

<b>Title:</b> Post-implementation review of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017  <b>PIR No:</b> RPC-HMT-5200(1)  <b>Original IA/RPC No:</b> RPC-4007(1)-HMT  <b>Lead department or agency:</b> HM Treasury  <b>Other departments or agencies:</b> Financial Conduct Authority (FCA)  Contact for enquiries: <b>anti-moneylaunderingbranch@hmtreasury.gov.uk</b>	Post Implementation Review
	<b>Date:</b> 24/06/2022
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 26/06/2017
	<b>Recommendation:</b> Amend
	<b>RPC Opinion:</b> Fit for purpose

## 1. What were the policy objectives of the measure?

The Office for Professional Body AML Supervision Regulations (OPBAS) was established to oversee the anti-money laundering and counter terrorist financing (“AML” and “CTF”) supervision of the accountancy and legal sectors by the Professional Body Supervisors (PBSs). OPBAS currently oversee 22 PBSs responsible for AML and CTF supervision, plus an additional 3 PBSs from whom supervisory functions have been delegated.

The OPBAS objectives detailed in the Impact Assessment were to:

1. Ensure supervisory authorities comply with their AML obligations, to make the UK’s financial system a hostile environment for illicit finance
2. Address weaknesses in the UK’s AML supervision regime, such as the need for greater consistency and effectiveness
3. Minimise unnecessary burdens on businesses

These objectives are noted in OPBAS explanatory memorandum in the following way:

4. Ensure a robust and consistently high standard of supervision by the PBSs overseeing the legal and accountancy sectors; and
5. Facilitate and increase collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies

Intended effects included improved AML supervisory standards; more open collaboration and sharing of best practice; and improved collaboration among supervisors and with law enforcement.

## 2. What evidence has informed the PIR?

This PIR uses a range of evidence to show that the OPBAS Regulations have made significant progress towards meeting their objectives.

Three reports published by OPBAS show progress in the supervisory functions of professional body supervisors as a result of OPBAS interventions and guidance. For example, in the 2019 report, the first report published by OPBAS, 91% of relevant PBSs were not fully applying a risk-based approach to their AML supervision. By the second report, this had reduced to 14%. The most recent report, published in 2021, found that 80% had not implemented an effective risk-based approach. This reflects a change in focus by OPBAS to effectiveness

The OPBAS sourcebook has also been a key piece of evidence in showing how OPBAS have improved the consistency of professional body supervision. This provides guidance and

information for professional body AML supervisors on how they can meet their obligations under the Money Laundering Regulations (MLRs), as well as examples of good practice and poor practice.

HM Treasury also collects supervision and enforcement data annually. This is used to inform the Treasury's own supervision report that aims to evaluate the performance of supervisors. The data shows that intensity of supervision by professional body supervisors is increasing, there are also more instances of enforcement against regulated bodies that breach the MLRs. HM Treasury also published a Call for Evidence on the effectiveness of the Money Laundering Regulations to assess views of AML-regulated sectors, and professional body supervisors. There were 94 responses to the Call for Evidence, and responses came from those in the accountancy, legal and financial sectors as well as others in civil society for example.

### 3. To what extent have the policy objectives been achieved?

The analysis of the PIR suggests that the overall policy objectives have been partly achieved. OPBAS has made significant progress since its inception in 2018 but there is more that can be done. The objectives remain appropriate but there is scope to reconfigure how they are best met, which has been looked at in the forward-looking part of the review:

1. The technical compliance of the PBSs with the Money Laundering Regulations has improved since the implementation of the OPBAS regulations, standards of supervision are therefore higher and some weaknesses have been addressed.
2. There has been less of an improvement when it comes to the *outcomes* of this compliance and OPBAS will focus more in future on effectiveness rather than just technical compliance.

Below is the OPBAS breakdown of the corresponding policy objectives and progress made:

3. **Consistency of professional body supervisor approach to supervision** is still limited, despite many improvements that have been seen. OPBAS has further to go in this area to meet the policy objective of the Regulations.
4. **Information and intelligence sharing** has improved significantly, much as a result of the work OPBAS has done in creating, and encouraging use of, sharing forums such as the Information Sharing Expert Working Groups.
5. There have been **clear improvements in the UK supervisory regime and PBS compliance with the MLRs**, reflected in sector feedback in the Call for Evidence and an increase in overall enforcement against breaches of the MLRs by regulated entities. Policy objectives in this area have been partly met, with the need for a continued focus on overall effectiveness rather than compliance moving forward.

Sign-off for Post Implementation Review: Economic Secretary to the Treasury

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: **Richard Fuller**

Date: 21/07/2022

### **Further information sheet**

Please provide additional evidence in subsequent sheets, as required.

#### **4. What were the original assumptions?**

It was assumed that:

- the creation of OPBAS would alter the framework of the AML regime, which may lead to some PBSs leaving, or being removed from, the regime and their members moving to other supervisors.
- OPBAS would oversee 22 PBSs responsible for AML and CTF supervision of the accountancy and legal sectors OPBAS would be funded by a fee on 22 PBSs, with a cost of c. £2m p.a. when operational and in steady state.
- The 22 relevant PBSs would also incur a familiarisation cost if they need to adapt their supervisory approach to meet OPBAS's best practice and they would incur ongoing costs from engaging with OPBAS.
- Currently, the OPBAS levy consists of a flat fee of £5,000 if the professional body supervises up to 6,000 individuals and a variable fee for every supervised individual above the 6,000 threshold, if applicable. This is subject to change year-on-year.
- If PBSs did not comply with their obligations in the MLRs, OPBAS would be able to publicly censure them (publish a notice detailing the PBS's failure to comply) or recommend HMT removes their responsibilities as an AML supervisor. The costs that PBSs could incur in this scenario were not included in the Impact Assessment.
- PBSs would benefit from OPBAS improving information sharing and increasing collaboration, therefore enabling them to target their resources more effectively.
- Regulated businesses and their customers would benefit from supervisors taking a more risk-based approach and having more consistent standards and expectations.
- There would also be a benefit to the wider economy as stronger supervision reduces economic crime.

#### **5. Were there any unintended consequences?**

The Call for Evidence sought views on the effectiveness of OPBAS and no unintended consequences were identified.

