

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Anti-Money Laundering and Counter Terrorist Financing

Annual Report 2021/22

Foreword

There has been a consistent focus by successive governments on the threat that illicit finance poses to society and to the reputation of the UK as an attractive place for global business, and we expect that to continue. This came into sharp focus in February this year, following the Russian invasion of Ukraine, when the government imposed a raft of new sanctions. In September, the Government announced more sanctions, including a ban on transactional legal advisory services for certain commercial activity. We are awaiting further details about how this will be implemented.

As I write, the Economic Crime and Corporate Transparency Bill ¹ is making its way through Parliament. As well as strengthening the role of Companies House, enabling it to take action to prevent those who seek to set up company structures that enable money laundering (a gap that the regulators and others have long argued needs plugging), the Bill seeks to introduce a new Regulatory Objective into the Legal Services Act, to promote the prevention and detection of economic crime. If this passes into legislation, as we anticipate it will in 2023, we will be assessing what this means for the BSB.

Also under development, is the second Economic Crime Plan², which will cover the period 2022-2025. We anticipate that a core strand of this will be increasing the effectiveness of the UK's supervisory regime for Anti-Money Laundering and Counter Terrorist Financing. Following its Call for Evidence ³ last year, HM Treasury has committed to consulting on options for the reform of the supervisory regime. At the same time, the reform of Suspicious Activity Reporting is now in progress, with a new IT platform about to be launched. This has the potential to improve the quality of information available to law enforcement and how it is used. Also next year, a new National Risk Assessment will be published by the Government.

It can be seen from this that the scale of the agenda is significant. The Government expects the Bar to play its part. This report provides an opportunity for us to share with you the work we are doing to prevent the Bar becoming involved in money laundering and what you can do to support that. Our website contains information to assist you with complying with your obligations. It is regularly updated with new information about risk and the latest developments in Government, and I would encourage you to monitor it for the latest information.

Mark Neale
Director General and Responsible Officer
27 October 2022

¹ Economic Crime and Corporate Transparency Bill <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-economic-crime-and-corporate-transparency-bill-overarching>

² Economic Crime Plan 2019-22
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019-22_Economic_Crime_Plan.pdf

³ HM Treasury response to the Call for Evidence Review of the UK's AML/CFT regulatory and supervisory regime
<https://www.gov.uk/government/publications/review-of-the-uks-amlcft-regulatory-and-supervisory-regime>

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How the Regulations apply to the Bar

1. All barristers have to declare at Authorisation to Practise (when they renew their practising certificate annually) whether they engage in work that falls within the scope of the Money Laundering Regulations (MLRs). BSB entities must do the same upon authorisation and annual renewal. The number of “relevant persons” (the term used in the MLRs) is as follows:

Table 1	Number of “relevant persons” that we regulate			
	2019	2020	2021	2022
Self-employed barristers	976	571	477	431
BSB entities	14	11	13	9

2. We are obliged to provide a register of Trust or Company Services Providers (TCSPs) to HMRC (regulation 54). The [National Risk Assessment](#) identifies TCSP activity as high risk. However, this forms a very small part of the work undertaken by barristers and BSB entities (as table 2 shows) and their TCSP activity is small scale, serving clients local to the area they are based in. They do not act for offshore structures.

[Regulation 12](#) defines Trust or Company Service Provider as a firm or sole practitioner who by way of business provides any of the following services to other persons:

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act as a director or secretary of a company; as a partner of a partnership; or in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement; or a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

Table 2	Number of Trust or Company Service Providers (TCSPs)			
	2019	2020	2021	2022
Self-employed barristers	1	1	1	2
BSB entities	3	3	2	1

