ICAS RESPONSE

GC17/7 OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING SUPERVISION: A SOURCEBOOK FOR PROFESSIONAL BODY SUPERVISORS

Submission Date: 23 OCTOBER 2017

ICAS welcomes the opportunity to comment on the Financial Conduct Authority's Consultation on the Office For Professional Body Anti-Money Laundering Supervision ("OPBAS"): a sourcebook for professional body supervisors .

Background to ICAS

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

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

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

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

As supervisor for AML/Counter-Terrorist Financing (AML/CTF), we welcome the opportunity to provide information in response to this consultation.

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

We consider the public interest, in this case, is to ensure that the high standards of the professional body (PB) supervisors and the collaboration and information sharing between them, and statutory supervisors, law enforcement agencies and others, helps to ensure the effective operation of the UK AML/CTF regime.

Consultation response

Executive Summary

- As set out in our response to HMT's call for further information in March 2017, we welcome the establishment of an oversight body to encourage consistency across the supervised sector.
- However, we are concerned that there does not appear to have been a full regulatory Impact Assessment before the decision was made, and that there will be significant unintended consequences for the sector.
- We will support the establishment of OPBAS in ensuring consistency across AML supervisors, and look forward to working closely with it, but we caution against the increased financial impact and burden that such enhanced regulation could bring about
- Our core concern is that HMRC, the default regulator for those not supervised by a professional body, is not going to be scoped into OPBAS supervision nor does it face mandatory adoption of the sourcebook. We understand the constitutional barriers but we consider that this could instead prompt a more strategic review of the role of HMRC within AML supervision. The proposed 'comply or explain approach' for HMRC is likely to be inadequate.
- This encourages an unlevel playing field, putting regulated and qualified PB accountants at a distinct competitive disadvantage to the unregulated service providers operating within the accountancy sector, who will not bear the costs of OPBAS nor be demonstrably held to the same high regulatory standards.
- We remain concerned about the public interest risk; the decision to permit a proportion of the accountancy sector to avoid the indirect oversight of OPBAS could have significant consequences. On one hand, certain users of accountancy services will be influenced by price, and firms supervised

by HMRC will have no additional OPBAS costs to pass onto clients. Similarly, the prospect of increased regulatory oversight by the PB supervisors, and underwriting the costs of OPBAS may force some of PB accountants to cease membership and set up their firms in the unregulated market. ICAS continues to encourage the public to make sure their adviser is a CA (ca.icas.com) as there are significant consumer benefits in using a qualified and regulated profession. ,.

- Consequentially, due to its limited scope, OPBAS may find it very difficult to achieve its objectives and the UK AML/CTF regime is at risk of criticism by FATF. The Government is asked to reconsider the proposed scope of OPBAS and to work with HMRC to identify a workable solution.
- We also have a concern over the timing of sourcebook consultation and proposed implementation date. We understand that this will be due to pressures in relation to the FATF inspection, however, we feel that OPBAS should be afforded more time to understand our sector and how to make a positive contribution.
- As explained in our detailed response, we would seek assurances that any amendments to the sourcebook at a later date will be subject to the same transparency and consultation.
- The cost and benefit analysis, in our view, requires more detail and scrutiny. We appreciate that there are significant difficulties in measuring benefits, due to their "intangible" nature. However, these are needed to decide whether the establishment of OPBAS is economically feasible. We also consider that in the present analysis of cost per body:
  - the direct OPBAS costs are stated only broadly due to the forthcoming cost consultation;
  - a number of indirect OPBAS costs are missing, as explained in our response;
  - a number indirect costs are understated; and
  - the costs of implementing the Money Laundering Regulations 2017 should also be included given that they are intertwined with the sourcebook and OPBAS supervision.
- We would welcome more information in relation to the future operations of OPBAS, including the operational budget and work plan. We also think that KPIs should be published in order that the effectiveness of OPBAS, and our interactions with OPBAS, can be measured.

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

Principles-based approach

As indicated in the ICAS response to the Call For Information, we support the creation of OPBAS and welcome the transparent approach being taken to the creation of the OPBAS sourcebook. We also agree with the principles-based drafting and agree that it should not be prescriptive, given the significant diversity between the different professional bodies within the regulated accountancy sector, and the firms within their supervision. In particular, we welcome the fact that the sourcebook recognises that there are different tools and methods that can be deployed to achieve the same overall regulatory objective.

