

Consultation: Office for Professional Body Anti-Money Laundering Supervision: Sourcebook update

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is pleased to have the opportunity to respond to the FCA consultation document [Office for Professional Body Anti-Money Laundering Supervision: Sourcebook update](https://www.fca.org.uk/publication/consultation/cp22-16.pdf)¹ ('the consultation') issued on 11 August 2022. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the need to review the OPBAS Sourcebook to ensure it provides appropriate guidance to AML supervisors.
- 1.3 The CIOT is an AML supervisor and our response needs to be considered in this context and in the context of the market in which tax advisers operate.
- 1.4 Membership of the CIOT is by way of a process of exams and practical experience individuals are asked a series of conduct questions when applying to undertake exams and apply for membership. Members are also required to provide information on an ongoing basis in relation to their conduct. There are therefore gatekeeping processes for general members. Those applying for AML supervision undertake further 'gatekeeping' checks before supervision is confirmed.
- 1.5 The great majority of CIOT members work for firms supervised by other professional body supervisors (or outside the regulated sector, for example in the in-house tax departments of large companies) and therefore our supervised population of 842 firms is considerably smaller than many of the other AML supervisors.
- 1.6 It should also be noted that individuals do not have to be a member of a professional body in order to provide tax services. Members can leave membership of the CIOT or can have their membership removed through disciplinary action but are still able to operate as tax advisers, albeit they then have to obtain AML supervision from another professional body (if they are members) or HMRC (if they are not).

¹ <https://www.fca.org.uk/publication/consultation/cp22-16.pdf>

2 Overview

- 2.1 Overall we consider that the OPBAS Sourcebook is well written and helpful and that the additions made provide useful additional guidance to AML professional body supervisors.
- 2.2 We support the risk based and proportionate approach to AML supervision and the CIOT aims to adopt this approach to ensure our AML supervision is effective and proportionate.
- 2.3 Our role as AML supervisors and the role of the [Taxation Disciplinary Board](https://tax-board.org.uk/)² (the independent body dealing with disciplinary matters in relation to our members) in providing an investigatory and disciplinary framework for this, operate in the context of our broader tax educational and crime-fighting remit and obligation as a charity to pursue these important priorities in the public interest.

3 Question 1: Do you agree that we should add the new chapters we have proposed to the OPBAS sourcebook? If not, please explain why. Is there different content you think we should include?

- 3.1 A chapter in the sourcebook outlining the OPBAS approach to supervision and how effectiveness will be measured is a useful addition to the sourcebook. It is important for there to be transparency in this area so professional body supervisors can be clear on why they have received the effectiveness assessment they have and how to improve effectiveness.
- 3.2 We agree that it is sensible to incorporate the current guidance on reporting into chapter 11 of the sourcebook rather than by way of separate standalone guidance.
- 3.3 In relation to the content of chapter 2 we have the following points:
- Chapter 2 in general does not always reinforce the messages around the risk based approach of supervisors and their supervisory activity being proportionate although these concepts do appear in other sections. It would be helpful to also include these terms in section 2 and link those to the measures of effectiveness.
 - 2.7 refers to a 4-point scale. Whilst we note that desired outcomes are set out in each chapter of the sourcebook it would be helpful to have examples demonstrating how improvements needed might be minor, moderate, major or fundamental. There are no definitions or principles included here which set out how these ratings are arrived at.
 - It would also improve transparency if the sourcebook set out the process undertaken by OPBAS to ensure these results are consistently assessed between different inspection teams within OPBAS and therefore between different bodies. We understand from the sourcebook workshops that all reports and notes are ultimately reviewed by one person so it would be helpful to confirm this in the sourcebook itself. This aligns with the requirement for the bodies to have quality control procedures for their processes.
 - The example in 2.8 should be reviewed in relation to looking at how areas work together. The CIOT disciplinary body is independent of the CIOT and therefore the example does not fit well in this context.

² <https://tax-board.org.uk/>

- We consider it would enhance effectiveness if there was a commitment to identify not only areas where the supervisor needed to implement improvements but specific guidance as to what OPBAS would consider an acceptable outcome. For example, whilst accepting that all bodies visit different proportions of members on site it would be helpful for a body receiving an action point that a greater number of visits are required was also provided with an indication by OPBAS on what they consider the appropriate number of visits should be or at least how the professional body should identify the figure.

4 Question 2: Do you agree that we have identified appropriate outcomes for chapters 3 to 11 of the sourcebook? If not, what outcomes do you think we should include?

4.1 The outcomes and sections in relation to more effective practice and less effective practice are useful. The format of these means they could be used by professional bodies as a self assessment tool.

4.2 Points about outcomes and examples of more effective practice/less effective practice noted when reviewing the document are:

- Chapter 3 - how does OPBAS determine 'material and proportionate level of resource invested' as set out in bullet point 6 of effective practice?
- Chapter 5 – one of the outcomes required is to 'deny membership to bad actors'. Whilst members can be excluded from membership by the TDB, we cannot prevent such members from continuing as tax advisers albeit that they then need to apply for supervision from another professional body or more usually in such circumstances HMRC (with whom we would seek to liaise in relation to the member's history).
- Chapter 9 – how does OPBAS determine what is a 'disproportionate focus on educating and supporting members when serious failings are identified'?
- Chapter 9 – there is a reference to fines which are 'not proportionate to the seriousness of the issues identified': it would be helpful to have more granular guidance on appropriate levels of fines.

5 Question 3: Do you have any comments on our proposed changes to the existing chapters of sourcebook? If so, what do you think we should change in:

- Chapter 3 (Governance)?**
- Chapter 4 (A risk-based approach)?**
- Chapter 5 (Supervision)?**
- Chapter 6 (Information and intelligence sharing)?**
- Chapter 7 (Information and guidance for members)?**
- Chapter 8 (Staff competence and training)?**

g. Chapter 9 (Enforcement)?**h. Chapter 10 (Record keeping and quality assurance)?****5.1 Comments on chapter 3 (Governance):**

- The separation of advocacy from enforcement (3.1) is sensible and important and as stated it is important that there are clear lines to senior staff. It is important though to understand that not everything which is not AML is 'advocacy': in particular, professional bodies uphold professional standards in the public interest, not out of 'advocacy', and in practical terms it is likely that compliance with professional standards will be positively correlated with compliance with AML rules.
- It may be helpful to add to 3.2 that AML supervision should regularly be on the agenda of the governing council or equivalent.
- Including references to the SPOC in chapter 3 also makes sense. However, given the role and requirements of the SPOC we are unsure why the named individual has to be at Board level as long as they are accountable to the Board.

5.2 Comments on chapters 4 - 5 (None)**5.3 Comments on Chapter 6 (Information and intelligence sharing):**

- Paragraph 6.7 a should more appropriately refer to performing relevant searches on applications for AML supervision rather than membership. CIOT do not AML supervise all members as most are employed by firms with other AML supervisors (or not requiring supervision). It would be disproportionate to undertake SIS checks on every single CIOT membership application.
- Paragraph 6.7 b refers to uploading intelligence flags for live investigations. It is not clear what is meant by the term 'live investigations'. We would not expect to upload cases in the disciplinary process with the TDB, or supervisory visits where there were action points to be dealt with, but both could be considered to be live investigations.
- We consider it helpful that the term 'whistleblowing' ceases to be used and that the term 'disclosures' is used instead.
- We continue to view more granular information sharing by law enforcement as one of the most effective tools in the fight against economic crime and OPBAS work to facilitate this has been appreciated. We consider further discussion is needed about use of tools such as SIS and Fin-Net.

5.4 Comments on chapters 7-8 (None)**5.5 Comments on chapter 9 (Enforcement):**

- This chapter proceeds on the basis that the professional body does all the supervision and enforcement in-house. It does not set out the situation which applies to the CIOT where enforcement by way of disciplinary action is delegated to be dealt with independently by the Taxation Disciplinary Board. We consider that this independence makes our supervision more effective as it underscores

for members the separation of the disciplinary process from any 'advocacy' role: the chapter should reflect such different models of operation.

- Paragraph 9.2 says 'Enforcement action should be effective, proportionate and dissuasive, and applied in a fair and consistent manner.' We endorse this based on the treatment of cases by the TDB.
- Paragraph 9.4 sets out principles on enforcement action. It would be helpful if OPBAS provided guidance on appropriate financial penalties or the principles underpinning them. For example are they expected to be punitive in nature and how would this be reconciled with being proportionate?
- Paragraph 9.8 deals with the publication of cases. The TDB currently publish cases when the case is proven and sanctions imposed. Would OPBAS ever expect publicity to be given to someone charged with an AML related offence ie prior to the case being proven and sanctioned?

6 Question 4: Do you agree with our analysis of costs in Annex 2 of this consultation? If not, please explain why, providing evidence of costs where possible.

- 6.1 We note that the estimates in Annex 2 suggest that each professional body may look to recruit an average of 0-2 additional staff to improve effectiveness with an average cost per professional body of £0 to £120,000. The background to these estimates has not been provided and it would be helpful to understand the basis on which this has been calculated. Given the general scarcity of experienced AML staff and the current employment market these costs may be underestimated.
- 6.2 The annex states that 'some costs may pass down to PBSs' members and subsequently to member's client populations'. It is inevitable that costs are passed on to (at least supervised) members and also that these would then generally be passed on to their clients.
- 6.3 Any disproportionate AML supervision costs placed on professional body members potentially results in them reducing their costs by leaving membership of their professional body or ceasing altogether. This is not in the public interest as it either leaves fewer tax advisers on the market able to assist clients or leads advisers to operate outside professional body membership and so not subject to the high professional standards required (including the requirements for continuing professional development and professional indemnity insurance), and no longer subject to professional body disciplinary processes which enable HMRC and members of the public to complain about any poor practice by tax professionals in areas other than AML.

7 Acknowledgement of submission

- 7.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

29 September 2022