Consultation on Action Plan for Anti-Money Laundering and Counter-Terrorist Finance

ICAEW welcomes the opportunity to comment on the Government Action Plan for Anti-Money Laundering and Counter-Terrorist Finance published by The Home Office on 21 April 2016 a copy of which is available from this link.

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1. In this response we include a major points section followed by our responses to specific questions for both the consultation on legislative proposals and Call for information on the AML supervisory regime.

MAJOR POINTS

2. We welcome the Government's intention to reform the SARs regime, and the commitment to a true risk based approach. We look forward to hearing more details regarding the proposals in this area however we urge against a complete abolition of the consent regime without sufficient alternative protections being in place.

3. We welcome proposals to encourage and enhance information in the private sector and with the public sector. We believe shared intelligence portals will allow different regulated sectors to share complementary and contrasting intelligence.

4. We are supportive of efforts to strengthen the UK's response to Money Laundering and Terrorist Financing and to this end we think that the regime would benefit from better supervision, better enforcement and better sharing of information. However we do not think that a single supervisory authority will necessarily lead to better supervision.

5. **We think that a central oversight body (similar to the Legal Services Board) would be welcome. This solution would allow a risk based approach within the sector and we hope would also result in an increased measure of consistency rather than an additional layer of bureaucracy.**

6. We welcome proposals to strengthen law enforcements response, particularly around asset recovery, but subject to adequate safeguards to protect the innocent. That said many authorities already have a suite of criminal and civil powers which are not used effectively due to under-resourcing. Any proposals in this area must be considered against a backdrop of austerity.

7. A complete abolition of the consent regime would make many common engagements such as insolvency and probate unworkable.

8. We think a common approach or common language underpinning risk assessment would be advantageous. However many regulatory sectors are complex and diverse and a 'one size fits all' approach would not work. The regime should reflect that variety and all these nuances create the need for tailored supervision that should not be viewed as inconsistent but instead facilitating proper application of the risk based approach. Professional accounting bodies, for example, have a wide range of mechanisms at our disposal, including for example formal training, client money regulations, practice regulations, quality control programmes, disciplinary procedures, and a code of ethics. A good starting point might be sector by sector methodologies, collaboratively prepared by representatives of each sector and approved by Government.

9. Furthermore, any changes to the supervisory regime will only be effective if supported by a genuine investment in knowledge, skills and resources in Government.

RESPONSES TO SPECIFIC QUESTIONS:

Annex A: Consultation on legislative proposals
Section 2(a): Public-private partnership

Q1: The Government is seeking views on the change in focus of the SARs regime from one on transactions to one on the entities responsible for money laundering and terrorist financing.

- **What benefits are there for the reporting sector in moving the focus of the SARs regime from *transactions* to *entities* for tackling money laundering and the financing of terrorism?**

10. We welcome the Government's intention to reform the SARs regime, and the commitment to a true risk based approach. In recent years the purpose of the regime has been called into question. It is not clear whether it is designed to address all instances of financial crime (including theft of petty cash), or the most serious (for example billions of drug money entering the London financial system).

11. The subjective nature of suspicion and the lack of a de minimis has led to many reporters filing SARs that are of little interest to the National Crime Agency (formerly the Serious Organised Crime Agency). Professionals are legally required to report suspicious activity to law enforcement without any ability to filter the most important reports, this means that the same level of obligation is attached to a report concerning a petty cash theft as it is to a genuine suspicion of serious organised crime. Law enforcement, under significant resource constraints, then need to sort through such reports to find those where serious economic crime is suspected.

12. A move to a suspicious entity approach is of interest. A focus on suspicious entities rather than suspicious transactions would likely result in a more targeted approach to areas of higher risk, by ensuring that entities presenting a higher money laundering risk are more closely monitored by both the public and private sector. However at this stage the operational aspects are unclear. We believe that the intention is to reduce the SARs "burden" both on reporters and the FIU but this should not happen at the expense of useful intelligence. Furthermore, whilst this approach may be of great interest from an AML perspective, a transactional approach may still be preferable for Counter Terrorist Financing (CTF), which often involves smaller sums of money and may not be carried out through the same entities consistently.

13. We look forward to hearing more details regarding the proposals in this area, in particular how they tie in with FATF recommendations and the 4th Anti Money Laundering Directive.

- **What would be the effect on costs to business in making that shift?**

14. We would hope that such a move would be less resource intensive than the current regime. However it is difficult assess further without the operational detail.