Implementation deadlines

We are, however, concerned that the drafting and finalisation of the handbook is being expedited in order to meet the impending Financial Action Task Force (FATF) Mutual Evaluation. The lead time, between the consultation response deadline of 31 October 2017 and the implementation date of 1 January 2018, may not allow the FCA sufficient time to properly consider the responses from the professional bodies and any wider stakeholders, and may not allow sufficient time to make any meaningful amendments.

We are, therefore, concerned that the sourcebook is already a fait accompli and this consultation exercise will have little or no bearing on the outcome.

It is of particular concern that the sourcebook is being drafted before OPBAS is formally established and it will not, therefore, have had sufficient time to interact with, or gain a full understanding, of the accountancy sector, and any potential risks or any potential inconsistencies in supervision.

Given the timescales involved, we consider it likely that the sourcebook will require further amendment once OPBAS has become more established. We would expect that any further amendments will themselves be subject to open consultation. Were any substantive amendments to be made to this sourcebook in the future, this could result in significant changes to professional body systems, procedures and approach to supervision, for which the bodies would require sufficient notice.

Statutory body adoption of the sourcebook

As mentioned in our response to Question 2, our most significant concerns are in relation to the scope of OPBAS, which excludes the statutory supervisors, in particular HMRC. Our comments below relate to the implications of this in relation to the adoption of the sourcebook.

The sourcebook is only mandatory for the professional body supervisors, and not the statutory body supervisors, being HMRC, the Gambling Commission or the FCA itself.

As HMRC is responsible for supervising the unregulated accountancy sector this already leads to inconsistent treatment between qualified regulated accountants supervised by the professional bodies, and the unqualified unregulated accountants supervised by HMRC.

This is at odds with the Government's stated purpose of OPBAS, which was to improve co-ordination and consistency:

- The Government's stated aim for OPBAS is: *"to improve coordination and consistency across the system"* (Source: consultation on regulations establishing OPBAS);
- The Government's Regulatory Policy Committee who made the decision to establish OPBAS stated that:
  "The professional body AML supervisors will face the costs related to funding OPBAS and the requirement to engage with OPBAS on a day to day basis. They are expected to benefit, as a result of a more coordinated approach to all regulated businesses and a more effective exchange of information across the system." (Source: Regulatory Policy Committee decision)

We question how OPBAS can achieve its aim and improve consistency of standards without the sourcebook applying on equal terms between all accountancy supervisors.

It is understood that the HMRC may apply the sourcebook on a "comply or explain" basis. Whilst a "comply or explain" approach, itself, has its place in a principles-base regulatory environment, it only works where all supervisors are afforded the same approach. It would important to know in advance in which areas HMRC anticipate deviation.

Any scope for inconsistent regulation is not in the public interest. We understand the constitutional barriers but we consider that this could instead prompt a more strategic review of the role of HMRC within AML supervision,

Information sharing

Our key concern in relation to information sharing is the apparent legal impediment to law enforcement agencies providing intelligence and information to AML supervisors. It is not clear how implementation of the sourcebook will facilitate collaboration between the bodies and law enforcement beyond what is presently happening.

The National Risk Assessment is of particular concern to the accountancy sector and we would welcome more in-depth dialogue with law enforcement agencies on the risks facing the sector, and how accountancy sector supervisors can contribute to assist in preventing money laundering and terrorist financing. We suffer from a lack of useful intelligence and this is where OPBAS could play a very useful role in improving the flow of information between law enforcement agencies and AML supervisors.

Sourcebook

The sourcebook makes reference to members and relevant persons, whereas the supervisory regime relates to the entity. Therefore the sourcebook requires to reflect this. PB supervisors regulate entities which may be comprised of their own members, members of other PBs and others

Similarly, in relation to sector guidance the sourcebook makes reference to reducing the number of sector guidance. To our knowledge, the accountancy sector supervisors only adopt the CCAB Guidance. The Regulatory Policy Committee stated that the benefit of the establishment of OPBAS was ''being able to draw on a single piece of user-friendly guidance for their sector, reducing uncertainty and unnecessary costs in the regime." We would suggest that this already happens, pre OPBAS.

