



## **Bar Council response to the Call for Information: Anti-money laundering Supervisory Regime**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the HM Treasury's consultation paper entitled Call for information: Anti-money laundering Supervisory Regime.<sup>1</sup>
2. The Bar Council represents over 15,000 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. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The Bar Council responds to the call for information from the perspective of the Bar.
5. As stated in the call for information, the recommendations of the Clementi Report have already been given effect to in relation to the legal profession by virtue of the *Legal Services Act 2007*. As a result, the regulatory and supervisory functions of the Bar Council have been delegated to the Bar Standards Board ("the BSB"), which acts independently from the Bar Council. The BSB discharges this function 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 anti-money laundering/counter-terrorist financing (AML/CTF) supervision of the Bar, and the task of monitoring its compliance with its AML/CTF obligations, operates without the risk of a conflict of interest.

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<sup>1</sup> HM Treasury (2016) Call for information: Anti-money laundering supervisory regime. Available here: <https://www.gov.uk/government/consultations/call-for-information-anti-money-laundering-supervisory-regime>

6. The Bar Council publishes guidance<sup>2</sup> for barristers to explain their obligations and illustrate best practice for AML/CTF compliance, and will be looking to add further practical assistance and examples into that guidance to give further help to barristers in applying it in practice. However, the majority of self-employed barristers<sup>3</sup> do not undertake work that falls within the scope of regulated business for independent legal professionals as defined by regulation 3(9) of the Money Laundering Regulations 2007.

7. The work of barristers generally consists of advising on and conducting contentious litigation which falls outside the AML 'regulated sector'. 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 entitled to, administer client accounts. They are only entitled to be paid for their services. 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. Like self-employed barristers, the very small number of BSB regulated entities<sup>4</sup> are not permitted to handle client money.

8. 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 will therefore be better placed to deal with AML/CTF issues and should already have addressed them.

9. In all fields, the BSB's rules, and its supervision and enforcement strategies, are well able to address the AML/CTF risks in a proportionate and effective manner.

10. 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 the specialist regulator, the BSB, works well. The BSB understands the nature of the work performed by the Bar and where any AML/CTF risks are likely to arise. It is therefore able to carry out risk-based supervision efficiently without placing an inappropriate burden on individual practitioners. From the perspective of the Bar, the Bar Council believes that it would be a serious error to attempt to replace the BSB with a "one size fits all" AML/CTF regulator, or a single AML/CTF regulator for the whole of the legal sector. Even if there were a case for what the Action Plan refers to as the "rationalisation of supervisors" in relation to other sectors the nature of the Bar, the existing independent nature of its AML/CTF

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<sup>2</sup> Bar Council (2016) Money Laundering and Terrorist Financing,. Available here: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/money-laundering-and-terrorist-financing/>

<sup>3</sup> Independent barristers who are self-employed and practising in Chambers. Barristers who work in law firms are regulated personally by the BSB but the law firms in which they work are comprehensively regulated by the Solicitors Regulation Authority.

<sup>4</sup> As of 20 May 2016 there are 49 BSB regulated entities. (BSB register of entities, available here: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-prospective-entities/>)

supervision and barrister's generally low-AML/CTF-risk profile would point to a different conclusion for the Bar. In further support of this position, the Bar Council refers to the HM Treasury's 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."<sup>5</sup>

(b) The Bar Council believes that any rationalisation of supervision in the legal sector that removed the supervisory role of the BSB would be likely to result in:

- i. Supervision being carried out by regulators with little or no understanding of the nature of the work of the Bar and the circumstances in which AML/CTF risks might arise. Such a regulator would be ill-equipped to conduct appropriate risk-based assessment.
- ii. Supervision being carried out by regulators who are not aware of other regulatory issues and concerns beyond AML. Such regulators would not be able to combine AML enforcement action with enforcement in other areas.
- iii. 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 and solicitors and other 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.

(c) Given the low AML/CTF risk presented by the Bar, some of the more intrusive measures proposed (such as an ability to enter premises – which for barristers could include private homes) for the purposes of AML/CTF compliance would be disproportionate to the risk and place an undue burden on individuals (as well as improper interferences with private life).

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<sup>5</sup> HM Treasury (2013) Anti-Money Laundering and Counter Terrorist Finance Report 2011-12.

