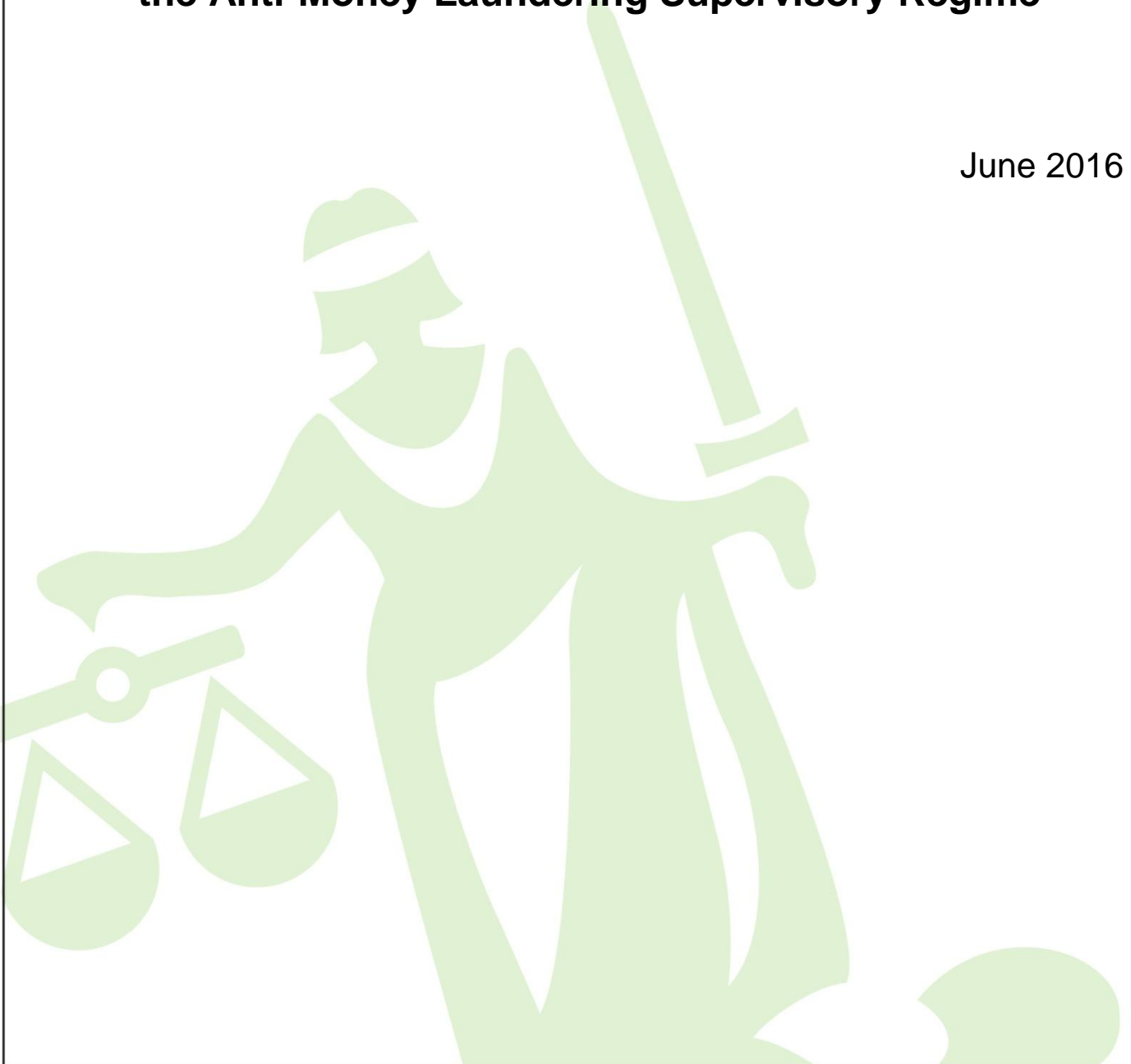




The Law Society

**Response of the Law Society of England and Wales  
to the Call for Information issued by HM Treasury on  
the Anti-Money Laundering Supervisory Regime**