Q2: To support that change, the Government is considering removing the current consent regime.

- **What are the risks in removing the consent regime, and how could these be overcome?**

15. Our original understanding of the consent regime revolved around its usefulness to Law Enforcement Agencies (LEAs), to give them the chance to "follow the money" in cases of active money laundering. LEAs may have also used it as a mechanism for filtering suspicion reports for importance – if no request for consent is made, it is less likely to be something requiring active law enforcement follow up. If the regime doesn't work in those ways any more then it is difficult to argue against reform.

16. However this is an area where reporters expose themselves to significant risk and are often caught between a rock (fulfilling their obligations to report) and a hard place (risking legal action). Another reason for the consent regime is to mitigate this risk and this has led, in some cases, to some erroneous judgements about the motivations of those who seek to use it.

17. It is not uncommon for businesses to receive 'accidental' payments into their accounts, usually followed by a request for repayment. Paying such money back could constitute a money laundering offence if there are suspicions as to its origins and therefore consent in such cases is a necessity to avoid prosecution.

18. Furthermore, a complete abolition of the consent regime would make insolvency engagements unworkable. When a professional seeks to either rescue a failing business, or ensure that creditors of a failed business get paid, he or she may have suspicions that the reason for such failure were due to, for example, fraud on the part of a delinquent company director. Without the consent regime there would be no way to make payments to those who are owed (and no doubt desperately need) the cash, as such payments would constitute a money laundering offence. A similar issue exists in respect of probate. We therefore need greater clarity on how reporters will be protected.

19. The Government proposes immunity for those taking specified courses of action and 'maintaining a customer relationship when to terminate it would alert the subject to the existence of a law enforcement investigation" is one suggestion of such action. Such options that rely on the reporter having knowledge of an investigation would make improved information sharing between private/sector even more important.

20. Other options include introducing an assumption that on submitting a SAR, a reporter has fulfilled their obligations and it is for the FIU to intervene if they feel that activity should be stopped. In other words consent is assumed (particularly appropriate in the case of insolvency as mentioned above). This would face many practical challenges under the existing regime however with an improved IT system, improved information sharing gateways, and a more risk focused reporting system it may be significantly more realistic.

21. A tiered system for SARs reporting should also make consent reports (or their alternative) significantly easier to deal with. Consent could, for example, be retained for those transactions presenting a higher risk, or for international transactions where the possibility of recovering funds is substantially reduced once they have left UK shores. An appraisal of situations where the NCA have refused consent may help identify potential categories.

- **If the current SARs consent regime is replaced, removing the statutory defence for SARs reporters, what legal protections should be available for reporters who unwittingly come into the possession of criminal property?**

22. We see a number of practical difficulties to be overcome with this proposal, as it may be easy to erase/falsify evidence that may suggest any prior connection with the other party. Furthermore the absence of mens rea is traditionally something that has been decided by a jury, with good reason. However it is essential that reporters are protected where their physical safety is at risk.

23. We note that the 'adequate consideration' defence under s329(2)(c) already applies to the acquisition offence and would protect a person who is entering into a business transaction 'in good faith'. This could be extended to an unwitting recipient.

- **What would be the costs to your business of this change?**

24. The cost saving for many may be small given that a SAR would still be required in the same circumstances as before. However we are aware that some of our members (and law

enforcement) spend significantly more time on consent SARs which often result in further enquiries.

Q3: Should a reformed SARs regime include powers for law enforcement agencies to direct reporters to take certain actions, including maintaining a customer relationship, and provide legal cover for the reporter to do so?

25. The circumstances where such direction may be allowed should be carefully considered, clear and with appropriate safeguards. There is a risk that having an ongoing relationship with a criminal element would put an individual in harm's way, as well as them not being morally comfortable with continuing such a relationship following the forming of a suspicion. Furthermore, it is not clear what is meant by 'law enforcement agencies' as a significant number of bodies have at least some powers of law enforcement, each with differing levels of resourcing and ability to use such powers for their intended purpose. Many authorities already have a suite of criminal and civil powers which are not used effectively due to under-resourcing. Any proposals in this area must be considered against a backdrop of austerity.

Q4: The Government is proposing to provide legislative cover to support better data sharing within the private sector.

