



CLC's response to the LSB's 'Consultation on Guidance for New Regulatory Objective on Economic Crime'

(submitted 31 January 2025)

Thank you very much for the opportunity to provide feedback regarding the proposed guidance.

Q1: Do you agree that guidance with outcomes is the right approach to take to assist regulators to pursue the new regulatory objective alongside the other objectives in section 1 of the Act?

We do not agree that the guidance with outcomes, as currently drafted, is the right approach.

The four proposed outcomes appear comprehensive for how regulators should approach the promotion of preventing economic crime. However, as currently described, the outcomes appear to be new regulatory requirements rather than guidance. If there is no intention to create additional requirements, it may be helpful to consider whether the guidance can be reframed against the RPA Framework requirements. For example, the new Outcome 1 in the proposed guidance could be replaced by Characteristic 9 of the RPA; Outcome 2 replaced by Characteristic 16, Outcome 3 replaced by Characteristic 11, and Outcome 4 replaced by Characteristic 11. The guidance text could subsequently be amended to incorporate any missing nuances from the originally proposed outcome, and the RPA amended to emphasise the importance of the new regulatory objective. This would enable separate guidance but avoid inadvertently setting additional regulatory requirements.

The document could be presented in a clearer way, as currently it gives different numbering and titles to the outcomes. For example, outcomes are referred to in paragraph 17 as (a)-(d) with long titles, and then (1)-(4) with shorter titles (i.e. 'Understand the risks and issues that may lead to the regulated sector facilitating economic crime and take appropriate actions to prevent and detect their occurrence' vs 'Risk Assessment').

We would suggest that the paragraphs 'In pursuing Outcome [X] regulators should [...]', should be reconsidered as they add an additional layer of complexity and, as currently presented, could be seen to dilute the defined outcomes somewhat.

In terms of the content of the guidance: we had hoped, further to the [Roundtable, June 2024](#), that many of the areas discussed would be expanded upon in the guidance. For example, it would be helpful for the guidance to include a definition of economic crime, particularly as a result of the second and third bullet points from the [Roundtable, June 2024](#) where it suggested there is a tendency for regulators to focus on AML in the first instance, rather than also consider the topic more broadly, like the failure to prevent bribery and tax evasion etc.

Q2: Are the four outcomes we have identified in the guidance the rights ones? Are there any others we have missed?

We would only observe that outcome 2 *'Ensure that authorised persons understand their duties and the risks they face[...]*', as currently worded, is unrealistic. Whilst our regulatory levers in education, standards, ongoing competence/CPD contribute to ensuring that our regulated community comply with the relevant laws, codes and frameworks, we would suggest that the outcome wording 'ensure' should be amended to 'help' or 'promote'. As currently expressed, the use of 'ensure [...] understanding' could imply that a regulator is required to assess the regulated community to confirm their understanding, which we do not believe was intended.

If this outcome is intended to mean that a regulator would take enforcement action in appropriate cases of non-compliance, we can confirm that we would, in the usual course of events, apply a proportionate remedy/sanction to any occurrence of breach.

Q3: How might the LSB and Regulators better support the sharing of case studies? What other information should be shared to support meeting the new regulatory objective?

The LSB could approach the Home Office, the Crown Prosecution Service, and OPBAS for relevant case studies, who may be able to provide helpful information on actions taken by individuals/companies/regulators which helped/hampered the detection and prevention of economic crime.

It may also be useful for regulators in a joint but confidential forum to reflect on any occasions where information sharing or Memorandums of Understanding etc, have not worked as well as intended.

Q4: Do you know of any case study examples that would assist regulators in demonstrating how legal professionals may knowingly or unknowingly facilitate economic crime?

Examples could be generated from our monitoring and enforcement activities:

- A legal professional assuming their personal knowledge of a client is a substitute for comprehensive client due diligence (CDD). For example, a client's good

standing and reputation in the community may lead professionals to think that due diligence is unnecessary or is an inappropriate intrusion into that person's affairs. Or possibly, a legal professional could feel pressurised by a client (particularly one who trades on their reputation and good standing in the community) to water down their otherwise comprehensive due diligence.