3. The majority of barristers and BSB entities do not engage in relevant work. This is because contentious litigation is generally not within scope and because the BSB Handbook does not permit barristers or BSB entities to hold client money or manage their clients' affairs, so they are less likely to conduct relevant work.
4. As we have reported previously, barristers have not always been clear about when the MLRs apply to their work, resulting in a large number declaring that they do work under the MLRs when they do not. As we have engaged with individuals to confirm their declaration, the numbers of relevant persons recorded has steadily reduced, as can be seen from the above tables. Last year we reported that through the engagement with chambers and sole practitioners who completed our [Regulatory Return](#), we were anticipating that the number of relevant persons would drop to around 290 this year. However, we were surprised to see that 431 barristers declared that they do work that engages the MLRs and we have embarked on another round of contacting them and their chambers to try to identify the reasons for the discrepancy. Next year at AtP, we will ask barristers to confirm if they are content for us to speak to their chambers about their declaration, so that chambers can reach a shared understanding with their barristers. It is important that chambers know when their barristers are conducting work that falls within the MLRs so that:
 - clerks have appropriate controls in place when engaging with clients, particularly in relation to conducting customer due diligence;
 - the management committee is aware of the risk to which chambers is exposed; and
 - appropriate training can be arranged for chambers staff, as well as barristers.
5. It is important for the BSB to get accurate declarations because the MLRs impose certain obligations on us, including to:
 - carry out risk-based supervision (regulation 17);
 - ensure that only those who are fit and proper persons are conducting work that falls within the scope of the Regulations (regulation 26); and
 - provide a register of Trust or Company Service Providers (TCSPs) to HMRC (regulation 54)
 To enable us to comply with these obligations we need to know which barristers and entities are undertaking work that is within scope.
6. We are required to report this data to HM Treasury, as part of an annual return that is used to produce an annual supervision report ⁴. This information is also used by our oversight regulator, the Office for Professional Body Anti- Money Laundering Supervision (OPBAS), to inform their programme of work. Inaccurate declarations distort the risk profile of the Bar and have the potential to lead to additional regulatory costs, such as through the fees that OPBAS charge us, the amount of resource that they allocate to supervisory activity and require of us to engage with them.

⁴ <https://www.gov.uk/government/publications/anti-money-laundering-and-counter-terrorist-financing-supervision-report-2019-20> (at the time of writing, the 2020/21 reports has not been published)

7. We would therefore urge all barristers to read the guidance that is available on MyBar when they make their declaration. We would also urge chambers to talk to their barristers and reached a shared understanding with them.

Our assessment of risk

8. The last [National Risk Assessment](#) was published in 2020. We have been informed that work on the next one is likely to commence in 2023. Whilst the Government assesses the risk of Money Laundering in the legal sector as high, we assess the risk for barristers and BSB entities to be low for the following reasons:
 - Practising barristers do not typically engage in conveyancing and only a very small minority act as Trust or Company Service Providers, which are the two services identified as at highest risk for money laundering in the National Risk Assessment.
 - Barristers and BSB entities are prevented by the rules in the BSB Handbook from holding client money or managing their clients' affairs.
 - The majority of instructions are referred by solicitors or other relevant persons under the Money Laundering Regulations, who are obliged to conduct their own Customer Due Diligence and therefore provide a first line of defence in assessing risk.
9. The most relevant area of risk is commonly referred to by the Government as "professional enablers" - where independent legal professionals are complicit, knowingly or unknowingly, in facilitating the laundering of money, by:
 - helping to create complexity such as setting up networks of corporate structures to acquire illicit funds and provide anonymity for the criminal;
 - through their involvement, giving an appearance of respectability; and/or
 - through conducting sham litigation.
10. The BSB works with an [Advisory Pool of Experts](#) (APEX). These are independent subject matter experts who may be called upon to provide advice and, in February this year, our Governance, Risk and Audit Committee felt that an independent view would provide helpful assurance that our assessment is appropriate. Our APEX member concludes that the current assessment of risk is appropriately described as low because of the nature of the work undertaken by the Bar and the rules governing the work of the Bar. Their review highlighted that some wording in our guidance for barristers when making their declaration at AtP about whether they conduct work that engages the regulations, should be reviewed to better reflect the more nuanced wording in the latest version of the Joint Legal Sector Guidance. We have amended the wording in the AtP guidance to bring it into line. This revised wording was used for AtP this year.
11. Under Regulation 17, we are required to identify and assess the money laundering and terrorist financing risks associated with the Bar. We have published [information on our website](#) for this purpose.

Breaches of the Money Laundering Regulations

Measures in place to ensure that breaches of the Regulations are reported to the BSB

12. There are a number of ways that barristers and others can report breaches, or potential breaches to us:

- All barristers and BSB entities have an obligation under the BSB Handbook to [report serious misconduct](#) by themselves or others.
- Anyone who has a concern about the conduct of a barrister or a BSB entity can make a [report](#) to us. Staff in the Contact and Assessment Team, which is responsible for making an initial assessment of reports, are provided with training to ensure they can identify red flags that might indicate a risk of money laundering.
- We work closely with other regulators and have signed a number [Memoranda of Understanding](#) in order to support sharing of intelligence where appropriate. We also subscribe to the Financial Conduct Authority's Shared Intelligence Service.
- Our [Money Laundering Hotline](#) provides an additional platform. It is a confidential service that anyone can use to report a concern to us about a person or an organisation we regulate, in connection with Money Laundering. During this period, we received no reports to the hotline.
- As part of our ongoing programme of supervision, chambers and entities are required to complete a self-assessment of compliance with the Regulations.
- Two staff in the Supervision Team have undergone security vetting to enable them to receive reports from the National Crime Agency relating to persons we authorise.

