



The consultation response below was submitted to the LSB on 30th September 2023.

We always welcome comments or questions on any of the CLC's thinking. You can email us on clc@clc-uk.org

Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime

Consultation Response from the CLC, 30th September 2023

Introduction

- 1) The Council for Licensed Conveyancers (CLC) is the specialist regulator of conveyancing and probate services in England and Wales. The CLC was established in the 1980s to introduce a new profession to the provision of legal services, fostering competition and innovation to bring greater consumer choice. The CLC does not have any representative function in relation to the lawyers it regulates. Nor has it ever been part of a body with a representative function. The CLC is the Professional Body Supervisor for AML for all the entities that it regulates.
- 2) The CLC's mission is to maintain the very highest standards in legal services and promote innovation to ensure that clients are protected and their best interests are served. We also regulate in the wider public interest to ensure that the objectives of relevant public policies, such as anti-money laundering, counter terrorism, anti-proliferation finance, and the sanctions regime are met.
- 3) The CLC and the other regulators of UK legal services work closely together to provide advice and guidance to legal service providers on compliance with the legislative requirements in these areas. The CLC devotes considerable resources each year to those objectives and to the monitoring and enforcement of compliance with them.
- 4) This work is part of our core responsibility as a proactive regulator. We take an assisted compliance approach which seeks to prevent risks arising from non-compliance and harm occurring by working with regulated entities to ensure that they achieve and maintain compliance. Where we find compliance failings that approach does not deliver the rapid results we require, we move to enforcement and discipline on a proportionate basis. Sometimes, an immediate enforcement or disciplinary step is the appropriate one alongside corrective action and on occasion, immediate intervention to take control of an entity is needed to protect clients.
- 5) Our approach and its outcomes are set out in our annual reports to HMT and to OPBAS ([the most recent Regulation 46A report is available here](#)) and are scrutinised by OPBAS through periodic inspections.

This consultation

- 6) This review is an opportunity to consider how to streamline oversight of the supervisory regime to deliver the necessary transparency and accountability more easily and clearly as part of ensuring the effectiveness of AML work in the UK. That could help to ensure that resources can be focused on delivering the very important objectives of anti-money laundering and counter terrorism financing. We hope that can be borne in mind as HMT develops its plans following this consultation and that dual reporting required of PBS to both HMT and OPBAS can be reviewed.
- 7) However, the CLC also considers that there should be consideration of whether there is an option for retaining the status quo alongside the four options set out. While there might be some regulators that need further advice and/or support to reach a particular standard in a particular year, we consider that this is an indication that the oversight system is working rather than a sign of failure. It shows that weaknesses or challenges are being identified and there is a clear route to address them. This is how the oversight regulators and the PBS progress together.
- 8) For example, the consultation document is concerned that malign actors may take advantage of PBS with weaker gatekeeping tests. This could be addressed by OPBAS undertaking targeted work in this area to bring up the standards of all PBSs to a particular level.
- 9) The new OPBAS sourcebook only came into effect at the start of this year and is a valuable tool to drive progress as well as help shape reporting. The CLC has found OPBAS's new sourcebook to be a valuable document that has, for example, improved our own risk assessments considerably.

The CLC's response

- 10) The CLC will only look at the questions in relation to the first option, OPBAS+ because the remaining three options would be detrimental to the regulation of legal services and to the success of AML in the legal sector. This is due to the framework and delivery of regulation in legal services.

Legal Sector Regulation

- 11) The range and diversity of legal sector regulators, that are also the professional body supervisors, contributes to the vigour and effectiveness of regulation of legal services. Each PBS has a holistic view of the entities that it regulates because it is responsible for setting the standards, monitoring compliance and providing enforcement and discipline for the **full range** of each entity's activities.
- 12) The consultation document characterises the range of PBS as 'fragmentation' and seems to regard it as necessarily a negative, holding back the achievement of better AML outcomes. In

the legal sector at least, this diversity of regulation is a strength. It has ensured that there is widespread expertise in AML standard-setting and enforcement tailored to different types of legal services and different models for their provision. 'Targeting' is one of the long-established principles of good regulation.

- 13) Additionally, it is very important to note that the legal services regulators have no representative responsibilities and act independently. Therefore, there is no risk of conflict of interest when regulating or assuring compliance with legislation as is suggested by the consultation document.

