

Financial Conduct Authority

Office for Professional Body Anti-Money Laundering  
Supervision – consultation

A response by  
CILEx Regulation

13 October 2017

## **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.

As an Approved Regulator CILEx is able to award practice rights in the reserved activities of litigation, rights of audience, conveyancing and probate. It regulates immigration services. 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.

## **Office for Professional Body Anti-Money Laundering Supervision – consultation**

We welcome the opportunity to contribute to the shaping of the anti-money laundering supervisory regime, ensuring that all supervisors are able to provide a proportionate and risk based supervisory oversight to their own distinct communities.

We are fully supportive of the government's intention to strengthen the supervisory regime and, with the debate around the best method to achieve this now past, we look forward to working with OPBAS over the coming period.

We hope our observations will be of value.

### **Response to the FCA consultation**

1. We are pleased to see that OPBAS are seeking to gain a sound understanding of the workings of the different organisations and that they have already demonstrated a desire to engage with CILEx Regulation and understand clearly both those in CILEx's membership which we can supervise and those that might sit outside of the current arrangements.
2. We are also pleased that they are looking to adopt a 'risk-based' approach to supervision concentrating their resources where the risk is greatest.
3. We believe that with an understanding of how the other oversight bodies operate in our sectors, and by adopting some of the best practice that is in place, OPBAS will be able to help all supervisors meet the standards expected in a proportionate manner.

### **Guidance consultation**

4. We welcome the recognition within 1.11 – 1.12 of the unintended consequences of the creation of OPBAS, particularly around not creating burdens on a professional body supervisor that are disproportionate to the risks that they are supervising within their membership. We have commented within the consultation questions on our view of the proportionality of requirements and expectations in the sourcebook.
5. Throughout the various consultations, we have expressed our concerns about the extra costs that will be incurred by the setting up of OPBAS and how these are to be met. Most consultation documents have simply stated that the costs of creation of OPBAS will be passed on to the membership of the professional bodies without seeming to understand how that may be achieved nor the implications of this. Often there is an assumption that all members in a professional body will require AML supervision, however this is not the case.
6. We hope therefore that by engaging with supervisors OPBAS gains a clear understanding of the true size of the supervised populations, including the risks they pose, and that the associated costs can not necessarily be easily absorbed by what might be quoted as the total membership of a professional body.
7. CILEX Regulation is keen to be involved in information sharing arrangements although again these will need to be of benefit to those that it supervises. We would hope that as part of the proportionate and risk-based approach to supervision that OPBAS is looking to encourage, it identifies those activities that are of benefit to each professional body rather than prescribing an arrangement that may have benefit only for those with larger populations and potentially a wider spread of risk.

## **Questions**

### **Question 1**

**Do you have any comments on the proposed sourcebook for professional body supervisors? Would greater detail or a more prescriptive approach be helpful?**

8. Because there is such a great difference in the size, structure and supervised communities of the various AML supervisors then the sourcebook needs to set an ethos and be outcomes focused rather than detailed and prescriptive. This will enable each supervisor to be able to decide how to implement the requirements of the sourcebook to achieve compliance with the regulations.
9. We have highlighted the following points in the sourcebook:

## **II. Application and III. Governance**

10. There should be clarity within both these sections of the relationship between the professional body as a supervisory authority under the regulations and any regulatory arm to which the responsibility for supervision and enforcement is devolved.
11. In our circumstances CILEx is the professional body and supervisory authority and CILEx Regulation is the regulatory arm with devolved responsibility for carrying out supervision and enforcement.
12. This is particularly relevant in section III where there are expectations of senior management and it is unclear whether this would refer to senior management in CILEx and/or CILEx Regulation.
13. Similarly the section talks about reporting and escalation arrangements as well as organisational structures and it should be clear whether this refers to the professional body and/or the regulatory arm.
14. We would suggest that the examples of good practice and poor practice are also reviewed for clarity as to responsibility.
15. We have discussed with OPBAS and HM Treasury some of the issues relating to members operating in unregulated firms and the extent of the supervision that

CILEx Regulation can reasonably carry out on individual CILEx members when they are operating within separate legal entities. We are continuing to work with all parties on gaining a better understanding of these unregulated and unsupervised firms.

16. In the meantime, we note that the sourcebook is requiring the professional body (CILEx) rather than the regulatory arm (CILEx Regulation) to identify which of its members are subject to the requirements of the regulations. We would welcome clarification that this is the intention of OPBAS in circumstances where functions are split.