June 2016



## PREFACE

1. The Law Society of England and Wales ("The Society") is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.
2. The Society welcomes the opportunity to respond to this call for information.
3. The Society is the named supervisory authority for solicitors in England and Wales in the Money Laundering Regulations 2007. We also have a public interest role and, as the professional body, also discharge a statutory public interest role on behalf of the profession.
4. The Society supports the government's aim to make the UK financial system a hostile environment for illicit finances, while minimising the burden on legitimate businesses and reducing the overall burden of regulation and is pleased to be able to contribute to this call for information.
5. The Society has a longstanding and distinguished record of working alongside government and law enforcement in the development of AML policy, legislation and working to improve the UK's AML regime.
6. We share the government's commitment to upholding FATF principles and to demonstrating that the UK has an effective AML/CFT regime during its forthcoming Mutual Evaluation (MER).

## RESPONSE

**Question 1: 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?**

7. The Society chairs the Legal Sector Affinity Group of the UK AML Supervisors' Forum. There was an initial scoping meeting in January with representatives from other reporting sectors to look into developing a common approach to risk across supervisors.
8. During the meeting it was agreed that supervisors in the accountancy sector would pilot a series of meetings to develop a draft common approach and would share the results with other reporting sectors as their methodology became more concrete. In principle, the development of a single risk

assessment methodology with appropriate sector-specific modifications is worthy of further consideration.

9. The Legal Sector Affinity Group awaits the accountancy sector supervisors' findings with interest.

**Question 2: How should the government best support supervisors – and supervisors support each other – to link their risk-assessments to monitoring activities and to properly articulate how they do so?**

10. The need for supervisors to clearly articulate the link between monitoring activities and risk assessments will be brought sharply into focus during the forthcoming Mutual Evaluation of the UK by the FATF. The government should use the data-gathering period ahead of the MER to share best-practice examples with supervisors who work within less developed frameworks.

**Question 3: 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?**

11. The Society believes that the supervisors are better placed than the government to identify and assess the AML/CFT risks facing their supervised populations. The government could monitor how often the supervisors review their risk assessments on a 'periodic' rather than an 'ongoing' basis. In the absence of evidence to prove inadequacy, performing such an exercise on an ongoing basis could be perceived as the government questioning the integrity of supervisors. Such a policy would also appear to be contrary to a risk-based approach. HM Treasury's annual AML return already provides the government with much of this information.
12. In our experience supervisors have been and remain more than happy to share good practice with one another, but the suggestion of peer-review carries significant resource implications for the AML supervisors, particularly the relatively smaller organisations in the supervisory regime.

**Question 4: 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?**

13. As the Society is among the larger professional body AML supervisors, this question is not of direct relevance to us. It is important that, if the pooling of resources is to be undertaken, it should be done only at the request of

individual supervisors. We would not support any of the relatively smaller supervisors – such as those in the devolved administrations - being forced to pool AML/CFT resources against their will.

14. We would also challenge the inference made by some that smaller supervisors should be automatically regarded as less effective supervisors by virtue of their size.

**Question 5: How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?**

15. The legal sector AML/CFT supervisors' views on the shortcomings of the National Risk Assessment (NRA) are a matter of public record<sup>1</sup>. One of the areas of greatest concern in the NRA was the lack of engagement with the legal sector during the information-gathering stage, resulting in the report attributing AML/CFT risks to the legal sector that were not backed up by robust intelligence. We hope that the government will genuinely engage with the professions when the NRA is updated in 2017.
16. The determination by some to shift the perception of the role played by the professions in the AML regime from that of 'gatekeepers' to 'professional enablers' is regrettable. Despite facing arguably the strictest AML regime facing lawyers worldwide and facing criminal penalties for completely unwitting involvement in money laundering, the assistance and intelligence which our members provide are rarely acknowledged.
17. Legal professionals would benefit from law enforcement agencies being more proactive and timely in sharing relevant sector-specific information to help them keep abreast of ever-changing criminal scams to manage risk and prevent attempts to abuse their services. The National Crime Agency might require further resourcing to ensure it is able to deliver this essential information to the regulated sectors.