There are a number of areas that would benefit from further clarification in the sourcebook:

- It would be helpful for OPBAS to explain how a principles-based approach could be applied to supervision in light of the fact that the underlying requirements placed on "relevant persons", i.e. our firms, are statutory. It would be helpful to have further dialogue with OPBAS in relation to this.
- It would be helpful to understand how clustering could be used in relation to risk assessment and still achieve consistent regulation between professional bodies.
- The Money Laundering Regulations 2017 require that the supervisory functions are only conducted by persons with appropriate qualification. Whilst the Sourcebook covers training it is silent in relation to what an appropriate qualification is or what OPBAS role might be in relation to appropriate qualifications.

Question 2 Do you have any comments on the FCA's cost-benefit analysis?

Timing of cost benefit analysis

In the original call for information response dated 20 July 2017, it is clear that the Government's Regulatory Policy Committee (RPC) required to make a decision on the establishment of OPBAS without a detailed cost-benefit analysis. The Consultation Stage Impact Assessment, published on the same date, did not include any financial cost or benefit figures. It is therefore of concern that the decision appears to be have been taken by the Government on the basis of incomplete information. Indeed, on reaching its decision, the RPC noted the lack of information contained within the Impact Assessment, including a lack of consideration of the different options and requested that certain information be made available on the final stage Impact Assessment (IA). To our knowledge, no final stage IA has yet been made public.

We still support the creation of OPBAS but are concerned over whether the Government has completed a full Impact Assessment, including consideration of the increased financial impact and burden that such enhanced regulation could bring about; and whether financial benefits are likely to outweigh the financial costs.

It came as surprise therefore that a very brief cost benefit analysis was then included within a consultation aimed ostensibly at considering the OPBAS sourcebook.

We have commented in detail below on the cost benefit analysis. However, we wish to raise a number of more significant matters first on who shall bear these costs.

Public interest risks of unqualified operators in the accountancy sector

As indicated in the consultation, OPBAS has only been established to regulate the professional body supervisors, and not the statutory supervisors, being the Gambling Commission, FCA and HMRC. This is of significant concern to the accountancy professional body supervisors given that HMRC is the default supervisor for unqualified, unregulated, operators in the accountancy market.

In our view, the greatest AML/CTF risk in the accountancy sector, is the fact that:

- In stark contrast to other professions (such as law) anyone can call themselves an accountant, and provide accountancy services to members of the public, with no barrier-to-entry and no current eligibility requirements. There are, therefore, a significant number of unqualified operators in the accountancy sector.
- This is in direct comparison to members of professional accountancy bodies such as ICAS, where qualification, examination, fitness and propriety, ethical compliance and professional standards are paramount,
- There are significant consumer benefits in using a qualified and regulated profession. ICAS continues to encourage the public to make sure their adviser is a CA (ca.icas.com).
- However, unqualified persons can become default regulated for AML/CTF purposes by the HMRC. By the nature of it being the regulator of last resort, HMRC regulates a high-risk population, yet it is not scoped into OPBAS oversight.

There are significant public interest risks with this proposed regulatory model and we would urge the Government to reconsider its proposals. We support the establishment of OPBAS but consider that its limited scope will limit its effectiveness.

Cost burden borne by professional body supervised firms

By excluding HMRC, the default supervisor, the costs of OPBAS will be borne only by the professional body supervisors, and in turn by their regulated qualified accountants, and ultimately their clients. This results in an unlevel playing field, meaning that qualified accountants become comparatively more expensive pushing clients into choosing the cheaper, and riskier, option of engaging an unqualified "accountant". There is significant public interest risk to members of the public who use an unqualified person, not least the lack of recourse for poor work.

Qualified accountants are already significantly concerned that unqualified operators under-cut on costs, because they aren't bearing the cost of being regulated, and this will increase those fee pressures.

It is ironic that the decision to establish OPBAS arose from a "red-tape" review which has resulted in increasing the red-tape for the professionally qualified accountants but having little impact on those in the accountancy sector posing the highest public interest risk.

This could undermine both the effectiveness of OPBAS at the outset, but further open the UK AML/CTF regime to criticism by the FATF.

Reduction in regulated firms and professional body supervisors

As the cost and regulatory burden of operating as an unqualified accountant is much lower than a qualified accountant, professionally qualified accountants may start choosing to resign their membership as a consequence of this policy.

