

## **Briefing – response to legal sector concerns about new measures for legal sector regulators in the Economic Crime and Corporate Transparency Bill (ECCTB)**

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The **ECCTB** contains some new provisions (including government amendments brought forward in the Commons) to ensure legal sector regulators play a robust role in tackling economic crime. These include:

- 1) **Removing the statutory cap on the Solicitors Regulation Authority’s (SRA) fining powers so that it can issue unlimited fines on solicitors and firms that breach economic crime rules (clause 181).**
- 2) **A new regulatory objective in section 1(1) of the Legal Services Act 2007 requiring legal sector supervisors to help promote the prevention and detection of economic crime (clause 183).**
- 3) **New Information Powers for approved legal sector regulators, to require certain persons in the legal sector to provide information and produce documents in order to fulfil this new regulatory objective (powers that are in the first instance reserved for the Solicitors Regulation Authority but may be extended to other legal sector regulators by the Lord Chancellor after an application by the Legal Services Board) (clause 184).**

While some legal sector regulators, including the [Legal Services Board](#) which oversees all supervisors in the legal sector, have strongly welcomed the new powers, the Law Society and Bar Council have both raised concerns about these measures. In this note, we address why we think these concerns are misplaced.

### *The Concerns*

The Bar Council, the approved regulator for the Bar, has [stated](#) its opposition to the new regulatory objective on the grounds that it is “*unnecessary, confuses the role of lawyers with the role of law enforcers, and may lead to wasted regulatory effort and cost*”.

The Law Society has [stated](#) it is “*extremely concerned about the government’s proposal to allow the SRA the ability to impose financial penalties for economic crime disciplinary matters*”.

### **The new regulatory objective**

In our view, the Bar Council’s concerns are misplaced for the following reasons:

1. The new regulatory objective applies to legal sector regulators, rather than individual lawyers.

The Bar Council contends that the new regulatory objective “*muddles up the role of lawyers with the role of law enforcers*”. This objection misconstrues the nature and application of the regulatory objectives set out in the Legal Services Act 2007. These objectives relate to the role performed by legal sector regulators — they do not directly apply to individual lawyers or firms within the regulated sector.

The new regulatory objective does not introduce new obligations on lawyers or change their existing professional duties, let alone introduce a requirement on them to act as policemen. In particular, it does not in any way change the scope of legal work covered by the Money Laundering Regulations (MLRs) as implied by the Bar Council. Instead, the regulatory objective simply aims to ensure legal sector regulators discharge their functions of promoting compliance with the MLRs and other economic crime legislation.

2. The amendment clarifies — rather than extends — existing regulatory objectives.

The new objective clarifies and crystallises, for the avoidance of doubt, what can already be inferred from the existing regulatory objectives of legal sector regulators. This is that promoting the prevention and detection of economic crime is implicit in the existing objectives

- to protect and promote the public interest,
- to support the constitutional principle of the rule of law, and
- to promote and maintain adherence to professional standards.

As the MOJ explains in its [impact assessment](#), the “*primary rationale for the intervention is efficiency: clarifying the role of regulators with regard to financial crime will create legal certainty as to when interventions are required and to act as an extra deterrent to those who commit these offences*”. The need for this clarification is evidenced by the Legal Services Board’s [submission](#) on the Bill, which explains how “*the lack of explicit reference in the current framework has contributed to a position where the eight legal services regulators are taking different interpretations of the extent to which they should proactively focus on economic crime*”.<sup>1</sup>

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/11/03.4-22-59-Annex-D-Written-evidence-from-the-LSB-on-the-Economic-Crime-Bill.pdf>

This amendment seeks to resolve any lingering doubt that identifying and preventing the involvement, unwitting or otherwise, of lawyers in economic crime falls within the appropriate remit of legal sector regulators. The rationale for the amendment is to ensure the regulatory framework and legal framework work in tandem to promote the prevention and detection of economic crime.

3. The regulatory objective does *not* interfere with fundamental principles of the legal profession such as the “cab rank” rule, legal professional privilege or the duty to act independently in the client’s interests.

The Bar Council expresses concern that the new regulatory objective is incompatible with some of the fundamental rules that govern the professional and ethical conduct of lawyers. For example, it is suggested that the regulatory objective conflicts with the “cab rank” rule because barristers will be torn between representing the best interests of their clients (who may be persons implicated in economic crime), and duties to prevent and detect economic crime.

