event of OPBAS gaining further powers and applying them in a heavy-handed manner, it is much less pronounced risk than can be seen in Options 2, 3 and 4.
20. Impact is likely to be limited from Key People, Intelligence and Education and Competency Risks as, under Option 1, there will be an expectation by PBSs that they will be able to retain their Key People. This this will allow the PBSs to continue to provide excellent educational material as well as continue to harness the intelligence which they gain from their many other touchpoints with their supervised population.
21. Overall, we believe that supervisory effectiveness will be, at worst, maintained and, at best, enhanced and improved during future cycles of OPBAS supervisory assessments. System co-ordination will also be maintained as PBSs continue to gather information and intelligence and work alongside law enforcement to identify firms who are knowingly enabling money laundering. A single register of all accountancy firms could strengthen system co-ordination further and would support future reforms, such as Companies House reform, to ensure effective information and intelligence sharing on ACSPs.
22. Option 1 also allows HM Treasury to strengthen OPBAS’ powers and build supervisory reform over many years. If we move straight to Options 2, 3 or 4, you can never return to Option 1 because AML supervisory expertise will be lost from the PBSs (Key People Risk).
23. We believe that Option 1 is the most feasible of the options as changes to OPBAS' powers can be implemented swiftly.

Option 2: Consolidated PBS model

24. We consider there to be a very high Dependency Risk with Option 1 due to the ability of the Consolidated PBS to give up its responsibilities at a time after other PBSs have closed down their AML supervision capabilities.
25. There will also be high Intelligence, Key People and Education and Competency Risks. While the Consolidated PBS should at least be hopeful of retaining its own Key People, it will need to recruit additional resources to supervise effectively a significantly larger population and it might not be possible to recruit the Key People from all other PBSs and it may even be difficult to recruit additional experienced accountants to fill any gaps. Any shortfall of expert staff will put pressure on time available to produce educational material. While the Consolidated PBS will maintain its own touchpoints to gather AML-intelligence from non-AML activity about firms it supervised before it was selected, there may also be an Intelligence Risk in obtaining AML intelligence from the former PBSs given the uncertainty about their own future intelligence-gathering roles and the availability of Key People to identify AML intelligence from their remaining professional standards activity.
26. We believe that supervisory effectiveness will reduce in the short-medium term as these risks crystallise and it will take several years to reach the equivalent levels of supervisory effectiveness achieved by the current PBSs. System co-ordination will be streamlined between law enforcement and the consolidated PBS but will become more complex when considering how the Consolidated PBS will gather AML intelligence that the former PBSs obtain from their non-AML monitoring activity. The former PBSs will unlikely retain skilled staff to identify emerging AML threats and trends.
27. The feasibility challenges arise from the Key People Risk and the ability of the new Consolidated PBS to retain and recruit skilled staff. The Consolidated PBS will supervise 51,000 accountancy firms which will make it the largest supervisor in the UK and significantly larger than any other supervisory or regulatory body currently in existence.

Option 3: SPSS

28. We believe that this model will have very high Intelligence, Key People and Education and Competency Risks due to the reliance of the new model on transitioning Key People to the new SPSS, the reliance on AML experts to produce educational material and the problems which will be created if there is a significant loss of intelligence from the former PBSs.
29. This model will also have a moderate Dependency Risk if there is no additional oversight put in place to hold it to account but a lower Dependency Risk than either Option 2 or Option 4.
30. We believe that supervisory effectiveness will reduce significantly in the short-medium term, as the Key People Risk crystallises. Given the size of the SPSS supervised population, it will take many years for the SPSS to reach equivalent levels of supervisory effectiveness achieved by the PBSs. While system co-ordination will be more streamlined between law enforcement and the SPSS, it will become more complex when considering how the SPSS will gather AML intelligence that the former PBSs obtain from their non-AML monitoring activity. This is further complicated by the fact that some intelligence held by HMRC will not be available to the SPSS. The former PBSs are also unlikely to retain skilled staff to identify emerging AML threats and trends.
31. There are also significant feasibility challenges linked to the set-up of a new statutory supervisor that is a public body, including the funding of new premises, IT systems and central functions. The SPSS will also need to recruit significant numbers of staff to provide effective supervision. The SPSS will supervise around 81,000 relevant persons.

Option 4: creation of a SAS

32. We believe that this model has the highest Key People and Education and Competency Risks because of the greater length of time it will take to create a SAS even after legislation is passed to transfer responsibilities. The longer the transition period, the longer time there will be for Key People to identify or be lured by more lucrative job opportunities with better job security. The more Key People who are lost, the greater the reduction will be in the PBSs' ability to produce educational materials during the transition period.
33. The SAS model will also have the same Intelligence Risk as Option 3 and a higher Intelligence Risk than Option 2 (as the Consolidated PBS will at least maintain its own other touchpoints). It will have a greater Dependency Risk than Option 3 because all supervisory responsibility will have been consolidated within one entity, not 4 as in Option 3.
34. We believe that the SAS model presents the greatest threat to supervisory effectiveness, with the significant Key People risk likely to cause a reduction in supervisory effectiveness across all the regulated sectors over a sustained period. It will also create the greatest disruption to system co-ordination as the intelligence risk now applies to all regulated sectors, rather than just the accountancy and legal sectors, and information and intelligence gathered from HMRC and FCA monitoring activity will no longer be available to the SAS.
35. There will also be considerable issues around the feasibility of transferring over 100,000 entities to a single supervisor effectively and efficiently.

Summary of risk analysis

36. It is clear from our analysis above that viewing the various Options through a risk lens highlights that some of the Options set out in the Consultation Document have very high risks attached to them, particularly the creation of a SPSS or a SAS.
37. While the OPBAS reports indicate that the existing framework is less than perfect, there is a clear route map showing how greater quality and greater levels of consistency can be achieved through Option 1, particularly if OPBAS were to be given more powers and uses them carefully to ensure better performance to remove responsibilities from the PBSs who do not improve. Option 1 comes with far less risk of undermining the current levels of supervisory effectiveness both during the transition periods and during the initial operational period of other models.
38. Both the HMT June 2022 review and the Consultation Document identified several strengths of the existing system for supervision which Option 1 can build on, including sector-specific expertise and multiple touchpoints with their supervised firms which comes from the degree of onsite monitoring which is undertaken. Indeed, the degree of monitoring by the PBSs compared to the statutory supervisors is quite stark. The most recent HMT Supervision Report details the number of monitoring reviews performed by supervisors between 2020 and 2022. Over this three-year period, FCA has reviewed around 2% of its population, HMRC has reviewed around 13% of its population but the accountancy and legal PBSs have reviewed 25% and 28% of the sectors, respectively.
39. It is against this analysis that HMT must weigh the criticisms of the PBSs referenced in the HMT review and the Consultation Document relating to inconsistencies, poor information-sharing, and the independence of the PBSs from the sectors they supervise. We have set out below why we believe that there have also been significant improvements in these areas during the last 5 years.

Inconsistencies / poor information-sharing

40. The OPBAS fourth report (referenced at paragraph 1.14) recognised that there have been significant improvements since 2018. It is important also to reflect that, while OPBAS was

created in 2017, it did not complete its first round of inspections of the PBSs until late 2018 and did not issue any of the PBSs with their private reports on findings until Spring 2019 (and did not, at that point, conclude on effectiveness). The significant improvements noted in the OPBAS fourth report have, therefore, been made within a period of only 4 years. In the fourth report, one PBS was recorded as being fully effective in 3 of the 8 categories and rated no less than 'largely effective' in all other areas. In the fourth report, 4 PBSs were rated largely effective and 5 partially effective on the risk-based approach whereas in the 2020/21 assessments of the same PBSs, only 1 was found to be largely effective, 6 partially effective and 2 ineffective.

41. OPBAS would also accept that all of the PBSs have made significant investments in intelligence-sharing and that the PBSs are working together more than ever in sharing information between themselves and with law enforcement agencies. What has not improved during the last 5 years is the flow of information which the PBSs receive from law enforcement agencies. This prevents the PBSs from understanding where some risks may lie within their supervised populations and can also hinder appropriate actions being taken. This is the principal problem with intelligence-sharing within the current supervisory framework – and stems partially from a complex law enforcement landscape with 45 police forces in the UK, 9 Regional Organised Crime Units and the National Crime Agency all co-ordinating economic crime investigations but also from cultural challenges within the police forces with many not understanding who the PBSs are, or their role in the fight against economic crime.

Lack of independence

42. We believe also that there have been considerable improvements made by most PBSs on the separation of their regulatory/supervision functions from their representative functions with many PBSs creating regulatory boards to oversee the discharge of regulatory and supervisory responsibilities. At ICAEW, the ICAEW Regulatory Board (IRB) was created in 2015 and is charged by its terms of reference of ensuring that ICAEW's regulatory functions are discharged in the public interest. It consists of 6 lay members and 6 chartered accountant members, with a lay chair with a casting vote and all members appointed by an independent appointments committee. It has specific delegated authority to make policy and strategy in respect of AML compliance, has directly interacted with OPBAS throughout its three inspections and has set up a specific subcommittee – AML Project Board – to determine and monitor changes to our AML work. Decisions taken by the IRB are made without interference or intervention by ICAEW Board or Council.

43. In addition to overseeing the work of ICAEW regulatory and disciplinary staff, the IRB oversees the work of all of ICAEW's regulatory and disciplinary committees. All of ICAEW's regulatory committees, including the Practice Assurance Committee which reviews monitoring reports on AML compliance. All regulatory committees consist of a parity of lay and chartered accountant members with a lay chair. Any challenge to a decision of the PAC will be heard by a Review Panel of the Review Committee which will have a majority of lay members. If AML matters are passed to the Conduct Department by the PAC or complaints come in from another source, they will be considered by the lay/CA parity Conduct Committee in the first instance and, if referred to a Disciplinary Tribunal, they will be determined by a lay majority tribunal. This means that all important regulatory and disciplinary decisions (liability and level of sanction) are determined by either lay parity committees or lay majority tribunals/panels, overseen by a lay parity regulatory board.

44. We also believe that the fines which are imposed by our committees and tribunals are comparable, when assessed on a percentage of turnover, with the headline-grabbing fines which are imposed by the statutory supervisors. Most fines are imposed due to a failure to

hold all necessary documentation on files. In our response to Question 7, we set out an analysis of our enforcement fines that shows the range to be between 25% and 1% of fees, with an average of 6.5%. This is comparable with the FCA's fees structure of between 0% and 20%, and other statutory fines such as data breaches, which are capped at 4%.

CHAPTER 2: OBJECTIVES

Question 1: Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?

45. We agree that these three objectives are the correct objectives for this project.

46. We agree that supervisory effectiveness should be the primary objective. It is important that the consultation carefully considers the impact of Key People risk, Intelligence risk and Dependency risk on supervisory effectiveness (we have defined these risks in the Introduction).

47. Feasibility is the more important of the two secondary objectives since if the model is not feasible, time and resources will be spent on making the model work rather than enhancing supervisory effectiveness.

48. The cost of options 2, 3 and 4 will be significant and this is an incredibly important factor when considering the feasibility of the options – the three options will result in firms paying professional body fees as well as AML supervisory fees, and the largest firms already pay the Economic Crime Levy. Setting up a new public body as a supervisor would be very costly to the taxpayer, or to the firms that it would supervise, and is not proportionate to the problems supervisory reform seeks to resolve.

49. The consultation must also consider the link between feasibility and supervisory effectiveness overall – HMT must carefully weigh up the impact on supervisory effectiveness of each of the options as there is a real risk that there may be a reduction in supervisory effectiveness if supervision were to move to a new body / consolidated PBS. We cannot risk a decrease in a decrease in supervision for even just a few years while a new body is set up and reaches operational effectiveness.

CHAPTER 3: OPBAS+

Question 2: What would the impact be of OPBAS having the FCA’s rulemaking power? What rules might OPBAS create with a new rulemaking power that would support its aim to improve PBS supervision?

50. We assume that OPBAS’s rule making power would give the Sourcebook more formal standing akin to the statutory status of industry guidance on AML compliance. This would allow OPBAS to have a clearer set of requirements to assess PBS effectiveness, with a clearer and more justified path to enforcement action should a PBS fail to comply with the ‘good’ practice examples set out.

51. Adopting this option would also enable OPBAS to set rules around areas such as Regulation 46A to set clear and detailed requirements on the information required within a PBS AML annual report, given that the MLRs have only a limited set of very high-level requirements. Historically, OPBAS has tried to write guidance in these areas by mutual consent, which has proven time consuming and so a rule making power may speed up this process.

Question 3: Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?

52. We agree that OPBAS should be given many of the powers set out in the consultation to support their powers of oversight to achieve supervisory effectiveness across all accountancy PBSs with the caveats/qualifications set out below.

Publishing supervisory interventions

53. We agree that OPBAS should have the power to publish supervisory interventions rather than these being dealt with privately. However, this new power should be accompanied by a fairer process than exists currently for PBSs to dispute findings made by OPBAS following its inspections (see paragraph 62 below).

Graduation of sanctions

54. We accept the principle of graduation of sanctions and that, to be an effective oversight regulator, OPBAS should have the power to remove any supervisors who are consistently ineffective, or not meeting the grade.

Restrict or reduce supervisory population

55. While we agree that this power would be a persuasive tool for OPBAS to ensure PBSs are demonstrating supervisory effectiveness (no PBS would want to tell their membership to apply elsewhere for supervision), we think that this would create confusion among firms and their PBS. Currently, ICAEW automatically supervises a firm that is an ICAEW member firm. If this proposed power was provided to OPBAS and exercised against ICAEW, that member firm would have to also apply to a separate body for AML supervision until such time that ICAEW could accept new firms to supervision, and the automatic supervision was reinstated. This would not only be confusing but also an unwelcome administrative burden on the firm having to deal with two regulators/supervisors. OPBAS's aim should be to ensure that a PBS returns to full effectiveness as quickly as possible and, therefore, we expect that any restriction on the supervisory population would be for a very short period meaning that a firm would move between supervisors, with a potential impact on effective information sharing.

Fining powers

56. We do not believe that OPBAS should have the ability to levy financial penalties on a failing PBS as we believe such a power/sanction to be counterproductive. While the narrative on this possible power in the Consultation Document raises the risk of fines being passed through to a PBS's supervised population and that this dissipates the deterrent or punishment effect – and we agree that it would be inappropriate for any such fines to be passed on in this way – we consider that the alternative option which is that the fines are paid out of the PBS's other income may impact the willingness of PBSs to continue to fulfil their supervisory role. This creates a Dependency Risk[2] as Option 1 would be potentially fatally undermined if one or more of the largest PBSs were to decide to give up their supervisory roles due to what it considered to be an unfair or excessive financial penalty. While the resignation of one PBS may not be too damaging, it is difficult to see how smaller PBSs would be able to absorb the supervised population of the largest PBSs if they chose to give up their supervisory responsibilities. In addition, efforts to absorb might be impacted by the Key People Risk as many of the Key People working for exiting PBSs may not move with the AML responsibilities.

[2] We have defined Dependency Risk, Key People Risk, Intelligence Risk and Education and Competency Risk in the Introduction.

57. It should also be borne in mind that ICAEW, like other PBSs, does not make any profit out of its role as an AML Supervisor. The ICAEW Regulatory Board considers the fee charged to BOOMs based on an understanding of the likely costs of AML supervision for the following calendar year. While not an exact science, the objective is only to ensure costs of operation are fully covered. If, in the future, fines are levied by OPBAS for poor performance and the fines are not passed through to the supervised population, this will mean fines being paid out of other income generated from membership subscriptions. Given that a substantial portion of such income is generated from members who are not subject to AML regulations, this may cause PBSs to consider whether they are prepared to be exposed to such a financial risk in addition to the inevitable reputational damage which will accompany the publication of a fine being levied. If the Government decides to adopt Option 1 and OPBAS is given a power to levy financial penalties, this could lead to gaps appearing immediately in the current coverage of professional services firms by PBSs giving up their supervisory roles and this might create a Dependency Risk.

Other possible powers

58. Given some of the challenges presented around structure and system co-ordination, we believe that consideration should be given to OPBAS being given the power to maintain a list of supervised firms within the accountancy sector. Maintaining this list could be funded via the OPBAS levy to PBSs and housed on the FCA website in the same way that the FCA register is presented, allowing law enforcement to access it within the same access powers that FCA, as a statutory body, can share with other public sector bodies. Maintaining such a list would mirror the decision made by the Department of Business and Trade on insolvency reform to create a register of insolvency practitioners to increase transparency.
59. We also believe that OPBAS should be directed to identify PBSs in their annual review of inspections of PBSs – currently the results of individual PBSs are anonymised. This would bring OPBAS in line with other oversight bodies such as the Financial Reporting Council and Legal Services Board. These bodies identify specific bodies in their public reports and provide a high-level commentary on the outcome of oversight assessments. This would make it easier for OPBAS to highlight where there are concerns, and for the public, and wider economic crime ecosystem, to understand where incremental, or more significant change, is required. It would also allow the PBSs to see a public acknowledgement of efforts they had made to improve the areas being assessed.

Question 4: What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

60. If there is to be public disclosure of supervisory interventions based on poor gradings in inspection reports, OPBAS needs to have a more transparent process in place to arrive at its final supervisory assessments. The current process involves OPBAS performing a supervisory assessment and then a final report being sent to the PBS with effectiveness gradings and findings. OPBAS does not provide a draft of its intended report and findings to PBSs in advance to allow them the opportunity to correct factual misunderstandings or to challenge the basis of findings which could lead to supervisory interventions. This contrasts sharply with the approach of other professional services' oversight regulators such as the Financial Reporting Council and the Legal Services Board who share with ICAEW (and other overseen bodies) an advance draft of their report and who will make changes to correct misunderstandings or if they are persuaded by representations before providing the final report.

