



**Response on Behalf of the General Council of the Bar of England and Wales, the Faculty of Advocates and the Bar Council of Northern Ireland to HM Treasury's**

- (i) Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime ("the Call for Evidence")**  
**&**  
**(ii) Consultation upon Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 of July 2021 ("the Consultation")**

**Suspicious Activity Reports (SARs)**

**§3.27-32 of the Call for Evidence & §3.4-14 of the Consultation**

*Supervisory Access to SARs*

1. We oppose the suggestion that supervisors, and in particular supervisors of the advocacy professions, should be given open and automatic access to SARs submitted by their supervised members. In adopting this position, we wish to make clear that we do not consider that the volume of SARs is of itself an indicator of quality of the issues being raised and would not seek to argue such a point. We consider that any actions aimed at improving quality of SARs must be focused on their content and usefulness, but that does not mean that there is a case for SARs to be accessed by supervisors.
2. First, we are not aware of any evidence that establishes a need for this step to be taken:
  - a. There is no evidence at all that there is a lack of 'quality' in SARs submitted by advocates.
  - b. Second, as a result, it is not clear what, precisely, is the aim of considering the 'quality' of advocates' SARs – whether there is said to be missing information or whether there are said to be too many SARs being made or some other problem.
  - c. Third, given the problems identified above, it is impossible to know what the appropriate response to any lack of 'quality' might be. If the supposed problem were that SARs were insufficiently detailed, that could be addressed by publishing additional guidance on the required content of SARs. The problem

is unlikely to be that there are too many SARs. While advocates are probably over-reporting,<sup>1</sup> the overall volume is low enough not to cause any material burden upon the investigative authorities.

- d. Fourth, if there was a relevant respect in which advocates' SARs lacked quality, it is completely obscure as to how allowing supervisors to review the SARs would represent the answer.
  - e. Fifth, the suggested approach appears to be at odds with the overarching aim of risk-based supervision and to exacerbate the principal problem for advocates in this area, i.e. over-regulation. Such over-regulation leading both to a disproportionate burden on practitioners and an unhelpfully complicated regime that tends by its very complication to obstruct rather than facilitate the aim it is supposed to achieve.
3. Accordingly, we do not accept the implied presumption that there is an issue with the quality of SARs submitted by advocates.
  4. Second, we have considerable concerns as to how such a power, when exercised, could be carried out in a way that does not risk inroads into the fundamental right of the client to legal professional privilege. Even if that could be addressed, careful consideration would need to be given to the impact it would have upon the client's confidence in the confidentiality of their communications with their legal representatives.<sup>2</sup> Given the importance of this right and the absence of any evidence of a pressing need to grant the power to review SARs to the supervisors of advocates, the introduction of such a power, in respect of our members, would seem to us to be disproportionate.
  5. Third, as there is no call for this power from the supervisors of the advocacy professions, we also think that it would represent an unnecessary diversion of supervisors' attention away from matters that they judge, on a risk-based assessment, to be priority matters of concern. The supervisors would feel obliged to make use of the power and review SARs, even though they did not have an evidence-based need to, if only to avoid being criticised for not doing so. Indeed, the Call for Evidence suggests that, once such a power is in place, supervisors should place the use of it at "the core of their activity" (Call for Evidence, §3.30). The supervisors would be obliged to make use of a power that they have not asked for to address a problem that has not been identified as existing. That cannot be a risk-based approach to supervision or tackling money laundering.
  6. Fourth, there is a concern that such inspection would have a negative impact upon the number and usefulness of SARs being made by advocates. Advocates would be aware that

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<sup>1</sup> In respect of Advocates in England and Wales, the Bar Standards Board has previously raised concerns of potential *over-compliance* with the Regulations.

<sup>2</sup> For the importance of which, see the ruling of the Court of Appeal in England and Wales in *In Bowman v. Fels* [2005] 1 W.L.R. 3083.

their SARs would be reviewed by their disciplinary-regulator-as-supervisor. That situation opens up the possibility of advocates, on the basis of a review of their SARs, being investigated for misconduct, say, for example, for a breach of legal professional privilege for a disclosure made by a practitioner in good faith, but adjudged by their disciplinary-regulator-as-supervisor as being unjustified. Leaving aside, for now, the substantial alteration of the relationship between the advocate and their disciplinary regulator, that prospect can only, particularly in borderline cases, have a negative impact upon the number of SARs made – a matter which has been said by the NCA to be a concern in the wider legal sector. It would also be likely to impact negatively upon the quality of SARs made because the advocate would fear saying something they ought not to.

