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# **Call for Evidence: Review of the UK's AML/CTF Regulatory Regime HM Treasury (HMT)**

**21<sup>st</sup> October 2021**

*Response from The Payments Association*

## **Abstract**

*This paper sets out the Payment Association's response to the HM Treasury's consultation: **Call for Evidence: Review of the UK's AML/CTF Regulatory Regime**. It contains recommendations on how to ensure the UK's payments industry continues to effectively tackle and prevent financial crime.*

**21st October 2021**

## Introduction – Tony Craddock, Director General, The Payments Association

The Payments Association welcomes the opportunity to contribute to HM Treasury's:

1. Call for Evidence (CfE) - review of the UK's AML/CFT regulatory and supervisory regime and
2. Consultation on Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (information on then Payer) Regulations 2017 Statutory Instrument 2022

Our community's response contained in this paper reflects views expressed by our members and industry experts. As The Payment Association's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to represent the views of all members fully.

We are grateful to The Payment Association's members and the experts they have recommended to us, who have contributed to this response which has been drafted by Jane Jee, a consultant, and Project Financial Crime Lead for The Payment Association. We hope it advances our collective efforts to ensure the UK's payments industry continues to be progressive, world-leading and secure, and effective at serving the needs of everyone who pays and gets paid.

Tony Craddock  
*Director General*  
**The Payments Association**



## Introduction – Jane Jee, Project Financial Crime Lead, The Payments Association

The Payments Association (TPA) is pleased to have the opportunity to respond to the HMT's

1. Call for Evidence (CfE)- review of the UK's AML/CFT regulatory and supervisory regime and
2. Consultation on Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (information on then Payer) Regulations 2017 Statutory Instrument 2022 (Consultation)

The Payments Association represents a broad range of organisations; many members are regulated persons under AML legislation i.e. established banks, Challenger banks and Fintechs (including Electronic Money institutions and Authorised Payment Institutions). TPA also has card scheme members and members who are vendors into the payments market, some of which are RegTech companies offering solutions to help prevent financial crime. At present these companies do not fall to be regulated under AML legislation. TPA may be one of the few responders to HMT's CfE which represents such AML technology (Regtech) firms. Sophisticated criminals know how to bypass many of the basic AML controls used today and have identified the vulnerabilities of detection systems implemented by financial institutions. The systems being used to fight back – a combination of technology and human expertise - need to continually evolve and aim to be one step ahead of the criminals who ruthlessly exploit any weaknesses and use the latest technology to achieve their ends. As the NCA points out “Technological enablers are firmly embedded within Serious Organised Crime Groups’ methodologies, enabling them to upscale their operations and to adapt to law enforcement and regulated sector activity.”<sup>1</sup>

The Payments Association has been provided with a copy of the UK Finance response to the CfE and Consultation. We agree with the statement that the private sector expenditure on preventing financial crime could be more effective if directed towards high value, threat focused activity.

Globally fraud and economic crime rates remain at record highs, impacting companies in more ways than ever. TPA recognises that there has been a long series of leaks uncovering abuse of the world financial system by the rich and powerful. The latest of these is the Pandora Papers which reveal the names and secret dealings of politicians and world leaders. The Papers have caused increasing criticism and scrutiny of such dealings and more governments around the world are pledging investigations in the wake of the Papers which constitute the biggest-ever offshore leak.

Against this backdrop, HMT, in reviewing AML laws in the UK, has an opportunity to help prevent financial crime which is so damaging to the UK's economy and financial stability as well as its global reputation as the place to locate a business. We would, like UK Finance, encourage HMT to look more broadly than just the MLRs. We agree that there are tensions between existing legislation and guidance which has led to a lack of clarity across the regulated sector.

Whilst the TPA supports a risk-based approach, there needs to be more emphasis on outcomes and this will only be achieved with clearer, more effective leadership and clear responsibility. Supervision of ML/TF is currently unnecessarily fragmented. We support the call made by UK Finance for a single leader with ML/TF responsibility across the public sector and a more developed threat assessment as well as a set of clear objectives and principles for all supervisors. Maintaining the integrity of the financial market is a key objective for the FCA – this is interpreted as requiring firms to maintain effective systems and controls to prevent money laundering and terrorist financing. None of the AML supervisors is mandated to consider how technology might be deployed to reduce the cost and increase the effectiveness of ML/TF controls. An overarching obligation on supervisors would spur on the use of relevant effective technology and potentially accelerate progress.

