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# Anti-money laundering supervisory review: consultation

Consultation Response

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## Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar welcomes the opportunity to comment on HM Treasury's consultation on the draft Oversight of Professional Body AML Supervision Regulations and the impact of the proposed new Office for the Professional Body Anti-Money Laundering Supervision (OPBAS). We previously responded to the consultations on transposition of the Fourth Money Laundering Directive in December 2016, the Money Laundering Regulations 2017 in April 2017 and the call for further information on the AML supervisory regime in April 2017. Our response detailed below provides commentary on the sections of the consultation document of direct relevance to the legal profession, referencing the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 where appropriate, and also addresses the questions posed in Annex A.

## Chapter One: Introduction

3. The Bar notes the rationale outlined in chapter 1.1 for the proposed reforms which stem from a key risk identified in the 2015 UK national risk assessment of money laundering and terrorist financing, namely that the effectiveness of the UK's anti-money laundering supervisory regime is inconsistent and that there is room for improvement in applying a risk-based approach to supervision. However, we would urge caution in relation to the interpretation of this approach as there is a tension between risk-based proportionate supervision and the adoption of a blanket system across various sectors; HM Treasury should be mindful of this when considering variations in practice which are already operating effectively across the supervisory landscape.
4. Whilst we have highlighted in our previous consultation responses that there is a willingness on the part of the professional body supervisors within the legal sector to comply with the AML supervisory regime, there are concerns that the requirements to be placed on supervisors to ensure compliance with OPBAS as presently outlined appear to be imposing a significant burden which brings little

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benefit to the professional body supervisors in meeting their obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).

5. In terms of the key themes emanating from responses to the previous consultation as outlined in chapter 1.2, we understand HM Treasury's intended concept of greater oversight aimed at strengthening the AML regime. We believe that the provision of a proportionate level of assistance from HM Treasury to ensure compliance with the MLRs would be beneficial but the present consultation does nothing to allay our concerns that the establishment of OPBAS may ultimately have a detrimental impact on PBSs in the legal sector.
6. This is particularly relevant to the consultation's failure to address the impact of OPBAS on the existing regulators in the sector across the devolved administrations of the UK, including the newly established Legal Services Oversight Commissioner in NI; these new structures created under the Legal Complaints and Regulation Act (Northern Ireland) 2016 are in their infancy and we are very concerned about the potential for duplication of work and confusion around the remit of OPBAS in NI's evolving regulatory environment. Therefore whilst the establishment of OPBAS with its core package of investigatory and disciplinary powers will undoubtedly prove worthwhile for the UK Government ahead of the Financial Action Task Force's upcoming evaluation of the UK's AML and CTF frameworks during 2018, we would question the direct value that it will bring to PBSs and their members in the legal sector given the low risk they typically represent.
7. We also note the brief reference in 1.2 to all respondents being of the view that any fee levied on PBSs for the establishments of OPBAS should be "proportionate". We take the view that this statement does not reflect our experience of the Legal Sector Affinity Group involving representatives from across the sector as it overlooks the view consistently expressed by the group that any fee imposed by OPBAS will have a negative impact on PBSs. This represents yet another charge to be levied on members of the various legal sector PBSs and in the absence of any further details we would query whether it will truly be "proportionate" to the level of risk represented by the sector.
8. Once again we would highlight that regardless of the structural and regulatory environment in other parts of the UK, the Bar remains an independent referral Bar with no form of direct public access in Northern Ireland. The lay client relationship is established, maintained and controlled by the instructing solicitor who is supervised by the Law Society. Furthermore, barristers in Northern Ireland are not permitted to hold or handle client money. They are paid by the instructing

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solicitor and are not permitted to have any financial relationship with the lay client. Our barristers are prohibited from entering into a partnership with another barrister, professional client or any other entity or individual and must not provide legal services within Northern Ireland in any capacity or as part of any entity or arrangement other than in their capacity as a member of the Bar. A barrister also must not enter into a fee sharing arrangement with another barrister, professional client or any other entity or individual. Consequently, we would reiterate that the Bar of Northern Ireland operates at the lower end of the risk scale for AML.