7. Fifth, given the very low level of SARs submitted by advocates the ability of smaller supervisors, such as the Faculty of Advocates or the Bar Council of Northern Ireland, to objectively judge and advise on the quality of SARs is limited. With little or no ability to compare SARs submitted against a broader sample of SARs, the input from these supervisors will be of little benefit to their members or law enforcement.
8. Finally, the proposal is being made at a time when the process of making SARs is undergoing substantial change, with, amongst other things, a new SARs IT system set to be rolled out in Spring 2022. There is a case to say that it would be better to see what impact these changes have before any further significant alterations are made.

*Legislative Basis for Access* (Consultation §3.5-6)

9. As to whether the collection of such information is currently permitted under the existing anti-money laundering Regulations (“the Regulations”), we do not believe that Regulation 51(1) and Schedule 4 of the Regulations alone provide a lawful basis for supervisors to access and view the content of SARs. We believe that those provisions may, at most and where the evidence exists, assist a supervisor in assessing whether there is a need to collect such information as being necessary for performing their supervisory functions. However, absent reliance upon a specified gateway provision that expressly grants the right to review the otherwise confidential contents of an SAR, the automatic collection and review of SARs by a supervisor would appear to be without a lawful basis.
10. We do consider that the investigative power within Regulation 66 could be used to compel the provision of an SAR or a number of SARs, but that is a materially distinct position and power from the grant of a right of access to all SARs made by the supervised population. The powers within Regulation 66 are, as the Consultation points out, subject to pre-conditions and safeguards both within the regulation itself and Regulation 72. The current proposal would appear to grant open, unrestricted access to SARs, coupled with a future obligation upon supervisors to make the review of SARs part of their core duties and “their wider supervisory assessments” (Call for Evidence, §3.31). Safeguards are not mentioned. We believe that the current provision, where the supervisors of the advocacy professions have the right to call for specific information, on notice and where reasonably required in

furtherance of an investigation, is an effective and sufficient tool that properly balances the interests of the supervisor and the supervised professions in a risk-based manner.

11. We further believe that the proposal, at §3.32 of the Call for Evidence, for a “a more substantial integration of the supervision, enforcement and reporting spheres” where supervisors are reviewing both the quality of the content of an SAR and the decision as to whether to make an SAR or not, would be a very radical step. It would effectively hand over the control and monitoring of the SAR system to the supervisors. That could well lead to a fragmented and inconsistent approach to enforcement. More fundamentally, absent the evidence for the need for such a change, it is difficult to see how this can be regarded as a truly risk-based approach to AML/CTF supervision. We do not support such a proposal.

*Essential Safeguards*

12. Should the government continue with the proposal to grant to supervisors a power of access to SARs, we would strongly suggest that the power is one that is not granted automatically or for all time. We would suggest that the matter is dealt with by way of:
  - a. making it a power that a supervisor could apply to have rather than be automatically granted;
  - b. for any such application to make a case for why it is needed;
  - c. for the applying supervisor to state whether they wish to have access to non-anonymised SARs and, where they do, to be required to make a case as to why such identifying material is required;
  - d. for there to be a presumption against granting access to identifying material in SARs and for there to be a requirement for “strong grounds” for such access to be granted;
  - e. for the supervised population to be consulted as part of the process of consideration of the application;
  - f. for the grant of any such power to be on specified terms, including as to duration;
  - g. that it is subject to review by HMT/OPBAS and reporting from the supervisor, so as to ensure that the power is being properly exercised, being used to meet the risk identified and remains necessary; and
  - h. automatically suspends at a set period in time if not renewed.

13. Such safeguards would help to ensure that the granting and use of the power is carried out proportionately and remains risk-based. The granting of a blanket power would, in the case of the supervision of advocates, meet neither of those requirements.

