



## **Bar Council of Northern Ireland**

### **Anti-Money Laundering Supervision Report for the period 6th April 2022 – 5th April 2023**

#### **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 2023.

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.

**Moira Smyth KC**

**Chair, 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. The Bar Council is subject to oversight regulation by the Office for Professional Body AML Supervision (OPBAS). OPBAS publishes a Sourcebook on how the Bar Council and other professional body supervisors can meet their obligations under the MLRs. Following consultation, OPBAS published its most recent edition of this Sourcebook in January 2023.

<https://www.fca.org.uk/publication/opbas/opbas-sourcebook.pdf>

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 was published in September 2022 and all members were directed to review it closely and ensure that they were compliant with it.

### **AML Requirements Placed Upon Barristers During the Year to 5<sup>th</sup> April 2023**

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 an annual basis re-apply for a Practising Certificate from the Bar Council of Northern Ireland.

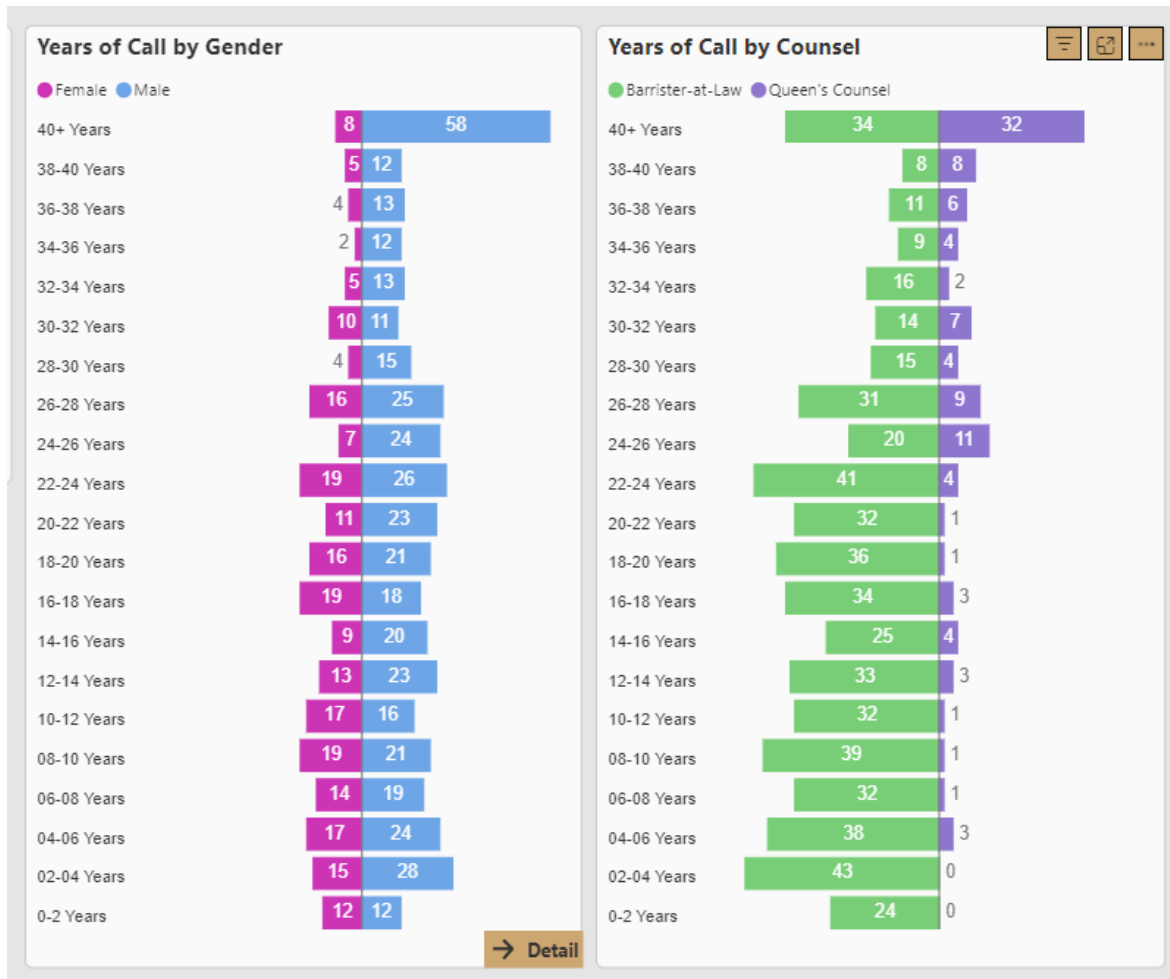
Practising Certificates are only issued after a barrister has demonstrated that they can meet all of the professional requirements stipulated in the Code of Conduct of the Bar of Northern Ireland.