61. We believe that there also needs to be much more transparency around decision making on gradings. It is often difficult to understand how OPBAS reaches its decisions on effectiveness ratings and it is not always clear to the PBSs what they need to do to improve their effectiveness rating. There should also be transparency in how findings and recommendations escalate into directions (including a mechanism for a 'warning') and, assuming OPBAS obtains more powers, fines or restrictions over supervised populations.

62. It is also important that a much fairer process is established where there continues to be a dispute between OPBAS and the PBS on a decision to exercise any supervisory power. The provision of any additional powers should be coupled with the right for a PBS to make representations to an independent tribunal or panel as to why such action is not justified. OPBAS could, for instance, be obliged to follow the HMRC appeal mechanism with first-tier and appeals tribunals.

Question 5: Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

63. We do not have any such evidence – we do not believe that ICAEW members can easily operate as accountants in public practice without supervision. We also believe that this is replicated across the accountancy PBSs.

64. This is due to the following factors:

    a) The checks and balances undertaken by ICAEW to ensure that all members in practice have a practicing certificate – we perform checks based on a member's annual declaration to understand the type of work they are performing but also, our dissuasive action (ie, fines and sanctions) are high for those members who are in public practice without a practising certificate.

    b) Each member in practice must have their firm registered with ICAEW, as the firm is subject to our Practice Assurance scheme under our Principle Bye-Laws and the Practice Assurance Regulations. Via this scheme, we check that all firms registered with ICAEW have an AML supervisor.

    c) The work done by the Accountancy AML Supervisors Group (AASG) to check that where firms may be eligible to be supervised by multiple PBSs, the PBSs agree who the AML supervisor should be. This is done via an agreed flowchart (see link) between the members of AASG. Box 2 of the flowchart is clear that where a firm may be subject to supervision for money laundering purposes by more than one supervisor, the regulations provide for cooperation between the supervisory authorities or for a single authority to take on this role, and they will agree who will be the firm's lead supervisory authority. The AASG has a separate protocol that sets out who the 'lead' supervisor will be in a variety of scenarios.

    d) Co-ordination between the PBSs and HMRC to ensure that firms that leave supervision by the PBSs are tracked by HMRC (this may be due to a change in membership/constitution by the firm, resulting in them not being eligible for supervision by a PBS). This is a regular discussion point between the PBSs and HMRC and AASG discussed supervisory gaps as part of its meeting agenda at the July 2023 meeting. HMRC also requires all tax agents to provide evidence of their AML supervision and therefore, this cohort of 'accountants' is constantly checked for supervision. A similar requirement exists with the Register of Overseas Entities and will exist with the ACSP model of Companies House reform. We have been working with Companies House to share this data so that we can confirm the ACSPs are supervised and by sharing this data, Companies House are helping to police the perimeter.

65. To support our belief, we have analysed relevant disciplinary cases in 2022. ICAEW's Investigation Committee sanctioned only 20 firms in relation to failure to have AML supervision. Six of these cases were where the firm was in public practice without ICAEW knowing. The remaining 14 firms were where the firm did not meet our definition of an ICAEW member firm and, therefore, were not automatically supervised by ICAEW and had failed to put contractual supervision in place.

Question 6: Do you think a "default" legal sector supervisor is necessary? If so, do you think a PBS could be designated as default legal sector supervisor under the OPBAS+ option?

66. We do not have any evidence to answer this question. However, we believe that this issue should be separate to the overall question of OPBAS+ supervisory effectiveness. The accountancy sector has a well-structured regime in place for AML supervision and it would be counterproductive to choose a different model of supervision that is less effective for one profession to meet a specific gap in another sector.

Question 7: Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.

General comments

67. We believe the OPBAS+ model would achieve the highest level of supervisory effectiveness and that it is the only option which would continue to deliver the improvement that the Government wants at the pace it desires. The OPBAS+ model is also the only option which will not create significant Key People and Dependency Risks and will not require significant start-up or transition funding.
68. While it noted the inconsistencies in the performances of PBSs, the most recent OPBAS review of 2022 inspections showed the continuing improvement in the effectiveness of AML supervision in the accountancy sector since OPBAS was established. The improvements are remarkable given that OPBAS has only been operational since early 2018 and has operated without any of the powers now being suggested. Insufficient time has passed for a reliable assessment to be made as to whether the OPBAS supervision model can produce consistent high performance across all PBSs. The further powers will allow OPBAS to take more robust measures against poorly performing PBSs and accelerate consistent high performance by forcing improvements at those PBSs or removing their supervisory role.
69. We believe that the OPBAS+ model is even more likely to be the best option for supervisory effectiveness if greater emphasis and effort is placed on OPBAS recruiting and retaining expert staff. One current weakness in OPBAS supervision work is the turnover of supervision staff meaning that there is little current continuity between inspections.
70. We believe also that there remains some misunderstanding over the relative effectiveness of supervision within the accountancy sector which we have addressed below.

Risk-based approach to supervision

71. While the narrative at paragraph 3.8 of the consultation document references OPBAS's conclusion that the risk-based approach of supervisors is a *'significant area of concern'*, we believe that Option 1 ensures supervisory effectiveness in relation to a risk-based approach to supervision. While OPBAS was correct to point out that improvements are required in this area, nearly half of the supervisors who were inspected were rated *'Largely Effective'* and

OPBAS's report noted marked improvement between the 2020/21 and 2022/23 supervisory assessments.

72. An effective risk-based approach relies on AML Supervisors understanding the risks within their sector and this, in turn, relies on the experience and expertise of Key People. OPBAS's recent project on risk concluded that the risks identified by the accountancy AML Supervisors were consistent with the National Risk Assessment. Furthermore, the Accountancy AML Supervisors Group (AASG) produces its own AASG Risk Outlook for the accountancy sector, which builds on the risks included within the National Risk Assessment providing more granular detail.

73. AASG continues to work with OPBAS to identify areas where we can further develop our understanding of risk and the nuances within risk categories. This has included a workshop on TCSP risk, chaired by the AASG, to ensure that we are aligned with HMRC following OPBAS's recent Multi-PBS review of TCSP risk.

74. Using these risks, each PBS performs its own risk assessment of its supervised population and concludes as to which firms are higher, or lower, risk and adjusts its supervisory effort accordingly. The OPBAS report concluded that *'most PBSs tended to adopt a risk-based approach to supervising high-risk supervised population, but many lacked adequate processes to monitor their medium to low-risk populations…. We expect PBSs to allocate resource in a way that enables them to focus on areas with a higher money-laundering risk whilst also ensuring they are alert to risk changes by appropriate oversight of the rest of their supervised population'*. Consequently, PBSs are using a risk-based approach to target resources to the highest risk categories but now need to focus on allocating resources to other risk categories.

Enforcement

75. We believe that the OPBAS+ model achieves the highest supervisory effectiveness in relation to Enforcement despite the reference in paragraph 3.1 to issues relating to timely and consistent enforcement approaches. While there is no more commentary on these issues, we presume that this is a reference to paragraph 1.16 where there is criticism about the low value fines which are imposed by some PBSs and an unfair comparison made to the size of fines imposed on other entities by the FCA and HMRC . We consider there to be a constant misunderstanding about the level of fines and the relative impact on the type of firm receiving fines as a result of enforcement action. As the table below shows, which is based on analysis of fines issued in Summer 2022, the fines being imposed on small firms amount to a significant percentage of firm income and will have high deterrent impact. We believe that a proper analysis of fines to firm turnover in the enforcement actions of other PBSs will show the same picture and same level of misunderstanding.

Case	Fine (£)	Costs (£)	Fine as % of Firm's total practice income
A	20,400	7,990	25.5%
B	525	2,300	1.0%
C	1,400	2,515	62.2%
D	3,500	2,800	11.8%
E	14,490	10,277	4.0%
F	11,000	4,360	4.8%

76. We believe that the information in the above table shows that ICAEW fines are in line with other regulatory frameworks. For example, the Information Commissioner has the power to levy fines of up to 4% for data breaches. The FCA Handbook sets out that FCA fines are at five levels ranging from 0% to 20% of relevant revenue.

77. If, in the future, there are outliers among the PBSs who consistently impose low value fines which do not have the necessary deterrent impact, OPBAS will be able to use its new powers to force changes in enforcement approaches.

Supervisory gaps, gatekeeping and policing the perimeter

78. In our response to Question 5, we explained why we do not have any evidence that suggests there is a particular concern with ICAEW members operating as accountants in public practice without supervision. We also believe that this is replicated across the accountancy PBSs.

79. We also believe that the issue of no ‘default supervisor’ within the legal sector should be separate to the overall question of OPBAS+ supervisory effectiveness. The accountancy sector has a well-structured regime in place for AML supervision and it would be counterproductive to choose a different model that is less effective for one profession to meet a specific gap in another sector.

80. We have no evidence to support the possibility of weaker gatekeeper tests. Neither FATF nor OPBAS have commented that this is a particular issue. As we have set out above, firms do not have the choice of who their AML supervisor is, it is determined by the accountancy PBSs and therefore we do not consider this to be a high risk for the sector. We do not have evidence that there are significant volumes of malign actors working within the accountancy sector, or within ICAEW’s supervised population.

81. In paragraph 3.9, the Consultation Document notes that there is no register of all regulated firms. In its July 2023 meeting, AASG agreed that it would be happy to work with HMRC and/or Companies House to create such a register – in particular to support the reform of Companies House and the creation of ‘Authorised Corporate Service Providers’. We do not believe that the option of creating a regulated sector register has ever been fully explored and believe that this would be an effective way of addressing certain concerns raised by the consultation on system co-ordination. In our response to Q3, we have suggested that OPBAS obtains the power to maintain a list of all supervised firms within the accountancy sectors.

Question 8: Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.

82. We believe that the OPBAS+ model would deliver the level of supervisory reform that best meets the objective of system co-ordination for the accountancy sector.

83. We agree that there is no need for additional information-sharing provisions to enable better sharing, or the transmission of higher quality of information, by accountancy PBSs and that OPBAS+ is an effective model to encourage greater information sharing. We also believe that the OPBAS+ model has the least Intelligence Risk of all options due to the continuation of full sharing of information by the PBSs who have the most touchpoints with their supervised firms. This Intelligence Risk contrasts strongly and favourably to the Intelligence Risk found in all other options.

84. System coordination has significantly improved over the past 5 years and particularly since the publication of the Economic Crime Plan. The Economic Crime Plan allowed the accountancy sector to have a ‘seat at the table’, which meant that the sectors visibility and

contribution to the wider economic crime agenda has been consistent and widely valued – OPBAS continues to push for AASG involvement in these groups/forums.

85. The value of PBSs' involvement in AML supervision and information-sharing arrangements is that PBSs gather a significant amount of information and intelligence about firms they supervise from their regular regulatory contact with those firms for matters other than AML supervision. For example, ICAEW also licences / regulates / supervises firms (or individuals in firms) to provide the following regulated services; statutory audit, local public audit, insolvency, probate, investment business advice, ATOL (CAA requirements) and we review firms more generally within our own Practice Assurance scheme. Important useful information comes through these other regulatory activities. For example, our knowledge on Bounce Back Loans comes from our Practice Assurance and insolvency reviews. All PBSs may also have additional contact points with supervised firms as a result of investigating complaints which might be made against them.

86. These regular touchpoints allow the PBSs to acquire a significant amount of useful AML intelligence to feed into their risk-based approaches and to share more widely with other bodies and law enforcement agencies (where relevant). The OPBAS+ model keeps this intelligence and information, along with subject matter expertise, firmly within the AML ecosystem. Options 2, 3 and 4 will require the creation of new information-sharing gateways for the transmission of this information from the PBSs to all of the new supervisors created under Options 2, 3 and 4. The removal of all or most PBSs from any role in AML supervision will, unless new legislation requires it, also remove the requirement for those PBSs to continue to maintain intelligence-sharing units which have been important in producing more valuable intelligence. However, any attempt to impose such a responsibility will need to identify how that work will be funded as any attempt by the PBSs to impose additional AML levies (over and above the levies which will be imposed by a Consolidated PBS, a SPSS or a SAS to fund their operations) may prompt firms to cease their affiliation with the former PBS putting an end to a valuable source of intelligence.

87. OPBAS has enhanced the quality of information-sharing by requiring PBSs to become active members of SIS and encouraging membership of FIN-NET. OPBAS co-ordinated the creation of ISWEG and continues to participate in these meetings. OPBAS also facilitated the accountancy PBSs in obtaining security clearance and CJSM accounts.

88. OPBAS continues to act as an effective intermediary between the PBSs and law enforcement and other public sector bodies to ensure the smooth transfer of information. Many of the challenges faced in this area come from barriers and restrictions in those public sector bodies. For example, AASG has been trying to access enhanced data from Companies House on the Register of Overseas Entities to ensure that firms that say they are supervised by an accountancy PBS are in fact supervised by that PBS but there are restrictions on Companies House sharing certain data sets with PBSs to allow the PBSs to perform these checks on their behalf.

89. AASG continues to welcome active engagement with other system actors – there are representatives from AASG at the PPTGs and relevant time-limited cells, AASG has an active and successful ISEWG where we share intelligence and information, as well as emerging threats and trends and co-ordinate the sharing of typologies and risks with our supervised populations. We have contributed to Companies House reform, providing feedback and input to the Register of Overseas Entities to share our experience and skills and support Companies House in achieving effectiveness through this policy area, and continue to support Companies House in wider reform of the company register. AASG repeatedly sets the message and agenda that we want to hear as much information and intelligence as possible, from all sources.

90. However, the reality remains that there appears to be very limited information or intelligence that NCA and law enforcement can share with the accountancy PBSs. Despite PBSs best efforts to gather this information, and to raise our profile, little intelligence appears available.

Consistency

91. Although there is a risk of inconsistency in supervisory interventions and poor information sharing, we do not believe that this risk crystallises within the accountancy sector. The AASG works hard to ensure that we mitigate this risk and that the accountancy PBSs have consistency of approach and regularly share information on our operating practices. For example, AASG has a SharePoint location where the accountancy PBSs share policies and procedures relevant to our supervisory activity. AASG has conducted mini-projects to compare our approaches on how we conclude firms to be 'compliant', 'generally compliant' and 'non-compliant' – to ensure that HM Treasury annual return data is as comparable as possible. We have recently performed an exercise to share our policies on information sharing on the FCA's Shared Intelligence Service, to ensure we are sharing the same quality of information at the same trigger point. During the summer of 2023, the supervisors are collectively working on a shared definition of a desk-based review. This is all to support OPBAS' work on ensuring that we are as consistent as possible. Should OPBAS continue to identify inconsistent approaches, the proposed rulemaking powers and enforcement powers will support them in enforcing consistency.

Question 9: Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.

92. The OPBAS+ model is clearly the most feasible option to implement because it carries no Key People Risk and it is much less affected by Intelligence and Dependency Risk. There is also no Education and Competency Risk.

93. Governance arrangements already exist for OPBAS+ and we assume the legislative changes are relatively quick and easy to bring through the existing regulations via Statutory Instruments. This is a strong advantage of Option 1. We have seen through our other roles as an audit and insolvency regulator that the introduction of legislative change is often pushed back as more pressing bills absorb parliamentary time – indeed it has been 4 years since the announcement to create ARGA within audit reform and yet the legislation will not feature in the legislative timetable for 2023/24.

94. The model is already in place and therefore appropriately funded (we note that ICAEW and its firms has already invested £3.4million in funding OPBAS since 2018). There is limited transition funding required other than for OPBAS to explore the policy implications of its additional powers. However, there is a mechanism for recouping these costs via the existing OPBAS levy.

95. While this may require greater funding for OPBAS, this could be achieved by a long overdue review of the way in which the OPBAS levy is funded where, even though most, if not all, PBSs pass through the OPBAS levy in the fees charged to those they supervise, all smaller PBSs have only contributed £5,000 to the OPBAS levy and this has not increased since originally being fixed. As we have pointed out on many occasions, the current model produces significant unfairness between the amount paid by BOOMs who are supervised by large and small PBSs.

96. The OPBAS+ model builds on the staff and expertise already present within the supervisory framework – across both statutory and professional body supervisors. Recruitment of appropriate talent is tough in the current climate and it will be easier to incrementally build staffing resources to increase supervisory effort than to start from scratch.

97. The OPBAS+ model allows HM Treasury to strengthen the powers of OPBAS and commence supervisory reform, which can be built on over future years whereas if we move to Options 2, 3 or 4, we can never return to Option 1 because AML supervisory expertise would be lost from the PBSs (Key People Risk).

CHAPTER 4: PBS CONSOLIDATION

Question 10: Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide remit, (b) retaining separate PBSs in the Devolved Administrations? Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both.

98. While Scotland and Northern Ireland have distinct legal and regulatory systems, we do not believe that separate accountancy AML supervisors would be necessary as the term 'accountant' is not a protected term in any of the Devolved Administrations. An assessment of the advantages of a PBS with a UK-wide remit or with specific geographical remit therefore rests on the pros and cons of reducing the number of supervisors in the UK, and the extent to which this can deliver the objectives of supervisory reform.

99. It is likely that a UK-wide PBS will need to have specialist divisions for differences in the legal and regulatory systems in Northern Ireland and Scotland. However a UK-wide PBS would also need to have detailed knowledge of the different parts of the accountancy sector that a consolidated PBS will be responsible for (accountancy, bookkeeping, audit, insolvency, and tax) with the consolidated PBS supervising parts of the sector it doesn't currently supervise.

