



HM TREASURY

Review of the Money Laundering Regulations:

summary of the call for evidence

March 2010



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1

Introduction

1.1 This paper summarises the responses received to the *Call for Evidence* conducted by HM Treasury (with support from the Better Regulation Executive (BRE)) as part of the Review of the Money Laundering Regulations 2007.

1.2 The *Call for Evidence* was run between 9 October 2009 and 11 December 2009 to seek views on all aspects of the Regulations including guidance, supervision and the practical application of the regulations. It was distributed to several thousand stakeholders across the public, private and third sectors and responses were received from regulated firms, supervisors, private individuals, third sector organisations, academics and law enforcement agencies.

1.3 The Review Team notified over 6000 individuals directly, had in-depth discussions with more than 250 industry representatives from 175 organisations and held about 30 events in various parts of the UK including Belfast, Edinburgh, Manchester and London. At the end of the *Call for Evidence* we had nearly 100 written responses.

1.4 By its very nature the value of an exercise of this kind lies in identifying areas where there may be scope for improvement. It therefore tends to emphasise the critical comments or suggestions for further improvement that were received. It should be noted that many responses were positive and supportive generally or in referring to particular parts of the regime. Furthermore the Treasury recognises there is always room for improvement and expects to consult on specific proposals for changes to the regulations in due course.

1.5 This summary is published on the HM Treasury website at www.hm-treasury.gov.uk. The Review Team will draw the attention of all of those who were notified directly by Treasury and the BRE of the *Call for Evidence*, and to those who organised events and provided written responses.

1.6 The Review Team are extremely grateful to all respondents, and in particular to those who arranged and attended events, in particular the Supervisors under the Money Laundering Regulations 2007. A list of all meetings and events, respondents and a breakdown of responses received are provided in the Annexes.

1.7 This summary does not represent an official response to the evidence submitted or the government's views on any of the responses made or current regulations, nor does it constitute an undertaking, implied or otherwise to take any suggestion forward.

1.8 While the Review Team are not actively seeking further views under the *Call for Evidence*, it is committed to maintaining and developing the dialogue with stakeholders and interested parties and can be contacted at any time to discuss the review or wider issues related to the Money Laundering Regulations.

1.9 The Anti-Money Laundering Branch at HM Treasury can be contacted by email at aml@hmtreasury.gsi.gov.uk or by telephone on +44 207 270 5358.

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Summary of responses

2.1 A wide range of views exists, both supporting and expressing concern about impact of the Regulations and commenting on other elements of the UK's AML regime. This summary does not seek to be comprehensive but does include many of the comments or proposals made in responses and should give a good indication of the main themes arising from the *Call for Evidence*.

Effectiveness, Proportionality and Engagement

2.2 Almost all responses comment on the effectiveness and proportionality of the regime. Views are divided on the extent of each. Some believe the regime is effective in deterring and reducing the level of crime by making money laundering more difficult, and that the regulations are proportionate to the threats. They endorse the risk-based approach and think it allows the right activities or sectors to be targeted.

2.3 Others express concern about some elements of the Regulations and the wider AML regime, pointing to evidence of continued money laundering as a sign of a lack of effectiveness. However many feel unable to comment on effectiveness or proportionality as they have insufficient evidence, including a lack of feedback and information from Government and Law Enforcement, on tangible benefits. Many point to high costs imposed on businesses.

2.4 There are mixed views on engagement under the Regulations. Many Supervisors are praised and provide evidence demonstrating a good level of engagement with regulated businesses. Some responses, however, point to insufficient engagement, often at SME level, though engagement with HM Treasury is generally thought to be good. Reference is also made to a lack of engagement on related areas of legislation.

2.5 Other responses draw attention to engagement between other government departments and agencies and non-government stakeholder groups such as firms, supervisors and third sector bodies. For example a professional body notes a recent series of roadshows was held in conjunction with the Serious Organised Crime Agency (SOCA) and Police to promote understanding of the AML regime by firms and to obtain industry feedback. An accountancy firm makes reference to SOCA's Dialogue outreach programme. An international NGO notes an "atmosphere of positive cooperation exists between the departments and agencies involved in work related to the processes of corruption, AML and PEPs" though they have some concerns about how their cooperation functions as a whole.