**Question 6: 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?**

18. The Society believes that both of these should be compulsory for all AML/CFT supervisors. On occasion, particular supervisors might be unable to send a

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<sup>1</sup> <http://www.lawsociety.org.uk/news/press-releases/intelligence-shortcomings-render-anti-money-laundering-report-findings-misleading-warns-legal-sector/>

delegate to an AMLSF meeting owing to circumstances beyond their control, so there should be an appropriate dispensation applied to ensure that supervisors are not unfairly sanctioned for non-attendance, particularly those based outside London.

**Question 7: Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?**

19. The Society has been a member of MLAC since its inception. We are also members of the UK AML Supervisors' Forum (AMLSF) and the Legal Sector Affinity Group which we currently fund and Chair. The main point of difference between the respective memberships of the AMLSF and of MLAC is that is the professionals from each of the reporting sectors are represented at MLAC. If the government wishes the professionals from the reporting sectors to have a greater role in driving improvements in the supervisory regime we would suggest they are invited to participate in the AMLSF as required. We believe that MLAC's mandate is substantial and sufficient as it stands and that there is no evidence to suggest that it needs to have a greater role in this area.

**Question 8: 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. HM Treasury is responsible for appointing (and revoking the approval of) AML/CFT supervisors and for the Money Laundering Regulations 2007 which set out the role of the supervisors and gives them powers to effectively monitor their respective sectors. HM Treasury receives an annual return from almost all supervisors which outlines the supervisory activity of each in detail.

21. As HM Treasury already has the power to remove poorly performing supervisors there is no obvious need to introduce a new formal mechanism. The threat of removal and the willingness to act on that threat should be sufficient to ensure shortcomings are addressed. HM Treasury needs to be provided with the resources to carry out its role effectively, and setting up a new body could be an unnecessary diversion of resources that could be used by the Treasury.

22. Importantly, supervisors will be required to clearly articulate and evidence their effectiveness prior to the forthcoming Mutual Evaluation of the UK by the FATF.

**Question 9: 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?**

23. We believe that an overarching body would add no more value to supervision than an adequately resourced HM Treasury able to use its existing powers to revoke the approval of supervisors.

**Question 10: Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a 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?**

24. The Society believes that, provided appropriate powers are available, it should be for the supervisory body (or the relevant disciplinary body such as the Solicitor's Disciplinary Tribunal) to decide the appropriate sanction for a member of its supervised population. While the facts of each case should determine the level of punishment, a minimum range could be introduced if certain supervisors are seen to be issuing relatively (across sectors) light sanctions on a consistent basis.

25. The SRA can impose sanctions itself upon both individuals and entities and may bring solicitors before the Solicitors Disciplinary Tribunal (SDT). The SDT has the power to impose a wider range of sanctions including higher fining powers and the power to suspend, or strike off depending on the severity of the matter.

26. All supervisory bodies (or their disciplinary bodies) should have the power to compel, sanction and/or revoke membership for AML/CFT breaches.

**Question 11: Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?**

27. The facts of each case should determine the level of punishment and if supervisors are delivering sanctions that are relatively (across sectors) consistent then there is little need for a 'single standard'. It must be remembered that even unwitting breaches of AML laws can result in imprisonment for professionals in the regulated sector.

**Question 12: 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 the government address this?**

28. As several similar powers are available to the SRA, this question is not of direct relevance to us. However, we would agree that liaison with law enforcement agencies should result in appropriate sanctions if a criminal breach of AML law has been committed.

**Question 13: Should all supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?**

29. Article 8 of the 4th EU Money Laundering Directive (4MLD) requires obliged entities to perform a risk assessment '*relating to their customers, countries or geographic areas, products, services, transactions or delivery channels*' which is '*documented, kept up-to-date and made available to the relevant competent authorities and self-regulatory bodies concerned*'. Once 4MLD is transposed into UK law all supervised businesses will require this information and will be compelled to provide it to supervisors on request.

