Response to HM Treasury Call for Evidence
Review of the UK's Anti-Money Laundering/Counter Terrorist Financing regulatory and supervisory regime

Chapter 2: systemic review

Recent improvements to the regulatory and supervisory regimes

1. What do you agree and disagree with in our approach to assessing effectiveness?
2. What particular areas, either in industry or supervision, should be focused on for this section?
3. Are the objectives set out above the correct ones for the MLRs?
4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

BSB response

Paragraph 1.8 of the consultation document says that money laundering is a key enabler of serious and organised crime, which costs the UK at least £37 billion every year. This data is drawn from the 2018 Serious and Organised Crime Strategy. The National Crime Agency (NCA) assesses that is highly likely that over £12 billion of criminal cash is generated annually in the UK and a realistic possibility that the scale of money laundering impacting on the UK (including through UK corporate structures or financial institutions) is in the hundreds of billions of pounds annually.

As a supervisor, we can assess our effectiveness based on our assessment of the degree to which relevant persons that we regulate understand and comply with the Money Laundering Regulations (MLRs), and the year-on-year improvement. We can also assess our effectiveness based on the number of cases that are prosecuted where a barrister or BSB entity was involved.

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At a market level, it is difficult to understand whether the collective effort of supervisors and relevant persons (which has been markedly stepped up since 2018) has had an impact if data is not current, not quantifiable with accuracy and trends are not reported. The 2020 National Risk Assessment also says that there is an acknowledged intelligence gap on the risks associated with the services provided by barristers. This means that it is difficult to be targeted in a risk- and evidence-based way in our approach to supervision, and instead our focus is on compliance testing the whole sector. Data that is available in the system could be more effectively used to assist supervisors in understanding where the highest levels of risk are and whether our work is effective in reducing the amount of money laundered through the UK.

The weak link in the current regime is in relation to Companies House, due to the lack of due diligence and ongoing monitoring conducted on those establishing corporate structures directly with Companies House. We welcome plans for reform and consider it crucial that Companies House is brought into the UK's Anti-Money Laundering (AML) regime, and that it engages with the existing stakeholder groups.

High-impact activity

5. What activity required by the MLRs should be considered high impact?
6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?
7. Are there any high impact activities not currently required by the MLRs that should be?
8. What activity required by the MLRs should be considered low impact and why?

BSB response

We will have the highest impact if we are risk- and evidence-based in our approach to supervision and relevant persons are risk-based in their approach to compliance. This means that we need good quality information and data from the NCA and the Government about where the highest areas of risk and emerging trends are.

We already hold to a great deal of information about our regulated population through the wider work that we do as regulators. As supervisors under the MLRs, we must be given the freedom (where we can justify it based on evidence) to identify where we think the highest risk is and where our time should be focussed. Some examples of low impact work are as follows:

- We feel under some pressure to attend all ISEWG meetings, since this in turn helps OPBAS to meet its information sharing objective, but some of the meeting topics are not relevant to the work that barristers do. We must have the freedom to decide if that is the best use of our time.
- OPBAS appears to take the view that all relevant persons that we supervise should be subject to cycles of compliance testing, rather than focussing our resources where we have an evidence base of highest risk. At times this has led to us diverting resources and conducting less work in certain areas that we would otherwise have focussed on.

- There is a significant amount of duplication in reporting information to OPBAS for the supervision visits, to HM Treasury for the Annual Supervisor Return and the Supervisor AML Annual report. This is time consuming and could be streamlined. In respect of the latter, HM Treasury and OPBAS have been very prescriptive about what we report on and how we publish it, rather than giving us the freedom to decide how to communicate information to our regulated population for the greatest impact.
- There is ongoing debate about how supervisors should be using the SIS and/or FIN-NET systems to share intelligence. Some of what is being proposed is potentially very resource intensive and does not reflect the fact that the population that we regulate under the MLRs is almost exclusively comprised of barristers and barrister-led entities. It is highly unlikely that there would be information about them on SIS that had not been reported to us directly through the other mechanisms that we have. We rarely have the need to search SIS for people that we do not regulate and have done so only twice since 2018. The searches did not yield any information in one case and in the other we had already received the information in a direct referral. We are not convinced that the SIS subscription provides good value for money in managing risk, and we are not convinced that what is being proposed about how we should use SIS is an effective use of our resources and proportionate to the risk.

