

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

Consultation

Response from Propertymark

September 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,500 members representing over 12,500 branches. We are member-led with an executive Board of practicing agents who we work closely with to ensure that we uphold high-standards of professionalism and are able to advocate for legislative change on behalf of the sector.

Consultation – overview

2. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 introduced a more coordinated system of anti-money laundering (AML) supervision in the UK. While only estate agents initially came under AML supervision, letting agents with properties that have a monthly rent of the equivalent amount of 10,000 euros a month or more in a European Union Member State have been included since 10 January 2020. Currently, Anti-Money Laundering and Terrorist Financing supervision is conducted by three statutory bodies, FCA, HMRC and the Gambling Commission as well as 22 Professional Body Supervisors (PBSs). Letting and Estate agents are currently supervised by HMRC.
3. In 2022, HM Treasury conducted a review of the UK's anti-money laundering and Counter-Terrorism Financing regime.¹ This review concluded that there was a strong case for further reform to improve the effectiveness of supervision, rather than improving the AML regulations themselves. From this review, HM Treasury has shortlisted four potential models for future AML/CTF supervision:
 - **Model 1:** Improving the current system by increasing current powers of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), creating OPBAS+
 - **Model 2:** Consolidating the current 22 PBSs to either two or six PBSs who would supervise the entire accountancy or legal sectors.

¹ <https://www.gov.uk/government/publications/review-of-the-uks-amlcft-regulatory-and-supervisory-regime>

- **Model 3:** A single Professional Services Supervisor (SPSS) to supervise all legal and accountancy sector firms with the potential of supervising all or some of the sectors supervised by HMRC.
- **Model 4:** A Single Anti-Money Laundering Supervisor (SAS) where all AML and CTF supervision in the UK would be undertaken by a single public body.

Propertymark response – summary

4. Propertymark welcomes the opportunity to respond to HM Treasury’s consultation on Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime. As the UK’s leading professional body of property agents, Propertymark has a strong interest in ensuring that the supervisory regime is fit for purpose as we work to ensure our members remain compliant with current regulations and improve standards across the sector.
5. Propertymark has responded to and continues to advocate for improvements to be made to the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime.² Our main four positions for reform are as follows:
 - **Improve coordination and standardisation across all sectors under the regime –** Propertymark has noted there is a much-needed coordination across all sectors which is currently lacking. This leads to unnecessary de-risking from some sectors, in particular the finance sector and client money protection requirements for property agents. This leads to negative consequences for other sectors, including where some high-street banks are closing undesignated client accounts of Propertymark members, when banks are under no obligation to do this under current AMLCTF regulations. This has been further exacerbated by a lack of consistency within sectors, where some branches allow for the continued operation of undesignated client accounts where others do not.³
 - **Improved sector-specific guidance, especially SARs reporting –** Under current regulations, the process that estate and letting agents must follow in order to report suspicious activity is unnecessarily long and geared towards financial institutions. For example, the current guidance on how to submit a SAR is 30 pages long and the process

² <https://www.propertymark.co.uk/resource/reducing-economic-crime-in-the-property-sector.html>

³ <https://www.propertymark.co.uk/resource/the-chancellor-needs-to-act-on-the-closure-of-pooled-client-accounts.html>

is clunky and involves using drop down lists and codes.⁴ We would like to see a simplified route for property agents when making a SAR and wider sector-specific guidance for the sector.

- **Ensure more effective compliance** – As stated by HM Treasury, fines issued by some PBSs are too low and inconsistently applied. Propertymark agrees with this assessment and urges that HMRC and all other AMLCTF supervisory bodies should publish sector specific fines and enforcement activity as a greater deterrent against failing to meet AML requirements and to discourage criminal activity. Additionally, important datasets such as Politically Exposed Persons and the Register of Overseas Entities should be easily accessible with live updates. Furthermore, HM Treasury must amend the Money Laundering Regulations to ensure that property agents can legally rely on verification of beneficial owners on the Register of Overseas Entities as part of their own Customer Due Diligence.
- **Ensure professional bodies continue to play a role in AMLCTF** – Professional bodies have an important role to play in AMLCTF. Propertymark has been working closely with HMRC in order to highlight the impact AML Regulations have on property agents and to share current legislative updates and sector insights. In order for the AMLCTF supervisory regime to continue operating effectively, we would like to see these relationships continue and be enhanced. Furthermore, estate agents operating across the UK and letting agents in England and Northern Ireland are unregulated, which means anyone can set up a business. To work in the sector there are no minimum standards and there is no statutory regulation to ensure agents are suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards. This can make estate agents a target for criminal activity. It also means that consumers are potentially dealing with someone who does not understand the technicalities involved in buying and selling property, nor understand how to analyse the level of risk to their business of money laundering or terrorist financing.

