

## Call for Evidence: HM Treasury's Review of the UK's AML/CFT regulatory and supervisory regime

### Response from Propertymark October 2021

#### Background

Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

#### Recent improvements to the regulatory and supervisory regimes

- 1. What do you agree and disagree with in our approach to assessing effectiveness?**
- 2. What particular areas, either in industry or supervision, should be focused on for this section?**
- 3. Are the objectives set out above the correct ones for the MLRs?**
- 4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?**

Propertymark agrees that continuing to assess the effectiveness of the MLR's based on FATF's established approach, combined with areas which have been identified for improvement from additional reporting by FATF, European Supervisory Authorities, HM Treasury, the Home Office and OPBAS is a reasonable approach.

An area of focus should be on the governance and accountability of the Professional Body Supervisors (PBSs). At the end of 2018 the FCA reported 12% of PBSs had not updated their written policies and procedures for AML compliance with the MLR's and 36% of PBSs did not have a consolidated AML policy.<sup>1</sup> Although there was an improvement on these numbers by 2019 Propertymark suggests increasing the focus on the governance and accountability of the PBSs ensuring they all have effective AML systems and policies in place to mitigate the risks and threats of money laundering and financing terrorism. The UK has 25 PSB's, ranging from large public organisations to small professional bodies, leading to varying quality of supervision as well as a lack of standardised guidance. Propertymark would suggest the consolidation of supervision with fewer supervisory bodies, who would be more sector specific. We believe that self-regulatory bodies acting as supervisors are best placed to understand their own sectors and to gather information about developing risks and anti-money laundering methodologies.

Propertymark supports the proposed objectives for the MLRs. We believe that introducing the requirement to lodge a suspicious activity report (SAR) into the MLR's making it prescriptive will lead to more SAR's being filed, particularly from Estate Agency Businesses (EAB's), a sector that is notoriously poor for filing SAR's. The UKFIU Suspicious Activity Annual Report 2020 reveals that in the period between April 2019 to March 2020 only 861 SAR's were lodged from the estate agent sector<sup>2</sup>,

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<sup>1</sup> <https://www.fca.org.uk/publication/opbas/supervisory-report-progress-themes-2019.pdf>

<sup>2</sup> <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/480-sars-annual-report-2020/file>

considering there were approximately 1,171,690 residential transactions in the same period a higher proportion would be expected.<sup>3</sup>

Additionally, it is imperative that an accurate, up to date and fully transparent list of beneficial owners is established, not only to meet with FATF Immediate Outcome 5<sup>4</sup> but to prevent the UK property sector being further used as a means for individuals accused of corruption to hide their illicit funds as reported by the Pandora Papers.<sup>5</sup>

## **High-impact activity**

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

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

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

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

Purchasing property in the UK is a common method used by serious organised criminals to launder the proceeds of criminal activity. The sheer size of the property market in the UK and the high value of property assets means that extremely large amounts of criminal funds can be 'cleaned' in a single transaction. The sales and lettings sectors, property auctioneers and high value dealers are all attractive targets. Both small and large agencies are susceptible to criminal activity. The London property market and the wider UK housing market are highly attractive options and are both affected by financial crime. Whilst the property sector remains largely unregulated, and without minimum standards, the industry is vulnerable to attack.

Property is a high-risk sector for money laundering because any foreign company can buy property in the UK without having a presence in the country. Criminal funds can be concealed and made to look legitimate through an untraceable 'company' and subsequently the purchasing of property. When agents try to determine the true, or 'beneficial' owners, they find only documents listing shell companies. The Pandora papers<sup>6</sup> have highlighted the true identity of owners can be hidden through the use of overseas shell companies. To maintain integrity in our housing market it is vital to know who the ultimate owner of a property is. Propertymark is calling for a public register of overseas beneficial owners and the UK Government should look to implement this immediately. It is imperative that the public register of overseas companies owning property in the UK is set up as soon as possible. The longer the UK waits for a register, the longer corrupt individuals will be able to use the UK property market to hide their wealth.

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<sup>3</sup> <https://www.ibisworld.com/uk/bed/number-of-residential-property-transactions/44176/>

<sup>4</sup> Immediate Outcome 5 - Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

<https://www.fatf->

[gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf](https://www.fatf-)

<sup>5</sup> <https://www.icij.org/investigations/pandora-papers/>

<sup>6</sup> Ibid

**National Strategic Priorities**

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

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

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

Propertymark does not believe having Strategic National Priorities would be a benefit. It is likely that supervised firms would primarily focus resources on the strategic priorities and neglect their full obligations under the MLR's.

**Extent of the regulated sector**

**12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?**

**13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?**

**14. What are the key factors that should be considered when amending the scope of the regulated sector?**

Due to the possibility of the high level of anonymity for those operating within the lettings sector including landlords, tenants and all other parties involved, Propertymark would recommend that letting agency businesses (LABs) become subject to the MLR's regardless of the monthly rent being obtained for each land or property transaction they are managing. As highlighted within the National Risk Assessment of Money Laundering and Terrorist Financing 2020, significant volumes of money can be moved quickly, especially when properties are under the €10,000 threshold for MLR checks.<sup>7</sup> At present it is possible landlord and tenant are part of the same criminal gang and are complicit in money laundering, by laundering illicit funds in the guise of rent payments. Without implementing legislative changes introducing mandatory Customer Due Diligence (CDD) requirements the risks remain high.

When amending the scope of the regulated sector there should be consideration to transaction and activity monitoring as well as the effect of emerging technologies and how the regulated sector can adapt to new threats.

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<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100460/2/210720\\_MLRs\\_Review\\_Call\\_for\\_Evidence\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100460/2/210720_MLRs_Review_Call_for_Evidence_final.pdf)

## Enforcement

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

The enforcement powers contained within the MLR's should be sufficient for the designated supervisory authority to supervise, monitor and enforce AML compliance on their supervised firms. However, Propertymark believes the supervisors are not utilising their enforcement powers to their full capacity, which may be down to a lack of resources. The HMRC Corporate report: Businesses that have not complied with the Regulations, and Suspensions and Cancellations of Registration, reveals between the period 1 October 2020 to 30 March 2021 only nine businesses received a penalty notice for compliance or registration failures.<sup>8</sup> The evident lack of prosecutions does not act as a deterrent for businesses to trade without registering with a supervising authority, having adequate policies and procedures in place or providing staff with sufficient training. More publicised prosecutions would lead to more businesses ensuring they had registered with a supervisory body and implemented full compliance procedures before they commenced trading. When pursuing prosecutions, more resources should be used to identify businesses operating without being registered for AML supervision and consideration must be given to the levels of failure of compliance of the MLR's from those who have registered and met with the costs of compliance with any penalties being proportionate to the perceived level of risk of money laundering due to the failures of the business.

## Barriers to the risk-based approach

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

The principal barriers to supervised authorities implementing a risk based approach is the lack of data collected from their supervised businesses in terms of identifying and understanding the inherent risks faced. PBS's require good quality data to help identify the relevant persons requiring support who may have an insufficient understanding of risk as well as concerns on demonstrating a risk based approach in relation to their MLR's obligations.

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<sup>8</sup> <https://www.gov.uk/government/publications/businesses-not-complying-with-money-laundering-regulations-in-2018-to-2019/businesses-that-have-not-complied-with-the-regulations-and-suspensions-and-cancellations-of-registration-2020-to-2021>

Under Regulation 17 of the MLRs, PSBs are required to undertake an informed risk assessment covering the international and domestic risks of money laundering and terrorist financing in their sector and develop risk profiles for their sector, which are to be regularly reviewed. Propertymark believes that introducing a prescriptive element into the MLR's for PSB's to introduce sector specific guidance will go a long way in helping the supervised business understand the methodology to be used when taking the risk based approach.

## Understanding of risk

**22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?**

**23. What are the primary barriers to understanding of ML/TF risk?**

**24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?**

A risk-based approach does not mean that risks from the lower end of the scale, ranging from likelihood to severity can be ignored. There is a concern a business may not take its obligations with vigorous appetite when implementing a risk-based approach

Customer due diligence and ongoing monitoring is an absolute legal requirement, but many businesses feel sector guidance and PSB's checks places too much emphasis to focus resources on obtaining hard copy documentation which imposes unnecessary costs and creates delays. OPBAS reported that many supervised businesses believe resources would be better used on transaction monitoring and the implementation of a more risk based approach.<sup>9</sup> Propertymark believes if guidance was updated regularly, which included recent case studies on taking risk based approaches it would help relevant persons with their understanding of money laundering risk.

## Expectations of supervisors to the risk-based approach

**25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?**

**26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?**

**27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?**

**28. Would it improve effectiveness and outcomes for the government and /or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?**

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<sup>9</sup> <https://www.fca.org.uk/publication/opbas/supervisory-report-progress-themes-2019.pdf>

**29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?**

Effectiveness could be improved with the introduction of standardised guidance. Several PSB's issue their own guidance which leads to duplication and creates confusion. The guidance can fail to differentiate between good practice and legal requirements. Additionally, having a defined compliance programme would make those operating on risk realise further enhanced due diligence measures are required as the risk may not be as low level as first perceived. A defined programme would benefit those who are reliant on ID checking software, particularly estate agency businesses, which may not be carrying out the functions they are expecting it to.<sup>10</sup>

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

**30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?**

**31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?**

**32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?**

**33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?**

**34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?**

**35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?**

**36. Are there any changes to the MLRs which could mitigate derisking behaviours?**

Propertymark believes the MLR's and relevant sector guidance have led some relevant persons to be confused on when to apply Enhanced Due Diligence (EDD) or Simplified Due Diligence (SDD). There is perceived to be a lack of understanding about Politically Exposed Persons (PEP's) and relevant persons should carry out due diligence to establish if the person is a PEP.

In a most recent example, the Solicitors Regulation Authority (SRA) imposed preventive conditions one of their members, as well as issuing a financial penalty. The SRA found the member was motivated by profit and failed to have in place an adequate documented assessment of the risks of money laundering, adequate policies, controls or procedures to mitigate and effectively manage the risks of money laundering, appropriate risk management systems and procedures to determine whether the

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<sup>10</sup> 12.16 page 111

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945411/NRA\\_2020\\_v1.2\\_FOR\\_PUBLICATION.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf)

client was a PEP and did not take sufficient measures to prevent the Firms Client Account to be used as a banking facility, with a considerable amount of illicit funds flowing through it.<sup>11</sup>

This example highlights where there can be discrepancies in those applying Client Due Diligence (CDD). Those persons motivated by profit or with new client targets to meet will not evaluate the full risks when onboarding clients and are likely to opt for SDD measures that will appear to meet their MLRs obligations. To support agents with their EDD obligations, the UK Government should create a free and easily accessible list of PEP's. This is even more important now that there is no longer a distinction between a domestic or foreign PEP. Furthermore, most estate agents or senior managers will not know how to define a middle-ranking or more junior official to distinguish whether enhanced due diligence is necessary. Estate agents need more support in how to establish the necessary mechanisms to carry out enhanced due diligence and be able to recognise whether a customer is a PEP.

### **How the regulations affect the uptake of new technologies**

**37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?**

**38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?**

**39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?**

As technology advances any amendments to the MLRs should not be so prescriptive as to prevent the adoption of new systems that will successfully tackle economic crime. However, there should be clarity in the MLRs or relevant guidance on the difference between digital identity technology and electronic verification of document technology.

### **SARs reporting**

**40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?**

**41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?**

**42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?**

**43. What else could be done to improve the quality of SARs submitted by reporters?**

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<sup>11</sup> <https://www.solicitortribunal.org.uk/sites/default/files-dt/12206.2021.Ogbonna.Topstone%20Solicitors.pdf>

**44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?**

Propertymark believe the MLR's should be amended to include an obligation for supervised businesses or individuals to report to law enforcement their suspicions of possible illicit activity relating to money laundering. Incorporating the SAR's reporting requirement into the MLRs would lead to an increase in reporting. In the period April 2019 and March 2020 only 861 SAR's were filed by EABs.<sup>12</sup> Considering there were approximately 1,171,690 residential transactions in the same period a higher proportion would be expected.

Enhancing the PSB's role to assess the quality of SAR's would be welcomed by Propertymark and, if the powers were utilised cleverly, it should be deemed as a positive move by the businesses being supervised. The data could be analysed, trends spotted, and sector specific guidance issued. A dearth of filed SAR's may be attributable to a lack of training on the UKFIU website or confidence with the reporter that the filing of a SAR may not be as anonymous as they thought, PSB's could provide adequate training sessions and provide assurances surrounding anonymity.

