



## **Bar Council of Northern Ireland**

### **Anti-Money Laundering Supervision Report for the period 6th April 2021 – 5th April 2022**

#### **Foreword**

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.

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.

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 Bar Council upholds the highest standards of regulation in all that it does.

Barristers that we regulate must comply with the Money Laundering Regulations (MLRs) if the work that they do falls within the scope of the Regulations.

This report will describe the Bar Council's approach to determining the risk of money laundering within the barrister profession in Northern Ireland in the year to 5<sup>th</sup> April 2022.

It explains the reasons why the risk profile associated with barristers in this jurisdiction is considered to be low and also the anti-money laundering (AML) processes that have been undertaken that have enabled us to state with confidence that we currently have no barristers currently falling within the scope of the Regulations.

The continued absence of any active supervised population affects the scope of the supervisory activities that we have been able to undertake. Nevertheless the report makes clear that the Bar Council has not only implemented a full suite of mandatory AML checks on all barristers' practices, it has also been active over the past year to work with fellow regulators to share intelligence, develop best practice and comply fully with our obligations under the Money Laundering Regulations.

The Bar Council will therefore continue to be active and vigilant in its approach to AML supervision.

**Bernard Brady KC**

**Chairman ,Bar Council of Northern Ireland**



## **Remit & Role in AML Supervision**

The Bar Council of Northern Ireland is the regulatory body for all barristers practising in the jurisdiction of Northern Ireland – a function which it sees as a vital obligation, fundamental to maintaining the standards of and confidence in the profession.

The Bar Council is the recognised supervisory authority for barristers in this jurisdiction for the purposes of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2020. This places an obligation on the Bar Council to ensure adherence with the Money Laundering Regulations and in doing so to work closely with OPBAS ( Office for Professional Body Anti-Money Laundering Supervision), an HM Treasury body that will supervise all existing supervisors.

There are approximately 650 practising barristers in this jurisdiction. This report details the approach we adopt with every single practising barrister to determine whether they have a practice that falls within the scope of the Money Laundering Regulations and to supervise them accordingly.

## **Risk Based Supervision Approach**

In developing its current Risk Assessment methodology the Bar Council of Northern Ireland has taken in to account examples of best practice and the sources of advice and approaches adopted by the various sources itemised under paragraph 2 of Regulation 17 of the MLRs.

We pay close attention to the findings of the National Risk Assessment and the work done by the National Crime Agency and the NECC and UKFIU.

We have also paid close attention to FATF Guidance on Risk Based Supervision and earlier material such as the ESA publication of April 2017 “ Joint Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis.

The Bar Council has to date and will continually take steps to inform itself of :

- Risk factors within the UK as a whole – drawing upon information provided from sources such as FATF, HM Treasury; NCA and others.
- Risk factors within the professional body supervisors across the accountancy and legal sectors that have been discussed and disseminated in particular over the past 12 months in forums such as ISEWG ;
- Specific risk factors within the legal sector that have been the subject of ISEWG and LSAG consideration.
- Risk factors within Northern Ireland as a specific jurisdiction, drawing upon any specific guidance or awareness raising provided by devolved government departments.
- Specific risk factors within the barrister profession taking in to account the referral nature of the profession and the relationships and reliance that exists with instructing solicitors and lay clients.
- Specific risk factors within the barrister profession in Northern Ireland to take account of the specific regulatory structures that exist within the profession in Northern Ireland.

- Information obtained directly from each of the barristers whom we supervise by means of AML specific information obtained from annual mandatory Practising Certificate returns.

Having applied our risk assessment methodology and having monitored risk factors over the period covered by this report we consider those that we supervise to be of lower risk for the following mitigating reasons:

- Barristers in Northern Ireland are self-employed individuals and are sole traders. They operate with the support of shared services made available to them from the Bar Library.
- Barristers in Northern Ireland are not permitted to engage in direct access work meaning that they can only receive work from instructing solicitors who are also bound by AML/CFT supervision as performed by the Law Society of Northern Ireland.
- The instructing solicitor maintains the relationship with the lay client. The Code of Conduct of the Bar of Northern Ireland imposes very clear and strict boundaries in relation to any contact the barrister may have with a lay client. This has a material bearing on lowering the risk presented by barristers. Nevertheless, they must meet their own obligations to carry out a risk assessment, undertake Customer Due Diligence [“CDD”] before acting, keep a record of their compliance with the Regulations and disclose suspicious activity to the authorities.
- The barrister places proportionate reliance on Customer Due Diligence also being performed by the instructing solicitor. This also has a bearing on lowering the risk of the role performed by the barrister and where the barrister is instructed by a solicitor it may be possible, with their consent, to rely on the CDD that they have carried out. However, if they do, the barrister remains legally responsible for the regulatory compliance of checks and therefore for any failings in them. The barrister must be satisfied that they have obtained the necessary information to satisfy their own CDD obligations and thus will need to undertake a risk-based review of the CDD materials provided to you.
- Barristers in Northern Ireland are not permitted to hold or handle client money. They are paid by the instructing solicitor and are not permitted to have any financial relationship with the lay client.
- Barristers are prohibited from either:
  - entering into a partnership with another barrister, professional client or any other entity or individual and must not provide legal services within Northern Ireland in any capacity or as part of any entity or arrangement other than in his or her capacity as a member of the Bar of Northern Ireland.
  - A barrister must not enter into a fee sharing arrangement with another barrister, professional client or any other entity or individual
  - The vast majority/entirety of the Bar would work on areas of law which would not involve any recognised risk of AML/CFT occurring.
- Barristers in Northern Ireland are subject to ongoing active supervision by means of the structure described above and represent a relatively small community of practitioners.