100. While the creation of three consolidated PBSs might mitigate the Dependency Risk[3] identified at paragraphs 12 and 13 of the Introduction, this would depend on which of the Consolidated PBSs resigned its supervisory responsibilities. In reality, the consolidated PBSs created in the Devolved Administrations would be unlikely to take on the responsibilities of the consolidated PBS for England and Wales due to the respective size of their supervised populations.

Question 11: How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?

101. Given that all responsibility for AML supervision might be concentrated in 2-6 private entities, it would be important for there to be effective oversight either directly by HMT or by maintaining OPBAS in its current oversight role. It would be important to ensure proper accountability with the increased responsibility.

102. We believe it would, therefore, be appropriate to provide OPBAS with enhanced powers such as those described in the OPBAS+ model. However, careful consideration would need to be given to the enforcement powers provided to OPBAS and how they would be used because of the Dependency Risk created under this model. We believe it will be difficult to legislate for a private body to be locked in for perpetuity into performing a Consolidated PBS role and, even if this were possible, it is unlikely that any PBS will agree to take on such a role without an exit route. Therefore, actions taken by OPBAS or any other oversight body considered to be unfair or disproportionate by the Consolidated PBS might result in the Consolidated PBS giving notice to withdraw its services. A lengthy notice period (but not too lengthy as this might deter applicants) and an effective dispute resolution mechanism (with disputes being resolved by an independent tribunal or panel) would mitigate the Dependency Risk as well as

[3] We have defined Dependency Risk, Key People Risk, Intelligence Risk and Education and Competency Risk in the Introduction.

ensuring that the remit of the future oversight regulator is tailored to the new regime. It would be important to ensure that the Consolidated PBS did not receive a disproportionate amount of oversight just because there was no longer a requirement to supervise the performance of many more PBSs.

103. There would also be a need for an oversight regulator like OPBAS (unless HMT is prepared to do this directly) to regulate and approve levies by the Consolidated PBSs on the supervised population to ensure that the 'monopoly' position of the Consolidated PBSs was not abused by charging excessive fees beyond the reasonably expected costs of AML supervision for the coming calendar year. This oversight model for fee charging has already been put in place by the Legal Services Board for regulatory fees charged by legal services' regulators.

Question 12: Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?

Supervision of ASPs

104. We agree that transferring HMRC's ASP population to the accountancy Consolidated PBS would result in an improvement in consistency of approach to supervision, including the application of guidance throughout the sector. However, there are practical problems in transferring this responsibility. Accountancy firms, who are affiliated to the current PBSs and who will become affiliated to the Consolidated PBS, will have other professional obligations such as a requirement to hold a minimum level of professional indemnity insurance and a requirement to comply with a Code of Ethics. If the AML supervision of ASPs were to be transferred to the accountancy Consolidated PBS, this would create an odd position where some supervised entities were required to comply with much more extensive obligations.

105. This section of the Consultation Document also considers whether PBSs with membership requirements could offer AML supervision to non-member firms. ICAEW already supervises over 1,000 firms which do not meet our member firm definition through AML supervision contracts obliging the contracted firm to comply with ICAEW's disciplinary bye-laws and Code of Ethics. This provides for the same enforcement powers over those firms as we have over our member firms. Under the terms of AASG flowchart and supervisory protocol, to apply for supervision, at least one principal in the firm must be an ICAEW member or an affiliate member, or the firm must be owned by a firm which has at least one ICAEW member or affiliate member as a principal. Should ICAEW become a Consolidated PBS, we could explore how we could extend this AML contract to a wider group of firms. It would, however, be necessary for HMT to create a mechanism through legislation to compel all the non-ICAEW member firms sign up to such a contract in addition to a requirement in the MLRs that all firms practicing in the regulated sectors must be registered with an AML supervisor (note this express requirement does not currently exist). It might, therefore, be easier for HMT just to introduce legislation bestowing powers on the Consolidated PBSs.

106. We set out information in our response to Question 5 on how ICAEW already polices its perimeter in the context of ensuring ICAEW members do not operate as accountants in public practice without supervision. We believe that other accountancy PBSs also have similar functions. We believe this would be the basis for monitoring the regulatory perimeter but we agree that a consolidated PBS would need additional powers to fine or sanction non-members who were not supervised, if HMRC were no longer a default supervisor for ASPs.

107. We disagree that the creation of Consolidated PBSs would undermine other government reforms such as Companies House reforms. Indeed, the requirement for an ACSP to have

AML supervision (alongside HMRC's requirement for tax agents to have an AML supervisor) would support a Consolidated PBS in policing the perimeter, assuming there is effective information/intelligence sharing between the PBS and Companies House (or HMRC). Conversely, Options 3 and 4 are more likely to undermine ACSP reforms because splitting AML supervision away from the professional membership bodies will further complicate the information and intelligence landscape for poorly performing ACSPs (since the prescriptive rules around verification are not the same as the risk-based requirements of the MLRs and intelligence regarding poor ACSP work might be a matter for the professional body rather than the AML supervisor – poor ACSP verification work might not be poor AML customer due diligence owing to the risk-based approach for AML).

Supervision of TCSPs

108. We believe that HMRC should retain supervision of the TCSPs that are not already supervised by another AML supervisor. Accountancy PBSs supervise the TCSP work of the accountancy firms they supervise. Our analysis demonstrates that, for the vast majority of firms in ICAEW's supervised population, trust and company service work is complementary to the services provided to clients. For example, firms create a new legal entity where a sole trader is looking to incorporate or provide registered office services and supporting company secretarial functions. The TCSPs supervised by HMRC are very different in nature. Those that are sole TCSP agents have very different client bases and different risk profiles. This was evident in the recent OPBAS Multi-PBS review of TCSP risk where it was identified that the key risks identified by HMRC and the accountancy PBSs were different due to underlying differences in the nature of the services. While consolidation of accountancy AML supervision to fewer bodies has some logic as some PBSs have experience of all types of accountancy services, the same cannot be said for TCSPs. Indeed, this would require the accountancy Consolidated PBS to create an additional area of specialism and recruit staff who have skills and experience of this type of TCSP work.

Question 13: What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?

109. As we set out in our answer to Question 5, we do not have any evidence that ICAEW members can easily operate as accountants in public practice without supervision. We also believe that this is replicated across the accountancy PBSs.
110. In our answer to Question 12, we explained that it would be necessary for HMT to create a clear requirement in the MLRs that all firms practicing in the regulated sectors must be registered with an AML supervisor (note this express requirement does not currently exist) and to give powers to the accountancy Consolidated PBS to monitor and police this, along with creating a register for the supervised firms in the accountancy sector.
111. Furthermore, the accountancy Consolidated PBS would need powers to charge for supervision, to compel the firms to provide them with information, to enforce, to exclude and to monitor. The accountancy Consolidated PBS would likely need similar powers given to HMRC in the MLRs to supervise.

Question 14: Under the PBS consolidation model, what would the advantages and disadvantages be of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?

112. The biggest advantage would be consistency of supervision across an entire sector – with proactive monitoring cycles and conclusions on compliance or application of sector guidance being implemented equally to all firms. It is, of course, possible that, with stronger powers, the OPBAS+ model might also deliver this consistency.

113. Other advantages would include:

    a) Efficiency/costs savings: the potential to reduce the overall costs of the current supervision model by placing all back-office administration within a small number of bodies and reducing duplication of effort and resource. Savings on administration costs could be diverted to more proactive, front-line supervision.

    b) Eradication of competition between PBSs for limited pool of expert resource: a Consolidated PBS would have the advantage of not having to compete with other bodies for available expert resource.

    c) Larger internal pool of resource providing for succession planning, staff development etc. At the moment, any PBSs have limited resource and there is limited room for growth and development which would be available if most of the existing resources were consolidated into a smaller number of PBSs. A Consolidated PBS with visible career paths and jurisdiction over a large number of supervised firms may also make it easier to attract resources from the private sector firms and to develop key pockets of expertise in niche areas.

    d) Greater investment in systems/infrastructure: Consolidated PBSs would be sufficiently well funded from levies from a larger population to make significant long-term investments in technology to improve efficiency and to target more accurately where the greatest risks lie within the supervised population.

114. A Consolidated PBS would also apply a consistent risk-based approach across the entire accountancy sector. This would mean more effective monitoring effort as two similar firms would be placed on similar monitoring cycles – 13 supervisors may mean that there are different thresholds for a high-risk firm, and therefore potentially different monitoring cycles.

115. It is possible that some subject specialisms may be lost, depending on the identity of the bodies selected to be Consolidated PBSs. However, some PBSs (such as ICAEW) supervise a wide range of accountants, bookkeepers, tax advisors, insolvency practitioners and auditors across a range of size of firms and geography.

116. We do not believe that PBS consolidation model would result in significant benefits for supervisory effectiveness of TCSPs. The OPBAS report referenced at paragraph 4.26 of the Consultation Document indicated that there were differences in opinion in determining risk factors between the PBSs, and between the PBSs and HMRC. However, at a recent workshop, all TCSP supervisors agreed with a long list of potential risks within the sector. The key difference in the risks considered by each supervisor as the highest risk factors were driven by underlying differences in the populations supervised rather than a difference of opinion about the risks themselves.

117. We also disagree with the comments made in paragraph 4.25 of the Consultation Document about the use of dip sampling by the Consolidated PBSs as an effective way to supervise lower risk firms. ICAEW monitors its entire population on a cyclical basis – with even the lowest risk and smallest firms receiving a monitoring intervention once every eight years. We have followed this monitoring methodology since 2006 and believe that it is the most effective method to ensure ongoing compliance among our supervision.

118. Throughout the 1990s and 2000s, ICAEW's monitoring methodology was based on dip sampling but we concluded that it was ineffective in maintaining compliance standards. One reason for this were that firms did not have an equal chance of being selected and were aware of the statistically small chance of selection which discouraged compliance. We also realised that the outcomes of dip sampling were difficult to understand and difficult to extrapolate across the wider population, information provided in Annual Returns varies in reliability and dip sampling meant that most firms missed out on the educational impact of a monitoring review and the ability to learn what their peers are doing and to ask questions.

119. This viewpoint is echoed by the firms we supervise. ICAEW's monitoring team gathers feedback from the firms it conducts monitoring reviews to each quarter. In the most recent feedback (Q2 2023), one firm said *"AML was an area that was concentrated upon - I do feel that this is a rapidly changing area and because of the timing between visits and the busy workloads we are under, serving clients, this can mean areas are sometimes overlooked. It may even be useful to have a halfway phone call to highlight areas that are changing since last visit as this may act as a refresher and focus training - I do realise that this may be difficult in practice but even in our review there were areas immediately we can improve on and implement new systems."* This shows that firms are keen to receive regular, and (even more) frequent, monitoring reviews.

120. Our strong view from our experience is that supervisors should only resort to dip sampling and the related extrapolation / justification when doing something more robust becomes prohibitively expensive. This means that, in order for the Consolidated PBSs to be effective, it will be important to ensure that they are well funded and able to carry out a more reliable and widespread system of monitoring. It may, of course, be possible in time to harness generative AI as a monitoring tool (and the Consolidated PBSs would be better placed to invest in this) but the technology is not sufficiently developed and will not be for some time.

Question 15: What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

121. The Consolidated PBSs will need powers to enable them to monitor and take enforcement action against non-member firms that they have no other connection with either by replicating the powers that HMRC and FCA are granted under the MLRs or by mandating all firms to be supervised by the Consolidated PBSs. The powers should include the ability for the Consolidated PBS to be able to terminate the AML supervisory contract, in the most serious of cases, without an alternative offer of supervision being made by another Consolidated PBS or another AML supervisor such as HMRC. In a model where there is only one Consolidated PBS for the accountancy sector, and no default supervisor, HM Treasury would need to consider which body would be responsible for pursuing those firms that continued to act as an accountancy service provider without AML supervision, as the Consolidated PBS would not have the criminal powers to undertake this policing of the perimeter.

122. ICAEW, like most PBSs, has a wide range of enforcement powers of its supervised population with unlimited fines, reprimands and exclusion. ICAEW can also require its firms to take certain measures to ensure compliance with the MLRs. The main difference between a PBS's powers and a statutory supervisors' powers are criminal powers but we accept that it is not appropriate for a private body to have such powers.

123. In relation to gatekeeping checks, ultimately, the Consolidated PBSs would need to perform their own gatekeeping checks, particularly to remain compliant with Regulation 26 since this approval must come from the supervisor. The Consultation Document suggests an information sharing / gatekeeping sharing arrangement to minimise duplication. However, this does not fully mitigate the Intelligence Risk as those PBSs who lose their AML

supervisory functions would no longer be required to perform elements of those checks under their own gatekeeping models unless legislation creating Consolidated PBSs requires this. However, the Government would also need to provide for continuing funding of AML intelligence activities by the former PBSs and to create information-sharing gateways to avoid an Intelligence Risk.

Question 16: Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?

124. In our response to Question 12, we explained that ICAEW has a mechanism in place for supervising firms that do not meet our member firm definition and that we already supervise over 1,000 non-member firms in this way. Our standard AML supervision contract obliges the contracted firm and their principals to be subject to our disciplinary bye-laws and provides our Conduct Department with the same powers that they have to bring action against our member firms. Under the terms of AASG flowchart and supervisory protocol, in order to apply for supervision, at least one principal in the firm must be an ICAEW member or an affiliate member, or the firm must be owned by a firm which has at least one ICAEW member or affiliate member as a principal.

125. If ICAEW were to become the accountancy Consolidated PBS, we could explore how we could extend this AML contract to a wider group of firms. However, we believe that it would be simpler for the new legislation to bestow powers on the accountancy Consolidated PBS (as legislation would be required in any event) to create an express requirement in the MLRs that all firms practicing in the relevant regulated sectors must be registered with the specific AML supervisor and that the relevant firms are all required to sign up to a HMT-pre-approved standard supervision agreement. The latter requirement is crucial as no accountancy Consolidated PBS can be expected to negotiate individual terms across tens of thousands of supervisory contracts.

Question 17: What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?

126. There is already cooperation in place between a number of accountancy PBSs across a range of regulatory areas, which demonstrates how dual-regulation can be effectively managed. In most situations, the disciplinary action is pursued by the incumbent PBS or the PBS that was the licensing/registering body at the time the poor-quality work took place.

127. We believe that the most sensible transition arrangements for enforcement actions is that any disciplinary proceedings which have been started by the original supervisor should remain with that supervisor until completion of the action, however long it might take (with no time-limit cut off).

128. If HM Treasury decided to require the transfer of live cases, we believe that it would only be appropriate to transfer to the new Consolidated PBS cases which were still at the investigation stage (as opposed to those moving through committee/tribunal decision stage). Any legislation would need to provide a power to the accountancy Consolidated PBS to investigate and take enforcement action against firms where there was no supervisory relationship at the time of the act or omission in question.

129. In our view, however, it would be preferable to leave existing investigations with the former PBS as they will continue to have jurisdiction over the individual or firm in respect of the alleged breach through the ambit of its own bye-laws or regulations. If the legislation were to

provide instead for the Consolidated PBS to take over all investigations from the date it becomes operational, the legislation may also need to make clear that the former original supervisor should not continue to pursue its own parallel investigation (which might otherwise be required by that supervisor's own bye-laws) as this would avoid confusion and potential legal challenges based on the unfairness of an individual/firm being pursued by two regulators.

130. Clearly, a Consolidated PBS should have the power to take enforcement action against any member of its supervised population for any act or omission which is identified after it starts its role as a Consolidated PBS. The Government may wish to provide also that the Consolidated PBS should at least have primacy, if not be the only action, which is brought in respect of that act or omission so as to involve the fairness issues which would arise from one firm being prosecuted at the same time by two different entities.

Question 18: Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.

General comments

131. When transition is complete, we believe that the PBS consolidation model will deliver improved supervisory effectiveness by delivering a consistent risk-based approach with firms that display similar levels of non-compliance receiving similar sanctions. We also believe that there are significant efficiency, recruitment and investment gains (as we set out in paragraph 115 above) to be made by moving to this model.

132. However, as we have noted above, the Consolidated PBS model is also the option with the highest Dependency Risk. The ability of the new Consolidated PBS to give up its role post consolidation would create a significant Dependency Risk. Such a risk might crystallise if, post-consolidation, the Consolidated PBS was unable to recruit sufficient resource to discharge its responsibilities properly or if it considered that it was being unfairly treated by OPBAS or any new oversight regulator. While it is theoretically possible that other Consolidated PBSs may be able to take over some or all of another Consolidated PBSs' statutory responsibilities, it would depend on the extent of the remit of the resigning Consolidated PBS and capacity at other Consolidated PBSs.

133. This Dependency Risk could only be mitigated by providing that any applicant for the Consolidated PBS role would have to commit to carrying out that role for a minimum term (2 or 3 years) with limited rights to terminate during that period and that any subsequent termination would be on the basis of at least 12 months' notice. This might then provide time for the Government to effect a transfer of responsibilities to another Consolidated PBS or create a new public or governmental body to take on the supervisory responsibilities.

134. The Consolidated PBS model also brings with it a Key People Risk. AML/CTF supervision in the accountancy sector is extremely complex. There are so many accountancy PBSs because of the sheer scale and variety of supervision needed. It spans different sectors, professions, and sizes of businesses. This requires each of the current PBSs to have a detailed level of knowledge and expertise to supervise firms to a high standard and understand the unique characteristics of the professions they oversee. It would, therefore, be crucial to the success of the PBS Consolidation model that most, if not all, of the Key People currently employed by those PBSs which lose their supervision status move to similar roles within the Consolidated PBS.