The government's ambition should be for the AML/CTF sector to be at the forefront of innovation and technology in the same way as it has that ambition for the payments sector. If we are to foster a vibrant payments market in the UK, TPA believes that we should ensure that financial crime is not an area for firms to compete in but rather to collaborate and share relevant data. It is critical that the right data (especially live intelligence) is available to regulated firms of all sizes to make the appropriate risk

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<sup>1</sup><https://www.nationalcrimeagency.gov.uk/who-we-are/publications/569-sars-in-action-september-2021/file>

assessments of prospective customers and monitor them in a robust manner. Currently smaller financial institutions bear an unfair cost and effort burden to comply with AML requirements. This means that the UK is not able to realise the full benefits of the digitisation of the economy and take advantage of the opportunities it represents (as stated in the Kalifa review).

The UK has an opportunity to be a world leader in the AML/CTF field. The public sector has a vital role to play in enabling the right framework and data availability so that private sector can, in turn, play its part to prevent financial crime. The public sector controls many data sources which are vital to preventing financial crime and work is underway to improve these sources: examples are reforms to Companies House (so that the beneficial ownership of companies is transparent and abuse of companies is prevented) the DCMS framework on digital identity, the SARs reform programme and reform of the law on corporate liability for economic crime – all these initiatives should be expedited. The level of knowledge and understanding of ML/TF challenges and available efficiencies among supervisors must be increased. FCA AML focused Techsprints have gone some way to achieve this – the FCA noted “Profound and rapid learning for regulators, firms and others on the application and impact of emerging technology”<sup>2</sup> but overall, such initiatives have produced few tangible anti-financial crime results. Innovative private sector firms, even if able to find the time and resources to participate, cannot simply donate their intellectual property which would stifle their growth and block investment. Arguably the FCA is the wrong body to facilitate such activities given their need to be technology/solution provider neutral and their role as AML supervisors.

We would also echo the request made in the UK Finance response – given that the AML/CTF regime relies on a significant amount of processing (sharing/analysing etc) of personal data in order for it to function, that guidance should be issued on interaction between the regime and the requirements of the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA). We agree that understanding the interplay of the two sets of requirements (GDPR and MLR) is key to ensuring necessary and proportionate application of the MLRs, to ensure we combat financial crime in a fair, transparent and accountable way. The Payments Association members also need clear guidance on how to navigate between the two regimes, and the TPA would welcome clarity on the retention schedules set out in the current MLRs - they are extremely difficult to understand and implement.

Although HMT wishes to keep within a tight remit for this exercise, we agree with UK Finance that a broader perspective on the AML regime would enable a more effective review and help improve the UK’s ability to defeat economic crime. Our members also have to manage tensions between current regulations, legislation and guidance within the overall AML/CTF regime, such as managing risk whilst supporting access to banking or balancing sharing intelligence, to improve our understanding of threats, with GDPR. We also agree that many areas of the MLRs are restrictive and prescriptive resulting in regulatory burdens that resource tie up resource in low value activity as opposed to being directed appropriately against known risks and threats. We specifically think that fear of regulatory sanctions has prevented many banks from adopting technologies which can make a significant difference to defeating economic crime and we urge HMT to alter the mandate of supervisors so that they have an explicit mandate to support the adoption of such technology. This will involve encouraging experimentation and pilots and engagement from regulators to uncover what is effective and capable of being recommended. Technology neutrality of regulation and supervisors may be desirable in theory but what is effective needs discussion and potentially support for its use. Some of the Regtech solutions available to regulated entities could easily be used to help support the NCA and FCA (and other supervisors) in their work including investigations. In the case of the supervisors, Regtech could help their approval and monitoring of their regulated constituents.

