



**Response on Behalf of the General Council of the Bar of England and Wales to
HM Treasury's Consultation on the Reform of the Anti-Money Laundering and
Counter-Terrorism Financing Supervisory Regime**

Introduction

1. This is the response on behalf of the General Council of the Bar of England and Wales ("the Bar Council") to HM Treasury's Consultation on the reform of the Anti-Money Laundering and Counter-Terrorism Financing Supervisory Regime ("the Consultation").

The General Council of the Bar of England and Wales

2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and

our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales.

4. Following the Clementi Report, and as a result of the changes implemented as a result in the *Legal Services Act 2007*, the regulatory and supervisory functions of the Bar Council have been delegated to the independent Bar Standards Board (“the BSB”). Accordingly, it discharges its regulatory and anti-money laundering/counter-terrorist financing (AML/CTF) supervisory functions through the BSB. The BSB exercises those functions according to its Enforcement Strategy which it applies in conjunction with a Supervision Strategy, both of which are underpinned by detailed provisions in Part 5 of the BSB Handbook. Therefore, the AML/CTF supervision of the Bar, and the task of monitoring the compliance of the supervised population with its AML/CTF obligations, operates without the risk of a conflict of interest.
5. As part of the effort to ensure compliance with its members’ anti-money laundering/counter-terrorist financing (“AML/CTF”) obligations, the Bar Council, the Faculty of Advocates and the Bar Council of Northern Ireland publish HM Treasury-approved guidance for barristers and advocates to explain the necessary obligations and illustrate best practice for AML/CTF compliance. The guidance is kept under review and continually updated and added to, to ensure that it provides relevant and practical assistance to practising barristers and advocates.

Overview

6. Supervision of AML/CTF is most effective when performed by regulators who understand their supervised populations and the associated risks. The further removed from their supervised population, the less effective a regulator becomes. Our preferred option for reform of the current AML/CTF supervisory regime is Option 1, OPBAS+. OPBAS+ would maintain the strength of the current system of

proximate supervision whilst addressing areas of performance considered to be in need of improvement.

7. Any consideration of the supervisory regime over barristers must factor in that their AML/CTF risk profile is low – along with the other advocates’ professions almost certainly the lowest of all supervised professions. The large majority of self-employed barristers do not undertake work that falls within the scope of regulated business for independent legal professionals as defined by Regulation 12 of the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017 MLRs)*. The work of barristers generally consists of advising on and conducting contentious litigation and thus falls outside the regulated sector.
8. Unlike solicitors, self-employed barristers rarely become involved directly in any transactional work and they are not permitted to receive, control or handle client money. Barristers do not, and are not permitted, to administer client accounts. They are only entitled to be paid for their services. As with self-employed barristers, the very small number of BSB regulated entities are not permitted to handle client money. The number of barristers who provide separate trust and company services is also small, and currently stands at four.
9. By the government’s own assessment, the AML/CTF risk associated with barristers has been consistently found to be “low”, see the National Risk Assessments 2017 & 2020.¹

¹ HM Treasury & Home Office *National Risk Assessment of Money Laundering and Terrorist Financing 2017*: “In Scotland and Northern Ireland barristers and advocates are barred from direct public engagement, while barristers in England and Wales can only engage directly with the public following a strict authorisation process. Barristers in each jurisdiction are prohibited from executing transactions, conducting conveyancing and offering client account services. These factors are also judged to mitigate the risks involved.” (§74 & Footnote 2). The 2020 *National Risk Assessment* found that there was “no evidence to suggest that the level of risk has changed since the last NRA.” (§10.14).

10. The risk-based approach of the BSB, as the PBS of barristers, reflects that level of risk. That should not be equated with an absence of supervision or an inadequate level of response from the supervisor. For example, as the BSB's approach to supervision is strictly risk-based, where a greater risk is identified, then the BSB has more stringent statutory powers under the *Legal Services Act 2007* to manage it. The BSB's assessment of the profession is that over-compliance with AML/CTF regulation is a greater problem than under-compliance.
11. The risk profile of barristers is entirely different from that of solicitors and other legal professionals who engage in higher-risk activities such as executing transactions, conducting conveyancing, handling client money and offering client-account services; professional services from which barristers are barred.
12. A few barristers in some specialist fields are involved in non-litigation work that might fall within the 'regulated sector' (e.g. tax barristers and chancery barristers involved in advising on trust documentation), but they are generally instructed by other professionals, usually solicitors, who will deal with the lay client and who are obliged to have addressed any AML/CTF issues prior to counsel being instructed.
13. In all fields, the current PBS rules, and their supervision and enforcement strategies, are more than sufficiently able to address the AML/CTF risks found within the practices of barristers in a proportionate but *effective* manner. The Consultation makes no reference to any inadequacy on the part of the BSB as the supervisor of the profession of barristers. Moreover, the Bar Council is not aware of any criticism being made at any point in time by HM Treasury, OPBAS or otherwise, of the BSB's effectiveness as a supervisor. This reflects the effectiveness of the current supervisory model and the inherently low-risk profile of the

supervised population of barristers and advocates and not any failure of the existing arrangement.

14. In light of this, the Bar Council's position overall is that:

(a) In the case of the Bar at least, the current system in which AML/CTF supervision is carried out by a specialist PBS works well. The BSB, as the existing PBS, understands the nature of the work performed by barristers and where any AML/CTF risks are likely to arise. They are therefore able to carry out proportionate but effective risk-based supervision efficiently without placing an inappropriate burden on the supervised population or the profession as a whole. The Bar Council's view is that it would be a serious error to attempt to replace the BSB with a single AML/CTF supervisor for the whole of the legal sector, with or without a devolution exception, or a "one size fits all" AML/CTF supervisor/regulator (public or private). Irrespective of whether there is a case for what the Consultation refers to as "*consolidation*" in relation to other sectors, the nature of the Bar, the existing independent nature of its AML/CTF supervision and the Bar's low-AML/CTF-risk profile strongly points to a different conclusion for barristers.

(b) In further support of this position, the Bar Council refer HM Treasury to its statement in its 2011-12 annual supervision report:

"The practical implementation of a risk-based approach to supervision varies depending on the nature and scale of the risks in each sector and this is reflected in the resources invested in supervision and by the specific measures taken to assess compliance. For example, in the legal sector, risks vary based on the work undertaken by different legal professionals. Most of the work undertaken by barristers may fall outside of the regulated sector. As a result, the level of resource applied to supervision of barristers

(in terms of education, monitoring and investigation) is less than the resource allocated for the supervision of solicitors and licensed conveyancers who regularly hold and transfer client money and assist clients to enter into arrangements.”²

- (c) The proposed reforms require the Bar Council to ask HM Treasury, in respect of the AML/CTF supervision of barristers, what has changed? There is no evidence to say that barristers now require different supervision. There has been no change in their professional rules of conduct. There has been no change in their risk-profile. There has been no outbreak of AML/CTF-related conduct of concern by barristers or advocates. There has been no reported failing of the supervisory system or OPBAS-expressed concerns in relation to the performance of the BSB. There is no evidence for change.
- (d) From the Bar Council’s perspective, OPBAS is yet to have a materially beneficial impact upon the BSB’s ability to assist its supervised population in better understanding and addressing their AML/CTF risks and obligations. Whilst our experience of OPBAS has therefore not been overwhelmingly positive, if change is to be imposed, the Bar Council take the view that it is best carried out at this level. That view is taken in part in reliance upon HM Treasury’s finding that OPBAS has had a positive effect on supervisory effectiveness. As that is HM Treasury’s assessment, then, in the absence of compelling evidence for change, OPBAS+, as the least disruptive option, should be selected.

