

BAR STANDARDS BOARD

REGULATING BARRISTERS

Office for Professional Body Anti-Money Laundering Supervision: Sourcebook update Consultation Paper CP22/16**

<https://www.fca.org.uk/publications/consultation-papers/cp22-16-opbas-sourcebook-update>

Q1: Do you agree that we should add the new chapters we have proposed to the OPBAS sourcebook? If not, please explain why. Is there different content you think we should include?

We welcome the explanation set out in the new chapters that the sourcebook amounts to guidance, not rules, that good practice examples are not intended to be exhaustive, and that outcomes can be achieved in other ways. We also welcome the focus on PBSs using their judgment in taking a risk-based, proportionate and flexible approach. We welcome and encourage open discussion with OPBAS during supervisory engagement with us, about how we set out to achieve the outcomes, in line with these statements.

Whilst OPBAS personnel helpfully emphasised this again in the consultation meeting, we think this position is sometimes at odds with the use of the word “should” throughout the sourcebook, which creates the appearance of mandating certain means of achieving the required outcomes.

The examples of good practice are helpful, but they tend to be drawn from the largest PBSs. We think it would be helpful to include more examples from smaller PBSs.

Q2: Do you agree that we have identified appropriate outcomes for chapter 3 to 11 of the sourcebook? If not, what outcomes do you think we should include?

We think that the sourcebook should also reflect good practice arising from how the wider regulatory role and activity of the PBSs contribute to AML effectiveness, particularly where there are strong governance arrangements in place for the separation of regulatory and representative functions. For example, our approach to authorisation is much more robust and onerous in ensuring standards than the minimum requirements set out in the MLRs, or those likely to be in place in an organisation that is a purely membership or registration body.

Q3: Do you have any comments on our proposed changes to the existing chapters of the sourcebook? If so, what do you think we should change?

We have some specific feedback in relation to certain changes as follows:

Chapter 2 – OPBAS approach to supervision

Paragraph 2.8 contains the following statement: “In assessing effectiveness, we consider the materiality of each of the areas assessed. We also look at how these work together to achieve outcomes in the context of the money laundering risks to which the professional body supervisor and its members are exposed. For example, we are unlikely to assess the enforcement arm of a professional body supervisor’s anti-money laundering framework as effective if its supervisory function is ineffective.”

This is contrast to the Red/Amber/Green ratings that the Legal Services Board publishes for each of the five areas in its assessment framework, which includes separate assessments of Supervision and Enforcement. We understand that OPBAS might assess Supervision effectiveness as so poor that it affects the overall rating of a PBS, and we do think it is important to assess how effectively the Supervision and Enforcement functions work together, but we think that the roles and processes in the BSB are sufficiently distinct to be able to assess the two areas separately. We think that it is helpful to break down the assessment of the two functions so that we can be clear about OPBAS’s view of what is working well, as well as what is not working well.

Chapter 3 – Governance

In relation to separation of advocacy and regulatory functions, the following is cited as an example of “less effective” practice: “The judgments of anti-money laundering supervisors are overruled because they may conflict with the commercial or advocacy functions of the professional body supervisor.”

We see this is a red line that is not acceptable and think that it should be articulated as such in the sourcebook.

Paragraph 3.11 says that “the Single Point of Contact (SPOC) should be appropriately senior within the professional body supervisor, preferably at board level or equivalent.” We have taken a slightly different approach, which we think is more practical. The Director General is the Responsible Officer with overall responsibility for monitoring and managing compliance with the BSB’s obligations under the MLRs. The SPOC for day-to-day engagement with external bodies is the Head of Supervision. We find this to be a more practical approach as the SPOC is the person with the technical expertise, time and knowledge of operational detail, who is better placed to engage with external stakeholders. This has long been documented in our Money Laundering policy, and OPBAS appears to have accepted this.

Chapter 5 – Supervision

There are two references to desk-based reviews in this chapter that appear to be defined inconsistently:

- Paragraph 5.6 says “Examples of some, but not all, of the tools professional bodies can use include: Desk-based reviews: supervisors may consider information about a business (see below) without contacting the business”.
- Under the “examples of more effective practice”, the definition suggests that the business would be contacted: “Desk-based reviews consider a range of information (such as annual returns from members, a sample of client files, members’ client due diligence and members’ websites) which enables an accurate assessment of each member’s level of risk by building a holistic view of the effectiveness of members’ controls.”

The definition used in the HMT Supervisor Return says: "A desk-based review should make use of supervisory tools to achieve the same outcome as an onsite supervisory visit."

This variance in definition reflects a difficulty we have had with the HMT return, which does not capture the nuance of the tools we use to supervise, which are also reflected in the sourcebook. For example, we often issue a questionnaire to a barrister, chambers or entity and conduct a risk assessment of their response. We then follow up those we have assessed as high risk with a visit – sometimes online, sometimes in person, depending on various factors. HMT requires us to count the number of desk-based reviews versus the number of on-site visits. That distinction is sometimes hard for us to make. A consistent definition would be helpful, although we think the distinction required in the HMT return is rather a blunt instrument as an indicator of effectiveness.

Chapter 6 – Information and Intelligence Sharing

The use of SIS and FIN-NET by PBSs has been discussed at length in various fora. We continue to have reservations about the level of apparent prescription that is set out in the sourcebook and would welcome further discussion with OPBAS to clarify their expectations specifically of the BSB, particularly in relation to information that we submit to SIS and when we search SIS. We developed our detailed written policy on this sometime ago, which we have shared with OPBAS on several occasions. We are keen to reach a settled position on this, which is risk-based and proportionate.

Paragraph 6.13 says that a PBS “should assess the quality of the content of SARs submitted by its supervised population as part of its risk-based approach to AML supervision to improve SARs’ effectiveness and use to UKFIU.” We think that this statement is too prescriptive and should take into account PBSs assessment of evidence about the quality of SARs, for example based on feedback from the NCA, so that our resources are appropriately targeted at areas of highest risk.

Q4: Do you agree with our analysis of costs in Annex 2 of this consultation? If not, please explain why, providing evidence of costs where possible.

We agree with this analysis and the additional cost to ensure effectiveness is broadly in line with our business plan.

28 September 2022