National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?
10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?
11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

BSB response

We are a risk- and evidence-based regulator. There is a disconnect between the National Risk Assessment (NRA) and the expectations placed on us as a supervisor under the MLRs. The 2020 NRA says that the risk of abuse of legal services for money laundering purposes remains high overall. The services most at risk of exploitation for money laundering continue to be conveyancing, trust and company services (TCSPs) and client accounts. Barristers are not permitted to hold client money, do not conduct conveyancing and the extent of TCSP work is very small. If national priorities were set out, it would provide us with an evidence base for our strategy. It would help in focusing our resources with a more clearly defined, measurable target.

It could also enable more effective working across the system – sharing good practice, working together with other regulators (for example where barristers and solicitors, or barristers and accountants work together) and sharing intelligence. An example (outside of the scope of the MLRs) where we have identified a problem and worked with other regulators is in relation to legal professionals practising in the coroners courts, where we

worked with other regulators, the courts, third sector organisations and members of the public to develop competences and guidance for legal professionals.

Extent of the regulated sector

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?
13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?
14. What are the key factors that should be considered when amending the scope of the regulated sector?

BSB response

There has been a recent suggestion that legal professionals conducting contentious litigation should be brought within the scope of the MLRs. We note that this is not suggested in the consultation. On the grounds of proportionality, unless there is clear evidence of a significant problem, contentious litigation should not be brought in scope.

Enforcement

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?
16. Is the current application of enforcement powers proportionate to the breaches they are used against?
17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?
18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

BSB response

The BSB does not have power of criminal prosecution and it would not be proportionate to the level of risk to provide that power, since it would require a significant increase in investigatory resourcing for an area of activity that is, based on the NRA, at lower risk.

The BSB has the power to refer barristers to the Bar Tribunal and Adjudication Service for disciplinary action. The highest sanction for self-employed barristers (who make up the vast majority of relevant persons under our supervision) is disbarment, which has a significant impact on the individual. Similarly, particularly for self-employed practitioners, the immediately less serious sanction of suspension also has a substantial impact (given the impact upon income). Indeed, even having a finding of professional misconduct can have a significant impact upon a barrister's career.

Referral to disciplinary action is regularly used and therefore we are satisfied that the enforcement powers available are adequate. However, where there is a suspicion of money laundering, it is much more difficult to take such enforcement action based on referral from the NCA without evidence of a criminal prosecution. We are therefore dependent on robust law enforcement in the most serious cases. Such cases are very rare.

Chapter 3: Regulatory review

Barriers to the risk-based approach

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?
20. What activity or reform could HMG undertake to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?
21. Are there any elements of the MLRs that ought to be prescriptive?

BSB response

The 2020 NRA says that there is an acknowledged intelligence gap on the risks associated with the services provided by barristers but no evidence to suggest that the level of risk has changed since the last NRA (when it was assessed as low risk). We have no evidence to suggest that this assessment has materially changed. We welcome the opportunity to work more closely with the NCA to share any intelligence they may have that indicates areas of potentially higher risk. Without a shared intelligence picture, we cannot provide effective risk-based guidance to barristers and BSB entities.

National Strategic Priorities would enable us to prioritise our resources to where they will have the greatest impact and give us some clarity that the work that we are doing aligns with national priorities. A continuing cycle of routine compliance testing will have little benefit unless it supports a wider, risk-based national strategy.

Understanding of risk

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?
23. What are the primary barriers to understanding of ML/TF risk?
24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?

BSB response

Please see our response to the previous group of questions.

Expectations of supervisors to the risk-based approach

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
28. Would it improve effectiveness and outcomes for the government and /or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?

29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

BSB response

We provide guidance through the information that we publish on our website and in the Legal Sector AML guidance. Robust risk assessments by those that we regulate enable them to evidence to us that their approach is risk-based, therefore that is our starting point when supervising relevant persons.

If guidance about compliance programme effectiveness is published, it is important to focus on outcomes and avoid being too prescriptive, which risks driving a tick-box, rather than risk-based, approach.

As set out in the previous questions, better data and intelligence from law enforcement would help us to be more evidence-based and targeted in our approach. It would be helpful to know if the NCA thinks that there is intelligence related to persons that we regulate that is not currently being provided to law enforcement.

Application of enhanced due diligence, simplified due diligence and reliance

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?
31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?
32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?
33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?
34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?
35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?
36. Are there any changes to the MLRs which could mitigate derisking behaviours?

BSB response

We have not identified particular issues with interpreting Enhanced Due Diligence and Simplified Due Diligence requirements, nor of derisking behaviour caused by the MLRs.