6. Considering our position on regime reform, out of the four models presented in the consultation Propertymark supports the introduction of OBPAS+ as the most suitable avenue to enhance

⁴ <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/446-guidance-on-submitting-better-quality-sars-1/file>

AMLCTF within the property sector. This would allow for improvements to be made to the supervisory regime while allowing for the expertise across individual sectors to be maintained, ensuring that the previous years of experience supervisors have gained can be further built upon.

Questions

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?

7. We have no issues with the objectives as currently written, nor their relative priority. What we would suggest is that improved system coordination should be expanded to include professional bodies. This is due to the fact that professional bodies have a greater understanding of the impact of current legislation, changes taking place and emerging risks to money laundering and terrorist financing within the sectors that their members operate. Currently Propertymark briefs HMRC on changes to the property agency sector to help them understand how this would impact requirements for property agents. A greater commitment from OPBAS, HMRC, PBSs and other statutory bodies to collaborate on resolving issues and proposing beneficial changes through guidance and communication would greatly improve the existing supervisory regime.

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

8. If effectively managed, we would hope that providing rule-making powers to OPBAS would support more consistent rules across sectors and improve enforcement. The main change OPBAS could make, is to ensure the implementation of minimum fine guidelines for PBSs to issue, when organisations have failed to meet AMLCTF requirements, with clear guidelines on when they must be enforced.

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?

9. We would welcome the following powers suggested to be granted to the OPBAS: publicisation of supervisory interventions, graduation of sanctions, restrict or reduce supervisory population and fining power, to be granted under this model. This would go some way to resolve issues around enforcement and compliance, where greater fines and a public record of interventions would discourage criminal activity. As an additional power, we would suggest that OPBAS+ have the ability to coordinate collaboration between PBSs and other regulatory bodies with the power to investigate instances where issues have been raised against the practices of a particular sector. For instance, supervisors with an interest in a topic or process relating to money laundering and property could work together to share information. This is something which could produce more productive outcomes for law enforcement. Ultimately, a co-ordinated approach would allow the different actors involved in the transaction to be able to flag pinch points or review critical events to prevent illicit purchases from taking place.

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

10. We would support the publication of the rationale for supervisory interventions, as this would allow for PBSs and other regulatory bodies to review and respond more effectively to decisions being made. We would encourage an open dialogue between all organisations involved in AML within and outside of the OPBAS in order to develop best practice over time as more accurate data and evidence of effective AMLCTF is gathered. We would urge for channels to be put in place for professional and regulatory bodies to raise concerns about how AML duties are impacting business practices. For example, the banking sector is currently requesting letting agents to close their undesignated client accounts in order to de-risk themselves from potential offences related to AML. Holding an undesignated client account is essential for a letting agent to conduct regular business and comply with Client Money Protection requirements.⁵ Currently, it is very difficult for Propertymark to report this issue which has existed for a couple of years and has resolved to encouraging members to contact banks which has caught the attention of some local MPs. An open channel would enable Propertymark and other industry bodies to report unintended consequences of the supervisory regime and legislation in order to develop solutions without the need for new legislation.

⁵ <https://www.gov.uk/client-money-protection-scheme-property-agents>

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?

11. We do not have any specific evidence of regulated activity which are at high risk of being illegally carried out without supervision other than letting agents who do not meet the 10,000 euros or more, monthly rent threshold for supervision. To this end, the UK Government estimate that there are 19,000 letting agents in England, but unlike all estate agents, who must register for anti-money laundering supervision, letting agents hold a significant amount of money from deposits, rents and service charges which highlight the opportunities for cash payments to be made. Propertymark has long held the view that the Money Laundering Regulations should include letting agents and landlords to reduce the risk of cash payments being used to 'clean' dirty money. The UK Government should remove the EUR 10,000 monthly rent threshold and set this at zero to create consistency and cover all tenancies let in the private rented sector.

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

12. As a professional body for property agents, we feel that it would be inappropriate to answer this question as it relates specifically to the legal sector.

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

13. We believe the OPBAS+ model would have a positive impact on supervisory effectiveness, without the need for radical change within the supervisor regime, for three reasons. Firstly, if open channels are promoted between professional bodies and the OPBAS+, the OPBAS+ can make rules designed to address issues flagged by these professional bodies. Secondly, without a radical shakeup of the current system, the OPBAS and the organisations involved can retain their experience and expertise they have gained since 2018, which can be built upon to inform best practice. Thirdly, new powers granted to OPBAS+ could allow it to address consistent enforcement, such as requirements to issue fines and to issue reports to the OPBAS to seek approval of enforcement action taken, would improve enforcement.

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

14. As part of the greater powers to the OPBAS, we would like to see the organisation play a key role in coordinating cooperation between PBSs and the other AML/CTF supervisors. We believe there is potential to greatly improve system coordination, granted that the OPBAS+ takes the following three measures. Firstly, the OPBAS+ should provide avenues for other PBSs, GC, FCA and HMRC to share how AML regulations are not being consistently adopted. Considering the impact of the finance sector's consistent approach to AML regarding the undesignated client accounts of letting agents, a channel where this can be reported and resolved within the supervisory regime would prevent much disruption to sectors impacted by similar issues. Secondly, taskforces must be established specifically for the purposes of reporting where AML regulations are being misinterpreted or ineffectively enforced. This would help encourage greater collaboration across multiple sectors, with the opportunity for OPBAS+ to resolve these issues. Thirdly the OPBAS+ should receive significant investment so that it has the required staff and ability to establish standards that it can enforce across all sectors.