*Supervisory Access to SARs as Part of the 2022 Statutory Instrument*

14. We note that the proposal for supervisors to have access to the content of SARs is the subject of both the Consultation (§3.4 *et seq.* & Qs.13-18) and the Call for Evidence (§3.27 *et seq.* & Qs.40-42). This is of concern.
15. Paragraph 1.18 of the Call for Evidence states that “A final report setting out the findings of the review and, where relevant, possible options for reform will be published no later than 26 June 2022. Further consultation may be conducted in response to the findings of this review.” The Consultation at §1.1 states that the current plan is for amendments to the Regulations to be “taken forwards through focused secondary legislation due to be laid in Spring 2022”. The Consultation is said to be for amendments that “are being made now” as “they are either time-sensitive or relatively minor, proposals for change which are in development” (§1.19).
16. However, it would appear that the Call for Evidence proceeds on the basis that the change *being consulted upon* will be made. Question 41 of the Call for Evidence is predicated on the basis that the power to access SARs by supervisors will be granted: “41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?”. It is axiomatic that supervisors cannot “bring the consideration of SARs *and assessment of their quality* within the supervisor regime” unless the power to access the content of the SARs in question has already been granted. This could be seen to suggest that the decision to grant supervisors access to the content of SARs has already been taken. Moreover, if that were not the case, then the proposal for there to be “substantive legal obligations on supervisors to bring the consideration of SARs into the core of their activity” (§3.30) would not be under consideration. This calls into question the point of consulting on whether to permit supervisors to have access to the content of SARs: the decision to do so may already have been made.<sup>3</sup>
17. This is particularly regrettable as it is not clear *why* the proposal to permit supervisors to have access to the content of SARs is a matter that needs to be in the Consultation or is required to be part of the Spring 2022 Statutory Instrument. As stated, the amendments to the Regulations are expressly said to be those that are “either time-sensitive or relatively minor”.

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<sup>3</sup> We note that the terms of the proposed change are not in Annex D: Drafting for Consultation. The draft regulations provided are for specific issues, e.g. Art Market Participants. The fact that the draft regulations at Annex D start at number 14 suggest that lower numbered regulations (1-13) have also been drafted and their position in the proposed SI at least provisionally determined. There is also no reason to believe that amending regulation will stop at regulation 19A.

18. The proposed change is certainly not “relatively minor”. In the case of legal professionals, it materially changes the relationship between practitioners and their disciplinary regulator. The regulator will have access to otherwise confidential material that has only been shared with law enforcement by operation of a legal compulsion backed up by potential criminal sanction. Supervisors will be granted privileged access to material that they would otherwise not have any right to see and, upon receipt of it, have the power to commence a disciplinary process against the practitioner on the basis of that material. That will happen without there needing to be any pre-existing investigation or any suspicion in respect of the practitioner, let alone any complaint having been made against the practitioner by any person at all. It represents an enormous expansion of the disciplinary regulator’s powers and an equally large encroachment into the right of the practitioner to practice without undue interference and the client’s right to confidential representation. It permits the disciplinary regulator, as supervisor, to peer right into the very heart of the otherwise confidential relationship between practitioner and client. For those reasons alone, such a change cannot be described as “minor” or uncontroversial.
19. The proposed change is also not “time-sensitive”. If it were, then a case for such urgency would have been made in the Consultation. No such claim is made, either in the Consultation or the Call for Evidence. No evidence is cited at all. At most, the case for there being a need for such a change is described as “*arguable*” (Call for Evidence, §3.28). Moreover, if it truly were time-sensitive and if the Call for Evidence is a *bona-fide* exercise, then the need for supervisors to bring the consideration of SARs “into the core of their activity” would be too urgent for that, longer, slower and later-reporting process.
20. We would urge the government to remove the proposal for supervisors to have access to the content of SARs from its planned Spring 2022 Statutory Instrument and permit the Call for Evidence process to complete before re-visiting this matter.

## **Response to Questions**

### *The Consultation*

**13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?**

For the reasons given above, we do not consider that access by the AML/CTF supervisors of the advocacy professions to the content of our members’ SARs, beyond their existing powers, is necessary or desirable for the effective performance of their supervisory functions.

**14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?**

For the reasons given above, we consider that Regulation 66 is sufficient to allow supervisors risk-based and proportionate access to the contents of SARs to the extent they find useful for the performance of their functions.