A number of accountancy sector supervisors, in either losing members, or finding the regulatory burden too much, may also decide to exit the market.

We fully support the establishment of OPBAS and consider that these risks can be addressed by ensuring that OPBAS has powers of supervision over the full accountancy sector. If this necessitates a strategic review of the role of HMRC within AML supervision of the sector then this should be considered by the Government.

Whilst OPBAS have indicated in the consultation that it is aware of the cost burden to professional firms and the risk of the reduction in supervisors, the proposed solution of minimising the regulatory burden and only codifying good practice do not go far enough and steps need to be taken to remove the inequalities in the market place.

£2m operational costs

Whilst we welcome the establishment of OPBAS, we consider that the estimated running costs of £2m and the informal staffing of 12-15 persons, is high for a newly formed supervisor, and that it would be more appropriate for a supervisor to start small, establish a clear remit, and staged workplan, and grow exponentially over the first few years of operation.

In estimating £2m we would surmise that the FCA has produced an operational budget. In the interests of transparency, and in line with other supervisors, such as the Financial Reporting Council, we would request that this operational budget is open to public consultation. We would also welcome a published workplan in order that we fully understand OPBAS' focus in the first years of operation and its intending staffing and resourcing.

Cost allocation

We are as yet uncertain how these running costs will be allocated to the various professional body supervisors and await the fee model consultation which is to be published in Autumn.

In advance of its publication, we would request that the FCA takes account of the size of the regulated population at each body. This is in order to avoid over-burdening smaller bodies, who could then subsequently exit the market.

The key size criteria should relate to the number of approved persons within those firms (under Section 26 of the Money Laundering Regulations 2017). It is not appropriate to base the fee model on general membership criteria as the costs will only be borne by the regulated firms and not the wider professional membership.

Scope of Cost benefit analysis

We also note that the cost benefit analysis only deals with OPBAS related costs, because this is an OPBAS consultation. However, as the Government should be considering the full burden on business, we consider that there should have been a full Impact Assessment taking into account both the costs of OPBAS and the additional costs arising from the Money Laundering Regulations 2017. Both costs, taken together, have a significant impact on professional body costs but there has been no holistic cost benefit analysis.

Cost-benefit analysis

The cost benefit analysis is incomplete in that it assesses the indirect costs of professional bodies dealing with OPBAS but does not include:

- Any financial benefits; and
- How the direct OPBAS costs will be allocated, which is subject to a separate consultation.

The true cost to each body has therefore yet to be articulated. The costs of dealing with the increased requirements of the Money Laundering Regulations 2017 are also significant although not OPBAS specific, but are related to the implementation of the sourcebook.

a. Benefits
The establishment of OPBAS should be conditional on an Impact Assessment showing that the benefits of setting up OPBAS outweigh the costs.

The consultation indicates that OPBAS "*may lead to a reduction in underlying offences and the costs associated with these crimes'* but no financial value has been placed on this potential reduction in crime. However, the OPBAS consultation goes on to conclude that '*we do believe that the costs imposed by its creation are proportionate to the potential benefits from a reduction in harm caused by money laundering through the professional bodies'*. There is, however, no evidence provided to support this conclusion.

Similarly, in relation to measuring its success the consultation indicates that it will be considered successful *"if perceptions of the adequacy and consistency of anti-money laundering supervision performed by professional body supervisors – among law enforcement agencies, government departments, international observers and others – improve once it begins its work."*

Whilst we understand that it is difficult to set objective measures, both because OPBAS is in its infancy and because of the difficulty in measuring "intangibles", there needs to be a more clearly articulated cost benefit analysis and Key Performance Indicators to ensure that success is both measurable and being achieved and that OPBAS is worth the significant regulatory cost to business.

b. Costs
Based on our experience of dealing with other oversight regulators, and based on our interactions with HM Treasury to date, we consider that the indirect costs of dealing with OPBAS are significantly understated.

In addition, we have identified a number of additional indirect costs from the sourcebook which have not been included in the calculations:

- the internal quality assurance testing of supervisory work;
- the suggested internal audit function;
- staff training; and
- the costs to be borne by the PB of OPBAS engaging any skilled third parties to produce reports.