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.

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 tables below provide the statistics on the supervisory checks that were performed over the course of the past year and how we determine the size of our supervised population.



Compliance with Requirement to Submit Annual Practising Certificate Return	<b>100%</b>
Compliance with Requirement to Complete Questions to Determine MLR scope	<b>100%</b>
After sampling and further verification, number of barristers within scope of MLRs	<b>Zero</b>

## 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 2023

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.

## Developments In Our Supervisory Processes

Despite the fact that we have verified that we have zero barristers currently within the scope of the Money Laundering Regulations, we nevertheless made a number of developments to our supervisory approach over the course of the past year. These measures were taken to enhance our existing approach and assist in ensuring alignment with the updated OPBAS Sourcebook which, following a consultation with all supervisors that the Bar Council submitted a response to, came in to effect in January 2023. Key highlights have included:

- **Increased staff** - A new Regulation Officer was appointed by the Bar Council who, within their role description, has dedicated responsibilities related to supporting our AML supervisory procedures.
- **New Policies :**
  - A new **Conflicts of Interest Policy** was developed and circulated to all Bar Council members and signed returned were obtained from them all.
  - An **Intelligence and information sharing policy was issued** in August 2022.
- **New Training** – The Bar Council’s Education and Training Officer developed a new comprehensive training course for all barristers to undertake online which helps guide the barrister through the MLRs, the available guidance, a barrister’s AML obligations and how they can achieve compliance with them.
- **Updated Supervisory Questions** – The questions contained in our Annual Returns were reviewed and changes identified to ensure that (a) they contained links to the most recent guidance available and (b) they contained updated questions and guidance relating to sanctions. These new questions were then deployed in the annual returns that issued from April 2023 onwards.

The Bar Council continues to invest 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 looked at a number of topics over the past year including:

- Response to the OPBAS consultation on its new Sourcebook.
- Implementation of the Money Laundering and Terrorist Financing (Amendment) Regulations 2022 and consequent adjustments to the Joint Legal Sector Guidance.
- The position contained within the guidance on conducting due diligence on ultimate beneficial owners.
- Sharing good practice in relation to supervisory efforts to establish compliance with the financial sanctions regime.

In addition, the Bar Council regularly attends both regional and national Intelligence Sharing Expert Working Groups (ISEWG) to help maintain its knowledge of current and emerging risks.

### **Looking Ahead & Future Supervisory Activity**

The Bar Council will continue to enhance its AML supervisory activity by monitoring risks, remaining engaged in all information sharing sessions and embedding the more recent developments to our practices and procedures that have been described above.

We anticipate that work will commence on a new National Risk Assessment. We expect to contribute to that through the stakeholder engagement fora.

The Bar Council responded to the HMT Consultation which concluded in September 2023 in relation to options for reforming the supervisory regime. In our view this consultation raised some extremely important principles that have significant potential repercussions for the legal profession and even the application of the rule of law. The selected model that emerges from this consultation will have profound ramifications for how supervision will function into the future. In addition to issuing our own response, in conjunction with both the Faculty of Advocates and Bar Council of England & Wales we issued a Statement of Principles on foot of this consultation. This can be read here: [conjoined-bars-statement-principles-response-hm-treasury-consultation-reform-aml-ctf-supervisory-regime.pdf \(barcouncil.org.uk\)](#). We await the findings of the consultation and will make preparations for any changes that it might entail for our future supervisory activity.

### **Further Information**

- You can find further information on the work of barristers in the Northern Ireland jurisdiction by visiting our website : [What do Barristers do? | The Bar of Northern Ireland \(barofni.com\)](#)
- Details on how barristers are regulated in Northern Ireland and how anyone can make a complaint about the conduct of a barrister can be found here : [Regulation | The Bar of Northern Ireland \(barofni.com\)](#)
- Details on how to raise a specific concern related to Money Laundering can be found here : [Money Laundering Concern | The Bar of Northern Ireland \(barofni.com\)](#) .This includes details of a dedicated and specific phone number and email address which can be used for that purpose.
- Barristers who engage in work that is within scope of the Money Laundering Regulations should refer to the guidance that has been prepared by The Legal Sector Anti-Money

Laundering (AML) Group . This guidance has been approved by HM Treasury and is in two parts:

- Part 1 [Guidance for the legal sector](#)
- Part 2 [Guidance for Barristers and BSB Entities](#)
- Part 2 has been written specifically to reflect the type of work that barristers typically engage in and it contains a number of useful FAQs and case studies to assist interpretation.
- Information on the work of OPBAS is available here : [OPBAS](#)