**15. In your view, would allowing AML CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why?**

For the reasons given above, we do not consider that allowing AML/CTF supervisors of the advocacy professions automatic access to the content of SARs would help support their supervisory functions. We would go further and say that it has the potential to detract from their ability to carry out their supervisory function in a risk-based, proportionate and efficient manner.

**16. Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?**

We do not agree with the proposed approach of introducing an explicit legal power in the MLRs to allow the supervisors of the advocacy professions to access and view the content of the SARs submitted by their supervised population as we do not believe that it would support the performance of their supervisory functions under the Regulations. We believe that a proportionate power to properly access SARs, where there is such a need, already exists within the Regulations in the form of Regulation 66. If the government intends to pursue this matter, and it would appear that it does, a power to have access to SARs outwith the investigatory power within Regulation 66 would, in our view, have to be provided for expressly within any amending legislation. If that avenue is pursued, we would strongly urge the government to make the power subject to the safeguards we refer to above at §12, i.e. that the power is not automatically granted, is time limited if activated and is subject to review.

**17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.**

**18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.**

As set out above, we believe that allowing AML/CTF supervisors of the advocacy professions access to the content of SARs would detract from their ability to carry out their supervisory function in a risk-based, proportionate and efficient manner. We would cite the absence of any call from any of the supervisors of the advocacy professions for such a power as evidence of this being the case.

We also believe that it would have a negative impact on the readiness of the members of the supervised advocacy professions to make SARs. Members of the professions would be well aware that their SARs are being reviewed by their disciplinary-regulator-as-supervisor with an obligation to investigate and pursue any misconduct found. As the making of SARs within the field of legal advice and representation is complicated by the duty to maintain the client's legal professional privilege, the decision whether to make an SAR or not is one

that will be finely balanced. The knowledge that such a decision will be reviewed by the practitioner's disciplinary regulator is highly likely to have a negative impact upon the number and usefulness of SARs made by advocates.

Given the competing obligations of making a required disclosure and maintaining a client's legal professional privilege, it is difficult to see how, if such a power of review is granted to the supervisors of the advocacy professions, useful mitigation could be put in place.

*The Call for Evidence*

**40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?**

We are not aware of any evidence within the advocacy professions of the Regulations not supporting the efficient engagement by the regulated sector in the SARs regime or the effective reporting of money laundering suspicions to law enforcement authorities.

**41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?**

We do not consider that the proposals in relation to supervisors being required to consider SARs and make assessments as to their quality, or number, would 'enhance' the role of supervisors in relation to the AML/CTF actions of their supervised populations. For the reasons given above, we do not consider that access by the AML/CTF supervisors of the advocacy professions to the content of our members' SARs, beyond their existing powers, is necessary or desirable for the effective performance of their supervisory functions.

**42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?**

We do have concerns about the role of the AML/CTF supervisors of the advocacy professions being altered to permit the review of advocates' SARs. We would urge the government not to grant such a power. If the matter is pursued, we would strongly urge the government to make the power subject to the safeguards we refer to above at §12, i.e. that the power is not automatically granted, is time limited if activated and is subject to review.

**43. What else could be done to improve the quality of SARs submitted by reporters?**

We reject the implied presumption framed within this question that there are issues in relation to the quality of SARs submitted by advocates. We are not aware of any evidence that the supervisors of the advocacy professions are concerned as to the quality of the SARs made by their supervised professions. We would suggest that until such evidence is provided there should not be an attempt to 'fix' a problem that does not appear to exist.

**44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?**

For the reasons given above, we do not consider that the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement upon the supervised population. It is worth noting that the Call for Evidence refers to the supervised population as consisting of “firms”. That is not the case in the advocates’ professions, where such an obligation, if created, would fall to the very great extent upon individual practitioners. This would be a very strict and burdensome requirement to place on practitioners with no corporate income and limited, or no, back-office support with which to meet it. In that respect we would re-iterate the point that there is no evidence that such a requirement is needed within our supervised population and point out that such a measure could not be said to enhance *risk-based* supervision.

## **Guidance**

### **§3.42-47 of the Call for Evidence**

21. We remain of the view that the profession of advocates should have their own stand-alone guidance, ideally approved by HM Treasury. The current arrangement does not recognise the substantial differences within the legal sector, for example between solicitors firms and individual advocates. The current situation requires advocates to consider both the general, legal sector wide guidance, which in substantial parts has no application to their practice, and their own, bespoke guidance. It is entirely unclear as to how this assists the advocate in taking a proportionate approach to their anti-money laundering and counter terrorist financing obligations.
22. Moreover, the process of building a separate work of guidance into the general, legal sector wide guidance is unduly complex due to the size and diversity of the groups involved. Such a lengthy process is in no-one’s interest.