- **What legislation and guidance needs to be in place to allow effective sharing of information between private sector firms in order to prevent and detect financial crime?**

26. Specific statutory mechanisms already exist under the current legislation. These could simply be extended.

27. Firstly, s333B of the Proceeds of Crime Act 2002 (POCA) allows disclosure between professionals of equivalent standing (and duties of confidentiality and data protection) where the information involves a common client and is for the purposes of preventing a money laundering offence. This does not currently apply to a cross sector disclosure meaning that multiple firms may all have different pieces of a jigsaw puzzle but are unable to share them.

28. Secondly, s24A of the Money Laundering Regulations 2007 (MLR) allows a supervisory authority to disclose to another supervisory authority information it holds relevant to its supervisory function.

29. The key here is to achieve a solution whereby multiple entities can combine their pieces of the puzzle with that of law enforcement (preferably in real time). Many of the barriers here are not necessarily just legislative, but also practical and operational.

30. We have in the past been told that HMRC procedures prevent them from sharing such information which is a concern given that they are one of the largest and most diverse UK supervisors. Improved information flows from law enforcement to the private sector are also a necessity here, as is mutual trust, which can't simply be legislated.

- **What benefits would you see from having the ability to develop SARs in partnership / report jointly with other private sector entities?**

31. As indicated above a solution that combines all the puzzle pieces is desirable and would no doubt be of immense value to law enforcement. That said, the process of collecting said pieces should not be so burdensome as to cause undue delay, as in such investigations time may well be of the essence.

32. The above approach also leaves the question as to at what point the SAR is complete.

- **What can we learn from the U.S. experience of data sharing between private sector entities under the s314 of the USA PATRIOT Act?**

33. It is worth noting that the US Patriot Act does have specific rules for the sharing of data, however as far as we are aware it only applies domestically which means issues may remain for global networks. It has historically only included financial institutions and the scope of the US regulated sector is smaller than that of the UK. An equivalent regime here would need special attention paid to the safeguards required, such as entity registration, adequacy of policies and procedures, and confidentiality/data protection concerns, given the diversity of our regulated sector. Proper implementation could result in an improvement in SAR and CDD quality, and a more effective response from law enforcement however trust in the private sector is a vital element. Anecdotally, we understand the convenience and practical operation of the Act remains in question.

Q5: Under the EU 4th Anti-Money Laundering Directive (4AMLD), Financial Intelligence Units are required to have a power to request further information in relation to a SAR. How should such information be gathered, and should it be regarded as part of the overall SAR?

34. It would make sense for further information requested in relation to a SAR should be included as part of that SAR and subject to the same protections. Such information should be gathered by allowing additions/updates to the existing SAR. Certain members of the regulated sector lament the fact that they are sometimes unable to even reference existing SARs they have already made, and therefore must duplicate that information in any new SAR involving the same suspect.

Q6: The Government wants to support the financial sector in dealing with suspected proceeds of crime held in suspended bank accounts.

- **What new powers are required to allow the criminal funds held in UK bank accounts to be forfeited more easily?**

35. If funds are indeed criminal then forfeiture should be made as easy as possible.

- **What safeguards should be put in place around any new powers in order to protect innocent account holders?**

36. It may not be appropriate to confiscate funds where the 'adequate consideration' defence applies under s329(2)(c) of POCA. This would protect a person who is unwittingly transacting with a criminal.

- **In uncontested cases, should administrative forfeiture be permitted, in the same way that POCA already enables the administrative forfeiture of cash?**

37. Yes.

Section 2(b): Enhanced law enforcement response

Q7: What do you see as the benefits of introducing a power to require individuals to explain the sources of their wealth?

38. Anyone under sufficient suspicion to merit a law enforcement investigation should be expected to cooperate with enquiries. Additionally, anyone currently engaging a regulated entity may well have to provide evidence of their source of funds as a matter of course.

39. We support measures to require such explanation where there is proper cause to do so, but not as a default position. The right of an individual to privacy should still be the assumption.

Q8: Would you see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided?

40. Yes. However as mentioned above care should be taken in considering the scope of where unexplained wealth orders are appropriate.

Q9: What benefit would you see in an illicit enrichment offence, targeting those who use their public position to enrich themselves? What are the potential impacts on business?

41. This would send a strong message to those who have committed to public service, that the trust placed in them should not be abused. Corruption is not a 'victimless' crime as it costs the taxpayer, results in a diversion of funds from those that are most likely to need them, an distorts effective economic analysis thereby impairing a Governments ability to plan for the future.