- Another example closely allied to the first bullet point is where a legal professional allows personal relationships to not only compromise the undertaking of client due diligence but also permits certain clients to use the practice's client account as a banking facility. A particular risk factor is where the matter is a commercial one, as such clients have many linked and related needs which they may also expect the practice/firm to offer them. These relationships may develop over an extended period of time and may weaken CDD even further. Allowing such work to take place exposes the practice to a risk that money could be laundered through their client account or other forms of economic crime such as tax evasion.
- Another example which the CLC believes is relevant is that some legal professionals may be tempted to help out friends/family who are in difficult situations such as where someone cannot access a bank account. In these cases, there is no underlying legal transaction and the legal professional is exposing themselves (unknowingly in our experience) to considerable risk that their client account could be used as a banking facility and also to potential money laundering. A risk factor in this regard is a sole practitioner in a remote area which has limited services available. A good example of this is the following case: [Mellen & Co](#)
- Other examples which can lead to legal professionals unknowingly facilitating economic crime: (1) Poor AML culture (where AML is not taken seriously and/or is underfunded/under resourced), (2) Weakness of the practice's AML controls and procedures (such as not enquiring about source of funds to a sufficient level), (3) Poor timing of CDD (eg done after exchange in a conveyancing transaction or even after completion), (4) over-reliance on technical "solutions" to AML.
- A pertinent case example which may assist other regulators is that of [Stratega Law Limited](#).

Outcome 1 – Understand the risks and issues that may lead to the regulated sector facilitating economic crime and take appropriate actions to prevent and detect their occurrence

Q5: Do you agree that undertaking a risk assessment will enable regulators to target their approaches for their regulated communities most effectively?

We already undertake an annual risk assessment regarding all the risks and issues the profession is facing which, we believe, is helpful. In addition, we participate in various

intelligence-sharing groups. This enables us to regularly review risks in the sector and decide on the most appropriate and effective regulatory approach to address these risks within our regulated community.

Q6: Do you have any other comments on this proposed outcome?

We have no further comments.

Outcome 2 – Ensure that authorised persons understand their duties and the risks they face related to economic crime and are supported to act in a manner that upholds the rule of law and adherence to the professional principles

Q7: Do you agree with the proposed outcome for regulators to help their regulated communities to understand the risks they may face concerning economic crime, and support them to avoid facilitating economic crime?

As per our overarching comment in Q1, we believe this outcome duplicates the RPA requirements.

In line with our response to Q2, if the outcome is retained, it would be more appropriate for the word 'ensure' to be amended to 'help' or 'promote', mirroring the terminology used within this consultation question (7).

Q8: Do you have any other comments on the proposed outcome?

We have no further comments.

Outcome 3 - Monitor authorised persons' compliance with any standards developed by regulators to support the prevention and detection of economic crime and address instances where authorised persons fail to comply

Q9: Do you agree that the proposed outcome relating to monitoring and enforcement will help regulators detect and prevent economic crime?

As per our overarching comment in Q1, we believe this outcome duplicates the RPA requirements.

Q10: Do you have any other comments on the proposed outcome?

We have no further comments.

Outcome 4 – Regularly evaluate any implemented standards and procedures to ensure they continue to be fit for purpose in addressing economic crime risks over the long term

Q12: Do you agree that an outcome around continued monitoring and evaluation will help ensure any measures regulators decides to put in place are effective to address economic crime into the future?

As per our overarching comment in Q1, we believe this outcome duplicates the RPA requirements.

Q13: Do you have any other comments on the proposed outcome?

We have no further comments.

Implementation and monitoring

Q14: Do you agree with our proposed plan for implementation?

If this guidance introduces new requirements via outcomes, it would be important to allow some time for implementation.

If it remains solely as guidance, we have no objections to it being effective immediately from date of publication.

Equality Impact Assessment

Q15: Do you have any comments or concerns about the equality impacts of our proposed guidance?

We have no further comments.

Q16: Do you consider we have identified the right groups, or do you have any evidence relating to the potential impact of our proposals on other groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

We have no further comments.

Q17: Are there any wider equality issues and interventions that we should take into account?

We have no further comments.

Impact assessment

Q18: Do you have any comments on the potential impact of the draft guidance, including the likely costs and anticipated benefits?

The original purpose of the guidance, set out in paragraph 3 of the consultation document, is explained thus: ‘the proposed guidance is intended to provide regulators with information and advice as to how they should meet the new regulatory objective.’

We would suggest that the value and impact of this guidance could be increased by developing the guidance further to address more of the points raised at the [Roundtable, June 2024](#).

As we believe that currently the draft guidance's outcomes could be considered as setting new requirements, creeping from the desired purpose, this could have larger impact on regulators than identified within the consultation document, particularly if there is no implementation lead-in time.

The impact assessment does not currently include commentary on the existing regulatory dependencies mentioned in paragraph 27 of the proposed guidance. This could be drawn out in more detail in both the guidance and the impact assessment.

Q19: Do you have any other comments about the proposed guidance?

Please see our overarching comment in Q1.

Submission date: 31 January 2025