The Risk-Based Approach

2.6 A significant body of responses are supportive of the risk-based approach in the Regulations. Several responses are critical of the absence of risk-based elements in certain parts of the regime. This includes criticism of the beneficial ownership provisions and those relating to Politically Exposed Persons (PEPs).

2.7 One response notes that the regulations "are proportionate to the risk that they pose and are sufficient to manage this risk". Another states, "anything other than a risk-based approach would be inappropriate, ineffectively prescriptive and generally cumbersome". Others noted that the risk-based approach provides for more flexibility than the 2003 regulations. One large

accountancy business in particular feels the approach has allowed their clients to “shape their anti-money laundering systems and controls on the basis of the specific risks that they are vulnerable to”.

2.8 A large money service business, among others, is supportive of a risk-based approach, although they highlight a number of areas (beneficial ownership, PEPs) where they feel the risk-based approach is not adequately reflected and they would like to see more done to make these aspects of the regulations risk-based.

2.9 Enthusiasm for a risk-based approach was not universal however, and a number of businesses express a desire for more prescription in the regulations and/or guidance. For example, one professional body indicates that some of their members do not like a risk-based approach or find it difficult to apply. Private individuals were another group that were particularly critical of what they see to be a lack of a risk-based approach on the ‘front line’.

2.10 Many believe that the threat of a criminal penalty under the Regulations discourages a risk-based approach and encourages businesses and Money Laundering Reporting Officers to adopt a zero tolerance policy. However there some responses make the case for the continued provision of a criminal penalty, including the deterrence effect and the opportunities provided for supervisory and law enforcement activity.

2.11 Other respondents highlight the difficulties of trying to operate a risk-based approach under the Money Laundering Regulations, while satisfying other apparently analogous policy areas like the Proceeds of Crime Act, the Terrorism Act, or in the sanctions context where the requirements in domestic and overseas regimes are more prescriptive.

The Regulations

2.12 There are general comments that the regulations can be complicated to follow, for example because they refer to other legislation. Some concerns have been raised about alleged ‘gold plating’ (that the UK has gone beyond the requirements of the Third EU Money Laundering Directive) for example (a) in the treatment of Customer Due Diligence (CDD) thresholds in casinos or (b) where supervisory advice is interpreted as imposing higher standards than those in the Regulations.

2.13 SOCA cited the significant benefits brought by CDD, including enabling the identification of suspicious activity, improving the quality of Suspicious Activity Reports (SARs) and helping ensure information was available to assist with investigations.

2.14 The need for clarifications to certain parts of the Regulations is identified. These include, for example, the definition of safe custody services; the agent-principle relationship and where responsibility lies for compliance if a regulated firm ‘contracts’ out aspects of their services to a third party (possibly non supervised) entity.

2.15 Multiple references are made to the high costs incurred by regulated firms as a result of the Regulations, including for staff, systems, training and supervision. Most firms are unable to quantify such costs, as these also serve a number of other purposes including other legislative requirements and their own commercial safeguards.

2.16 Several bodies and firms emphasise that any further changes will incur costs, that it is only two years since the current regulations came into force and that they are still bedding in.

Scope - Politically Exposed Persons (PEPs)

2.17 Difficulties are cited complying with the requirements under the Regulations, and the proportionality of these requirements in relation to other apparently more risk-based elements of the regulations. This includes a request that Enhanced Due Diligence and source of wealth

enquiries be more risk-based. Others call for a more robust approach to prevent more corrupt individuals from developing and natural resource rich countries from personally benefiting from the proceeds of corruption, at the expense of the health and well being of their citizens.

2.18 Views are expressed on both sides of the argument for extending the definition to include domestic PEPs; several responses argue for domestic PEPs to be regulated, but significant voices oppose that suggestion, including the British Bankers' Association, who support the continued application of a risk-based approach.

2.19 To make it easier and less costly to identify PEPs several respondents suggest that the government produce either (a) a global list of PEPs or (b) a list of persons in the UK who should be treated as PEPs by non-UK businesses.