#### **6. Has the evidence identified any opportunities for reducing the burden on business?**

Whether the objectives could be achieved in another way which involves less onerous regulatory provision has been explored further through the broader, forward-looking element of the MLRs Review.

A few different options for development of the supervision regime have been explored in the wider report.

Based on the findings of the PIR and the CfE responses, HM Treasury have developed four different policy options for supervisory reform.

1. The first of these is the **OPBAS+ model** which involves formally expanding the remit of OPBAS to focus on effectiveness of PBSs, rather than just technical compliance; and expanding OPBAS's powers, improving its ability to take action to resolve poor performance with a broader and more targeted range of supervisory and enforcement tools.
2. A second option is **PBS consolidation**. This means reducing the number of PBSs allowing greater oversight of the remaining supervisors and reducing complexity of the supervisory regime.
3. The third option is a **Single Professional Services Supervisor (SPSS)**. This would establish a new statutory supervisor for legal, accountancy and TCSP services, which would replace all 22 PBSs and HMRC as the accountancy and TCSP supervisor.
4. The final option is the **Single AML Supervisor (SAS)** which would establish a new authority that would take responsibility for AML supervision across the regulated sector away from the current 22 PBSs and 3 statutory supervisors.

These four options are laid out and analysed in the Review document. **The next step will be to consult further with stakeholders before selecting a single model for implementation.**

## **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

The Financial Action Task Force (FATF) is the international standard setter for AML/CTF supervision. One set of bodies that require supervision according to the Financial Action Task Force (FATF) are Designated Non-Financial Business and Professions (DNFBPs). The category of DNFBP covers all non-financial sector bodies that pose a money-laundering or terrorist financing risk. This includes casinos, real estate agents and trust and company service providers (TCSPs), as well as lawyers and accountants. The legal sector and accountancy sector supervision is what OPBAS oversees.

The UK was the only country out of those evaluated in the fourth-round of Financial Action Task Force (FATF) assessments to gain a 'compliant' rating in Recommendation 28: regulation and supervision of DNFBPs. All countries in the EU are subject to Money Laundering Directives (MLDs) which would mean some obligation to supervise DNFBPs. According to FATF, the international standard setter for AML/CTF, the UK has one of the more extensive regimes of DNFBP supervision.

## Contents

<b>OPBAS PIR .....</b>	<b>1</b>
<b>Introduction and background .....</b>	<b>6</b>
Background .....	6
The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 .....	8
Post-Implementation Review of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 .....	9
UK's AML Supervision Regime .....	9
Statutory Instrument 2022 .....	10
Treasury Select Committee .....	10
<b>Approach to the PIR .....</b>	<b>12</b>
Scope of this review .....	12
Methodology .....	13
Summary of findings .....	15
<b>Evidence used to inform this PIR.....</b>	<b>16</b>
OPBAS reports .....	16
Regulation 46A reports .....	16
Intelligence Sharing Expert Working Group (ISEWGs) .....	16
Supervision data and HMT supervision reports .....	17
MLRs Review Call for Evidence .....	18
<b>Findings .....</b>	<b>19</b>
OPBAS Reports.....	19
2019, 2020 reports.....	19
OPBAS third report, 2021 .....	21
Regulation 46A reports .....	22
ISEWGs .....	22
Supervision data and reports .....	23
Call for evidence .....	24
Pre-consultation session with OPBAS .....	24
Accountancy sector Call for Evidence responses .....	24
Legal sector Call for Evidence responses .....	25
FCA response to the Call for Evidence.....	25
How appropriate regulation objectives remain .....	26
<b>Conclusion.....</b>	<b>28</b>
Next steps.....	30
<b>Annex A – professional body supervisors .....</b>	<b>32</b>
<b>Annex B – FCA findings .....</b>	<b>=34</b>

# Introduction and background

## Background

1. The UK's first National Risk Assessment of anti-money laundering and counter-terrorist financing (AML/CTF) in 2015 suggested that whilst UK supervisors were highly effective in some areas of AML/CTF policy, there was room for improvement across the board in understanding and applying a risk-based approach and in providing a credible deterrent to money laundering.
2. The Oversight of Professional Body Anti Money Laundering Regulations (the "OPBAS Regulations") were implemented in 2017. This followed the fourth Money Laundering Directive (4MLD) which required European Union Member States to ensure that supervisory authorities comply with their AML obligations. 4MLD was implemented in the UK via the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations on 26 June 2017.
3. The implementation of these Regulations led to the creation of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) in 2018. OPBAS oversees 22 professional body supervisors (PBSs) in the accountancy and legal sectors, supervising just over 36,200 entities for AML purposes.
4. The Economic Crime Plan 2019–22, published in 2019, set out the UK's collective public-private response to economic crime. It set out seven priority areas which reflected the most significant barriers to combatting economic crime and offered the greatest scope for collaborative work between the public and private sectors.
5. Action 33 of the Economic Crime Plan committed HM Treasury to a comprehensive review of both the Money Laundering, Terrorist Financing and Transfer of Funds

(Information on the Payer) Regulations 2017 ('the MLRs') and the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 ('the OPBAS regulations').

6. This commitment aligns with an extant legal duty in both these sets of regulations to conduct a post-implementation review of their regulatory provision, which must set out the objectives intended to be achieved, assess the extent to which the objectives are achieved, whether the objectives remain appropriate, and the extent to which they could be achieved in another way which involves less onerous regulatory provision.
7. The Economic Crime Plan commits the review to considering the effectiveness and scope of the regulations, the proportionality of the duties and powers they contain, the effectiveness of enforcement actions taken under the MLRs, and the interaction of the MLRs with other pieces of legislation. There is considerable complementarity with the work within the private sector on how to improve the effectiveness of AML/CTF regimes, including the Wolfsberg Group's paper on demonstrating effectiveness, and this review will look to work in partnership with initiatives in the private sector to improve the effectiveness of their AML/CTF systems.
8. Following the UK's departure from the European Union, the UK has greater autonomy in setting AML/CTF regulations. This review offers the opportunity to ensure the AML regime responds to the UK's particular circumstances and risks, is as effective as possible in preventing and detecting illicit finance and supports UK competitiveness by ensuring the UK is a clean and safe place to do business.
9. This document sets out the approach and methodology taken during the post-implementation review, the range of evidence and data sources drawn on, and the findings and initial conclusions. A broader report, the Review of the UK's AML/CTF

regulatory and supervisory regime, builds upon these findings and sets out options for future reform. This full report will be published alongside the PIR.

