



Response from the Faculty of Advocates
to the
Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime
27 September 2023

Introduction

The Faculty of Advocates ensures that the people of Scotland, regardless of wealth, background or location, have access to the very best independent, objective legal advice. The Faculty has been at the forefront of legal excellence since 1532 and regulates the training and professional practice, conduct and discipline of Advocates. There are around 450 practising Advocates. All practising Advocates operate as self-employed individuals.

Members of Faculty are legal practitioners but, importantly, they are holders of the public office of Advocate. As public office holders, Advocates have duties to the Court and regulation by Faculty must be understood in that context. The relationship between the Court and Faculty is fundamental. By virtue of the Legal Services (Scotland) Act 2010, the Court of Session is responsible for: (i) admitting persons to (and removing persons from) the office of Advocate; (ii) prescribing the criteria and procedure for admission to (and removal from) the office of Advocate; and (iii) regulating the professional practice, conduct and discipline of Advocates. That reflects the position which has existed for centuries. The Court may not delegate its responsibility to admit persons to and remove them from the office of Advocate. However, the Court's other responsibilities are exercisable, in accordance with such provision as the Court may make, by the Lord President or by Faculty. The Court has delegated those functions to Faculty. Amendments to the rules which Faculty may make in relation to the matters delegated to it require to be approved by the Lord President. In carrying out its regulatory function, Faculty already acts in the public interest, because it is discharging a responsibility given to it by the Court in respect of the conduct of public office holders.

Advocates and the AML Regulations

Advocates cannot handle client money and do not carry out conveyancing nor execute transactions. They are primarily instructed through solicitors, who are themselves subject to the AML regulations. Advocates are considered low risk from an AML/CTF perspective as recognised by the National Risk Assessments 2017 and 2020. We also note that in the December 2018 FATF UK MER barristers were identified for lesser focus "as they are prohibited from conducting the sorts of activities that bring lawyers within the FATF Recommendations (e.g. executing transactions, conducting conveyancing and offering client account services). In addition to this, they are either barred from direct public engagement or can only engage with the public after a strict authorisation process." That assessment is correct.

The vast majority of work carried out by Advocates is advising on and carrying out contentious litigation and accordingly is not in scope for the AML Regulations. The only work carried out by Advocates which is in scope is in the area of non-contentious tax advice. Faculty maintains a register of those persons who may carry out such work ("the Supervised Population").

It is a breach of the Guide to Professional Conduct to which all Advocates are subject to carry out any work which may be in scope of the Regulations without first registering with Faculty as a member of the Supervised Population.

As of September 2023 the Supervised Population was only 7 members of Faculty. Based on the regulatory inspections carried out by the Faculty AML team we are aware that in the 24 months to 31 March 2023 only one instruction was carried out across Faculty which was in scope of the AML regulations.



The very low number of Advocates within the Supervised Population and the even lower number (one) who have carried out work within scope of the regulations over the last two years under review, bears out the National Risk Assessment's recognition that the risk arising from members of Faculty is extremely low.

The Risk-Based Approach

The introduction to the FATF Recommendations includes the following statement:

"The risk-based approach allows countries, within the framework of the FATF requirements, to adopt a more flexible set of measures, in order to target their resources more effectively and apply preventive measures that are commensurate to the nature of risks, in order to focus their efforts in the most effective way".

In addition, the OPBAS Sourcebook states;

"An effective risk-based approach underpins all aspects of anti-money laundering supervision. An effective risk-based supervisory framework enables a professional body to identify, assess and understand the money laundering risks within its sector and supervised population and mitigate them on an ongoing basis. ...A professional body should ensure that the measures it takes to reduce money laundering are proportionate to the risks identified."

Faculty wholeheartedly endorses the risk-based approaches outlined by FATF and OPBAS.

Money laundering, terrorism finance and proliferation finance remain a real and significant risk within the UK. However, the limited nature of regulated work carried out by Advocates means that those risks are not reflected in the risk profile of Advocates generally nor our Supervised Population in particular. All of the changes proposed in the consultation insofar as they would impact on Faculty are wholly disproportionate. As highlighted in the statement of agreed principles of the UK Bars the proposals run the risk of fettering the independence of the Bar which is of fundamental importance to the rule of law.