2.20 Some industry bodies argue the current PEPs regime is disproportionately costly and / or ineffective. Concerns are raised about the cost of access to commercial systems and data to help them manage the higher risk presented by PEPs, and the difficulties raised by 'false positives'.

2.21 A PEP is currently defined as an individual entrusted with or having held a prominent public function within the previous year. Suggestions include removing the one-year limit or extending it to five years.

Scope - Regulated sectors

2.22 There are requests for specific sectors and sub-sectors to be included or excluded from the Regulations. Some thought that the following should not be regulated:

- mortgage intermediaries, on the basis that the client will be checked by the mortgage lender;
- very small bookkeepers / sole accountancy practitioners, on the basis of the disproportionate costs they face as small businesses;
- estate agents, on the basis that they replicate checks made by others for the same transaction and do not handle cash; and
- pawnbrokers, as asset backed, low value transactions, incentives already exist to refuse stolen property.

Some thought the following should be regulated:

- clearing houses / London stock exchange;
- online gambling businesses;
- betting shops;
- letting agents; and
- Royal Mail, for the provision of a commercial mailbox service for which other businesses are subject to the regulations.

2.23 More regulation of high value dealers is sought by some, including the regulation of those who provide services rather than goods, as well as the removal of the reporting limit for all.

Simplification provisions

2.24 Many responses cite the use of, but more often the lack of use of 'reliance', a cost reducing facility, allowing one firm to rely on the checks performed by another. Some suggest that removing criminal sanctions could encourage greater use of reliance.

2.25 Other responses note that improved supervision would encourage use of reliance because businesses would have greater confidence in the CDD procedures of the businesses they are relying upon. Responses also indicate that changing criminal liability would lead to greater use of reliance.

2.26 Requests are made to extend the list of types of firms that can be relied upon, by allowing reliance on firms that cannot currently be relied upon at all, or on firms supervised by currently unapproved Supervisors. However, at least one view is that reliance is not viable in practice and that the provisions should be removed.

2.27 Clarification is sought on the consequences of using reliance in the circumstances of corporate failure or insolvency and whether reliance could be used for large numbers of customers obliged to move their accounts from an insolvent business.

2.28 There are complaints about multiple checks being carried out in related transaction chains, e.g. property purchase where a lawyer, a mortgage lender and an estate agent are typically involved, or multiple checks for similar products by the same bank, or checks made by new institutions on transfer of even very simple products.

Supervision and Guidance

2.29 Many stakeholders commented positively on the role of, and access to, guidance in assisting them to apply the regulations in a risk-based way. They drew attention to a variety of other communications channels including training seminars and newsletters. In addition, various forums exist for firms to meet with one another and share experiences.

2.30 Engagement by supervisors and law enforcement agencies is another channel through which practical measures are communicated. Examples of these include training seminars and conferences.

2.31 Responses indicate gaps in the provision of guidance on a specific topic or for a particular sector e.g. mortgage intermediaries and service providers rather than financial firms. There were many positive comments about the value of guidance, in particular the JMLSG Notes. These include the legal standing of guidance in the Regulations.

2.32 Some responses noted reluctance on the part of some Supervisors to respond to questions and provide advice in advance of a particular business activity being undertaken.

2.33 The responses about supervision reflect those in other areas to the extent they vary widely. Many businesses have had positive experiences of supervision; others less so and some are deeply critical of their Supervisor in specific areas.

2.34 On the positive side, a considerable level of guidance, support, outreach and other 'engagement' activities take place. A number of forums exist to facilitate cooperation between supervisors, and between them and other relevant bodies across the AML regime.

2.35 On the other hand, there is also a sense that more could be done, particularly around consistency of supervision (in terms of guidance, compliance monitoring and enforcement) and strengthening a risk-based, proportionate and effective approach to compliance and enforcement.

2.36 Some think that fit & proper tests could be improved, including one suggestion that HMRC should apply the test to accountancy service providers and one suggestion that all regulated firms should be subject to a fit & proper test.

2.37 One suggestion is that if the FSA has already carried out checks on an authorised firm or its relevant officers and employees, other regulated businesses ought to be able to rely on this, negating the need for further unnecessary checks.

