BIRMINGHAM LAW SOCIETY

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Response to HM Treasury Consultation on Anti-Money Laundering and Counter-Terrorist Financing Supervision Reform: Duties, Powers and Accountability Consultation

19 December 2025

Response of the Professional Regulation Committee of the Birmingham Law Society to HM Treasury Consultation on Anti-Money Laundering and Counter-Terrorist Financing Supervision Reform.

This response has been prepared by the Professional Regulation Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Professional Regulation Committee whose members include specialists practising in all aspects of professional regulation and compliance for the legal profession.

1. Do you agree with our proposal to amend the MLRs to require the FCA to maintain registers of the professional services firms it supervises?
    a. Are there any practical challenges or unintended consequences we should consider?

    Answer

    We agree with this proposal in principle; however, we are concerned about the confusion that it may raise with the public about where to locate information about a regulated firm - i.e. should they look to a register held by the FCA or the SRA or both?

    It is our view that the consumers of legal services would not understand the distinction between the regulatory ambits of the SRA and the FCA. We think that consumers of legal services will more likely look at the SRA's website when researching a firm.

    An alternative is that the SRA register notes also that a firm is supervised by the FCA for AML purposes. If this is not supported, then a link from one register to the other should be placed on the website of each regulator.

2. Do you agree with our proposal to grant supervisors the explicit ability to cancel a business' registration when it no longer carries out regulated activities?
    a. How might these changes affect firms of different sizes or structures?

Answer

We do not agree with this proposal.

A supervisor, including the FCA, will struggle to determine when a firm is no longer conducting regulated activities. This is especially the case in respect of tax advice as the definition of tax adviser can easily bring work that is out of scope within scope. The nature of legal work does not necessarily lead to a black and white conclusion as to whether the work is in scope of the regulations or not and is quite different from the activities in the financial services sector.

Some law firms may undertake small amounts of work in scope of the regulations and in any one year may do none, but then may conduct such work again the following year. To have supervision cancelled one year to then have to reapply for it the next will create a significant administrative burden and cost for both supervisor and firms and would be a disproportionate cost to small law firms.

Any cancellation of supervision should be with the agreement of the law firm. Any process to become supervised again for AML purposes must be swift and efficient so that there is no detrimental impact on the ability to serve consumers of legal services.

3. Do you support the application of regulation 58 "fit and proper" tests to legal, accountancy and trust & company service providers?
    a. Please explain your reasoning.

Answer

We do not agree with this proposal.

Solicitors, and certain role holders in SRA regulated firms, already have to go through an authorisation process that assesses their character and

suitability. Additionally, solicitors and SRA regulated law firms have a duty to report any matter that amounts to a serious breach of the SRA's regulatory arrangements.

We think that the application of regulation 58 to SRA regulated legal service providers is disproportionate and amounts to 'dual regulation' that will increase costs for law firms and consequently the cost of legal services for consumers.

We propose that those approved by the SRA when the transition takes place should automatically be passported to the FCA. The fit and proper test should be aligned with the test applied by the SRA to avoid creating terminology gaps and dual standards being applied.

4. What are your views on the proposed changes to regulation 58, including the requirement for BOOMs to pass the fit and proper person test before acting, mandatory disclosure of relevant convictions, and the introduction of an enforcement power similar to those under regulation 26?

Answer

We do not agree with this proposal.

Solicitors already have mandatory disclosure requirements to the SRA, as mentioned above in response to question 3. If regulation 58 is amended in the way proposed this will lead to dual regulation. This will impose a regulatory burden on the solicitors' profession, the cost of which will be passed on to consumers of legal services. We have significant concerns as to which regulator would make the assessment of the fit and proper test and what would happen if there were different outcomes from SRA and the FCA.

As mentioned in our response to 3 above, BOOMs already in situ must be passported as approved for clients to continue to be serviced. If the FCA then must approve a BOOM, an existing BOOM must be able to continue as such until the approval process has been conducted.

5. Should the FCA be granted any extra powers or responsibilities with regards to "policing the perimeter" beyond those currently in the MLRs?