Whilst Faculty recognises and understands the objectives of the consultation, any changes which are made to the current supervisory regime should be focussed on those sectors representing the highest risk and should not, either by design or default, impose unnecessary, additional and inevitably costly regulatory burdens on those who are low risk. Indeed the loss of specialist sector expertise and the creation of additional barriers to information sharing which is currently held within a single regulatory body, is likely to reduce supervisory effectiveness and system coordination. Accordingly, it fails to meet at least two of the consultation objectives. We believe any form of consolidation or the creation of a new body will also fail on the third test of feasibility.

Faculty does not support any of the four options. We do not comment on whether changes may be required for other parts of the supervised landscape which may be considered to be higher risk. If change in our sector is required, we regard the OPBAS+ model, meaning an improved OPBAS, with suitable accountability, as the only model that we could support. An improved OPBAS would understand the risk profile of the Scottish Bar and tailor its requirements to the risk profile.

We have answered the consultation questions below against this background. Almost all questions have been answered, but we have omitted those which we do not think are relevant to us.

Objectives

- 1. Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?**



Yes, we believe these are the correct objectives. We would emphasise that it is critical that the existing regulatory context in which we operate is fully understood before any change is considered.

OPBAS+

2. What would the impact be of OPBAS having the FCA's rule making power? What rules might OPBAS create with a new rule making powers that would support its aim to improve PBS supervision?

It is unclear what the impact of OPBAS having the FCA's rule making power would have on members of the Faculty of Advocates.

The OPBAS sourcebook is comprehensive and acts as the standard for each PBS to operate to on a comply or explain basis. It has been updated very recently and we suggest that as this becomes embedded, this will lead to further improvement. Rulemaking powers for an unspecified mischief are unnecessary.

Whilst surely not the intention, granting OPBAS the ability to make rules in relation to how a PBS operates carries a risk to the independence of the legal profession and could bring it into direct conflict with Faculty as the primary regulator of all of its members, whether they carry out supervised work or not.

3. Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?

We do not believe it necessary for OPBAS to be granted any additional powers for the reasons above. Its effectiveness could be increased on the basis of current powers by better understanding the regulated legal sector, greater accountability and transparency.

One of the issues which we have experienced in dealing with OPBAS is what appears to be a high turnover of staff. This in itself leads to inconsistency as with each new team we have to start from scratch. This concern would only increase if OPBAS were granted additional powers as inconsistency, a lack of understanding of our risk profile and our wider regulatory framework could have more far reaching consequences.

4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

We do not believe it necessary for OPBAS to be granted any additional powers for the reasons above.

Were OPBAS to be granted any new rule making and enforcement powers a genuine consultation exercise would have to be engaged in as to the perceived need to do so, why the current tools are ineffective, the implications and the direct and indirect costs both to the relevant PBS's and their supervised populations. Decisions made in terms of such new rules or powers would have to be subject to effective challenge.

OPBAS should adopt measures to aid transparency and accountability. In particular, OPBAS should publish measurable objectives to which it can be held to account.

5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

No.



6. Do you think a 'default' legal sector supervisor is necessary? If so, do you think a PBS could be designated as a default legal sector supervisor under the OPBAS+ option?

All members of Faculty are regulated by the Faculty. Members carrying out regulated work are required to register with the Faculty before they do so. It is a breach of the Guide to Professional Conduct to fail to do so. Accordingly, we do not consider that a default legal sector supervisor could add anything to the Faculty's existing role. Such a default regulator could not in any event regulate an Advocate in a general sense. We do not consider that there is a particular issue in Scotland as to establishing whether a firm or individual should be supervised by the Law Society of Scotland or Faculty. The distinction is clear.

