

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Anti-Money Laundering and Counter Terrorist Financing

Annual Report 2020/21

Foreword

Money laundering is a key enabler of serious and organised crime, which the Government estimates costs the UK at least £37 billion every year. The National Crime Agency assesses that it is highly likely that over £12 billion of criminal cash is generated annually in the UK and there is a realistic possibility that the scale of money laundering impacting on the UK is in the hundreds of billions of pounds annually¹. The Economic Crime Plan 2019-22² sets out the collective public-private response and we are working collaboratively with the Government, other regulators and law enforcement to respond to this threat.

Some types of money laundering need the services of legal professionals. It is therefore essential that, if you are a chambers, a barrister or a BSB entity that engages in work that falls within the scope of the Money Laundering Regulations, you understand the risks and your obligations under the Regulations so that you do not unwittingly act as a facilitator in the laundering of money. Our website contains information to assist you to comply with your obligations. It is regularly updated with new information about risk, and I would encourage you to monitor it for the latest information.

A particular challenge for barristers is to understand when the Regulations apply to the work that they do. Our Supervision Team has been working with chambers and individual barristers to help them to understand when the Regulations apply so that they make accurate declarations to us when they renew their practising certificates or their entity's authorisation. I would encourage chambers in particular to ensure that they are familiar with the Regulations and when they apply, and support their barristers accordingly. It is essential if we are to be an effective regulator that we have accurate data about those who conduct work in this area.

The General Council of the Bar is a designated supervisor under the Money Laundering Regulations. In line with our Internal Governance Rules, supervision is delegated to the Bar Standards Board in accordance with our protocol for ensuring regulatory independence and the provision of assurance. Under Regulation 46, we are obliged to publish an annual report containing information about the work we do as a regulator in this area, including how we encourage the reporting of actual or potential breaches and the measures we have carried to monitor, and enforce, compliance with the Regulations. This report provides an opportunity for us to share with you the work we are doing to prevent the Bar becoming involved in money laundering and what you can do to support that.

Mark Neale
Director General and Responsible Officer
27 October 2021

¹ HM Treasury Call for Evidence Review of the UK's AML/CFT regulatory and supervisory regime, July 2021
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004602/210720_MLRs_Review_Call_for_Evidence_final.pdf

² Economic Crime Plan 2019-22
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019-22_Economic_Crime_Plan.pdf

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How the Regulations apply to the Bar

1. All barristers have to declare at Authorisation to Practise (when they renew their practising certificate annually) whether they engage in work that falls within the scope of the Money Laundering Regulations (MLRs). BSB entities must do the same upon authorisation and annual renewal. The number of “relevant persons” (the term used in the MLRs) is as follows:

Table 1	Number of “relevant persons” that we regulate		
	2019	2020	2021
Self-employed barristers	976	571	477
BSB entities	14	11	13

2. The [National Risk Assessment](#) identifies Trust or Company Services Providers (TCSP) activity as high risk.

[Regulation 12](#) defines Trust or Company Service Provider as a firm or sole practitioner who by way of business provides any of the following services to other persons:

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act as a director or secretary of a company; as a partner of a partnership; or in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as a trustee of an express trust or similar legal arrangement; or a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

3. We are obliged to provide a register of TCSPs to HMRC (regulation 54). There is work ongoing nationally to gather more targeted information about this risk. However, this forms a very small part of the work undertaken by barristers and BSB entities (as table 2 shows) and their TCSP activity is small scale, serving clients local to the area they are based in. They do not act for offshore structures.

Table 2	Number of Trust or Company Service Providers (TCSPs)		
	2019	2020	2021
Self-employed barristers	1	1	1
BSB entities	3	3	2

4. The majority of barristers and BSB entities do not engage in relevant work. This is because contentious litigation is not within scope and because the BSB Handbook does not permit barristers or BSB entities to hold client money or manage their clients' affairs. Whilst barristers have responded positively to our requirement to declare that they conduct relevant work, they have not always been clear about when the Regulations apply to their work, resulting in a large number of incorrect declarations. The Supervision Team has engaged widely with barristers to improve the accuracy of declarations. This is important for the following reasons:

- The MLRs impose certain obligations on us, including to:
 - carry out risk-based supervision (regulation 17);
 - ensure that only those who are fit and proper persons are conducting work that falls within the scope of the Regulations (regulation 26); and
 - provide a register of Trust or Company Service Providers (TCSPs) to HMRC (regulation 54)

To enable us to comply with these obligations we need to know which barristers are undertaking work that is within scope.

