



HM Treasury Call for Evidence:
***Review of the UK's AML/CFT
regulatory and supervisory
regime***

A Response by
CILEX (The Chartered Institute of Legal Executives)

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1. Introduction

- 1.1. CILEX (The Chartered Institute of Legal Executives) is one of the three main professional bodies covering the legal profession in England and Wales. The 20,000-strong membership is made up of CILEX Lawyers, paralegals and other legal professionals. Our members are judges, advocates, and specialist lawyers working across every aspect of the law.
- 1.2. CILEX is the Professional Body Supervisor (PBS) listed in the Money Laundering Regulations 2017 for Chartered Legal Executives in England and Wales. CILEX has delegated the responsibility of the application of money laundering-related rules to its independent regulator CILEx Regulation Ltd.
- 1.3. This is because CILEX is a designated Approved Regulator under the Legal Services Act 2007. A requirement under the Legal Services Act 2007 is to ensure that representation and regulatory matters are separated so that regulation can be carried out independently. CILEX Regulation is the independent regulator of members of CILEx, those who are not members, but who are authorised to undertake reserved legal activities, and who do so in their own entities.
- 1.4. Therefore, CILEX confines its responses to this Call for Evidence to its remaining residual role within AML compliance as a Professional Body but one that has delegated all supervisory and enforcement (all regulatory) activity to its independent regulator. That said, there are aspects of regulatory activity where a view can be taken; in the main these are contained within the joint response from Legal Sector Affinity Group of which CILEX is a member and with which we are in agreement.

2. General Points

- 2.1. In the legal sector, there is a great variety of PBS reflecting the differences in their regulated communities. A one-size-all approach for AML compliance is therefore as in appropriate as it would be for legal regulation. Therefore, the references in the call for evidence about differences of approach by different supervisors¹ is not necessarily a bad thing; individual supervisors are best placed to bespoke the most appropriate and therefore effective approach for their constituencies. This means, for example, that we can agree with both the 'common critique' referred to at paragraph 2.10: focusing effort on the mandatory aspects of the MLRs could detract from regulator using their knowledge of their particular part of the sector to best effect.
- 2.2. This links to consideration of the overall structure of the supervisory regime: reducing the number of supervisory bodies for example would dilute the specific expertise and knowledge individual supervisors have of their particular part of the sector.

¹ Eg approach to risk assessment at para 2.7

3. Answers to specific questions

3.1. **Q3: Are the objectives set out above the correct ones for the MLRs?**

CILEX believes that objectives set out in the Call for Evidence are broadly right. However, in relation to Objective 3, we have long believed that the potential for Companies House to have a key role in adding value in terms of accurate corporate information in relation to beneficial ownership should not remain untapped. Indeed, the proposed controls recently consulted on in respect of Companies House should be taken up so their benefits may be realised, alongside consideration of how that body can provide further benefits to AML compliance regime.

3.2. **Q40: Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why**

CILEX believes that the MLRs do support efficient engagement of the regulated legal sector in the SARs regime. However, we are aware that the legal sector is often regarded as having shortcomings in relation to SARs engagement, particularly in relation to the number and quality of SARs generated by the sector.

3.3. It is important in objectively considering these criticisms though to bear in mind that they are often made in comparison to the experience in the financial sector. The complexity and duration of many legal services compared to simpler financial transactions, combined with specific complicating factors such as Legal Professional privilege, all impact on SARs. As with our general appeal not to fall back on a one-size-all approach, these 2 sectors, their business and their practices are not comparable and such comparison should be consciously resisted.

3.4. That said, there could be a role for PBSs in relation to the quality but, in the above context, any expectation in them assuming such a role should be weighed as being proportionate to any actual issue which requires remedy, along with mitigating any risk of 'role creep' towards PBSs; after all, it should be the law enforcement agencies who ultimately make a judgement of the validity of SARs content and the decision for action without being potentially obscured or delayed by the creation of an additional filter.

3.5. Lastly, CILEX recommends that any related considerations should wait until the current, various and comprehensive changes to the framework for submitting SARs are implemented and established. We are conscious that they are both subject to imminent consultation as well as being affected by the 2022 implementation of the new SARs IT system.

- 3.6. **Q56: What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**
&
Q57: What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

OPBAS has made a good contribution to driving improved and higher standards in AML supervision. However, as has been acknowledged within the consultation paper itself, money laundering is complex and ever-changing and it is mainly the PBSs themselves who rightly have the greatest insight into their part of the legal sector and therefore are best placed to develop the most proportionate and effective responses to it.

- 3.7. OPBAS has been able to provide the framework and environment for high standards, re-focusing expectations of performance amongst PBSs and creating better visibility of requirements to support better prioritisation of AML resourcing and activity. but cannot become expert in the nuances of approach to compliance needed across the sector. In that context therefore, CILEX believes OPBAS may benefit from a slight change in emphasis in its approach: one-to-one relationships with individual PBSs could be more two-way and of mutual benefit rather than rigidly prescriptive, an approach which is itself premised on the erroneous one-size-first-all approach.
- 3.8. OPBAS is ideally placed to use the intelligence and insight thus gained to benefit the sector as a whole by a second change of emphasis: acting as an engine to drive the sharing of good practice across all PBSs. This approach would encourage and enable greater collaboration and sharing amongst PBSs and also enable greater learning and awareness of developments across the sector for OPBAS itself. It would also assist all parties to gain awareness of developments in the dynamic world of money laundering and plan better to meet challenges as they arise.
- 3.9. CILEX is also of the view that this greater collaboration could negate the need for duplicate activities such as the new requirement to publish an annual report² and the requirement for PBSs to provide an annual return to Treasury.
- 3.10. **Q58: What if any further powers would assist OPBAS in meeting its objectives?**
&
Q59: Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

CILEX believes the benefits delivered by the change of emphasis above would mean that OPBAS would not need not have any extension of existing powers nor any extension of

² Introduced in 2019 via Regulation 46a

remit.

4. Conclusion

- 4.1. CILEX is grateful for the opportunity to input into HM Treasury's review of the AML/CTF regime and supports the concept of such regular reviews to ensure ongoing effectiveness. CILEX would not advocate change for changes sake: there are elements of the current regime, such as the emphasis of approach taken by OPBAS, which would benefit from continuous improvement in incremental steps at this stage rather than more extensive amendment to powers and remit; to an extent, that office is still bedding in.
- 4.2. CILEX also believes the regime still needs to guard against being tempted to assume a one-size-all-approach is right; it is not. Legal PBSs vary dramatically in size and composition and are best placed to determine the optimum approach to AML compliance in their area. Whilst there has been real benefit in sharpening the focus of related requirements and encouraging consistent approaches, any such requirements need to be realistic and proportionate if they are to be effective and meaningful. After all, arguably the greatest area of risk for the UK is in the unregulated sector which is not touched by this regime. Compared to that, in the main, the PBSs work well, supported by the overarching framework regime.

For further details

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further
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