Q10: The Government is considering the introduction of a power to enable the Government to designate entities of primary money laundering concern.

- **What benefit would such a power provide?**

42. It would likely result in disruption to the business of targeted entities.

- **What would be the impact of such a power on firms in the regulated sector?**

43. Such a power would assist entities carrying out client due diligence and ongoing monitoring. Entities designated as high risk would invite a red flag leading to enhanced due diligence and a higher likelihood of refusal of business.

- **What legal recourse should be available for designated entities who wish to challenge their designation?**

44. The consequences of being on such a list are likely to be severe, and an appeal system similar to that in the sanctions regime (where cases can take several years and mistaken identity can be common) should not be reproduced. The importance of separation of powers cannot be understated, and an independent appeals process is therefore essential.

45. It is not clear from the proposals which Government department(s) would have the power to make such designations. Without this information it is difficult to make detailed suggestions as to what the appeals process should look like. However, entities whose designation is legitimate should be given clear steps to take should they desire removal from the list. The Serious Fraud Office (SFO) usage of Deferred Prosecution Agreement (DPAs) might provide a model here.

- **What can the UK learn from the U.S. experience of using section 311 of the USA PATRIOT Act?**

46. It is important to realise that the operation of s311 is dependent in some part upon the global reach and power of the US financial system, which tends to (outwardly at least) worry less about business/talent/investment leaving its shores than its UK equivalent does.

- **What would be the costs to your business?**

47. No comment.

Q11: What benefit would you see in the provision of a power, similar to the provisions for cash seizure, to allow seizure and forfeiture of other forms of readily moveable property such as high value jewellery or precious metals?

48. We support measures that will enhance the ability of law enforcement to deprive criminals of their ill-gotten gains.

Q12: What benefit would you see in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court? Should a limit be set on the value of property that could be administratively forfeited, and what should that limit be?

49. See response to Q11.

Q13: If we amend the investigative powers within POCA so they can be sought earlier in the investigative process, and make applications and administration more flexible, what would be the impact on your business?

50. No comment.

Q14: In addition to the proposals in this Action Plan, are there additional powers that UK law enforcement agencies should have to tackle money laundering?

51. No comment.

Annexe C: Call for information – AML Supervisory Regime

Q1: Should the government address the issue of non-comparable risk assessment methodologies and, if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?

1. We think a common approach or common language underpinning risk assessment would be advantageous. However many regulatory sectors are complex and diverse and a 'one size fits all' approach would not work. If the aim is to achieve consistency then all supervisors could use the format, methodology and assessment process used in the NRA as a template and then adapt it for their own purposes.

Q2: How should the government best support supervisors – and supervisors support each other – to link their risk assessments to monitoring activities and to properly articulate how they do so?

2. The AML community in the UK already has the Anti Money Laundering Supervisors Forum and its attached affinity groups. These are already used as forums for the sharing of information regarding risk assessment and monitoring activities, including a recent mutually agreed understanding of what constitutes compliance. Support in this sense may be unnecessary however it would be useful to have a mechanism of formal acceptance or approval (beyond tacit) from Government that the conclusions reached are acceptable. This would create clarity for regulated businesses.

Q3: Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?

3. It would be useful to understand where the line between monitoring and sharing is drawn. For example risk assessment results and the methodologies underpinning them could be shared via a central database or other mechanism which could then be "monitored" by HMT and law enforcement. But the monitoring of an individual supervisor's activities would seem unnecessary unless there were specific grounds for doing so.

Q4: Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?

4. See our suggestion above regarding a shared resource for supervisors, which may also be a helpful resource solution for all supervisors, not just the smaller ones. However a pooling of all supervisory may present practical difficulties given the wide and varied supervised populations, which will also be proportionate to the size of the supervisor thus leaving little to be gained from true pooling.

Q5: How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?

5. We support any agenda that might lead to an improvement in information sharing between private sector supervisors and law enforcement. The collection and sharing of information is a priority and when law enforcement share typologies it means obliged entities are better informed in carrying out client due diligence checks, which otherwise have to be carried out armed with little more than a list of general risk factors. This inhibits proper application of the risk based approach and encourages a 'tick the box' mentality. When intelligence about regulated individuals is passed to regulators, it enables us to launch our own regulatory actions, and this is especially important where all the elements for a criminal charge may not be present. Mechanisms are also required to ensure that all supervisors receive equal and consistent levels of intelligence from law enforcement. A shared intelligence portal, accessible by all supervisors, may be an effective remedy.