² [HM Treasury \(2013\) Anti-Money Laundering and Counter Terrorist Finance Report 2011-12](#)

(e) The Bar Council's firm submission is that any rationalisation of supervision in the legal sector that removed the role of the BSB as the Bar's current PBS would be likely to result in:

- i. Supervision being carried out by a regulator with little or no understanding of the nature of the work of barristers and the circumstances in which AML/CTF risks might arise. Such a regulator would, absent substantial and resource-intensive input from its supervised population, be ill-equipped to conduct appropriate risk-based assessment.
- ii. Supervision being carried out by a regulator who is not aware of other regulatory issues and concerns beyond AML/CTF. Such a regulator would not be able to combine AML enforcement action with enforcement in other areas.
- iii. Supervision being carried out by a regulator who does not have the same level of insight into, and visibility of, barristers' conduct more generally as a PBS, making it less likely that such a regulator would detect any conduct raising AML/CTF concerns or be able to swiftly address any such concerns.
- iv. The imposition of inappropriate burdens on individuals practising in a profession that generally represents a very low risk in AML/CTF terms (in particular in comparison to banks, accountants, solicitors and others involved in transactional work and handling client funds). This would include the very real risk of the imposition of overlapping supervisory and regulatory regimes – adding rather than reducing bureaucracy,

red tape and cost. Any form of consolidation would lead to regulatory proliferation as the PBSs would continue to exist, with or without an AML/CTF supervisory responsibility, and supervised populations would have to engage with not one but two regulators.

- v. Increased cost to the Bar due to it being required to engage with a supervisor who has had no previous experience of regulating it before. It will inevitably take a great deal of time, input and close co-operation from the profession to ensure that the new supervisor understands its supervised population to the required level of detail. This is the very opposite of efficient and effective regulation. It is also completely unjustified on any risk-based analysis.
- vi. Increased difficulties in communication. The consolidated PBS or public body AML supervisor would require information to be shared with it by the BSB, for instance the size and make up of the supervisory population and any information learned from supervisory chambers visits which may impact AML supervision. Regulatory action against barristers found in breach of the 2017 *MLRs* would still be taken by the BSB. Law enforcement would need to either communicate with the BSB via the consolidated PBS or public body supervisor, or with both the BSB and the other AML supervisor.

(f) Given the low AML/CTF risk presented by barristers, the changes proposed and the attendant financial costs would be disproportionate to that level of risk and place an undue financial burden on the practitioners who,

ultimately, would be required to pay for the changes made. It is recognised within the Consultation that a consolidated PBS or a new single supervisor would not possess the diversity of specialist knowledge, insight or understanding of the supervised population as the current PBSs. The suggested solution to the problem that such a change would create are (i) the recruitment of specialist staff and (ii) the *potential* to invest in new IT systems and data services, e.g.:

“A consolidated PBS would not be a specialist in each sub-sector it supervises, potentially leading to a reduction in sub-sector specific risk. This could potentially be mitigated through hiring experts in relevant sub-sectors.” (§4.24)

(g) Both options, whether a consolidated PBS or a new single supervisor, can only come at significant additional cost. Cost that will in turn be passed on to the practising members of the profession. Such cost will be borne in order to return supervision levels to what was in place before, at best. The Consultation refers to the ‘*mitigation*’ of lost expertise and IT and data only *potentially* improving “*risk understanding*” (§4.23). A great deal of time and effort would be spent on bringing any new supervisor up to speed on the supervision of a what is recognised within government and law enforcement as a low-risk profession – an entirely disproportionate and not risk-based use of resources. An essential point that is reinforced by the fact that such upheaval and re-direction of efforts would be entered into for a profession with a supervised population of only c.430 practitioners and 9 entities – and that is 430 people, not law firms with multiple practitioners.

(h) In respect of the AML/CTF supervisory oversight of barristers, the Bar Council does not see PBS Consolidation as a model that would achieve the primary objective of increased supervisory effectiveness. It offers no evidence of how it would improve already-effective system co-ordination,

for example via LSAG. Finally, given the additional cost, lead time and loss of effective supervision during any transitional period it fails to meet the Consultation's further objective of feasibility.

15. The Bar Council sees no merit at all in options 3 (a Single Professional Services Supervisor) or 4 (a Single Anti-Money Laundering Supervisor) and are not aware of any Professional Body Supervisor that has called for such an option to be implemented. We also stress the risk of severe reputational harm that is inherent in professions that are prized for their independence being made subject to a public body regulator and foresee the damage that such state oversight could do to both their global standing and to the perception of the United Kingdom globally as a free, fair and open democracy.

The Proposed Options

Model 1, OPBAS +

The Performance of OPBAS to date (1): HM Treasury's Assessment

16. The Bar Council notes that OPBAS has been in place since 2017 and during its period of operation HM Treasury has never considered it to have either failed or to be inadequately carrying out its functions. Indeed, the Consultation, relying upon HM Treasury's own "*Post-implementation review of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017*" (June 2022) ("OPBAS PIR"), states that OPBAS has been found to have "*made significant progress against its objectives, with PBSs' technical compliance against the MLRs being much improved*" (§3.1 & Footnote 26).
17. In terms of HM Treasury's objectives, the Consultation states that "*Increased supervisory effectiveness is the primary objective and overall aim of this reform.*" (§2.2). In that respect OPBAS is, by HM Treasury's measure at least, already facilitating the meeting of that objective. The OPBAS PIR records that:

“Most notably, fines issued have increased in both size and frequency (see below). This increase in enforcement activity can be taken as indicative of a more proactive approach by PBSs as a result of oversight by OPBAS, demonstrating higher supervisory effectiveness as a result of the OPBAS Regulations.”³

18. Given its HM Treasury-assessed success, it would be odd if HM Treasury, as the maker of that assessment, now concluded that OPBAS should be scrapped in favour of an untested replacement. A replacement that would come at great financial cost to the supervised professions, substantial regulatory upheaval and with the inescapable risk of a drop in standards of supervisory effectiveness during any transitional period.⁴

The Performance of OPBAS to date (2): The Financial Action Task Force (FATF)

19. There was also no criticism of OPBAS in [FATF’s December 2018 Mutual Evaluation Report of the UK](#) or its up-to-date [2022 Follow Up Report](#). The Consultation states that the Mutual Evaluation Report was “positive overall regarding the UK’s implementation of the FATF standards but found the UK’s supervision regime to be only moderately effective”.

³ The total sum of fines issued by PBSs is recorded as having increased year on year from £98,789 in 2016/17 to £684,846 in 2020/21.

⁴ The Bar Council notes, with concern, that HM Treasury has used the Consultation to resurrect, without notice, the idea of AML/CTF Supervisors being provided access to the Suspicious Activity Reports of their supervised populations (§2.7 & §2.10). That idea was raised in HM Treasury’s 2021 “*Consultation upon Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*” and the “*Call for Evidence: Review of the UK’s AML/CFT regulatory and supervisory regime*”.

In its [conjoined response](#), the Bar Council with the other Bars, set out, amongst other concerns, how such a power would represent an entirely unjustified inroad into the fundamental right of access to legal advice and the concomitant right to legal professional privilege. The response also set out how no evidence had been offered to demonstrate the need for such a change and how there had been no call for such a change from the supervisors of the advocacy professions. The [proposal was not supported by the Bar Standards Board](#) and was also [opposed by the Law Society of England and Wales](#). The Consultation should not address so fundamentally as important a matter as this without recognising and recording that the proposal does not have the support of the majority of the legal sector. There should not be any suggestion on the part of HM Treasury or the wider government that this highly contentious issue has been set out properly and considered as part of this Consultation. It has not.