Further, draft legislation is before the Scottish Parliament (The Regulation of Legal Services (Scotland) Bill) which, if enacted, would make it an offence for a person who is not a member of the Faculty of Advocates to use a name, title, addition or description implying that the person is a member of the Faculty of Advocates or otherwise pretends to be a member of the Faculty of Advocates.

Assuming this provision comes into force it would provide an extra layer of gatekeeping and further mitigate against the need for a default legal supervisor.

7. Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.

In our view the current supervisory regime is effective at least in so far as it relates to Advocates. There could be improvements in OPBAS's approach to ensure greater consistency, a greater understanding of a risk-based approach and accountability, but that ought to be possible within the current arrangements. It follows that we do not believe an OPBAS+ model is necessary or would increase supervisory effectiveness.

8. Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.

PBS's already have systems in place which allow information to be shared where it is appropriate to do so. It is difficult to see how an OPBAS+ model would improve that.

9. Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.

We have no concerns about the feasibility of an OPBAS+ model – our concern is that it is not necessary. If the OPBAS levy were to increase as a result of this model, we would expect that there would be a consultation in relation to the proposed changes and the reasons for that.

PBS Consolidation

10. Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide model, (b) retaining separate PBSs in the Devolved Administrations. Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both?

This response relates to the legal sector.

Separate PBSs operate in each of England & Wales, Scotland and Northern Ireland. In both the solicitor and Barrister/Advocate branches of the profession those regulators have a wide regulatory remit which is not restricted to AML matters. As set out in the statement of agreed principles of the UK Bars, the independence of the referral bar is essential. As a result, the solicitor and barrister/advocate branches of the profession are separately regulated. This distinction must be maintained. We are opposed to any option which erodes this.



The separate PBSs exist as distinct bodies because each operates within a separate legal jurisdiction with different laws and practices. Each organisation is populated by individuals with deep sector specialisms operating within their respective jurisdictions. Consolidating on a UK wide basis would lose the distinct skill sets required. We do not consider that the jurisdictional issues could be mitigated or overcome by having separate departments within a UK wide body.

Such a body would need to be created from scratch. It is inevitable that sector specific expertise would be lost. This would be expensive, time consuming, inefficient and does not meet the feasibility test.

The regulation of legal services in Scotland is currently under review with the Regulation of Legal Services (Scotland) Bill before the Scottish Parliament. The Law Society of Scotland and the Faculty of Advocates will continue to be separate regulators of the two distinct branches of the profession. Any consolidation of PBSs, either on a UK or devolved basis, risks conflict with the regulatory regime in Scotland.

11. How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?

As set out in our response to the OPBAS+ questions we do not believe enhanced powers are appropriate. In a consolidated PBS landscape the tools currently available to OPBAS would be sufficient.

12. Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?

We have no comment to make on this question as our members cannot be ASPs or TCSPs.

13. What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?

Please see response to question 6.

14. Under the PBS consolidation model, what would be the advantages and disadvantages of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?

The independent referral Bars have significant expertise and deep knowledge in relation to their respective sectors and jurisdictions. These memberships present a significantly lower risk in relation to AML and CTF than other constituent parts of the legal sector as supported and endorsed by the National Risk Assessments. The specific type of regulated work which is undertaken by advocates is different from that undertaken by solicitors and the wider regulatory context in which advocates operate is distinct. The existence of sector specific guidance for advocates and barristers also recognises this.

Were PBS consolidation to occur, and on the assumption that the consolidated regulator(s) is (are) from the larger PBSs, there is a significant risk that a “one size fits all” approach is taken leading to the regulatory burden on members of the Bars being very significantly increased. This would be disproportionate to the risk they pose in AML terms. There is also a risk that this will increase the cost of delivery of legal services with that cost being passed on to the consumer for no corresponding benefit.

The manner in which the AML regulations are administered by the independent referral Bars are proportionate and aligned to risk. There is no need to change the existing model – indeed the loss of expertise and the ability to supervise the members registered to undertake regulated work which would arise through doing so would be damaging to the overall effectiveness of regulation.



15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

We cannot comment on the enforcement powers of other PBSs. We consider our own enforcement powers to be sufficient.

16. Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?

Please see answer to Question 6.

17. What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?

Transitional arrangements would be required where either enforcement action is carried through to a conclusion by the legacy PBS, possibly with an ability to pass it across to the new PBS at certain defined points. However, we would note that sanctioning an advocate by means of a disciplinary process would still have to be carried out by Faculty. We do not see that a new PBS could take on enforcement powers in the sense of a disciplinary process where it is only the Faculty which can do so.

18. Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.

We believe supervisory effectiveness would decrease. There will be a loss of sector specific expertise and the risk of a “one size fits all” approach. We also consider that it is unlikely that a consolidated PBS would be in a position to carry out the same level of supervision which Faculty does at present. For example, we are able to meet with each of our regulated members annually. We do not anticipate that would be possible for a combined PBS.

In addition the legacy PBS would carry on as the primary regulator for non AML/CTF purposes. The creation of an additional regulator in that space will create a barrier in terms of information flow that does not currently exist.

19. Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.

In theory a reduction in the number of bodies required to share intelligence should make matters more streamlined. However, there is a risk that asking large PBSs to handle even more data creates an increased opportunity for matters of concern to be missed/not shared due to administrative overload. In addition, there would require to be co-ordination between two different regulators of the same professionals. Whilst an information sharing agreement could be put in place, it requires to operate effectively in practice.

In the legal sector, we do not consider that consolidation would improve the position – it is a proliferation of regulators which increases rather than decreases barriers.

20. What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and that supervision standards do not fall in the interim?

We do not believe that OPBAS requires additional rule making powers. As noted above, the requirement for this would have to be specifically justified and consulted upon.

21. How do you believe fees should be collected under the PBS consolidation model?



Faculty currently pays a fee to HMT based upon the number of members who fall within the supervised population for AML purposes. Presumably that fee would fall to be paid by the consolidated PBS. In addition, it pays the OPBAS levy.

However, Faculty does not collect fees directly attributable to its role as a PBS – these are absorbed within overall budgets. There is an inevitability that moving to a new model would result in additional costs, potentially very significant ones in terms of set up, and then ongoing increased costs on an annual basis. We would be very concerned if these costs disproportionately affected Faculty as a whole given its low risk profile or individual members. A levy on Faculty proportionate to the number of regulated members and its risk profile would seem the best option. We do not consider that an individual levy on members would be appropriate. If increased costs were passed on to members either by the Faculty itself or directly by the PBS, ultimately that may result in increased costs for consumers of the legal services.

22. Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

Very significant. In any scenario the consolidated PBS would be required to regulate parts of the legal sector that it does not currently regulate. This would require new skills, new personnel and potentially a physical presence where none currently exists. That is before going on to examine new governance arrangements, IT and systems requirements. The challenges (and cost) would be great.

Even more significantly, consolidation could interfere with the very basis of the independent referral bar. It could interfere with Faculty's wider regulatory responsibilities.

We do not consider consolidation to be feasible.

Single Professional Services Supervisor

23. Do you agree that these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?

We would suggest that a key issue for consideration should be the interaction of the new body with the existing regulators who will in any event retain their wider regulatory functions.

It should be an overarching objective/requirement that the cost of compliance on supervised firms does not increase. This would likely require Government funding certainly for the set-up costs and potentially for ongoing running costs. At present it is assumed that members of different PBSs pay fees related to AML/CTF regulation in different ways and at different rates.

Those differential fee rates would need to be maintained – in particular those operating in low risk sectors should not be required to pay an increased rate due to being regulated by an organisation that is also regulating higher risk sectors.

24. If an SPSS were to be created, which sectors do you think it should supervise?

If it is to be a true SPSS, it would need to cover all sectors currently covered by the individual professional services PBSs. However, HMRC does not currently supervise the legal sector whereas it supervises elements of other sectors. Advocates cannot be TCSPs. Accordingly, from Faculty's perspective, HMRC continuing to supervise some of its current sectors or transferring them to an SPSS would have no impact on Faculty.



