BAR STANDARDS BOARD

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

17 August 2017

Dear Sir/Madam

Consultation – AML Supervisory Regime

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

Yours sincerely

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Anti-money laundering supervisory review: consultation

Q1: Do the draft regulations deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?

We agree that the draft regulations provide the framework to deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs.

The success of OPBAS will depend on how the framework is implemented. It is envisaged that OPBAS will report on its performance against its objectives. We welcome this. The objectives should be measurable and formally reviewed post implementation.

The resourcing and scope of work of OPBAS must be proportionate to risk and cost effective, focusing on an oversight approach to its application of the framework. In this respect, we think that the Legal Service Board's model, in which 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, works in a cost-efficient way. OPBAS should not duplicate the oversight role already performed by the LSB, and we think that OPBAS could gain some of its assurance from the conclusions drawn by the LSB. We are encouraged by the ongoing dialogue between OPBAS and the LSB – it is clearly in everyone's interests that duplication of oversight is avoided.

We welcome the government's intention that OPBAS's focus will be to work constructively with the PBSs to ensure high standards of supervision. We would hope to work with OPBAS to ensure effective use of resources, including in determining:

- the scope of supervision work by the BSB;
- the need to commission a report by a skilled person and the scope; and
- the value in subscribing to intelligence-sharing arrangements such as the Financial Crime Information Network (FIN-NET) and Shared Intelligence Service (SIS).

The BSB is primarily funded through a Practising Certificate Fee (PCF) which the Bar Council raises on our behalf under s51 of the Legal Services Act 2007 (subject to approval by the LSB). The PCF is collected annually in March, with our budget agreed in the preceding September for the business year beginning the following April. Any OPBAS fee to be paid by the BSB would need to be factored into this cycle and recovered by the profession. It may be helpful for the regulations and associated guidance to reflect this, not least because such regulatory costs are ultimately passed on to consumers, although we do not anticipate a need for further legislative amendments.

We note that the draft regulations at 20(9) - (10) refer to the Data Protection Act 1998 and that it will need to reflect the new General Data Protection Regulation coming into force on 25 May 2018.

Q6: Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings. Please round your answer to the closest £100.

OPBAS has set out an estimated time requirement of 120 days annually at a cost of £34,800 for each PBS. Whilst we understand that is an average across all regulators of all sizes, we are of the view that this is a gross over-estimation of the level of engagement that OPBAS will need to have with the BSB given the size of the Bar and the extent of work that barristers do that falls under the MLRs. We anticipate that engagement with OPBAS will be covered from existing resources.

Q7: Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS's guidance going forward? If more or less, please provide the estimated annual additional cost or saving. Please round your answer to the closest £100.

We have already prioritised resources to this area in the current year business plan https://www.barstandardsboard.org.uk/media/1826204/bsb_business_plan_2017-18.pdf and anticipate that it will remain an area that needs resources allocated to it next year to further develop our approach to supervision, carry out a thematic review, liaise with OPBAS, support the conclusion of the FATF Mutual Evaluation Review process and further develop the Joint Legal Sector Guidance. We anticipate that this will be covered from existing resources.

We will soon be developing our strategic plan for the three year period commencing 2019/20 and, when doing so, will consider whether to commit additional resources to the area of unregistered barristers (not limited to AML). We understand that the issues involved in oversight of the unregulated market are not limited to the BSB. We have already raised this with HM Treasury and intend to have further discussions, together with other legal regulators.

Q8: In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for businesses you would like the government to take into account? If yes, please outline these and provide estimated costs or savings. Please round your answer to the closest £100.

OPBAS expects PBSs to participate in existing information sharing arrangements such as the Financial Crime Information Network (FIN-NET) and Shared Intelligence Service (SIS). The BSB is currently not a member of these networks and there is no requirement in the regulations to subscribe to them. We would need to have a clear business case if we were to subscribe to these services; the costs of accessing these networks must be proportionate to the risk presented by the Bar and provide genuine added value to the way we supervise the Bar and share information with other stakeholders.

As noted above, regulation 13 allows for the possibility of independent review, which would need to be funded by the PBSs. The likelihood of this being required, and the cost, is unknown. Again, this must provide genuine value for money. The FCA consultation on the OPBAS Sourcebook suggests that a PBS's supervisory work should be subjected to quality assurance testing. Considering this, it may be beneficial, from a cost saving perspective, for the BSB to combine this with the third-party review as an alternative to carrying out an additional internal quality audit.

Other benefits may include greater consumer protection, additional tools for supervision, increased confidence in the profession and greater co-operation between regulators and law enforcement.