The Code of Conduct is kept under active monitoring and review and changes are frequently made to address any identified risks to compliance. An updated version of the Code of Conduct is due to be published in September 2022.

## **AML Requirements Placed Upon Barristers During the Year to 5<sup>th</sup> April 2022**

In order to practice as a barrister, one must first of all satisfy the criteria for admission to the profession (being called to the profession) which are detailed in the Rules of Admission of the Inn of Court of Northern Ireland.

Once called, a barrister must then obtain and on annual basis re-apply for a Practising Certificate from the Bar Council of Northern Ireland.

Practising Certificates are only issued after a barrister has demonstrated that they can meet all of the professional requirements stipulated in the Code of Conduct of the Bar of Northern Ireland.

As part of this process every barrister must answer a series of mandatory questions that require them to consider and indicate whether their practice is within the scope of the Money Laundering Regulations. To assist barristers to answer these questions, we provided them with guidance an explanatory text that will help them to determine their status. One of the most significant forms of guidance we were able to supply during the year in question was the updated Legal Sector Advisory Group (LSAG) guidance that was jointly developed and published in April 2021 and which now includes a specific section wholly devoted to barristers and advocates. This is described in further detail in a later section of this report.

For the avoidance of any doubt:

- It constitutes professional misconduct for a barrister in independent practice to provide legal services without a current practising certificate and any failure to satisfy requirements laid down by the Bar Council would be grounds for withholding or removing a Practising Certificate and for referring a barrister to the Professional Conduct Committee.
- the process of applying for a Practising Certificate applies to all practising barristers within this jurisdiction on an annual basis.
- the section relating to the MLRs must be completed by members before they can submit the subsequent parts of their application.
- all barristers are required to confirm that they have read and understood their obligations before submitting their Practising Certificate returns.

The Bar Council therefore **conducted the above mandatory check on all practising barristers (approximately 650 in total) in Northern Ireland during the year to 5th April 2022.**

In addition we randomly selected a sample of a further number barristers each of whom were required to answer structured questions to determine that they have made accurate and complete answers to the MLR related questions contained within their Practising Certificate application returns.



## **Supervised Population**

As a result of the AML requirements placed annually on all practising barristers that have been described above, the Bar Council is confident that it has obtained information from all practising barristers with regards to the extent to which their practices engage the MLRs.

Our annual processes have shown that, consistent with the pattern observed in previous years currently there are zero ( Nil) barristers whose practices bring them currently within the scope of the Regulations.

## **Monitoring and enforcing compliance during the year to 5th April 2022**

The fact that, following the detailed , careful and mandatory checks we have undertaken, we had a supervised population of Zero in the past year has inevitably meant that there are certain aspects of our regulatory approach that were unable to be demonstrated in the manner that we have prepared for.

Activity such as desk- based reviews, the application of enforcement actions or addressing any deficiencies by our supervised population have not arisen in the past year. We are therefore unable to provide any applicable case studies.

Despite this inevitable and entirely appropriate limitation on the potential scope of our regulatory activity and notwithstanding the fact that the risk of a barrister becoming involved in conduct that involves money laundering or terrorist financing is relatively low (for the reasons given above) our advice to all barristers has consistently remained that some potential risk remains.

We have repeatedly advised our overall population of barristers that they must therefore know how to address those risks and how and when to take the correct and necessary action when such risks arise. This assessment should take into account risk factors including those relating to the client, the countries or areas in which the barrister practises, the nature of the services they offer, the type of transactions they advise on and the source of their instructions.

To assist barristers in this regard the Bar Council invests considerable effort in monitoring supervisory trends and best practice and producing guidance and awareness raising to our barristers.

The Bar Council is a member of The Legal Sector Anti-Money Laundering (AML) Group (comprising legal sector regulators and representative bodies). This group has completed an extensive review of the guidance available for barristers relating to the Money Laundering Regulations.

Updated guidance was jointly developed and published in April 2021 which now includes a specific section wholly devoted to barristers and advocates. The Bar of Northern Ireland worked intensively with the BSB, Bar Council of England & Wales and Faculty of Advocates to create the section specifically aimed at barristers and advocates. This Guidance has been published to all members of the profession in Northern Ireland.

The new guidance also incorporates amendments implemented via The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 and The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

### **Future Supervisory Activity**

The Bar Council will continue to adopt a comprehensive and risk-based approach to supervision and will participate fully in government and professional initiatives to combat money laundering and terrorist financing. We will respond to all OPBAS and FCA policy consultations.

In the coming year we will, amongst other actions, be implementing

- **A new conflicts of interest policy**- This will apply to all Bar Council members and will help to reinforce best practice in regulatory standards.
- An updated **AML intelligence and information sharing policy**.
- An updated **AML training plan** for the Bar Council staff engaged in AML supervision.