



Memorandum of Understanding: Anti-Money Laundering and Counter-Terrorist Financing

1. Participants

- 1.1. The General Council of the Bar of England and Wales (“the Bar Council”), and
- 1.2. The Bar Standards Board (“the BSB”).

2. Introduction

- 2.1 This Memorandum of Understanding (MoU) sets out how the Bar Council and the BSB will work on matters relating to Anti-Money Laundering /Counter-Terrorist Financing. It should be read in conjunction with the [Protocol for ensuring regulatory independence and the provision of assurance](#).
- 2.2 This MoU is underpinned by the Legal Services Board’s (LSB’s) Internal Governance Rules (IGRs), particularly IGR 1 (‘The Overarching Duty’) and IGR 3 (‘Provision of Assurance to the Approved Regulator’). The Approved Regulator is the Bar Council.
- 2.3 IGR 1 provides that the Bar Council has an overarching duty to ensure that the BSB’s exercise of its regulatory functions is not prejudiced by any representative functions, that arrangements are in place to separate its regulatory and representative functions and that the BSB maintains the independence of its regulatory functions.
- 2.4 IGR 3 states that the BSB shall provide sufficient information to the Bar Council as is reasonably required for the Approved Regulator to be assured of the regulatory body’s compliance with section 28 of the Legal Services Act 2007.

3. Purpose and scope

- 3.1 This MoU clarifies the respective roles and responsibilities of the Bar Council and the BSB with respect to all anti-money laundering and counter-terrorist financing (AML/CTF) activity.
- 3.2 Specifically, this Memorandum of Understanding clarifies respective roles and responsibilities in relation to the eight areas listed in the Office for Professional Body AML Supervision (OPBAS) Sourcebook:
 - Governance;
 - Risk-based approach
 - Supervision
 - Information Sharing between Supervisors and Public Authorities
 - Information and Guidance for Members

- Staff Competence and Training
- Enforcement
- Record Keeping and Quality Assurance.

4. Legislation: The Bar Council as the Supervisory Authority

- 4.1 The Bar Council is the “supervisory authority” for barristers in England and Wales under *The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (the Regulations), which provide the following at sections 7(1)(b) and Schedule 1(11):

7.—(1) Subject to paragraph (2), the following bodies are supervisory authorities in relation to relevant persons—

(b) each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it, or regulated or supervised by it;

“Schedule 1

(11) The General Council of the Bar”.

5. Delegation of supervisory function

- 5.1 Under regulation 14(a) in its constitution, the Bar Council has the power to delegate any of its functions:

“The Bar Council may delegate any of its functions and powers to (and may make or approve any arrangements for the delegation of those functions by) the Bar Standards Board or any committee, Officer or employee of the Bar Council and at any time revoke any such delegation.”

- 5.2 The BSB’s functions are set out in its constitution at paragraphs 4-7:

“Functions of the BSB

4. The BSB is responsible for performing all regulatory functions of the Bar Council as defined in section 27(1) of the Legal Services Act 2007. These regulatory functions have been delegated to the BSB in entirety.

5. The BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.

6. The BSB must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.

7. The BSB has no representative functions as defined in section 27(2) of the Legal Services Act 2007.”

- 5.3 The Legal Services Act 2007 at section 27(2) defines “regulatory functions” as follows:

“Regulatory and representative functions of approved regulators

(1) In this Act references to the “regulatory functions” of an approved regulator are to any functions the approved regulator has—

(a) under or in relation to its regulatory arrangements, or

(b) in connection with the making or alteration of those arrangements.

(2) In this Act references to the “representative functions” of an approved regulator are to any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it.”

5.4 The Bar Council as the Supervisory Authority for its members under the Regulations therefore delegates the following functions in the OPBAS Sourcebook to the BSB as follows.

6. Division of responsibilities

6.1. The Bar Council will retain these areas in the following capacities:

6.1.1. Governance

Under Regulation 49 in the Regulations, the Bar Council as the Supervisory Authority is required to make arrangements to ensure its supervisory functions are exercised independently of any of its other functions which do not relate to disciplinary matters, and provide adequate resources to carry out the supervisory functions.

6.1.2. Information Sharing between Supervisors and Public Authorities

Under Regulation 50, the Bar Council will take such steps as it considers appropriate to co-operate with other supervisory authorities, the Treasury and law enforcement in relation to information sharing in the interests of AML/CTF. The Bar Council will deal with any potential intelligence received through the Ethical Enquiries Service (EES) according to its EES Whistleblowing Policy.

