THE BAR of NORTHERN IRELAND

FACULTY OF ADVOCATES

THE GENERAL COUNCIL OF THE BAR · JUSTICE FOR ALL ·

Stephen Barclay MP
Economic Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

08 January 2018

Dear Stephen Barclay MP,

Office for Professional Body Anti-Money Laundering Supervision

Although we were grateful to receive your letter of 6th November 2017 in response to our correspondence of 23rd October 2017, we once again feel compelled to write, with increasing urgency, to you jointly in our role as leaders of the professional bodies that together comprise over 17,000 specialist barristers and advocates across England and Wales, Scotland and Northern Ireland in relation to the approach being taken towards our professions in the creation of the new Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

In the period since our last correspondence we have seen the consultation conclude in relation to the sourcebook for OPBAS, have seen the publication of the consultation responses given in relation to the anti-money laundering supervisory review, have been advised that the OPBAS Statutory Instrument has been laid in Parliament and have actively participated in engagement with OPBAS in the context of its current consultation on fees. Our various bodies will provide individual responses to the fees consultation.

In your letter you reassured us that OPBAS will "foster a cooperative and open dialogue with those it oversees and will consider the individual circumstances of each PBS. This includes gaining a sound understanding of the sectors supervised by the PBS and operating a principles led, risk based approach to supervision."

Regrettably the evidence accumulating from these sources is that despite our best efforts to make constructive contributions and to highlight the challenges that the current approach to OPBAS creates

for our profession, the policy direction remains unchanged and thus creates an unfair, disproportionate and ill-fitting regime for our members.

We would urge you to consider various examples that illustrate our concerns. We would initially refer you to the manner in which the consultation findings in relation to the anti-money laundering supervisory review have been summarised[1]. These do not appear to have captured anywhere the views expressed about the difficulty in applying the OPBAS regime to the barrister or advocate's profession (save for the need to examine a contingency legal AML supervisor).

A further example can be found in the Impact Assessment published by HM Treasury as part of the above consultation[2]. This makes clear that "t*he UK financial sector, and the public, will benefit as the issues highlighted in the NRA are addressed, and professional body AML supervisors adopt consistently high standards of supervision and build more effective relationships with each other and law enforcement, improving the UK's defences against money laundering and terrorist financing and so reducing the flow of illicit funds into the UK's financial system*". There is no mention in this document of the UK legal system or barrister or advocate's profession and how these will be impacted.

A further example was provided in the recent round-table meetings arranged by OPBAS to discuss the current fees consultation. While we welcome this level of engagement, it was commonly acknowledged by all attendees that OPBAS needs to define more accurately the community of professionals that it intends to supervise and how it will do so. Various suggestions were proffered in the meeting in relation to how to approach such definitions but none of them worked in the context of our profession. Several contributors remarked on the fact that it is difficult enough to find a definition that can be applied across either the accounting or legal sector but potentially impossible to find one that works successfully across both. Various speakers cited specifically the differences that needed to be observed in relation to the barrister profession which are wholly different to the structures that exist within the accounting sector or other parts of the legal sector.

We must emphasise that it is a cause of significant and growing concern that we have yet to see any practical evidence that our previously expressed concerns are being appreciated and addressed.

We restate that:

a) All barristers/advocates are prohibited from handling client money and managing client affairs under their respective Codes of Conduct. Nor do they open or manage bank, savings or securities accounts. Consequently, barristers in England & Wales, Scotland and Northern Ireland all operate at the lowest end of the risk scale for AML supervision;

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[1] HM Treasury, *"Anti-Money Laundering Supervisory Review: Response to the Consultation"* (December 2017) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/668772/AMLSR_response_to_consultation_web.pdf

[2] HM Treasury, *"Consultation Stage Impact Assessment: Office for Professional Body AML Supervision"* at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628989/Consultation_Stage_Impact_Assessment_OPBAS.pdf

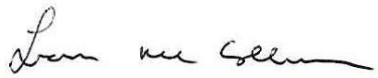
b) The occasions on which a barrister/advocate engages directly with a lay client (direct access) are very rare and are atypical of the scenarios envisaged in the policy. Barristers in Northern Ireland and Scotland only permit direct access with professional bodies or recognised public bodies and not with lay clients. This facility is used very infrequently and this form of access is only granted in tightly controlled circumstances. Even where direct access is permitted in England and Wales, it constitutes a comparatively small element of the practice of the Bar and the above prohibitions remain in force. Thus the primary form of practice for the vast majority of barristers/advocates in all jurisdictions is for instructions to be received on a wholly independent basis by a network of supervised instructing solicitors;
c) Barristers/advocates occupy a unique position in being one step removed from the lay client. They are instructed and paid directly by the solicitor who, by contrast, has a contractual relationship with the client; they manage the relationship with the client, hold and transfer any client assets/funds and carry out any CDD long before a barrister/advocate is engaged given that they are separately subject to the application of the AML/CTF regulatory regimes;
d) For the substantial majority of barristers/advocates the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 simply do not apply to their practices.

Due to the structural mitigations and prohibitions above and also the findings of HM Treasury's own National Risk Assessment for 2017, it is impossible not to conclude that the significantly reduced scope and vastly lower ML/TF risk of our respective professions is unique amongst designated non-financial businesses and professions and deserves to be recognised.

We are extremely disappointed that HM Treasury seems unable or unwilling to demonstrate an active regard for our concerns and we lack confidence that the views we have expressed on the consultations regarding the sourcebook and fees will be given the attention and weight they deserve.

The Bar Council of England and Wales, Faculty of Advocates and Bar of Northern Ireland remain keen to work jointly with HM Treasury to remedy the issues outlined above. We would urge you once more in your capacity as Economic Secretary to the Treasury to ensure that HM Treasury revisits its approach to date on this matter and commits to engaging with the profession across the UK to ensure the development of a risk-based AML supervisory regime which operates effectively in ensuring high standards whilst also minimising the burden placed on those working in our sector.

Yours sincerely,



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