25. Were an SPSS to be created, what powers should it have?

The powers of supervision and intervention would need to be at least commensurate to the existing regime. It would also need the power/obligation to share AML/CTF regulatory breaches with the primary regulator. The interaction between its role and Faculty's wider regulatory responsibilities would have to be very carefully considered.

26. How should enforcement responsibility be transferred should an SPSS be created?

Transitional arrangements would be required where either enforcement action is carried through to a conclusion by the legacy PBS possibly with an ability to pass it across to the new PBS at certain defined points. However, enforcement in the sense of disciplinary sanctions against an advocate would remain a matter for Faculty in any event.

27. What powers should HM Treasury have to oversee an SPSS?

We would agree that it would have to be overseen and would have to report to HMT and Parliament regularly. However, this perhaps illustrates a further conflict between the independence of the legal profession in Scotland and what is proposed.

28. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

Supervisory effectiveness relates not only to AML/CTF but to wider regulatory matters. An SPSS would create a barrier that does not currently exist at Faculty – an existing regulator would be reliant on the SPSS advising if an AML/CTF issue were to arise in relation to one of its members. Under the current model that knowledge would be embedded.

The current model of bespoke PBSs also allows appropriate risk-based approaches to be taken to AML regulation. Creating a single regulator would create a behemoth with risks that issues which would currently be caught under the existing regime may fall between the cracks. Similar to PBS consolidation, such an organisation if it were to include Faculty would not be in a position to supervise Members of Faculty by meeting with the regulated members annually and indeed may only rarely do so standing the risk profile and the numbers of members involved.

Supervisory effectiveness would decrease in relation to members of Faculty.

29. How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?

This would be significant for the reasons stated above including most importantly, that this would be in direct conflict with the fact that the professional practice of advocates is regulated by the Faculty in terms of delegation by the Court. It cannot be undertaken by other bodies which have to report to the executive. To do so undermines the independence of the bar and is a risk to the rule of law.

In addition, for those involved, this would increase the number of relationships to manage and very likely increase the cost of regulation in terms of both direct and indirect costs.

Splitting out AML/CTF supervision could also result in the primary regulator not being aware of regulatory breaches either at all or in a timely manner.

Given that it will be the primary regulator who will be responsible for intervening if, for example, an AML/CTF issue meant that the individual was no longer fit for practice, this represents a risk to the public.



30. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

See 28 above.

31. Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.

The creation of a new public body to act as a new SPSS is an enormous undertaking. This would require the creation of an entirely new body, new personnel, premises, systems etc as well as the transfer of the current AML/CTF functions of all the existing PBS's potentially with TUPE transfers of relevant staff and/or associated redundancy costs.

Transitional arrangements would be needed, potentially for years, increasing the risk of ineffective supervision until the SPSS was properly established.

We do not consider that a transfer of all PBSs into one SPSS would be at all feasible. Feasibility could be increased if it were not to be a truly single professional services regulator, but for example, take on those sectors currently supervised by HMRC. However, the gains may be marginal.

Single Anti-Money Laundering Supervisor

32. Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?

We see the main challenge to effective gatekeeping being the requirement to draw data from the legacy regulator in relation to the relevant individual. For example, if an advocate applied for supervision the SAS would need to check the status of that person with the appropriate legacy regulator and would likely need to continue to make such checks on an ongoing basis. That step is not required under the current model and would add to the overall administrative burden and cost.

33. Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.

We are of the view that it would have a similar impact to an SPSS. The bigger the organisation is, the less effective it will be at supervising those actually involved in carrying out regulated work. Please see 28 above.

34. Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.

We are of the view that it would have the same impact as an SPSS. Please see 29 above.

35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

It would reduce system coordination. Legacy PBSs would no longer be aware of AML/CTF issues affecting its membership unless advised by the SAS. Given the size of the population that the SAS would be dealing with the operational risks involved in that are obvious.

36. Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.

We are of the view that it would have the same impact as an SPSS. Please see 31 above.



Sanctions Supervision

37. Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?