**Question 14: 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?**

30. It is very important for supervisors to be up to date with developments in AML/CFT.

31. Representatives from the Society attend regular meetings of the UK AML Supervisors' Forum. The Society hosts and funds meetings of the AML Legal Sector Affinity Group for which Scott Devine of the Society sits as Chair.

32. Some of the other fora the Society attends and contributes to are:

- MLAC (UK)
- SARs Regime Committee (UK)
- CCBE AML Committee (Europe)
- FATF Private Sector Forum (Global)

33. Our international exposure at the CCBE and FATF enables us to regularly share experiences on AML risk with fellow professionals and regulators from across the globe.

**Question 15: 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?**

34. Regulation 21 of the Money Laundering Regulations 2007<sup>2</sup> already requires regular AML/CFT training for all relevant employees operating in the regulated sector.

35. With respect to the Society's responsibility for communicating obligations and providing assistance on AML compliance to the supervised population, the National Crime Agency recently noted that compared to other sectors, the legal sector makes a lot more information available to its members.

36. Initiatives undertaken by the Society of England and Wales have been cited by our international peers as an example of best practice in helping legal professionals comply with their AML obligations. The Money Laundering Task Force was created in 2000 to steer the Society's AML policy work, and issued official guidance for solicitors in 2002 following discussions with Government, law enforcement, other regulatory bodies and the profession.

37. The Society has also put together a comprehensive package of practical support to assist solicitors in complying with UK AML legislation, including: an AML Toolkit, a dedicated AML web-page with links to helpful articles and case studies, a bi-monthly AML newsletter with a subscription of around 22,000, as well as a series of training events and national networking groups for money laundering reporting officers held across the country. The Society's Practice Advice Service also provides AML advice to solicitors and receives approximately 3,000 calls annually on AML issues. The Society also facilitates an AML Directory of solicitors who practise in this area and are willing to offer 30 minutes of free legal advice on AML compliance to other solicitors.

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<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2007/2157/regulation/21/made>



**Question 16: 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?**

38. The Society is the named supervisory authority for solicitors in England and Wales in the Money Laundering Regulations 2007 and is responsible for communicating obligations and providing assistance on compliance to the supervised population.

39. Despite the NRA's acknowledgement that such 'safeguards' existed in the current arrangements for solicitors in England and Wales, it also found that the evidence gathered across all sectors during the NRA process, and through the annual reporting process, *'does not indicate that this potential conflict of interest is undermining the effectiveness of supervision'*<sup>3</sup> in AML supervisors concurrently exercising both a representative and regulatory function.

**Question 17: Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?**

40. No. There is no evidence to support the suggestion that government mandated separation of representative and AML/CFT supervisory roles is required. The impact of such a proposal on the professional bodies concerned could be greater for those bodies in the devolved administrations.

**Question 18: How does the UK approach to professional body supervision compare to other countries' regimes?**

41. Research performed by Utrecht University (NL) into the economic and legal effectiveness of AML/CFT policy in the EU<sup>4</sup> broadly categorises four models of AML/CTF supervisory architectures as: the FIU Model, the External Model, the Internal Model and the Hybrid Model.

42. The FIU Model has as its main characteristic that the Financial Intelligence Unit (FIU) is the national authority with end-responsibility for AML/CTF supervision.

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_October\\_2015\\_final\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf)

<sup>4</sup> [http://www2.econ.uu.nl/users/unger/ecolef\\_files/Final%20ECOLEF%20report%20\(digital%20version\).pdf](http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf)

43. Under the External Model there is no direct, professional relationship between the supervisory authority and the supervisees. External supervisors are public administrative or Government authorities.
44. Under the Internal Model, apart from supervision on financial and credit institutions and casinos, AML/CTF supervision is mainly performed by professional associations.
45. The Hybrid Model combines elements of the three models mentioned above.
46. The UK supervisory regime was categorised as an example of the Internal Model alongside the regimes present in Austria, Belgium, France, Germany, Ireland, Latvia, Luxembourg and Portugal.
47. EU Member States categorised under the FIU model were: Bulgaria, Czech Republic, Lithuania, Malta, Poland, Slovakia and Spain.
48. Greece and the Netherlands were identified as countries that belong to the External model.
49. The Hybrid Model countries included Denmark, Finland, Sweden, Cyprus, Estonia, Hungary, Italy, Romania, and Slovenia.
50. Across the rest of the world there are various supervisory models adopted but the majority would fit into one of the categories listed above.
51. With respect to legal sector supervision, it should be noted that in several of the world's largest economies, such as the USA, Argentina, Canada, and South Korea, AML legislation is not directly applicable to lawyers. This means that, unlike in the UK, lawyers may not be obliged to report suspicious activity to their authorities<sup>5</sup>.

