

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

13 October 2020

**Response to supplementary questionnaire for supervisors by HM Treasury -
Economic crime levy: Funding new government action to tackle money laundering**

Our response to the questionnaire is attached.

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Economic Crime Levy – Collection Models Survey (Supervisors)

Please see Chapter 6 of the [consultation](#) for full details of the below collection models. This questionnaire asks questions specific of supervisors which we did not feel it appropriate to include in the consultation document itself.

Questions

Single agency model

[Single agency collects and enforces the levy]

Question: What do you estimate your costs as a supervisor would be for your role in this model (passing on information to the single agency, and making sure this is up to date)? How many FTE do you anticipate this would require?

Response: The BSB carries out a similar exercise on updating the Trust and Company Service Providers Register maintained by HMRC. There is one dedicated FTE that extrapolates the requisite data from our database and uploads this information to the Register. The amount of work would depend on the consultation outcome:

- If the threshold were set at £10.2 million or £5 million, no barristers or BSB entities would fall within scope and there would be a nil return if we were only required to report barristers and entities that conduct work within the Money Laundering Regulations *and* exceeded the threshold. It would be disproportionate to require us to report any other information about persons we regulate.
- If the threshold were set at £1 million income arising from work that falls within scope of the Money Laundering Regulations, we would have to introduce new processes to collect this data.
- If the threshold were set at £1 million income without distinguishing relevant work under the Regulations, the work required would not be onerous for the BSB but would not meet the principle of proportionality for the relevant barrister.

Question: Is there an agency you think should act as *the* single agency in this model? Perhaps because you have strong links, an existing relationship, or believe they are well suited to the task.

Response: We think HMRC is best suited to the task as they already have tax records for barristers and BSB entities. HMRC also have enforcement powers and scale of resources to administer and enforce the levy.



Supervisor collection model

[Supervisors collect and enforce the levy]

Question: What challenges (legal or other) would you face if you were required to collect and enforce levy contributions from your supervised populations? Would these still apply if you were not the enforcer?

Response: It will be very challenging to collect and enforce levy contributions. The legal framework for enforcing collection would have to be established as there are no existing legislative powers to collect the levy. Furthermore, we would need to submit a rule change to the Legal Services Board, our oversight regulator, to amend the BSB Handbook to enable the BSB to collect and enforce the levy. We will also have to plan, build and implement the mechanism for collection, including IT requirements and administrative processes. In addition, existing staff across the finance, records, supervision and enforcement functions would need to be trained for this purpose. This would detract from resourcing our core regulatory objectives under the Legal Services Act and it unlikely that costs would be recoverable, given that most barristers are self-employed sole practitioners and likely to fall below the minimum threshold for the levy.

Question: How many FTE would you, as a supervisor, need to support this model? If possible, are you able to provide a rough breakdown of what these FTE would be needed for?

Response: Collection and enforcement of the levy would impact the finance, records, supervision and enforcement functions of the BSB. Setting up the required structure would in addition require resourcing by the projects, policy and legal teams to establish the IT infrastructure and legal basis for collection.

As we operate on a lean staff basis, with no spare capacity, this would require additional resourcing that is not proportionate to the amount likely to be collected (if any).

Question: How long do you think it would take for you to set up the necessary collection and enforcement teams and / or infrastructure?

Response: We do not believe that the necessary infrastructure would be in place by 2022/2023 when the first set of levy payments are to be made. The two main barriers would be building the IT infrastructure and establishing the legal basis for collection and enforcement.

There is an annual Authorisation to Practise (AtP) process, in March, whereby barristers have to pay a Practising Certificate Fee (PCF) in order to get a practising certificate. There is a similar process for BSB entities. IT requirements for the AtP process need to be specified a year in advance of the next AtP process. Therefore, the earliest we could specify requirements would be May 2021. The BSB would then need to assess whether we have the budget to build the requirements



Question: Alternatively, how difficult would it be for you to expand your existing AML-regulation fee infrastructure to accommodate economic crime levy payment collection and enforcing as well?