Answer

Regulation 46 of the MLR imposes a duty on "the supervisory authority to effectively monitor the relevant persons for which it is the supervisory authority". The consultation explains that 'bad actors' may carry out regulated activity free from supervision. The FCA considers that this creates an 'uneven playing field' and undermines the integrity of the UK's AML regime.

We welcome the recognition by HM Treasury that the regulated population bears the cost of compliance whilst 'bad actors' escape those costs and regulatory scrutiny by avoiding membership of the regulated population. The proposal to 'police the perimeter' is welcomed and the FCA should devote significant resource to this activity.

We will consider any detailed proposals in this respect once they are published.

The consultation makes it clear that the FCA's responsibilities will be limited to AML/CTF compliance. It will be critical that that these regulatory 'tram lines' are adhered to so the legal profession has certainty about which regulator is responsible for which aspect of regulation.

However, we are concerned about a real risk of dual regulation. One example is in relation to AML compliance and compliance with the SRA Accounts Rules. We expect the FCA to work closely with other regulators and the respective professions to ensure that the 'tram lines' are maintained and that there is clarity regarding enforcement arrangements.

It is critical that the FCA develops professional services expertise, including establishing dedicated sector teams so that the professions can be confident that in regulating them, the FCA understands the different issues faced by the professions including their duties to their clients.

In the case of solicitors, for example, there are detailed conduct obligations, such as the duty of confidentiality and legal professional

privilege, that can only be waived in specific circumstances. It must be recognised that the privilege belongs, not to the solicitor, but to the client and it is a fundamental right of the client to be able to consult a solicitor in the knowledge that what is said will not be disclosed to others.

6. Do you foresee any issues or risks with the extension of regulations 17 and 46 to the FCA in carrying out its extended remit, particularly in relation to how these powers will interact with the FCA's proposed enforcement toolkit?

Answer

We agree with this proposal, with a caveat (see below).

We consider that there are no issues with the transfer of the existing arrangements in regulations 17 and 46 from the current supervisory authorities to the FCA. The risk assessment undertaken by the FCA must reflect the nature of the work undertaken by the different professions that it will regulate. This will either require separate risk assessments for each profession or a separate section for each profession in a wider risk assessment.

We do not support the proposal "to provide the FCA with a broadened toolkit". We consider that the current provisions are adequate. Any proposals for a 'broadened toolkit' will need to be spelt out in more detail for proper consideration.

7. What are your views on introducing new supervisory powers to make directions and appoint a skilled person?
    a. If this power is introduced for the FCA should it also be available to HMRC and the Gambling Commission?

Answer

We consider that this proposal will require more detailed consideration of potential implications for law firms and their clients.

The option to direct a professional firm, (or for the FCA to appoint of its own volition) t appoint a skilled person may prove to be a valuable tool, in order that the FCA can effectively assess legal matters which do not fall within its expertise. However, it is not possible for an external person to be granted access to a client's information, if that contains information protected by legal professional privilege (LPP). Although it is accepted that information obtained as part of Customer Due Diligence will not be subject to LPP, key documents containing the client's instructions and advice given to the solicitor will be subject to privilege and unless it is clear there is prima facie evidence of a crime, the law firm will be unable to disclose key information to the skilled person.

We consider that where the 'skilled person' is a law firm then this may create competition issues that must be resolved and may result in conflicts of interests. We also think that the costs of appointing a 'skilled person' need to be communicated to the regulated person.

8. Do you agree with our proposal to extend the information gathering and inspection powers in the MLRs to the new sectors within FCA supervision?

Answer

We do not agree with this proposal.

We consider that the powers set out in regulations 66 – 74 of the MLR are adequate and there is no justification for any extension to these powers. We reject the proposal to extend the FCA's powers under the MLR to those under FSMA without primary legislation and Parliamentary scrutiny of those extended powers.

We consider that there are significant issues in respect of client confidentiality and legal professional privilege that must be considered, understood and addressed. Whilst it is accepted that the SRA may access legally privileged information – see Parry-Jones v Law Society [1969] 1 Ch. 1 – it will require primary legislation to extend this power to the FCA. We do not consider that there will be many circumstances in which the FCA will need to have access to legally privileged information. We consider

that if such a power is extended to the FCA, it should be on the basis of an application for an order from the High Court.

