

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By email to: gc17-07@fca.org.uk

19 October 2017

Dear Sir/Madam

**Guidance consultation GC17/7 - Office for Professional Body Anti-Money Laundering
Supervision: sourcebook for professional body supervisors**

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

Yours sincerely

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

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Anti-money laundering: consultation

Q1: Do you have any comments on the proposed sourcebook for professional body supervisors? Would greater detail or a more prescriptive approach be helpful?

Overall, we think that the level of detail is about right and not too prescriptive. We have some specific comments as follows:

a) Measuring success and meeting expectations

In the section of the consultation headed “measuring success” you have said: “OPBAS can be considered a success if perceptions of the adequacy and consistency of anti-money laundering supervision performed by professional body supervisors – among law enforcement agencies, government departments, international observers and others – improve once it begins its work.” Perception is a very subjective measure and (as far as we are aware) there is no baseline against which to measure improvement. We would welcome some further clarity about how this will be measured, for example with a representative sample and a target level to aspire to. We think this is important in order to ensure that there is a basis and plans in place to evaluate this initiative (which is not mentioned in the consultation), so that the cost of regulation is justified and the approach to regulation is evidence-based, transparent and proportionate.

With this in mind, we note that the chart in section 1.2 does not recognise the fact that there is separation, through robust governance arrangements, between the Bar Council (the representative arm) and the BSB (regulatory arm) as required by the Legal Services Act 2007. This ensures that regulation of the profession is carried out independently from the representative arm. It would be helpful to reflect that in all documentation (particularly that which is made public) because it will ensure that there is a shared understanding across all stakeholders in government, law enforcement, the FATF and other interested parties in the third sector. Oversight by OPBAS, referred to in 1.3, will be in relation to the BSB.

You also said the outcome you are seeking is “to ensure professional body supervisors meet the standards expected of them when they pursue their anti-money laundering supervision”. At 3.8 you say that OPBAS will ensure that “professional bodies supervise to a consistently high standard”. Whilst you say that “the sourcebook is a key part of how OPBAS can achieve this success, by making clear what its expectations of professional

bodies are”, it is not clear what the objective measures are. How will we know if we are meeting expectations? For example, do you intend to provide us with a report setting out your conclusion with some form of quantitative measure or rating? If so, that will need to be defined. We would also like to know if you intend to make your reports public.

OPBAS expectations could differ from ours about the level of resource that we apply to supervising relevant persons. It is the BSB’s responsibility to set its priorities, in line with its own risk assessments and strategy, and to allocate resources accordingly and, where necessary, to be in a position to justify those decisions. It would not be appropriate for the level of priority or the amount of allocated resource to be driven by an external organisation. We welcome the government’s intention that OPBAS’s focus will be to work constructively with the supervisors 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 (covered in section V of the sourcebook).

FIN-NET and SIS

OPBAS expects supervisors 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 Money Laundering 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.

We have real concerns that the cost-benefit to the BSB’s achievement of its regulatory objectives has not been demonstrated and that incorrect assumptions are being made about the volumes of transactions/intelligence which we are likely to contribute to/draw from the systems - it is likely to be extremely low. We have limited resources to monitor such systems and indications are that the NCA regard the Bar as low risk and has little information to share with us. We would like an opportunity to test the systems so we can get a better understanding of how we might use them and give an informed view about them.

As regulators, we are under close financial scrutiny and we adopt robust budget planning processes to ensure that we can justify our expenditure against our strategic priorities and so that we secure the best value and level of regulation for the funds we have available. We would expect to put any requirement to subscribe to an external network through the same level of scrutiny and to be able to take our own decisions whether it is necessary (and to be justified that decision if challenged). The BSB does not think, therefore, that subscription should be made compulsory.

Whistleblowing

The MLRs (section 46(2)(e)) require a supervisor to take effective measures to encourage its own sector to report breaches of the provisions of the Regulations to it.

The sourcebook (Section VI) says “as well as standard supervisory engagement, this will include whistleblowing arrangements, allowing concerns to be disclosed by any person to an

independent channel able to protect the whistleblower's confidentiality. Poor practice: No arrangements in place for handling disclosures from whistleblowers.”

The BSB Handbook rules rC65-69 provide a duty for regulated persons (barristers, registered European lawyers, BSB entities and employees or managers of the above) to report certain matters to the BSB, including serious misconduct by themselves or by others. rC69 says that regulated persons must not victimise anyone for making a report in good faith. We have been considering the need for a separate whistleblowing policy and process and, in doing so, sought legal advice, including the applicability of statutory protection. Because of the predominantly self-employed nature of the Bar, the majority of barristers are not covered by the statutory provisions. From this, we concluded that we are not able to guarantee anonymity to whistleblowers or those reporting in a similar manner. However, we are still considering the matter as we are currently reviewing the way that we handle information that comes into the BSB. We would like to discuss this further with you so that we understand your expectations.

Q2: Do you have any comments on the FCA's cost-benefit analysis?

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.

We note your analysis that says that the Professional Body Supervisors collectively oversee 200,000 members. Presumably this figure includes all barristers; it is important to note that only a small proportion of barristers carry out work that engages the Regulations.

In this respect, we think that the Legal Service Board's model, in which regulators self-assess their performance and progress against a published regulatory standards 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.

You have set out an estimated time requirement of 120 days annually for each supervisor. Whilst we understand that is an average across all regulators of all sizes, we are of the view that this is likely to be an 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 would need more details about what your expectations are for each task that you have set out in the table and would hope to work with OPBAS to ensure effective use of resources.