Response: This will be very difficult. The BSB does not have a separate fee for AML-regulation; it is covered by the Practising Certificate Fee (PCF). The PCF can only be used for permitted purposes, a list of which you can find here:

https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF

Furthermore, any increase in the PCF will need to be approved by the Legal Services Board. Further information can be found here: <https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/section-51-practising-fees>

It is important to note that the Practising Certificate Fee, which in turn is based on barristers' income. Given the impact of Covid-19, our budget is currently under severe pressure. This extra resource requirement could not readily be absorbed.

Question: How would your costs/views on collection be impacted by:

- A. The small business threshold being set at £1m as opposed to £10.2m (meaning c. 13,500 businesses will be liable to pay the levy compared to 3,500)
- B. Businesses below any exemption threshold being required to: (i) submit their revenue figures to yourselves; or (ii) required to submit a nil return declaring their revenue is too low to be in scope of the levy. This is opposed to these businesses not being required to submit any information in relation to the levy.
- C. The levy rate being adjusted annually, as opposed to being fixed for multiple years

Response:

- A. Barristers and BSB entities will fall into the small business exemption if the threshold is set at the suggested level of £10.2 million, and also at £5 million. They will be exempt at £1 million if only the fee income that is derived from work under the Money Laundering Regulations is used as the basis of the calculation. If all fee income is counted, a small number of barristers may be captured if the threshold is set at £1 million. As the number will be very small, it would not meet the principle of cost-effectiveness to calculate and collect.
- B. Barristers must declare, when they renew their practising certificate, what [income band](#) they fall under. The top band is £1,000,001 and above. They must also declare whether they do work that falls within the scope of the Money Laundering Regulations. However, further work would be required to collect data on the proportion of the fee income that relates to work that falls within the scope of the Money Laundering Regulations. As the amount to be collected at that level would be very small (if any) this will not meet the principle of cost-effectiveness.
- C. Whether barristers do work that falls within the scope of the Money Laundering Regulations, and the proportion of work that does, will vary from year to year. Therefore an annual rate is preferable.



Question: In your role as an AML-regulator, what percentage of you regulated population fail to submit data / pay fees on time? When this occurs, how long does it take you to recover the data / debt, and at what cost?

Response: Barristers are not able to practice without a Practising Certificate. Barristers should complete their annual renewal by 31 March each year, but have a 1-month grace period until 30 April. At that point, all the barristers who failed to renew are recorded as unregistered. This means that as they failed to renew their Practising Certificate and pay the associated fee, they cannot practice (including conducting work under the Money Laundering Regulations). Anyone who reappplies for a Practising Certificate after 30 April must confirm that they have not practised in the interim period. Anyone who practices without a Practising Certificate will be liable for enforcement action if they conduct reserved activities. Typically, around 3 to 12 barristers annually are referred for possible enforcement, although the number was much higher this year, due to the unusual conditions with the pandemic.

Question: How many FTE work in your existing regulator-fee collection team?

Response: The Practising Certificate Fees are collected at Authorisation to Practise. This process is managed by our Records team, who administer the renewal process and are responsible for maintaining our records. There are 6 FTEs in the Records team.

Hybrid model

[Where supervisors collect the levy but can refer to HMRC any cases of non-compliance. HMRC also acts as overall administrator of the levy – this will mainly involve light touch oversight ensuring supervisors are paying into the Consolidated Fund]

Question: Is this model, where supervisors play no direct role in enforcing payments, more or less preferable to you than the other models? What impact would this have on your costs?

Response: This model is not described in the consultation document. Based on this limited description, this would be less preferable to the BSB than the single agency model for the reasons set out in our response to the consultation on the Supervisor model.

Other

Question: For the entities you supervise for AML purposes, do you hold information on how much of the activity they undertake is AML-regulated? If so, on average what percentage of their total revenue do you estimate they derive from AML-regulated activity? We are also interested in how this might vary for the different types of entity you regulate (this difference can be determined by size, type of activity undertaken, or other factors).

Response: We do not routinely collect this data, but from information collected so far, only a proportion of work that barristers and BSB entities do is likely to fall within the scope of the Money Laundering Regulations.



Question: Is there anything else you would like to add to your above answers? For example, is there an alternative collection model we should be considering?

We would add that the hybrid model was not set out in the consultation and do not understand the reasons for this. Clarity would be welcomed.