



Law Society
of Scotland

Consultation response

Economic Crime Levy – Collection Models

Survey (Supervisors)

October 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

As the AML supervisor for Scottish solicitors, supervising over 800 firms in Scotland we welcome the opportunity to respond to HM Treasury consultation: Economic Crime Levy – Collection Models Survey (Supervisors). In preparing our response we have considered the main consultation document,¹ and in particular Chapter 6 (Collecting the Levy). Having considered the consultation document, the options for collections models as set out and the consultation for supervisors, we have the following comments to put forward for consideration.

General Comments

We note that the indication is given within the main consultation document that the intention is to introduce the proposed levy in 2022/23.² We would suggest that it is crucial for consideration to be given to the stability of the economy at the proposed time for the introduction of the levy. As a result of the COVID-19 pandemic, the UK is officially in recession for the first time in 11 years, with the UK economy shrinking 20% in August 2020 in comparison with the first three months of the year. There is widespread acknowledgment that this recession may be deep and lengthy in comparison with previous recessions, with recovery limited by continued anxiety over COVID-19. To introduce a levy on firms already struggling during a period of economic crisis and uncertainty may create further anxiety and may be detrimental to the recovery of the legal and AML regulated sector and the UK economy.

Another factor to consider, from the economic downturn caused by COVID-19, is the knock-on effect on AML supervisors and regulatory bodies whose income, which funds the regulatory and supervisory work undertaken, is derived from those it regulates. There may be many supervisors, including ourselves, who are having to make difficult budgeting decisions due to actual or anticipated drop in income and must balance priorities, while continuing to meet their legal regulatory responsibilities. To introduce the levy during a time of

¹ Economic crime levy: Funding new government action to tackle money laundering
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902445/Levy_Consultation_Document_-_FINAL_.pdf

² Ibid page 6 paragraph 1.15

economic instability, and which will require supervisors to make costly changes to IT programmes and process infrastructures, will put supervisors under greater budgeting pressure. We suggest this is an unrealistic expectation on the part of the UK Government at this current time.

For these reasons, we urge the UK Government to reflect further on the timeframe for the planned introduction of this levy to ensure that supervisors are in a position to take this forward in the most effective and appropriate way regardless of the collection model to be introduced.

Specific Comments

Single agency model - Single agency collects and enforces the levy

Question 1: What do you estimate your costs as a supervisor would be for your role in this model (passing on information to the single agency, and making sure this is up to date)? How many FTE do you anticipate this would require?

There would be a significant and additional cost to us as a supervisor should this model be taken forward. We estimate an initial cost to be in the region of at least £20,000. This is an additional cost resulting from updating our software to provide new functionality of our database and reviewing and developing new processes. We also anticipate an increase in resource cost of one additional full time employee (FTE) who would be required for this role at a minimum cost of £30,000 per annum. This is reflective of the salary and benefits, provision of the necessary IT equipment to perform the role and costs associated with accommodating the additional FTE. There would also be associated resource costs incurred which cannot be easily estimated, resulting from the amount of supervisory managerial input and cross colleague work that may be required ongoing.

Given these high additional costs, it is possible that, depending on the model of levy calculation, including thresholds, the incurred cost may be greater than the levy collected.

Question 2: Is there an agency you think should act as the single agency in this model? Perhaps because you have strong links, an existing relationship, or believe they are well suited to the task.

We believe that a single agency model would be the most appropriate, feasible and workable option. We do not believe it would be necessary to create a wholly new agency. This is a regime that could, and should, be absorbed by an existing UK Government agency, for example we suggest that HMRC would be well placed to absorb and administer this responsibility.

As recognised and stated within the consultation, at paragraph 6.4, this is the most cost-effective option and as such is the model likely to be most favoured by both the AML regulated population and supervisors. This will provide a clear line of accountability and transparency and would provide the possibility of developing the most streamlined and efficient method of collecting and enforcing any new levy regime.

Supervisor collection model - Supervisors collect and enforce the levy

Question 3: What challenges (legal or other) would you face if you were required to collect and enforce levy contributions from your supervised populations? Would these still apply if you were not the enforcer?

We note that paragraph 6.17 of the consultation document refers to compliance activity being cost effective for supervisors, whilst it is not specified why this would be the case, the inference appears to be because it would be inbuilt to existing activity for collecting current fees. This appears to be an assumption on the part of HMT without evidence. Regardless of the existing process supervisors will undoubtedly incur additional resource and infrastructure costs resulting from the need to update software and develop processes. These costs would be incurred prior to, and separate from, the cost incurred for collection and enforcement under the supervisor model. We further note that in the Single Agency Model, at paragraph 6.8, the suggestion is made that the cost would be paid for from the funds raised by the levy. However, there appears to be no mirrored proposal for supervisors' costs to be covered.

There will be resource implications and challenges given the increase of responsibilities placed on supervisors, which include invoicing, collecting, transferring payments, and enforcing the levy. In addition, paragraph 6.19 refers to the interaction which would be required between supervisors and the body which would be needed to monitor supervisor compliance regarding setting and adjusting. This would all require additional resource. This would be significant regardless of the levy regime to be introduced, whether this be a levy payable by a proportion of the AML regulated population or, and it would be much greater, if all AML regulated firms were to be liable for the levy. This also comes at a time when the AML regulated population, and supervisors, are having to make difficult budgeting decisions as a result of the COVID-19 pandemic. The UK Government should not fail to take into account that it may not be practical for supervisors to finance additional resource and IT infrastructure upgrades at this difficult and uncertain time.

Paragraph 6.24 of the main consultation document states that supervisors will be liable to transfer payment for the total amount levy received from their supervised businesses. It is not clear if supervisors will be liable for transfer to the extent of the levy collected or the amount due from those firms subject to the levy. We would be resistant to the suggestion that supervisors would be liable to the extent of the amount due but not paid by the AML supervised firm.

Paragraphs 6.27 and 6.28 provide that penalty charges for late submission and unpaid levy amounts will be recoverable as a civil debt, which we agree would be the most appropriate course of action. However, from an administrative view, this would appear to involve a further step if penalty notices need to be issued by the supervisor. From an enforcement view, in the event of continued non-payment, a court action may be required if there is no provision to give a penalty notice the same effect as a court order (which is probably unlikely as the recipient would be given no opportunity to challenge it). There are additional and significant costs involved in the pursuit of court actions. Whilst a supervisor may successfully receive an award of expenses, this will not cover the whole cost of enforcement and would only be of benefit if the recipient had the means to pay the costs awarded. This will be unlikely as the financial difficulties may be the reason for non-payment of the levy in the first instance.

There does not appear to be any provision within the consultation proposals for the supervisor's costs to be covered as is suggested in the Single Supervisor model. If there is continued non-payment after a decree is obtained from the court, then we, as the supervisor, would need to instruct diligence to recover payment which will involve even further expense (i.e. Sheriff Officers fees, bankruptcy proceedings etc). Potentially this may be a case of 'throwing good money after bad'. It is not clear, or even mentioned, at what point supervisors will have the discretion, or not, to be able to make a decision whether to discontinue debt action which is not viable from an economic perspective, or is the proposal for supervisors to continue with pursuing the debt without any chance of recovery? If the levy were to be received, but costs remained outstanding, would the UK Government reimburse supervisors for costs incurred, as this could leave supervisors heavily out of pocket.

From a collection and enforcement perspective, it should also be noted that we do currently not have the necessary vires that would be required to undertake these activities. The Solicitor (Scotland) Act 1980 clearly sets out the parameters of our current powers and any activities outside of these would be ultra vires. Therefore, introducing this model would require careful consideration of existing statutory powers and the necessary amendments or supplementary provisions being made.

Question 4: How many FTE would you, as a supervisor, need to support this model? If possible, are you able to provide a rough breakdown of what these FTE would be needed for?

We anticipate that under this model we will require one FTE from the outset, as set out in response to Q1 above. This model would require us to develop and build a new functionality on our current database. This will be a significant and lengthy piece of work. Following this, from the introduction of the levy, the FTE would be required to maintain the record keeping on our database for the population of firms liable for this new levy and oversee all administration requirements imposed on us and relating to the collections and enforcement of the levy

Question 5: How long do you think it would take for you to set up the necessary collection and enforcement teams and / or infrastructure?