Impact of a single PBS covering legal services or all professional services

- 14) Introducing a single PBS for the legal sector (whether that PBS came from within or outside the sector) would:
- Reduce an individual regulator's insight into and understanding of the individual firms and community it regulates (by carving AML out of the regulator's responsibilities).
 - Introduce dual regulation of each entity, which would now be accountable to both its main regulator and the new single PBS for the sector.
 - Require new coordination and resource devoted to cooperation between the individual regulators and the single PBS because the regulator would need to remain abreast of AML performance by its individual firms and take that into account in its own work.
- 15) These impacts of options 2, 3 and 4 would appear to rule them out on the grounds of damage to the effectiveness of regulation. The dual reporting would also create an unnecessary burden on the regulated entities as well as the legal services regulators and the single PBS. This is an impact that we hope can be explored and taken into account as a result of this consultation and before any decisions are taken about next steps. That could be achieved through a regulatory impact assessment that is worked up with input from the current PBS.
- 16) The current framework in the legal sector, with individual regulators acting as the PBS for the entities they regulate, seems the most efficient way to deliver oversight. As the consultation paper notes, the UK is in a strong position and continues to make progress in AML effectiveness and we would hope that it is possible to build on the current framework rather than undergo a process of change that would disrupt that progress. The consultation paper notes the lead times and costs to establish new, consolidated PBS. Those resources would be better deployed on raising standards and delivering the 'dissuasive but proportionate enforcement' that is appropriate.

- 17) Of the four options set out in the consultation document, option 1, OPBAS+, seems the broad approach most likely to deliver the stated objectives. However, we note and echo the points made in the Legal Services Board's response to this consultation in relation to the feasibility of this option. We hope that following this consultation there could be a close look at how this option might be adjusted to work effectively and efficiently in alignment with the existing regulatory framework for legal services as well as the new elements that are emerging including the new regulatory objective relating to economic crime.
- 18) Options 2, 3 and 4 would have the damaging consequences we set out at 11, above. Accordingly, we are limiting our answers to those questions that relate to the OPBAS+ option and to all options in general and do not comment on options 2, 3 or 4.

Answers to consultation questions.

Objectives

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?*

The CLC broadly agrees with these objectives but considers that it is very difficult to prioritise them because they are each so intimately linked to the others. The CLC would hope to see a strong emphasis on proportionality and the principles of better regulation underpinning any evolution of the current arrangements.

In thinking about system coordination, for example, it may be that effort that is considered disproportionate under the current model could be made less onerous through new process or IT solutions to ease the sharing of data and intelligence. Clearly, proportionality will also be a consideration in assessing the feasibility of the options. Cost and time are very significant considerations given that the cost burden will fall on the users of legal and other professional services and thus impact the wider economy and time is of the essence in relation to tackling crime, which is the public policy objective here.

OPBAS+

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?*

A rule making power could enable OPBAS to respond to emerging risks, but it is not clear that not having a rule-making power currently hinders OPBAS ability to drive changes in the work of PBS.

In terms of requiring publication of supervisory interventions the CLC's view is that this is not a power that should be considered as (a) OPBAS already produces an annual report that

summarises findings which provides a degree of transparency, (b) in the most recent OPBAS annual report only one PBS out of nine was identified as an outlier with unsatisfactory ratings (see 2022/2023 report) and (c) in the CLC's experience the practices we regulate are sufficiently incentivised to cooperate and bring their practice's into compliance without resort to publishing outcomes of inspection reports.

The consultation states, "We will examine the FCA's prior use of its rule-making powers to understand how such a power might be used by OPBAS." The CLC would be eager to be part of the consideration of how a rule-making power might be developed and used. Any such power would need to be exercised with a high degree of transparency, accountability and with full regard to the better regulation principles and framework.

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?*

We do not consider that fining PBS in the legal sector would be likely to be an effective or useful sanction. PBS are funded by their regulated entities for the delivery of regulation. Because the regulators have no other income, any fine would have to be funded in that way too and so would not act as an incentive to change behaviour. Close oversight by OPBAS as now, with reporting back and recommendations for change seems to be an effective way to deliver ongoing improvement to supervision.

Restricting the size of a PBS's regulated community would not be feasible in the legal sector as the entities must be regulated in order to deliver legal services. Removing them from a PBS's regulation would therefore be a sanction on the entities affected.