135. The Key People Risk in this model is not as high as the risks we highlight in our analysis of Options 3 and 4 because it is more likely that Key People will be prepared to migrate to another professional body and there are already strong relationships between Key People at

the different PBSs. However, the Key People Risk for this option remains significant due to the finite amount of people who have AML regulatory expertise/expertise and the potential difficulty in persuading that expertise to migrate to a new body. Some Key People at the former PBSs may carry out their AML work as only part of their role and they may opt to remain employed where they are by expanding other areas of their role to fill the AML gap. Other Key People may decide if they must change employer to seek potentially higher rewards in carrying out an economic crime role in the commercial sector. The loss of Key People could happen at any time between the announcement of the policy statement by HMT through to the launch of the Consolidated PBSs. If Key People were to seek new opportunities early during that intervening period, this could potentially undermine the ability of the current PBSs (certainly those not selected to become Consolidated PBSs) to maintain their current level of supervisory effectiveness.

136. If some or many Key People do not transfer, it is likely to be very difficult and expensive for the Consolidated PBS to recruit people with the same experience and expertise from elsewhere in the public sector or the commercial sector. Even if an accountancy Consolidated PBS was able to recruit accountants with some knowledge of AML compliance, they would all require an extensive period of training before they could perform a full front-line role.

137. Despite these risks, should HMT decide to pursue Option 2, ICAEW would likely apply to be a Consolidated PBS if assurances were given about reasonable termination provisions and how the Consolidated PBSs would be overseen. Given that we are already responsible for supervising more than one third of accountancy firms affiliated to a professional body, and we also undertake AML monitoring for one of the other larger accountancy PBSs (taking our monitoring responsibilities to almost half of all affiliated firms), we believe we are well-placed in terms of our scale and resources to reduce the impact of the Key People Risk and to ensure that supervisory effectiveness is restored as quickly as possible. Indeed, if HMT were to select any other accountancy PBS to become the accountancy Consolidated PBS, it is almost inevitable that the Key People Risk would be significantly increased.

Risk-based and data-led approach to supervision

138. The main advantage of the Consolidated PBS model is that it would create a single platform on which to risk assess the sector and would provide the opportunity to ensure that comparable data is collected about all accountancy firms. Firms would be treated equally, with two similar firms having the same chance of being selected for monitoring review and with two firms with similar compliance issues having the same enforcement action applied.

139. Out of Options 2, 3 and 4, it has the lowest Key People Risk – the best chance of retaining sector expertise within AML supervision for the accountancy sector.

140. However, in the short to medium term, the risk-based approach would be impacted by a high Intelligence Risk. This is because we would have concerns about the availability of data/information in a consistent format and of consistent quality that can be shared between the former PBSs and the new accountancy Consolidated PBS. The first step of data-transfer will be for the Consolidated PBS to create a list of its supervised population recognising that this might not be easy as data may be held in a variety of formats across the different PBSs. The Consolidated PBSs will also then need to gather the firm risk assessments performed by each former PBS (which will be held in different formats and will be based on different scoring mechanisms) to ascertain the monitoring effort required at its highest risk firms. This will take time to collate and complete. Unless mandated by legislation, the Consolidated PBS would then need to create information-sharing gateways with the former PBSs but even then, unless legislation provided a continuing duty on the former PBSs to retain an intelligence unit and to provide information on a timely basis to the Consolidated PBS, there would be a clear

Intelligence Risk regarding the continued transfer of important intelligence to the Consolidated PBS.

Greater proportionality in supervision and broad toolkit

141. Once a Consolidated PBS has assessed the risk within its supervised population, it will turn its attention to ensuring that its monitoring effort is proportionate to risk with more resources allocated to higher risk firms. In the short to medium term, supervisory effectiveness is at risk of reducing as the Consolidated PBS adapts and adjusts to its increased role whilst juggling available resources (including the time it takes to gather data from the firms and other supervisory bodies, as well as creating the appropriate information gateways).
142. The benefit of the Consolidated PBS model is that the Consolidated PBS would risk assess its entire population and identify the monitoring cycles of its supervised population. Two similar firms would be assessed under the same criteria meaning that a moderate or low risk firm would not be treated as high risk when they are only high risk for a particular PBS, rather than within the sector as a whole.
143. However, careful consideration will need to be given to how the risk-based approach will work for a Consolidated PBS with a vastly increased supervised population where the Consolidated PBS may suffer, at least initially, from resourcing issues which may be exacerbated if it is unable to recruit Key People from the other PBSs. The ultimate supervised population for a single accountancy Consolidated PBS is likely to be in the region of 51,000 firms. This means that, under a cyclical basis with every firm being visited once every eight years (using the ICAEW model), the consolidated PBS would need to perform approx. 6,500 reviews a year. Under an approach where the high-risk firms are regularly reviewed, and the lower risk firms are dip-sampled, it is still likely that the Consolidated PBS would need to conduct thousands of reviews each year. To make this more challenging, we have already noted, in our response to Question 14, that our experience suggests that dip sampling is not an effective monitoring tool. The Consolidated PBS will need to be able to set AML supervisory fees sufficiently high to generate sufficient resources (including staff recruitment) to ensure that the appropriate amount of supervisory activity takes place

Understanding of risk

144. We believe that the accountancy PBSs have a reliable understanding of risk among their supervised firms. OPBAS's recent project on risk concluded the risks identified by the accountancy supervisors were consistent and in line with the National Risk Assessment. Furthermore, ASAG produces its AASG Risk Outlook for the accountancy sector, which builds on the risks included within the NRA, proving more granular detail.
145. We are concerned that the PBS Consolidation model is likely to reduce understanding of risk within the accountancy sector in the short to medium term, while information gateways are created between the accountancy Consolidated PBS and former PBSs (Intelligence Risk) and due to the Key People Risk. Furthermore, under the PBS Consolidation model, general monitoring of members/member firms affiliated to many professional bodies will be separated from the AML supervision. This will mean that the Consolidated PBS will lack of visibility of all the relevant information / intelligence available to the current AML supervisors. The importance of this 'external' intelligence can be seen in the analysis of AML related intelligence received by ICAEW for the year ended 31 July 2023:
    a) 46 (32%) came from AML monitoring reviews or AML investigations;
    b) 59 (41%) came from other regulatory / monitoring activity within ICAEW (eg audit monitoring reviews, insolvency monitoring reviews or non-AML investigations); and

c) 40 (27%) came from external sources (eg, other supervisors, law enforcement or through our 'Raise an AML concern' channel).

146. We note that this evidence of the significant reliance on 'external information' outside of AML monitoring reviews mirrors the reference made in paragraph 5.26 of the consultation document to most of HMRC's criminal investigation and intelligence on TCSPs coming from teams other than its AML supervisory team.

147. Based on these figures for source of intelligence, the PBS Consolidation model would mean that a Consolidated PBS would be receiving a significant proportion of its AML-related information and intelligence from external sources, whereas currently ICAEW only receives 27% of its AML-related information and intelligence from external sources. To mitigate against this Intelligence Risk, legislation will need to require the former PBSs to maintain some form of AML expertise and information capture and to share it on a timely basis with the accountancy PBS. However, the legislation will also need to provide for funding for this continued activity as any attempt by the former PBSs to charge fees for this activity on top of the AML levies which firms will need to pay to the Consolidated PBS may cause firms to end their affiliation with the former PBSs which will reduce the intelligence currently flowing through the current framework. The legislation may also need to provide for ongoing oversight of the former PBS by OPBAS or another body to ensure that these requirements are satisfied and to take enforcement action if they are not.

Effective gatekeeping and policing the perimeter

148. The PBS Consolidation model does add a layer of complexity for effective gatekeeping and policing the perimeter because:

a) A Consolidated PBS would have to take some responsibility for policing the perimeter – and entire responsibility in the variation where HMRC is no longer the default supervisor for the accountancy sector. This would require additional powers to be conferred on the consolidated PBS within the MLRs.

b) In relation to gatekeeping checks, ultimately, the Consolidated PBSs would need to perform their own gatekeeping checks, particularly to remain compliant with Regulation 26 since this approval must come from the supervisor. The Consultation Document suggests an information sharing / gatekeeping sharing arrangement to minimise duplication. However, this does not fully mitigate the Intelligence Risk as those PBSs who lose their AML supervisory functions would no longer be required to perform elements of those checks under their own gatekeeping models unless legislation creating Consolidated PBSs requires this. However, the Government would also need to provide for continuing funding of AML intelligence activities by the former PBSs and to create information-sharing gateways to avoid an Intelligence Risk.

Communicating effectively with firms

149. PBSs have many years of experience of fine-tuning the most effective ways of communicating with their supervised populations and communicate very effectively. At ICAEW, we have established channels for communication via regular email bulletins, social media posts or formal communications with MLROs and MLCPS. We are concerned that there will be an inevitable reduction in effective communications as a Consolidated PBS establishes new communication channels and firms become used to looking out for these new communications.

150. We are also concerned that there will be an Education and Competency Risk, at least during any transition period, while the Consolidated PBS is created and recruits sufficient expert resources to reach a level of supervisory effectiveness. We believe the educational activities

undertaken by ICAEW and the other accountancy PBSs to be an important factor in improving the compliance with the MLRs at accountancy firms. Most of the educational material is created by the AML experts within each PBS as part of their role. During a transition to create a Consolidated PBS with much greater responsibilities and much greater need for resources (and strain on existing resources), there will be an increased Education and Competency Risk as those involved in producing educational material may have to prioritise front-line regulatory work.

Enforcement

151. We assume that the Consolidated PBSs will be given the powers to take enforcement action against the population they supervise and that the powers will be equivalent to the range of enforcement action that can be taken currently. It may be necessary for these powers to be conferred via the MLRs, akin to the powers available to HMRC or that the Consolidated PBSs will have another mechanism for ensuring that their current disciplinary/enforcement powers apply to their increased supervised population, rather than just its members/member firms. If so, there will be limited impact on supervisory effectiveness once the powers are established.

Question 19: Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.

152. We believe that the consultation paper has identified the main system co-ordination advantage of the Consolidated PBS model being the potential for easier information sharing between law enforcement / statutory supervisors because of their being fewer professional body supervisors.

153. While we acknowledge this potential advantage, we believe that the current supervisory model could be improved, simplified and made easier for law enforcement and statutory supervisors by the creation of a single register of accountancy firms supervised. In our response to Question 3, we have suggested that OPBAS could be given enhanced powers under Option 1 to create and hold this register. In our response to Question 7, we noted that the AASG agreed at its July 2023 meeting that it would be happy to work with HMRC and/or Companies House to create such a register and, in particular, to support the reform of Companies House and the creation of 'Authorised Corporate Service Providers'.

154. Although the Consolidated PBS model creates a potential advantage for law enforcement, the statutory supervisors and Companies House (for ACSPs), we are concerned that it also creates additional complexity in the sharing of information and AML intelligence within the accountancy sector. As we have noted above, the accountancy Consolidated PBS should expect to receive a significant proportion of its AML-related information and intelligence from external sources which creates an Intelligence Risk. To mitigate this risk, legislation will need to create new information-sharing gateways between the former PBSs and the Consolidated PBSs and provide for the former PBSs to continue to identify and transmit intelligence regarding firms which continue to be affiliated to them and to provide for how such continuing work would be funded and overseen.

155. There is also a risk that some firms who do not require special licences to carry out regulated accountancy services, and only carry out unregulated accountancy services, may choose to give up their affiliation altogether with their current PBS if they are forced to be supervised by the Consolidated PBS. As general accountancy services are not regulated services, and accountant is not a proprietary term, there is no requirement on them to continue with that affiliation. This would reduce the information available to the current PBSs and their ability to

pass this information through any information gateway established with the Consolidated PBS creating a further Intelligence Risk.

Companies House and ACSPs

156. The Consolidated PBS model is also further complicated by the ACSP and verification regime that results from Companies House reform. The requirements for ACSP verification under Companies House Reform are not aligned with AML supervision and it is possible that intelligence shared by Companies House relates to ACSP verification failings, rather than AML compliance failings (since ASCP verification work is more prescriptive than the AML risk-based approach). A Consolidated PBS would then need to share such cases with the relevant professional body so that the professional body can take enforcement action against the ACSP that has performed poor quality verification work. This could be addressed by awarding the Consolidated PBS powers to oversee the standard of verification work.

Question 20: What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and supervision standards do not fall in the interim?

157. We believe it would be appropriate to provide OPBAS with most of the powers set out in the OPBAS+ model, as they would support OPBAS' ability to enforce consistency of supervision and any identified improvements to supervisory effectiveness. However, as a result of the Dependency Risk created by the Consolidation model, OPBAS would have to ensure that any enhanced powers were fairly and properly exercised. It would also appear to be completely counterproductive for OPBAS or any continuing oversight regulator to have the power to impose financial penalties on the Consolidated PBS. The exercise of such a power would either reduce the amount available to be spent on AML supervision (if the fine is met out of levies on the supervised population) or increase the Dependency Risk (if the Consolidated PBS is precluded from paying fines out of levies and has to draw on other revenue generated for their body from people who have no or limited connection to AML supervision work).

158. As we have indicated in several places above, there may be a need for OPBAS to continue to have an oversight role over the existing PBSs to ensure that they continue to gather and share important intelligence with the Consolidated PBS and that they comply with all reasonable information sharing requests.

159. However, we believe that there are some external factors which could adversely impact the performance of a Consolidated PBS which OPBAS would need to take into account in exercising any new powers. For example, if the Consolidated PBS cannot persuade Key People to transfer to the Consolidated PBS, it may not be able to recruit the right level of expertise initially, and for a period after going live, to allow it to perform to the highest level. Any unfair penalisation during that period might crystallise the Dependency Risk in this model.

Question 21: How do you believe fees should be collected under the PBS consolidation model?

160. We would counsel strongly that the Consolidated PBSs collect AML supervision fees directly from the firms they supervise. In our experience, it is challenging to collect fees on behalf of other organisations and the firms themselves do not understand the fee structures.

161. When HMT considered the collection of the Economic Crime Levy, it was decided that HMRC would collect the levy for all firms that fell in its scope. This was because trying to confer collection powers on non-statutory bodies, for a statutory levy was challenging.

Consolidated of AML supervision would pose a similar challenge – if fee collection was retained by the former PBSs, these bodies would need powers to enforce payment/collection of the Consolidated PBS's AML supervision fee despite having no other powers/role under the money laundering regime.

Question 22: Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

Funding

162. The Consolidated PBS model would require that the Consolidated PBS has the power to charge supervisory fees to the enlarged supervisory population. This could be achieved through a straightforward mechanism where the consolidated PBS charges the firms directly. It should be possible to scale the fees in line with the size of a firm – for example, by charging per BOOM or principal in a firm. While, as we have indicated above, there would need to be some form of approval process by HMT or OPBAS or another oversight body to ensure that Consolidated PBSs do not abuse their monopoly position and charge excessive fees, it will be important that Consolidated PBSs are able to collect sufficient annual funding not just to discharge fully the costs involved in effective supervision but also to make long-term investments in technology and to carry out policy work/thematic reviews and to provide the education which the current PBSs provide to their supervised population.
163. If selected as a Consolidated PBS, ICAEW would propose rolling out its existing fee structure to the enlarged supervised population. Fees could be charged via a contracting mechanism or ICAEW could require all principals or BOOMs in new firms to become General Affiliates. The level of fees charged would have to be calibrated to producing the funding required to discharge all of the Consolidated PBSs enhanced responsibilities and to ensure supervisory effectiveness and to build up funding for long-term investments in technology etc. Transition costs could perhaps be funded by a one-off application fee for the new members of the supervised population.

Staffing

164. AML/CTF supervision in the accountancy sector is extremely complex with a huge variety of nature and variety of firms. 'Accountancy' spans different sectors, professions, and sizes of businesses. This requires each PBS to have a detailed level of knowledge and expertise to supervise firms to a high standard and understand the unique characteristics of the profession they oversee. The PBS Consolidation model creates a Key People Risk albeit a lower risk than Options 3 and 4 as it would be hoped that some of the existing Key People at existing PBS who lose their supervision role would be persuaded to migrate to the new Consolidated PBS as it would be another professional body. The feasibility of Option 2 relies considerably on the successful transition of Key People or the ability to recruit quickly appropriately skilled people from the private sector (and train them quickly) to ensure that any drop in supervisory effectiveness is limited and short term.
165. The importance of the successful transfer of Key People from other PBSs and the ability to bring in the right resources can be seen by a comparison with the resources which ICAEW deploys at the moment to supervise its own population of 11,000 firms:
    a) 35 reviewers conducting monitoring reviews. They conduct a range of monitoring reviews but AML reviews accounted for 70% of the monitoring reviews conducted in the period;

b) 4 FTE operational staff responsible for AML risk assessments of firms, information/intelligence handling, AML supervision applications, criminality checks, and designing our AML supervisory and monitoring activity;

c) 4 case managers with at least a part-AML case load who manage our informal action following a visit;

d) 15 case managers with AML case load who manage formal action following a visit, investigations and enforcement action;

e) 8 professional advisors who work on our member helplines providing technical support; and

f) 1 Technical Manager who designs and delivers AML guidance for members.

g) 6 members of the legal team who helps compile cases for Investigations Committee and Disciplinary Committee, with AML case load (among other responsibilities).