- We are required to report this data to HM Treasury, as part of an annual return that is used to produce an annual supervision report³. This information is also used by our oversight regulator, the Office for Professional Body Anti- Money Laundering Supervision (OPBAS), to inform their programme of work. Inaccurate declarations distort the risk profile of the Bar and have the potential to lead to additional regulatory costs, such as through the fees that OPBAS charge us, the amount of resource that they allocate to supervisory activity and require of us to engage with them. Additionally, the Government recently consulted on imposing an economic crime levy⁴ on all relevant persons. Whilst it is unlikely that this will be imposed on barristers, given the anticipated minimum threshold, it is important for all stakeholders to have an accurate understanding of the extent to which the MLRs affect the Bar.

³ <https://www.gov.uk/government/publications/anti-money-laundering-and-counter-terrorist-financing-supervision-report-20182019> (at the time of writing, the 2019/20 and 2020/21 reports had not been published)

⁴ <https://www.gov.uk/government/consultations/economic-crime-levy-consultation>

5. In September 2020 we issued a [Regulatory Return](#) to 320 chambers, entities and sole practitioners. Of a total of 477 barristers that declared at Authorisation to Practise in 2021 that they do work under the MLRs, 287 (60%) were covered by the Regulatory Returns. Of the 287, 185 (64%) practise from chambers that have said their barristers have made the wrong declaration because they do not do work under the MLRs. We are in the processing of asking those barristers to check their declarations and amend their records if they agree. This will bring the total number of barristers doing work under the MLRs down to 291.
6. Of the remaining 102 barristers covered by the Regulatory Returns, one is a sole practitioner and the remainder practise from 18 chambers and two BSB entities. We are in the process of assessing their inherent risk, based on what they have told us about the nature and scope of work that they do, and updating our risk assessment accordingly. The information that we have collected to date indicates that, in most cases, relevant work comprises a very small proportion of their total practice, and most work is referred by solicitors who are regulated under the MLRs. The inherent risk is therefore likely to be low in most cases. We will conduct further supervision work with those we identify as highest inherent risk. Our further supervision plan for these will be fully formulated once we have completed our analysis and received the further information that is now being requested.

Our assessment of risk

7. Whilst the Government, in its [National Risk Assessment](#), assesses the risk of Money Laundering in the legal sector as high, we assess the risk for barristers and BSB entities to be low for the following reasons:
 - Practising barristers do not typically engage in conveyancing and only a very small minority act as Trust or Company Service Providers, which are the two services identified as at highest risk for money laundering in the National Risk Assessment.
 - Barristers and BSB entities are prevented by the rules in the BSB Handbook from holding client money or managing their clients' affairs.
 - The majority of instructions are referred by solicitors or other relevant persons under the Money Laundering Regulations, who are obliged to conduct their own Customer Due Diligence and therefore provide a first line of defence in assessing risk.
8. The most relevant area of risk is commonly referred to by the Government as "professional enablers" - where independent legal professionals are complicit, knowingly or unknowingly, in facilitating the laundering of money, by:
 - helping to create complexity such as setting up networks of corporate structures to acquire illicit funds and provide anonymity for the criminal;
 - through their involvement, giving an appearance of respectability; and/or
 - through conducting sham litigation.
 - Under Regulation 17, we are required to identify and assess the money laundering and terrorist financing risks associated with the Bar. We have published [information on our website](#) for this purpose.

Breaches of the Money Laundering Regulations

Measures in place to ensure that breaches of the Regulations are reported to the BSB

9. There are a number of ways that barristers and others can report breaches, or potential breaches to us:
- All barristers and BSB entities have an obligation under the BSB Handbook to [report serious misconduct](#) by themselves or others.
 - Anyone who has a concern about the conduct of a barrister or a BSB entity can make a [report](#) to us. Staff in the Contact and Assessment Team, which is responsible for making an initial assessment of reports, are provided with training to ensure they can identify red flags that might indicate a risk of money laundering.
 - We work closely with other regulators and have signed a number [Memoranda of Understanding](#) in order to support sharing of intelligence where appropriate. We also subscribe to the Financial Conduct Authority's Shared Intelligence Service.
 - Our [Money Laundering Hotline](#) provides an additional platform. It is a confidential service that anyone can use to report a concern to us about a person or an organisation we regulate, in connection with Money Laundering. During this period, we received no reports to the hotline.
 - As part of our ongoing programme of supervision, chambers and entities are required to complete a self-assessment of compliance with the Regulations.
 - Two staff in the Supervision Team have undergone security vetting to enable them to receive reports from the National Crime Agency relating to persons we authorise.

Breaches of the Regulations reported to the BSB and action taken

Table 3	Number of potential breaches reported to the BSB	
	2019/20	2020/21
Cases reported to the BSB and assessed but no further action taken	1	1
Cases where supervisory action was taken	2	3
Cases investigated by the Investigations & Enforcement Team where no enforcement action was taken	0	0
Cases where enforcement action was taken (barrister disbarred)	0	1
Cases under investigation at year end	2	2

The barrister that was disbarred had been struck off the roll of solicitors for conduct while in practice as a solicitor, which included breaching the Money Laundering Regulations. Details of the case are published on our [website](#).

Themes arising from our supervision work

10. Our proactive supervision work this year was focussed in three areas:

- following up the actions identified in our reviews of TCSPs and tax advisors in the prior year;
- conducting spot checks of practice risk assessments, which was identified as an area of weakness in the TCSP and tax reviews; and
- gathering information about the next cohort identified as a priority for review through the issue of Regulatory Returns, which we are using to identify where further work will be focussed.

11. Key themes that have emerged from this work are shown below. Where we have identified areas of non-compliance, we have set and monitored actions for follow-up with the relevant chambers, entities or sole practitioners, who have engaged well with this process.

We encourage those that have not yet been subject to a supervision review to consider whether they have adequate controls in these areas.

Policies, controls and procedures

[Regulation 19](#)

Relevant persons must document policies, controls and procedures to mitigate and manage the risks that you have identified, regularly review and update them and communicate them within your practice, as relevant. The policies, controls and procedures must include:

- a) risk management practices;
- b) internal controls;
- c) customer due diligence;
- d) reliance and record keeping;
- e) the monitoring and management of compliance with, and the internal communication of, such policies, controls and procedures.

They should be proportionate with regard to the size and nature of your practice.

12. Whilst self-employed barristers are individually responsible for compliance with the MLRs, certain controls and procedures are carried out by clerks or other staff. Documented chambers-wide policies and procedures help to ensure consistency between all relevant barristers and chambers' staff, but we found they were not always available.

13. In some cases, documented policies or procedures provided no or insufficient detail to indicate when, on a risk basis, Enhanced Due Diligence and ongoing monitoring should be carried out.

Risk assessments

Regulation 18(1)

A relevant person must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.

Regulation 18(2)

In carrying out the risk assessment required under paragraph (1), a relevant person must take into account:

- a) Information made available to them by the supervisory authority under regulations 17(9) and 47, and
- b) Risk factors including factors relating to:
 - (i) Its customers;
 - (ii) The countries or geographic areas in which it operates;
 - (iii) Its products or services;
 - (iv) Its transactions; and
 - (v) Its delivery channels

Regulation 18(4)

A relevant person must keep an up-to-date record in writing of all the steps it has taken under 18(1).

14. Self-employed barristers and BSB entities must conduct, document and maintain up to date a practice risk assessment. These were not always immediately available and for this reason we extended our testing and conducted a spot check of a small sample of 10 more self-employed barristers this year. Most of the latter sample, however, reviewed their practice and concluded that they did not in fact engage in relevant work under the MLRs. This was in line with our expectations, when taking into account our knowledge of their practices.

Whilst there is no obligation under the MLRs for chambers to conduct a risk assessment, we would encourage them to do so in order to ensure that risks to chambers as a whole are identified and managed. For example, it helps to ensure that there is a collective understanding of the potential impact of the practice of individual barristers on chambers if they engage in higher risk services, have higher risk customers or act in higher risk jurisdictions than chambers as whole has a risk appetite for (ie. the level of risk that a chambers is prepared to accept).

Politically Exposed Persons

Regulation 35

You must have in place appropriate risk-management systems and procedures to determine whether a customer or the beneficial owner of a customer is:

- (a) a politically exposed person (a “PEP”); or
 - (b) a family member or a known close associate of a PEP,
- and to manage the enhanced risks arising from the relevant person’s business relationship or transactions with such a customer.

This includes a requirement under 35(5)(b) to take adequate measures to establish the source of wealth and source of funds.

15. We found that documented policies did not always explain the procedures for identifying PEPs and did not always address how source of wealth and source of funds checks should be conducted.

Training

[Regulation 24](#)

Barristers and relevant staff in chambers must undertake and maintain records of training in:

- the law relating to money laundering and terrorist financing; and
- how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing.

The BSB Handbook requires that barristers of more than three years' standing must complete a plan of the CPD that they are going to undertake by setting learning objectives and planning the types of CPD activities that they are proposing to undertake. They must keep a record of CPD activities undertaken and reflect how they have met the learning objectives and what further CPD they need.

<https://www.barstandardsboard.org.uk/for-barristers/cpd.html>

16. Training requirements were not consistently met and, where they were, records were not always maintained.

Financial sanctions

[The Office of Financial Sanctions Implementation \(OFSI\)](#), which is part of HM Treasury, is responsible for the implementation of financial sanctions in the UK. Financial sanctions are restrictions put in place by the UN, EU or UK to achieve a specific foreign policy or national security objective.

In order to act for a client who is subject to a sanction, a barrister will need to apply for a licence from OFSI before proceeding. If a barrister decides not to act for a client who is subject to a sanction, they are required to make a report to OFSI.

