

Financial Conduct Authority

Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision: proposed fee rates for 2018/19

A response by
CILEx Regulation

27 November 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 around 20,000 members 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 have engaged with OPBAS on the fee setting proposals and believe that the 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 the proposed 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. Our responses to the questions are as follows.

Questions

Q1: Do you have any comments on our proposed variable fee of £41.06 per supervised individual?

3. We have been concerned about the affordability of the model for the PBSs with fewer supervised individuals and so support the minimum fee structure of £5,000 as making an appropriate contribution to costs. We do remain mindful that the larger PBSs are bearing a significant burden of cost and therefore would support all efforts to reduce the overall cost per supervised individual.
4. We have raised in our previous responses to consultations that we are concerned about the lack of transparency on the costs and the budget for the operation of OPBAS. As a regulator we are required to account for the costs of regulation and supervision to the membership of our professional body, as well as to the Legal Services Board.

5. We do not believe that it is correct for there to be no transparency on the costs of operating OPBAS, especially as this clearly is now having a significant impact on the variable fee per supervised individual. Whilst there has been an indication that the costs of OPBAS will be referred to within the FCA budget and business plan, we would expect our oversight regulator to be transparent on its costs.
6. Clearly the process on the setting of the variable fee would have benefited from greater clarity at the outset with supervisors on the definition used for the supervised population and this would have avoided the current situation where a significant increase has had to be passed on to the larger supervisors. We are also surprised that there cannot be transparency on the supervised population.
7. The other part of this process that this has highlighted is the timetable for the setting of the OPBAS fees clearly does not fit with the timetable used by the legal sector with the Legal Services Board for setting of Practising Certificate Fees (PCF). The majority of regulators will have had income from PCF and therefore their budget agreed for 2019, and so this does not allow them to adjust for changes to the 2019 OPBAS fees.
8. We are also concerned that with no indication of the likely activity and oversight for OPBAS in 2019, supervisors will always be playing catch up on their fees. Whilst for those on a fixed fee this can be budgeted for, for larger supervisors this will have a greater impact.
9. We would encourage OPBAS to review its position around transparency on all these issues.
10. **Q2: Do you agree that for fees purposes professional body supervisors should report the most recent count of supervised individuals in the 12 months ending 5 April each year and submit the figure to us by 31 October of the year preceding the relevant fee-year?**

11. We support the proposal to use the count of supervised individuals as reported on 5 April each year to HM Treasury in their supervision questionnaire. This avoids any additional requirement on supervisors to provide a further count.

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