



REGULATING BARRISTERS

Sanctions and Illicit Finance Team
1 Blue
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

By email to: aml@hmtreasury.gsi.gov.uk

25 April 2017

Dear Sir/Madam

Call for Further Information – Oversight of the Anti-money laundering supervisory regime

Please find attached our response to the above call for information. If you have any questions, please contact me.

Yours sincerely

Julia Witting
Supervision Manager
Regulatory Operations Department
Telephone: 020 7611 1468
Email: jwitting@barstandardsboard.org.uk

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Call for Further Information – Oversight of the Anti-money laundering supervisory regime

Q1: Are these powers to monitor supervisors' activities and penalise poor practice sufficient? If more powers should be added, which powers might be?

Yes, the powers are sufficient.

Q2: Should the Office's powers to request information or attendance at interviews be extended to supervisors' members as well as supervisors themselves?

The work of OPBAS needs to be proportionate and cost effective. It may be appropriate for OPBAS staff to accompany BSB staff on an occasional supervision visit, but this should be limited to situations where OPBAS has evidenced concerns that the BSB's approach to supervision is inadequate or not targeted at where there is evidence of greatest risk. The powers to do so would need to be clearly set out so that barristers, chambers and authorised bodies are clear about OPBAS' right to access confidential information. However, we would not expect this to be a routine arrangement and we would not expect OPBAS to request information directly from barristers, chambers and authorised bodies.

Q3: Should the Office report annually on other issues, in addition to its performance against its objectives in that year, priorities for the coming year and expectations around emerging risks? If so, which issues should the Office report on?

Yes, OBAS should also publish its annual budget and accounts.

Q4: The government envisages the Office having representation at the Money Laundering Advisory Committee, the Anti-Money Laundering Supervisors Forum and engaging with the Accountancy and Legal Affinity Groups. What role could the Office best fulfil in each forum, and are there other fora the Office should attend – if so, which?

The BSB can see some merit in OPBAS being at least initially represented at each forum to ensure that they are abreast of developments in the regulation of money laundering and to share its own learning with the other attendees. It would be wise, though, to review this representation annually to ensure that it remains of value to OPBAS and to each forum.

Q5: How might the AML supervisory regime evolve over the next five to ten years, especially in the legal and accountancy services sectors? What are the advantages and disadvantages to the potential options – how might government help minimise the disadvantages?

The legal sector is already the subject of rigorous oversight regulation by the LSB. This oversight includes the supervisory elements of the BSB's regulation. Care needs to be taken to

avoid duplication of oversight and to ensure that intervention by an oversight body is proportionate and risk based.

It is important that there is close collaboration between supervisors across the legal sector and beyond to ensure that risk is applied consistently. The BSB anticipates that this collaborative approach will become more sophisticated in the next five years as intelligence gathering methods become more embedded and regulatory supervision more mature. It would be unwise for the government to take any radical steps to alter the current supervisory regime whilst it is still in its relative infancy unless there is evidence of regulatory failure. The BSB is not aware of such failure.

Each profession within the legal sector has separate representative and regulatory bodies. This ensures that there is independent regulation of professions with a focus on the public interest rather than self-interest. This model is enshrined within the Legal Services Act 2007. The BSB believes that regulatory independence is essential and any supervisory regime for AML should ensure that independence is not compromised.

Q6: Are there other issues you would like government to take into account as it considers increasing the oversight of AML supervision in the accountancy and legal sectors?

Yes, it is important to recognise that the BSB has a robust framework for regulatory independence under the Legal Services Act and has in place a risk-based approach to regulation and supervision.

Cost and proportionality are of paramount importance. At the first meeting with the OPBAS team at the FCA, we discussed the models of oversight supervision that exist in other sectors, particularly the Legal Services Board.

We would encourage you to consider the Regulatory Standards Framework (RSF) that is used by the LSB to monitor the regulatory performance of the front line legal services regulators. (A similar model is used by the Professional Standards Authority for healthcare regulators). The LSB has oversight of a wide range of regulators. There are very large regulators like the SRA, and very small regulators with less than 500 members and only one member of staff. Their regulated persons are involved in a range of practice areas and activities. The LSB's methodology is scaleable and flexible whilst being robust and consistent. It is a proportionate way to oversee regulators with differing regulated communities, governance arrangements and risks.

The LSB takes a truly oversight approach to its application of the framework; regulators self-assess their performance and progress against the framework and the LSB forms its own view on material and evidence provided in support of the self-assessment. It's largely a desk based exercise but also builds in stakeholder engagement to gather views on how effective each regulator is.

At the BSB, we have used the RSF to develop good practice regulation and have found it a very useful measure of performance and progress.

The LSB is shortly to consult on an updated approach to the RSF with the intention of being risk based in their oversight. They are proposing to take a differentiated approach to each regulator depending on the risks (both regulatory and corporate) that they present. We very much support this approach.