Potential breaches of the Regulations reported to the BSB and action taken

13. The BSB is required to take appropriate action against barristers and BSB entities where they have failed to meet their obligations. Regulation 49(1)(d) requires that effective, proportionate and dissuasive disciplinary measures are in place. The enforcement regulations in the BSB Handbook and the Bar Tribunals and Adjudication Service (BTAS) [Sanctions Guidance](#) provide the framework for sanctions. New Sanctions guidance came into force on 1 January 2022 which includes an explicit reference to the MLRs in the misconduct group "[Financial Matters](#)". The starting point for this group is medium level fine, which has been revised from £1,000-£3,000 to £5,000-£15,000 and goes up to disbarment. The misconduct group "Financial matters" excludes dishonesty, which is a separate misconduct group. As set out in the Guidance, "*a finding of dishonesty will almost invariably lead to disbarment in all but the most exceptional circumstances*".

Table 3	Number of potential breaches reported to the BSB		
	2019/20	2020/21	2021/22
Cases reported to the BSB and assessed but no further action taken	1	1	2
Cases where supervisory action was taken	2	3	3
Cases investigated by the Investigations & Enforcement Team where no enforcement action was taken	0	0	0
Cases where enforcement action was taken (barrister disbarred)	0	1	0
Cases under investigation at year end	2	2	0

Themes arising from our Supervision activity

14. Our proactive supervision work this year was focussed on two areas:

- following up the actions identified in the Regulatory Returns; and
- compliance with the sanctions regime.

Themes arising from the Regulatory Returns

15. Key themes that have emerged from this work are shown below.

The majority of those selected for the Regulatory Return confirmed that they did not do work within the MLRs. This was in line with our expectations that work within the scope of the MLRs makes up a small proportion of the work carried out by the Bar. Some chambers had only one or two barristers that undertook in-scope work, and this was limited to 2 to 3 instructions a year, representing a very small part of their practice.

Table 4	Number declaring work within the MLRs	
	Yes	No
Chambers	27	220
BSB entities	2	17
Sole Practitioners	3	49

[Rule S59.7](#) of the BSB Handbook requires barristers to declare at Authorisation to Practise whether they do work within the scope of the MLRs. This rule enables us to meet our obligations under the MLRs to carry out risk-based supervision ([regulation 17](#)) as it helps to identify which barristers are carrying out relevant work.

16. A common theme among chambers that did not undertake work within the Regulations was that this position was inconsistent with the declarations made by their barristers at AtP. These chambers were set an action to review the definition in the Regulations and check with their barristers to confirm whether their assessment was correct.
17. Eleven chambers out of the 27 that confirmed they undertook work within scope of the Regulations did not have oversight of the declarations their barristers were making at AtP. This group were set an action strongly encouraging them to monitor the declarations made by their barristers.

Whilst the declaration at AtP is the responsibility of individual barristers, chambers need to know which barristers engage in work under the MLRs in order to ensure that appropriate policies and procedures are in place and risk is managed. We strongly encourage oversight by chambers of declarations made by the barristers to ensure an accurate risk profile of the Bar is maintained. This is an area that we are considering as part of our current work to clarify our expectations of chambers.

18. We found that six chambers declared work within the MLRs because their barristers engaged in public access work. This group considered public access work raised the risk profile of the instructions and therefore they need to comply with the MLRs. To address any misunderstanding, these chambers were signposted to the Regulations as well as the [Joint Legal Sector Guidance](#) and were asked to review their understanding and confirm to us whether their declaration was correct. In all instances, chambers confirmed they did not do work within the Regulations.
19. The most common areas of work undertaken by all those who declared work within the Regulations were as follows:
- Taxation and revenue law.
 - Property law, including advising on property transactions both residential and commercial.
 - Dealing with cases involving an offshore trust.
20. We have assessed the inherent risk of the practices of the barristers who do conduct work under the MLRs, based on what they told us about the nature and scope of work that they do. From this, we have updated our risk assessment and supervision plan for the next cycle of compliance testing in 2022/23. This will focus on 12 chambers and BSB entities that will be subject to further supervision activity in 2023.

