
Financial Action Task Force: Draft Risk-Based Approach Guidance for Legal Professionals

Consultation 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 of Northern Ireland is an independent referral Bar comprising self-employed sole practitioners who perform courtroom-based work for instructing solicitors. The Bar is one of 22 Professional Body Supervisors responsible for anti-money laundering supervision across the legal and accountancy sectors in the UK and are named in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (information on the Payer) Regulations 2017. The Bar is subject to supervision by the Office for Professional Body Anti-Money Laundering Supervision which was set up by the UK Government under the remit of the Financial Conduct Authority in February 2018. We are also part of the Legal Sector Affinity Group, comprising the AML supervisors for the UK's legal sector, which has already developed wide-ranging and detailed guidance to assist independent legal professionals in meeting their obligations under the AML/CTF regime.
3. The Bar welcomes the work undertaken by the Financial Action Task Force in developing guidance to assist countries, competent authorities and professionals across various sectors in the application of a risk-based approach to AML/CTF. We have limited our comments to the guidance produced for legal professionals, focusing largely on sections one and four, and recognise that it is intended to provide support to both the private sector and public authorities in focusing on ML/TF risks and associated mitigation measures.
4. The Bar agrees with the assessment outlined in section 1.1 on the background and context to the guidance that the "risk-based approach is central to the effective implementation" of the revised FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted in 2012. We also welcome the recognition that this guidance only applies to legal professionals when they prepare for, or carry out, transactions for their clients concerning certain specified activities. The Bar has engaged extensively with authorities in the United Kingdom, such as HM Treasury, on changes to the AML supervisory regime in this jurisdiction and have repeatedly stressed that

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effective and proportionate supervision must be founded upon a risk-based approach to AML/CTF.

5. The Bar also endorses section 1.4 on the scope of the guidance in relation to legal professionals. The statement at paragraph 9 that the “FATF recommendations apply to legal professionals when they prepare for or undertake specified transactional activities and do not apply to all activities carried out by legal professionals” is to be welcomed. Furthermore, the point that “most notably, litigation is not a specified activity and a legal professional representing a client in litigation will not be subject to the FATF recommendations” emphasises the need to differentiate between this activity and the high-risk specified areas for the potential exploitation of legal services itemised at paragraph 12 across AML supervisory regimes for legal professionals.
6. The Bar has always cautioned against a ‘one size fits all’ approach to AML/CTF when engaging with authorities in the United Kingdom given the diverse supervisory landscape across the legal profession. Consequently, the Bar considers the recognition at paragraph 10 that the legal sector comprises a “broad spectrum of practitioners and are not a homogenous group, from one country to another or even within a country” to be particularly useful. The FATF R.22 for the specified activities of relevance to legal professionals outlined in paragraph 12 provides a useful international standard for jurisdictions to implement through measures which can be adapted to suit their particular circumstances. In the UK, the Bar has been working in partnership with other legal sector supervisors, as part of the Legal Sector Affinity Group, to develop high standards of supervision with a focus on promoting best practice guidance across the sector. As a result we have been able to develop wide-ranging and detailed guidance which explicitly highlights these specified activities to assist independent legal professionals in meeting their obligations under the AML/CTF regime.
7. We note paragraphs 17 and 18 in section 1.4 which highlight the role of legal professionals, including barristers and specialist advocates, who typically represent clients in court. There is also a recognition that the work of these professionals does not typically extend to handling funds. It is worth highlighting that the Bar of Northern Ireland is an independent referral Bar with no form of direct public access and barristers are not permitted to hold or handle client money or manage client affairs under our Code of Conduct meaning that our members represent a uniquely low-risk group of individuals. Given this prohibition on barristers handling client funds and managing their client’s affairs, the specified activities from R.22 outlined at paragraph 12 are not applicable to the work of barristers in jurisdiction. Despite these higher risk activities not being

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relevant to the work of our members, it is useful to see these set out in an international context and reinforces the need for countries to implement appropriate and proportionate risk-based supervisory schemes which can translate across a diverse landscape of legal professionals.

8. The Bar concurs with the statement at paragraph 19 that the work of legal professionals is “fundamental to promoting adherence to the rule of law in the countries in which they practice”. We would also add that 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 in each of the jurisdictions of the UK 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.
9. Section 1.4.2 on services provided by legal professionals also reiterates that the activities of legal professionals are diverse with the list of services at paragraph 31 providing a useful overview for national authorities to take into consideration when refining AML supervisory schemes. It is helpful to note that some of these services may involve specified activities within the scope of R.22 and paragraph 12 but not all will be relevant.
10. Meanwhile the Bar has also considered section 4 which provides guidance to supervisors. We note the minimum requirements set out for the supervision of legal professionals at paragraph 143 which is helpful. It is worth highlighting that the Bar of Northern Ireland has developed a risk assessment methodology for engaging with our members and making them aware of the specified activities under R.22 of relevance to AML/CTF. We also conduct a mandatory annual exercise in April of each year to validate any individuals who may fall within the scope of the specified activities under R.22 and to ensure ongoing and active supervision by the Bar Council if necessary. The Bar of Northern Ireland has a membership of 650 yet to date none of our members have been engaged in the specified activities contained in R.22.
11. The Bar welcomes the point made at paragraph 144 that a risk-based approach to AML/CTF means that the measures taken to reduce ML/TF are proportionate to the risks. Supervisors should therefore “supervise more effectively by allocating resources to areas of higher ML/TF risk”. The Bar takes the view that this risk-based approach to supervision must allow for a country to recognise the very low-risk base of the barrister profession where appropriate in order to ensure that the independent referral Bar can be differentiated from others involved in managing more high-risk activities elsewhere in the legal profession. The Bar recognises the important need for international standards in the areas of

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AML/CTF. However, it is also vital that countries under the remit of the FATF guidance take proportionate action when giving effect to the risk-based approach to supervision, particularly in relation to those at the lowest end of the risk scale, in order to allow supervisors to effectively operate viable supervisory models which ensure that any risks are managed and mitigated appropriately.

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