6. The format and mechanisms for such sharing need to be looked at closely. By way of example the current SARs format is currently designed for financial institutions and we don't think NCA are yet as used to seeing reports in a more narrative based format. It should also be recognised that many regulated entities will not necessarily have all the information that a bank would (eg. account numbers of recipients), but will nonetheless submit a report because they have a legal obligation to report subjective suspicion. This has led to some criticisms over quality.

7. Trust is a key factor here, and for many years there has been much talk of information sharing. The clear solution here is to follow through. The accountancy sector already shares information on risk assessments at tri annual AAG meetings and the vast majority provide information to HM Treasury. What is needed is a greater level of reciprocation from law enforcement and government.

Q6: To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?

8. Whilst we see no issue with making the submission of an annual return compulsory but HM Treasury would need the legal mandate to enforce this. There may be some value in making attendance at forums compulsory, however mere presence does not equate to actual engagement.

Q7: Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?

9. MLAC is currently attended by the private sector and relevant government departments. We welcome the suggestion that its role should be considered further. The objective of MLAC needs to be clearly established with terms of reference and a transparent appointments procedure. Our understanding is that the committee was originally set up to review the efficiency and effectiveness of the AML regime. Its current purpose seems to differ from its intended purpose and is unclear. It would be an ideal vehicle for the sharing of knowledge, skills and experience.

Q8: Should the government instigate a formal mechanism for assessing the effectiveness of the supervisors' AML/CFT activities with the power to compel action to address shortcomings? If so, should this duty be carried out by the Treasury, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?

10. A well-resourced, effective oversight body with experienced staff would be welcome here. Such a body would allay concerns around the perceived risks of conflicts in professional bodies. Such an oversight function should have the option to name supervisors/supervisees where they fail to comply, following a fair period for required improvements, as well as the option to terminate approval for bodies to be supervisors. The most obvious department to fulfil this role would be HM Treasury, but it would need appropriate resourcing to do so.

Q9: Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?

11. In considering the number of supervisors, a single supervisor would have to be a large body with different departments dealing with different sectors. We are reminded of repeated references to subcultures within the NHS and the resulting inconsistency. It would almost certainly target its work less accurately, and may (in many cases) have lower standards, well as lacking the wider regulatory framework (code of ethics, client money regulations, practice regulations etc) to which its members will also be required to adhere. We think that an oversight body (similar to the Legal Services Board) might facilitate a risk based approach whilst also ensuring an increased measure of consistency.

12. It would be helpful to have clarity on what is meant by guide and compel. We believe guidance is essential and compulsion necessary where a supervisor is unable to demonstrate that they have an adequate response, after a fair period for improvement.

Q10: Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?

13. Increased consistency here would be welcome, and proportionality is key. We believe supervisor experience is advantageous in respect of the latter, especially when such factors as culpability and existence of multiple charges (including regulatory AML breaches) may be present. Supervisors are also better positioned to take into account any prior disciplinary history.

Q11: Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?

14. The complexity of professional regulatory actions might make this difficult to implement in practice. The reality is that a typical disciplinary action will often involve multiple counts, such as breaches of the code of ethics as well as other professional regulations. It may therefore be difficult to separate the AML infractions from the other charges for the purposes of sentencing and appeals.

Q12: Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively

supervise, or is liaison with law enforcement an appropriate mechanism? If so, how could the government address this?

15. Inability to legally compel responses or unilaterally enter premises may not necessarily detract from effective supervision. Whilst most supervisors (bar perhaps HMRC and FCA) may not have these powers, non-responses or refusal of visits will weigh heavily against a member in an investigatory or disciplinary processes, which can in turn end in fines or expulsion. As indicated elsewhere in this response, professional bodies also have a wide range of other powers at their disposal to address poor behaviour on the part of their membership. It is also not clear that the availability of such powers has improved the quality of FCA or HMRC supervision.

Q13: Should all supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?

16. Yes. This information is vital for effective supervision, which does not simply constitute disciplinary action where required but also ongoing programmes of quality control and education. It would be difficult to adopt a risk based approach without such information. However the format of the information should be left to the discretion of the supervisor otherwise there is a danger that we end up with generic information being submitted as part of a box-ticking exercise. Many accountancy supervisors already require their members to submit an 'annual return', as far as we are aware it is only HMRC that doesn't.

Q14: Is there a need for supervisors themselves to undergo training and/or continuous professional development? If so, what form might this take and should it be government-recognised?

17. We don't believe that there is any evidence to suggest that supervisors require further training or CPD in this area but if it is to be a requirement for regulated entities (which we believe it should be) then it is only right that similar should be expected from supervisors.

18. To have a government recognised qualification risks standardising and de-professionalising something which not be.

Q15: Is there a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuing professional development to aid their understanding of AML/CFT issues?

19. We are unsure as to why this question is being asked as there is already a requirement in the existing 2007 regulation. This requirement should remain in place. Furthermore, we would suggest that anyone who has obligations under AML regulations should be subject to fit and proper tests, and would add adherence to ethical standards to this recommendation. In order to uphold the highest standards required to tackle money laundering.

Q16: What safeguards should be in place to ensure that there is sufficient separation between the advocacy and AML/CFT supervisory functions in professional bodies? To what extent are appropriate safeguards already in place?

20. We are yet to be provided with evidence to suggest that the model of regulation by professional bodies is fundamentally broken. We are aware that some professional bodies choose to have their supervisory functions in a separate entity. We believe that segregation is more appropriate than separation. There are clear benefits for representation and regulation to work together. For example it creates synergies regarding practice assurance and quality control, as well as allowing the supervising entity to better identify areas where further education may be required. This facilitates effective, efficient, economic and better regulation. What is now required is strong, effective oversight.

21. Segregation can be achieved through the governance functions of the supervisors. For example in 2013, ICAEW undertook an independent review of our regulatory functions led by Sir Christopher Kelly. This has led to the establishment this year of a new Regulatory Board (IRB) to be chaired by Michael Caplan QC which enhances further the distinction between ICAEW's representative and regulatory roles. It is one of a number of initiatives being implemented by ICAEW to strengthen the governance and oversight of its regulatory functions, ensuring it continues to demonstrate best regulatory practice.

Q17: Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?

22. Mandatory separation would generate substantial additional costs without the evidence base to support them. As indicated above the regulation of their members by professional bodies is nothing new, nothing unique to the UK and nothing unique to Anti Money Laundering. It is a model shared by many different professions, including all Chartered Bodies, the world over. In the case of the largest of the accountancy professional bodies, our regulation of our members for audit work is carried out under the oversight of the Financial Reporting Council (FRC) and we are also bound internationally by the requirements of the International Federation of Accountants. Professional bodies are also funded by their members. We think that this widely adopted model of professional bodies regulating their members is fit for purpose and are concerned that to suggest otherwise is to suggest that professionalism should be abandoned altogether. Alternatively, Government is suggesting that this model is appropriate for everything except Anti Money Laundering, which in itself is challenging. We would add that the UK AML regime is seen by many international AML professionals as the gold standard.

23. The consultation also makes reference to the system having grown up organically over the years. We think this is inaccurate. The supervisory bodies have scarcely changed since they were listed in the Schedule to the 2007 AML Regulations. That said there is something to be said for organic growth which facilitates evolution and adaptation.

Q18: How does the UK approach to professional body supervision compare to other countries' regimes?

24. As stated above regulation of their members by professional bodies is nothing new, nothing unique to the UK and nothing unique to the accountancy profession. It is a model shared by many different professions the world over and such bodies are also funded by their members.

25. We do not believe that the model of professional bodies regulating their members is broken. We would add that the UK accountancy profession is seen by many as a global model and we are not convinced that a central government supervisor would raise standards in this area. We fear government regulators have not always been wholly effective and we do not believe there to be adequate monitoring of the regime's perimeter.

26. More specifically, self-regulation is conducive to the development of sector specific responses where a one size fits all approach would be inadequate. In the case of reputable professional body, this will be supported by a strong demand from the members of the body for the reputation of their profession to be maintained, by strong action against those who fail to act appropriately.

27. Better developed accounting and auditing systems are often associated with less perceived corruption in a given geographic region, and a positive impact therefore on economic prosperity. Professional regulation is an inherent characteristic of more developed systems.

Q19: How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?

28. Guidance from a supervisor should logically carry more authority than that from a trade association. That said, the JMLSG guidance is highly regarded. Merging the guidance under the FCA banner would therefore make sense however the resolution of inconsistencies is a matter for a separate consultation.

Q20: What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of the government providing legal safe harbour to businesses that follow the guidance?