#### **IV. Risk-based approach**

17. We are supportive of the risk based approach as set out in this section focusing efforts where risks are highest and making sure that measures are proportionate to risk. We feel it is important to ensure that resources can be used effectively, especially within smaller supervisors.

18. Where there is a requirement for regular appraisal and review of risks we would suggest that a minimum period is set between reviews. That then sets a minimum standard to be used across all supervisors. We do not believe that supervisors would default to this period.

19. To be effective we would wish to understand whether OPBAS will be driving and overseeing the communication between the various bodies listed in this section and the supervisors. We understand that currently interaction is often with the larger supervisors as that is seen as having the greatest impact on risk. With limited resources, consideration needs to be given as to how this can be effectively communicated amongst all supervisors and we believe this should be a role for OPBAS to take on.

20. We would welcome discussion as to whether in seeking a principles-based supervisory approach, the intention is for supervisors to development a separate

set of principles to those that they may already have in place. For example we have in place an existing CILEx Code of Conduct with nine principles that members and firms are required to follow and the outcomes they must meet. Our belief is that these would be suitable to enable us to adopt a risk based approach.

21. We welcome the acknowledgement that money laundering can never be eliminated and that a professional body's members will not always be able to prevent it. We believe that it is important to acknowledge this in putting in place a proportionate supervisory approach that does not impose onerous burdens on supervisors and members.
22. We are currently working with the other legal sector regulators on our approach to risk assessments to explore whether we can bring a consistent approach to this area.
23. The individual factors to be assessed fit with our existing risk frameworks so we are comfortable that the approach required should be proportionate for our supervised community.

## **V. Supervision**

24. There is reference to a gatekeeper role as a supervisory tool that may be available although this refers to ongoing participation in the profession. We would welcome clarification as to how this might operate in practice as this would seem to be more closely aligned to someone for the first time entering a role requiring money-laundering compliance.

## **VI. Information sharing**

25. Membership of information sharing organisations such as FIN-NET and SIS are being proposed as part of the requirements for Professional Body Supervisors. We are concerned that they may not be proportionate for supervisors in all cases due to the type of work that members are carrying out, the risks that are being supervised and the size of the supervised population.

26. We believe that membership should be appropriate to the nature of the risks being supervised. Therefore the requirement for membership should be reviewed by OPBAS, at least annually, but as part of the risk based approach highlighted in IV. Clearly if supervisors are seeing changing risks, then they should review the benefits of membership.
27. The requirements for the SPOC need to be reviewed in the context of regulatory separation mentioned above. It needs to be considered whether the MLRO will be the same as the SPOC in all regulators and whether this is not acceptable.

## **Question 2**

### **Do you have any comments on the FCA's cost-benefit analysis?**

28. We remain of the opinion that the outcomes necessary under the regulations to meet expected standards could be achieved without the significant additional costs being imposed on the professional bodies and their members.
29. It does seem that there is an assumption made that costs can just be passed on to the membership as part of their fees. As the government will be benefiting from the savings made to the economy through a reduction in the £24bn bill that serious and organised crime costs then there could be an argument that government should be funding this rather than the vast majority of members who are not involved in money laundering activity.
30. Given the wide disparity between professional bodies in terms of size, membership, income and perceived risk the average cost figure actually adds little value in considering the cost benefit analysis.
31. Clearly there will be additional costs we have to absorb over and above any fee that is charged but we would hope that with OPBAS adopting a risk based and proportionate approach to its supervision then these costs can be managed appropriately.



32. With the legal sector regulators already working closer together on the implementation of the new regulations, we do question how the impact of and success or otherwise of OPBAS will be measured when there seems to be little sector specific information around the cost of money laundering.

33. We believe it is important for the professional bodies to clearly understand the accountability of OPBAS and how success is measured both at OPBAS and the individual professional bodies. For example if the annual cost to the economy of serious and organised crime increases above the £24bn as quoted is that a failure of OPBAS and/or the professional body supervisors or nothing to do with these sectors?

### **Conclusion**

34. We welcome the OPBAS approach to supervision of Professional Bodies and subject to the points raised we believe that the sourcebook provides a good structure for professional bodies to work.

35. In terms of the cost benefit analysis, we believe it is important to have in place measures suitable to assess the effectiveness of this additional layer of supervision and the cost to the professional bodies and their members.