166. If ICAEW were to be selected as the accountancy Consolidated PBS, ICAEW would likely need to increase this level of resourcing by 300% to supervise ultimately 51,000 accountancy firms. Even if all Key People transfer from other PBSs, this will still require some recruitment. If a significant number of Key People do not transfer, this will cause significant resource issues as, even if it is possible to recruit experienced accountants with some AML knowledge, it may take up to 12 months for new recruits to be fully trained and able to manage their own monitoring reviews or investigations independently.

167. Given the Key People Risk and the requirement for adequate specialist resource to be recruited to supervise up to 51,000 firms, it does not appear possible to us that the consolidation can take place other than in tranches with certain PBSs being expected to continue to supervise even after the accountancy Consolidated PBS is established and starts supervising. We would suggest that this staged consolidation is unlikely to happen quicker than the taking over of responsibilities from two of the existing PBSs every six months but even that may be ambitious depending on the availability of expert resources at the accountancy Consolidated PBS. Even if that staged consolidation took place, it would take 3 years for the accountancy Consolidated PBS to take over full responsibility and then a further 2-3 years to reach supervisory effectiveness over the increased population. Any staged consolidation would also raise the question of the order in which the existing PBSs would be asked to hand over their responsibilities.

CHAPTER 5: SINGLE PROFESSIONAL SERVICES SUPERVISORS (SPSS)

Question 23: Do you agree these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?

168. We agree that the features set out in section 5.5 of the consultation document are the key structural design features.

169. The structural design would also need to consider:

a) Information sharing gateways and mechanisms to mitigate against the Intelligence Risk. The SPSS would need to be included in relevant gateways set out in the MLRs for information sharing.

b) How would the SPSS police the perimeter? The SPSS would need to have the powers, available intelligence and skills/knowledge to police the perimeter across the wide range of sectors it may be required to supervise.

c) How would the SPSS ensure that all the of the sectors it supervised have equal representation at key steering groups and economic crime governance architecture and ensure that there is information sharing across sectors and not a silo approach?

Question 24: If an SPSS were to be created, which sectors do you think it should supervise?

170. We consider that the second smaller model would be most appropriate with HMRC retaining supervision for those sectors that involve the handling of cash and physical goods with the other sectors move to the SPSS. We agree that HMRC's data-sets align with these sectors and we are aware that HMRC is limited in how it can share some of these data-sets externally.

171. However, even opting for the smaller model will mean that the supervisory remit of the SPSS will be almost 80,000 firms. We do not believe that there is currently any other body with a supervisory, regulatory or oversight population of this magnitude. The size of this population exacerbates the Intelligence[4], Key People and Education and Competency Risks we flagged in our Introduction which are associated with each of the areas of supervisory effectiveness, system co-ordination and feasibility. We do not believe that these risks are offset by the benefits of unlocking efficiencies. Indeed, we are sceptical about the realisation of any efficiencies even in the long term.

Question 25: Were an SPSS to be created, what powers should it have?

172. It would make sense for the SPSS to have broadly the same powers as the statutory supervisors including the power to impose financial penalties, publicly censure, impose prohibitions on individuals and firms and to apply for court injunctions.

173. It would also make sense for the SPSS to have similar powers to those held by FCA under FSMA such as including the ability to make rules, issue directions and require a skilled person to write a report.

174. We are surprised that the Consolidation Document suggests the SPSS 'might' need an intelligence function. In our opinion, the SPSS would definitely need an intelligence function to request, receive and review the intelligence the SPSS would receive from the former PBSs, law enforcement and Companies House which will be significant if effective information-sharing gateways are established and effectively used.

175. The SPSS will also need the power to require regular information from its supervised population (eg, via submitting an annual return) and to require the supervised population to notify it about changes in key contacts or business addresses. The SPSS will also need powers to perform monitoring reviews, gatekeeper tests and to review Suspicious Activity Reports.

176. Not only should the SPSS be accountable to HM Treasury for how it achieved its mandate, but it should also be required to write an annual report on how it achieves its mandate. Omitting such a requirement would reduce transparency of the supervisory regime compared to the current system of OPBAS publicly reporting on the PBSs.

[4] We have defined Intelligence Risk, Key People Risk, Education and Competency Risk and Dependency Risk in the Introduction.

Question 26: How should enforcement responsibility be transferred should an SPSS be created?

177. Transitional rules would need to be established that would allow the outgoing PBSs to share existing information and records with the SPSS especially where this information include personal data.

178. As we explained in response to Question 17 in Chapter 4, we believe that there is no reason why there cannot be a separation between the timing of the taking over of responsibility for supervision by the SPSS and the completion of any ongoing investigation or disciplinary proceedings by the former PBS. Indeed, given that the outgoing PBS will have the jurisdiction and the experience of such enforcement actions, and given all of the other transitional issues which the SPSS may face, we believe that it would be better for all existing enforcement action to remain with the former PBS. HMT could introduce a requirement in the legislation that the PBS must notify the SPSS of relevant enforcement action as part of the flow of AML intelligence required for the SPSS to operate effectively.

179. We would strongly counsel against the imposition of a time-limit as this could lead to individuals/firms trying to elongate the process until the time expires for the outgoing PBS to complete its enforcement action.

180. Because the outgoing PBS will be obliged to carry on with its own investigation under its own bye-laws, there is a risk of parallel investigations being conducted by the PBS and SPSS that will be unfair and potentially subject to legal challenge. HMT might want to consider introducing legislation to prevent such parallel investigations.

181. HMT might also wish to consider introducing legislation to prevent any parallel investigations in respect of an AML issue after the launch of the SPSS as otherwise the former PBSs will retain an interest in such a case in relation to its members under their bye-laws. This creates the potential for future SPSS investigations to be impeded and for there to be challenges made by individuals/firms on the fairness of being pursued by two bodies which could result in potential legal challenges.

Question 27: What powers should HM Treasury have to oversee an SPSS?

182. HMT's powers to oversee an SPSS should be the same as those it has to oversee the current statutory supervisors. These should include the ability to perform assessments of each of the body's performance as a supervisor, including an assessment of the risk-based approach. HM Treasury should also have powers to require an SPSS to publicly report on its monitoring and enforcement activity each year.

Question 28: Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

General comments

183. Our main concern with the creation of a SPSS is that it appears to create a number of significant risks with there being no evidence that it could or would create efficiencies or improve supervisory effectiveness. We are concerned that the introduction of a SPSS will create significant Key People, Education and Intelligence Risks and Dependency Risk.

184. We are also concerned by the amount of time that it might take to establish the SPSS. We have seen proposed legislation introducing reforms of other areas of regulation we work in move very slowly. For example, the creation of ARGA was announced in March 2019 and legislation may yet not be introduced within the current Parliament. The delay between the announcement by the Government of its policy decision to introduce a SPSS and the launch

of such a body creates immediately, and for the whole of that intervening period, a significant Key People Risk which would impact both existing PBSs and the future SPSS.

185. The Key People Risk would manifest itself in Key People deciding to look for more lucrative economic crime positions in the commercial sector due to their lack of job security at their PBS as soon as any policy statement is issued indicating the introduction of a SPSS. Key People may also be concerned about the level of remuneration which would be offered by the SPSS if set up as a public body. For example, a recent job advert for a Senior Associate at OPBAS was listed at £45k to £50k per annum. The starting salary of an ICAEW reviewer (ie, who performs monitoring inspections) is £75k per annum.

186. If Key People quit to take up other positions, some or all PBSs would struggle during the transition period to maintain the current high levels of supervisory effectiveness. Some may even have to resign their supervisory role if too many Key People choose to leave given that it will then be impossible to recruit suitably skilled replacements given the public policy statement about the end of the PBSs' AML roles. Such a development would also reduce the number of Key People at PBSs when the SPSS is launched and the number who may be prepared to transfer their experience and expertise into the new body.

187. We also flagged in our introduction that, while the greatest risks in this model would be Key People, Intelligence and Education and Competency Risks, there would also be a Dependency Risk given that, once the SPSS is established, AML supervision capability within the PBSs and HMRC will have been dismantled (or partly dismantled) and there will be no other entity capable of taking back or taking on responsibility for some or all of the supervisory work of the SPSS were it to fail or perform at a level well below the current level of supervisory effectiveness. It is not being suggested in the Consultation Document that the SPSS will have any form of oversight like the current close supervision of the PBSs by OPBAS (other than a need to report to HMT and possibly Parliament) or that there would be any point in imposing sanctions on a public or governmental body to encourage or force improvement. The very high Key People Risk could mean that the levels of supervisory effectiveness could fall considerably and for a lengthy period with there being no alternative, with the only indicator that supervisory effectiveness has failed is a poor Mutual Evaluation Review by FATF.

Risk-based and data-led approach to supervision

188. The advantage of the SPSS model is that it would create a single platform on which to risk-assess firms across the accountancy sector and would provide the opportunity to ensure that comparable data is collected about all accountancy firms. Firms would be treated equally, with two similar firms having the same chance of being selected for monitoring review and with two firms with similar compliance issues having the same enforcement action applied.

189. However, in the short to medium term, we are concerned that there will be a significant Intelligence Risk because the risk-based approach is likely to be adversely impacted by the availability of data/information in a consistent format and of consistent quality that can be shared between the outgoing PBSs and the SPSS. The first step of data-transfer will be for the SPSS to have a list of its supervisory population and this data may be held in a variety of formats across the different professional bodies. The SPSS will then need to gather the firm risk assessments performed by each outgoing PBS (which will be held in different formats and will be based on different scoring mechanisms) to ascertain the monitoring effort required at its highest risk firms. This will take time to collate and complete. There would then be a need, unless legislation provides for it, for the SPSS to establish information-sharing gateways with the former PBSs.

190. The effectiveness of the risk-based approach would also be undermined, at least in the short term, by a failure to ensure that all of the current Key People transfer with their experience and expertise into the SPSS. While it might be possible to recruit qualified accountants into the SPSS to make up for the loss of Key People, few are likely to arrive with any experience or expertise in identifying AML risks in the sector. In addition to this, the SPSS will need to be in a position, despite public sector pay constraints, to be able to compete with the commercial sector for talented accountants in what is already a difficult market where demand for good, qualified accountants far exceeds supply.

Greater proportionality in supervision and broad toolkit

191. Once the SPSS has assessed the risk within its supervised population, it will turn its attention to ensuring that its monitoring effort is proportionate to risk with more resources allocated to higher risk firms. In the short to medium term, supervisory effectiveness would reduce as the SPSS is set up and gets to grips with its remit while juggling available resources (including the time it takes to gather data from the firms and other supervisory bodies, as well as creating the appropriate information gateways).

192. We are concerned at the task which a SPSS would face in gearing up to be able to match the number of monitoring visits which the current PBSs carry out between them in order to avoid any drop in supervisory effectiveness. Given that the supervised population is likely to be in the region of 80,000 firms, even following an approach where only the high-risk firms are regularly reviewed and the lower risk firms are only the subject of dip sampling, the SPSS is still going to need to conduct thousands of monitoring reviews each year. If dip sampling is not carried out (we have provided reasons why it should not be incorporated into the methodology in our answer to Question 14), and the current risk-based cyclical monitoring approach of bodies like ICAEW is instead extrapolated over the whole of the supervised population, the SPSS could need to carry out as many as 10,000 reviews a year (ICAEW has a back-stop of an eight-year monitoring cycle).

193. The ability of a SPSS to carry out any effective monitoring reviews on launch, let alone the thousands which would be required to replicate the current monitoring activity of the accountancy PBSs, will depend on how many Key People transfer their skills to the SPSS. If the Key People currently employed by the PBSs to carry out AML monitoring visits do not transfer to the SPSS, it is difficult to see how the SPSS will be equipped on launch to carry out any monitoring visits for a considerable period of time while efforts are made to recruit accountants and time is spent training them on identifying AML risks.

194. Even if enough Key People transfer, there is a risk that supervisory effort would follow the trend seen with the larger, statutory supervisors, where supervisory resources are allocated across larger supervised populations that the statistics show results in a reduction in proactive monitoring across all categories of risk. The most recent HMT Supervision Report (2020-22) details the number of monitoring reviews performed by supervisors. From this data, we can see that the two supervisory authorities with large populations (HMRC and FCA) review very small proportions of their supervised population each year. Over the three-year reporting period, FCA has reviewed around 2% of its population and HMRC has reviewed around 13% of its population. This contrasts with the accountancy and legal sectors where 25% and 28% of the sectors have been reviewed by the PBSs over the three-year period.

Understanding of risk

195. The Intelligence Risk associated with the SPSS model relates to the dependency on ‘external’ sources of intelligence and the problem caused by separating the general monitoring of individuals and firms by the current PBSs from the monitoring for compliance

with AML. External intelligence currently forms, and should form in the future, a large part of the important intelligence received by a supervisor. For example, in the year ended 31 July 2023, ICAEW received 145 pieces of AML related intelligence or information for us to investigate, harness and analyse for emerging threats and trends and/or enforcement action. Of these:

a) 46 (32%) came from AML monitoring reviews or AML investigations;

b) 59 (41%) came from other regulatory / monitoring activity within ICAEW (eg audit monitoring reviews, insolvency monitoring reviews or non-AML investigations); and

c) 40 (27%) came from external sources (eg, other supervisors, law enforcement or through our 'Raise an AML concern' channel).

196. This mirrors the reference in paragraph 5.26 of the consultation document to most of HMRC's criminal investigation and intelligence on TCSPs coming from teams other than its own supervisory team.

197. Based on these experiences, the SPSS should expect to receive a significant proportion of its AML-related information and intelligence from the former PBSs and other external sources. To mitigate this Intelligence Risk, the legislation creating the SPSS will need to ensure that obligations remain on the former PBSs to collect and pass on this information (with some form of oversight to ensure that this happens) and that effective information gateways are created between the SPSS and the former PBSs. The legislation will also need to provide for how the continuing AML responsibilities would be funded. If the former PBSs were forced to charge their affiliated individuals/member firms to recoup the costs of this continuing AML intelligence related work, in addition to those firms paying AML levies to the SPSS for its operations, this might prompt those firms to end their affiliation with the former PBSs which would reduce the current flow of intelligence from these sources.

198. Many accountancy PBSs carry out their AML monitoring work within the context of a wider Practice Assurance monitoring visit as part of a Practice Assurance Scheme. In addition to carrying out checks on AML compliance generally and on selected files, reviewers will also carry out checks on the way in which the firm holds client money and whether there are any breaches of Client Money Regulations and will consider other compliance issues such as the firms handling of complaints. The wider, more holistic view which a reviewer can take of the general compliance levels of a firm, and the firm's attitude to compliance generally and investment in risk management provides a much more comprehensive view of the future risk profile of that firm in relation to AML compliance. Our concern is that future AML-only monitoring visits carried out by the SPSS will have a much narrower focus and will lack this holistic appraisal. There would then need to be an information gateway for the transmission of any wider concerns but this, in turn, would rely on firms deciding to maintain their affiliation with the former PBSs after the launch of the SPSS and continuing to submit to Practice Assurance monitoring visits where participation in such a scheme and ongoing affiliation with a professional body are not legal requirements.

Effective gatekeeping and policing the perimeter

199. The SPSS model does add a layer of complexity for effective gatekeeping and policing the perimeter because the SPSS would need to perform its own gatekeeping checks, creating duplication with any checks performed by the former PBSs. The Consultation Document suggests that it may be possible for the PBSs and SPSS to reach a gatekeeping sharing arrangement to reduce duplication. In such an arrangement, the former PBSs would retain the burden of keeping those checks up to date even though they may no longer be required to perform elements of those checks under their own gatekeeping models for membership. Legislation may need to provide for this and for funding for ongoing AML intelligence work

being required from the PBSs and also to create information-sharing gateways in order to mitigate the Intelligence Risk.

200. While the PBSs could continue to provide a certificate of good standing to the SPSS for any new BOOMs as part of gate-keeper tests, as suggested in the consultation document, it is unclear how the Government would expect such work to be paid for if all future AML fees are collected by the SPSS. For example, ICAEW currently receives c. 40 applications for new BOOMs each month and the checks can be extensive.

Communicating effectively with firms

201. PBSs have many years of experience of fine-tuning the most effective ways of communicating with their supervised populations and communicate very effectively. At ICAEW, we have established channels for communication via regular email bulletins, social media posts or formal communications with MLROs and MLCPS. We are concerned about the Transition Risk in this area as we believe that there will be an inevitable reduction in effective communications as a SPSS establishes new communication channels and firms become used to looking out for these new communications.

Educating / raising awareness

202. Many of the communications referred to above either include or promote/signpost the availability of regularly updated educational materials in the form of articles, helpsheets, webinars and even educational films reflecting the importance which the PBSs attach to educational initiatives in increasing the level of AML compliance. Given this importance, we are also concerned that the introduction of a SPSS will create an Education and Competency Risk at least during any transition period after the SPSS is launched while it recruits sufficient expert resources to reach a level of supervisory effectiveness. This is because a lot of the substantive educational material communicated to firms is created by the AML subject matter experts at the PBSs. Even if the SPSS is able to secure the transfer of most Key People from the PBSs, any loss of this expertise/experience and the need for AML experts to assist with other inevitable start up stresses (such as recruitment, training, review of risk profile across enlarged supervised population) will almost inevitably reduce the time which those AML experts will be able to spend in creating or contributing to educational material creating at least a short term Education and Competency Risk.