20. However, the Mutual Evaluation Report stated as follows:

“The UK has significantly strengthened its AML/CFT framework since its last evaluation particularly in relation to operational co-ordination among law enforcement agencies, stronger investigative tools, mechanisms to facilitate public/private information sharing, and the creation of an authority to address inconsistencies in the supervision of lawyers and accountants”.

21. The underlined words are a reference to the creation of OPBAS and it is thus clear that the Mutual Evaluation Report regarded the creation of OPBAS as having contributed to the “significant strengthening” of the UK’s AML/CFT framework. There is no criticism of the supervisory effectiveness of OPBAS in the 2022 Follow Up Report. As such, it is difficult to discern any concern expressed by the FATF as to the present arrangements for supervision. The Mutual Evaluation Report does not make a case for change, particularly not one that would require such substantial regulatory upheaval for so little return for low-risk professions.

22. Nor, looking at the detail of the Mutual Evaluation Report, is there any suggestion that the supervision carried out by the BSB is inadequate. The Report approaches matters very broadly repeatedly referring to “*legal and accountancy supervisors*” and concluding that generally they do apply “*an RBA to their supervision.*”⁵. Given the Bar’s unique characteristics (e.g. no transactions, no retainers, no client funds) and concomitant low-risk profile, it is unsurprising that there is no suggestion of a failure to adopt the correct risk based approach to supervision by the BSB.

23. It is therefore also not surprising that the supervisory role and conduct of the BSB has not been the subject of criticism of OPBAS, HM Treasury or FATF. An

⁵ At §383.

impartial observer, free of any pre-determined agenda, might conclude that, for the Bar, the current system is working well, as it was intended to and that there is no evidence for change.

The Performance of OPBAS to date (3): The Bar's Perspective

24. Despite the success that the government identifies, the Bar Council is obliged to observe that OPBAS has not, from the barristers' perspective, been entirely satisfactory. Our experience is that OPBAS is yet to deliver any material service to its supervisor that assists its supervised population in either better understanding their already well-understood AML/CTF obligations or facilitates how they address those risks. That is almost certainly due, at least in part, to the low-risk profile of the profession.

25. The Bar Council has previously expressed their concern that OPBAS, despite being funded by contributions from all supervisors, does not always engage with supervisors in a productive or transparent manner. For example, OPBAS does not publish an annual work plan or issue any measurable objectives against which to assess its performance. Whilst it exhorts supervisors to share information and intelligence, OPBAS itself seems reluctant to engage in dialogue with supervisors. In the past it has failed to consult with supervisors before publishing its annual findings. It specifically prevents those supervisors from pooling knowledge obtained from respective OPBAS site visits. The Bar Council proposes that HM Treasury could take large steps to improve effective supervision and system co-ordination by starting with remedial measures in those areas. Such steps would immediately bolster the effectiveness of OPBAS. In addition, the Bar Council's experience is that the focus of OPBAS is on identifying shortcomings rather than also identifying where a PBS is achieving success as a result of its practices and sharing that practice across other PBSs. Altering that focus could have a large, low-cost, low-disruption impact for the better upon the objective of improved

system co-ordination. Simple but effective solutions are no less worthy just by virtue of their simplicity.

26. If OPBAS is to continue to play a role in the improvement of supervision it should be required to focus on assisting supervisors and their members with best practice and risk-based solutions to the regulatory requirements of the regime. In keeping with the principle of risk-based supervision, such solutions should reflect the inherently lower AML/CTF risk arising from the nature of an advocate's work. Sustained evidence of OPBAS applying appropriate context when commenting on supervisory performance would immediately demonstrate the sought-after supervisory effectiveness. The BSB and other advocates' supervisors are, too often, subject to a relatively rigid and singular definition of what effective supervision looks like, despite the markedly different activities and risk profiles that arise across the spectrum of legal services. The different qualifications, roles, functions and regulation of the separate professions within the legal sector lead to significantly different risk-profiles, as recognised within the National Risk Assessments (see Footnote 1 at §9, above). That in turn necessitates tailored supervision. That has been recognised by the publication and HM Treasury approval of the stand-alone guidance for barristers and advocates. That is not to be critical of OPBAS but rather to point out what changes could be made to bring about real and immediate improvements without the need for major supervisory upheaval and a large rise in cost.

27. Greater openness from OPBAS would also give rise to more effective supervision. As system co-ordination, through collaboration and information-sharing, are aims that HM Treasury wishes to achieve, we would suggest that a reformed OPBAS lead by example in that regard. Annual reports on supervisory performance should not be published to external audiences without prior engagement with the PBSs referenced within such publications. Supervisors with similar risk profiles,

such as the supervisors of the advocacy professions, should be facilitated to share knowledge and thus develop appropriate and consistent risk-based approaches borne out of the site visits undertaken by OPBAS. Further, where successful practices are being employed, these should be recognised and shared across PBSs. The experience of the advocates' professions as a whole is that the OPBAS Supervisory Assessments lacked transparency as to the goals that were being sought, the information required and the preparation that could have been undertaken by the supervisors in order to prepare for the meetings. As such, the best information was not able to be given at the time that it was requested. Again, improvements to the effectiveness of OPBAS could start with remedial measures in these areas.

Feasibly Improving Supervisory Effectiveness and System Coordination through OPBAS

28. We consider that an enhanced OPBAS *could* play a valuable role to help supervisors navigate, align and plan their interaction with the array of the various entities who all feature on the AML landscape (e.g. NECC, NCA, the Legal ISEWG, HMT, OPBAS, LSAG and the NRA). If they could streamline, consolidate or assist in this regard, it would prevent any inefficient or duplicative effort that might otherwise risk supervisory effectiveness. Good supervision requires focus, consistency, clarity and efficient processes. There is an opportunity for OPBAS, by summarising and signposting, to perhaps add much needed value – helping supervisors ensure they are familiar with all developments and requirements that they should be meeting.

29. The Bar Council notes that the evidence provided to the AML/CTF Legal Sector Supervisors Roundtable Poll considered that keeping OPBAS would retain a set up that benefits from the existence of strong professional relationships between the legal professional bodies and their individual ability to address the differing

AML/CTF risks in the different the legal professions; building upon the “*high levels of understanding amongst each PBS of business practices, products and services offered by the firms each PBS supervises.*” (§3.7)

30. As also noted in the Roundtable Poll results, OPBAS+ has the singular advantage of being the only model that might “*conceivably be completed before the next FATF mutual evaluation*”.

31. Considering the terms and broad proposals used in the Consultation, the Bar Council takes the view that a form of “OPBAS+” is the preferred option of those models being considered. Referred to in the Consultation as “*the least disruptive option*” (§3.7), it could be carried out with the minimum amount of disruption to the supervision process, the lowest cost and the least interference with established legal professional independence. It would retain legal sector expertise within the PBSs, the most beneficial feature of the current AML supervisory regime. It would also permit OPBAS to retain its role as statutory supervisor and allow it to build upon the expertise and experience it has developed to date. OPBAS is already familiar with the PBSs and has built an understanding of their role. Retaining OPBAS would at least mean that the experience it has built is not lost and thus avoid the investment in OPBAS by the supervised professions since 2017 being wasted.

32. By extension of those reasons, OPBAS+ would also be, by far, the most feasible model to establish and operate. Feasibility is one of the “*key elements of the outcomes [HM Treasury] want to achieve through a reformed supervision regime*” (§2.2). Unlike each of the other models, an enhanced version of OPBAS could be implemented relatively quickly, with minimum disruption to the established system of supervision and with no transitional period.