**Gatekeeping tests**

**45. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?**

**46. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?**

**47. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?**

**48. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession? Is an additional requirement needed for when new individuals take up relevant positions in firms that are already registered?**

Introducing a single more robust testing system by consolidating and developing further the requirements in regulations 26 and 58 would be more effective. The list of offences found in Schedule 3 of the MLR's relate only to UK crimes. It is not robust enough to prevent those convicted from similar crimes overseas being accepted for supervisory registration. With most PSB's not having the authority to check with local enforcement agencies the applicant's declarations that they do not have a criminal conviction, criminals may be able to obtain registration and launder illicit funds without ever being identified.

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<sup>12</sup> <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/480-sars-annual-report-2020/file>

Propertymark would suggest that any reform of regulations includes that the firms and sole practitioners specified in Regulation 26 (2), EAB's, and LAB's in particular, must be members of a professional body. When applying or renewing for supervision they must also evidence to have met with the professional body conditions of membership. This requirement allows for additional levels of scrutiny. Any amendments to the regulations must look at introducing prescriptive for more detailed information sharing between PSB's and membership bodies as part of the ongoing monitoring processes.<sup>13</sup>

## Guidance

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

**50. What barriers are there to guidance being an effective tool for relevant persons?**

**51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?**

In the view of Propertymark, the guidance issued by HMRC specific for EAB's primarily supports the relevant persons in understanding their obligations in terms of the MLR's. Improvements could be made by updating the guidance regularly with case studies of good and bad practice identified by HMRC through inspections. A further suggestion would be to align or standardise the guidance for the sectors who overlap, for example estate agency business, legal professionals, and accountancy sectors.

## Structure of the supervisory regime

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

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

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

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

A lack of resources for PSB's to effectively monitor and carry out enforcement action is a major weakness of the UK supervisory regime. Earlier in this submission Propertymark highlighted that HMRC, which many would consider having the potential to be heavily resourced, only issued nine penalty notices for MLR compliance or regulation failures between the period 1 October 2020 to 30

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<sup>13</sup> <https://www.fca.org.uk/publication/opbas/supervisory-assessments-progress-themes-2020-21.pdf>

March 2021.<sup>14</sup> There is not much evidence from the other PSB's taking extensive enforcement action against their supervised businesses. The Solicitors Regulation Authority (SRA) in 2019, sampled 400 of their member firms and found many risk assessments were of poor quality and in some cases did not even exist yet it has taken the SRA over a year to fine only 3 firms for noncompliance.<sup>15</sup>

Already referred to in this submission, having 25 PSB's, ranging from large public organisations to small professional bodies, this is leading to confusion, a varying quality of supervision as well as a lack of standardised guidance. HMRC, currently the supervisory authority for seven business sectors, issuing separate guidance for each specific business type is perhaps overburdening themselves. Propertymark would suggest the consolidation of supervision, with fewer supervisory bodies, particularly around the Accountancy and Law Sectors and the creation of more sector specific PSB's.

### **Effectiveness of OPBAS**

**56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**

**57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?**

The performance of PSB's should be the key factors on assessing the effectiveness of OPBAS. The OPBAS annual report for 2021 found some significant weaknesses from the PBS's in their effectiveness in meeting the MLRs.<sup>16</sup> As these supervisory bodies are responsible for managing AML supervisory activity Propertymark find it disconcerting not all PBS's have effective Governance structures in place, have not implemented effective risk-based approach to AML and had not maintained an effective supervisory approach to ensure members took adequate and timely corrective actions. Supervised bodies rely on their supervisors to ensure they are passing on correct and up to date guidance and OPBAS should apply their authority more rigorously to ensure the standards of PBSs are raised.

### **Remit of OPBAS**

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

**59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?**

Propertymark believe extending the remit of OPBAS across the boundary between PBS's and statutory supervisors would be beneficial and go a long way in delivering consistency across all sectors.

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<sup>14</sup> <https://www.gov.uk/government/publications/businesses-not-complying-with-money-laundering-regulations-in-2018-to-2019/businesses-that-have-not-complied-with-the-regulations-and-suspensions-and-cancellations-of-registration-2020-to-2021>

<sup>15</sup> <https://www.lawsociety.org.uk/en/topics/anti-money-laundering/sra-starts-aml-enforcement-action-against-firms>

<sup>16</sup> <https://www.fca.org.uk/publication/opbas/supervisory-assessments-progress-themes-2020-21.pdf>

**Supervisory gaps**

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

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

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

Propertymark would consider the legal sector would benefit from a default supervisor, which would offer standardised guidance, training and develop consistency across the sector.