6.1.3. Information and Guidance to Members

6.1.3.1 The Bar Council provides the Ethical Enquires Service in its capacity of providing ethical advice to the profession. This service includes written and oral advice as well as the publication of guidance documents. The full terms of this service are published on the Ethics and Practice Hub. Notably:

- i. The Bar Council publishes documents to assist barristers on matters of professional conduct and ethics in particular types of situations. These are not “guidance” for the purposes of the Handbook I6.4. Neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman are bound by any views expressed in such documents.
- ii. The Ethical Enquiries Service is a confidential service. All information provided to barristers through this service, all oral and written responses which the Bar Council gives to ethical enquiries, and any assistance which it gives in or in relation to such enquiries,

will be kept confidential to the Ethics Committee, ethical advisors and all those connected with providing the service. This is subject only to barristers' consent and to such qualifications as may be provided for by law.

- iii. Those wishing to report serious misconduct, including suspected money laundering or terrorist financing, must do so to the BSB and not to the Ethical Enquiries Service. Under rC68.4 in the BSB Handbook, members of the Bar who become aware of serious misconduct as a result of their work on the Ethical Enquiries Service are specifically exempted from the obligation to report it to the BSB.
- iv. Under the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*, as the Supervisory Authority for the Bar of England and Wales where the General Council of the Bar knows or suspects, or has reasonable grounds for knowing or suspecting, that a person is or has engaged in money laundering or terrorist financing, it is obliged to provide that information to the National Crime Agency. In these circumstances it may therefore not be possible to maintain the confidentiality of the enquiry. This obligation is distinct from the obligations to report serious misconduct under rC66 of the Handbook, to which the exemption for the Ethical Enquiries Service at rC68.4 applies.

6.1.3.2 The Bar Council provides content on AML/CTF for the joint Legal Sector AML Guidance. The Bar Council may also provide content on AML/CTF within its own guidance, in its capacity of providing ethical advice to the profession. This advice will not be inconsistent with the Joint Legal Sector AML guidance. Furthermore, in relation to its role of providing information and guidance on AML to its members

- i. The Bar Council will retain a responsibility for *staff competence and training* to ensure that all its staff issuing information and guidance on AML are competent and appropriately trained to do so;
- ii. Retain a responsibility to *record* any decision in relation to providing information and guidance on AML to its members or to testing the *competence* of any staff responsible for issuing such information and guidance, and
- iii. Ensure that any information and guidance on AML provided to its members passes through a quality assurance process.

6.2 While retaining the areas as set out above, the Bar Council will delegate to the BSB in its capacity as the independent regulator these areas in the following capacities:

6.2.1 Governance

The BSB will ensure it exercises its regulatory function independent of the Bar Council. The BSB's governance structure is underpinned by its Constitution and supported by policies and procedures, including an AML Policy.

6.2.2 Risk-based approach

The BSB adopts a risk-based approach to regulation by taking an evidenced-based approach to determining risks and allocating resources accordingly. The BSB will create and maintain risk profiles of its members to ensure risk-based, proportionate regulation.

6.2.3 Supervision

The BSB will supervise its members in accordance with its Supervision Strategy and Framework, targeting resources at areas of greatest risk and applying the right supervisory tool to each situation. Through its supervision work, the BSB will seek to educate its members and promote effective risk management and compliance with the Handbook and other regulatory requirements.

6.2.4 Information Sharing between Supervisors and Public Authorities

The BSB will work closely and regularly with other regulators, representative bodies, Law Enforcement and others through various AML forums and one-to-one contacts to support the sharing of information and good practice in accordance with Regulation 50(1).

6.2.5 Information and Guidance to Members

The BSB will provide content on AML/CTF for the joint Legal Sector AML Guidance. The BSB may also provide content on AML/CTF within its own guidance, in its capacity as the regulatory body. This advice will not be inconsistent with the Joint Legal Sector AML guidance..

6.2.6 Staff Competence and Training

The BSB will ensure its staff are adequately trained and equipped to carry out supervisory functions and ensure updates and knowledge of regulatory developments are cascaded across the BSB.

6.2.7 Enforcement

The BSB will take appropriate action against its members where they have failed to meet the standards required of the BSB Handbook and the Regulations. The enforcement regulations in the BSB Handbook provide effective, proportionate and dissuasive disciplinary measures in accordance with Regulation 49(1)(d)

6.2.8 Record Keeping and Quality Assurance

The BSB will document and maintain records of significant decisions related to its AML supervision. The BSB will also ensure all actions taken in the course of its supervision are adequately recorded and maintained in accordance with Regulation 46(2)(d).

7 Correspondence between the Bar Council and BSB

7.1 The participants will correspond on AML/CTF regulatory and policy issues as appropriate under the *Protocol for Ensuring Regulatory Independence and the Provision of Assurance* (the Protocol). Where necessary, any issues arising will be dealt with under the Protocol.

Signed by the below representatives on date: 25 March 2021

Bar Council

Name: Malcolm Cree CBE

Position: Chief Executive



Signature:

BSB

Name: Mark Neale

Position: Director General



Signature: