

Financial Conduct Authority

Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision: fees proposal

A response by  
CILEx Regulation

5 January 2018

## **Introduction**

This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation has demonstrated its emphasis on economic growth, as it aims to capture a wider range of individuals and entities within its regulatory remit.

CILEx became an approved supervisory authority for money laundering on 6 February 2015. Its authorised entities are supervised by CILEx Regulation as the independent regulator of CILEx members, CILEx Practitioners and entities.

CILEx Regulation is a member of the Legal Sector Affinity Group and the AML Supervisors forum. We support the aims of reinforcing a risk based approach across all sections of the anti-money laundering and counter-terrorist finance regime.

Its authorised entities and a small number of individuals working as sole practitioners are supervised for money laundering compliance.

# **Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision: fees proposal - consultation response.**

## **Response to the FCA consultation**

1. We are keen to engage with OPBAS on the fee setting proposals and believe that any model on which the fees are based needs to be both straightforward and fair. Assuming the overall desire to retain the broader public interest of maintaining professional membership, then any model needs to recognise the differing sizes and risks of the various supervised populations and ensure that all professional body supervisors are contributing on a proportionate basis.
2. We think it is important that there is real clarity on both the costs and benefits of having OPBAS in place and that all parties are clear on the measures that are in place to assess the value that OPBAS seeks to provide. This is particularly important where existing resources appear to remain in place within HM Treasury which have historically fulfilled the supervision function.
3. We are concerned that there is an absence of any detail for the setting up and ongoing costs for OPBAS, which have been initially put at £2M, and that despite being assured that OPBAS is a separate organisation from the FCA, the OPBAS budget cannot be provided immediately but only as part of the timetable for the overall FCA budget later in 2018.
4. We believe if decisions have been made that there is a requirement for 11 full time staff members (with access to additional policy resource) to supervise 22 supervisors ( a ratio of 1:2 notwithstanding the large number of smaller supervisors that may require less supervision) , then the full breakdown of costs and expectations that have driven these decisions should be published. The previous consultation had identified that each professional body supervisor should anticipate a potential average time cost of £39,800 per annum in addition to any fees to cover OPBAS costs. Given this level of detail has been produced

based on the impact on resources in the professional body supervisors, then a full cost breakdown of OPBAS operating costs should be possible as part of this process.

5. We would expect there to be similar detail and clarity on the costs of supervision by OPBAS as provided by other oversight regulators that the professional body supervisors currently engage with. The absence of this has meant that whilst we have provided responses to the questions, without certainty over the budget and the actual fees that flow from this, we would reserve our final view until this has been provided.
6. This is particularly relevant given the timescales for approval of and setting of annual fees that all supervisors will have to go through. We fully accept that there will not be one timetable that suits all supervisors but this makes it even more important that there is clarity on cost for members.
7. There is a reference throughout the consultation to self-regulatory organisations in Schedule 1 of the MLRs but we believe that this should more accurately refer to Professional Bodies as stated in Schedule 1.

## **Questions**

**Q1: Do you have any comments on our proposed application fee of £5,000 for professional bodies that wish to be added to the list of self-regulatory organisations in Schedule 1 to the MLRs?**

8. We support the proposal for an application fee for new professional bodies wishing to be added to list of professional bodies in Schedule 1 but this fee should fully cover the costs involved for OPBAS of assessing any application by a body. As there is some doubt as to the true cost involved, and with potentially a wide variation in size and risk to be assessed, we believe that there is a danger of the fee being set too low. Consideration should be given as to whether the fee should be set higher than the £5,000 proposed to avoid those supervisors paying

a variable rate having to carry any additional costs. The fee could then be reviewed as part of annual fee consultation.

**Q2: Do you have any comments on the different measures we have considered for the tariff base for OPBAS fee-payers? Are you aware of any other measures we should consider?**

9. Following the discussion with the other professional body supervisors at the OPBAS round table meeting on 1 December, we support the suggestion to use the definition in the MLRs for Beneficial Owners, Officers and Managers as the basis for the calculation of the tariff base. As the MLRs make use of this definition to identify who needs to be approved, this seems the clearest measure to use to decide how to allocate the costs of the resources that OPBAS will be using to supervise the 22 professional bodies.
10. We fully appreciate that this will mean the larger supervisors will be contributing a greater proportion of the costs and therefore we are supportive of the desire to see full clarity on costs for OPBAS, how the proposed resources will be effectively used and what measures of success will be put in place.
11. We understand that there is a desire to move towards a more risk based measure but at the outset it is difficult to envisage how this could be put in place. We believe that this could only be on an historic basis after OPBAS has gained a greater understanding of the levels of supervision required. Even then agreement will need to be reached that this is charged on a retrospective basis and it may be difficult to agree on the measures that are used to assess the level of risk and the proportion of costs this equates to.
12. Ideally as evidence is gathered of professional body supervisors meeting the expected outcomes, then the cost burden of OPBAS can reduce.
13. We have considered the other measures and do not believe these are appropriate.

**Q3: Can you suggest any improvements to the definition of our preferred measure for OPBAS fees of ‘supervised persons (under the MLRs) who are individuals’?**

**And**

**Q4: Can you suggest any ways of consistently identifying those individuals who are supervised by professional body supervisors as relevant employees of relevant persons? Are there risks of double-counting? If so, how can we avoid them?**

14. As mentioned in the response to Q2, we would prefer that the definition in the MLRs for Beneficial Owners, Officers and Managers is adopted. This provides consistency in the figures gathered by OPBAS as this is the number of approvals as required within the MLRs and is information that would appear to be both readily available for the majority of supervisors and that we are required to collect.

15. We believe it is important that this definition does provide clarity as to who is supervised for compliance with the MLRS. The use of Beneficial Owners, Officers and Managers also then links back to the regulated firm or sole practitioner and thereby the professional body that regulates that firm. This then gives the clarity on who is the supervisor for that firm and the Beneficial Owners, Officers and Managers.

16. This is particularly relevant for those instances of professional bodies having members working in firms not regulated by it or any other professional body and not undertaking reserved or regulated legal activities. They should not be included as there is no regulatory reach for that professional body.

17. This would also seem to be a more proportionate measure, especially for those supervisors of firms who may have large numbers of members of other professional body supervisors working within those firms. By using this definition and principle, then this should reduce the risk of double counting. It will then

avoid the additional requirement to collect data on all individuals working within a firm and to identify if they are a member of another professional body supervisor.

**Q5: Do you think we should set a minimum fee for the OPBAS levy? If so, is £5,000 a reasonable contribution from those professional body supervisors paying minimum fees only?**

18. We support the requirement for a minimum fee from all professional body supervisors and cautiously believe that the figure of £5,000 is reasonable, based upon the limited cost information currently provided. Dependent on the final cost of OPBAS this may in fact mean that effectively those individuals regulated by a supervisor with a smaller population may be paying proportionally more than under a larger supervisor.

19. However it is likely that any charging structure will have instances where there may be perceived unfairness but this has to be balanced against what is seen as a proportionate cost to be a Professional Body supervisor.

20. There also needs to be consideration of any additional costs that professional body supervisors may be required to cover with the current intention to require membership of information sharing organisations meaning an additional potentially 100% increase in the proposed minimum fees.

**Q6: Do you believe we should spread recovery of the set-up costs and accumulated costs of OPBAS over two years?**

21. With the uncertainty about the actual costs involved, we believe that HM Treasury should revisit the decision to impose the set-up costs and accumulated costs of OPBAS on the members of the Professional Body supervisors. We would assume that there will now be cost savings to HM Treasury due to a reduction in work involved in supervising the Professional Body supervisors and therefore these should be included in any calculation of costs.

22. If there are any residual costs then these should be spread over a longer period than the two years proposed, especially as it appears that there may be new professional bodies seeking to be approved and they should also share some of these costs. It may be appropriate for these costs to be spread over a period in line with any review of OPBAS's effectiveness or say a 5-10 year period. This will help reduce the burden on the larger supervisors.

## **Conclusion**

23. We look forward to being able to comment further once more detail has been provided and we have a better understanding of the proposed fees and the related work and outcomes that these will contribute towards.

24. Any questions relating to this consultation response can be directed to David Pope, Entity Authorisation & Client Protection Manager (david.pope@cilexregulation.org.uk).