Model 2, The Proposal for the Consolidation of Professional Body Supervisors

33. As stated above, the Bar Council is deeply concerned by the suggestion and the implications of a reduction in the number of legal sector PBSs. The proposal implies that there is an optimum or preferred quantity of supervisory bodies. We consider this to be an arbitrary aim based on no more than generalised assertions as to *potential* 'benefits' and unproven assumptions (for example the suggestion of investment in unspecified and un-costed IT systems, §4.23), lacking in any evidential support (none is set out in the Consultation) and wrong. Given that HM Treasury cannot say what such IT systems are (or even if they currently exist) it is wholly unclear how their purchase could, at this point in time, be considered to be of even *potential* benefit to effective supervision. There is no evidence of any such benefit and the case for it happening simply does not exist.
34. Consistent with the views we have previously expressed in relation to the proposals for supervisory reform, the paramount methodology of any supervisory regime must be to adopt a risk-based approach. In addition to covering separate legal jurisdictions, the legal sector covers a broad spectrum of services, each with different risk profiles. In order to have useful insight and effective responses there has to be recognition of the diverse risks that exist across the broad and varied scope of legal services. Rather than monolithic oversight, a range of specialist supervisory bodies are required. Such supervisory bodies provide immediate expertise, local application and integration into a wider oversight of business activities, thus reducing regulatory burdens (in-line with the Government's 2011 Red-Tape Challenge) and improving competitiveness.
35. Not only does the proposal to reduce the number of PBSs not produce evidence that no harm would arise to this informed and risk-based approach, it accepts that it would (e.g. §4.24). One accepted consequence of consolidation would be the

outcome of less specialist insight. In answer to which the Consultation only hopes that the loss *might* be mitigated by 'investment'.

36. As pointed out above, consolidation of the PBSs would lead to unjustified regulatory proliferation, as those PBSs which are not selected as the consolidated PBS would still be required to exist, even after consolidation. The supervised population would then have not one but two direct regulators. That is not desirable, and it is not effective supervision.

37. Moreover, as above, consolidation would not make information sharing more efficient. The consolidated PBS would need to receive information from the non-consolidated PBS. For instance, the BSB would need to share the names of barristers whose practice falls within scope of the 2017 *MLRs*. The BSB would continue to supervise chambers and would need to share with the consolidated PBS any concerns they may have about a chambers which also relate to the 2017 *MLRs*. Rather than law enforcement having to speak to one PBS, they would need to continue to speak to the other PBSs. The BSB investigates and prosecutes breaches of its Handbook. Barristers charged with professional misconduct appear before a Disciplinary Tribunal appointed by the Bar Tribunal and Adjudication Service. It would be inappropriate and outside the scope of their remit for barristers to appear before the Solicitors Disciplinary Tribunal (SDT). The SDT does not have the power to discipline barristers. Should law enforcement wish for regulatory action to be taken against a barrister, they would need to speak to the BSB irrespective of whether or not they remained the Bar's PBS.

38. The Consultation accepts that there are jurisdictional and devolution issues that would need to be overcome, thus recognising the need to provide specific supervised populations with specific PBSs. Specific and distinct populations require specialist supervision. However, that recognition demonstrates the fallacy

of PBS consolidation. Whilst a distinction would be made on the basis of distinct legal systems, if this model were pursued, no distinction would be made on the basis of AML/CTF risk – the guiding principle of AML/CTF regulation, supervision and compliance. It should hardly need to be said, but supervision that is divorced from the risk-based approach is not effective supervision.

39. It would be wholly unacceptable to seek to absorb the lower risks that apply to the barristers and advocates, with their distinct business activities and structural protections against AML, into those of a wholly different area of the legal sector for the purpose of reducing the number of bodies involved. In our view this would be entirely counterproductive and damaging to the risk-based model of AML/CTF regulation.

40. The Bar Council's view is that the concerns that have been expressed about there being a tension between a risk-based approach and divergence of practice across a range of supervisory bodies can be met by various mitigations which could moderate and standardise supervisory approaches where it is appropriate to do so. These include:

(a) Supporting the work of LSAG;

(b) OPBAS adopting a more proactive role in information sharing and peer networking (and, if necessary, as set out above, adopting a form of OPBAS+);

(c) Encouraging "clusters" of related or similar supervisory bodies to pool knowledge, resources and approach. This has already happened successfully across the advocates profession as is reflected in both the joint

statement of principles prefacing this response and the specific guidance produced as Part 2 of the overall LSAG Guidance;

(d) A program to streamline and rationalise the cumulative demands on supervisors arising out of the requirement to separately engage with OPBAS, HMT, NRA and others on similar aspects of money laundering supervision.

41. We do not believe that a drive for any greater uniformity of approach or outcomes is a goal to be strived for. What matters is context-driven, risk-based, proportionate supervision.

42. If a concern still persists regarding the number of supervisory bodies, the Bar Council strongly suggests that, for the legal sector, the above represents a better and risk-based approach. The Bar Council further suggests that a system of 'simplified supervisory oversight' should be introduced for professions that are assessed, for example by the National Risk Assessment, to be low risk. Such a categorisation would work by way of reducing the supervisory expectations upon any supervisory bodies that have proven to represent a low-risk regulatory population (such as barristers and advocates) so that resources and enforcement could be focussed instead on those bodies that have responsibility for higher-risk populations.

43. To the extent that Model 2 is considered to have any merit, the Bar Council would make the following suggestion. It is apparent that certain legal service PBSs may be capable of being operated as a single body due to their similar nature, similar AML/CTF profiles and, perhaps, a willingness to be merged, e.g. the SRA and CILEX. If, contrary to the evidence submitted here, the option to reduce supervisors is progressed, it should be carried out incrementally, starting with the

most compatible and closely aligned supervisory bodies. A gradual adoption of the program would allow for its impact to be better understood and for any difficulties encountered to be ironed-out in the context of the most straightforward scenarios. Such an incremental approach would assist HM Treasury and the consolidated supervisors of understanding the merits and demerits of consolidation *before* any further roll-out in more challenging areas.

44. While the assumption that supervisory effectiveness is improved by reducing the number of supervisors may be attractive, for AML supervision to be effective it needs to be carried out by a regulator which is closest to the relevant profession. The differences in working practices and the level of risk between legal service providers makes the BSB an inappropriate regulator for solicitors and the SRA an inappropriate regulator for barristers. For the reasons set out above the Bar Council considers that a reduction in the number of supervisors for the Bar and for the advocates' professions more widely would not assist in the maintenance or improvement of the fight against money laundering or terrorist financing. We do not consider that there is an 'optimum number' of supervisors (2, 6 or otherwise) or that there should be an attempt to find one. Any such goal would be arbitrary and unhelpful. What matters is informed, responsive, risk-based supervision. For low-risk professions such as barristers, either consolidation or increased oversight through further or more distant levels of supervision, represents the death knell to proportionate and effective risk-based supervision.

Model 3, Single Professional Services Supervisor (SPSS)

45. The concerns expressed above in relation to the risks of monolithic oversight and loss of specialist insight are all the more acute in respect of the proposed SPSS Model.