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

15. We consider the feasibility of the OPBAS+ model to be one of its greatest strengths which will allow the OPBAS to retain its experience while improvements are made to its powers to improve enforcement and consistency across the regime. Our concerns for models three and four especially is that the significant changes to the supervisory regime risks resetting progress made towards improving AML regulations and reducing money laundering.

Remaining models

16. In order to provide the most concise response to the remaining questions within the consultation, we will provide an overview of issues that we see with the remaining models and why Propertymark supports increasing the powers of the OPBAS as the preferred model to take forward.

PBS Consolidation

17. While we acknowledge that Propertymark would not be directly impacted by the consolidation of the existing 22 PBSs, we are concerned that this model will not have a large impact on the effectiveness of the regime or encourage greater collaboration. While we understand that the consolidating PBSs would improve the consistency of interpretation and guidance of AMLCTF legislation within the legal and accounting sectors, it will do little to help create consistency across PBS, HMRC, FCA and GC which is our main concern as the representative of property agents. Establishing the OPBAS+ which will have oversight over all the entire AMLCTF regime, with the power to create rules, can establish the need for collaboration and open up opportunities for professional bodies to report on issues with the current regime. This would set the foundations for effective cross-sector collaboration which PBS consolidation alone would not be able to do.

Single Professional Services Supervisor

18. Propertymark does not believe that this would be the most effective model for three reasons. Firstly, under the current system, each supervisors understands the wide range of nuances and activities of the sector they supervise. This enables each supervisor to better understand the sector they are working in, whereas a single supervisor may not have the same expertise across all sectors they supervise. AML guidance and supervision can therefore best be targeted to support the specific nuances of each sector. Secondly, when changes take place within a sector, it is much easier to reach out to a supervisor that has a more limited remit. This ensures that each supervisor can have a greater understanding of how legislative changes will affect existing AMLCTF guidance, reducing the unintended consequences of legislative change and ensuring effective supervision. Thirdly, Propertymark has a good relationship with HMRC where we have been able to regularly update them on recent and upcoming legislative changes as well as the difficulties agents are facing on the ground. Propertymark and agents across the sector would have to restart this process of developing the necessary relationship for effective AMLCTF supervision with the new supervisor.

Single Anti-Money Laundering Supervisor

19. The single anti-money laundering supervisor has many of the same issues that exist with the single professional services supervisor. There are issues with the retention of expertise, the lack of

specialisation and teething issues associated with such a significant shakeup of the current system, which also apply to the single professional services supervisor. Considering that the single supervisor will be tasked with supervising a greater number of sectors, these issues would be exacerbated. The additional concern we would have with the single AML supervisor is its feasibility. In order to deliver effective AMLCTF supervision, the supervisor would require substantial funding to take on the duties that other organisations have been required to do for the past five years. While we understand that the single supervisor may improve cooperation between sectors, the OPBAS with more powers to incentivise collaboration would also be able to achieve this without sacrificing any current expertise or specialisation from the existing AMLCTF supervisors.

Additional questions

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?

20. We have not had any experience of significant changes since sanctions were introduced and received no additional specific information from HMRC. However, we are aware of third hand accounts that HMRC has increased supervisory activity in connection to higher-value London properties and does send direct information to our members as regulated entities for supervision.

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?

21. We would support greater powers for supervisors to monitor sanctions and controls effectively. We would encourage a system that requires sanctions to be logged and shared centrally. An overview of sanctions can be shared on a regular basis through steering groups representing other supervisors, with oversight from the OPBAS+. This would allow for sanctions to be reviewed and best practice developed overtime based on more effective analysis of available data. Access to available sanctions data would also enable other supervisors to access a list of individuals or organisations that have received sanctions and why sanctions were issued. This would ensure that sanctions from one industry help others to identify potential risks and prevent criminal activity from taking place in their sector.

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

22. Yes, there are technological and data protection barriers to effectively monitoring sanctions systems and controls both within and between sectors. Additionally, it will require a change in the way individual organisations and the supervisors operate. A central database of sanctions issued which can be accessed within and across sectors would be difficult to establish firstly due to the complexity of such a database. This can be addressed through sufficient resources allocated to establish the database. While this may be an expensive option, it will have a great impact on preventing repeat offences. That being said, there may be difficulties in establishing the database while adhering to data protection legislation. Additionally, requiring organisations to report and check the database as part of their AML checks would increase staff time and costs.

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

23. Yes, we believe that powers should broadly cover all types of UK sanctions.