### Chapter Two: Office for Professional Body AML Supervision (OPBAS)

9. The Bar notes that this section of the consultation document aims to provide feedback on the core package of investigatory and disciplinary powers which OPBAS will require in order to fulfil its objectives effectively. We highlighted in the response to the call for further information in April 2017 that it is vital that OPBAS works with PBSs to develop high standards of supervision but we are concerned that HM Treasury is presently taking a 'one size fits all' approach that does not translate across this diverse supervisory landscape. The Bar believes that professional bodies should be able to develop their own risk-based approach to supervision where appropriate if it meets the required legal obligations. HM Treasury will be aware that The Legal Sector Affinity Group, which the Bar of NI is a member of, has already sought to develop wide ranging and detailed guidance to assist independent legal professionals in meeting their obligations under the AML/CTF regime. We would query the process which will be employed by HM Treasury for approving this guidance and the length of time that this will take.
  
10. In considering the powers which it is envisaged will underpin OPBAS, we note that the draft regulations are wide-ranging in scope and are likely to place significant additional regulatory burdens on legal sector PBSs. We note that section 13 of the draft regulations will allow OPBAS to direct a PBS to commission a report by a skilled and independent individual in relation to any matter. We would query how often it is envisaged that such a power might be invoked and the level of cost likely to be incurred by a PBS, as stated in section 25(1)(c) of the draft regulations, given that OPBAS will also have the power to appoint a third party directly under 13(2)(b). In addition, the power to require information from a PBS "or a connected person" under section 7 appears very extensive and could impose a burden on organisations and their members in terms of information provision. We would welcome an indication as to how this provision would operate in practice. Whilst the Bar acknowledges the inclusion of the various safeguards around the regulations focusing on the use of public censure or removal of a PBS

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as outlined in the regulations, we would request that HM Treasury provide guidance on situations where it is envisaged that OPBAS might seek to impose such penalties in the legal sector.

11. The Bar also recognises HM Treasury's acknowledgement at paragraph 2.5 that effective PBS supervision lessens the need for OPBAS to engage directly with members. However, the suggestion that "there may be scenarios where OPBAS could helpfully seek feedback or other information from members" does not provide sufficient clarity around the level of cooperation that will be required from PBSs and their members to allow OPBAS to collect "appropriate information". Further guidance on this matter would be essential.
12. In summary, as outlined in the last three paragraphs the Bar of Northern Ireland cannot accept the regulations detailing the core powers of OPBAS as they are currently drafted. We believe that they are too broad and vague in their scope and stray into the remit of other existing parties already operating in the legal sector's regulatory landscape without clarifying how any duplication of work will be avoided at a considerable cost to the profession.
13. Furthermore, we also remain concerned that there is not a sufficient level of consideration given to the management of AML risks relating specifically to the legal sector in Northern Ireland. The Bar would reiterate the need for HM Treasury to provide detail around exactly how members operating under our supervisory regime within Northern Ireland's legal sector can fulfil their obligations in relation to AML. No further clarification on how OPBAS will seek to do this across the devolved administrations has been provided since the previous consultations. We also note the reference in 2.5 to OPBAS attending the Money Laundering Advisory Committee and the Anti-Money Laundering Supervisors Forum which we welcome but it will be vital for the body to possess specialist knowledge in relation to the sector in Northern Ireland to ensure its relevance to PBSs in this jurisdiction.
14. The Bar's concerns outlined in the last number of paragraphs in respect of the various powers that OPBAS will be given clearly point to a wider issue with the structure of the draft regulations. They are far too general in nature and employ a 'one size fit all' approach which is inappropriate in this context for the legal sector in Northern Ireland. We have consistently advocated that the most appropriate role for OPBAS to perform would be to work with PBSs to develop high standards of supervision with a focus on promoting best practice guidance in the sector. We are disappointed that HM Treasury's regulations have instead expanded dramatically on this remit by seeking to create a body with such wide

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ranging powers that it can sanction a PBS by way of censure or recommend removal from Schedule 1 to the MLR. We do not believe that these regulations recognise the low risk base of the barrister profession and they have not been drafted in a way that differentiates PBSs working in this sector from others involved in managing more high risk activities elsewhere.