203. However, it is also unclear from the consultation document that the Government is expecting the SPSS (or the SAS) to carry on the educational activities of the PBSs. It is not mentioned at all in the narrative despite its importance in improving the level of AML compliance across firms. If it is not envisaged that the SPSS will not provide educational material as part of its objectives, this will create a permanent and serious Education and Competency Risk which may lead to a deterioration of levels of AML compliance. This is because there will be little incentive and no funding available out of AML fees (which will go solely to the SPSS) for the former PBSs to continue to produce the educational material which is produced and disseminated at the moment. In addition, there is a risk that if the PBSs do provide educational material, that the guidance is inconsistent with the expectation of the SPSS. If, despite it not being mentioned, HMT does intend for the SPSS to undertake this role, this will need to be factored into the future operational costs of the SPSS and efforts will need to be extended to mitigate against the Key People Risk to ensure also that those at least some of those currently involved in communications/educational initiatives at the PBSs agree to transfer to the SPSS.

Enforcement

204. The advantage of the SPSS model is that it would create a single set of enforcement criteria and ensure that all accountancy firms are treated equally, with two firms with similar compliance issues having the same enforcement action applied.

205. Supervisory effectiveness will only be maintained in enforcement if the legislation creating the SPSS also reduces the friction and potential legal challenges which might be created between the SPSS and the former PBSs if they are both obliged to investigate AML breaches after the SPSS is launched (see our concerns about this in our response to Queston 26).

206. Currently, PBSs' enforcement actions include an element of ongoing monitoring to ensure that the firm reaches the required standard and maintains it. We would expect the SPSS to have a similar range of tools to ensure that compliance standards are reached and maintained.

Question 29: How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?

207. As part of our representation of ICAEW members' interests, we reached out to a range of firms of different sizes to seek their views on the consultation and the four options via questionnaire to all firms and a roundtable with the largest firms in our supervised population. This feedback was provided generally and specifically to question 29.

Open questionnaire to all firms

208. While views diverged on the specific 'ideal' arrangement for supervisors, there was general acknowledgement and concern that any significant change would create additional uncertainty and increase the burden on firms to comply. It was noted that for smaller firms without a dedicated AML resource the current arrangement already took up a significant amount of their time and any significant supervisory change was likely to exacerbate this issue. There was also concern expressed that the introduction of a new supervising body, despite the well-intentioned increase in information sharing, would require firms to share information with multiple bodies.

209. There was support for PBSs to continue to deliver supervision as they understood the specific requirements related to the accountancy profession and were able to provide support to their supervised firms where necessary.

210. There was general support expressed for the notion of simplifying the system and having one specific regulator. Several firms expressed support for this being delivered by a PBS rather than a statutory supervisor, given the potential requirement changes for compliance and potential uncertainty. Generally, firms support measures to increase effectiveness through any measure, including through having an overarching supervisor, but concern was again expressed at the current effectiveness of HMRC and how that model may be used were HMG to adopt option 3 or 4. There was general support for options 1 and 2 as being the most practical way to deliver improvements, and while some firms accepted the idea of options 3 and 4, this was offset by concerns over implementation times and administrative challenges.

Roundtable with large firms

211. We separately held a roundtable with representatives of the largest firms. The firms fed in their individual views as well as feedback they had gathered from separate roundtables convened by HMT.

212. The overwhelming consensus of the discussion was that option 1 would be the best approach to improving supervision in the accountancy sector, or at least minimising the risk of reducing the effectiveness of the system. While support was expressed for the consultation as a theoretical exercise and on the basis that we, as the UK, should be exploring options to improve, in a practical sense options 2, 3 and 4 would be very difficult to deliver with significant time, resource and monetary burdens on both HMG and the firms. There was some consensus that, theoretically, it is difficult to envisage 22 individual supervisory bodies being the ideal supervisory landscape, however given that we are in that situation and, with OPBAS being a relatively new body, it was felt that option 1 with the potential for 'natural consolidation' to take place would be the best solution should some supervisors be unable to meet new OPBAS requirements.

213. It was also noted that the timing of the consultation and any major reforms was questionable given the UK FATF inspection in the near future. Following on from this point, attendees noted that previously the FATF had judged the Gambling Commission to be the most effective UK supervisor, which supervises comparatively few firms. This led to questions as to the rationale behind the exploration of vastly increasing the number of firms either a PBS or Government supervisory body would be required to supervise under options 2,3 and 4.

214. Firms noted that the FCA were required to address issues beyond AML/CTF, and wondered that perhaps in the future if the scope of supervision could be extended to, for example, include fraud.

215. Finally, there was feedback from the HMT roundtable sessions that smaller firms particularly valued their relationship and advice that they received from their PBS, and wouldn't want to deal with a separate supervisor as well as their PBS. This would add additional burdens to firms with limited resources in this area. There was also concern that any large supervisory body tends to be overcome by the most high-profile issues or those raised by large organisations, with specific examples being drawn from the HMG Sanctions group in which the majority of focus concentrated on the oil-price cap, and not the ban on accounting or audit services, and therefore with options 3 or 4 more minor areas of focus may not receive the attention they require.

Question 30: Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

Note from ICAEW: We assume this question meant to ask about the impact on systems coordination. We have set out our assessment of the impact on supervisory effectiveness in Q28.

216. The advantage of the SPSS model is that it will create simpler information exchange between law enforcement and the SPSS for the accountancy and legal sector by providing one contact point for all issues in relation to legal and accountancy firms. However, as we noted in our response to Question 7, we believe that a register of supervised accountancy firms would provide a lower cost, practical solution to deal with this challenge (by signposting which supervisor is responsible for which firm) and the AASG would welcome the opportunity to create such a register.

217. While the Consultation Document claims at paragraph 5.2 that law enforcement and other competent authorities may be more comfortable sharing information with a public body, this fails to consider the significant improvements made in recent years by the PBSs to provide assurance around information-sharing. Considerable efforts have been made by the PBSs to gain security clearance for key staff in AML supervisory roles in addition to some Key People obtaining CJSM email accounts to share information securely. While the passing of information by law enforcement is still very low, this is not caused by the efforts of the PBSs to provide assurance about the way in which the information will be held and used.

218. We are also concerned that the creation of a SPSS will create an additional layer of complexity with sharing information and AML intelligence across the accountancy sector and create an Intelligence Risk. This is because, unless legislation provides otherwise, the former PBSs who will continue to acquire intelligence about their members and member firms through other regulatory touch-points, will be under no legal obligation to maintain any AML expertise or to provide any such intelligence to the SPSS. There will also be no oversight regime to ensure that this is happening and with the powers to take enforcement action for failure to comply. As we pointed out at paragraph 197 above, the majority of AML intelligence comes from sources other than a supervisor's AML monitoring visits. If the legislation requires ongoing AML intelligence work by the PBSs, it will also have to provide for how this ongoing AML intelligence work would be funded (given that all future AML fees will presumably be paid by supervised firms to the SPSS). If the expectation is that the PBSs will cover the costs of this work by imposing a further fee on firms, this might exacerbate the Intelligence Risk by prompting individuals/firms to end their affiliation with the former PBS ending that source of intelligence from wider regulatory monitoring work.

219. The cutting of the supervisory relationship between the former PBSs and their firms may, in any event, lead to members/firms deciding to terminate their affiliation with their PBS particularly if they do not require ongoing membership to be authorised to provide other regulated services. If this happens, this will significantly exacerbate the Intelligence Risk by ending all other sources of intelligence regarding the activities of such firms outside of the SPSS's own monitoring activities (where we have queried already how often firms, particularly those considered to be medium or low risk, will be subject to monitoring visits). The loss of intelligence could be significant. Taking ICAEW as an example, only 20-25% of the firms we supervise are also regulated by us for another service (such as audit or insolvency).

220. The SPSS model is also further complicated by the ACSP and verification regime that results from Companies House reform. The requirements for ACSP verification under Companies House Reform are not aligned with AML supervision and it is possible that intelligence shared by Companies House relate to ACSP verification failings, rather than AML compliance failings. The SPSS would need to assess each piece of intelligence for whether they relate to ACSP verification rules or the AML regulations and then, where they relate to ACSP, share such cases with the relevant professional body so that the professional body can take action against the ACSP that has performed poor quality verification work. However, this could be addressed by awarding the SPSS powers to oversee the standard of verification work.

221. The SPSS model may also require firms to provide information to both the SPSS and to ICAEW to allow us to perform our supervisory/monitoring obligations. For example, ICAEW is interested in the amount of clients' money held by our firms, so that we can assess the risk under our Clients Money Regulations. The SPSS will be interested in this information as well since Clients Money presents a key risk of accountancy firms being used by criminals to launder the proceeds of their crimes.

Question 31: Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.

Key People Risk

222. As the consultation document correctly identifies, the biggest risk in the feasibility of the establishment of a successful SPSS is the ability to ensure a smooth and complete transfer of Key People from the PBSs to the new SPSS. Without achieving this, the feasibility of

producing an effective supervisor will be fatally undermined. We assess this risk as 'very high' because there is only a very limited number of individuals in the UK who have sufficient experience and expertise in AML supervision who are all currently employed within the PBSs. This Key People Risk will threaten the feasibility of the SPSS model both in the period leading up to the creation of the SPSS and at the time it is created.

223. The Consultation Document also refers to the time it may take from HMT's issue of a policy statement to the creation of a SPSS. We have seen in other areas where ICAEW regulates that regulatory reform legislation is seldom viewed as priority legislation. We have seen significant delays to both the introduction of the legislation to create ARGA to take over from the FRC in audit and significant delays in issuing a feedback statement on the outcome of the Insolvency Service consultation on the future of insolvency regulation despite the consultation closing in March 2022. That consultation indicated that regulatory responsibility would be removed from professional bodies and has resulted in significant retention/recruitment issues for key people who regulate that area which has been exacerbated by the continuing delays in a final decision. Given that this consultation is taking place in the approach to a General Election in 2024, we are concerned that there may be a significant gap between the issuing of a policy statement and legislation being introduced into Parliament to create a SPSS, let alone work carried out to make it operationally effective.

224. Against this background, the issuing of a policy statement endorsing the introduction of a SPSS will create an immediate short-term retention issue for the PBSs in relation to their Key People. The PBSs are already struggling to match the remuneration packages on offer for their Key People in the commercial sector where there has been a growth in economic crime-related positions. The issuing of a policy statement will undermine the PBSs' ongoing recruitment/retention issues by announcing that the PBSs have limited time left as an AML supervisor. This development may prompt Key People who spend all or most of their time on AML to seek more lucrative positions in the commercial sector if they know they are going to have to change roles anyway.

225. Any significant loss of Key People by the PBSs during the transition period will not only reduce the number of Key People theoretically able to transfer to the SPSS when it is created but it may also undermine the supervisory effectiveness of the current system (given the impossibility of replacing them in light of the policy statement). If sufficient Key People leave, this could lead one or more PBSs to have to resign their supervisory responsibilities completely during the transition period creating the potential for a regulatory vacuum.

226. Even if the PBSs are successful in retaining all or most of their Key People through the whole transition period, there will still be a significant risk that many of the Key People will not transfer to a SPSS even if they are offered positions. This is because many Key People carry out AML compliance work as part of a wider workload. For example, many of ICAEW's Professional Standards staff who carry out AML monitoring reviews also carry out reviews of the quality of work carried out in other regulated areas such as audit or insolvency. Investigation case managers working on AML compliance complaints do this as part of a wider caseload of complaints. These Key People may prefer the opportunity to continue working at the PBSs by taking on some non-AML work to replace the AML work being transferred to the SPSS.

227. The SPSS model will, therefore, bring with it an inevitable Key People Risk both during the transition period and at the point when the SPSS becomes operational. The loss of some or all Key People in this way will make it virtually impossible for the SPSS to replicate the supervisory effectiveness of the current regime initially and potentially for many years after launch. The loss of Key People would also make it inevitable that the SPSS will need to stagger over many years the transfer of responsibilities from the PBSs. If most Key People

do not transfer, it may even be challenging for the new SPSS to recruit experienced accountants who understand the activities of the supervised population. Demand for experienced accountants is considerably higher than supply at the moment which is making it very difficult for public sector and not-for-profit bodies to compete with higher salaries offered by firms.

Practical issues in creating the SPSS

228. We also agree with the concern expressed in the Consultation Document that it will be virtually impossible to create the SPSS without HMT being provided with considerable start-up assistance from the PBSs and that such help and support will be difficult to procure. PBSs do not operate with excess AML resources and any assistance provided to establish the SPSS would inevitably be to the detriment of PBSs' efforts to ensure effective supervision of their supervised population during the transition period. PBSs would leave themselves open to criticism from OPBAS if this were to happen. If the policy statement heralding the creation of a SPSS causes the PBSs to lose Key People, the PBSs may not even have sufficient resources to carry out their own supervisory work, let alone help with the creation of a SPSS and some may be forced to resign their supervisory roles altogether.
229. While the Consultation Document already suggests that there will need to be a staggered process for the SPSS relieving the PBSs of their responsibilities, it is difficult to see how the SPSS will be able to take over responsibilities from any PBSs during an initial period if none or very few Key People transfer. It is also then unclear which responsibilities will be taken over first and whether this will require a focus only on one sector and whether the initial focus would be on accountancy or legal and how it is expected that the PBSs in the second area of focus will be able to retain Key People and continue effective supervision in the meantime due to the continuing uncertainty.
230. Given that the SPSS will ultimately be required to supervise 80,000 firms, it is likely that it would need to recruit hundreds of staff to supervise 80,000 firms effectively. There is no equivalent body in the UK that can give an indication of the true nature and size.

Funding

231. The SPSS model would require the SPSS to have fee-collecting powers. It would be necessary for the SPSS to have a scalable fee model that reflected the wide range in size and complexity of the firms in its remit which will stretch from the Big Four accountancy firms and Magic Circle law firms to sole practitioner firms with, say, £20,000 of fee income.
232. The SPSS would also need to set up a funding model that factored in set up costs. We agree with the consultation document that these would be significant – requiring a physical office, new IT systems, recruitment fees to bring in significant numbers of staff and communications.
233. We do not believe that the SPSS will create economies of scale or efficiencies in supervision resulting in a decrease in fees paid by firms. At ICAEW, AML supervision is currently funded through ICAEW's practicing certificate (PC) fee that is paid by ICAEW PC Holders. ICAEW members must hold a PC if they are a principal in a firm (or a sole practitioner) which is in 'public practice' (and therefore a 'relevant person' under the MLRs). However, the PC fee also funds the whole of the Practice Assurance scheme of which AML compliance is only one part. We do not charge our member firms, or ICAEW members, separately for AML supervision. Consequently, ICAEW members will continue to have to pay the PC fee to ICAEW, with perhaps a small reduction to reflect the fact that ICAEW would no longer perform AML monitoring activity, and pay the new supervision fee to the SPSS.

CHAPTER 6: SINGLE ANTI-MONEY LAUNDERING SUPERVISOR

Question 32: Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?

234. The SAS model, like Options 2 and 3, does add a layer of complexity for effective gatekeeping and policing the perimeter because the SAS would need to perform its own gatekeeping checks. There is the potential that there will be duplication with the basic checks performed by the accountancy professional membership bodies for their own membership purposes. While the Consultation Document suggests that the SAS may be able to rely on the checks performed by the PBSs, it is unlikely that the PBSs will carry out all elements of the current checks if they no longer have any AML supervision responsibilities. In order to mitigate against an Intelligence Risk[5], the legislation creating the SAS may need to require the PBSs to continue to carry out AML intelligence work and provide the SAS with relevant information and create information-sharing gateways.

235. If the SAS were to require certificates of good standing from the former PBSs for any new BOOMs as part of gate-keeper tests, it is unclear how it is proposed that the PBSs be remunerated for number of checks which would be required (for example, ICAEW processes 30-40 applications for new BOOMs each month) and the extensive checks which are made. It would be unfair for the Government to expect any of this work to be carried out without some form of compensation.

Question 33: Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.

General comments

236. Our main concern with the SAS model is that it appears to create a number of significant risks with there being no evidence that it could, or would, create efficiencies or improve supervisory effectiveness. In line with our comments on the introduction of a SPSS, we are concerned that the introduction of a SAS will create significant Key People, Education and Competence and Intelligence Risks and that there would be a low Dependency Risk. Indeed, by combining accountancy sector supervision into the SAS and relieving the FCA, the Gambling Commission and HMRC of their regulatory roles in addition to the PBSs, we are concerned that the Key People Risk is considerably greater than even those we highlighted for the creation of a SPSS.

237. We are concerned about the length of time it will take from the issue of a policy statement endorsing the creation of a SAS to it becoming fully operational. We believe that this will be an even longer period than to create a SPSS given how much broader its responsibilities will be, how many entities it will be created to supervise and how many staff it will need to recruit and train in order to provide effective supervision over the whole of its supervised population. Any significant delay between the issuing of a policy statement and the SAS becoming operational will create a Key People Risk not only in relation to the Key People at the PBSs but also at the FCA, HMRC and the Gambling Commisssion. Key People in all the current supervisors may decide to seek more lucrative and secure roles in the commercial sector. Such a development would not only undermine the supervisory effectiveness of all supervisors during the transition period but will create problems when staffing the SAS.

238. We also flagged in our introduction that, while the greatest risks in this model would be Key People, Intelligence and Education and Competency Risks, there would also be a

[5] We have defined Intelligence Risk, Key People Risk, Dependency Risk and Education and Competency Risk in the Introduction.

Dependency Risk given that, once the SAS is established, all other AML supervision capability will have been dismantled and there will be no other entity capable of taking back or taking on responsibility for some or all of the supervisory work of the SAS were it to fail or perform at a level well below the current level of supervisory effectiveness. It is not being suggested in the Consultation Document that the SAS will have any form of oversight like the current close supervision of the PBSs by OPBAS (other than a need to report to HMT and possibly Parliament) or that there would be any point in imposing sanctions on a public or governmental body to encourage or force improvement. The very high Key People Risk could mean that the levels of supervisory effectiveness could fall considerably and for a lengthy period with there being no alternative, with the only indicator that supervisory effectiveness has failed is a poor Mutual Evaluation Review by FATF.