Based on our experience of similar projects, with both the former SIB, former FSA and now the FCA, the work and preparation required will be significant and this will take at least 18 months.

Question 6: Alternatively, how difficult would it be for you to expand your existing AML-regulation fee infrastructure to accommodate economic crime levy payment collection and enforcing as well?

This is not a straightforward or easy option. As a matter of law, and as noted above in response to question 3, the Solicitors (Scotland) Act 1980, which provides the regulatory framework would require amendments to both raise this new fee and allow for its collection by an external single agency.

Question 7: How would your costs/views on collection be impacted by:

- a. **The small business threshold being set at £1m as opposed to £10.2m (meaning c. 13,500 businesses will be liable to pay the levy compared to 3,500)**

- b. Businesses below any exemption threshold being required to: (i) submit their revenue figures to yourselves; or (ii) required to submit a nil return declaring their revenue is too low to be in scope of the levy. This is opposed to these businesses not being required to submit any information in relation to the levy.**
- c. The levy rate being adjusted annually, as opposed to being fixed for multiple years**

All options would involve significant set up costs to develop new processes and new functionalities within our database. These set up costs and annual maintenance costs will be incurred irrespective of which of the three options in this question are pursued. There will be no economies of scale based on any of these three options.

Question 8: In your role as an AML-regulator, what percentage of you regulated population fail to submit data / pay fees on time? When this occurs, how long does it take you to recover the data / debt, and at what cost?

Since the introduction of the AML regime we have had a high compliance rate by regulated firms. At the time of the last annual renewal less than 1% failed to submit the required data timeously by the specified deadline. The remaining firms all submitted the required data shortly afterwards.

Question 9: How many FTE work in your existing regulator-fee collection team?

There are currently five colleagues within our Registrar's team. Among other responsibilities, this team are responsible for collecting all fees relating to our regulatory role, both as an AML supervisor and as the regulator for the Scottish solicitors' profession.

Hybrid model - Where supervisors collect the levy but can refer to HMRC any cases of non-compliance. HMRC also acts as overall administrator of the levy – this will mainly involve light touch oversight ensuring supervisors are paying into the Consolidated Fund.

Question 10: Is this model, where supervisors play no direct role in enforcing payments, more or less preferable to you than the other models? What impact would this have on your costs?

This hybrid model is less preferable than the single agency model. A single agency model will provide consistency of approach in enforcing and collection of the levy as well as clear accountability. This would also allow for the effective management of costs and for any issues that may be identified, particularly in the early stages, to be addressed appropriately and swiftly by the single agency. A hybrid model, or supervisor model, involving some 22 AML supervisors would, we believe, be more costly and cumbersome to administer, being more fragmented and difficult to monitor, with differing processes, software packages and requirements. We do not believe that a supervisor or hybrid model is a feasible, workable or practical option. A hybrid model would require 22 AML supervisors to develop or modify their IT programmes and for this work to be completed concurrently to prevent introduction being staggered between the supervisors. This would be a significant undertaking and require supervisors to collaborate. The work by each supervisor to update their software will undoubtedly differ, as will the costs and resources necessary for this. Working collaboratively may not be an option.

Question 11: For the entities you supervise for AML purposes, do you hold information on how much of the activity they undertake is AML-regulated? If so, on average what percentage of their total revenue do you estimate they derive from AML-regulated activity? We are also interested in how this might vary for the different types of entity you regulate (this difference can be determined by size, type of activity undertaken, or other factors).

As a supervisor, we do not currently collect data from those firms we supervise on what proportion of their business activity is derived from AML related activity. It would be possible for us to collect this data, however this would be dependent on a change to our data collection processes and reliance being placed on the regulated firm that they can or do separate their AML business activity from other activity.

Question 12: Is there anything else you would like to add to your above answers? For example, is there an alternative collection model we should be considering?

We do not have any suggestions for alternative collection models but would emphasise our view that the single agency model is the most appropriate.



Brian Simpson
Regulation Policy Executive
Law Society of Scotland
DD: 0131 476 8184
briansimpson@lawscot.org.uk