### **The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

10. The UK has had regulations intended to prevent money laundering in place for nearly thirty years. Over time, these have evolved in line with international standards set by the FATF, an intergovernmental body which promotes effective implementation of measures for combatting money laundering and terrorist financing along with other threats to the integrity of the international financial system, and multiple EU Money Laundering Directives. The most substantial recent revision was in June 2017, transposing the European Fourth Money Laundering Directive and the Funds Transfer Regulation, which were themselves heavily informed by a substantial rewrite of FATF international standards in 2012. Since 2017, the MLRs have been amended, most significantly through the transposition of the Fifth Money Laundering Directive in January 2020.
11. Through these revisions, the MLRs have expanded in scope, bringing in new sectors outside of the original financial industry focus, and extending the requirements falling on those in scope to ensure an understanding of the beneficial ownership structure of those involved in transactions. The MLRs are designed to detect and prevent money laundering and terrorist financing before it occurs, both directly through the UK's financial institutions and through enablers who may be involved in transactions such as lawyers, accountants and estate agents. They seek to do this while minimising the burden on legitimate customers and businesses.
12. The scope of this legislation, and the international standards that inform it, covers both money laundering, and terrorist financing. As drawn out in detail in recent National Risk Assessments, money laundering includes how criminals



change money and other assets into clean money or assets that have no obvious link to their criminal origins. Money laundering can undermine the integrity and stability of our financial markets and institutions. It is a global problem and represents a significant threat to the UK's national security. Money laundering is a key enabler of serious and organised crime, which costs the UK at least £37 billion every year. The NCA assesses that it is highly likely that over £12 billion of criminal cash is generated annually in the UK and a realistic possibility that the scale of money laundering impacting on the UK (including through UK corporate structures or financial institutions) is in the hundreds of billions of pounds annually.

13. Terrorist financing involves dealing with money or property that a person knows or has reasonable cause to suspect may be used for terrorism. There is an overlap between money laundering and terrorist financing, as both criminals and terrorists use similar methods to store and move funds, but the motive for generating and moving funds differs. The UK has a comprehensive anti-money laundering and counter-terrorist financing (AML/CTF) regime, and the government is committed to ensuring that the UK's financial system is effectively able to combat ML/TF.

### **Post-Implementation Review of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

14. The Treasury is required to undertake a post-implementation review of the MLRs. This PIR is being published alongside this document, and the findings from both have informed the broader review of the UK's AML/CTF landscape.

### **UK's AML Supervision Regime**

15. HM Treasury appoints AML/CTF supervisors to ensure compliance with the requirements of the MLRs. The UK has 25 supervisors: three statutory supervisors (the FCA, HMRC and the Gambling Commission) and 22 legal and accountancy

Professional Body Supervisors (PBSs). The list of PBSs is defined by Schedule 1 of the MLRs and copied in Annex A of this report.

16. Supervisors are required to effectively monitor their supervised populations and take necessary measures to secure their compliance with the MLRs, as well as being responsible for a number of gatekeeping tests that prevent unfit or criminal persons from operating in the regulated sector.
17. HM Treasury is responsible for ensuring the effectiveness of the supervisory regime, and engages regularly with the supervisors, either bilaterally, or through a number of fora which exist to support supervisory cooperation and engagement. These include the AML Supervisors' Forum, the Public Sector Affinity Group, the Legal Sector Affinity Group, and the Accountancy Sector Affinity Group.
18. The Treasury also works with the Office for Professional Body AML Supervision (OPBAS) which oversees the 22 PBSs. OPBAS was established in 2018 to ensure a robust and consistently high standard of supervision by the PBSs, and to facilitate collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies.

### Statutory Instrument 2022

19. As set out in the Call for Evidence published in July 2021, the Treasury has conducted this review whilst also progressing a Statutory Instrument which makes time-sensitive or relatively minor amendments to the MLRs. A consultation was published alongside the Call for Evidence to inform the SI.
20. While the limited nature of amendments made through the SI mean they have limited relation to the findings of this review, where amendments have the potential to have a future impact or have been implemented to address known issues with the MLRs, this has been noted in the review.

### Treasury Select Committee

21. In February 2022, the Treasury Select Committee published the report of its inquiry into Economic Crime. This inquiry reviewed the progress made by the government in combatting economic crime since the Committee's previous inquiry in 2020.
22. While the full report covered a range of economic crime-related topics, including the ECP, fraud and Companies House reform, it made several recommendations on future reform of the UK's AML regime and supervisory approach. The Review of the UK's AML/CTF regulatory and supervisory regime addresses the points raised by the Committee's inquiry.

# Approach to the PIR

## Scope of this review

23. This review has considered the implementation and effectiveness of the OPBAS Regulations and the activity they require of supervisors.
24. The post-implementation review must meet the requirements of Regulation 32 of the OPBAS Regulations, which sets out the requirement for HM Treasury to review the regulations ‘from time to time’ and to publish a report on its review at least once every 5 years. The first such report must be published by 26 June 2022. Regulation 32 cross-refers to Section 30(4) of the Small Business, Enterprise and Employment (SBEE) Act 2015 states that the review must:
- a) set out the objectives intended to be achieved by the regulatory provision [in the OPBAS Regulations]
  - b) assess the extent to which those objectives are achieved;
  - c) assess whether those objectives remain appropriate; and
  - d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
25. Regulation 32 also cross-refers to Section 30(3) of the SBEE Act 2015, which requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Article 48 of the fourth money laundering directive (which sets out the requirements for effective risk-based supervision regimes) is implemented in other Member States. This obligation is no longer mandated by the RPC for PIRs, though we intend to learn from comparator supervision regimes to inform the forwards-looking part of the review.

26. The OPBAS Regulations aim to support the MLRs, working in tandem with them to govern the UK's AML supervision regime. As a result, the effectiveness of the MLRs which is evaluated in a separate PIR document is relevant to the scope of this PIR.

## Methodology

27. This paper has used information and evidence available to analyse the progress that has been made by OPBAS. It is very difficult to quantify the exact impact OPBAS supervision of supervisors has on the overall scale of economic crime.

28. The PIR has used the Regulation's objectives, stated in the Impact Assessment, to measure the progress of OPBAS and effectiveness of the OPBAS Regulations. These are outlined below:

- a) To ensure supervisory authorities comply with their AML obligations, to make the UK's financial system is a hostile environment for illicit finance
- b) To address weaknesses in the UK's AML supervision regime, such as the need for greater consistency and effectiveness;
- c) To minimise unnecessary burdens on businesses.

29. The OPBAS Regulation objectives were interpreted into the following objectives for OPBAS, that have been used to measure the effectiveness of the Regulations in this PIR:

- a) Ensuring a robust and consistently high standard of supervision by the professional body AML supervisors overseeing the legal and accountancy sectors.
- b) Facilitating collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies.

30. These objectives provide a useful framework for assessing the progress OPBAS has made since its creation, and this PIR considers the extent to which they have been met and how appropriate they remain.
31. Whether the objectives could be achieved in another way which involves alternative regulatory provision will be explored further through the broader, forthcoming, forward-looking element of the MLRs Review.
32. Given the importance of not just improving the effectiveness of individual professional body supervisors, but improving the consistency of supervision across the regime, we have chosen to assess the consistency and effectiveness of PBS supervision separately, effectively splitting the first stated objective above into two related objectives. The note therefore considers:
- a) The extent to which OPBAS has improved consistency of AML supervision in the accountancy and legal sectors;
  - b) The extent to which OPBAS has strengthened collaboration between supervisors and law enforcement through increased information and intelligence sharing; and
  - c) The extent to which OPBAS helps supervisors meet their obligations under the MLRs and improves the overall effectiveness of the supervisory regime.
33. It is important to note the difficulty that measuring these objectives poses. The immediate *outputs* – i.e., consistency of the approach of professional body supervisors in the UK – can be inferred through PBS assessments of their sectors' compliance and by comparing and contrasting supervisory approach. The intended *outcome* – i.e., the prevention of illicit finance from entering the financial system – is even more difficult to measure.

## Summary of findings

34. Based on the analysis set out in this paper, OPBAS has made significant progress since its inception in 2018. Policy objectives have been met to some extent but there is more that can be done. The objectives remain appropriate but there is scope to reconfigure how they are best met, which has been looked at in the forward-looking part of the review:

- a) **Consistency of professional body supervisor approach to supervision** is still limited, despite many improvements that have been seen. OPBAS has further to go in this area to meet the policy objective of the Regulations.
- b) **Information and intelligence sharing** has improved significantly, much as a result of the work OPBAS has done in creating, and encouraging use of, sharing forums.
- c) There have been **clear improvements to the UK supervisory regime and PBS compliance with the MLRs**, reflected in sector feedback in the Call for Evidence and an increase in overall enforcement against breaches of the MLRs by regulated entities. Policy objectives in this area have been largely met, with the need for a continued focus on overall effectiveness rather than compliance moving forward.

# Evidence used to inform this PIR

35. The PIR has drawn on a number of different sources of evidence to evaluate the extent to which the OPBAS Regulations have met their objectives. The primary sources that have been used to inform the PIR are set out below:

## OPBAS reports

36. Annex B sets out a summary of the key findings from OPBAS reports, which demonstrate improvement across several measures of compliance with the MLRs and of effective supervision.

## Regulation 46A reports

37. Under Regulation 46A, PBSs are required to publish an annual report containing information on the supervision of their regulated populations. The first iterations of the Regulation 46A reports were published by November 2021. OPBAS and HMT published a joint update with some guidance on what should be included in these reports, following on from a workshop that helped lay out expectations for what the reports should look like.

## Intelligence Sharing Expert Working Group (ISEWGs)

38. OPBAS established the accountancy and legal ISEWGs in conjunction with the National Economic Crime Centre (NECC) in 2018 and 2019 respectively. This was in order to address an identified gap in information and intelligence sharing between the PBSs and law enforcement and to help address supervisory deficiencies, both of which have been found to be a barrier of effective AML/CTF supervision.



39. The purpose of the ISEWGs has been to provide a strategic and tactical facilitation platform for PBSs, law enforcement, statutory supervisors and other agencies to share intelligence and information on risks and trends in their sectors and to increase engagement in wider threat assessments such as the National Risk Assessment.
40. In 2020, PBS members of the accountancy ISEWG formed a sub-group with HMRC and the NECC to review key risk alerts to raise awareness and increase knowledge in their supervised populations. This has resulted in the dissemination of summarised intelligence and information sharing alerts to all PBS and HMRC supervised accountancy professionals.
41. Since the sub-group was formed, 8 accountancy PBSs have participated. As of June 2022, the accountancy sub-group has reviewed 32 NCA alerts resulting in 25 sector specific summaries being cascaded to the accountancy sector. The group have also created 2 of their own alerts via the accountancy sector affinity group.
42. The ISEWGs are now on their 3<sup>rd</sup> chairmanship rotation having successfully moved from being chaired by OPBAS to being chaired by elected PBS members since 2020. The legal sector ISEWG is currently chaired by the Law Society of Northern Ireland (LSNI), having been chaired by Law Society of Scotland (LSS). The accountancy ISEWG is now being chaired by the International Association of Bookkeepers (IAB), having been chaired by the Association of Chartered Certified Accountants (ACCA).

## **Supervision data and HMT supervision reports**

43. Supervision data is collected annually by HM Treasury and informs the annual supervision report.

44. The report provides analysis of annual figures, commenting on aspects of supervision, enforcement and information and intelligence sharing.

## **MLRs Review Call for Evidence**

45. The Call for Evidence responses have provided views from both supervisors and regulated entities on the progress and overall effectiveness of OPBAS and whether OPBAS have reached their objectives.
46. The Call for Evidence has also invited views on whether the remit of OPBAS should be expanded.
47. The Call for Evidence ran from July–October 2021 and received 94 responses, ranging across industry, AML/CFT supervisors, non-governmental organisations (NGOs), law enforcement and government departments.
48. The Treasury conducted engagement sessions with industry groups, public sectors bodies and NGOs both in advance of the Call for Evidence to inform the scope and after it was published to support engagement and feedback in responses.

# Findings

## OPBAS Reports

### 2019, 2020 reports

49. The first papers published by OPBAS, in 2019 and 2020, looked at the technical compliance of PBSs. Between these first and second assessments, PBSs improved in every area of the OPBAS sourcebook used to assess them. A few examples below:

- a) In 2019, 80% lacked suitable governance arrangements and 44% of PBSs lacked clear accountability for AML supervisory activity. In 2020, OPBAS observed a significant improvement, in principle, of governance arrangements for AML supervision and all had clear accountability and oversight for AML at senior levels.
- b) By the end of 2018, we found that 20% of PBSs had insufficient oversight by an internal governing body. At the end of 2019, all PBSs had oversight by an internal governing body with a specific remit for AML.
- c) At the end of 2018, 12% of PBSs had not updated their written policies and procedures for AML compliance with the MLRs. By the end of 2019, all PBSs had updated their policies and procedures in accordance with the MLRs.
- d) In 2019, 9% of PBSs fully applied a risk-based approach to their supervision. In 2020 86% fully applied a risk-based approach, with 14% having plans to implement an approach in early 2020.
- e) At the end of 2018, 68% of relevant PBSs had completed a written risk assessment of their supervised populations. At the end of 2019, this figure

was 86%. At the end of 2018, only 40% of PBSs had completed risk profiling their members. By the end of 2019, this figure was 81%.

- f) At the end of 2018, 18% of relevant PBSs had still not identified their supervised population. By the end of 2019, all PBSs had identified and verified their supervised population under the MLRs for the relevant period.
- g) In 2019, 10% of PBSs undertook proactive supervision. This rose to 86% in 2020.
- h) The total number of fines issued by relevant PBSs for contraventions of the MLRs has increased by 150% from the reporting period May to April 2017/18 and May to April 2018/2019

50. Intelligence and information-sharing has improved in PBSs since the inception of OPBAS:

- a) The 2019 report found that only 48% of PBSs took part in information-sharing arrangements and in 2020, 60% were. Since 2018, PBS membership of FIN-NET and/or SIS<sup>1</sup> has increased significantly, up from 40% in 2018 to 60% in 2020.

This marks a significant improvement in PBSs because of OPBAS oversight.

---

<sup>1</sup> The Financial Crime Information Network (FIN-NET) and the Shared Intelligence Service (SIS) are established information sharing arrangements, with a set of criteria that PBSs are required to reach in order to be members. These criteria include:

- a willingness to respond promptly and fully to referrals and enquiries from others,
- adequate physical and electronic security to ensure that all documentation received is held securely,
- a commitment to input intelligence flags
- access to, or willingness to install, an accredited secure means of communication,
- agreement to pay costs

51. These improvements to PBS technical compliance are stark and show that OPBAS has had a positive impact on raising compliance levels of PBSs with the MLRs.

52. These figures also show an increase in consistency of approach to supervision, which relates to the first objective that the progress of OPBAS is being measured against: consistency of supervision in the UK's AML/CTF supervision regime.

### OPBAS third report, 2021

53. OPBAS took a risk-based approach and did not assess every Sourcebook area for every PBS. So the percentages cited only cover those PBSs OPBAS assessed against the Sourcebook area discussed, meaning percentages will not always reflect the full population of supervisors.

54. These findings demonstrate the clear need for further work in the area of effectiveness.

- a) Whilst all PBSs previously had clear accountability and oversight for AML supervision at a senior level, only 54% of them were effective in demonstrating senior management engagement.
- b) Where 86% of PBSs were found to have applied a risk-based approach, only 19% of the PBSs assessed had implemented an effective risk-based approach. While all PBSs met basic technical compliance requirements (by considering risk in their approach), there were gaps in how PBSs approach risk, as well as in developing and managing their members' risk profiles.
- c) Only 52% were found to be effective in using a broad range of tools in their supervisory work.
- d) 68% of PBSs have effective information and intelligence sharing arrangements in place.

55. The three reports show two things:
1. That OPBAS has made a positive impact on consistency of approach and technical compliance of PBSs in the varied areas of the sourcebook they are measured against.
  2. That a lot more work can, and should, be done in the area of effectiveness to ensure that the MLRs? are producing consistent outcomes.

## Regulation 46A reports

56. The publication of the first iteration of the reports in November 2021 shows direct action by OPBAS that has increased consistency in PBSs' approach to supervision.
57. HMT and OPBAS have reviewed the first set of PBS reports and have provided feedback to the PBSs on how they can improve these reports ahead of the next iterations that will be published by 1 November 2022.
58. The reports have proved a useful tool for PBSs to assess their own progress, as well as benchmark of their supervisory approaches against their peers. The reports have also provided law enforcement and other government agencies with insight into the PBSs activities and their role in the intelligence and information sharing landscape.

## ISEWGs

59. Since 2018, the ISEWGs have been held quarterly and have adapted to the restrictions around remote and hybrid working to ensure their continuity. The ISEWGs have also evolved to include dedicated sessions focused on sectorial input into the National Risk Assessment and, more recently, smaller Regional versions to consider specific ML and TF threats faced by the legal and accountancy sectors in Scotland and Northern Ireland. ISEWGs have been recognised by sector

supervisors in Call for Evidence responses for their role in increasing public-private information and intelligence sharing.