29. We note no significant issues with the existing approval process, which includes a consultation process amongst members of MLAC. Safe harbour is essential for clarity and stability of the regime.

Q21: Should the government produce a single piece of guidance to help regulated businesses understand the intent and meaning of the Money Laundering Regulations, leaving the supervisors and industry bodies to issue specific guidance on how different sectors can comply? If so, would this industry guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?

30. The benefits of sector specific guidance should not be understated. A single piece of government guidance could only ever be an overview of the relevant legislation and an attempt at a 'one size fits all' list of general risk factors, much of which might well subject to repetition in sector specific guidance, rendering it unnecessary.

Q22: Should supervisors be required to publish details of their enforcement actions and enforcement strategy, perhaps as part of the Treasury's annual report on supervisors, or in their own reports? What are the benefits and risks in doing so?

31. Supervisors should make details of their enforcement cases publicly available, including the penalties and sanctions administered. Many already do this, including ICAEW.

Q23: Should the government publish more of the detail gathered by the annual supervisor's report process? For example, sharing good practice or weaknesses across all supervisors?

32. There are advantages of doing so however there is also a strong case for not having complete transparency. There must be a point where public interest overrides transparency. Just as asking credit card companies to disclose the purchase values below which they don't normally perform full checks would help criminals to optimise their buying patterns, disclosing too much about how supervisors supervise might send criminals in the direction of the weakest link. Until, as is suggested, greater consistency is achieved it would not be for the benefit of the regime to publicly share certain details.

Q24: Should supervisors be required to undertake thematic reviews of particular activities or sections of their supervised populations, as the FCA currently does? If so, how often should such reviews be undertaken?

33. The suggestion is not an unreasonable one but careful thought would need to be given around depth and frequency as this would depend on the size of the supervised population and the services they provide. The diversity of the professions should not be underestimated. Thematic reviews should also not be an alternative to more focussed supervisory activity that may be less desirable due to a lack of resources to completely cover a supervised population.

Q25: What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?

34. Intelligence sharing will only be facilitated against a backdrop of trust, confidence and the will to do so. This will only work if relationships are reciprocal. Examples of safeguards include a single information portal with restricted, secure access and dedicated contact points for supervisors. We sometimes experience a lack of understanding on that part of law enforcement as to how supervisors operate.

Q26: As one means of facilitating better sharing of intelligence among supervisors and between supervisors and law enforcement, could the government mandate that all supervisors should fulfil the conditions for, and become members of, a mechanism such as FIN-NET? Are there other suitable mechanisms, such as the Shared Intelligence System (also hosted by the FCA)?

35. It is important that skills, knowledge and experience are shared too. Additionally FIN-NET is given as an example of an information sharing mechanism but some will not be aware of this and it is not the only solution. There are others solutions that should form part of a comprehensive efficiency, effectiveness and value for money assessments such as the SIS shared intelligence portal, which is favoured by many supervisors.

Q27: Should the government require all supervisors to maintain registers of supervised businesses? If so, should these registers cover all registered businesses or just certain sectors? Should such registers be public? What are the likely costs and benefits of doing so?

36. This is a good suggestion, one which is already implemented by a number of supervisors where such information is available to the public on enquiry. However, more work must be done on the risks around unregistered/unregulated firms. Policing the perimeter is essential so as to ensure the capture of unregulated business, perhaps through the encouragement of whistleblowing.

Q28: How can credit and financial institutions best be encouraged to take a proportionate approach to their relationships with customers and avoid creating burdensome requirements not strictly required by the regulations?

Q29: Does failure of AML/CFT compliance pose a credible systemic financial stability risk? If so, does this mean the FCA should devote more resource to the largest banks which have the greatest potential to have systemic defects?

Q30: How should the FCA address the perception from evidence submitted to the Cutting Red Tape Review that it is overly focussed on process and ensure that its AML/CFT supervision is focused proportionately on firms which pose the greatest risk?

37. No comment.

Q31: Is the number of supervisors in itself a barrier to effective and consistent supervision? If so, how should the number be reduced and what number would allow a consistent approach?

38. Asking respondents for an absolute number of how many supervisors there should be is likely to yield a range of unhelpful and arbitrary responses though could this question be one for an oversight body to address over time? It is not the number of supervisors that is important, but the quality of supervision.

Q32: If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?

39. See paragraphs 3 and 4.