On the topic of fraud, Chris Hemsley (Managing Director at the Payment Systems Regulator) stated recently that focus was essential on, amongst other things, the receiving bank, where a fraudster had managed to open or take over an account, and to where fraudulent funds were being transferred. He commented that while many of the sending banks are stepping up their efforts – but is there enough focus on where the funds are received? He also referred to the need for social media firms to step up and make it hard for criminals to seek out their victims using their platforms. As the FCA has highlighted social media firms make money from the adverts placed by criminals.<sup>3</sup>

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<sup>2</sup><https://www.fca.org.uk/publication/research/fostering-innovation-through-collaboration-evolution-techsprint-approach.pdf>

<sup>3</sup> [https://www.psr.org.uk/news-updates/speeches/speeches/pay360\\_chris-h\\_oct-2021/](https://www.psr.org.uk/news-updates/speeches/speeches/pay360_chris-h_oct-2021/)

The Payments Association would also draw HMT attention to the independent Taskforce on Innovation, Growth and Regulatory Reform report was released on June 16, 2021 to set out a near-term vision for the future of UK regulation. The report does not specifically address payment service providers (PSPs) in full, with the exception of a proposal for reduced AML burden on account information services providers (AISPs) and payment initiation services providers (PISPs), currently in consultation and PSPs' role in facilitating retail central bank digital currency (CBDC) payments. The two key changes outlined throughout the report are:

1. The UK's move from codified law towards principles-based common law to increase competition both domestically and internationally and
2. The drive for the establishment of a framework that supports and nurtures digital innovation.

The report proposes that the UK could implement a framework that supports leadership in fintech as recommended by the Kalifa review. We want to make sure that this is considered in revising AML laws and regulations and that HMT's actions support, and do not set back, the progress and potential within the Fintech/RegTech sector.

Jane Jee  
*Project Financial Crime Lead*  
**The Payments Association**



## Contents

### EPA Responses

The section below corresponds to the numbering as listed in Annex B 'List of Consultation Questions'

## Recent improvements to the regulatory and supervisory regimes

### 1. What do you agree and disagree with in our approach to assessing effectiveness?

We agree with the overall approach of HMT – i.e., that FATF principles should be followed. We also agree with UK Finance that HMT's approach should be aligned with the Wolfsberg paper on Effectiveness<sup>4</sup> which advocates:

- a focus on clearly articulated national priorities against which financial institutions can demonstrate risk-based control environments;
- where resources are appropriately allocated in a timely manner based, as far as possible, on live intelligence and understanding of higher risk factors;
- where there are demonstrable positive outcomes from these controls, and a financial institution has the confidence to re-allocate resources from ineffective and inefficient controls without concern for regulatory criticism.

We, at The Payments Association, particularly endorse this statement within the Wolfsberg paper:

“While these, and indeed other, controls are well known, today auditors, consultants and supervisors tend to focus their assessment of these controls almost exclusively on their technical implementation and execution. In a regime focused on effectiveness, supervisors and FIs would instead focus on the practical element of whether the controls are making a material difference in helping the FI, and the jurisdictions in which it operates, mitigate its risks and address defined AML/CTF priorities. In other words, as the FATF has emphasised, effectiveness should be judged on outcomes rather than process”<sup>5</sup>

### 2. What particular areas, either in industry or supervision, should be focused on for this section?

We agree with UK Finance that the focus should be on:

- System leadership across the public sector
- Articulated national threat priorities to enable better targets and priorities
- An improved more detailed threat assessment building on the National Risk Assessment
- An extended regulatory perimeter to target entities which bring risk into the system
- More consistency and effective supervision with all supervisors working to the same standards underpinned by principles and guidelines

We also consider that supervisors should actively encourage the use of effective new technology by regulated entities. To achieve this, collaboration and experimentation should be encouraged and RegTech solutions which deliver live intelligence, and which can reduce manual, ineffective time-consuming activities should be actively supported.

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<sup>4</sup>[https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20Group\\_Demonstrating\\_%20Effectiveness\\_JUN21.pdf](https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20Group_Demonstrating_%20Effectiveness_JUN21.pdf)

<sup>5</sup> See FATF (2021), <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-supervision.html> Guidance for applying a Risk-Based Approach to Supervision, FATF, Paris, 18 (“The FATF focuses on outcomes rather than process.”)

### 3. Are the objectives set out above the correct ones for the MLRs?

In a similar way to UK Finance, The Payments Association welcomes the introduction of objectives, in an effort to encourage cohesion across the system. We agree that a clearly defined, overarching outcome for the system as a whole should be developed so that there is a clear, shared purpose.