17. Whilst there was awareness of the sanctions regime, processes to check for sanctions were commonly not clearly defined and not reflected in written policy and procedure documents.

Suspicious Activity Reports

[Section 330 of the Proceeds of Crime Act 2002](#) says that a person commits an offence if they fail to disclose if they know or suspect, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and the information on which their knowledge or suspicion is based came to them in the course of a business in the regulated sector. A similar provision is set out in [Section 19 of the Terrorism Act 2000](#).

[Regulation 19](#) of the MLRs says that relevant persons must have policies, controls and procedures in place for the reporting of suspicions.

18. We found that BSB entities did not always have written procedures to set out how suspicions should be handled, for example if a member of staff has a suspicion that they should report to the nominated officer for consideration.

How we engage with others

19. This area continues to receive considerable national focus and we continue to engage extensively with government, OPBAS, law enforcement, other regulators and other stakeholders in order to identify risk, share good practice and collaborate in responding to risk. We do this through:

- The Legal Sector Information Sharing Expert Working Group comprising the legal sector regulators and representative bodies, who meet together with the National Crime Agency, OPBAS and HM Treasury.
- The Legal Sector Affinity Group, comprising the legal sector regulators and representative bodies.
- The Legal Sector Supervisors forum, comprising those conducting supervisory activity, separate from the representative bodies where relevant.
- The Anti-Money Laundering Supervisors Forum, comprising the regulators and representative bodies of the legal and accounting sectors, the statutory supervisors (The Financial Conduct Authority, HMRC and the Gambling Commission), Companies House, HM Treasury, the National Crime Agency and OPBAS.

Looking ahead

20. The Government has recently consulted on some technical changes to the Money Laundering Regulations and intends to introduce a new Statutory Instrument ⁵ in spring 2022. They also published a Call for Evidence ⁶ in order to assess the effectiveness of the UK's anti-money laundering and counter terrorist financing regulatory and supervisory regime. They will publish their response to this in 2022. You can read our [consultation responses on our website](#).

21. HM Treasury plans to introduce new provisions into the MLRs through the above Statutory Instrument to require both the UK government and private sector to carry out Proliferation Financing (financing of the proliferation of chemical, biological, radiological and nuclear (CBRN) weapons) risk assessments in the same way that they do currently for Money Laundering and Terrorist Financing. It published a [national risk assessment](#) in September 2021. In relation to the Bar, the two key risk areas would seem to be TCSP activity and ensuring policies and processes are in place to prevent sanctions breaches.

⁵ <https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022>

⁶ <https://www.gov.uk/government/consultations/call-for-evidence-review-of-the-uks-amlctf-regulatory-and-supervisory-regime>

22. The BSB is required to take appropriate action against barristers and BSB entities where they have failed to meet their obligations. Regulation 49(1)(d) requires that effective, proportionate and dissuasive disciplinary measures are in place. The enforcement regulations in the BSB Handbook and the Bar Tribunals and Adjudication Service (BTAS) [Sanctions Guidance](#) provide the framework for sanctions. Changes to the [guidance are currently subject to consultation](#) and this includes a proposal to include an explicit reference to the MLRs in the misconduct group “Financial matters”. The starting point for this group is a medium level fine and goes up to disbarment. The consultation also considers revising the fine brackets, including the range of the medium level fine:

Current level	Current bracket	Proposed revised bracket	New description
Low	Up to £1,000	Up to £5,000	Sufficiently serious to justify a fine
Medium	£1,000 - £3,000	£5,000 - £15,000	Moderately serious
High	Over £3,000 and up to £50,000	£15,000 - £50,000	Serious misconduct that does not warrant a suspension to protect the public interest

The misconduct group “Financial matters” excludes dishonesty, which is a separate misconduct group. As set out in the Guidance, “*a finding of dishonesty will almost invariably lead to disbarment in all but the most exceptional circumstances*”.

Where to find more information

23. Our [website](#) contains useful information about Money Laundering and Terrorist Financing risks and barristers’ obligations under the MLRs, and is regularly updated. We have compiled a set of [FAQs](#) to help barristers and BSB entities to understand their obligations and if the work that they do falls within the scope of the MLRs.
24. We have worked closely with other legal sector regulators and this year we updated the [joint legal sector guidance](#), which now contains a wealth of information to support legal professionals to comply with their obligations. We also worked together with the Bar Council, the Bar of Northern Ireland and Scottish Advocates to provide a tailored chapter for barristers and advocates. We welcome feedback on this.
25. The Bar Council provides a confidential [Ethical Enquiries Service](#) for the benefit and assistance of barristers and their staff to assist them to identify, interpret and comply with their professional obligations.
26. You can contact us with any questions or feedback by emailing aml@barstandardsboard.org.uk