## **Response to Questions**

### *The Call for Evidence*

#### **49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?**

For the reasons given above, we do not consider that the current guidance regime supports relevant persons in meeting their obligations under the MLRs.

#### **50. What barriers are there to guidance being an effective tool for relevant persons?**

As matters stand, advocates are obliged to consider both the general, legal sector wide guidance, despite it having, in substantial parts, no application to their practice and their own, bespoke guidance. This acts as a wholly unwarranted barrier to effective, focused and accessible guidance being put into the hands of advocates aiming to take a proportionate and risk-based approach to their AML/CTF obligations.

#### **51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?**

Advocates, given their distinct means of practice, their low-risk profile and their limited professional interaction with their lay clients, should be permitted to have their own stand-alone, HM Treasury approved guidance.

### **Supervisory Review**

#### **Structure of the AML/CFT supervisory regime, Call for Evidence, §4.7-11**

##### *The Proposal for the Consolidation of Supervisors*

23. We are concerned that the implication behind these questions is that there is an optimum or preferred quantity of supervisory bodies. We consider this to be wrong and an arbitrary aim based on a flawed and unproven assumption. Consistent with the views we have expressed in relation to other aspects of this Call for Evidence, we think that the paramount aim of any supervisory regime must be to adopt a risk-based approach. Legal services cover a broad spectrum of services, each with different risk profiles and covering separate legal jurisdictions. In order to have useful insight and tailored, effective responses to the diverse risks that exist across the broad scope of legal services, a range of supervisory bodies are required to be involved. These supervisory bodies can provide immediate expertise, local application plus linkage and integration into a wider oversight of business activities, thus reducing regulatory burdens and improving competitiveness.
24. Any proposal to reduce or consolidate the number of supervisory bodies would have to prove that it would not be detrimental to this risk-based approach. Leaving aside the jurisdictional and devolution issues that would need to be overcome, it would be wholly unacceptable to seek to absorb the lower risks that apply to the advocates profession, with its very distinct business activities and structural protections against AML, into those of a wholly different area of the legal sector solely to reduce the number of bodies involved. In our view this would be entirely counterproductive and damaging to the risk-based model of AML/CTF regulation.
25. If concerns exist about there being a tension between a risk-based approach and divergence of practice across a range of supervisory bodies, we consider that there are various mitigations which could moderate and standardise supervisory approaches where it is appropriate to do so. These include:
  - a. Supporting the work of the Legal Sector Affinity Group (LSAG);
  - b. OPBAS adopting a more proactive role in information sharing and peer networking;
  - 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 this response and the specific guidance that we 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.
26. If a concern still persists regarding the number of supervisory bodies, we strongly suggest that a better approach to adopt and one that would be wholly consistent with a risk-based approach (and that would in turn reflect views we have previously expressed) would be to reduce the expectations or even exclude from the current scope of supervisory oversight any supervisory bodies that have proven to represent a low-risk regulatory population (such as advocates) so that resources and consistency can be focused instead on those bodies that have responsibility for higher-risk populations.

### **Response to Questions**

#### *The Call for Evidence*

Structure of the supervisory regime

**Q 55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?**

For the reasons set out above, we consider that a reduction in the number of supervisors for the advocates' professions 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 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 advocates, consolidation or increased oversight through further or more distant levels of supervision consolidation represents the death knell to proportionate and effective risk-based supervision.

#### **Call for Evidence, §4.12 *et seq.***

27. The experience of the advocates' professions of OPBAS has not been entirely satisfactory. Our view is that OPBAS is yet to deliver any notable service to the advocates' professions' supervisors that ultimately assists their members in better understanding or addressing their anti-money laundering and counter terrorist financing risks and obligations.
28. We regret the fact 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. It does not consult supervisors of the advocates' professions before publishing its annual findings. It specifically prevents those supervisors from pooling knowledge obtained from respective OPBAS site visits.