Risk-based and data-led approach to supervision

239. The main advantage in creating a SAS is that it would create a single platform on which to risk-assess across all businesses and entities who are required to comply with the MLRs. It may lead to all regulated entities being subject to the same supervisory methodology, being treated equally and fairly so that two small, regulated firms would have the same chance of being selected for a monitoring review and would be subject to the same outcomes in enforcement actions arising out of monitoring reviews irrespective of the nature of the businesses and the sectors they operate within.

240. However, in the short to medium term, we are concerned that there will be a significant Intelligence Risk because the risk-based approach is likely to be adversely impacted by the availability of data/information in a consistent format and of consistent quality that can be shared between all of the current supervisors and the SAS. The first step of data-transfer will be for the SAS to have a list of its supervisory population and this data may be held in a variety of formats across the different professional bodies. The SAS will then need to gather the firm risk assessments performed by all of the current supervisors (which will be held in different formats and will be based on different scoring mechanisms) to ascertain the monitoring effort required at its highest risk entities. This will take time to collate and complete. Legislation will have to provide for a continuing role for the former PBSs (and other supervisors), how those continuing intelligence-sharing role will be funded and will need to create effective information-sharing gateways.

241. The effectiveness of the risk-based approach would also be undermined, at least in the short term, by a failure to ensure that all the current Key People in the PBSs transfer their experience and expertise to the SAS. To try to fill any resource/expertise gaps for its supervision of the accountancy sector, the SAS will also need to be in a position, despite public sector pay constraints, to be able to compete with the commercial sector for talented accountants in what is already a difficult market where demand for good, qualified accountants far exceeds supply.

Greater proportionality in supervision and broad toolkit

242. Once the SAS has assessed the risk within its supervised population, it will turn its attention to ensuring that its monitoring effort is proportionate to risk with more resources allocated to higher risk firms. In the short to medium term, supervisory effectiveness would reduce as the SAS is set up and gets to grips with its remit while juggling available resources (including the time it takes to gather data from the firms and other supervisors, as well as creating the appropriate information gateways).

243. We are concerned at the size of the task facing the SAS in gearing up to be able to match the number of monitoring visits which the current supervisors carry out between them in order to avoid any drop in supervisory effectiveness. Given that the supervised population is

likely to be in the region of 101,000 firms, even following an approach where only the high-risk firms are regularly reviewed and the lower risk firms are only the subject of dip sampling, the SAS is still going to need to conduct thousands of monitoring reviews each year. If dip sampling is not carried out (we have provided reasons why it should not be incorporated into the methodology in our answer to Question 14), and the current monitoring approach of bodies like ICAEW is extrapolated over the whole of the supervised population, this would lead to thousands of additional reviews every year.

244. The ability of a SAS to carry out effective monitoring reviews on launch, let alone the thousands which would be required to replicate the current monitoring activity of the current supervisors, will depend on how well the Key People Risk is mitigated. If the Key People currently employed by the PBSs to carry out AML monitoring visits do not transfer to the SAS, it is difficult to see how the SAS will be equipped either on launch, or for a considerable period of time afterwards, to carry out many monitoring visits. If there is a deficit in Key People transferring from the accountancy PBSs, it will take a considerable period of time to train replacements even if it is possible to recruit accountants into roles at the SAS given the current mismatch of demand and supply for experienced accountants.

245. Even if enough Key People transfer, there is a risk that supervisory effort would follow the trend seen with the larger, statutory supervisors, where supervisory resources are allocated across larger supervised populations that the statistics show results in a reduction in proactive monitoring across all categories of risk. The most recent HMT Supervision Report (2020-22) details the number of monitoring reviews performed by supervisors. From this data, we can see that the two supervisory authorities with large populations (HMRC and FCA) review very small proportions of their supervised population each year. Over the three-year reporting period, FCA has reviewed around 2% of its population and HMRC has reviewed around 13% of its population. This contrasts with the accountancy and legal sectors where 25% and 28% of the sectors have been reviewed by the PBSs over the three-year period. Indeed, one of the first issues to be tackled by the SAS would be how to harmonise the significant difference in the current AML monitoring regimes across different sectors in order to ensure both fairness and that resources are being directed to the key risk areas.

Understanding of risk

246. The Key People and Intelligence Risks associated with the creation of a SAS are likely to reduce understanding of risk within the different sectors in the short to medium term due to the separation of general monitoring firms affiliated to the former accountancy PBSs from the monitoring of AML compliance. This external intelligence currently forms, and should form in the future, a large part of the important intelligence received by a SAS. For example, in the year ended 31 July 2023, ICAEW received 145 pieces of AML related intelligence or information for us to investigate, harness and analyse for emerging threats and trends and/or enforcement action. Of these:

a) 46 (32%) came from AML monitoring reviews or AML investigations;

b) 59 (41%) came from other regulatory / monitoring activity within ICAEW (eg audit monitoring reviews, insolvency monitoring reviews or non-AML investigations); and

c) 40 (27%) came from external sources (eg, other supervisors, law enforcement or through our ‘Raise an AML concern’ channel).

247. This mirrors the reference in paragraph 5.26 of the consultation document to most of HMRC’s criminal investigation and intelligence on TCSPs coming from teams other than its own supervisory team.

248. Based on these experiences, the SAS should expect to receive a significant proportion of its AML-related information and intelligence from all of the former supervisors. To mitigate this

Intelligence Risk, the legislation creating the SAS will need to ensure that obligations remain on the former supervisors to collect and pass on this information (with some form of oversight to ensure that this happens) and that effective information gateways are created between the SAS and the former supervisors and to provide for how such continuing activities will be funded (given that all future AML levies will presumably be paid by firms to the SAS). If the accountancy PBSs were forced to charge their affiliated individuals/member firms to recoup the costs of any required continuing AML intelligence related work, this might prompt those individuals/firms to end their affiliation with the PBS which would significantly reduce the current flow of intelligence. This would further exacerbate the Intelligence Risk.

249. Many accountancy PBSs carry out their AML monitoring work within the context of a wider Practice Assurance monitoring visit as part of a Practice Assurance Scheme. In addition to carrying out checks on AML compliance generally and on selected files, reviewers will also carry out checks on the way in which the firm holds client money and whether there are any breaches of Client Money Regulations and will consider other compliance issues such as the firms handling of complaints. The wider, more holistic view which a reviewer can take of the general compliance levels of a firm, and the firm's attitude to compliance generally and investment in risk management provides a much more comprehensive view of the future risk profile of that firm in relation to AML compliance. Our concern is that future AML-only monitoring visits carried out by the SAS will have a much narrower focus and will lack this holistic appraisal. There would then need to be an information gateway for the transmission of any wider concerns but this, in turn, would rely on firms deciding to maintain their affiliation with the former PBSs after the launch of the SAS and continuing to submit to Practice Assurance monitoring visits where participation in such a scheme and ongoing affiliation with a professional body are not legal requirements.

Communicating effectively with firms

250. Current accountancy PBSs have many years of experience of fine-tuning the most effective ways of communicating with their supervised populations and communicate very effectively. At ICAEW, we have established channels for communication via regular email bulletins, social media posts or formal communications with MLROs and MLCPS. We are concerned about the Transition Risk in this area as we believe that there will be an inevitable reduction in effective communications as a SAS establishes new communication channels and firms become used to looking out for these new communications.

Educating / raising awareness

251. Many of the communications referred to above either include or promote/signpost the availability of regularly updated educational materials in the form of articles, helpsheets, webinars and even educational films reflecting the importance which the PBSs attach to educational initiatives in increasing the level of AML compliance. Given this importance, we are also concerned that the introduction of a SAS will create an Education and Competency Risk at least during any transition period after the SAS is launched while it recruits sufficient expert resources to reach a level of supervisory effectiveness. This is because a lot of the substantive educational material communicated to firms is created by the AML subject matter experts at the PBSs. Even if the SAS is able to secure the transfer of most Key People from the PBSs, any loss of this expertise/experience and the need for AML experts to assist with other inevitable start up stresses (such as recruitment, training, review of risk profile across enlarged supervised population) will almost inevitably reduce the time which those AML experts will be able to spend in creating or contributing to educational material creating at least a short term Education and Competency Risk.

252. However, it is also unclear from the Consultation Document that the Government is expecting the SAS to carry on the educational activities of the PBSs. It is not mentioned at all in the narrative despite its importance in improving the level of AML compliance across firms. If it is not envisaged that the SAS will not provide educational material as part of its objectives, this will create a permanent and serious Education and Competency Risk which may lead to a deterioration of levels of AML compliance. This is because there will be little incentive and no funding available out of AML fees (which will go solely to the SAS) for the former PBSs to retain specialist AML staff and to continue to produce the educational material which is produced and disseminated at the moment. In addition, there is a risk that if the PBSs do provide educational material, that the guidance is inconsistent with the expectation of the SAS. If, despite it not being mentioned, HMT does intend for the SAS to undertake this role, this will need to be factored into the future operational costs of the SAS and efforts will need to be extended to mitigate against the Key People Risk to ensure also that those at least some of those currently involved in communications/educational initiatives at the PBSs agree to transfer to the SAS.

Enforcement

253. The advantage of the SAS model is that it would create a single set of enforcement criteria and ensure that all regulated firms are treated equally, with two firms with similar compliance issues having the same enforcement action applied.

254. However, supervisory effectiveness will only be maintained in enforcement if the legislation creating the SAS also reduces the friction and potential legal challenges which might be created between the SAS and the former supervisors if they are both obliged to investigate AML breaches after the SAS is launched. Firms falling within the supervision of the SAS for AML compliance which are affiliated to a professional body are likely to be liable to disciplinary action under the body’s bye-laws in respect of future AML breaches even after the SAS becoming operationally effective.

255. Currently, PBSs’ enforcement actions include an element of ongoing monitoring to ensure that the firm reaches the required standard and maintains it. We would expect the SAS to have a similar range of tools to ensure that compliance standards are reached and maintained.

Question 34: Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.

256. We do not have any information or evidence on the impact on the supervised populations of the statutory supervisors.

Queston 35: Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

257. The main advantage of the SAS model is that it will create simpler information exchange between that law enforcement and the SAS by providing one contact point for all issues in relation to all regulated firms. However, as we noted in our response to Question 7, we believe that properly maintained registers of supervised accountancy firms would provide a lower cost, practical solution to deal with this challenge in identifying the supervisor for accountancy firms (by signposting which supervisor is responsible for which firm) and the AASG would welcome the opportunity to create such a register.

258. While the Consultation Document suggests that law enforcement and other competent authorities may be more comfortable sharing information with a public body, this fails to consider the significant improvements made in recent years by the PBSs to provide assurance around information-sharing. Considerable efforts have been made by the PBSs to gain security clearance for key staff in AML supervisory roles in addition to some Key People obtaining CJSM email accounts to share information securely. While the passing of information by law enforcement is still very low, this is not caused by the efforts of the PBSs to provide assurance about the way in which the information will be held and used.

259. We are also concerned that the creation of a SAS will create an additional layer of complexity with sharing information and AML intelligence across the accountancy sector and create an Intelligence Risk. This is because, unless legislation provides otherwise, the former PBSs who will continue to acquire intelligence about their members and member firms through other regulatory touchpoints, will be under no legal obligation to maintain any AML expertise or to provide any such intelligence to the SAS. There will also be no oversight regime to ensure that this is happening and with the powers to take enforcement action for failure to comply. As we pointed out at paragraph 248 above, the majority of AML intelligence comes from sources other than a supervisor’s AML monitoring visits. If the legislation requires ongoing AML intelligence work by the PBSs, it will also need to provide for funding for this ongoing work by the former PBSs given that all future AML fees will presumably be paid by supervised firms to the SAS. If the expectation is that the PBSs will cover the costs of this work by imposing a further fee on firms, this might exacerbate the Intelligence Risk by prompting individuals/firms to end their affiliation with the former PBS ending that source of intelligence from wider regulatory monitoring work.

260. The cutting of the supervisory relationship between the former PBSs and their firms may, in any event, lead to members/member firms deciding to terminate their affiliation with their PBS particularly if they do not require ongoing membership to be authorised to provide other regulated services. If this happens, this will significantly exacerbate the Intelligence Risk by ending all other sources of intelligence regarding the activities of such firms outside of the SAS’s own monitoring activities (where we have queried already how often firms, particularly those considered to be medium or low risk, will be subject to monitoring visits).

261. The SAS model is also further complicated by the ACSP and verification regime that results from Companies House reform. The requirements for ACSP verification under Companies House Reform are not aligned with AML supervision and it is possible that intelligence shared by Companies House relate to ACSP verification failings, rather than AML compliance failings. The SAS would need to assess each piece of intelligence for whether they relate to ACSP verification rules or the AML regulations and then, where they relate to ACSP, share such cases with the relevant professional body so that the professional body can take action against the ACSP that has performed poor quality verification work. However, this could be addressed by awarding the SAS powers to oversee the standard of verification work.

262. The SAS model may also require firms to provide information to both the SAS and to PBSs like ICAEW to allow them to perform their ongoing supervisory/monitoring obligations. For example, ICAEW is interested in the amount of clients’ money held by our firms, so that we can assess the risk under our Clients Money Regulations. The SAS will be interested in this information as well since Clients Money presents a key risk of accountancy firms being used by criminals to launder the proceeds of their crimes.

Question 36: Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.

Key People Risk

263. As the consultation document correctly identifies, the biggest risk in the feasibility of the establishment of a successful SAS is the ability to ensure a smooth and complete transfer of Key People from the PBSs, the FCA, HMRC and the Gambling Commission to the new SAS. Without achieving this, the feasibility of producing an effective supervisor will be fatally undermined. We put it that highly because there is only a very limited number of individuals in the UK who have sufficient experience and expertise in AML supervision across all of the relevant sectors and they work currently for all of the current supervisors. This Key People Risk will threaten the feasibility of SAS model both in the period leading up to the creation of the SAS and at the time it is created.
264. We are also concerned about the time it may take from HMT's issue of a policy statement to the creation of a SAS. We have seen in other areas where ICAEW regulates that regulatory reform legislation is seldom viewed as priority legislation. We have seen significant delays to both the introduction of the legislation to create ARGA to take over from the FRC in audit and significant delay until September 2023 in issuing a feedback statement on the outcome of the Insolvency Service consultation on the future of insolvency regulation despite the consultation closing in March 2022. The announcement made at the start of that consultation in December 2021 that regulatory responsibilities would be removed from professional bodies created significant ongoing retention/recruitment issues for the professional bodies. Given that this consultation is taking place prior to a General Election due in 2024, we are concerned that there could be a very long gap between the issuing of a policy statement and even legislation being introduced into Parliament to create a SAS, let alone work carried out to create it.
265. Against this background, the issuing of a policy statement indicating the Government's intention to introduce either a SAS or a SPSS will create an immediate short-term retention issue for the PBSs in relation to their Key People. The PBSs are already struggling to match the remuneration packages on offer for their Key People in the commercial sector where there has been a growth in economic crime-related positions. The issuing of the policy statement will undermine the retention/recruitment efforts of the PBSs by making it clear that there is no long-term future for the PBSs in AML supervision. Such a development may prompt Key People who spend all or most of their time on AML to seek more lucrative positions in the commercial sector if they are going to have to change roles anyway.
266. Any significant loss of Key People by the PBSs during an interim period will not only reduce the number of Key People theoretically able to transfer when the SAS is created but would also undermine the supervisory effectiveness of the current system during the transition period and the loss of Key People could lead one or more PBSs to resign their supervisory responsibilities. This, in turn, has the potential to create a regulatory vacuum.
267. Even if the PBSs are successful in retaining all or most of their Key People during the whole of the transition period, there will still be a significant risk that many of the Key People will not transfer to a SAS even if they are offered positions. This is because many Key People in the PBSs carry out AML compliance work as part of a wider workload. For example, many of ICAEW's professional standard staff who carry out AML monitoring reviews also carry out reviews of the quality of work carried out in other regulated areas such as audit or insolvency. Investigation case managers working on AML compliance complaints do this as part of a wider caseload of complaints. These Key People may prefer the opportunity to continue working at the PBSs by taking on some non-AML work to replace the AML work being transferred to the SAS.
268. The SAS model will, therefore, bring with it an inevitable and significant Key People Risk both during the transition period and at the point when the SAS becomes operational and

seeks to transfer in the expertise/experience it requires to be effective. The loss of Key People may make it virtually impossible for the SAS to replicate the supervisory effectiveness of the current regime for many years, if at all. The loss of Key People would also make it inevitable that the SAS will need to stagger the transfer of responsibilities from the PBSs over many years. It may even be challenging, if the market for talent does not improve, for the new SAS to recruit experienced accountants who understand the activities of the supervised population. Demand for experienced accountants is considerably higher than supply and where public sector bodies and not-for-profit institutes must compete with higher salaries offered by the larger accountancy firms.

Practical issues in creating a SAS

269. We also agree with the concern expressed in the Consultation Document that it will be virtually impossible to create the SAS without HMT being provided with considerable start-up assistance from the PBSs (and other current supervisors) and that such help and support will be difficult to procure. PBSs do not operate with excess AML resources and any assistance provided to establish the SAS will be inevitably to the detriment of the PBS's ongoing efforts to ensure effective supervision of their supervised population. As such failures will be criticised by OPBAS, there will be no incentive for any PBS to provide any assistance. Of course, if the policy statement heralding the creation of a SAS has caused the PBSs to lose some or many Key People, some PBSs may not even have sufficient resources to discharge their current supervisory responsibilities and some may have even been forced to resign their supervisory responsibilities.