9. Do you believe any changes are needed to the information gathering and inspection powers in the MLRs beyond extending them to the FCA in supervising accountancy, legal and trust and company service providers for AML/CTF matters?

Answer

We do not agree with this proposal.

As mentioned in the response to question 8 above, we consider that the powers set out in Part 8 of the MLR are adequate. We do not consider that any further changes are required other than assigning these powers to the FCA.

10. Do you agree that responsibility for issuing AML/CTF guidance for the legal, accountancy and trust and company services provider sectors should be transferred to the FCA?

Answer

We do not agree that responsibility for formal AML Guidance should be transferred to the FCA, although the FCA should be empowered to issue its own guidance. The FCA does not have experience of the legal services provided by solicitors and is not best placed to understand how legal services are delivered.

11. Do you agree that the MLRs should be amended to transfer responsibility for approving AML/CTF guidance to the relevant public sector supervisor, with HM Treasury retaining 'right of veto' but not having responsibility for approving entire guidance documents?

Answer

The sole argument to withdraw HM Treasury oversight of approval of guidance is that it will lead to guidance being published more quickly. However, in practice guidance is communicated by the LSAG Group, and then HM Treasury guidance is sought afterwards. It should be noted that there has been no judicial challenge to HM Treasury approval to date which evidences the quality of the current application process and the successful relationship between professional body groups and HM Treasury. The prospect of guidance being issued and then Firms making changes to adapt, only for the HM Treasury to veto the guidance, could seriously disrupt legal practice and cause significant wasted costs.

Further, the current separation of sector bodies from the approving body (HM Treasury) is a process that demonstrates independent accountability and fairness. A "super-regulator" with the power to set the rules, investigate the rules, prosecute the rules and then decide on the rules is a system that has no check and balance and is likely to lead to poor outcomes where the regulator justifies its own approach by deciding on the correct guidance. A super-regulator with unchecked powers to set the rules and guidance pursuant to statute is more likely to be vulnerable to a legal challenge.

The FCA is already empowered to issue guidance, and is obliged to issue guidance specifically on Politically Exposed Persons. Guidance on these specific topics that apply across all sectors is the best way to reflect the FCA's high level view of money laundering risks, rather than issue guidance in sectors in which it has little experience.

12. Do you agree to the extension of requirements under regulation 47 to the FCA in relation to accountancy, legal and trust and company service providers?

Answer

We agree that it would make sense for the FCA to provide the information outlined in Regulation 47. However, much of the intelligence information held in respect of organised crime and types of economic crime will be

held by the SRA, by the SRA's Fraud Intelligence Unit, referrals from the Association of Chief Police Officers, and from the thousands of reports the SRA receives in relation to suspected misconduct (including from Reporting Accountants). The FCA will not be in a position to take account of this data, unless the SRA is obliged to also produce information about money laundering and terrorist financing practices, indications of improper transfers of funds and high-risk indicators of money laundering.

13. Do you see any issues with the FCA's information sharing duties and powers in regulation 46, 50 and 52 applying to the professional services firms it supervises for AML/CTF purposes?

Answer

We consider that, as supervisory authorities and the FCA both currently have information sharing arrangements with the NCA, these arrangements should continue. Similarly, we have no objection to the continuation of co-operation and information sharing between regulatory bodies to ensure more effective supervision, subject to the comments on legal professional privilege. We add to that a caveat. There is a risk that independent legal professionals may be at risk of financial consequences and reprisals – See Disclosure reports put lawyers at risk | News | Law Gazette and Solicitors face death threats, intimidation and violence, Law Society survey finds | Law Gazette

The legal services sector is unique in that regulated persons may hold information that is subject to legal professional privilege. Privileged information obtained by the FCA (this issue is mentioned elsewhere in this response) cannot be shared with other authorities.

With the increasing threat of cybercrime committed against commercial organisations and public bodies we are concerned that the more organisations that have access to this information, the more likely it is to get into the hands of criminals. This will increase the risks faced by those

who have made reports to the NCA in good faith, trusting in the security of the system as it stands.

