



Ministry of Justice

Baroness Drake CBE
Chair of the Constitution Committee
House of Lords
London
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The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary
of State for Justice

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19 April 2023

Dear Baroness Drake,

ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

Thank you for your letter of 28 February 2023 on behalf of the Constitution Committee regarding its concerns about the new legal sector regulatory objective included in the Economic Crime and Corporate Transparency Bill.

We expect law firms and legal professionals to operate to the highest ethical standards and I am confident the overwhelming majority do so. As we have seen over the past year, allegations that parts of our legal sector may be facilitating or participating in economic crime risk undermining trust in the profession as a whole. It is therefore crucial that the legal sector regulators have the necessary tools at their disposal to give confidence that the sector is complying with the economic crime regime.

Purpose of the new regulatory objective

Section 1 of the Legal Services Act 2007 sets out the regulatory objectives that legal services regulators should promote within their regulated communities. The Legal Services Board (LSB) and approved regulators “must, so far as is reasonably practical, act in a way which is compatible with the regulatory objectives” and in a way which is “most appropriate for meeting those objectives”. Taken together, they are widely drawn, including among other things supporting the rule of law, promoting the public interest, improving access to justice, promoting competition among services and encouraging the diversity of the professions. The Act is not prescriptive about how regulators should approach meeting these broad objectives.

Crucially, the purpose of the objectives is solely to guide the actions of the regulators. They do not place any requirements or specific duties directly on lawyers, so I do not agree that the new objective creates any uncertainty in this regard. The new objective will however put beyond doubt that regulators have an important role to play in upholding adherence to economic crime rules and legislation, which lawyers are already subject to, giving a clear basis for both their regulatory action and the LSB’s oversight of this important matter of public concern. The intended effect of the objective, like the other objectives, is to put the onus on regulators to be active in this space, using the tools available to them (including rule setting, guidance and enforcement action) to ensure compliance among their regulated communities with the economic crime regime.

As you have raised, regulators already have significant duties in some areas of economic crime. For example, under the Money Laundering Regulations 2017 (MLRs), many of the legal services regulators

are also Professional Body Supervisors, tasked with monitoring compliance with anti-money laundering and counter terrorism financing. The new objective will clarify that this work, and activity around wider economic crime including sanctions compliance, is central to their regulatory role.

Definition of economic crime

Separately, I note the Law Society's argument for a more targeted definition of economic crime. Economic crime is defined in Clause 180(1) of the Bill and the list of economic crime offences is included in Schedule 9 of the Bill. The offences that are most relevant in this context include fraud, money laundering and terrorist financing, plus an offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018. In practice, the LSB and the approved regulators will need to give consideration to which of these offences their regulated communities may be exposed to, on the basis of available evidence, when exercising their functions in a way that is compatible with the regulatory objective. As with all regulatory activity, the LSB and approved regulators must act in a proportionate and targeted manner when discharging their functions (a principle enshrined in the Legal Services Act.)

Impact on the rule of law and legal professional privilege

I am proud of the fact that everyone in the UK has the right to access legal representation in the context of litigation, and the right to bring challenges via the court system. The fundamental rights deeply embedded in our constitution are long-held principles that ensure those facing court proceedings should be able to access legal representation, no matter what their views or what they are alleged to have done.

The concept of legal professional privilege (LPP) protects the confidentiality of communications between a lawyer and client and ensures complete fairness in legal proceedings. In some circumstances, during their investigative work, regulators may rely on their codes of conduct, statutory powers and caselaw to request privileged material from lawyers and firms. There may also be situations where LPP does not exist. For example, where a person consults a lawyer to further a crime or fraud, the communications between the client and the lawyer do not attract LPP. The new regulatory objective will not change the approach to LPP in these circumstances, nor will it impact situations where LPP properly attaches and in which it should be upheld. As set out above, the objective will guide the activities and focus of the regulators and will not place any specific duties directly on lawyers. Therefore, it will not create any uncertainty around the lawyer/client relationship. The LSB will of course work closely with the profession on implementation of the new objective, including where appropriate the publication of any necessary policy statements and guidance.

Upholding the rule of law is central not only to maintaining confidence in the justice system at home, but also to preserving our unrivalled international legal reputation. We recognise that access to legal services and legal representation is fundamental to the rule of law. The changes we are taking forward will improve confidence in our regulatory framework and enhance the reputation of our system, not undermine it.

Yours sincerely,



RT HON DOMINIC RAAB MP