

BSB submission to LSB consultation on economic crime guidance

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OVERVIEW

This is the Bar Standard Board's (BSB) response to the Legal Services Board's (LSB) consultation on guidance for the new regulatory objective on economic crime.¹

In summary, the BSB welcomes the proposed guidance. Economic crime covers a broad list of crimes (per the Economic Crime and Corporate Transparency Act 2023). The government has sought to identify where it thinks efforts should be focussed in the Economic Crime Plan² and associated action plan. We see this guidance as helpfully clarifying the LSB's expectations of our role and hope that this will align well with the national strategy.

RESPONSE TO CONSULTATION QUESTIONS

Proposed Statutory Guidance on the New Regulatory Objective on Economic Crime

Q1: Do you agree that guidance with outcomes is the right approach to take to assist regulators to pursue the new regulatory objective alongside the others in section 1 of the Act?

We agree that guidance with outcomes is an effective approach over prescriptive guidance.

The guidance addresses collaboration, and we welcome that. We have seen collaboration work well in this space through the anti-money laundering forums and the Legal Sector Affinity Group has already expanded its terms of reference to capture a broader view on the economic crime agenda, in anticipation of this regulatory objective. There are active forums that have been established to implement the actions that accompany the National Economic Crime Plan, which many of us are involved in (notably through the Professional Enabler strategy and working group). This is an area where effective collaboration and a shared understanding of risk across stakeholders is key.

Q2: Are the four outcomes we have identified in the guidance the rights ones? Are there any others we have missed?

We believe the four outcomes are sufficient and wide enough to address current issues and do not feel the need for any further outcomes at this stage.

We would recommend that the LSB schedules regular engagement with the regulators to ascertain how the guidance is working in practice, and whether any additional outcomes are needed. We note the LSB's commitment to periodically reviewing the guidance; it would be helpful to be made aware of that schedule as and when set.

¹ See: <https://legalservicesboard.org.uk/wp-content/uploads/2024/11/LSB-Economic-Crime-Regulatory-Objective-Guidance-Consultation-15-Nov-24.pdf>

² <https://www.gov.uk/government/publications/economic-crime-plan-2023-to-2026>

Q3: How might the LSB and Regulators better support the sharing of case studies? What other information should be shared to support meeting the new regulatory objective?

We would recommend supporting and where possible enhancing existing arrangements, as the best means to achieve this aim.

The BSB is a member of the Legal Sector Intelligence Sharing Expert Working Group (ISEWG). The Legal ISEWG was set up by the Office for Professional Body AML Supervision (OPBAS) to encourage intelligence and information sharing between legal sector professional body supervisors, AML statutory supervisors and law enforcement agencies. Further information can be found in its terms of reference [here](#).

Membership of this group helps us to stay up to date with emerging risk and build collaborative working relationships. The LSB could look to work with OPBAS to expand the ISEWG's remit to include economic crime rather than set up new mechanisms. The Professional Enabler working group (formed to support the Economic Crime Plan) is currently working to improve the information sharing between the legal sector supervisors and law enforcement. Any support from the LSB in this space would be welcomed.

Q4: Do you know of any case study examples that would assist regulators in demonstrating how legal professionals may knowingly or unknowingly facilitate economic crime?

The National Crime Agency issues 'Alerts' or typologies on various economic crime topics to promote awareness of these issues and aid stakeholders in complementing their existing knowledge and improving their business processes and procedures. Past Alerts have covered topics such as shell companies and tax evasion, use of the gold market, money mules and fraud.

Although these Alerts provide useful information, the NCA have put restrictions on how far they can be shared. The Alerts are categorised as not for public dissemination or to be included on public facing websites and therefore, we are unable to share these with the Bar which limits their effectiveness. However, the legal sector is working with the NCA to address this.

Outcome 1 – Understand the risks and issues that may lead to the regulated sector facilitating economic crime and take appropriate actions to prevent and detect their occurrence

Q5: Do you agree that undertaking a risk analysis will enable regulators to target their approaches for their regulated communities most effectively?

Yes. We agree that understanding who is impacted by economic crime and how economic crime is facilitated is key to enabling regulators to be effective in this area.

Q6: Do you have any other comments on this proposed outcome?

As noted in question 3 above, there is work underway to address the gap in intelligence from law enforcement and other government agencies such as OFSI. This is key to effective understanding of risk that enables us to be targeted in a risk and evidenced based way in our approach to supervision.

Outcome 2 – Ensure that authorised persons understand their duties and the risks they face related to economic crime and are supported to act in a manner that upholds the rule of law and adherence to the professional principles.

Q7: Do you agree with the proposed outcome for regulators to help their regulated communities understand the risks they may face concerning economic crime, and support them to avoid facilitating economic crime?

We agree with this outcome.

Q8: Do you have any other comments on the proposed outcome?

No.

Outcome 3 – Monitor authorised persons’ compliance with any standards developed by regulators to support the prevention and detection of economic crime and address instances where authorised persons fail to comply

Q9: Do you agree that an outcome relating to monitoring and enforcement will help regulators detect and prevent economic crime?

We agree with this outcome.

Q10: Do you have any other comments on the proposed outcome?

We will have the highest impact if we are risk and evidence based in our approach to supervision and our supervised population are risk-based in their approach to compliance. The BSB already undertakes significant work in the field of economic crime, with the BSB Handbook and our regulatory framework enabling us to take enforcement action. To complement our work, we need good quality information and data from law enforcement about where the highest areas of risk and emerging trends are to target resources further.

Outcome 4 – Regularly evaluate any implemented standards and procedures to ensure they continue to be fit for purpose in addressing economic crime risks over the long term.

Q11: Do you agree that an outcome around continued monitoring and evaluation will help ensure any measures regulators decide to put in place are effective to address economic crime into the future, there should be?

We agree with this outcome.

Q12: Do you have any other comments on the proposed outcome?

We have no further comments.

Implementation and monitoring

Q13: Do you agree with our proposed plan for implementation?

While we appreciate the urgency of the intervention, in light of the proposed implementation timeframe (i.e. that the final guidance will take effect immediately on publication), it would be helpful to have clarity on the LSB’s expectation for the “day one” situation, with specific consideration of outcomes B, C, and D. If this could be provided prior to the launch date that would provide us with some opportunity to prepare our teams involved in this area of activity.

We welcome the proposal to monitor this through the Sourcebook.

Equality Impact Assessment

Q14: Do you have any comments or concerns about the equality impacts of our proposed guidance?

In relation to the Bar, new regulations tend to have a greater impact on small chambers and sole practitioners, who are less well-resourced to manage regulatory compliance. Sole practitioners are a more ethnically diverse population.

Q15: Do you consider we have identified the right groups, or do you have any evidence relating to the potential impact of our proposals on other groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

We agree with the groups identified.

Further work in this area, not least better intelligence sharing between law enforcement and legal service regulators, may uncover subsets within those groups that need specific mitigating measures, or new groups

Q16: Are there any wider equality issues and interventions that we should take into account?

We have not identified any issues or interventions at this time. However, we would recommend regular review of the data and intelligence to ensure the guidance is kept up to date in light of new and emerging issues.

Impact Assessment

Q17: Do you have any comments on the potential impact of the draft guidance, including the likely costs and anticipated benefits?

As noted above, new regulations have greater impact on small chambers and sole practitioners, who are less well-resourced to manage regulatory compliance. Overall, we would like to highlight that the costs of compliance should be proportionate to the risks identified.

Q18: Do you have any other comments about the proposed guidance?

We have no further comments.

ENDS