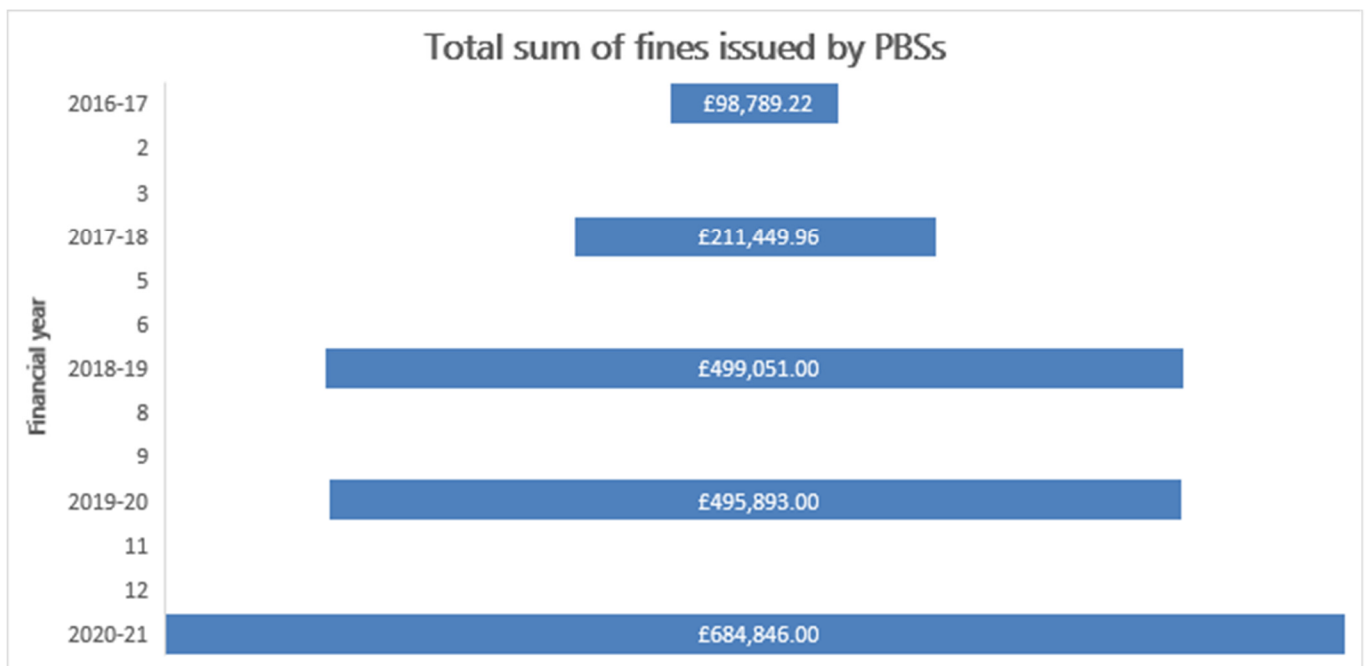
60. A few accountancy sector respondents to the CfE cited ISEWGs, amongst other risk sharing platforms such as the Public Private Threat Group, as having enabled a 'significant improvement' in information and intelligence sharing.

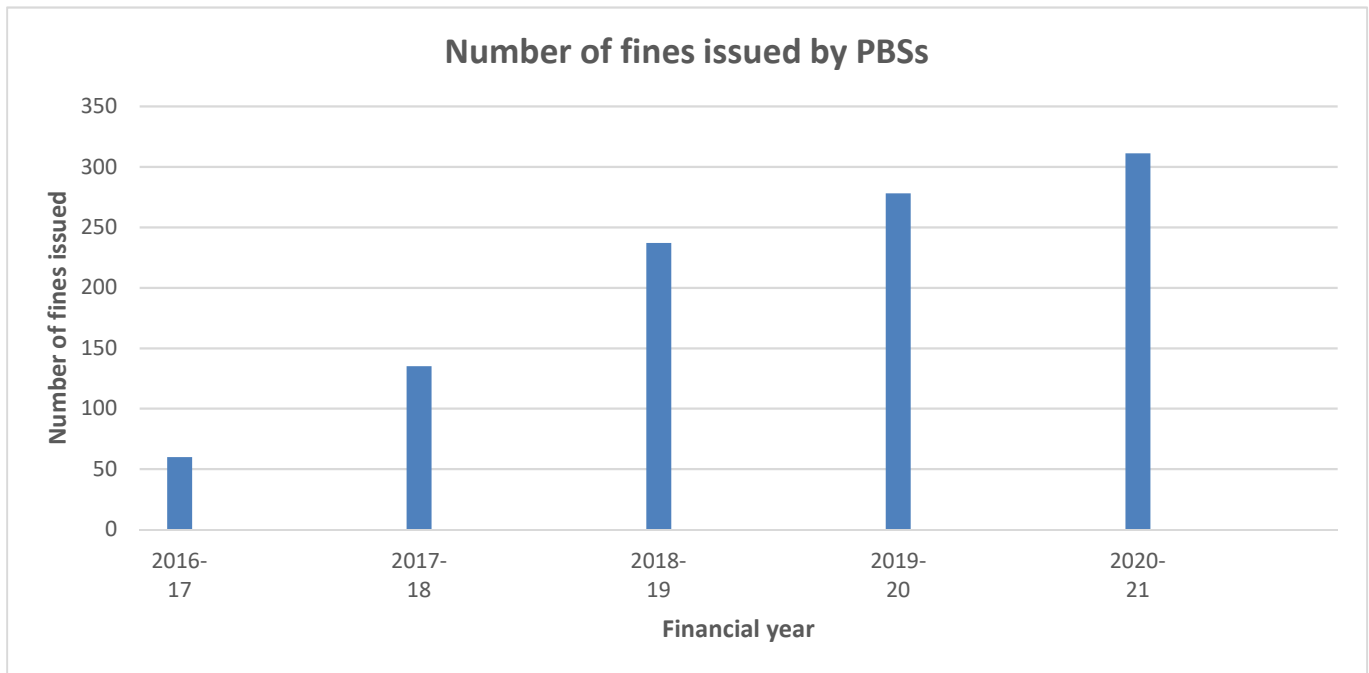
61. Other accountancy sector respondents mentioned that they were keen to see an assessment of the impact that ISEWGs and other intelligence and information sharing forums have had in terms of the reduction of economic crime.

## Supervision data and reports

62. A comparison of the data on enforcement and supervision from before the creation of OPBAS to now shows a significant increase in activity.

63. Most notably, fines issued have increased in both size and frequency (see below). This increase in enforcement activity can be taken as indicative of a more proactive approach by PBSs as a result of oversight by OPBAS, demonstrating higher supervisory effectiveness as a result of the OPBAS Regulations.





64. Overall, supervision data collected by HM Treasury and OPBAS has shown an increase in intensity and effectiveness of supervision by the current metrics of how these processes are measured.

## Call for evidence

65. Both legal and accountancy sectors were generally positive about the progress that had been made by OPBAS. Both sectors were also keen to note that the remit of OPBAS should not change very much.