**Question 19: 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?**

52. The Society firmly believes that the responsibility for drafting AML guidance should remain with the professional bodies. For this reason, if there are inconsistencies between the guidance of the FCA and the JMLSG and one needs to be withdrawn, we would support the continuation of the profession-driven JMLSG guidance and the withdrawal of the FCA guidance.

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<sup>5</sup> <http://www.anti-moneylaundering.org/globalchart.aspx>

53. The issue of whether the professions should continue to own AML guidance or HM Treasury should assume control was put to a vote of the members of MLAC as recently as 2015 and there was near unanimity of response strongly in favour of the status quo. Representatives from all reporting sectors agreed that in addition to benefitting from sector-specific knowledge it is much easier to get buy-in from the professions if the guidance is drafted and owned by professional bodies as opposed to imposed on the profession by a supervisor or regulator.
54. Professional bodies have unique sector-specific knowledge and expertise regarding the nature of their professions, and the risks and vulnerabilities of the transactions they are involved in. It would be difficult, if not impossible, for a government body or stand-alone supervisor to match the depth of this institutional understanding.
55. At the Society our expertise is built around the Money Laundering Task Force, a group of expert professionals who volunteer their time to maintain and further build our comprehensive AML offering. The Society also periodically draws on the expertise of members outside the Task Force, for example, when developing responses to government consultations.
56. The Society is indebted to its expert members for the hours of work over many years that they have contributed to the excellent quality of guidance, advice and support we offer.
57. We are also the only supervisor among the UK professional bodies to have a full-time staff member dedicated to AML.
58. The Law Society of Scotland and the Law Society of Northern Ireland have agreed in principle to write jurisdiction-specific additions to the soon-to-be-updated Law Society AML Practice Note. This will mean that solicitors across the UK will be subject to uniform profession-drafted AML guidance which is approved by HM Treasury. This development is a prime example of collaboration between legal sector AML supervisors resulting in a joined-up and consistent approach with resultant benefits for the UK AML regime.
59. Accordingly, any decisions the Law Society makes with respect to the future of AML guidance would be taken in consultation with the Law Society of Scotland and the Law Society of Northern Ireland.
60. A further example of the benefits to the UK regime of collaboration by professional bodies is evidenced by the recent statement on anti-corruption by

professional bodies, drafted and led by the Society. In the statement, the Society were joined by ICAEW, STEP and 16 other professional bodies in committing to assist governments, law enforcement agencies and each other to improve anti-bribery, anti-corruption and AML/CFT regimes across the world.

61. The Society also recently exercised its international outreach to work alongside the International Bar Association, the Council of Bars and Law Societies of Europe and the American Bar Association to jointly produce a guidance report on anti-money laundering<sup>6</sup>. The purpose of the guidance is to provide practical advice to legal professionals around the world as to the AML/CFT risks that they may face in order to place them in the best possible position to address those risks.

**Question 20: 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?**

62. The Society remains strongly in favour of retaining a system whereby HM Treasury continues to approve profession-drafted guidance.

63. We also believe it is important to maintain the principle of providing legal safe harbour to businesses that follow the guidance. Our members face arguably the strictest AML regime facing lawyers worldwide and can face criminal penalties for unintentional involvement in money laundering. Providing some legal certainty to those who follow our guidance is fair and just in return for the assistance provided to law enforcement under these strict conditions.

64. The Society's AML guidance has been cited in several court cases<sup>7</sup> and in many SDT cases involving suspected AML/CFT breaches.