270. While the Consultation Document already suggests that there will need to be a staggered process for the SAS relieving the PBSs of their responsibilities, it is difficult to see how the SAS will be able to take over responsibilities from any PBSs during an initial period if few Key People transfer. It is also then unclear which responsibilities will be taken over first and from which supervisors. While there is a suggestion that the SAS might take over responsibility from the smallest PBSs first and build up, this will only result in the transfer of a fraction of businesses required to be supervised by the SAS and does not factor in the potential need to prioritise the taking over of responsibilities early from the largest PBSs if they suffer the largest loss of Key People. Even if the SAS has the luxury of assuming only the responsibilities of the smallest PBSs first, leaving the largest to a much later date, the continued functioning of the existing supervisory system will require the SAS not to 'poach' Key People from the largest PBSs before the SAS is in a position to take over those PBSs' responsibilities.

271. Given that the SAS will ultimately be required to supervise 101,000 firms, it is likely that it would need to recruit hundreds of staff to supervise these firms effectively. There is no equivalent body in the UK that can give a guide to how difficult this will be to achieve.

Funding

272. The SAS model will require the SAS to have fee-collecting powers. It would be necessary for the SAS to have a scalable fee model that reflected the wide range in size and complexity of the firms in its remit which will stretch from the largest banks to Big Four accountancy firms to Magic Circle law firms and also to sole practitioner firms with £20,000 of fee income.

273. The SAS would also need to set up a funding model that factored in the potentially huge start-up costs. We agree with the consultation document that these would be significant – requiring a physical office, new IT systems, recruitment fees to bring in significant numbers of staff and communications.

274. We do not believe that the SAS will create economies of scale or efficiencies in supervision resulting in a decrease in fees paid by firms. At ICAEW, AML supervision is currently funded

through ICAEW's practicing certificate (PC) fee that is paid by ICAEW PC Holders. ICAEW members must hold a PC if they are a principal in a firm (or a sole practitioner) which is in 'public practice' (and therefore a 'relevant person' under the MLRs). However, the PC fee also funds the whole of the Practice Assurance scheme of which AML compliance is only one part. activity across ICAEW and not just AML supervision. We do not charge our member firms, or ICAEW members, separately for AML supervision. Consequently, ICAEW members will continue to have to pay the PC fee to ICAEW, with perhaps a small reduction to reflect the fact that ICAEW would no longer perform AML monitoring activity, and pay the new supervision fee to the SAS.

CHAPTER 7: SANCTIONS SUPERVISION

Question 37: Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?

275. ICAEW's proactive risk-based approach has always included risk assessing firms for AML risk relating to sanctions, as well as understanding the firm's assessment and compliance with the sanctions regime through regular monitoring reviews. We conducted a thematic review in 2021 on trust and company service providers and this covered how firms sanction-check clients.

276. In direct response, to Russia's invasion of Ukraine, ICAEW created the Ukraine hub to collate education and guidance in one place for firms on the risks associated with the war in Ukraine and Russians sanctions compliance, including new CCAB Guidance on Sanctions for the Accountancy Sector. We publicised these materials through regular articles to firms and members (both in business and practice). Additional guidance was issued to quality assurance reviewers in March 2022 for immediate use, setting out new procedures to address AML risks associated with sanctions.

277. We also brought forward our scheduled thematic review for the largest firms on how they identify, handle and mitigate the AML risk associated with PEPs and sanctions to summer 2022. We also extended it to assess how firms identified, and managed, the AML risks associated with sanctions during this period of significant and rapid change. All our firms had access to the sanctions thematic review's final report, providing guidance on exposure, screening, risks and best practice. There is continued assessment, and communication to firms, of emerging threats and trends.

Question 38: Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?

278. As a professional body, ICAEW has an overriding interest in any member, or member firm, who has failed to comply with laws and regulations through both the Practice Assurance scheme and through the ICAEW Disciplinary Bye-Laws.

279. The Practice Assurance scheme requires ICAEW members and ICAEW member firms to comply with laws, regulations, and standards relevant to the services it provides – this includes the sanctions regime.

280. The ICAEW Disciplinary Bye-Laws set out that an ICAEW member and an ICAEW member firm shall be liable to disciplinary action if they have:

a) committed misconduct; committed an act that will bring discredit on themselves, ICAEW or the profession of accountancy or fallen significantly short of the standards reasonably expected of them; or

b) demonstrated professional incompetence; or

c) been convicted of an indictable offence.

281. Consequently, ICAEW has an interest in any case where it is known that one of its members, or member firms, has breached a sanction and positively encourage information and intelligence sharing so that we can bring disciplinary cases, where relevant. We do not believe we need any further powers.

Question 39: Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

282. The key challenge will relate to ensuring there is a clearly defined and agreed line between AML supervisors effectively monitoring sanctions and systems and controls and OFSI, or DBT, effectively enforcing actual sanctions breaches. These can be achieved through a clear regulatory framework setting out the supervisory responsibilities of the AML supervisors.

Question 40: Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

283. Yes. The accountancy sector has both financial and trade sanctions that apply to its businesses and consequently, it makes sense for the AML supervisors to have supervisory responsibilities across all areas of sanctions.

CHAPTER 8: OVERVIEW

Question 41: How would expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

284. AML supervision is currently funded through ICAEW's practicing certificate (PC) fee that is paid by ICAEW PC Holders. ICAEW members must hold a PC if they are a principal in a firm (or a sole practitioner) which is in 'public practice' (and therefore a 'relevant person' under the MLRs). However, the PC fee also funds activity across ICAEW and not just AML supervision. In 2023, the PC fee was £395 across approximately 19,000 PC holders (£7.5million). We would expect to a small reduction in the PC fee if ICAEW was no longer an AML supervisor.

285. We do not charge our member firms, or ICAEW members, separately for AML supervision. We do charge non-member firms for supervision, where that supervision is via contract. The fee structure is based on the PC fee – with any non-ICAEW member in a firm being charged the equivalent of a PC fee. Currently, we charge approximately £336,000 each year for supervision via contract.

286. We also charge PC holders an 'OPBAS levy' which we use to fund the fee ICAEW pays to OPBAS for oversight. If we no longer carried out AML supervision, we would no longer charge the OPBAS levy to PC holders (this totalled £1.06million in 2023) however, we pass this straight on to OPBAS and so this is not an 'income' for ICAEW.

Question 42: Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness and (b) improved system coordination.

287. We have set out below our evaluation of each of the four options in the Consultation Document through the lens of the four key risks we have identified – Dependency Risk, Intelligence Risk, Key People Risk and Education and Competency Risk. We have defined these in the Introduction.

Option 1: OPBAS+

288. While there is a Dependency Risk around the larger PBSs deciding to continue their AML supervisory responsibilities in the event of OPBAS gaining further powers and applying them in a heavy-handed manner, it is much less pronounced risk than can be seen in Options 2, 3 and 4.
289. Impact is likely to be limited from Key People, Intelligence and Education and Competency Risks as, under Option 1, there will be an expectation by PBSs that they will be able to retain their Key People. This this will allow the PBSs to continue to provide excellent educational material as well as continue to harness the intelligence which they gain from their many other touchpoints with their supervised population.
290. Overall, we believe that supervisory effectiveness will be, at worst, maintained and at best, enhanced and improved during future cycles of OPBAS supervisory assessments. System co-ordination will also be maintained as PBSs continue to gather information and intelligence and work alongside law enforcement to identify firms who are knowingly enabling money laundering. A single register of all accountancy firms could strengthen system co-ordination further and would support future reforms, such as Companies House reform, to ensure effective information and intelligence sharing on ACSPs.
291. We believe that Option 1 is the most feasible of the options as changes to OPBAS' powers can be implemented swiftly.

Option 2: Consolidated PBS model

292. We consider there to be a very high Dependency Risk with Option 1 due to the ability of the Consolidated PBS to give up its responsibilities at a time after other PBSs have closed down their AML supervision capabilities.
293. There will also be high Intelligence, Key People and Education and Competency Risks. While the Consolidated PBS should at least be hopeful of retaining its own Key People, it will need to recruit additional resources to supervise effectively a significantly larger population and it might not be possible to recruit the Key People from all other PBSs or even experienced accountants. Any shortfall of expert staff will put pressure on time available to produce educational material. While the Consolidated PBS will maintain its own touchpoints to gather AML-intelligence from non-AML activity about firms it supervised before it was selected, there may also be an Intelligence Risk in obtaining AML intelligence from the former PBSs given the uncertainty about their future intelligence-gathering roles and the availability of Key People to identify AML intelligence from their remaining professional standards activity.
294. We believe that supervisory effectiveness will reduce in the short-medium term as these risks crystallise and it will take several years to reach the equivalent levels of supervisory effectiveness achieved by the current PBSs. System co-ordination will be streamlined between law enforcement and the consolidated PBS but will become more complex when considering how the Consolidated PBS will gather AML intelligence that the former PBSs obtain from their non-AML monitoring activity. The former PBSs will unlikely retain skilled staff to identify emerging AML threats and trends.
295. The feasibility challenges arise from the Key People risks and the ability of the new Consolidated PBS to retain and recruit skilled staff. The Consolidated PBS will supervise

51,000 accountancy firms which will make it the largest supervisor in the UK and significantly larger than any other supervisory or regulatory body currently in existence.

Option 3: SPSS

296. We believe that this model will have very high Intelligence, Key People and Education and Competency Risks due to the reliance of the new model on transitioning Key People to the new SPSS, the reliance on AML experts to produce educational material and the problems which will be created if there is a significant loss of intelligence from the former PBSs.
297. This model will also have a moderate Dependency Risk if there is no additional oversight put in place to hold it to account but a lower Dependency Risk than either Option 2 or Option 4.
298. We believe that supervisory effectiveness will reduce significantly in the short-medium term, as Key People risks crystallise. Given the size of the SPSS supervised population, it will take many years for the SPSS to reach equivalent levels of supervisory effectiveness achieved by the PBSs. While system co-ordination will be more streamlined between law enforcement and the SPSS, it will become more complex when considering how the SPSS will gather AML intelligence that the former PBSs obtain from their non-AML monitoring activity. This is further complicated by the fact that some intelligence held by HMRC will not be available to the SPSS. The former PBSs will unlikely retain skilled staff to identify emerging AML threats and trends.
299. There are also significant feasibility challenges linked to the set-up of a new statutory supervisor that is a public body, including the funding of new premises, IT systems and central functions. The SPSS will also need to recruit significant numbers of staff to provide effective supervision. The SPSS will supervise around 81,000 relevant persons.

Option 4: creation of a SAS

300. We believe that this model has the highest Key People and Education and Competency Risks because of the greater length of time it will take to create a SAS even after legislation is passed to transfer responsibilities. The longer the transition period, the longer time there will be for Key People to identify or be lured by more lucrative job opportunities with better job security. The more Key People who are lost, the greater the reduction will be in the PBSs' ability to produce educational materials during the transition period.
301. The SAS model will also have the same Intelligence Risk as Option 3 and a higher Intelligence Risk than Option 2 (as the Consolidated PBS will at least maintain its own other touchpoints). It will have a greater Dependency Risk than Option 3 because all supervisory responsibility will have been consolidated within one entity, not 4 as in Option 3.
302. We believe that the SAS model presents the greatest threat to supervisory effectiveness, with the significant Key People risk likely to cause a reduction in supervisory effectiveness across all the regulated sectors over a sustained period. It will also create the greatest disruption to system co-ordination as the intelligence risk now applies to all regulated sectors, rather than just the accountancy and legal sectors, and information and intelligence gathered from HMRC and FCA monitoring activity will no longer be available to the SAS.
303. There will also be considerable issues around the feasibility of transferring over 100,000 entities to a single supervisor effectively and efficiently.

Summary of risk analysis

304. It is clear from our analysis above that viewing the various Options through a risk lens highlights that some of the Options set out in the Consultation Document have very high risks attached to them, particularly the creation of a SPSS or a SAS.

305. While the OPBAS review reports indicate that the existing framework is less than perfect, there is a clear route map showing how greater quality and greater levels of consistency can be achieved through Option 1, particularly if OPBAS were to be given more powers and used them carefully to ensure better performance to remove responsibilities from the PBSs who do not improve. Option 1 comes with far less risk of undermining the current levels of supervisory effectiveness both during the transition periods and during the initial operational period of other models.

306. Both the HMT June 2022 review and the Consultation Document identified several strengths of the existing system for supervision which Option 1 can build on, including sector-specific expertise and multiple touchpoints with their supervised firms which comes from the degree of onsite monitoring which is undertaken. Indeed, the degree of monitoring by the PBSs compared to the statutory supervisors is quite stark. The most recent HMT Supervision Report details the number of monitoring reviews performed by supervisors between 2020 and 2022. Over this three-year period, FCA has reviewed around 2% of its population, HMRC has reviewed around 13% of its population but the accountancy and legal PBSs have reviewed 25% and 28% of the sectors, respectively.

307. It is against this analysis that HMT must weigh the criticisms of the PBSs referenced in the HMT review and the Consultation Document relating to inconsistencies, poor information-sharing, and the independence of the PBSs from the sectors they supervise. We believe that there have also been significant improvements in these areas during the last 5 years.

Question 43: Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?

308. We do not have evidence or information on whether these options would help or harm individuals or households with protected characteristics.

APPENDIX 1 – ADDITIONAL INFORMATION REQUESTS

A) How do you use the powers that are available to you?

We would like to know what powers you have, and what they are rooted in. We know that your powers are largely publicly available, but we are interested in your experience using them. Of the powers you have, it would be useful to know which are the ones you use regularly, and which you do not, and why. If you think that there any limitations in your powers, such as powers you feel it would be useful to have, or restrictions on their use, this would also be helpful.

309. We do not currently experience any barriers in using our powers effectively. ICAEW conducted a review of its disciplinary bye-laws during 2021/22 and the new disciplinary framework came into effect on 1 June. At a high level, the review simplified the bye-laws by removing legalistic language and improving clarity but also moved processes and procedures into the disciplinary regulations. More substantially, the review created mechanisms to streamline those processes and procedures so that the Conduct Department's resources can be directed at managing disciplinary cases.

310. The review introduced the power to 'suspend' members and gave the Conduct Committee and Disciplinary Tribunals the power to impose a non-financial sanction such as the requirement for a member to undertaking relevant training.

311. As we have noted in the previous two HMT Annual Questionnaires, the whistleblowing procedures expected by the ML Regs (and OPBAS sourcebook) are not married up with the protections in employment legislation therefore a key aspect of the risk-based approach – in terms of gathering information/intelligence from staff within firms – is weakened because the staff member may feel exposed/unprotected and/or we are required to disclose information via a Subject Access Request. We would welcome additional powers to be able to maintain the confidentiality of certain pieces of information it they relate to an ongoing investigation by ICAEW or law enforcement.

B) How do you determine your fee structures?

Are your AML/CTF fees separated out from fees for our services you undertake? Do they change depending on whether or not you provide your member with AML/CTF supervision? How do you think your fee structures, and the fees you charge to your supervised populations, would have to change if you no longer carried out AML/CTF supervision?

312. AML supervision is currently funded through ICAEW's practicing certificate (PC) fee that is paid by ICAEW PC Holders. ICAEW members must hold a PC if they are a principal in a firm (or a sole practitioner) which is in 'public practice' (and therefore a 'relevant person' under the MLRs). However, the PC fee also funds activity across ICAEW and not just AML supervision. In addition, General Affiliate fees are also used to fund non-regulatory disciplinary functions (including AML).

313. We do not charge our member firms, or ICAEW members, separately for AML supervision. We do charge non-member firms for supervision, where that supervision is via contract. The fee structure is based on the PC fee – with any non-ICAEW member in a firm being charged the equivalent of a PC fee.

314. We also charge PC holders an 'OPBAS levy' which we use to fund the fee ICAEW pays to OPBAS for oversight.

315. The 2023 PC fee was £395. The OPBAS levy was £59. The General Affiliate fee was £215.

316. If we no longer carried out AML supervision, we would no longer charge the OPBAS levy to PC holders (this totalled £1.06million in 2023) and we would reflect a small reduction in the PC fee.

C) Your wider regulatory functions.

We are thinking carefully about the impact of our proposals on the dynamics of accountancy sector more broadly and wider regulatory landscape for this sector. Therefore we would be interested to know what the main other functions you carry out, other than AML/CTF supervision, and how you think your ability to carry out this function would be affected by the models included in the consultation. We would also like to know what you think the impact of this would be on the accountancy sector firms and practitioners themselves, and the profession more widely (eg: a decline in professional standards).

317. ICAEW is subject to the following external oversight and governance:

a) **The Financial Reporting Council (FRC)** - statutory audits under Companies Act 2006, and Irish Auditing and Accounting Supervisory Authority (IAASA) - statutory audits under Irish Companies Acts - We receive annual inspections from the FRC as part of their statutory obligation to report to the Secretary of State on the regulation of statutory audit. The inspection involves the detailed review of a detailed review of ICAEW's regulatory procedures, controls and systems in the area of audit.

b) **The Insolvency Service** conducts a similar oversight function to the FRC, but over our regulation of insolvency practitioners

c) **The FCA** is our oversight body for the areas of investment business permitted under a designated professional body (DPB) licence.

d) **The Legal Services Board** – is the approved regulator and licensing authority for the reserved legal service of Probate.

318. We do not foresee that our ability to carry out these regulatory functions will be impacted by any of the options.