29. 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. We also believe that, in keeping with the principle of risk-based supervision, those solutions should reflect the inherently lower AML/CTF risk arising from the nature of an advocate's work. We will consider OPBAS to be effective in this regard when we see more sustained evidence of them applying appropriate context when commenting on supervisory performance. Regrettably, we feel that we 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. This is why (in relation to which see above) the stand-alone guidance for advocates is of such fundamental importance.
30. Greater openness would also assist. If collaboration and information-sharing are aims that OPBAS wishes to achieve, we would appeal to OPBAS to lead by example in that regard. Annual reports on supervisory performance should not be published to external audiences without prior engagement with the supervisors referenced within such publications. This is uncollaborative, unnecessarily divisive and exclusionary. Supervisors with similar risk profiles, such as our supervisors of the advocates' 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. Instead, the experience of the advocates' professions 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.
31. We consider that 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, NRA, NCA, ISEWG, HMT, OPBAS). 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.

## **Response to Questions**

### *The Call for Evidence*

#### Effectiveness of OPBAS

**56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**

We believe that OPBAS should be assessed on the basis of whether it delivers a service that materially enhances supervisors' ability to assist their members in better understanding or addressing their anti-money laundering and counter terrorist financing risks and obligations. At present we do not regard OPBAS as being able to meet that level of effectiveness. We will also not consider OPBAS to be more effective in the aim of improving supervision until we see a more sustained application of appropriate context by them when understanding, assessing and commenting on supervisory performance. With regards to the supervisors of the advocates' professions, that context must be founded upon and thus reflect the inherently lower AML/CTF risk arising from the nature of an advocate's work.

**57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?**

As a first step to encouraging openness and information sharing OPBAS must first embrace transparency, information sharing and collaboration with the supervisors it is duty-bound to assist. Until such time as it can safely be said to have adopted those values in its approach to supervision it must be considered to having not met this objective.

**Remit of OPBAS**

**58. What if any further powers would assist OPBAS in meeting its objectives?**

We do not see OPBAS as either requiring or being enhanced by the provision of any further powers. For the reasons given above, and to those ends that we have stated should be aimed for, we believe that OPBAS should instead focus on making best use of its existing powers.

**59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?**

No. 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. In addition, we consider that until OPBAS has mastered assisting the improvement of the quality of supervision within its current jurisdiction it would be unfair on it, those it is currently responsible for and the statutory supervisors for it to take on any more responsibilities.

**Bar Council of England and Wales, the Faculty of Advocates and the Bar Council of Northern Ireland**

**12 OCTOBER 2021**

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## ANNEX 1

### *The General Council of the Bar of England and Wales*

1. 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.
2. 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.

### *The Bar Council of Northern Ireland*

3. The Bar Council of Northern Ireland is the regulatory and supervisory body of the Bar of Northern Ireland- a profession of over 650 self-employed barristers. Members of the Bar of Northern Ireland specialise in the provision of expert independent legal advice and courtroom advocacy.
4. The Bar Council of Northern Ireland champions the rule of law, serving the administration of justice and the public interest. Our barristers play a vital role in safeguarding the legal rights afforded to all citizens right across Northern Ireland.
5. The maintenance of an independent referral Bar represents one of the cornerstones of the legal system in this jurisdiction. The existence of a strong and independent Bar is paramount in promoting public confidence in the expert representation provided by barristers. As independent professionals, barristers are free of any external pressures or intrinsic interests other than to serve their clients to the best of their ability, whilst also serving justice and fulfilling their duties to the court. The specialist advocacy skills which they deploy are essential in helping to contribute to the high regard in which our legal system is held around the world.

### *The Faculty of Advocates*

6. The Faculty of Advocates ensures that the people of Scotland, regardless of wealth, background or location, have access to the very best independent, objective legal advice. The Faculty has been at the forefront of legal excellence since 1532 and regulates the training and professional practice, conduct and discipline of advocates.
7. As well as ensuring excellence in the specialist field of courtcraft, the Faculty is constantly evolving and is at the forefront of innovations in alternative dispute resolution methods such as arbitration and mediation.
8. Members of the Faculty have access to the country's finest legal resource - the [Advocates' Library](#) and the Faculty provides a collegiate atmosphere which allows advocates to exchange views in a way that gives them a unique insight into the law and helps ensure that they are always at the leading edge of analysis.