2.38 Supervisors themselves would like greater freedom to share information between themselves and a request was made for a legal platform or information-sharing gateway, to

allow them to do this with greater confidence, improving supervision and reducing duplication. They would also like stronger powers, for example to enforce the payment of fees.

2.39 Some critical comments were received, especially from SMEs, about the imposition of registration fees and the proportionality of these, particularly where a business is duplicating membership of other organisations, as well as the process of registration itself.

2.40 In terms of record keeping, where views are expressed, they generally suggest that the current requirements present no significant difficulties. At least one response said they are onerous and points to difficulty relying on checks undertaken by others. A number of comments are made on the importance of written policies and procedures to facilitate supervision. Several suggested that this should be stipulated in the regulations.

2.41 Many comments were received on the need for greater consistency between Supervisors including those situations where a business is subject to more than one Supervisor.

2.42 Some Supervisors are thought by some to encourage inappropriately risk averse behaviour or otherwise 'gold plate' the Regulations by encouraging businesses to go beyond statutory requirements.

Industry practice

2.43 In general the responses evidence a wide variety of industry practice, often attributing this to the risk-based approach and inconsistencies in supervision. Several responses draw attention to the practical difficulties, especially within larger firms, of creating policies and practices that deliver a risk-based approach at the front line – for example by bank counter staff.

2.44 Multiple respondents raise the difficulty of complying with the Beneficial Ownership provisions. Issues include difficulties with, and costs incurred when, trying to establish beneficial ownership; a frustration that often a beneficial owner cannot be identified, even after exhaustive checks, and a suggestion that the requirements should be extended to include other beneficiaries e.g. of trusts.

2.45 Mixed views are expressed on whether the Regulations are compatible with 'business as usual'. Some references are made to the ability to combine or align responsibilities under the Regulations with other policies and procedures, but others note that the Regulations demand action over and above that which they would ordinarily undertake.

2.46 Clarification is sought on the use of Simplified Due Diligence, and the opportunity to use this in more situations, for example when relying upon an FSA regulated third party. There are wide and varied responses in relation to equivalence. Some call for the entire system to be reviewed or removed altogether, while others seek more information from government to help identify equivalent jurisdictions.

2.47 A lack of consistent application of the regulations between businesses in the same sector lead some to believe that customers may be taking their business 'down the street'. Some businesses believe that inconsistent implementation of the EU Directive by Member States and the different AML regimes in countries outside the EU, means that UK businesses could be at a competitive disadvantage in certain circumstances. This was raised by the legal sector in particular, in relation to the differences between UK and US regulation.

The Customer Experience

2.48 Mixed views are expressed. Some suggest that customers are getting used to providing proof of identity documents, others cite customer frustration, particularly where repeat requests for identity checks occur or these are carried out many years into a long-standing business relationship.

2.49 The difficulties experienced by marginalised or potentially excluded consumers and UK ‘ex-pats’ living abroad are highlighted. As already noted, problems persist for some vulnerable members of society as a result of CDD requirements. Toynbee Hall thinks that more should be done to raise customer awareness of the breadth of identity documents institutions should accept.

2.50 A number of retail customers draw attention to what they experience as unduly onerous requirements, for example, to identify their identity, especially in the case of long-term customers who are well known to their bank but still subject to what they perceived to be unnecessary checks.

Other Feedback

2.51 The Review is focussed on the Money Laundering Regulations only and does not extend to other legislation under the UK AML regime, such as the Proceeds of Crime Act 2002 (POCA). However, the Review Team received significant feedback on other areas of the AML regime and will ensure that this is communicated to those responsible.

2.52 Stakeholders frequently refer to aspects of POCA and other legislation, particularly suspicious activity reporting, consent, and information from the UK Financial Intelligence Unit at SOCA.