14. Do you agree that the MLRs should be amended to require the NCA to share SARs with the FCA and other public sector supervisors, where these have been submitted by or relate to firms within their supervisory population?

Answer

We do not agree with this proposal.

We have grave concerns about this suggestion as does the Law Society of England and Wales. This would undermine the SARs regime under POCA and undermine the core pillars of confidentiality and trust. This would increase risks to the security and integrity of the SARs system as well as the safety of reporters.

There would be significant dangers if given the numbers of supervisors/regulators, they were given access (an issue which has been considered in the past). There are real risks relating to use, storage, management and potential criminal access.

The SARs regime was established for the purposes of intelligence gathering to aid the police and security services in their work in tackling serious criminality.

We consider that it is appropriate for the NCA to share information on trends and provide guidance on how to improve suspicious activity reporting, but this does not extend to sharing all SARs with the FCA.

Even if access were limited to the FCA, our view is that the risks associated with this proposal do not merit the change. The fundamental issues of undermining the SARs regime, integrity, confidentiality and risk of abuse remain.

The question of direct access by supervisors to the SARS database was considered by the SARs Regime Committee (in 2012 during the time of

SOCA) and considerable concern was expressed about the safety and security risks for reporters if direct access was permitted. At one point the SRA sought access which was not permitted.

The Law Society has issued guidance to firms about considering carefully whether it is appropriate to retain copies of SARs submitted and if so, ensure clear policies, controls and procedures are in place to limit access and maintain confidentiality. As the article referred to above (28 November 2025) states, lawyers face death threats, intimidation and violence on a regular basis and that risk would increase if the subject of a report were to obtain information about the SAR, including who submitted it.

There is a SAR Confidentiality Breach Line which is a dedicated helpline for reporting any concerns about inappropriate use of SARs (by end users) or breaches of SAR confidentiality. This demonstrates the importance of ensuring reporters are confident about access to potentially life-threatening information being very restricted.

The FCA does not currently have access under their supervision of financial institutions. No evidence has been provided to justify such a change which would have such far-reaching consequences.

We are also concerned that, in an age where commercial and public organisations are increasingly the victims of cyber-criminals (including state actors), that sharing of information presents an increased risk of the information falling into the hands of those criminals. Such events will impact on those who make SARs to the NCA in good faith, trusting in the security of the system.

15. Do you agree that these existing whistleblowing protections are sufficient and appropriate?

Answer

Whistleblowing reports should be directed to the SRA, and the SRA should disclose information that is consistent with a Memorandum of Understanding. The existing memorandum should be expanded to include reports not only in respect of the Financial Services and Markets Act 2000,

but also in respect of the Money Laundering Regulations. Information provided to the SRA can be collated with other relevant regulatory information and be disclosed to the FCA, to exclude any items covered by legal professional privilege.

16. Do you foresee any issues with our proposal for the FCA to exercise the same enforcement powers already exercised by it in relation to the financial services firms for professional services firms too?

Answer

We do not agree with this proposal.

We consider that the enforcement provisions in the MLR and the Economic Crime & Corporate Transparency Act are more than adequate. We can see no justification for the powers currently exercised by the FCA under FSMA being extended to its responsibilities under the MLR.

17. Are there any additional enforcement powers that you feel the FCA should be equipped with to ensure non-compliance is disincentivised effectively?

Answer

We consider that the enforcement powers set out in the MLR and the Economic Crime & Corporate Transparency Act are more than adequate.

18. Do you think any amendments to regulations 81 and 82 would help the FCA issue minor fines for more routine instances of non-compliance such as failure to register?

Answer

We do not agree with this proposal.

It is not clear what is meant by 'routine instances of non-compliance' beyond failure to register. It is also not clear what, in reality, 'minor fines' would mean. Further, what one might consider minor, another may not.

Fines are not always the best response to a compliance issue and instead guidance, training and supervision is more effective and proportionate.