Public access work (engaging directly with the consumer rather than work referred by solicitors or other professional clients) forms a very small proportion of work for the Bar as a whole, and this also applies to barristers doing work that engages the MLRs. It is therefore essential that barristers can make use of the reliance provision in Regulation 39, not just for efficiency, but also because of the nature of the relationship between the barrister and the lay client where a professional client is involved and the barrister does not form a client

relationship in the same way that the professional client does. Where the professional client is a relevant person under the MLRs, it should be sufficient (with appropriate due diligence) for the barrister to rely on the Customer Due Diligence carried out by the professional client, subject to any red flags identified during the case risk assessment. Our evidence shows that barristers do make use of the reliance provision, but some professional clients are reluctant to agree to provide reliance. It would be helpful if the MLRs could signal more strongly that parties should work together to enable use of the reliance provision where appropriate and remove obstacles, such as concerns about liability by those providing reliance.

Discussions with HM Treasury last year, whilst seeking clarification on their expectations about what the reliance provision means in practice (ie what practical steps the barrister is expected to take to use the reliance provision) indicated some confusion, particularly in relation to Reg 39(2) (a): "When a relevant person relies on the third party to apply customer due diligence measures under paragraph (1) it must immediately obtain from the third party all the information needed to satisfy the requirements of regulation 28(2) to (6) and (10) in relation to the customer, customer's beneficial owner, or any person acting on behalf of the customer". The wording of the Regulation is unclear as to its intent and would benefit from clarification. How we interpret this is covered in the Legal Sector AML Guidance. We are waiting for this to be approved by HM Treasury to provide us with certainty that the approach we have taken is approved. It would be better to provide this certainty through the Regulations themselves rather than through the guidance.

How the regulations affect the uptake of new technologies

37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?

38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?

39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

BSB response

We are monitoring the use of technology and will, through the Legal Sector Affinity Group, adapt our guidance as needed. Consensus about standards would be helpful where relevant, but this is not yet an issue significantly affecting the Bar.

SARs reporting

40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?

41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?

42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?

43. What else could be done to improve the quality of SARs submitted by reporters?

44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?

BSB response

The NCA has worked with some of the Professional Body Supervisors to educate relevant persons about how to submit a “good quality” Suspicious Activity Report (SAR), where the NCA has identified problems. The BSB has approached the NCA to find out whether there are any concerns about either the number or quality of SARs submitted by those we supervise. So far, we have not had any feedback, but welcome any information that the NCA is able to provide us.

The Legal Services Act requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted. We also have a statutory responsibility under the Regulators' Code to base our regulatory activities on risk, taking an evidence-based approach to determining the priority risks, and allocating our resources where we think they would be most effective in addressing those priority risks. Any work that we do in this area would therefore need to be targeted at an identified problem so that it does not distract resources that are better deployed to higher risk activity. We would hope that the new IT system will help to improve quality, with a more user-friendly interface, and an ability to identify specific relevant persons that are submitting poor quality SARs or failing to submit SARs.

We are unclear what the concerns about quality are. If there is a failure to complete a glossary code, that is relatively straightforward to remedy. However, if there is concern about the qualitative information provided, we will potentially be getting into a debate about the merit of the SAR. Judgment about a suspicion, and the responsibility for submitting a SAR, must remain with the relevant person.

Most barristers are self-employed and, because of the nature of their work (which is often out of scope) do not submit many SARs, so it is difficult to draw meaningful conclusions about quality in relation to individuals who may submit one SAR every few years.

If there is an evidence-based requirement for us at to look at SARs, it would be helpful to make an explicit statement that we have the power to do so, since they contain potentially highly sensitive information.

Gatekeeping tests

45. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?

46. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?

47. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

48. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession? Is an additional requirement needed for when new individuals take up relevant positions in firms that are already registered?

BSB response

The standards of entry to the Bar are very high compared to some other sectors covered by the MLRs and higher than the standards required by the MLRs. We require barristers to complete three components of training: completion of a degree and a postgraduate diploma if it is not a law degree; completion of a vocational training course including examinations; and, if they want to go on to practise as a barrister, completion of a period of work-based learning, including further examinations and assessments. They must also undergo fit and proper tests, including a criminal records check, before Call (at which point they become an "unregistered barrister").

In addition, barristers are subject to authorisation and supervision processes that are independent of their membership organisation. They are subject to a Code of Conduct that is set out, together with our enforcement powers, in the BSB Handbook, which applies throughout a barrister's career. For example, barristers are also subject to obligations such as the ten Core Duties, Continuing Professional Development and the duty to report serious misconduct (their own and others). We do not make a distinction between TCSPs and other types of relevant persons within our regulatory regime. Any prescription in relation to ongoing requirements should be avoided, and we should be able to determine risk in the context of our wider regulatory controls.

Regulation 26 does not make sense in this context: "Supervisors must grant such an application unless the applicant has been convicted of an offence listed in Schedule 3 of the MLRs".