2.53 Themes include:

- the need for more and better quality feedback from Law Enforcement on the use made of SARs, particularly at sector level but not necessarily on individual SARs;
- more information from Government and Law Enforcement on risks and threats, to inform and enable a more risk-based approach by businesses and a better understanding of the reasons for the regulations and related requirements; and
- Concerns with the Consent provisions under POCA (2002)

A Meetings held

The following is a list of the meetings held by the Review Team under the *Call for Evidence*

Meeting with Professor John Walker
Meeting with Serious and Organised Crime Agency (SOCA)
Meeting with the Financial Services Authority (FSA)
Event with firms supervised by the Law Society
Money Services Businesses (MSB) forum
Meeting with the Crown Prosecution Service
Meeting with the City of London Police
Meeting with the British Banking Association
Meeting with members of the International Association of Money Transfer Networks
Event with firms supervised by the Law Society of Scotland
Event with firms supervised by the FSA in Scotland
Event with firms supervised by the Office of Fair Trading
Event with firms supervised by Chartered Accountants Regulatory Board
Event with firms supervised by the Law Society of Northern Ireland
Event with members of the Institute of Directors
Event with firms supervised by HMRC: MSB, Accountancy Service Providers (ASP) and High Value Dealers (HVD)
Supervisors Forum
Event with members of the Association of British Insurers
Event with members of LIBA
Meeting with the Home Office
Event with members of the Building Society Association
Event with firms supervised by the Gambling Commission
Meeting with the Gambling Commission
Meeting with members of the Investment Managers Association
Meeting with members of the Association of Independent Financial Advisers (AIFA) & the Association of Mortgage Intermediaries (AMI)
Event with representatives of customers at Toynbee Hall
Event with firms supervised by HMRC: Trust and Company Service Providers (TCSP)
Meeting with members of the Association of Private Client s Investment Managers and Stockbrokers (APCIMS)
Meeting with the Institute of Chartered Accountants in England and Wales (ICAEW) Technical Panel

B

List of respondents

B.1 The following is a list of those that provided a written response to the Call for Evidence

AAT (Association of Accounting Technicians)
ABCUL (Association of British Credit Unions Ltd)
ABI (Association of British Insurers)
ACCA
Age Concern & Help The Aged
Alan Reid Esq.
APCIMS (Association of Private Client Investment Managers and Stockbrokers)
Association of British Bookmakers Ltd
Association of Certified Public Accountants
Aviva Plc
Baker Tilly
Bar Standards Board
Betfair Ltd
British Bankers Association
British Cheque & Credit Association
Building Societies Association
Callcredit Ltd
Casino Operators Association UK
CCLA Investment Management Ltd
CDC Group Plc
Chartered Accountants Ireland, Ulster Society
Cheque Exchange Ltd
Children's Charities' Coalition on Internet Safety
CIPFA (Chartered Institute of Public Finance and Accountancy)
Citizens Advice
City of London Law Society
Clare Everson
Council for Licensed Conveyancers
DB Risk & Compliance Services Ltd
Deloitte LLP
Electronic Money Association
Euroclear UK & Ireland Ltd
Finance and Leasing Association
Francesca Mead
FSA (Financial Services Authority)
Gambling Commission
Geoff Hill Esq
George & Co.
George Gavin Esq.
Global Witness
Grant Smith (a firm)
Hirsh Sharma Esq.
HM revenue and Customs
ICAEW (Institute of Chartered Accountants in England and Wales)

Institute of Certified Bookkeepers
Institute of Financial Accountants
International Financial Data Services UK Ltd
Investment Management Association
Janet Ulph LLM
Jeremy Leaf & Co
Jordans International Ltd
Keith Bonney Esq.
Kirklands Law Ltd.
KPMG LLP
Lane-Smith & Shindler LLP
Law Society
Law Society of Northern Ireland
Law Society of Scotland
Lloyds Banking Group
Loan Market Association
London and Country Mortgages Ltd
Mail Boxes Etc (UK) Ltd
Metropolitan Police Service
Mr and Mrs Ian Carmichael
Nabarro Poole Ltd
National Casino Industry Forum
National Federation of Property Professionals
National Pawnbrokers Association
O'Melveny & Myers LLP
OFT (Office of Fair Trading)
Paul Magson Esq.
Professor Jackie Harvey PhD
Professor Michael Levi
Remote Gambling Association Ltd
Rodney Elliott Esq.
Royal Institute of Chartered Surveyors
Serious Organised Crime Agency
Society of Pension Consultants
SRA (Solicitors Regulatory Authority)
STEP (Society of Trust and Estate Practitioners)
TaxAid
Taylor Wessing LLP
Thinking About Crime Ltd
Toynbee Hall
Transparency International (UK)
Travelex
UKMTA (UK Money Transmitters Association)