Regulated entities are dependent upon the data collected by Companies House (CH) which is so often inaccurate and outdated. Successive data leaks have revealed the shocking extent of the abuse of UK corporate vehicles much of which can be prevented by an efficient, effective corporate registry. In turn the obligation of Directors to update CH information should be reinforced. In the case of regulated entities there is a case for enhanced sanctions for failing to report changes.

Given the importance of the fintech sector to the UK economy, it is essential that government and supervisors engage directly with smaller regulated entities not only to monitor compliance but also to enable them to comply with all their obligations in as cost effective and efficient a manner as possible. Often these Fintechs will use available technology more effectively than larger counterparts.

### 4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

We at TPA consider that compliance with the MLRs and supervisors' expectations based on them have not kept pace with change and have unintentionally stifled the adoption of innovative technology which could help prevent financial crime. More incentives need to be given to regulated entities to experiment and to collaborate in this respect. Fear of sanctions from the supervisors and the ICO is preventing trials of technical solutions and appropriate data sharing. We are not suggesting that technology does not bring its own challenges – its functions must be capable of being explained to regulators and it may be difficult to implement (especially for banks with legacy systems) but in the long run it is a key part of the solution to stopping more economic crime and key to the UK maintaining its lead in the Fintech sector.

Money laundering usually involves groups of individuals and companies, resulting in complex money laundering schemes. Identifying weak signals and quickly adding contextual information to them is crucial. Criminals are exploiting technology more effectively than those seeking to prevent their activities. It is no longer just a question of identifying suspicious transactions and accounts – criminals' methods are sophisticated and the response needs to be equally so.

In particular the pandemic has increased remote onboarding of customers and incentivised improved digital strategies for regulated entities. The MLRs take no account of the rise of technologies which could help regulated entities fight back e.g. graph databases and forms of artificial intelligence such as machine learning, natural language processing and robotic process automation.

## High-impact activity

### 5. What activity required by the MLRs should be considered high impact?

There is currently no firm agreement on what constitutes high impact even though an interpretation would assist regulated persons. An essential aspect of AML activity is to assess the risk associated with a customer and manage that risk. Risk assessments have to be based on available data and therein lies the problem. It is relatively easy to obtain data (which the supervisor will see as complying) and wrongly categorise the true level of risk. Criminals are aware of the way to fall into a low-risk category and slip under the radar.

Many financial institutions use third party data providers which may create a weakness as their data may be out of date or incomplete – see FATF report <sup>6</sup>. It should also be noted that many of the data sources available to larger financial institutions are not available to smaller regulated persons including many Fintechs – for example JMLIT, The Joint Fraud Taskforce (JFT) and The Online Fraud Steering Group (OFSG).

It would be sensible for there to be an objective test of the data providers which could encompass some of the newer RegTech companies which offer real-time searches of the internet for adverse data as opposed to searching static databases. Again, when it comes to access to the appropriate data, the public sector has a crucial role to play in maintaining up to date data for example on companies and disqualified directors and other publicly held data such as tax evaders and VAT or Data Protection registrations.

#### 6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?

We agree with UK Finance that improved feedback from the law enforcement agencies to define more formally what constitutes "high impact" or "high value" activity and this must be shared with all regulated persons otherwise as stated above Fintechs (as secur which the government wants to support are placed at a disadvantage. As such the ambition of the reformed SARs programme, focussed on uplifting capabilities to deliver enhanced analysis and improved intelligence outcomes, will be very welcome once delivered.<sup>7</sup>

#### 7. Are there any high impact activities not currently required by the MLRs that should be?

Analysis and promulgation of current threats to regulated persons would help to concentrate or vary activities so that the most impactful are prioritised and the system strengthened. We agree with UK Finance that the MLRs, whilst technology neutral, could benefit from setting out clearer rules for experimenting with new technologies and the standards that any new system should meet.

We also agree that a broader emphasis on fraud and Terrorist Financing would be beneficial. We support the call for the Online Harms Bill to cover online fraud and scams and the regulation of social media platforms which facilitate such activities.

Better communication from law enforcement to all relevant persons on Terrorist Financing would help identify emerging typologies and trends. We agree that information about such "high value" activity is not always accessible and more should be communicated outside the National Risk Assessments.