### Chapter Three: Evolving AML Supervision

15. The Bar considers that the main risk inherent in the AML supervisory regime as it evolves will be PBSs stepping down from the role of an AML supervisor in the legal sector. The addition of significant burdens which are disproportionate to the level of risk represented by PBSs in this sector will cause a number of adverse impacts with supervisors at risk of becoming diverted from their core supervisory functions as they attend to an increasing number of administrative procedures. This will ultimately result in less active supervision as supervisors are forced to deal with this layer of bureaucracy and may also mean that some PBSs in this sector have to step down. HM Treasury's impact assessment provided alongside this consultation highlights that there is presently no agreed process by which members would transfer to another appropriate supervisor. We would welcome clarification around the identification of contingency legal AML supervisors once the Government has had the opportunity to "explore potential options" as referenced in chapter 3.1, particularly in relation to how this might be managed across the devolved nations.

### Chapter Four: Assessing the Impact

16. The Bar notes the observation that HM Treasury is engaging with supervisors and industry experts as they draft AML guidance and "stands ready to work with MLAC to consider and approve the guidance as it is submitted". We believe that the LSAG is best placed to develop the relevant guidance for our members. We would welcome further detail from HM Treasury around the process and timescales for the consideration of guidance. We would also emphasise that expert input into the development of this best practice AML guidance is the most appropriate role for OPBAS in strengthening the supervisory regime for barristers working in Northern Ireland.
17. In developing a response to this consultation exercise we have also considered the FCA's proposed approach to supervision as detailed in its recently published sourcebook for PBSs. We note that the cost benefit analysis in section 3 details estimated running costs for OPBAS of £2million per year which will be passed on

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to PBSs. The FCA considers that the average incremental additional cost to each of the 22 PBSs will be £39,800. Whilst the Bar recognises that these figures are initial estimates and that the fee regime will be consulted on fully in the autumn, we cannot accept even in principle this level of resource and method of recoupment. We are very concerned at the significant level of projected cost and the impact this will have on our membership. We find it entirely unacceptable and consider that it is yet further evidence of a fixed approach to AML supervision that fails to take into account the particular circumstances of the legal sector and the Bar of Northern Ireland.

18. As we have highlighted previously, HM Treasury must be conscious that this fee is yet another form of regulation on the legal profession and would represent the third iteration of expanding supervisory structures which we will have been required to finance in Northern Ireland, given the imminent introduction of a levy to fund the Office of the Legal Services Oversight Commissioner under the structures created by the Legal Complaints and Regulation Act (Northern Ireland) 2016 and the Department of Justice's statutory registration scheme. We continue to question how these additional OPBAS fees can be justified to our membership as proportionate to the level of risk represented by the Bar of Northern Ireland. Unfortunately it is evident that a lack of awareness or interest exists on the part of HM Treasury in relation to the operation of the barrister profession in this jurisdiction. We find this to be wholly unacceptable.

19. In summary, the Bar takes the view that the projected running costs for OPBAS and resource implications for PBSs are entirely unacceptable. We fail to see how the excessive £2 million running cost per year can be shown to be justifiable, controlled and represent value for money purely from the perspective of safeguarding public funds. We are also unsatisfied at present as to the lack of detail on how costs will be controlled and how efficiency and value for money will be assessed and proven. Consequently, we are unconvinced that the creation of OPBAS should result in any costs being borne by the profession.