As we have noted above, we consider that PBSs are sufficiently incentivised to address any weaknesses in their supervisory work. Our experience is that each PBS takes OPBAS assessments very seriously and will implement actions as soon as possible. The advent of the new Regulatory Objective on combating economic crime will further strengthen this.

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

In addition to the mechanisms suggested at 3.6 in the consultation document, PBS would need to have some route of appeal as well as 'right of reply'. The addition of the powers suggested may encourage a less collaborative approach between OPBAS and the PBS and a more rules based, less flexible and less responsive implementation of AML/CTF activity. As we argue above, this would damage the effectiveness of tailored approaches.

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

No.

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?*

In theory it could be helpful to designate one PBS in the legal sector to act as the PBS responsible for unregulated legal services. However, it is not clear to us that there are providers of unregulated legal services that are subject to the regulations.

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

In the CLC’s view the OPBAS+ model could have some positive impact on supervisory effectiveness. As noted above, however, only one PBS was found to be a significant outlier in the 2022/2023 report, and we presume that OPBAS is currently working very closely with this PBS to ensure they are in line with the accepted standards.

Also of particular note is that the OPBAS sourcebook has only come into operation at the start of this year – only when all 22 PBSs’ which OPBAS supervises have been assessed under this model will we have the evidential baseline to assess the potential scope for OPBAS+ and its possible impact.

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

Coordination across the legal sector PBS is effective in our view. The most frequent point of contact the CLC has is with the SRA who regulate many practices with CLC licensed individuals. Likewise, the CLC regulates practices with solicitors working in them. In our experience – for example when referring concerning AML matters over to the SRA – they have acted in a way that is consistent with our own approach and understanding of the AML Regulations.

Our view that information sharing is reasonably good between PBS is backed up by OPBAS’ own conclusions in their own 2022/2023 report. The findings across all nine of the PBS is that intelligence and information sharing is good, with five out of nine being rated as largely effective and the rest being partially effective. Of course, there are elements which could be improved in this area and the most useful tool for this is the use of the OPBAS sourcebook.

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

The CLC considered that the OPBAS+ model is a feasible one given that it could be built out from the existing organisation with no change in the scope of activity but the addition of new approaches to achieve outcomes.

In terms of staffing the CLC does not know how many individuals are employed at OPBAS and what their functions are so it is very difficult to conclusively say whether new staff will be required. Any additional funding or regulatory burden on supervised service providers would need to be demonstrably proportionate given the potential for impact across important parts of the economy.

The CLC is of the view that the current fee model is fit for purpose and should continue. Rulemaking powers may be the sole reason for new staff to be employed or trained – matters such as fining etc are clearly within the FCA's remit and experience and materials and resources could be sought from them in order to ensure the powers are deployed effectively.

Sanctions

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?*

We refer HM Treasury to the answer provided in our July report to HM Treasury (at 1.2) which covers this area and has details of what the CLC has done in response to the changing sanctions environment.

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?*

The CLC is of the view that the existing powers that we have are sufficient. We have integrated sanctions checking into our own monitoring and compliance procedures without difficulty.

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

We do not foresee any issues at this time and have been able to assess our regulated sector's compliance with sanctions rules without any significant issue at this time.

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

In principle, yes, but the CLC is not clear that further supervisory powers are required in relation to sanctions.

Options Comparison

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

The move to a single PBS or legal services would not lead to any significant reduction in the CLC's costs. As we have already noted, such an approach would create duplication of effort between the front line regulatory (CLC) and the single PBS. The CLC would still need to monitor most aspects of AML/CTF compliance. In addition, it would create a new activity of coordination with the single PBS which is not currently necessary. So, it is even conceivable that creation of a single PBS would increase the CLC's own costs as well as creating costs at the single PBS.

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.

In the CLC's view the OPBAS+ model could provide some improvements to supervisory effectiveness and system coordination if there was clear accountability by OPBAS for how it carries out its expanded role. The other approaches would not improve these areas and would in fact damage them.

Public Sector Equality Duty

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?

We have no evidence to address this question.

Additional questions circulated by HMT following the launch of the consultation.

1) 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.

Response: The CLC’s powers stem from the Administration of Justice Act 1985 (Which applies to recognised bodies) and the Legal Services Act 2007 (applicable to Alternative Business Structures (ABS)). The route to enforcement differs considerably between the acts. However, the Legal services act provides us with a potentially faster route for sanctions against practices as it is possible to avoid a formal disciplinary process if the practice or individual accepts the allegations and sanctions proposed.