#### 8. What activity required by the MLRs should be considered low impact and why?

We agree with UK Finance that low impact activity is driven by several factors, but primarily driven by the lack of a true risk-based approach in regulation and supervisory expectation which in practice is more process driven as opposed to outcome focused and generates regulatory burdens, restrictive rules and processes, and reduces the ability of relevant persons to focus on existing and new higher risk threats.

Resources should be directed towards higher risk areas. As things stand the supervision of relevant persons can lead to a tick box mentality so that firms put significant effort into checking

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<sup>6</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf> paragraph 222-224

<sup>7</sup> <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/569-sars-in-action-september-2021/file>



and auditing compliance and low risk customers rather than considering how their resources can be directed towards higher risk activities.

We agree that the approach to AML controls in firms are driven by the legislation and regulations; the approach and guidance from regulators; and firms' risk appetites. In some cases they are also unnecessarily driven by the fear of fines and regulatory action from AML supervisors or the ICO. This in turn leads to poor decisions about where resources are directed. An open conversation about the challenges in onboarding domestic PEPs, MSBs and other perceived high risk customers with the regulators would be helpful as would greater clarity on supervisors' expectations

We also agree that all involved in AML should acknowledge that no matter the effectiveness of technology, systems, or controls, not every criminal or suspicious activity will be detected, and firms will legitimately take a number of approaches to detect financial crime. As UK Finance has stated AML/CTF is not a precise science and there will also be situations where measures taken may impact legitimate customers.

Most Fintechs' business models involve international operations and we agree that the UK therefore needs to engage internationally to promote a truly public-private, risk-based approach.

## National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?

Yes, we consider that publishing National AML/CTF priorities could be a positive move. Fincen has done this recently see [https://www.fincen.gov/sites/default/files/shared/AML\\_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf) We agree with UK Finance that if there are to be Strategic National Priorities, the private sector should be able to input to the process and clear expectations and outcomes of the priorities should be set.

10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?

We agree with UK Finance that a NRA that covers the wider economic crime ecosystem is needed. To support that, if Strategic National Priorities were accordingly broad, in a similar way to FinCEN and were explicitly produced to support focusing activity and resource towards agreed threats then they could be more effective in terms of outcomes if they are priorities. If used in this way Strategic National Priorities could enable an agile, prompt, risk-based and intelligence-led approach, and reflect future priorities, whereas the NRA has traditionally been focused on past data.

11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

We agree with UK Finance that ultimately Strategic National Priorities will only be effective if they are accompanied by the appropriate means to ensure that activity can be flexibly dialled up or down to ensure that these priority areas are addressed.

## Extent of the regulated sector

We agree with UK Finance's response in relation to this section. We would also urge HMT to consider the Treasury Select Committee on Economic crime activity. The Committee has interviewed the heads of significant players in the economic crime space – most recently the major Tech companies and HMT should pay close attention to lessons learned from the sessions held by that Committee<sup>8</sup>

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?
13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?
14. What are the key factors that should be considered when amending the scope of the regulated sector?

## Enforcement

In general, we agree with UK Finance's response under this heading. In particular we agree that the application of supervisory powers varies by sector and are not always applied consistently or sufficiently robustly to be adequately dissuasive. We also agree that supervisors lack knowledge of the practical challenges and the resources to effectively monitor and assess risk in their supervised base. We note the first criminal prosecution of a bank by the FCA has recently occurred. Such cases take a long time to come to court so that this may have a deterrent effect but the issues will have been rectified long ago. Better data sharing and trials of solutions would be more effective to move the dial than just a fear of sanctions.

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?
16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?
17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?
18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

## Barriers to the risk-based approach

Again, we agree in general with the responses which UK Finance has given to this section. A single public sector overview of the whole economic crime ecosystem could make a great improvement in combatting criminal activity and we support the call for system leadership to set out that overview and enable resources to be tailored to threats. As many of our members are Fintechs and RegTechs, we particularly support changes in the regulations which will enable new technologies to be more easily adopted. The regulations currently place the risk and responsibility for using technology and outsourcing on relevant persons who lack guidance and supervisory support for trialling new technologies and working with external providers. Even if larger firms can build technical solutions, they may be less than effective and it is important that smaller firms can access relevant technology which is likely to be from specialist providers – as mentioned elsewhere a system of certification of such providers could

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<sup>8</sup> <https://committees.parliament.uk/committee/158/treasury-committee/news/157896/treasury-committee-presses-tech-giants-further-on-economic-crime/>

accelerate adoption. Some relevant persons are reluctant to take on any new technology unless there is supervisory support.