### Annex A

**Q1. Do the draft regulations deliver the Government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?**

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20. In summarising the comments detailed above, the Bar of Northern Ireland is not persuaded that the draft regulations presently deliver on the Government's intention that OPBAS ensures PBSs comply with their obligations in the MLRs. We would query the value which OPBAS will bring to legal PBSs given that the regulations are drafted in very broad terms and appear to have little relevance to the profession operating in this jurisdiction. See our comments in paragraphs 9-14 for further detail on this. Consequently, at present it is difficult to envisage how OPBAS will be able to provide any material benefit to PBSs such as the Bar of Northern Ireland. We accept that OPBAS could have a role to play in strengthening the supervisory regime and supporting the ongoing work of PBSs but this should be much more narrowly defined than this statutory instrument presently allows for. Instead we believe that OPBAS should be a very lean entity with a remit that should be limited to providing a source of expert AML guidance to assist PBSs relevant to their specialist sectors.
21. In addition, we are very concerned at being directed to fund yet another layer of supervision which does not meet our needs as a PBS or those of our members in working to strengthen the AML supervisory regime. We fail to see HM Treasury's rationale for passing the estimated cost of £2 million per year on to PBSs when it appears that the establishment of OPBAS will only increase the burden on these organisations at their membership's expense. In Paragraph 3 above we have highlighted that variation in supervisory practice cannot in all circumstances be extrapolated to mean that supervision is inappropriate. Rather, given the differing levels of risk that exist and the encouraged adoption of risk-based supervision, one would be more concerned to find an exact uniformity of approach.
22. This does not mean that there is no role for dissemination of best practice but OPBAS as it is presently proposed in these regulations will ultimately only serve the aims of the Government in bringing the UK's AML/CTF regime into line with international standards as required under 4MLD rather than taking into consideration the needs of PBSs in operating viable supervisory models which ensure that any risks are managed and mitigated appropriately across a sector. Consequently, we entirely reject and oppose the suggestion that PBSs should be charged to cover the high running costs of OPBAS. See our earlier comments in paragraph 16-19 for further detail on this.
23. The OPBAS model also fails to take into consideration the number of regulatory changes that have already taken place across the legal sector in Northern Ireland which provide greater Government oversight, such as the appointment of a Legal Services Oversight Commissioner under the Legal Complaints and Regulation Act

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(Northern Ireland) 2016. We take the view that this emphasis on yet more oversight of supervisors' compliance will likely result in duplicated work and processes which will only risk hindering a PBS in the proper exercise of its supervisory functions.

**Q6. Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings. Please round your answer to the closest £100.**

24. The Bar takes the view that significant additional resources will be required to meet the anticipated extra obligations which will be placed on the organisation. It is difficult to accurately forecast the estimated average annual cost of this at present given that it remains unclear as to exactly how OPBAS will seek to engage with PBSs in this jurisdiction given the general nature of the draft regulations. However, we can conservatively estimate that it is likely the additional burden presented by OPBAS will result in increased costs to the organisation running into the tens of thousands of pounds. This cost estimate excludes any proposed unjustified attempt to recoup the costs of OPBAS from the PBSs. We cannot foresee any savings or commensurate associated with OPBAS engagement.

**Q7. Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS's guidance going forward? If more or less, please provide the estimated annual additional cost or saving. Please round your answer to the closest £100.**

25. The Bar does not believe that we will have to undertake much work to align our approach with OPBAS guidance as this is unlikely to differ much from current practice given that we have already adopted a risk-based and proportionate supervisory regime and are working with the recently appointed Legal Services Oversight Commissioner in this jurisdiction. However, as outlined in response to question 6 the cost to the organisation will be borne in investment required to meet the obligations placed on us by OPBAS, particularly given that PBSs will be required to take on additional tasks such as liaising with OPBAS on an ongoing basis, reviewing supervisory procedures and participating in another tier of information sharing.

**Q8. In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for businesses you would like the Government to take into account? If yes, please**

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**outline these and provide estimated costs or savings. Please round your answer to the closest £100.**

26. See our response to question 6 for our estimate of the additional resource implications for the Bar of Northern Ireland. It is too early to say at present whether there will be greater additional costs associated with complying with OPBAS. This will likely only be known once the implications of the draft regulations become more apparent for the legal sector in Northern Ireland.