### Pre-consultation session with OPBAS

66. OPBAS suggested they had limited powers and tools (public censure and removal) to use on PBSs. OPBAS sees the forward-looking aspect of the MLRs Review as a great opportunity to explore expanding their powers and tools.

### Accountancy sector Call for Evidence summary

67. The accountancy sector in general have reported that OPBAS oversight has been beneficial in improving consistency and effectiveness.



68. Expanding the remit of OPBAS is generally thought to help with consistency in this area, with respondents pointing out that OPBAS being an overarching observer of the system means the existence of a strategic overview of the landscape that PBSs have found useful.

69. A few respondents suggested that OPBAS should be overseeing statutory supervisors as well to improve consistency, citing inconsistency at the point where some accountants are supervised by HMRC and some by PBSs which has led to different processes of supervision.

### Legal sector Call for Evidence responses

70. Respondents suggested that OPBAS needed continued funding and resources to retain expertise.

71. Respondents said that OPBAS have improved information-sharing by removing clear barriers to effective information-sharing. Respondents also thought that the remit of OPBAS was sufficient for it to carry out its function.

72. Other respondents suggested that OPBAS had done a good job so far, but a change in approach may be needed for them to continue to perform an effective oversight function.

73. Legal respondents showed less appetite for increasing the remit of OPBAS than accountancy respondents.

### FCA response to the Call for Evidence

74. OPBAS has seen a direct correlation between holding workshops for PBSs on common weaknesses in supervision and the risk-based approach, and their performance in these areas. This has improved consistency across the supervision regime. Common weaknesses in supervision refer to areas such as a lack of staff-training or a fully effective implementation of the risk-based approach. See Annex

A for full breakdown of OPBAS-identified weaknesses that were highlighted in the FCA CfE and past OPBAS reports.

75. Since 2018, OPBAS has issued directions under Regulation 14 of the OPBAS Regs to 5 different PBSs across both the legal and accountancy sector. It has also on one occasion used its powers under Regulation 7 to require a PBS to provide information.
76. PBS responses to OPBAS findings have meant that OPBAS has not so far needed to use its powers to publicly censure or recommend to the Treasury that a PBS should be removed from Schedule 1 of the MLRs.
77. OPBAS supervisory tools, so far, have been sufficient in improving PBS compliance with the MLRs and they have not needed to use their enforcement powers.
78. These actions provide evidence that there has been an increase in overall proactive supervisory activity as a result of the creation of OPBAS.
79. PBSs are much more technically compliant with the MLRs, but there is limited evidence of the impact on supervision leading to more effective AML outcomes.

## How appropriate regulation objectives remain

22. Supervisory authorities continue to comply with their AML obligations, to make the UK's financial system a hostile environment for illicit finance. This objective remains relevant.
23. There are still weaknesses in the UK's AML/CTF supervision regime, as assessed by a number of different bodies. This remains a highly appropriate objective.
24. Minimising unnecessary burden on businesses relies on the use of the risk-based approach, which requires regulated entities to apply the MLRs according to

the risk that countries, customers and services present to them. Finding the balance between burden and necessity of AML/CTF regulations is a constant policy priority.

# Conclusion

25. The evidence available has been considered against the objectives of improving consistency of AML/CTF supervision, facilitating sharing of information and intelligence across supervisors and improving PBS compliance with the MLRs and their subsequent effectiveness.
26. Having assessed available evidence alongside the three objectives of OPBAS, as laid out in this PIR, the progress that has been made as a result of the inception and work of OPBAS is significant. OPBAS has now evolved its focus, from compliance to effectiveness, when holding supervisors to account and is demonstrating some initial progress in this.
27. The analysis of the PIR suggests these three key findings:
- a. Consistency of approach to supervision is still limited in PBSs, despite many improvements that have been seen since the creation of OPBAS. There are more improvements to be made in this area in order to meet the policy objective of the Regulations. General improvements to PBS application of the risk-based approach, publications of Regulation 46A reports and qualitative data in responses to the Call for Evidence can all be used to demonstrate this overall progress in meeting the consistency objective.
  - b. Information and intelligence sharing has significantly improved, much as a result of the work OPBAS has done in creating, and encouraging use of, sharing forums. OPBAS have therefore been more effective in reaching this policy objective.
- This is demonstrated through the much-increased activity of PBSs in this area, heightened engagement with SIS and FIN-NET shows improvements in engagement as a result of OPBAS requirements. Equally, the establishment

of Intelligence Sharing Expert Working Groups (ISWEGs) is a key piece of evidence that shows the creation of OPBAS moving towards meeting this policy objective of the Regulations. The next step will be to work out a substantive method of testing how impactful these forums are in combatting economic crime.

- c. There have been improvements in the effectiveness of the UK supervisory regime since the inception of OPBAS in 2018, as is reflected in relevant sector feedback and the overall improvements in enforcement. While these improvements are welcome, the findings from the third OPBAS report, which focused on effectiveness, demonstrate that there remain significant weaknesses in the regime which must be addressed. The objectives remain appropriate, with some scope to explore how to make them less burdensome on supervisors in encouraging a genuine and effective risk-based approach, as explained above.

PBS compliance is now largely in place, but effectiveness of supervision must be further improved. OPBAS has already started this shift of focus, which has been considered further through the future forward-looking elements of the Review.

- 28. This paper has used available evidence to show the extent to which policy objectives of the OPBAS Regulations have been met; and touched on how appropriate these objectives still are.

- 29. This information and analysis will inform the backwards-looking PIR section of the MLRs review. This does not preclude HMT from looking at further steps we could take to improve effectiveness of the work of OPBAS in the future, as part of the wider MLRs review.

- 30. OPBAS do not claim to have met their objectives entirely, but there has been good progress. In their pre-consultation session, OPBAS cited the scale of

the problem and the time frame between their inception and the review, as well as their plans to keep up the momentum for change as all points for consideration within the review.