Compliance with the sanctions regime

21. ALL barristers and BSB entities must comply with the UK's sanctions regime and must have procedures in place to ensure that sanctions are not breached. There are some exemptions for which you can seek a licence from the Office of Financial Sanctions Implementation (OFSI). These include applying for a licence in order to receive reasonable fees for the provision of legal advice. In addition, legal professionals have certain reporting obligations. You must inform OFSI promptly if you know or reasonably suspect that a person is a designated person or has committed offences under sanctions regulations, where that information is received in the course of carrying on business.
22. This came into sharp focus in February this year, following the Russian invasion of Ukraine, when the government imposed a raft of new sanctions. The government sought the support of all regulators to raise awareness of the regulations and to test compliance.
23. In response, we published a series of articles in the Regulatory Updates, we created a new page on our [website](#) and we wrote to a number of the Specialist Bar Associations to explain the requirements and raise awareness.
24. We have also been working closely with HM Treasury, the National Crime Agency and other regulators to share good practice and intelligence about where there is the greatest risk of breaches. OFSI (which is located within HM Treasury) has proved a little harder to engage with as a result of their significant workload, which has clearly stretched their resources, but we continue to liaise with HM Treasury and the Ministry of Justice.
25. Reflecting this engagement, and with the input of our own APEX expert, we conducted our own risk assessment. Our current assessment of risk in respect of the conduct of barristers and the sanctions regime is medium risk. This influenced by the following factors:
 - Lack of a detailed national risk assessment, although an alert has now been issued by the National Economic Crime Centre and OFSI to provide information about some common techniques being used to evade financial sanctions. This is available on our [website](#).
 - Lack of information from OFSI about the extent to which barristers are engaging with the licence application and reporting requirements, or any evidence of concerns about specific barristers.
 - We are in the process of assessing the levels of compliance by barristers, particularly those who do not fall within the scope of the MLRs.
26. This assessment will be refined as further information becomes available to us and as we progress our supervision activity. Under the current statutory framework, everyone is entitled to legal representation, including those who wish to appeal inclusion on the sanction listings. That does not mean that barristers are associating themselves with those they represent and, when they do, it does not in itself make them high risk. However, barristers need to understand what the rules and requirements are to act for sanctioned individuals, and that is what our thematic review is focusing on. From this risk

assessment, we developed a compliance testing plan which focuses on those conducting work under the Money Laundering Regulations (where we had previously already conducted some Supervision activity) and members of Combar, the Specialist Bar Association for commercial barristers advising the international business community. This work is in progress and we will report any themes that emerge from it for others to learn from.

27. In September, following Russia's proclaimed annexation of the Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia, the Government announced new sanctions, including a ban on transactional legal advisory services for certain commercial activity, which is likely to affect in particular those conducting work that engages the MLRs. We are awaiting further details and barristers should monitor our website and Regulatory Updates.

How we engage with others

28. Economic crime, including money laundering and breaching sanctions, continues to receive considerable national focus and we continue to engage extensively with government, OPBAS, law enforcement, other regulators and other stakeholders in order to identify risk, share good practice and collaborate in responding to risk. We do this through:

- The Legal Sector Information Sharing Expert Working Group comprising the legal sector regulators and representative bodies, who meet together with the National Crime Agency, OPBAS and HM Treasury.
- The Legal Sector Affinity Group, comprising the legal sector regulators and representative bodies.
- The Legal Sector Supervisors forum, comprising those conducting supervisory activity, separate from the representative bodies where relevant.
- The Anti-Money Laundering Supervisors Forum, comprising the regulators and representative bodies of the legal and accounting sectors, the statutory supervisors (The Financial Conduct Authority, HMRC and the Gambling Commission), Companies House, HM Treasury, the National Crime Agency and OPBAS.

29. The Information Sharing Expert Working Group is a particularly useful forum that helps us to stay up to date with emerging risk. Key topics that we have engaged on in 2021/22 include:

- We received a presentation from HMRC about their work on the highest areas of risk in relation to TCSPs.
- We reviewed Money Laundering alerts issued by the financial sector to assess how they may be relevant to the legal sector.
- We received a presentation from the Head of Forensic Accounting in Police Scotland about their current policing priorities and assessment of threat in this area, including cross-border activity.