46. The Consultation accepts at §5.2 the risk of supervisors with lower sector-specific expertise being less effective, something the Bar Council considers is almost certainly going to be the case. The Bar Council also considers that it is highly unlikely that this could be mitigated through hiring individuals with the right expertise, especially given public sector pay restraints. They accordingly consider that this course could only be justified if there were substantial benefits from jettisoning the specialist staff and the experience they bring to bear under the existing PBS model.
47. The Bar Council notes that the suggestion that information sharing and system coordination may be enhanced, and that it is considered that a public body would be more accountable. However, against this (and as recognised at §§5.13 and 5.24) to gain access to the data already retained by PBSs, new information sharing systems and gateways will be required and information will inherently be more difficult for the SPSS to access than it would be for the PBS which is collecting such data in connection with its other regulatory functions. Further, at the very least during the transition period, there is a risk of jeopardising ongoing work and confusion as a result of having a dual regulation system with potential clashes and overlapping jurisdictions. To this is to be added the prospect of the regulated population having to provide the same information to a PBS in respect of non-AML/CTF regulation, as well as to the SPSS, even after the transition period has come to an end.
48. The Bar Council is also doubtful whether there is any genuine perceived lack of accountability as a result of the PBSs not being public bodies, and notes that they would continue to exercise a great deal of regulatory and intervention powers outside of the AML/CTF context as private bodies.
49. Further, and as explained in the sub-paragraphs to paragraph 40 above, there are a number of far less disruptive and cheaper means by which divergences in

supervisory practices could be addressed at the same time as retaining sector-specific expertise.

50. The Bar Council also considers that the lengthy transition period required to create the SPSS, which §5.29 of the Consultation recognises would take several years and be dependent on the timing of primary legislation, will lead to a material reduction in supervisory effectiveness and co-ordination during that period. This is recognised in the Consultation at §5.32 by reference to the inability of the SPSS to conduct its own risk assessments over a period of up to two years, compounded by the time it will take for its staff to develop the correct capabilities and skills (assuming such staff could in fact be recruited).

51. The Bar Council further views it as very likely that the risks recognised at §5.34 concerning the inability of PBSs to retain staff and disincentives to maintain and improve systems will materialise; and in addition note that it is intended that the PBSs will be required to simultaneously regulate their own populations while working with the new SPSS in connection with data and systems transfers. That will inevitably reduce their effectiveness.

52. The need to retain OPBAS and the PBSs during at least some of the transitional period will also lead to regulatory proliferation, duplication of effort and cost on top of the already substantial costs that §5.36 recognises the establishment of the SPSS will entail (including accommodation, IT, staff hiring and outreach activities). Whatever the economies of scale ultimately achieved, which, even if achieved, will not be seen for a number of years in any event, the fact remains that regulated individuals will end up paying for regulation by their PBS in respect of all non-AML/CTF functions, and for the SPSS in connection with the AML/CTF functions. The Bar Council considers that this will almost certainly increase the costs faced by barristers despite their low risk-profile – which means that PBS regulation has

hitherto been achieved without substantially increasing the amounts paid in respect of regulation.

53. The Bar Council also considers that the SPSS model would pose a serious threat to the independence of the legal sector and prevent the relevant PBSs from having direct input into the AML/CTF supervision of their regulated populations. We also consider that a body with such a broad remit will inevitably be unwieldy in reacting to sector-specific risks and unable to properly calibrate an appropriate risk-based approach to all of the distinct business activities and functions being performed by a very large number of disparate firms and individuals.
54. If, as expressed in the Consultation, the aim is to ensure more effective oversight and avoiding individuals or firms operating in an unsupervised manner, the recognition in §5.10 that the SPSS will lead to firms receiving *less* oversight than at present because they will form part of a much larger supervisory population would seem to be a compelling reason for rejecting this model. Moreover, “allocating resources in line with *risk across the entire professional services sector*” ignores the fact that risk levels are different between those sectors and, crucially, *within* each of those sectors.
55. At a time when legal independence is under threat around the world, the SPSS model would severely undermine the UK legal sector’s global reputation as professions free of government control and interference. Given the value of the legal sector to the UK’s export market that would represent damage to UK plc as a whole. It could damage the UK’s reputation as a leading democracy, a free society and a stable, rule-driven, trade-friendly nation. With regards to the Bar, and as set out above, that is a substantially disproportionate risk for a supervised population of c.430 people.

56. Ultimately, then, the Bar Council foresees a certainty of increased cost, the reduction of effectiveness and creation of confusion (at least during the transition period), the loss of sector-specific expertise (which may well prove to be permanent) and reputational damage, in exchange for extremely uncertain benefits which in large part may be achieved via the alternative means identified above.

Model 4, Single Anti-Money Laundering Supervisor

57. The Bar Council considers that all of the points made in relation to the SPSS (Model 3) above apply with even greater force to the proposed Model 4 single supervisor. Moving all AML/CTF supervision into one body, including that currently done by the FCA, the Gambling Commission, HMRC and all other PBSs, will have an even more detrimental effect on sector-specific expertise. It will also lead to far greater disruption and cost (as the Consultation itself recognises at §§6.19-6.20). This is so, not least because of the need for primary legislation, public funding and the creation of an extremely large and far-reaching supervisory entity with a transition period even longer than that envisaged by the creation of the SPSS under Model 3, and with a concomitantly greater risk of duplication, confusion and reduced effectiveness during this phase.

58. The Bar Council notes that the Consultation also accepts at §6.2 and §6.11 that the regulatory burdens, including regulation by multiple supervisors, and difficulties with information sharing will be “*more pronounced*” than under the SPSS which, for the reasons set out above, are considerable. In addition, it is expressly recognised that there are risks that this model will also entail a short-term weakening of the risk-based approach (§6.8) and a longer-term risk that certain businesses will receive less supervisory attention than under the current system (§6.9).

59. The Bar Council further considers that, as addressed in detail above, the perceived information sharing, system co-ordination and law enforcement cooperation benefits are uncertain, and could largely be achieved by alternative, less intrusive and cheaper means which do not do away with the loss of sector-specific expertise.
60. In short, then, the Bar Council considers that Model 4 carries the greatest risks, costs and disbenefits of all of the four options and should not be adopted.

Sanctions

61. The Bar Council's overall view is that the current system of supervision of barristers by the BSB in relation to sanctions compliance is adequate.
62. Despite it not being enshrined in legislation, the Bar Council considers that sanctions compliance supervision to be within the BSB's remit and that the BSB Handbook's Core Duties and Code of Conduct⁶ are wide enough to cover issues arising from sanctions compliance. In support of this supervisory function, the BSB has the power to request documents from chambers, and conduct chambers visits.⁷
63. Compliance with sanctions against Russia has been a prominent issue since the invasion of Ukraine in February 2022. It has been brought to the attention of chambers through announcements of the latest developments in sanctions law and guidance by the relevant government departments and agencies – most notably the Office of Financial Sanctions Implementation within HM Treasury ("OFSI"), as regards financial sanctions; the Department of Business and Trade, as regards trade sanctions; and the National Crime Agency, as regards criminal enforcement. Further, there is a constantly evolving body of UK government guidance on sanctions compliance.

⁶ [BSB Handbook version 4.7](#) (20 September 2023)

⁷ [BSB Supervision](#)

64. Given the prominence of the issue of sanctions compliance, the Bar Council's view is that those barristers advising on matters that raise sanctions issues are well aware of the relevant regulatory requirements, and the associated UK government guidance. In order to ensure that this continues to remain the case the Bar Council is preparing its own guidance for its members as to professional compliance with the UK's sanctions regime
65. In the view of the Bar Council, in the context of barristers, to introduce new supervisory powers and responsibilities to monitor sanctions compliance is not required as (i) the current system is adequate, there being no evidence of non-compliance with sanctions regulations by barristers and (ii) it would over-complicate the regulatory landscape. Over-complication is a risk because, as noted, the relevant government departments and agencies already issue their own guidance on sanctions compliance.

Questions

Objectives

1. Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?

The Bar Council agrees that the three objectives identified are appropriate, subject to the following.

First, the stated objectives are valid provided that the outcomes they lead to enhance rather than detract from the primary statutory objective of risk-based supervision. That overriding requirement does not seem to be enshrined in the three objectives, which is a concern. HM Treasury must ensure that its stated objectives serve the overriding requirement of

achieving risk-based supervision and do not let these, important but lesser, goals come to be its master.

Second, there is no basis for any suggestion that the current system of supervision of AML/CTF risks by PBSs in relation to barristers is in any respect ineffective. If and to the extent that an objective of ‘increased’ supervisory effectiveness might be taken to suggest otherwise, it is inappropriate.

Third, and in addition to HM Treasury’s objectives, it might be appropriate to add a fourth objective: efficiency. An effective and risk-based system of supervision ought not to impose disproportionate or unnecessary costs or burdens either on the public purse or on the supervised population. This is of particular importance to barristers, most of whom are self-employed, many of whom earn relatively modest incomes and who, as a group, offer a limited AML/CTF risk. Imposing unnecessary additional regulation (and the associated costs) can have a significant impact on individuals and may act as a barrier to entry. That would be neither efficient nor a risk-based approach to supervision and AML/CTF risk.

OPBAS+

2. What would the impact be of OPBAS having the FCA’s rule-making power? What rules might OPBAS create with a new rule-making power that would support its aim to improve PBS supervision?

As the Consultation Paper notes (at paragraph 3.4) it is not clear how the rule-making power has been used by the FCA or how OPBAS would in fact intend to use it. That makes it difficult to comment. However, as noted above (a) there is no basis for any suggestion that AML/CTF supervision by the

PBSs of barristers require improvement; (b) the current rules are perfectly adequate to enable effective supervision of barristers and (c) it is difficult to envisage any further rules that would be likely to assist.

The Bar Council would submit that the agenda for the creation of rule-making powers should be set by need, i.e. evidence from the conduct of supervision, and not from consideration of what powers could be granted.

3. Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?

The Bar Council would, in principle, support OPBAS being granted the additional powers to publicise supervisory interventions in appropriate cases, for the reasons suggested in the Consultation, if they are shown to be required. However, any such power would need to be matched with a duty upon OPBAS to be transparent as to its processes, procedures and decision-making.

A power to restrict or reduce the supervisory population (a) would not be capable of applying to barristers (for whom multiple supervisors are not available); (b) is highly unlikely ever to be appropriate; not only would having a PBS for one profession providing partial supervision for a different profession give rise to inevitable complicated jurisdictional and practical problems, for the reasons set out in this document, AML supervision by a PBS that understands and is responsible for the profession in question is almost inevitably preferable and more effective than supervision by a body that does not supervise the relevant profession and does not understand the

issues that arise in relation to it; and (c) does not appear to be necessary on any risk-based assessment to address any current issue.

The Bar Council also considers that there is no basis to suggest that a power to fine PBSs is necessary or appropriate. It is important to recall that PBSs are not 'the enemy'. PBSs wish to ensure effective AML/CTF supervision. If and to the extent that any PBS were to fall below necessary standards in its AML/CTF supervision (which does not currently apply to the barrister PBS) the appropriate response from OPBAS would, in the first instance, be guidance and positive engagement to assist that PBS in improving its standards. Fines (a) are blunt instruments that do not assist the PBS in improving its practices; (b) are criminal or quasi-criminal penalties the threat of which would be likely to harm the objectives of transparency, openness and co-operation between OPBAS and the PBSs, introduce expense and scope for dispute in relation to enforcement decisions and distract from the real aim of achieving effective supervision and (c) crucially, would ultimately be borne not by those actually responsible for supervision at the PBS but by the supervised population who have no control over the actions of the PBS and penalising whom would be unfair and unproductive.

4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?

The Bar Council fully supports the accountability mechanisms suggested at paragraph 3.6 of the Consultation. The imposition of any of the types of sanction proposed must as a minimum (a) require OPBAS to produce reasons of the standard required by existing supervisors; (b) afford PBSs an effective right of reply and (c) be subject to appeal and/or judicial review in appropriate cases, in order to comply with the requirements of natural justice

and lawful decision-making by public bodies that form part of administrative law in each of the UK jurisdictions.

5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?

No.

The PBS for barristers in England and Wales, the BSB, supervises all barristers who provide legal services in their jurisdictions, including all who undertake activity in the regulated sector. While it might be theoretically possible for a person to call themselves a 'barrister' and unlawfully use that title when purporting to provide legal services (including in the regulated sector) (a) there is no evidence that there is any particular risk of that happening in respect of regulated activity and (b) that would be a straightforward fraud that could be committed by any member of the public and not an issue concerning the effectiveness of supervision by the PBSs.

6. Do you think a "default" legal sector supervisor is necessary? If so, do you think a PBS could be designated as default legal sector supervisor under the OPBAS+ option?

Definitely not.

Even if there were evidence that there were 'barristers' not supervised by the PBSs and undertaking regulated activity (which there is not) the answer would be (a) that those individuals would be committing plain fraud by holding themselves out as being authorised to practice as barristers and should be prosecuted as such; (b) the issue would be one of simple criminality on the part of the individual and not of effective AML/CTF supervision and (c) if and to the extent that it were felt that further efforts to

identify such individuals were needed, that task would appropriately be one for the PBSs in the first instance.

7. Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.

The starting point must be to acknowledge that the current system of supervision of barristers for AML/CTF purposes by the specialist PBSs works effectively and that no change in respect of barristers is necessary. The minimum change to the current system therefore represents the most proportionate and appropriate approach in relation to supervision of barristers in particular. Subject to that overarching point, the Bar Council considers that the OPBAS+ model could have a positive impact on supervisory effectiveness if it leads OPBAS to improve in providing assistance to the PBSs by (a) summarising and signposting best practice, developments and the requirements that they should be meeting; (b) identifying any specific areas in which individual PBSs might have a weakness that can be addressed and (c) assisting the PBSs to navigate, plan and align their interaction with the various entities that feature on the AML landscape. The emphasis should be on a co-operative and open partnership between OPBAS and the PBSs, in which the former is tasked with assisting the latter to be the best supervisors they can be, rather than a confrontational relationship in which the task of OPBAS is to find fault or over-regulate. The result should be a supervisory regime that combines the strengths of (a) supervision by specialist supervisory bodies that understand the risks and needs of particular professions and (b) streamlining and consistency of approach to the extent appropriate through the sharing of best practice and a consistent understanding of developments and requirements.

8. Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.

An effective OPBAS+ ought to be an effective vehicle for sharing of information at the level that will actually assist PBSs to ensure effective supervision by, e.g. summarising and signposting best practice, developments and the requirements that they should be meeting. If and to the extent that such information sharing is not occurring, that is likely to be a result of the fact that OPBAS has not to date always engaged with supervisors in the most constructive or transparent manner, as set out above. That can best be addressed by improving OPBAS; it does not require adopting any of the other, more problematic, courses suggested in the Consultation.

9. Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.

The Bar Council does not consider there to be any significant feasibility constraints in the OPBAS+ model.

PBS Consolidation

10. Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide remit, (b) retaining separate PBSs in the Devolved Administrations? Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both.

The Bar Council does not consider the PBS consolidation model to be advantageous in achieving the objectives of the Consultation in either form.

Whether a UK-wide remit, or the retention of separate PBSs in the Devolved Administrations (in the form suggested, being effectively 6 PBSs to reflect the legal and accountancy sectors in the devolved regions), neither proposal would allow for a supervisory regime which is capable of addressing the differing risks of the supervised population regulated within the legal sector without further oversight (the inclusion of an OPBAS+ approach as well as the consolidation of PBSs) or the hiring of experts (as accepted in the Consultation at §4.24). The negative consequences of reducing the number of PBSs as suggested in these proposals would not be mitigated or improved through the final number being reduced to 2, for each sector, or 6, for each sector in each devolved region.

The Bar Council notes the Consultation's acceptance that differences within the legal sector's supervised population requires differentiated supervision and repeats its observation that such acceptance demonstrates the fallacy of consolidated rather than specialist supervision.

11. How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?

The requirement of the continued and, as proposed, enhanced oversight and intervention of OPBAS/OPBAS+ demonstrates that the 'consolidated PBSs' model offers the legal sector no advantages over the current model and only disadvantages. The Bar Council agrees with the Consultation's suggestion that the conjoined PBS models would "[m]ake effective oversight even more important" through the retention of OPBAS (§4.11) and that the loss of the specialist PBSs would lead to a loss of expertise which would have to be met

through the cost of hiring of experts familiar with the risks specific to the specialist areas of the Bar (§4.24). While, for the reasons discussed above at Q.10, it would not be inappropriate to provide OPBAS with the enhanced powers discussed in the OPBAS+ model, the Bar Council does not accept such additional powers are required or would bring about any benefits for the same reasons. The Bar Council does not consider PBS consolidation to bring about the advantages sought.

12. Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?

The Bar Council is not able to provide an informed response to this question.

13. What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?

The Bar Council is not able to provide an informed response to this question.

14. Under the PBS consolidation model, what would the advantages and disadvantages be of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?

The Bar Council does not consider that there would be any relevant advantages in a consolidated body supervising the entire Legal Sector for AML/CTF purposes. The present system, in terms of the profession of barristers, works well and as intended. There is no evidence for change. The

BSB, as the existing PBS, understands the nature of the work performed by barristers and where any AML/CTF risks are likely to arise and are therefore well placed to carry out proportionate and effective risk-based supervision efficiently without placing inappropriate burden on individual practitioners, or cost on the profession as a whole. As the Consultation identifies, the consolidation of the PBSs, for the Bar, would lead to the need for new structures and systems, the loss of expertise, a consequent need to recruit and a requirement to build levels of supervision to an acceptable standard.

There is no evidence of any benefit from this approach in relation to supervisory effectiveness or system co-ordination in relation to the Bar. It would lead to additional cost and the accepted danger of duplicating work and costs in the supervision of individuals and their gatekeeping practices (§4.29). In addition, it would present significant (and potentially insuperable) practical and legal complications in terms of data sharing, division of labour and enforcement mechanisms in circumstances in which non-AML/CTF issues will continue to be supervised by the separate PBSs. There is simply no possible justification for introducing complication and cost of that kind, either in absolute terms or in particular by reference to the accepted low-risk nature of the work of barristers and advocates.

15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?

The Bar Council does not consider that consistency of enforcement powers is an issue of concern. The professions and entities regulated by consolidated PBSs of the nature proposed would be diverse both in activity and size and in their disciplinary regimes. It would be inappropriate and unnecessary to

attempt to impose a 'one-size-fits-all' enforcement regime in situations that are different. By way of example, barristers are likely to be individuals and enforcement powers which are likely to be proportionate and effective in relation to them will be wholly different from those which would be proportionate and effective in relation to large or even medium or small companies and partnerships.

16. Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?

As is stated above, the Bar Council, as with the PBS of each of the UK Bars, supervises all barristers who provide legal services in their jurisdictions, including all who undertake activity in the regulated sector. Non-members purporting to provide legal services would be criminally liable. Therefore, there is no advantage in either PBS consolidation model.

17. What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?

The Bar Council considers that the consolidation of PBSs for AML/CTF purposes would be likely to lead to significant disruption, confusion and complication. It is difficult, if not impossible, to provide informed comment in the abstract on the steps that might be appropriate to attempt to reduce that disruption. It would require detailed consideration beyond the scope of this response, for example on areas such as mechanisms for data sharing between PBSs, mechanisms for cost recovery, minimising complication and confusion for individuals regulated by one PBS for most purposes and by a

different PBS for this single purpose, delimitation of responsibilities and enforcement and mechanisms for sharing specialist knowledge and experience.

The best that can be said is that increased assistance by a more transparent and empowered OPBAS might assist the process. In other words, a form of OPBAS+. However, if that is accepted to be the case then it is immediately apparent that an improved OPBAS can assist in achieving the objectives of the Consultation without the destructive effect of PBS consolidation in the legal sector.

18. Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.

The Bar Council believes the impact the PBS consolidation model would have on supervisory effectiveness of barristers and advocates to be wholly and significantly negative. There is no evidence of any concerns regarding the present supervisory effectiveness in this sector. The risks within the sector are low and well understood by the present PBSs. The proposed model would add additional cost disproportionate to the risk and require additional supervision and the recruitment of experts.

19. Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.

No evidence is offered as to how the proposals would improve the current system of co-ordination – for example as is achieved via LSAG. Again, therefore, there would be no positive advantage, but there would be extra cost and potentially a loss of the effective co-ordination which is achieved

today. As pointed out in this response to the Consultation, better system co-ordination can be achieved at much less cost and regulatory upheaval and without damaging supervisory effectiveness through improvements to the focus, operation and transparency of decision making at OPBAS. Such changes would be proportionate to the scale of the concerns in the effectiveness of AML supervision sought to be addressed.

20. What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and supervision standards do not fall in the interim?

See above.

21. How do you believe fees should be collected under the PBS consolidation model?

The Bar Council notes that the present PBSs have in place systems by which fees for regulation are collected for all purposes, including AML/CTF. The consolidation of the PBSs for AML/CTF purposes would not mean that the “deselected” PBS will not continue to fulfil its other functions. As such, the most cost-effective way of fees being collected in the sector would be through the “deselected” PBS. It is self-evident that the financial burden on the members of the Bar would be higher if they are required to pay two different regulatory bodies directly, or a third party hired to fulfil this role on behalf of the consolidated supervisor. This would still mean extra cost to the members, and without any identified need for the change to take place considering the current effectiveness of supervision, and the lack of other identifiable and evidenced advantages.

22. Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.

The feasibility constraints of additional cost, lead time and loss of effective supervision during the transitional period would be significant for the reasons stated above.

SPSS

23. Do you agree these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?

The Bar Council notes that the structural design features do not include reference to its ability to interact with the diverse supervised populations which it would be required to supervise. No doubt this has been left out as it is impossible to conceive of a structure which would allow an efficient method for such a body to effectively and efficiently understand the diverse risks of its supervised population, create and communicate risk-specific guidance for that diverse supervised population, and effectively and proportionately sanction where necessary that diverse supervised population; unless it does so through the existing PBS structures which, as far as barristers are concerned, presently meets the identified risks effectively and efficiently.

24. If an SPSS were to be created, which sectors do you think it should supervise?

The Consultation offers no indication of an advantage in an SPSS, of the size and scope considered here, with reference to the supervision of barristers. As is explained above, “consistency in the risk-based approaches to

supervision” should not be a driving aim of the review process. The intended supervised population would be so large and diverse that it risks, (as identified in the Consultation at §5.10 to 5.14) a reduction of appropriate supervision for some firms plus a loss of PBS specialist knowledge of their supervised population and the specific AML/CTF risks which their members face. The proposed mitigation of ‘dip-sampling’ would be a radical reduction of supervisory effectiveness from current levels. Dip-sampling as a proposal indicates that an essential aspect of practice at the Bar and the work of individual barristers – their practices, between themselves, even within the same chambers and field of work, can be wholly different. The results of a ‘dip sample’ would be highly likely to have no relevance outside of the examined individual or chambers.