We have provided guidance to our whole membership, not just the Supervised Population. During our annual reviews with the Supervised Population we have interrogated the extent to which they have engaged with the sanctions regime or handled any matter that may be impacted by sanctions. We have not identified any areas of concern.

38. Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?

This can be done under existing powers.

39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

No.

40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

We are not seeking additional powers. If we were required to add monitoring of sanctions systems and controls, we would require to understand what is expected. It is likely that this would have resource and cost implications for the Faculty with consequent impact on our members and ultimately the consumers of legal services.

We would also observe that if sanctions compliance were put on the same footing as AML compliance supervision and one of Options 2 – 4 were chosen, the issue of conflict with the fundamental nature of the independent referral bar and our regulatory responsibilities would become even clearer as all members of Faculty would then be regulated by someone other than the Faculty exercising its court delegated authority.

Options Comparison

41. How would you expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

We do not charge an identifiable fee in relation to AML/CTF matters. However, it is entirely likely that under any of the models except OPBAS+ that additional fees/costs would have to be borne by the Faculty or its members with the risk that these may be passed on to consumers of legal services without any corresponding benefit.

42. Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness, (b) improved system coordination?

To the extent that any of the options might lead to improved supervisory effectiveness we would regard that as being Option 1 – OPBAS+.

We do not believe a case has been made that any of the options would lead to improved system coordination insofar as the legal sector is concerned.



Public Sector Equality Duty

43. Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?

No – save that the potential impact may be an increase in the cost of regulation which may be passed on to consumers without corresponding benefit.

Additional Questions from HMT

1. **How do you use the powers that are available to you? We would like to know what powers you have, and what they are rooted in. We know that your powers are largely publicly available, but we are interested in your experience using them. Of the powers you have, it would be useful to know which are the ones you use regularly, and which you do not, and why. If you think that there any limitations in your powers, such as powers you feel it would be useful to have, or restrictions on their use, this would also be helpful.**

The current relevant legislation is the Legal Services (Scotland) Act 2010. However, the Regulation of Legal Services (Scotland) Bill is currently progressing through the Scottish Parliament. The Guide to Professional Conduct forms the basis of the regulation of our members. It is on this basis that we require registration of members wishing to carry out regulated work. We are able to supervise members by requiring them to meet with the AML team, produce relevant documents and respond to questions in relation to their AML work, policies and risk assessments. We are able to require relevant training. Faculty has power to deal with conduct complaints about members which a breach of the AML regulations or a failure to register would constitute. We have never had to use our disciplinary powers in relation to AML/CTF, but we do use our other powers in the exercise of our supervisory role. We do not seek or require additional powers.

2. **How do you determine your fee structures? Are your AML/CTF fees separated out from fees for other forms of regulation you offer? Do they change depending on whether or not you provide regulated persons with AML/CTF supervision? How do you think your fee structures, and the fees you charge to your supervised populations, would have to change if you no longer carried out AML/CTF supervision?**

As already noted above, Faculty does not charge members separately for its AML/CTF work. It is subsumed into overall budgets. Other than in relation to OPBAS+ where it is suggested that limited changes to the financial arrangements would be required, we are concerned about the financial impact either on the Faculty as a whole, or members undertaking regulated work, should costs increase significantly. Ultimately, the consumer of legal services will have to bear that cost.

3. **Your wider regulatory functions. We are thinking carefully about the impact of our proposals on the dynamics of legal sector more broadly and its wider regulatory landscape. Therefore we would be interested to know what the main other functions you carry out, other than AML/CTF supervision, and how you think your ability to carry out this function would be affected by the models included in the consultation.**

As explained at the start of this response, Faculty is responsible for admission, training and professional practice, conduct and discipline of Advocates – i.e. all other regulatory matters in relation to Advocates are dealt with by Faculty. These are fundamental to the independent referral bar. We consider that all of these functions would be detrimentally affected by the models included in the consultation. OPBAS+ is the only model which we consider could potentially work, but we have serious concerns about the suggested rule-making powers which may also interfere with our existing regulatory functions.