These objections flow from the Bar Council’s misconception that lawyers are being directly tasked with “*promoting the prevention and detection of economic crime*”. As clarified, the regulatory objective does not apply directly to lawyers, and does not displace existing professional and ethical obligations that lawyers owe to their clients.

4. The new regulatory objective will enable greater consistency across legal sectors regulators in the performance of their supervisory functions.

The new objective will bring much-needed consistency across the different legal sector regulators in their approach to supervising and promoting compliance by lawyers whose professional work exposes them to a risk of facilitating or enabling economic crime. This leads to different levels of supervision and enforcement which is counter-productive to the shared regulatory objective of mitigating the risks of economic crime in the legal sector.

As the Bar Council’s response itself illustrates, different regulators may interpret their objectives in different ways when it comes to tackling economic crime. The annual reports by the Office of Professional Body Anti-Money Laundering Supervision (OPBAS) and HM Treasury on AML supervision have repeatedly found that some legal sector regulators have more readily embraced their role of promoting compliance with anti-money laundering obligations than others.<sup>2</sup>

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<sup>2</sup> <https://www.spotlightcorruption.org/report/a-privileged-profession-how-the-uks-legal-sector-escapes-effective-supervision-for-money-laundering/>

5. The new regulatory objective provides a statutory basis for the Legal Services Board to develop cross-sectoral guidance for legal sector supervisors in relation to economic crime.

The new regulatory amendment gives the Legal Services Board an express mandate to produce statutory statements of policy and to work with individual regulators to develop cross-sectoral guidance on regulatory issues relating to economic crime. The Legal Services Board has indicated that they welcome the introduction of this regulatory objective and would exercise their powers to ensure it is understood and implemented across the legal sector.

### **Fining powers**

The SRA is the only major statutory regulator of a sizeable portion of a regulated sector<sup>3</sup> that does not have the power to impose unlimited fines for breaches of anti-money laundering obligations. Currently, the maximum fine that the SRA can impose on solicitors, traditional firms and the individuals who work within them, is £25,000.<sup>4</sup> Beyond these limits, the SRA has to refer serious cases to the Solicitors Disciplinary Tribunal (SDT) which has a mixed record on taking money laundering breaches seriously. The highest ever fine imposed by the SDT for anti-money laundering failures is £30,000.

There are also serious discrepancies in the SRA's fining powers as between traditional law firms and Alternative Business Structures (law firms that operate with non-legal partners, which make up about one-tenth of UK law firms<sup>5</sup>). The SRA can impose fines of up to £250 million on Alternative Business Structures — although it has yet to show real appetite for fining at this level.<sup>6</sup>

The SRA has long been urged by the Office of Professional Body Anti-Money Laundering Supervision (OPBAS) to embrace bolder reforms. Responding to the consultation in March 2022, OPBAS [appealed](#) to the SRA to be “*more ambitious when evaluating its current enforcement framework and proposing changes to its approach*”.<sup>7</sup>

OPBAS also questioned the current division of labour between the SRA and the SDT, asking whether the SRA has “*compelling evidence that the current structure of two different methods*

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<sup>3</sup> The SRA is the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. It oversees around 212,000 solicitors and some 10,000 law firms. See further <https://www.sra.org.uk/globalassets/documents/sra/consultations/financial-penalties---detail-of-new-approach-consultation-paper.pdf?version=4a45f3>

<sup>4</sup> <https://www.sra.org.uk/sra/news/press/2022-press-releases/statement-fining-powers/>

<sup>5</sup> Flexing the abs. *The Law Gazette*. <https://www.lawgazette.co.uk/features/flexing-the-abs/5112032.article>.

<sup>6</sup> The largest AML fine imposed by the SRA against an Alternative Business Structure was £232,500 against Mishcon de Reya: <https://www.sra.org.uk/consumers/solicitor-check/624547/>

<sup>7</sup> <https://www.sra.org.uk/globalassets/documents/sra/consultations/opbas-response-to-the-sra-consultation.pdf?version=49d3cb>

*of processing cases is the most effective approach to delivering a robust and credible anti-money laundering (AML) enforcement framework”.*<sup>8</sup>

The current proposals in the Bill are in keeping with OPBAS’ recommendations, and ensure that the largest legal sector regulator can impose fines in line with those that can be imposed on banks, estate agents and high-value dealers, accounting firms and gambling companies.

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<sup>8</sup> <https://www.sra.org.uk/globalassets/documents/sra/consultations/opbas-response-to-the-sra-consultation.pdf?version=49b865>.