**Question 21: 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**

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<sup>6</sup> <http://www.lawsociety.org.uk/support-services/advice/articles/new-global-aml-guidance/>

<sup>7</sup> *Purrunsing v A'Court & Co and House Owners Conveyancers Ltd* [2016] EWHC 789 (Ch)

<http://www.bailii.org/ew/cases/EWHC/Ch/2016/789.html>

*Santander UK plc v RA Legal Solicitors* [2013] EWHC 1380 (QB) <http://www.bailii.org/ew/cases/EWHC/QB/2013/1380.html>

*AIB Group (UK) plc v Mark Redler & Co Solicitors* [2013] EWCA Civ 45 <http://www.bailii.org/ew/cases/EWCA/Civ/2013/45.html>

*Davisons Solicitors v Nationwide Building Society* [2012] EWCA Civ 1626 <http://www.bailii.org/ew/cases/EWCA/Civ/2012/1626.html>

**industry guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?**

65. For the reasons cited above, the Law Society firmly believes that the responsibility for drafting AML guidance should remain with the professional bodies.
66. We are not, in principle, opposed to a two tiered system of guidance as long as the professions retain responsibility for the sector-specific guidance and that HM Treasury continues to approve industry guidance as stated in the answer to question 20 above.
67. We believe that if such a system were to be adopted, it would be important for HM Treasury to make clear that the supervised population is to follow the industry guidance.

**Question 22: 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?**

68. The Society is the named supervisory authority for solicitors in England and Wales in the Money Laundering Regulations 2007 and maintains responsibility for communicating obligations and providing assistance on compliance.
69. The SRA requires solicitors to work in accordance with the solicitors handbook, the principles and the code. There is also primary legislation covering the regulation of solicitors which includes the Solicitors Act 1974 and the Legal Services Act 2007. In addition there are more specific rules relating to the handling of client monies and these are described within the Solicitors Accounts Rules 1998.
70. The SRA has the ability to bring solicitors before the SDT for breaches of the code where they have the power to warn, fine, suspend, restrict or strike off depending on the severity of the matter.
71. In 2014-15, there were a total of 78 cases referred to the SDT; 32 expulsions/withdrawal of practising certificate, one suspension, 12 instances of a fine, 27 undertakings/conditions and six reprimands.
72. Judgements of the SDT are published so many of the enforcement actions taken against our members in this area will already be in the public domain.

**Question 23: 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?**

73. The Society believes that the wholesale disclosure of this information and other information contained in its annual supervisors' return to HM Treasury could be useful to those wishing to launder money or finance acts of terrorism. The disclosure of this information could also create vulnerabilities in the systems designed to counteract these crimes.

74. A summarised version of most of the key data is already available publicly in the form of the HM Treasury's annual anti-money laundering and counter terrorist finance supervision report.

75. The AMLSF and the sector-specific Affinity Groups that support the forum already exist as platforms for the key stakeholders in government, law enforcement and AML supervision to share and discuss trends across specific sectors and the UK regulated sector as a whole.

**Question 24: 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 reviews be undertaken?**

76. While we understand that thematic reviews can aid understanding of the overall compliance picture of a supervised population we do not consider that these need to be made mandatory or should be assigned an arbitrary timescale at which they are required to be undertaken. We believe it should be up to the supervisors to decide on a risk-based approach how best they review the compliance of their supervised populations.

77. The SRA, for example, has recently undertaken its first piece of significant thematic work in the AML area.

78. The report confirmed that the overall picture is positive for solicitors' anti money laundering compliance and that *'the profession showed a good grasp of its [AML] obligations and regulatory requirements'*<sup>8</sup>. It is difficult, therefore, to say with any certainty that the frequency of these exercises alone has a large bearing on the compliance outcomes of a supervised population.

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<sup>8</sup> <https://www.sra.org.uk/sra/how-we-work/reports.page#aml>

**Question 25: What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?**

79. Our ability to keep our members well equipped to battle money laundering depends on receiving quality and timely AML intelligence from law enforcement. The most effective way to facilitate better intelligence sharing would be to resource the NCA adequately and enable them to provide the supervisors with more timely information.