Available here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200643/amlctf\\_supervision\\_report\\_201112.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200643/amlctf_supervision_report_201112.pdf)

**Q1: Should the government address the issue of non-comparable risk assessment methodologies and if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?**

11. Given the generally low AML/CTF risk presented by the work of the Bar, it is quite possible that the BSB's approach to risk assessment might legitimately differ from that adopted by supervisors for different professions and industries with different business models and presenting different risks. The Bar Council considers this to be one of the benefits of a specialist supervisor such as the BSB responding proportionately to the lower risk that the Bar presents within the wider legal sector. That said the Bar Council also recognises that it would be appropriate for supervisors to share expertise and, where appropriate, to develop comparable (or at least compatible) risk-assessment methodologies. The Bar Council considers that the AML Supervisors' Forum (AMLSF) presents the right medium for the sharing of expertise and for the development of risk assessment models. We would oppose the Government seeking to develop a single methodology.

**Q2: How should the government best support supervisors - and supervisors best support each other - to link their risk-assessments to monitoring activities and to properly articulate how they do so?**

12. The Bar Council believes that the AMLSF provides a helpful forum and opportunity for both the Government to support supervisors and for supervisors to support each other in linking their risk assessments to monitoring activities. The AMLSF provides the Government with an opportunity to share information and ideas with all supervisors. In particular, the AMLSF is an appropriate forum for the Government to inform all supervisors of AML/CTF trends and concerns that it has and similarly for the supervisors themselves to identify and share information on AML/CTF trends as perceived by the supervisors. The AMLSF also gives all participants the opportunity to consider appropriate monitoring activities in the light of those AML/CTF trends and concerns.

**Q3: Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?**

13. See the response to question 2. The Bar Council considers that informal Governmental monitoring through the AMLSF should be effective and sufficient.

**Q4: Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?**

14. No, and even less so where the supervisors also carry out wider regulatory functions. The Bar Council is not persuaded that direct pooling of resources by regulators would be helpful. Individual supervisors have very different regulated populations to supervise, from gambling sector workers to insolvency practitioners and estate agents. In the case of the legal sector, only a proportion of all lawyers operate within the 'regulated sector': in the case of the self-employed bar, a low proportion. Pooling of resources would require protracted negotiations (and indeed disputes) as to which supervisors should contribute which resources (on an ongoing basis) that has the potential to damage relationships between the

supervisors. Moreover, it is not hard to envisage it resulting in inefficiencies due to a lack of familiarity with the diverse sectors covered and duplication of coverage. The Bar Council believes that voluntary cooperation and pooling of information and ideas through the AMLSF provides the most effective and efficient means of pooling resources between supervisors.

**Q5: How should the ability of supervisors and law enforcement agencies to share information on risks be improved?**

15. While there is almost certainly no harm in different agencies sharing information on risk assessment, it is important that that does not lead to inappropriate approaches from one industry or one supervisor being imposed on another.

**Q6: To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?**

16. No. The Bar Council does not regard either proposal as necessary or helpful. The Bar Council supports the role of the AMLSF and recognises the benefit of regular attendance. However, the Bar Council does not view compulsory attendance as a step that would improve discussions between supervisors and recognises the difficulty compulsory attendance may present for some supervisors, particularly those with more modest resources and based out of London.

17. The Bar Council believes that the current system of annual returns could be made more effective and useful for both supervisors and the Treasury, enabling more concise and efficient communication of headline data from regulators to Government. However, it is important that these are designed in a way which focusses on the most important and relevant information and metrics for each supervisor, and avoid returns becoming an increased burden rather than a benefit, with the time taken to compile information outweighing the gain delivered by its submission. The required contents of returns should be the subject of regular review and discussion with supervisors.

**Q7: Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?**

18. No. Whilst there is always room for further cooperation to combat money-laundering, for example, by identifying trends and sharing best practice, the Government should avoid a situation where multiple bodies carry out overlapping oversight functions.

19. In the context of the legal profession, where regulation and representation are statutorily-distinct functions, an increase in the role of the MLAC is likely to represent an unnecessary regulatory interference with the BSB's supervisory function. Given the low risk profile of the Bar, and in the absence of any evidence that it is required, an additional layer of supervision would seem both unjustified and contrary to the spirit and intention of the Government's Red Tape Challenge and its drive to "get rid of unnecessary bureaucracy".<sup>6</sup>

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<sup>6</sup> See: <https://cutting-red-tape.cabinetoffice.gov.uk/>

The Bar Council also questions as to how an additional layer of supervision would fit with the function of the Legal Services Board and its relationship with the BSB.

**Q8: Should the government instigate a formal mechanism for assessing the effectiveness of all the supervisors AML/CFT activities with the power to compel action to address shortcomings? If so, should this be carried out by the Treasury directly, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?**

20. No. The Bar Council agrees that it is important that the Government is able to have faith and confidence in all of the regulators including in, but not limited to, the field of money laundering and counter terrorist finance. In the event that any regulator proves unable to live up to those standards, it is to be hoped that the situation could be addressed well before formal assessment mechanisms become necessary.

21. The question refers specifically to the Legal Services Board, and while the Bar Council questions the need for the Legal Service Board to have any oversight role (in this regard as well as in others), its current existence and role mean that there can in any event be no need for any additional or alternative body carrying out a similar function specifically for AML/CTF. Additional bodies could lead to confusion in accountability and the imposition of overlapping supervisory and regulatory regimes – again, adding rather than reducing the bureaucracy and red tape that the Government has made a commitment to reducing.

**Q9: Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?**

22. No. The Bar Council sees value in a body which facilitates communications between supervisors and identifying a strategic view, and it notes that, at present, this role is fulfilled by the AMLSF with support from Government. However, the Bar Council considers that the current system operates at an appropriate level of flexibility and effectiveness, and does not consider that further layers of regulation are necessary or desirable (see above). It is also noted that at present HM Treasury has the power to appoint and remove supervisors, and the Bar Council does not consider that this power should be amended or delegated.

**Q10: Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?**

23. No. The Bar Council does not consider it necessary or appropriate that the Government should seek to harmonise approaches to penalties and powers as between

supervisors across different professions, particularly as the BSB has sector specific sentencing powers and enforcement tools contained in Part 5 of the BSB Handbook. Regulated professions with regulatory structures do not need more regulation, and it is important that a regulator and supervisor's penalties and powers should be consistent and appropriate to its particular regulated/supervised community. Harmonisation is unnecessary, and could only lead to unnecessary increases in costs and inefficiencies of the sort that the Red Tape Challenge was designed to remove. There is a good case for targeted, sector-specific sanctioning powers. A supervisor for an industry involved in, for example, moving significant sums of client money should have powers and be able to impose penalties that are very different from those that are appropriate for a very low risk profession like the Bar. It may be helpful for supervisors to have a forum in which they can share experiences in relation to the powers and penalties that they have found to be effective and useful. However, whether the powers and penalties exercised by one supervisor are appropriate for a different industry or profession will depend upon the particular circumstances and characteristics of the industry or profession in question. If any individual supervisor considers that it lacks a power that it requires, then the appropriate course is to address the particular concerns of that supervisor. Moreover, it is difficult to see what benefit harmonising powers and penalties across different supervisors for differing industries would achieve: there is no reason to think that it would make risk assessment or detection in any given industry any more efficient. In the circumstances, creating additional regulation harmonising powers and penalties would not seem to be a good use of Government or private sector time or resources.

**Q11: Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?**

24. No. The Bar Council does not consider it necessary or appropriate to establish a single standard for supervisors' disciplinary and appeals functions. Different supervisors for different industries and professions have developed disciplinary and appeals functions tailored to the industry or profession that they regulate. The particular nature and structure of those functions are the result of a wide-range of factors particular to a given industry or profession, and not the result of inefficiencies that need to be rectification. The Bar has long-standing and effective arrangements for disciplinary functions and appeal functions which work well and enable a consistency of approach and efficiency of application across the breadth of regulatory matters affecting the Bar. Attempting to impose a single standard is likely to lose the benefit of tailored functions and create its own inefficiencies and difficulties for which it will be impossible to legislate, without achieving any clear benefit.

**Q12: Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively supervise, or is liaison with law enforcement agencies an appropriate mechanism. If so, how could government address this?**

25. This does not affect the Bar. The BSB has all of the necessary powers available to deal with barristers failing to comply with their AML/CTF obligations in the rare event that they are needed. The BSB's Professional Conduct Committee (the 'PCC') may at any time seek

information or assistance as it thinks fit from any person, group or body<sup>7</sup>. The Bar Council does not express any view as to whether such powers might be appropriate for supervisors in other industries or professions where risks are higher and business models different. It is not considered either appropriate or necessary to create further powers in respect of the Bar.

**Q13: Should supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?**

26. No such step should be taken as regards the Bar. The BSB already has all of the necessary powers available to deal with barristers failing to comply with their AML/CTF obligations. The Bar Council is content that the BSB should and does have the power to require submission of information by barristers to aid risk assessment. The Bar's low-AML/CTF-risk and the fact that the burden of filing significant amounts of documentation would fall upon self-employed barristers as sole practitioners necessitates a very careful examination of any requirement to submit such information to ensure that it is both proportionate to the risks involved and clearly directed towards and restricted to submission of information likely to be relevant and useful. The BSB's current supervision system is conducted in a risk-based and proportionate manner, and that is the right approach in this context.

**Q14: Is there a need for supervisors themselves to undergo training and/or continuous professional development? If so, what form might this take and should it be government-recognised?**

27. No, at least as regards the Bar. The Bar Council is in favour of the current AMLSF for knowledge-sharing purposes and notes the recent session where training was provided to supervisors to assist them in preparing for the upcoming FATF Mutual Evaluation Review. Each supervisor will have different needs depending on their size, risk-level and nature of their profession, and streamlined training would therefore seem to be unnecessary, and a likely burden on those supervisors who are smaller or based outside London. The Bar Council suggests it may not be sensible to require supervisors to undertake the same training.

**Q15: Is there a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuous professional development to aid their understanding of AML/CFT issues?**

28. Such training is already mandated by the *Money Laundering Regulations 2007*.

29. All practising members of the Bar are subject to continuing professional development (CPD) regulations. The Bar Council is committed to providing the guidance that its members need to be fully aware of their AML/CTF obligations and how to fulfil them. The AML/CTF guidance has very recently been updated and publicised, and the Bar Council will be looking to add further practical assistance and examples into that guidance to give further help to barristers in applying it in practice. The Bar Council also operates an Ethical Enquiries Service by telephone and email which enables barristers to raise enquiries arising

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<sup>7</sup> BSB Handbook, Part 5, Rule E7. Available here:

[https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf)



from their practice, including those relating to their AML/CTF obligations. Furthermore, those accepting instructions directly from members of the public (“public access” barristers) are already required to receive public access training which includes AML/CTF components, from one of the three BSB-approved providers. The Bar Council’s training is tailor-made to barristers, and is one of three approved providers for this training. The Bar Council has in the past and will continue in the future to organise AML/CTF training and awareness events.

30. The Bar Council does not consider that further continuing professional development is necessary. From the perspective of the Bar, the Bar Council would regard it as placing an unnecessary burden upon a low-risk profession, only some of whose members operate within the ‘regulated sector’ or undertake work which is not covered by legal professional privilege, to impose any further regulations or specific AML/CTF requirements.

**Q16: What safeguards should be put in place to ensure that there is sufficient separation between the advocacy and AML/CFT supervisory functions in professional bodies? To what extent are appropriate safeguards already in place?**

31. There is no need to put in place additional safeguards to ensure there is sufficient separation between AML/CFT advocacy and supervisory functions in relation to the Bar, as this is already provided for under the Legal Services Act 2007. The Bar Council considers that, for the public as well as for the Bar and its clients, the current arrangements for ensuring this separation are working well.

32. In relation to other supervisors, any steps of this nature should in principle be taken only where there is evidence of inappropriate and detrimental influence on the effectiveness of AML/CTF supervision, and only to the extent that it is necessary and proportionate to do so.

**Q17: Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?**

33. There is no need for the Government to mandate for separation of representative and supervisory roles in relation to AML/CFT with respect to the Bar Council as separate roles are already established and in operation. Such a mandate would only add further layers of unnecessary regulation, potentially complicating the existing arrangements.

34. The Bar Council also notes that both the National Risk Assessment and the current call for information make the point that for the legal sector, the risk of conflict of interest between representative and supervisory roles for AML/CTF is not present due to the arrangements made under the Legal Services Board referred to in above.

35. In relation to other supervisors, the Government should consider action of this nature only if there is clear evidence to justify it: please see paragraph 33 above.

**Q18: How does the UK approach to professional body supervision compare to other countries’ regimes?**

36. With regards the legal sector, it is unusual for professional bodies to be overseen by another body in the way that the Legal Services Board oversees the nine approved regulators in operation in England and Wales. The majority of professional bodies have no such oversight, are independent of Government and are not separated into representative and regulatory operations. The Bar Council is aware that countries such as Canada, Australia and Spain operate under a central AML/CTF regulator, but the Bar Council takes the firm view that the role of the Bar Council/BSB as an independent specialist supervisor in England and Wales is more than sufficient in light of the nature of the profession being a referral profession, and presenting a low risk for money laundering and terrorist financing, and that a sector-specific approach is the right one for the UK.

**Q19: How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?**

37. The Bar Council does not respond to this question which is most appropriately answered by the FCA and others in the financial sector.

**Q20: What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of providing legal safe harbour to businesses that follow the guidance?**

38. The Bar Council supports the role of HM Treasury in approving the guidance provided by supervisors or representational bodies, and is in favour of a process for approving guidance that is efficient, effective and not overly burdensome. It should be possible for supervisors or representative bodies to engage with HM Treasury before seeking formal approval, and to have their guidance approved in reasonably short timeframes, and the process should not be daunting or unnecessarily complicated.

39. The aim should be that a combination of the legislation and sector-specific guidance should be clear enough for individuals affected to be in no doubt how to comply with their obligations in practice (a yet further justification for a profession-specific approach which takes full account of how different professionals work and the context in which they work). The role of the Government should be to facilitate this.

**Q21: Should the government produce a single piece of guidance to help regulated businesses understand the intent and meaning of the Money Laundering Regulations, leaving the supervisors and industry bodies to issue specific guidance on how different sectors can comply? If so, would this industry guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?**

40. The Bar Council does not see value in the Government producing its own AML/CTF guidance unless it provides something useful which the existing system cannot; and it is not clear that this would be so. The value of profession-specific guidance is that, if prepared properly, it emphasises the practical impact of the AML/CTF legislation in a way which the particular supervisor knows from experience of its own profession will have the greatest impact on working practices. The Bar Council is therefore unenthusiastic about universal

guidance, the majority of which would not be relevant to any one 'regulated sector', and could even lead to confusion due to misunderstanding or misinterpretation of an approach aimed at one sector which is not readily applicable to another sector. The Bar Council would also not be in favour of a single piece of guidance for the whole of the legal sector, as the nature of barristers' practice entails a different application of the legislation from that of other legal professionals. It would be in the best interests of the Bar and the public for the Bar Council to continue to produce guidance specific to the particular needs of the Bar.

**Q22: Should supervisors be required to publish details of their enforcement actions and enforcement strategy, perhaps as part of the Treasury's annual report on supervisors, or in their own reports? What are the benefits and risks in doing so?**

41. No. This would place an unnecessary burden upon a low-risk profession, and could undermine or lead to inconsistency with the BSB's approach to the publication of the results of regulatory action more generally. The Bar Council makes just two further observations.

42. First, it may helpful for some supervisors to report their enforcement strategies and actions to the Treasury but that is matter that should be considered on a sector-specific basis. Even if such an obligation were imposed upon a particular sector that would not necessarily mean that it would be appropriate to publish everything that is reported; if reporting identifies good and bad practice, and draws attention to risks and areas to address, it may be sensible to publish that information. However, requiring all supervisors to produce published reports of their actions and strategy may impose an unjustified and unnecessary burden on the supervisors whose time and energy might be better spent elsewhere.

43. Second, it is important that in publishing information on enforcement actions appropriate steps are taken to ensure that the rights of individuals to privacy are not inappropriately infringed. The Bar Council notes that in circumstances where findings of professional misconduct have been made and sentence imposed by a Disciplinary Tribunal, Part 5 of the Handbook sets out the clear provisions that the BSB has in place to publish those findings.

**Q23: Should the government publish more of the detail gathered by the annual supervisor's report process? For example, sharing good practice or weaknesses across all supervisors?**

44. The Bar Council has no objection to this proposal in principle. Appropriate transparency of findings may be of advantage to all those who are subject to the AML/CTF regime.

**Q24: Should supervisors be required to undertake thematic reviews of particular activities or sections of their supervised populations, as the FCA currently does? If so, how often should such thematic reviews be taken?**

45. The Bar Council does not regard this as appropriate, at least not for the Bar. It is important that any requirement imposed on the supervisor is capable of being tailored to the particular industry or profession concerned. In the case of the Bar, it is possible to identify specific, limited areas of practice in which any AML/CTF risk is likely to be concentrated (i.e. tax and trust advisory work and direct access work) while for most of the profession

AML/CTF issues are extremely unlikely ever to arise. The most appropriate way for the BSB to review those particular sections of the Bar is by applying a risk-proportionate approach. That is something that the BSB can, and should be allowed to, determine for itself through its own risk assessments: it seems unlikely that imposing a requirement on the BSB to consider such an approach is necessary or appropriate, and is likely simply to create additional burdens of compliance with regulation, to create inefficiencies, and to add unnecessary costs, potentially to the detriment of other regulatory activity of similar importance.

**Q25: What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?**

46. Given the low-risk nature of the work of the Bar, the existing law (which would entitle the BSB to provide information to law enforcement agencies if it considered that there was evidence of an offence having been committed) is sufficient. Requiring or permitting the BSB to share information more broadly (both in terms of recipients and circumstances) on FIN-NET or any similar platform seems likely to involve an unwarranted and disproportionate regulatory cost for the Bar (given the cost in terms of time and money in having the BSB fulfil the criteria for membership) and an unwarranted and disproportionate interference with its members privacy and data protection rights. This is an example of a situation in which it is appropriate for supervisors of different industries or professions that present different risk profiles to be subject to different obligations.

**Q26: As one means of facilitating better sharing of intelligence among supervisors and between supervisors and law enforcement, could the government mandate that all supervisors should fulfil the conditions for, and become members of, a mechanism such as FIN-NET? Are there other suitable mechanisms, such as the Shared Intelligence System (also hosted by the FCA)?**

47. No, it should not do this. See further our response to question 25 above.

**Q27: Should the government require all supervisors to maintain registers of supervised businesses? If so, should these registers cover all registered businesses or just certain sectors? Should such registers be public? What are the likely costs and benefits of doing so?**

48. No. The Bar Council does not consider it appropriate to require the BSB to maintain a register of all supervised entities (which in effect would mean a register of all barristers) for AML/CTF purposes. The BSB already keeps a register of all barristers whom it regulates. Given the low-risk nature of the work of the Bar the creation of a specific register for AML/CTF purposes would be disproportionate and wasteful; publication of such a register would be unnecessary, costly and unlikely to serve any useful purpose.

**QQ28-30**

49. These questions do not relate to the Bar.

**Q31: Is the number of supervisors in itself a barrier to effective and consistent supervision? If so, how should the number be reduced and what number would allow a consistent approach?**

50. The Bar Council strongly disagrees with the proposal that the number of supervisors is in itself a barrier to effective and consistent supervision. On the contrary, each profession having its own specialist regulator is in the best interests of each profession and the public. Furthermore, supervisors within the legal sector have been collaborating in their supervision via, for example, the Legal Sector Affinity Group; a fact acknowledged by the National Risk Assessment itself: "Over recent years there has been a considerable amount of national co-ordination and engagement between law enforcement agencies, government and legal sector supervisors. This has led to an improved understanding of the risks and a greater focus on money laundering by the supervisors".

**Q32: If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?**

51. No, at least so far as the legal sector is concerned.<sup>8</sup> The current number of legal services supervisors is not a barrier to good supervision. As set out in response to question 4 above, the Bar Council is also of the view that pooling of resources would not be helpful. The Bar Council's view is based on the following:

- (a) The current number of supervisors reflects divisions within the legal services sector, between different types of work and distinct legal jurisdictions.<sup>9</sup>
- (b) The kinds of risk assessment and monitoring required for and of law firms which handle client money and provide a plethora of international and national transactional services is very different from that required in respect of barristers, the great majority of whom never carry out any transactional work less still any 'regulated sector' transactional activities.
- (c) The legal services supervisors who are designated as such<sup>10</sup> (for barristers, the BSB) are able to provide specialist supervision in their designated areas. It carries out risk-based reviews generally and brings enforcement actions against those it regulates including prosecutions before disciplinary tribunals.
- (d) Specialist regulation by the BSB enables it to develop appropriate risk-based reviews and monitoring regimes for barristers, which can be and are conveniently, efficiently and cost-effectively combined with its consideration of all risks relating to barristers, its supervision of them, and its existing regulatory and disciplinary structures.

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<sup>8</sup> For which there are (7) regulators: Law Society (England and Wales), Law Society for Scotland, Law Society for Northern Ireland, Bar Council (England and Wales), Faculty of Advocates (Scotland) and the General Council of the Bar of Northern Ireland

<sup>9</sup> England and Wales, Northern Ireland and Scotland

<sup>10</sup> By Regulation 23 of the Money Laundering Regulations 2007

**Bar Council<sup>11</sup>**  
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<sup>11</sup> Prepared for the Bar Council by the Anti-Money Laundering Working Group