



Response to Home Office and HM Treasury Consultation on legislative proposals for an Action Plan for anti-money laundering and counter-terrorist finance 'Call for information – AML Supervisory Regime' from the National Association of Estate Agents (NAEA)

June 2016

Background

1. National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, being part of a group representing more than 16,000 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).
2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

Identification of risks

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

3. For money laundering purposes estate agents are supervised by Her Majesty's Revenue and Customs (HMRC). NAEA believes that the development of a single risk assessment methodology with appropriate specific modifications could lead to a greater identification of risks and reduce duplication of checks across different sectors. However, each supervisor and businesses within sectors are faced with different risks from money laundering. Therefore the single methodology would need to focus on functionality.
4. Furthermore, a common methodology would help NAEA members because this is one area that they struggle with. Consequently, members do not cover all aspects that they should when assessing the risk to their business from money laundering and terrorist financing.

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

5. The government must ensure that supervisors are adequately resourced and understand the day to day workings of businesses in their sector. For instance, under the Money Laundering Regulations estate agents must ensure that the due diligence they carry out is appropriate for the level of risk in order to minimise the threat of their business being used to launder money. Like other sectors estate agents have to consider the level of identification, verification and monitoring needed to check for money laundering.
6. However, in London it is common practice for an estate agent to take on an instruction and to use sub-agents to find a buyer. Therefore many sub-agents in London are concerned that under the current rules they can't rely on the main agent's own due diligence and must carry out their own checks. As a result this means multiple checks have to be carried out on directors and the agency's other clients. It also means different agents contacting sellers on multiple occasions to carry out checks. Ideally, sub-agents need to be able to share the anti-money laundering check information on clients from the main agent whilst being cognisant of the Proceeds of Crime Act and the necessity to report.

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

7. NAEA believes that the government should monitor the identification and assessment of risks by supervisors on an ongoing basis but report periodically in order to improve performance. Rather than assess each other we believe that the supervisors should share best practice.

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

8. We think that smaller supervisors should be asked whether they want to pool AML/CFT resources into a joint risk function before any decision is made. NAEA does not believe that effectiveness should be judged purely on the size of the supervisor.

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

9. Law enforcement agencies must be more proactive in providing sector-specific information that can be shared in a timely manner. This will allow the estate agency sector to keep abreast of individuals and organisations who might affect their ability to manage risk and prevent attempts to abuse their services.
10. In addition, the supervisors and law enforcement agencies may wish to develop initiatives such as the Joint Money Laundering Intelligence Taskforce (JMLIT) for other sectors.



Supervisors Accountability

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

11. Yes, in order to promote discussions between the supervisors NAEA believes that supervisors should have to attend the AMLSF and submit an annual return to the Treasury. The government could ensure that this happens by inviting them to participate as required or make it a requirement of being granted supervisory status.

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

12. NAEA is a member of the Money Laundering Advisory Committee (MLAC) and we think MLAC should have a greater role in driving improvements in the supervisory regime. In our experience there is little representation at MLAC from HMRC though there is reporting from the Anti-Money Laundering Supervisors' Forum (AMLSF) into MLAC.

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

13. NAEA understands that the Treasury has the power to appoint or remove poorly performing supervisors. Therefore the government must ensure that the Treasury is adequately resourced to carry out its existing responsibilities before using or creating a new body.

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

14. We do not have anything further to add other than the response we provided to the previous question.

Penalties and enforcement



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

15. NAEA has long held the view that fines are an effective deterrent against money laundering. We know of a number of estate agents who have been fined by HMRC. However, for example, if an estate agent fails to register with the HMRC the amount of a penalty will depend on each individual case. Therefore minimum levels of fines consistent and scalable with other sectors may act as a deterrent. NAEA believes that fines should be against the estate agent (personal) and not the estate agency (organisation). To strengthen enforcement we would advocate that breaches of the rules may lead to Warning or Banning Orders. Penalties should also be in the public domain.

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

16. NAEA feels that if the government did establish a single standard for supervisors disciplinary and appeals functions this may also act as a further deterrent.

12. Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively supervise, or is liaison with law enforcement agencies an appropriate mechanism? If so, how could the government address this?

17. Enforcement of the rules is essential and NAEA does think that the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduces their ability to supervise effectively. We also think that the National Crime Agency (NCA) and HMRC should be able to retain fines and ring fence the money, putting it back into further enforcement. This should also lead to greater cooperation between the two bodies.

Ensuring high standards in supervised populations

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

18. From an estate agency perspective we think that supervisors should have the powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment.

19. Furthermore, whilst estate agents are required to register with HMRC, HMRC does not operate a 'fit and proper' test for estate agents because the regulations do not provide them



with the legal powers to do so. By introducing a 'fit and proper' test this would allow for the checking of internal and external information sources.