- We received feedback from various Public Private Threat Groups (representatives from law enforcement and the private sector that come together to discuss areas of highest economic crime risk), including the property cell and the fraud cell.
 - We discussed particular country risk, such as the threat from organised crime groups from Albania.
30. More recently, we have discussed source of funding that has entered the legitimate economy through so-called “informal value transfer systems” (IVTS) that do not use the normal banking system and/or have not complied with national currency controls. This is a particular issue in relation to funds coming from China. The Legal Sector Affinity Group is currently drafting some guidance in this area.

Looking ahead

31. In June 2022, in response to its Call for Evidence in 2021, the Government published its Review of the UK’s AML/CFT regulatory and supervisory regime⁵. This includes **policy options for reforming the supervisory regime, including an option to consolidate the supervision under the MLRs of all legal sectors** into one or more of the current legal sector regulators, and another option to consolidate the supervision of all sectors into a new regulatory body. It will be consulting on this in 2023. This has potentially significant implications for the way that barristers are regulated under the MLRs. We would encourage barristers to engage with this consultation when it is published.
32. The Government is seeking to introduce a **new Regulatory Objective** into the Legal Services Act 2007 to promote the prevention and detection of economic crime⁶. If this passes into legislation, as we anticipate it will in 2023, we will be assessing what this means for the BSB’s risk framework and business plan, and will work closely with other regulators when doing so. We already have regard to this objective, particularly in relation to the MLRs and the sanctions regime; a key driver for this has been to align Regulatory Objectives with the work already being done by regulators in these areas and in particular to clarify the role of regulators in promoting sanctions compliance. We are also contributing to the development of the second national Economic Crime Plan, which we anticipate will continue to focus on these areas.
33. The Economic Crime and Corporate Transparency Bill also seeks to **strengthen the role of Companies House**⁷, enabling it to take action to prevent those who seek to set up company structures that enable money laundering. The Registrar is currently required by law to accept information if it is “properly delivered” and has limited powers to correct or query information where there is a suspicion that something submitted is erroneous or fraudulent. This is significant gap that we, and other regulators, have long argued needs plugging, so we welcome this legislation. The government is introducing a new power to enable the Registrar to reject and query new filings, as well as to query information

⁵ Review of the UK’s AML/CFT regulatory and supervisory regime <https://www.gov.uk/government/publications/review-of-the-uks-amlcft-regulatory-and-supervisory-regime>

⁶ Economic Crime and Corporate Transparency Bill <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-new-regulatory-objective-in-the-legal-services-act-2007>

⁷ <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-the-role-and-powers-of-the-registrar-of-companies>

already on the register, where information is identified as potentially fraudulent, suspicious, or might otherwise impact on the integrity of the register or wider business environment.

34. A new [Suspicious Activity Reports \(SARs\)](#) portal will be launched in the next few months. The National Crime Agency is developing user guides for the new system. The aim of this project is to make the portal more user friendly for those need to make reports about suspicious activity under the Proceeds of Crime Act, which should lead to better quality information being collected and analysed.
35. **OPBAS** recently held a consultation⁸ on updating their Sourcebook. The Sourcebook sets out how the BSB and other professional body supervisors can meet their obligations in relation to money laundering/terrorist financing supervision. We responded to the consultation which can be found [here](#). We welcome the explanation set out in the new chapters that the sourcebook amounts to guidance, not rules, that good practice examples are not intended to be exhaustive, and that outcomes can be achieved in other ways. We also welcome the focus on supervisors using their judgment in taking a risk-based, proportionate and flexible approach. We welcome and encourage open discussion with OPBAS during supervisory engagement with us, about how we set out to achieve the outcomes, in line with these statements.

Where to find more information

36. Our [website](#) contains useful information about Money Laundering and Terrorist Financing risks and barristers' obligations under the MLRs, and is regularly updated. We have compiled a set of [FAQs](#) to help barristers and BSB entities to understand their obligations and if the work that they do falls within the scope of the MLRs.
37. The [joint legal sector guidance](#), which is now approved by HM Treasury, contains a wealth of information to support legal professionals to comply with their obligations.
38. The Bar Council provides a confidential [Ethical Enquiries Service](#) for the benefit and assistance of barristers and their staff to assist them to identify, interpret and comply with their professional obligations.
39. You can contact us with any questions or feedback by emailing aml@barstandardsboard.org.uk

⁸ <https://www.fca.org.uk/publications/consultation-papers/cp22-16-opbas-sourcebook-update>