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?
20. What activity or reform could HMG undertaken to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?
21. Are there any elements of the MLRs that ought to be prescriptive?

Some elements of the MLRs could be prescriptive if the available technology were more accessible. For example, adverse information checks, currently recommended as part of EDD in JMLSG guidance, if sufficiently easy and affordable, could be mandated as part of every risk assessment.

## Understanding of risk

We agree with the UK Finance response to this section. We also believe a risk-based approach would be greatly facilitated by the levelling up of financial crime controls and oversight in sectors other than financial institutions. We are aware that many members and RegTech providers do not have access to JMLIT and therefore miss out on lessons learnt, or typologies discussed there. This information should be available to all relevant persons and appropriately vetted/certified data providers.

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?
23. What are the primary barriers to understanding of ML/TF risk?
24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?

## Expectations of supervisors to the risk-based approach

In general, the Payments Association is very pleased with our contact and dialogue with the FCA. . We agree with UK Finance that an explicit requirement for the FCA to support effectiveness and efficiency as well as competitiveness would help support a risk-based approach. Our view is that the arena of sharing data and using effective new technologies to combat economic should not be a competitive issue and that more guidance and support is appropriate. We endorse the statement that “Sharing what can work well and what does not in a system is a subtle but important difference from simply highlighting the FCA view of good and bad practice.”

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?
29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

## Application of enhanced due diligence, simplified due diligence and reliance

We agree with UK Finance's response to this section and the analysis of the overly prescriptive application of EDD. Again, some of the burden of EDD could be lightened by the use of appropriate technologies, particularly the uncovering of adverse information at onboarding, ongoing adverse information checks and automated transaction monitoring. The Payments Association Project financial crime requested and were refused permission to join JMLSG and so our members cannot input their experiences or help shape the guidance.

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?
31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?
32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?
33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?
34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?
35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?
36. Are there any changes to the MLRs which could mitigate derisking behaviours?

## How the regulations affect the uptake of new technologies

Please see our comments in the introduction. The regulations have been drafted without the benefit of knowledge of the evolving anti-financial crime technologies and whilst they do not specifically prevent the adoption of such technologies as we have mentioned there is no incentive for relevant persons to adopt them and they fear breaching the regulations if they do.

37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?
38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?
39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

## SARs reporting

We agree with UK Finance that the NCA is best placed to evaluate the quality of SARs and their value and as such it is for the NECC to assess the overall quality of reporting by sector and to address sectoral and individual firm failings as necessary through feedback and if needed engagement with the relevant supervisors. The SARs reform programme should be expedited as a great deal of time and effort is wasted in relation to the current SARs regime. We at the Payments Association would welcome the opportunity to be involved in the reform programme.

40. 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?
41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?
42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?
43. What else could be done to improve the quality of SARs submitted by reporters?
44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?
45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?

## Gatekeeping tests

We have elected not to reply in detail to this section. As mentioned in the introduction the RegTech which can support relevant persons can be deployed to enhance the efficiency of supervisors. We believe that some financial institutions have been approved in circumstances where had all relevant information been available, they would not have been.

46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?
47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?
48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

## Guidance

As stated in the introduction we consider that more can and should be done in terms of guidance to enable the adoption of effective new anti-economic crime technologies.

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

We agree that the current guidance regime does support relevant persons in meeting their obligations under the MLRs but the available guidance is not consistent and there are areas where it could be improved especially on the appropriate EDD measures which are too general and the sharing of data between relevant persons.

50. What barriers are there to guidance being an effective tool for relevant persons?
51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

There needs to be broader involvement of different types of firms across the regulated sector and companies which have developed relevant technologies to combat economic crime.

## Structure of the supervisory regime

### 52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?

We think that work is still to be done to address FATF's December 2018 evaluation of the UK's Anti-Money laundering and counter-terrorist financing measures that the UK should address the significant weaknesses in supervision by ensuring consistency in ML/TF risk understanding; taking a risk-based approach to supervision; and ensuring that effective and dissuasive sanctions apply.

