
Treasury Committee: Economic Crime Inquiry

Bar of Northern Ireland Response

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 the Treasury Committee's Inquiry into Economic Crime. We note that the inquiry has two strands with one considering the anti-money laundering and sanctions regime and the other looking at economic crime as it affects consumers. The Bar intends to comment solely on strand one relating to anti-money laundering, including the current regulatory landscape, the effectiveness of the Treasury and its associated bodies in supervising the AML regime and the impact of the Financial Conduct Authority's newly created Office for Professional Body Anti-Money Laundering Supervision on professional bodies operating in the legal sector in Northern Ireland.
3. In terms of background, the Bar Council supervises barristers who are members of the Bar in Northern Ireland. The Bar Council derives its supervisory authority from the Code of Conduct that applies to all barristers within Northern Ireland and from the associated constitution, bye-laws and regulations of the General Council of the Bar of Northern Ireland and the Inn of Court of Northern Ireland. Hence the Bar Council is listed within Schedule 1 of *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (MLRs) as being the supervisory authority in relation to the relevant persons that fall within its remit.

Independent Referral Bar

4. The independent referral Bar is one of the cornerstones of access to justice and the legal system across the United Kingdom. The existence of a strong and independent Bar serves the public interest, facilitates the protection of the rights of the nation's citizens, the enforcement of their duties and is fundamental to the efficient and effective administration of justice.

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5. We very much support any initiative that seeks to counteract money laundering, terrorist financing and economic crime. Money laundering and terrorist financing are serious threats to society, causing a loss of revenue and endangering life whilst fuelling other criminal activity. Independent legal professionals are key actors in the business and financial world, facilitating vital transactions that underpin the UK economy. As such, they have a significant role to play in ensuring that their services are not used to further a criminal purpose. Independent legal professionals must act with integrity and uphold the law, and they must not engage in criminal activity. In addition to having stringent controls over the work and conduct of the barristers that we regulate, we are active members of both the Legal Sector Affinity Group (LSAG) and the Legal Regulators AML Forum which have been very useful for exchanging best practice.
6. However, there is a highly diverse and heterogeneous range of independent legal professionals and too often we have felt that the approach adopted by HM Treasury with regards to AML supervision under the MLRs has displayed a fundamental misunderstanding of the role of barristers and the independent Bar.
7. It is worth highlighting to the Committee 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 already 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 solicitor and are not permitted to have any financial relationship with the lay client.
8. 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 have repeatedly highlighted to HM Treasury that the Bar of Northern Ireland operates at the lowest end of the risk scale for AML.

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Risk-Based Supervision

9. Despite members of the Bar of Northern Ireland possessing the lowest level of risk for the purposes of AML, HM Treasury has not adequately recognised this. In failing to differentiate the Bar from others involved in managing more high-risk

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activities elsewhere, the approach adopted by HM Treasury has frequently failed to reflect a proportionate and risk-based ethos, with the attendant disadvantages that cost, delay and bureaucracy rise whilst service levels and agility decrease. Although we are adopting a co-operative and positive engagement with all of the actions being undertaken, HM Treasury's 'one size fits all' approach to the creation of the Office for Professional Body Anti-Money Laundering Supervision fails to translate across the diverse AML supervisory landscape.

10. We remain concerned that appropriate and proportionate risk-based supervision is wrongly being categorised as uneven or inconsistent supervision "in need" of a "supervisor-of-supervisors" to instil common practice. The Bar of Northern Ireland already engages in independent regulation of the profession, including with the recently appointed Legal Services Oversight Commissioner in this jurisdiction. We have repeatedly queried the specific or additional value that OPBAS will bring to our organisation given the addition of significant administrative burdens that are disproportionate to the very low level of risk represented by our members. However, we have not received adequate reassurance from HM Treasury on this point to date.
11. It is worth pointing out that HM Treasury's National Risk Assessment for 2017 highlighted high-risk areas for the exploitation of legal services as being financial transactions related to the set-up of trusts and companies, property purchases and the transfer of funds through client accounts. Given the prohibition on barristers handling client funds and managing their client's affairs, these particular risk areas are not applicable to the work of our members and therefore the remit of OPBAS is aimed at addressing a problem which does not currently exist within our profession. In summary, risk assessment is central to the MLRs under Regulation 46 yet HM Treasury seems to have disregarded our bespoke, risk-based approach to supervision in favour of a homogeneous and generic blanket oversight body in the form of OPBAS.

OPBAS

12. The Bar of Northern Ireland appreciates that the original intention behind OPBAS in relation to some professions or organisations may be a legitimate and potentially useful one. As referenced above, we have also engaged positively with Government on this through participation in various existing HM Treasury supported forum and affinity groups. In each of these we have consistently highlighted our willingness as a professional body supervisor within the legal sector to comply with and assist in enhancing the UK's AML supervisory regime.

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13. However, the most recent consultation exercise by the Financial Conduct Authority in October 2017 on 'Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision' (CP17/35) lacked detail around the significant running costs for OPBAS with a plan for the organisation to recover periodic fees from professional body supervisors totalling £2.5 million in 2018/19 – 2019/20 and £2 million from 2020/21 onwards. Whilst the Bar of Northern Ireland may be required to pay the minimum fee of £5,000 as a small professional body with just over 600 members under the latest draft proposals, we are disappointed that our low-risk profession is being caught in a net designed for others who will, on a recurring basis, be involved in managing more high-risk activities elsewhere.
14. We have consistently highlighted to HM Treasury and the FCA in recent months that the number of members falling under the scope of the MLRs was likely to number in the tens of members at the very most. Since our most recent interaction with OPBAS in April 2018, the Bar has conducted a comprehensive and mandatory survey of our 650 members to ascertain an exact figure. We can now confirm that just one barrister has indicated that they undertake work that is within the remit of the MLRs.
15. Consequently, the proposed cost to the Bar of £5,000 is extremely high given our very limited level of exposure. It is worth noting that the Bar will be disproportionately impacted by this fee alongside all of the indirect costs associated with OPBAS that we will be required to absorb on additional tasks such as liaising with OPBAS on an ongoing basis, reviewing supervisory procedures and participating in another tier of information sharing.

Conclusion

16. In summary, the Bar of Northern Ireland believes that that the approach adopted by HM Treasury has been too rigid and threatens to undermine pre-existing effective supervision. We willingly want to continue to be part of any UK wide conversation and exchange that shares best practice, highlights potential risks, gives guidance on an appropriate response to adopt in relation to a given risk assessment and monitors the resultant effectiveness of supervision. However, it is essential that the approach remains risk-based and proportionate at all times. We are disappointed as we feel that the data obtained from all of our barristers vindicates the Bar's long stated position of being a much lower risk profession than others and yet there is no differentiation in terms of the applicability (merely the cost) of the new OPBAS regime.

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17. The Bar believes that in terms of policy development, HM Treasury has failed to acknowledge or recognise the uniquely low-risk base in relation to the barrister profession, resulting in our organisation being subject to a “one size fits all” supervisory model in the form of OPBAS operating across a highly diverse range of AML risk profiles. Even though our qualifying headcount and thus associated fee recovery will likely be lower than others, given that we have only had one barrister identified as being within scope, the resultant financial cost is wholly disproportionate. This is not a good model of policy development as it signals a repeated lack of recognition of a certain section of the affected community and lacks credibility, failing to demonstrate that the policy is based on sound and fair principles.

18. We would urge the Committee to recognise that HM Treasury should, at the earliest possible opportunity, revisit its approach to date in relation to OPBAS and seek to differentiate the sharing of best practice which can apply to all from active supervisory oversight which should only be engaged when it is appropriate to do so. We would also ask the Committee to engage with the legal profession in Northern Ireland to help ensure the operation of a proportionate and risk-based AML supervisory regime which functions effectively in safeguarding high standards whilst also minimising the burden placed on those working in our sector.