## Next steps

31. The broader MLRs Review is picking up the question of supervisory reform, which will determine the future of OPBAS.
32. Based on the findings of the PIR and the CfE responses, HM Treasury have developed four different policy options for supervisory reform.
33. The first of these is the **OPBAS+ model** which involves formally expanding the remit of OPBAS to focus on effectiveness of PBSs, rather than just technical compliance. This model would involve greater powers to direct PBSs to take action to resolve poor performance and greater enforcement powers.
34. A second option is **PBS consolidation**. This means reducing the number of PBSs, allowing greater oversight of the remaining supervisors and reducing complexity of the supervisory regime.
35. The third option is a **Single Professional Services Supervisor (SPSS)**. This would establish a new statutory supervisor for legal, accountancy and TCSP services, which would replace all 22 PBSs and HMRC as the accountancy and TCSP supervisor.
36. The final option is the **Single AML Supervisor (SAS)** which would establish a new authority that would take responsibility for AML supervision across the regulated sector away from the current 22 PBSs and 3 statutory supervisors.
37. These four options are laid out and analysed in the Review document. **The next step will be to consult further with stakeholders before selecting a single model for implementation.**



# Annex A – professional body supervisors

1. Association of Accounting Technicians
2. Association of Chartered Certified Accountants
3. Association of International Accountants
4. Association of Taxation Technicians
5. Chartered Institute of Legal Executives/CILEx Regulation
6. Chartered Institute of Management Accountants
7. Chartered Institute of Taxation
8. Council for Licensed Conveyancers
9. Faculty of Advocates
10. Faculty Office of the Archbishop of Canterbury
11. General Council of the Bar/Bar Standards Board
12. General Council of the Bar of Northern Ireland
13. Insolvency Practitioners Association
14. Institute of Certified Bookkeepers
15. Institute of Chartered Accountants in England and Wales
16. Institute of Chartered Accountants in Ireland
17. Institute of Chartered Accountants of Scotland
18. Institute of Financial Accountants
19. International Association of Bookkeepers
20. Law Society/Solicitors Regulation Authority
21. Law Society of Northern Ireland
22. Law Society of Scotland





# Annex B

These tables from the FCA's response to the Call for Evidence outlines the improvements seen in PBSs between the first report they published after a year of work in 2019, and the 2020 period. Below this table is another table showing the findings from the OPBAS third report published in 2021.

Sourcebook area	2019 report	2020 report
Governance	<p>80% lacked appropriate governance arrangements</p> <p>44% lacked clear accountability and oversight of AML</p> <p>56% lacked sufficient senior management focus on AML</p> <p>36% did not have an AML policy</p> <p>77% of accountancy PBSs lacked adequate conflict policies</p> <p>12% had not updated policies after the 2017 MLRs</p>	<p>All met the requirements</p> <p>All but 1 had a consolidated AML policy</p> <p>All had clear accountability and oversight for AML at senior levels All had oversight by internal governance for AML</p> <p>All accountancy PBSs had conflicts policies</p> <p>32% had created new dedicated AML roles</p>
Risk-based approach (RBA)	<p>9% applied an RBA</p> <p>9% collected relevant data</p> <p>32% had dedicated AML returns</p> <p>68% had a written risk assessment</p>	<p>86% applied RBA with 14% having plans to implement an approach in early 2020</p> <p>95% collected relevant data</p> <p>41% had dedicated AML returns</p> <p>86% had written risk assessments</p>

	40% had completed risk profiling	81 % had completed risk profiling
Supervision	<p>18% had not fully identified their population</p> <p>23% undertook no supervision</p> <p>10% undertook proactive supervision</p> <p>23% outsourced supervision</p>	<p>All had identified and verified their population</p> <p>All undertook supervisory work</p> <p>86% undertook proactive supervision</p> <p>13% had undertaken thematic reviews</p> <p>18% had renegotiated outsourcing contracts</p>
Intelligence and Information sharing	<p>9% failed to ID and report suspicious activity</p> <p>48% were members of intelligence sharing platforms</p> <p>56% had insufficient whistleblowing policies</p> <p>36% had adequate anonymity protections</p>	<p>All were reporting suspicions when appropriate</p> <p>84% had a whistleblowing policy</p> <p>60% were members of intelligence sharing platforms</p> <p>16% still questioned the value of intelligence sharing systems</p>
Information and guidance to members	One PBS provided no AML guidance	<p>All but 1 produced AML guidance</p> <p>84% update members through external comms</p> <p>92% provided roadshows/ conferences/ newsletters</p>
Staff training	80% lacked appropriate staff training	56% produced a dedicated AML handbook

	40% lacked awareness of SAR reporting	2 lacked structured AML training
Enforcement	86% preferred to issue support rather than issue penalties  92% of accountancy PBSs expressed concerns about retaining members	Increased value of fines  Moved away from a developmental approach
Record Keeping	36% lacked sufficient record keeping policies and procedures  48% lacked internal audit and quality assurance	2 still lacked sufficient record keeping  3 still maintained insufficient records  32% lacked quality assurance procedures.

Sourcebook area	2021 report
Governance	67% had effective separation of functions
	61% effectively allocate AML responsibility.
	54% were effective in demonstrating senior management engagement
Risk-based approach (RBA)	80% had not implemented an effective RBA. 60% of the legal sector were using powers effectively and only 40% of the accountancy sector
	33% had developed effective risk profiles
Supervision	52% were effective in using broad range of tools (67% of legal PBSs and 42% accountancy)
	50% failed to ensure members took timely action (Particularly accountancy)
	15% were effective in using predicable and proportionate supervisory action
Intelligence and Information sharing	68% effectively took part in arrangements but there were gaps
	Larger PBSs are generally better – Accountancy sector better between supervisors but legal sector better with LEAs
	SIS searches fell by 1% but uploads reduced by 35%

	General reluctance to share active misconduct intelligence.
Information and guidance to members	83% were effective in providing information and guidance to members
	67% were effectively interacting with other supervisors
Staff training	33% were effective in recruiting and retaining staff with relevant experience
	Key staff lacked sufficient expertise and knowledge to perform their role.
	Baseline knowledge was missing in some staff – e.g., the NRAs, FATF updates.
Enforcement	32% of PBSs have effective enforcement frameworks
	All have sufficient powers to investigate but only
	62% legal and 50% accountancy use them effectively
	26% use enforcement tools effectively
Record Keeping	70% make enforcement outcomes public
	25% of PBSs are still not effective in record keeping with the legal sector performing better.
	General lack of effectiveness on recording decisions made