80. We are pleased that the NCA agreed to implement our proposal of a 'Legal Sector Engagement Group' designed to discuss practical issues and coordination of Suspicious Activity Reporting related matters in the legal sector, as well as better sharing of money laundering typologies and intelligence with the sector. We hope that this will lead to the development of similar sector-specific platforms for direct engagement with the NCA across all of the reporting sectors

81. The Society's Money Laundering Task Force has, through engagement with the NCA, offered to assist the JMLIT<sup>9</sup> with specific projects which are of particular relevance to the legal sector.

82. We are not aware of any great difficulties being encountered regards the ability of supervisors to share information with each other through existing frameworks.

**Question 26: 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)?**

83. The Society does not believe that fulfilling the requirements to become a member of FIN-NET or any similar mechanism should be mandatory for all supervisors. Frameworks already exist to serve this purpose.

84. As stated above, our ability to keep our members well equipped to battle money laundering depends on receiving quality and timely AML intelligence from law enforcement. The most effective way to facilitate better intelligence

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<sup>9</sup> <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/joint-money-laundering-intelligence-taskforce-jmlit>

sharing would be to resource the NCA adequately and enable them to provide the supervisors with more timely and relevant information.

**Question 27: 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?**

85. The Society would urge caution in any proposal to implement yet another register which would be costly for business and have very little impact in improving regulatory outcomes and provide no added benefit in the fight against money laundering.

**Question 28: How can credit and financial institutions best be encouraged to take a proportionate approach to their relationships with customers and avoid creating burdensome requirements not strictly required by the regulations?**

86. The Society believes that the industry guidance (JMLSG in this case) should make clear what is required is a genuine risk-based approach. The FCA should sanction those institutions applying a disproportionate and over-burdensome approach which extends requirements well beyond those stated in the approved industry guidance.

**Question 29: Does failure of AML/CFT compliance pose a credible systemic financial stability risk? If so, does this mean that the FCA should devote more resource to the largest banks which have the greatest potential to have systemic effects?**

87. This question is outside the Society's area of expertise so we have no comment to make.

**Question 30: How should the FCA address the perception from evidence submitted to the Cutting Red Tape Review that it is overly focused on process and ensure that its AML/CFT supervision is focused proportionately on firms which pose the greatest risk?**

88. This question sits outside the Society's direct area of expertise.

89. The Society has raised with HM Treasury the fact that this supervisory regime consultation document continually refers to the AML supervisory policy review process being informed by the findings of the BIS Cutting Red Tape Review.



90. We argued that the ability for us and other stakeholders to prepare a properly informed response without the benefit of access to these findings is significantly reduced.

91. BIS is yet to indicate when these findings will be published.

**Question 31: Is the number of supervisors in itself a barrier to effective and consistent supervision? Is so, how should the number be reduced and what number would allow a consistent approach?**

92. No. We have seen no evidence that would suggest that a high number of supervisors, in of itself, presents a barrier to effective and consistent supervision.

93. The key to improving consistency lies in the development of common frameworks, with appropriate sector-specific modifications, such as that relating to risk outlined in question one above.

**Question 32: 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?**

94. As stated above, the Society believes that the individual supervisors are best placed to identify and assess the AML/CFT risks facing their supervised population. Research performed by Utrecht University (NL) into the economic and legal effectiveness of AML/CFT policy in the EU stated that professional bodies' *'enhanced understanding of the way the businesses operate helps them identify relevant risk factors for AML/CTF purposes as well as for professional purposes'*<sup>10</sup>.

95. As stated previously, the Law Society of Scotland and the Law Society of Northern Ireland have agreed in principle to write jurisdiction specific additions in the appendices of the soon to be updated Law Society AML Practice Note. This agreement to pool resources on guidance will mean that solicitors across the UK will soon be subject to uniform AML guidance which is approved by HM Treasury.

96. We would re-iterate that we will not support any moves to force any of the smaller supervisors to pool AML/CFT resources against their will, particularly in the legal sector.

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<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204350/amlctf\\_supervision\\_report\\_201011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204350/amlctf_supervision_report_201011.pdf)

**FOR FURTHER INFORMATION**

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