The table below sets out those powers.

Statutory powers in Administration of Justice Act 1985 (1985 Act) and Legal Services Act (2007 Act)

Enforcement tool	Statutory Authority	Determination made by
Licence/certificate revoked	1985 Act s.26(2)(a)	CLC Adjudication Panel
	1985 Act s.28 fraud or error	
	2007 Act s.101	
Disqualification from holding a licence/role	1985 Act s.26(2)(b)	CLC Adjudication Panel
	2007 Act s.99	
Licence/certificate suspended	1985 Act s.24(5)	CLC Adjudication Panel
	1985 Act s.26(2)(c)	
	2007 Act s.101	
Payment of a penalty	1985 Act s.24A(1), s.26(2)(e)	CLC Adjudication Panel
	2007 Act s.95	

Reprimand	1985 Act s.26(2)(f)	CLC Adjudication Panel
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Broadly speaking we would like to have the powers of the 2007 Legal Services Act in respect of all regulated practices, not just ABS.

It would be useful, specifically for AML breaches if we had powers similar to the SRA which would enable us to levy fast-track fines and sanctions against practices and individuals (An authorised decision maker can levy sanctions and fines up to £25,000).

As set out in our response to the HM Treasury AML/CTF Supervision questionnaire in July of this year:

For recognised bodies (RBs) the CLC must use the powers derived from the Administration of Justice Act 1985 (AJA). These powers involve costly and lengthy disciplinary proceedings which can take up a lot of resources when compared with the CLC's powers under the Legal Services Act (LSA) 2007. Under the LSA the CLC can take enforcement action against ABS' which can involve imposing fines through warning notices without the involvement of the Adjudication Panel. This latter route is much more efficient in the CLC's view than formal disciplinary proceedings before the Adjudication Panel and may be a more proportionate route to taking quick and effective action for AML breaches. The CLC has also taken legal advice about the possibility of a fast-track procedure for the independent Adjudication Panel but have been advised that due to the drafting of previous legislation that is not possible. The CLC has also consulted on changes to the Adjudication Panel rules to clarify and where possible streamline the procedure and a formal application will be made this year to the Legal Services Board under the rule change process. Further we will continue to look out for a possible legislative vehicle.

- 2) **How do you determine your fee structures?** Are your AML/CTF fees separated out from fees for other forms of regulation you offer? Do they change depending on whether or not you provide regulated persons 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?

Response: The CLC is a specialist regulator that focuses only on Conveyancing and Probate. AML is embedded into the conveyancing process and we have found that it is best to look at the conveyancing transaction and AML holistically. As such our supervision and monitoring team focus on all aspects of our regulatory remit.

We do not separately calculate or charge for AML supervision because of this integration. As we supervise our entire population there is no need for us to have a dual fee structure.

We do not believe that our costs would materially decrease if we did not supervise AML, this is because we would still require a similar number of staff to perform our other supervision duties. We suspect that even if we didn't supervise AML, we would still as a matter of course be identifying issues (due to the integration into the conveyancing transaction) and reporting to/ working with the supervising body.

- 3) ***Your wider regulatory functions.*** *We are thinking carefully about the impact of our proposals on the dynamics of legal sector more broadly and its wider regulatory landscape. 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.*

Response: Separation of general legal regulation/supervision and AML supervision is likely to increase the burden on practices as they would then have two supervising bodies. It is likely to result in duplication, confusion and possibly gaps in supervision. It is almost certainly going to cost the regulated community more as they would need to fund a separate supervision body.

The CLC has a robust and regular monitoring, compliance and enforcement programme which includes the following key components:

- 1) A regular cycle of full, on-site practice inspections, which tests compliance with all the CLC codes (including AML, Accounts etc).
- 1) Thematic and risk-based reviews
- 1) Intelligence led investigations
- 1) Complaint led investigations

If the CLC ceased AML supervision, we would still continue with all the activities listed above and might be able to reduce our focus on AML related issues to a degree. However, because AML is integrated into the conveyancing process we would still note matter risk assessments and SoF/SoW checks on files. Any deficiencies are likely to necessitate reporting to and supporting the AML supervisor. This is likely to lead to delays and inefficiencies in remedying AML breaches as well as duplicating effort and cost.

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