Breakdown of written responses

Type of respondent

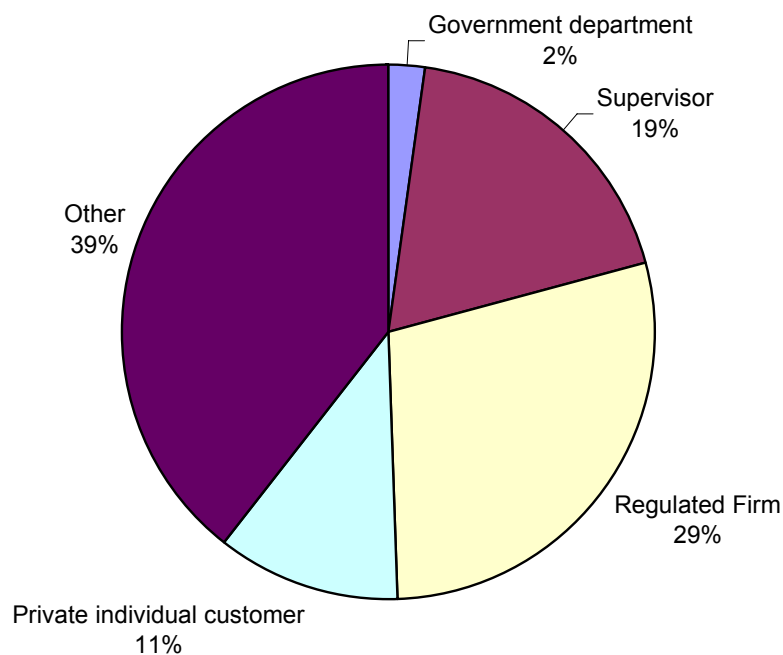
C.1 The Review team received 91 responses to the Call for Evidence. Respondents were asked to identify themselves as one of the following categories:

- government department / law enforcement agency;
- supervisors;
- regulated firm;
- non-regulated firm (customer firm);
- private individual customer; and
- other (professional bodies, non-governmental organisations, consumer groups, academics and professionals working with the Regulations but responding in a personal capacity).

C.2 The following table and graph present the breakdown of respondents by categories, on the basis of the information provided by respondents.

Respondent type	Number
Government department	2
Supervisor	17
Regulated Firm	26
Non-Regulated Firm	0
Private individual customer	10
Other	36
Total	91

Classification of repondents



Regulated firms by sector

C.3 We also asked Regulated Firms to classify themselves as belonging to one of the following sectors:

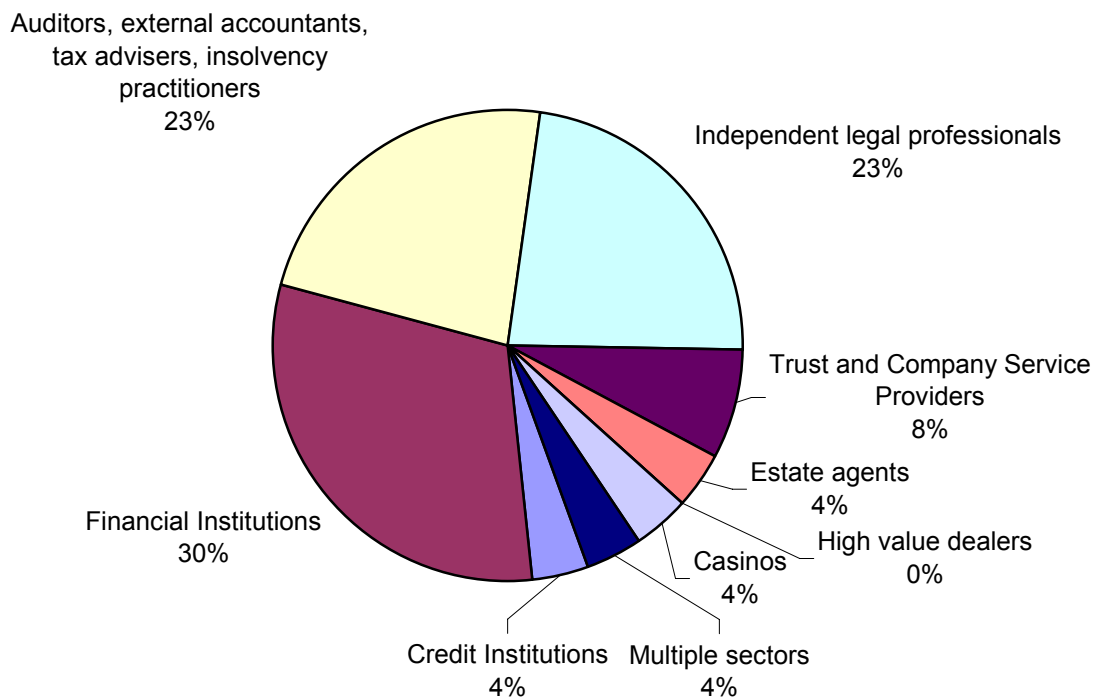
- credit institutions;
- financial institutions;
- auditors, external accountants, tax advisers, insolvency practitioners;
- independent legal professionals;
- trust and company service providers;
- estate agents;
- high value dealers;
- casinos; and
- multiple sectors