The capacity of both the 22 non statutory and 3 statutory supervisors has not kept pace with their increased responsibilities with new sectors brought within scope of the MLRs not being adequately matched by supervisory capabilities. In particular the level of knowledge and expertise within supervisors about the practical challenges faced by relevant persons is not adequate.

All too often the financial sector is having to act to prevent risk introduced by other regulated sectors because the supervision and enforcement of those sectors is not consistent or up to the required standard.

### 53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?

Of the 25 UK AML supervisors, the FCA is recognised as the most effective but even the FCA can improve and better direct its resources by for example using appropriate technology. The lack of single entity within the public sector with responsibility for AML means that compliance and guidance is fragmented. As stated earlier many government departments can provide crucial data to prevent economic crime and yet they lack coordination and resources to achieve this. Key high-risk areas such as MSBs and Estate agents are well known but without a better overall economic crime strategy the burden of trying to prevent risk is unequal and unfair.

### 54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?

It is clear that the status quo can be improved and that a consistent, effective approach to supervision underpinned by sufficient powers, resources and a common set of principles and objectives is required. If a new approach is adopted, it must address these weaknesses rather than potentially introducing more.

### 55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

Better supervision is less about consolidating supervision and more about the supervisors working to agreed standards and priorities, overseen by a single entity. The point that supervisors know their constituencies is well made but in some cases that familiarity leads to wrong assumptions and a lack of rigour. Examining cases where money laundering has occurred and the role of the various relevant persons involved may lead to identification of gaps and better coordination of supervision.

## Effectiveness of OPBAS

### 56. 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?



The success criteria for OPBAS (rather than its objectives) are not clear – its most recent report identifies many weaknesses in the PSBs which it supervises:

- the vast majority of supervisors in this sector (81%) do not have an effective risk-based approach to supervising their members;
- 85% of supervisors are not effective in using predictable and proportionate supervisory action;
- 50% of supervisors do not ensure members take timely action to correct gaps in their AML controls;
- 68% of supervisors do not have effective enforcement frameworks – with 74% failing to use enforcement tools available to them effectively;
- a third (33%) of supervisors have still not effectively separated their regulatory and advocacy roles posing real conflict of interest issues and reducing effective supervision.

57. 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?

We have no doubt that OPBAS has made progress but professional enablers are still identified as a key risk for money laundering/terrorist financing. The above statistics reveal a lack of progress. The Payments Association is not in a position to spell out the key factors but certainly consistent standards of AML supervision by the PSBs has not been achieved.

## Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?

We agree with UK Finance that the existing regime should be improved or strengthened so giving OPBAS the authority to properly supervise and hold to account the supervisors they oversee would be one way of levelling up standards. The creation of a rulebook that the entire regulated sector could be held to would help. We also agree that OPBAS should be responsible for the creation of a methodology for external AML/CFT supervisory audits and for the training and / or accreditation of the persons undertaking those supervisory audits.

59. 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?

Yes.

## Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?

In a similar way to UK Finance we are not aware of businesses offering regulated services under the MLRs that do not have a designated supervisor. We agree that there are unregulated entities that at face value advertise or provide services as business activities that would seem to fall within the MLRs or where there is a lack of clarity. We agree with the examples cited by UK Finance.

61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?

In December 2020, HM Treasury published its third national risk assessment (NRA) of money laundering and terrorist financing which shows that professional services are a crucial gateway for criminals looking to disguise the source of their funds. The NRA states that, like banking and accountancy services, legal services remain at high risk of abuse by money launderers and suggests that high-end money laundering almost always requires facilitation by professional services, even if unwitting.

The most recent SRA Anti-money laundering report identified "A failure of staff to follow procedures, inadequate training or supervision and poor policies"<sup>9</sup>

The Payments Association is not in a position to recommend that a default supervisor would make a difference - it might but clearly there is scope for improvement in AML supervision of law firms.

62. How should the government best ensure businesses cannot conduct regulated activity without supervision?

No response.

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<sup>9</sup> <https://www.sra.org.uk/sra/news/press/aml-supervisor-report-2021/>