25. Were an SPSS to be created, what powers should it have?

It is axiomatic that the SPSS would require broadly the same powers as the PBSs. This would clearly lead to the risk of duplication of regulation in processes, data collection, supervisory and enforcement functions – adding an increased financial burden upon the supervised population, i.e. individual barristers. It is not explained how the SPSS and separate PBSs would ensure consistency of approach towards their supervised population and mitigate against conflicting guidance and confusion over consequential duties.

26. How should enforcement responsibility be transferred should an SPSS be created?

An immediate transfer would require very large expenditure to ensure the SPSS has the requisite specialist knowledge, data and processes to

effectively supervise and sanction the supervised population. This cost would likely have to be met by the supervised population and this would be wholly disproportionate in this sector, considering the low risk of the Bar, and the present levels of effectiveness of supervision through the BSB.

A transitional approach would spread this cost but offer no advantage over the present structure. In addition, the expertise required would probably only be met through the retention of OPBAS, presumably with the additional powers discussed above. This transitional model therefore, while spreading the cost, would at the same time lead to an overall higher spend, to be borne by the membership – for no obvious gain.

27. What powers should HM Treasury have to oversee an SPSS?

The Bar Council considers that the SPSS model poses a serious threat to the independence of the legal sector, severely undermining its global reputation as a provider of World-class *independent* legal advice – free of government control and interference. Given the damage that could do to the position of UK plc on the world stage, the Bar Council does not believe that it is in the public interest for there to be an SPSS overseen by HM Treasury. For the same reasons the Bar Council does not consider that there can be sufficient safeguards or structures put in place to properly and visibly guarantee the independence of the legal professions.

28. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

As is identified in the Consultation, the impact would likely be less supervision than at present for barristers because of their evidenced low risk,

and the very large and diverse population the SPSS would be supervising. The SPSS would be without the specialist understanding of the sector which the BSB has and currently utilises. The SPSS' understanding of the specific risk factors faced by barristers would be less than that of the BSB today and the SPSS may not have the specialist knowledge to efficiently understand the data which the BSB holds in relation to AML/CTF risks in this sector and no established means of collecting its own.

29. How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?

Dual regulation of the sector would be burdensome and disproportionate. That burden would be two-fold. First, it would be financial. Secondly, it would also be intensely time-consuming and potentially confusing for each individual barrister in understanding their duties towards each regulator. In the unlikely event of an individual barrister being subject to enforcement proceedings by the SPSS, it is extremely likely that individual would have carried out activities which would require concurrent proceedings by its professional regulator, which could lead to very clear inconsistency in enforcement and sanction. This would be expensive and unfair to the profession, and to the individual barrister concerned.

Any mitigation of these negative impacts would be prohibitively expensive, disproportionate to a profession of individuals, and have the potential to reduce access to the profession.

30. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.

This is explained above.

31. Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.

This option is not feasible. The Consultation demonstrates this clearly (§5.29-5.41). The Bar Council agrees with the observed shortcomings and negative outcomes which are clearly indicated. It is not accepted that the mitigations proposed are feasible, proportionate, or effective. The very high costs in creating and sustaining the new body would be duplicated in changing the procedures and structures in oversight, supervision, and enforcement in the existing PBSs. All of these costs would have to be met by the supervised population. As the Bar is low-risk and presently effectively supervised, this is wholly disproportionate and counter to the objectives of effective, risk-based supervision.

SAS

32. Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?

The supervised population of the Bar for AML/CTF purposes is small and low risk. A supervisor of the size and wide remit of either proposal could not provide the present level of effective supervision of regulated barristers. It is likely that supervision standards, and gatekeeping capabilities, would decline and do so sharply in the short to medium term. There are also clear

risks of duplication of activity between the professional regulator and the single supervisor, increasing cost and risking the identification and management of AML/CTF threats being missed. The time and financial burden on individual barristers and the profession's representatives would be disproportionate – without any substantial, evidence-based advantage to the aims of effective supervision, system co-ordination or feasibility. The lack of specialised and expert knowledge of the sector risks inappropriate intervention and enforcement, if any such action is taken at all.

33. Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.

The challenges indicated above explain the impact of the SAS model would be a reduction in supervisory effectiveness without any evidential basis to show that the hoped for benefits will be realised.

34. Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.

The supervised population of the Bar Council is individuals rather than firms. The additional burden to individual professionals in terms of time and resources is unrealistic, disproportionate and may be an additional barrier to access/retention within the supervised population.

35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.

First, the Bar Council cautions strongly against considerations of the 'goal' of improved system coordination being permitted to impact negatively on the overriding objective of risk-based supervision. Risk-based supervision is both the most efficient and effective basis for supervision and the legally obliged goal that those seeking to alter the supervisory system must work towards. The Consultation notes that system-coordination for an entity with such a wide remit would be both an "increased challenge" and a "barrier" (§6.1). The Consultation's hope that those barriers to better supervision *might* be "successfully overcome" can only be a matter of speculation. That represents an unjustifiable risk given the level of change that Model 4 represents. It is also wholly unnecessary in the case of the Bar, where the present supervision of the supervised population is already both effective and efficient. How such barriers would be specifically overcome with regards to specific sectors or professions is not particularised in the Consultation. They would likely require significant time and investment by the SAS, the PBSs and the supervised population to "successfully overcome" a barrier which currently does not exist and would not exist but for the creation of an SAS.

36. Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.

Creating an SAS to supervise all sectors and entities would clearly adversely affect supervision of the supervised population within the Bar. The additional costs of implementation, information sharing, and duplicity of activities for the PBS, the SAS and the consequent increase in regulatory fees,

and expense of time for the individuals supervised is wholly unnecessary and counter-productive for a supervised population which is presently effectively and efficiently supervised. As is identified in the Consultation (§6.19 to 6.21) the feasibility of this proposal is undermined by such issues, both in any transitional period and when fully implemented.

Sanctions

37. Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?

The Bar Council is not able to provide an informed response to this question.

38. Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?

As per the comments provided above, the Bar Council takes the view that, in the context of there being no evidence of non-compliance with sanctions regulations by barristers, there is no need to introduce new supervisory powers and responsibilities to monitor sanctions compliance by barristers as (i) the current system is operating adequately and (ii) it would over-complicate the regulatory landscape. Over-complication being a regulatory risk as the relevant government departments and agencies already issue their own guidance on sanctions compliance.

39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?

In the case of barristers, no.

40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?

In the case of barristers, no.

Options Comparison

41. How would expect losing AML/CTF supervision to affect PBS' financial models, and the fees charged to supervised populations?

The Bar Council is not able to provide an informed response to this question.

42. Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness and (b) improved system coordination.

The Bar Council refers HM Treasury to its views as set out in this response. In short summary, but in no way in replacement for what is set out in the body of this response the Bar Council considers that:

Model 1 (OPBAS+) would provide the most supervisory effectiveness for the least disruption and, with reform of OPBAS, could provide a sufficient level of system co-ordination.

Model 2 (PBS Consolidation) would provide less supervisory effectiveness at the price of enormous disruption, despite offering no guarantee of improved system co-ordination.

Models 3 (SPSS) & 4 (SAS) would damage legal independence and jeopardise the international standing of the legal professions and UK Plc. They, like Model 2, remove specialisation – thereby reducing supervisory effectiveness. They would also require comprehensive upheaval (and primary legislation) at substantial financial cost with, for an as yet, unproven level of improvement to system co-ordination.

Public Sector Equality Duty

43. Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?

The Bar Council is not able to provide an informed response to this question.

The Bar Council of England and Wales

29th SEPTEMBER 2023

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