Guidance

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

50. What barriers are there to guidance being an effective tool for relevant persons?

51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

BSB response

Whilst the principle of consolidated guidance is attractive, it gives rise to practical challenges. The legal sector is very varied, both in terms of the types of legal practices (ranging from very large firms with dedicated compliance personnel, down to sole practices), the services provided and how they work (eg the Bar is primarily a referral profession and does not have direct access to lay clients). Therefore, it is challenging to produce a single piece of guidance that is appropriate for everyone across the legal sector.

Nevertheless, the Legal Sector Affinity Group put a lot of work into providing a single set of guidance. The result is a very large document. Our primary concern is to produce a piece of guidance that encourages a practitioner to read it. It should be user friendly and help them to apply the legislation to their practice. For example, the main issue for barristers is understanding when the MLRs apply to the work that they do. They need a route map through the legislation and practical case studies. The Bars collaborated in the development of tailored guidance, which is provided as a separate chapter. This was essential in order to help barristers by providing practical guidance about how to apply the legislation in relation to the type of work that they do and how they work. In practice, they are less likely to refer to the main body of the Legal Sector guidance; the chapter for the Bars was designed to stand alone.

We intend to engage with barristers and BSB entities to determine whether the guidance in its current form assists them in understanding their obligations. This will be taken into account when updating the guidance in future.

As the consultation document says, supervisory authorities must take any relevant guidance into account when deciding whether a relevant person has contravened a relevant requirement imposed on them by the MLRs. Similarly, in deciding whether a person has committed an offence under regulation 86 the courts will consider whether the person followed any relevant guidance. It is therefore essential that our guidance is promptly approved by HM Treasury once it is updated. The timeline for approving our latest update is unclear (part 1 was submitted in January 2021 and part 2 was submitted in July) and this makes it difficult for us to conduct our supervision work, particularly where areas in the regulations are unclear and have had to be interpreted (a key example being the reliance regulation, as set out above).

Chapter 4: Supervisory review

Structure of the supervisory regime

52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?
53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?
54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?
55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

<u>BSB response</u>

As set out above, we do not supervise barristers and BSB entities in relation to our obligations and theirs under the MLRs in isolation. They are regulated in accordance with the wider regulatory controls in the BSB Handbook, which encompass the education and training requirements and the Code of Conduct. This control framework has greater breadth and

depth than the MLRs and it means that our risk-based approach to regulation and our understanding of the profession can be leveraged for the purposes of supervision in relation to the MLRs. When approaching our role as supervisor of relevant persons under the MLRs, we take into account our wider knowledge of them, and the environment in which they practise, through the broader work that we do. We are able to achieve a depth of understanding of the Bar and the persons and entities that we regulate that is unlikely to be achieved in a cost-efficient way by another single regulator acting solely for the purpose of supervision under the MLRs.

Furthermore, the legal sector already has an oversight regulator, the Legal Services Board, that holds the Approved Regulators to account for the standards of supervision in relation to our obligations under the Legal Services Act.

We therefore agree with the statement in the consultation document that "the use of specialist regulators ensures the risks of diverse and innovative products are assessed by experts that understand their sectors and are effectively managed. It also enables AML supervision to be integrated into wider oversight of business activities, reducing regulatory burdens and improving competitiveness".

We see value in collaboration. The role of OPBAS in ensuring consistent standards and facilitating collaboration is therefore the best model.

Effectiveness of OPBAS

56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?

57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

BSB response

Q56: The standards expected of PBSs, and against which they are supervised by OPBAS, is set out in the OPBAS Sourcebook. Effectiveness could, therefore, be measured based on the extent to which PBSs are meeting those standards. However, we think there are limitations to the way that this is being done currently.

OPBAS is a relatively new body. In the period since it was established it has, understandably, been finding its feet as an oversight regulator. We do not think that it has yet matured into this role. As an oversight regulator, OPBAS needs to be assured that we are meeting our obligations under the MLRs and supporting the UK's strategic approach to the risks, in the way that the Legal Services Board has oversight of the legal sector regulators.