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

20. The government must ensure that supervisors are adequately resourced and understand the day to day workings of each sector.

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

21. Yes, NAEA believes there is a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuous professional development to aid their understanding of AML/CFT issues.
22. NAEA members are regulated by a body called NFoPP Regulation who have co-authored guidance about anti-money laundering for members with the Royal Institution of Chartered Surveyors, Association of Relocation Professionals and the Association of Residential Managing Agents. The guidance, which covers the Money Laundering Regulations (2007), the Proceeds of Crime Act (2002) and the Terrorism Act (2000), has been formally approved by HM Treasury. If members fall foul of the rules they could face an NFoPP Regulation disciplinary process which could involve expulsion from NAEA and a fine of up to 5 million euros.
23. In addition to the guidance NAEA meets with HMRC on a quarterly basis and we host a number of free masterclasses around the country to ensure members are aware of the legislation. Speakers include representatives from HMRC, the National Trading Standards Estate Agency Team, National Crime Agency and the Property Ombudsman.

The role of professional bodies in AML/CFT supervision

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

24. NAEA would place an emphasis on reporting and the need for independence from the professional body. The safeguards should also take into consideration the disciplinary function and whether judgements would be made by peers or an independent panel.

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



25. If the government mandate the separation of representative and AML/CFT supervisory roles, the impact on professional bodies would be costs. This is because of the operation of a dual structure and the need for another body.

18. How does the UK approach to professional body supervision compare to other countries' regimes?

26. NAEA understands that in comparison to other countries such as Australia financial institutions are required to report suspicious activity whereas property agents are not. In addition we know that in Canada the authorities are increasing their efforts to educate estate agents about their obligations to monitor and report suspicious transactions because compliance, similar to the UK, is low.

Guidance

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

27. NAEA does not have enough relevant information to answer this question.

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

28. NAEA does not have enough relevant information to answer this question.

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

29. NAEA believes that the current guidance from HMRC (Money Laundering Regulations 2007: supervision of Estate Agency Businesses) should be updated to include working examples of estate agents who have given reports to the NCA and the outcome to better explain to staff and MLROs about how long the process can take and what happens if the report is acted upon or not.

Transparency

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

30. NAEA thinks that supervisors should be required to publish details of their enforcement action and strategy. However, we do not have a view on whether this should be part of the Treasury’s annual report on supervisors or something else.

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

31. Yes, the government should publish more of the detail gathered by the annual supervisor’s report process. We understand that HMRC does not produce an annual AML enforcement report.

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

32. Yes, supervisors should be required to undertake thematic reviews of particular activities or sections of their supervised populations. Currently, there are no thematic papers produced by HMRC or detailed reviews of compliance.

Information sharing

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

33. NAEA believes that the ability to share information is a vital component in the fight against money laundering and terrorist financing. It’s important that the right information is shared at the right time between the right people, and then acted upon.

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

34. NAEA does not have enough relevant information to answer this question.

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

35. HMRC maintain a register, but not all supervised business appears on the register. For instance, Trust and Company Service Providers (TCSPs) do not appear. Some NAEA members undertaking Block Management functions fall under the definition of TCSPs but NFOPP Regulation cannot check that they have registered as they are required to by law, which leads to inefficiencies in their processes.

Ensuring the effectiveness of the FCA

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

36. NAEA believes that the financial sector is better placed to answer this question. However, what we would like to see is the banks stop de-risking because of the Money Laundering regulations. This is creating difficulties for estate and letting agents to open client accounts in an environment where there is greater legislation coming along requiring client money to be held in correctly designated client accounts.

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

37. We understand that a large number of Suspicious Activity Reports relating to property originate from banks, which highlights the importance of the FCA and the need for a coordinated approach by regulators.

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

38. NAEA recognises that maximising the effectiveness of supervisory activities is a difficult and challenging task. As long as firms applying a risk-based approach are proactive in seeking out information about money-laundering trends and threats then a focus on process should continue to produce strong intelligence.

The number of supervisors

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

39. Yes, NAEA believes that the number of anti-money laundering supervisors must be consolidated to prevent the fragmentation of monitoring and enforcement, improve transparency across sectors and ensure standards are consistent.



40. However, we feel that professional bodies acting as Supervisors are best placed to understand their own sectors and to gather information about developing risks and AM/CFT methodologies. In discussions we have had with HMRC it is clear that they have very little understanding of developments in estate agency and the fringe areas of the sector, such as online estate agents.

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

41. It is our view that the effectiveness of the supervisory regime in the UK is inconsistent. There needs to be a better understanding and application of a risk-based approach to supervision. Furthermore, in order for supervisors to provide a more credible deterrent against money laundering, NAEA would like to see a more consistent approach between supervisors and the sharing of data between supervisors more freely and frequently.