C.4 The following table and graph present the breakdown by sector of activity of the 26 Regulated Firms that responded to the Call for Evidence.

Regulated Firms by sector	Number
Credit Institutions	1
Financial Institutions	8

Auditors, external accountants, tax advisers, insolvency practitioners	6
Independent legal professionals	6
Trust and Company Service Providers	2
Estate agents	1
High value dealers	0
Casinos	1
Multiple sectors	1
Total	26

Regulated Firms by sector



Regulated Firms by size

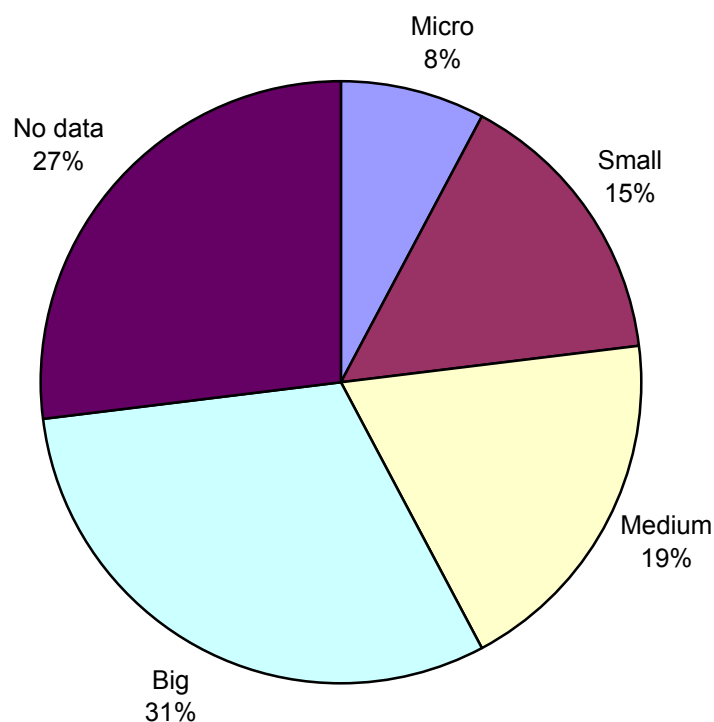
C.5 We asked Regulated Firms to provide information on the number of staff they employ. Using this information, we have classified Regulated Firms that provided a response into the following categories:

- micro companies (firms employing 5 or fewer people);
- small companies (firms employing between 6 and 50 people);
- medium companies (firms employing between 51 and 500 people); and
- big companies (firms employing more than 500 people).

C.6 The following table and graph present the breakdown by company size of the 26 Regulated Firms that responded to the Call for Evidence.

Regulated Firms by size (Full Time Employees)	Number
Micro	2
Small	4
Medium	5
Big	8
No data	7
Total	26

Regulated Firms by size



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