We find that the governance structure of OPBAS is opaque. OPBAS makes high profile, public statements about our effectiveness, but it is unclear who is in OPBAS is making those judgments. For example, we were subject to an OPBAS visit in early June. There was no closing meeting in which OPBAS officers gave us an indication of their assessment. We

received a letter, in which issues were raised, more than two months later. There was no opportunity to correct misunderstandings, fill in knowledge gaps or get some feedback before their report was issued. Similarly, PBSs did not get collective feedback about the themes in the OPBAS annual report, nor an opportunity to discuss those themes as a group before publication. Collectively, the PBSs devote considerable senior resource to engagement with eachother and with OPBAS, but we are not engaging with similarly senior personnel in OPBAS/the FCA. The staff that we engage with do not seem to be empowered, or have the confidence, to have those discussions with us. This is compounded by the fact that we devote a great deal of resource and effort to providing OPBAS staff with information and explaining how the profession works. However, OPBAS staff turnover is high and that makes it difficult for them to grow their knowledge and understanding and develop into their role. We are not convinced that the resourcing of OPBAS has been applied to achieve the best results. There is little transparency about its budget and its strategy. A more sophisticated and collaborative relationship between OPBAS and the PBSs may need to resourced differently.

All in all, this leads to quite disjointed communication and the OPBAS staff tend to become quite prescriptive and directive, often pushing us in directions without being clear about how this will achieve the UK strategic aims and whether the diversion of resource is cost-effective.

We do not think that the OPBAS Sourcebook is triggering the right discussions with us at the moment. When making their assessment, we would encourage OPBAS to focus on evidence-based risk and the outcomes of the work done by PBSs, rather than being prescriptive about the means to get there, recognising the diversity of the sectors and our understanding of risk to, and among, those we regulate. We would welcome a more mature relationship with OPBAS during supervisory visits and in cross-regulator forums, in particular the opportunity to debate risk and our strategy with senior and experienced staff. This would help to lead to a more shared understanding of risk and enable us to benefit from the knowledge and experience that OPBAS acquires through its position overseeing all PBSs.

The implementation of OPBAS has resulted in the PBSs conducting a great deal more AML work, which is very positive, but unless the impact of that work is measured in terms of reducing money laundered, the effectiveness of OPBAS cannot be meaningfully determined.

Q57: There is a great deal of engagement between the PBSs and the establishment of OPBAS is helpful in creating the structure for effective collaboration between Government, law enforcement, the regulators, the professions and other stakeholders. OPBAS's efforts in this area appear to have focussed on two main areas that they have seen as quick wins: implementation of the Information Sharing Expert Working Groups (ISEWG) meetings and use of SIS and/or FIN-NET IT systems for intelligence data.

In relation to the legal sector ISEWG, success seems to be measured by attendance rates. We have received very little intelligence from law enforcement about relevant persons that we regulate since OPBAS was created. We are unclear whether there is more intelligence that could usefully be shared, or whether this simply reflects the fact that the Bar is low risk for money laundering.

In relation to SIS and FIN-NET, success seems to be measured by the amount of information that PBSs put on the systems and the number of times they carry out searches. We encourage OPBAS to focus on the quality of data shared rather than on the quantity and how it is shared, and measure success in terms of preventative action that resulted. This is an example of an area where OPBAS has been very prescriptive, without being risk- and evidence-based, or considering other ways that the outcomes can be, and are being met.

Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?

59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

BSB response

We think that OPBAS should focus on using its current powers effectively rather than extending its remit.

Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?

61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?

62. How should the government best ensure businesses cannot conduct regulated activity without supervision?

BSB response

The BSB Handbook defines a *practising barrister* as a barrister who is supplying legal services and holds a practising certificate. We supervise practising barristers who are "relevant persons" under the MLRs. There are many barristers who do not have a practising certificate either by choice or because they do not qualify for a practising certificate. Such barristers are called "*unregistered barristers*" because they are not on the public register of barristers who have practising certificates. Even though the rules which apply only to practising barristers do not apply to them, all unregistered barristers remain members of the profession and are expected to conduct themselves in an appropriate manner. In this context, they remain subject to certain Core Duties and Conduct Rules at all times. If they provide legal services, they must comply with all the Core Duties and they have a responsibility not to mislead anyone about their status.

It is a criminal offence for a barrister without a practising certificate to provide legal services which are *reserved legal activities* under the Legal Services Act 2007. We have produced guidance on what legal services may be provided by a barrister without a practising certificate and on the rules which must be followed when doing so.

Unregistered barristers who conduct work that falls within the scope of the MLRs are not supervised by the BSB. In some cases, they are employed by firms that are regulated by the

FCA or another Professional Body Supervisor, such as the SRA. We have previously agreed with HMRC that any unregistered barristers engaging in TCSP activity (which is not a reserved legal activity) must register with HMRC. It would be helpful to be able to say in the MLRs that HMRC is the default regulator for any unregistered barristers not working in a firm that is supervised by another regulator under the MLRs, so that we can refer to that in our guidance for unregistered barristers.

The Government could ensure that businesses cannot conduct regulated activity without supervision as part of the gatekeeping processes at Companies House.

Bar Standards Board
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