Whenever fines are issued, the recipient of the fine must have the ability to make representations. Currently regulations 81 and 82 require a warning notice and the opportunity for the subject to make representations before a decision notice is issued. It is not clear whether it is proposed that this right to make representations is removed. It must not be.

19. Do you have any issues with our intention that decisions made by the FCA in relation to their AML/CTF supervision of professional services firms be appealable to public tribunals, in line with the existing system?

Answer

We agree with this proposal and are of the view that decisions made by the FCA should be appealable to the Solicitors Disciplinary Tribunal.

20. Do you have any comments regarding the FCA charging fees, under regulation 102, noting the possible amendments?

Answer

It is recognised that the FCA's supervision needs to be funded. However, the fees charged must be proportionate, not prohibitive to the conducting of business (particularly for smaller firms), transparent and relate to the actual cost of the FCA. In addition, if fees are to be calculated on the basis of the amount of work conducted that is in scope of the regulations, it must be recognised that it is often very challenging for firms to accurately indicate all work that is in scope of the regulations due to the definition of tax advisor. This could lead to law firms that do very little work within scope having to pay disproportionate fees.

Law firms will already be paying fees to the SRA which includes the costs of their AML supervision. Any fees paid to the FCA should not see an increase overall in the cost to law firms and therefore the fees payable to the SRA should decrease when it no longer has a AML supervisory role.

An objective for creating a Single Professional Services Supervisor is to bring efficiencies and reduce cost. The cost burden on firms should therefore be no more than it is now and if anything should be less.

21. Are there any specific powers or transitional arrangements that you believe would help the FCA, current supervisors, or HM Treasury support a smooth and low-burden transition for firms already supervised under the MLRs?

Answer

We would welcome the opportunity to review any proposals made in addition to those set out this consultation.

22. Do you agree that a requirement should be placed on the FCA and existing professional bodies and regulators to create an information sharing regime that minimises burdens on firms?

Answer

We agree with this proposal. Information should be shared to ensure that solicitors only need to make information available to their primary regulator, being the SRA. Law firms are required to provide annual information to the SRA as part of the renewal of practising certificates and ideally information would be collected at this time.

23. Are there any other legislative measures that would prevent additional regulatory burdens arising?

Answer

Section 209 of the Economic Crime and Corporate Transparency Act 2023 introduced a new regulatory objective to section 1 of the Legal Services Act 2007 namely, "promoting the prevention and detection of economic crime". We consider that this provision was introduced to support the efforts of the legal services regulators in relation to AML/CTF activities.

With the transfer of responsibility to the FCA we consider that section 209 should be repealed and the objective removed from the Legal Services Act.

24. Are there any additional powers that would support OPBAS to provide effective oversight of the PBSs during the transition?
    a. If so, please provide an overview.

Answer

We do not consider that any additional powers are needed to support OPBAS in the transition stage.

25. Are there any wider legislative changes that may be necessary to support the effective implementation of this policy, including agreement with existing statutory frameworks governing professional services?

Answer

We would welcome the opportunity to review any proposals made in addition to those set out this consultation.

26. Should any changes be made to the economic crime objective introduced for legal regulators by the Economic Crime and Corporate Transparency Act?

Answer

As mentioned in our response to 23 above we believe that section 209 of the Act should be repealed to remove the economic crime objective from section 1 of the Legal Services Act 2007.

27. Do you have any issues with our intention to apply the FCA's existing accountability mechanisms in carrying out its additional supervisory duties?

Answer

We agree with this proposal.

We consider that this additional duty imposed on the FCA is an important one that should not be diluted by the FCA's other activities. In reporting to HM Treasury and/or Parliament the FCA should produce a separate report in respect of its AML/CTF activities.

28. What measures do you think should be taken to ensure a proportionate overall approach to supervision, including prioritising growth?

Answer

Any measures introduced must be assessed to determine the impact of those measures. Where the regulatory burden increases there are inevitable cost consequences that are ultimately borne by the consumers of legal services. An increase in the regulatory burden with therefore have the effect of suppressing growth. The overall cost of regulation should not increase. With a Single Professional Services Supervisor the expectation is that the cost of regulation will decrease as the FCA will be able to make economies of scale.