

**FCA Consultation – ‘Office for Professional Body Anti-Money Laundering  
Supervision: a sourcebook for professional body supervisors’**

**A response by  
The Chartered Institute of Legal Executives**

**October 2017**



## **1. Introduction**

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is the Supervisory Authority listed in the Money Laundering Regulations 2007 for Chartered Legal Executives in England and. CILEx has delegated the responsibility of the application of money laundering-related rules to its independent regulator CILEx Regulation.
- 1.3. This is because CILEx is also a designated Approved Regulator under the Legal Services Act 2007. A requirement under the Legal Services Act 2007 is to ensure that representation and regulatory matters are separated so that regulation can be carried out independently. CILEx Regulation is the independent regulator of members of CILEx, those who are not members, but who are authorised to undertake reserved legal activities, and who do so in their own entities.
- 1.4. It is important to set this out at the outset because CILEx continues to be concerned that the practical consequences of this arrangement, which applies to the legal sector through the Legal Services Act, and the regulatory approach and its prevailing direction in the sector, have not been completely appreciated in the context of its influence on current AML regulation and impact on the proposal for the creation of OPBAS as part of this consultation.

## **2. Main general points**

- 2.1. As with previous related consultation responses<sup>1</sup>, CILEx understands the government's rationale for creating OPBAS and appreciates what it is intended to bring to AML supervision. Proper focus on dealing with the corrosive effect of increasing amounts of money laundering affecting the country, its economy and its international standing must be welcomed.
- 2.2. However, it is all the more important that the response to these developments is effective and CILEx continues to have some reservations that the intended outcomes to be enabled by the creation of OPBAS will not actually come to fruition nor is any evidence offered to support the supposition that any

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<sup>1</sup> HM Treasury's 'Anti-money laundering supervisory regime: response to the consultation and call for further information', April 2017 and 'Anti-money laundering supervisory review', July 2017

anticipated benefits will come to fruition. The draft FCA Sourcebook does not provide sufficient detail or clarity to give real assurance that the role of OPBAS will truly add value to the arrangements that are already in place through the various current supervisors.

- 2.3. The lack of clarity around how the running costs of OPBAS have been estimated combined with only vague ideas about how success will be measured makes any meaningful cost-benefit analysis difficult.

### 3. Responses to specific 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?

- 3.1. There is much to be welcomed in the content of the draft Sourcebook: it is not prescriptive and sets out expectations of what OPBAS would expect to see of the supervisors rather than specifying what their response to specific regulations should look like. This is welcomed because it represents at least tacit acknowledgement that not all supervisors are the same, in terms of size and regulated community, and a one-size-fits-all approach would be neither proportionate nor effective.
- 3.2. It will also be important for OPBAS to objectively assess what arrangements are 'appropriate' in the context of each individual supervisor; for example, the approach to risk assessments and reporting and escalation arrangements will vary by supervisor and their sector and what approach is 'reasonable' should be for discussion rather than falling into any trap of assuming that "different is wrong". This may be assisted by OPBAS's facilitation of supervisors comparing their money laundering arrangements '*with those of its peers*'<sup>2</sup>.
- 3.3. Similarly linked to above, CILEx also welcomes OPBAS's expectation that supervisors should adopt a risk-based approach. This rightly gives individual supervisors the discretion to adopt the appropriate focus in their efforts on the areas of highest risk within their regulated community and this, again, will vary between supervisors, enabling them to tailor their approach '*to the scale and nature of the member*'<sup>3</sup>. It is also reasonable for OPBAS to expect risk assessments to be regularly reviewed and updated<sup>4</sup>. The CILEx Group has an operational focus on identification and management of risk but it may be

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<sup>2</sup> Consultation, page 20

<sup>3</sup> As is said for example in relation to the use of supervisory tools; *ibid*, page 21

<sup>4</sup> *Ibid*, page 18

helpful if the Sourcebook offered a little more detail in relation to OPBAS's expectation in this regard and of what '*regular appraisal and review of the risks*'<sup>5</sup> actually looks like.

- 3.4. CILEx also welcomes the FCA's acknowledgement that there may be unintended consequences from the creation of OPBAS<sup>6</sup> and that the '*new burdens*' it may impose create a risk of extra costs being incurred by the supervisors, which will only then be passed on to their members and, ultimately, their members' clients. This observation is in many ways a crucial one as it gets to the heart of how OPBAS will add value to anti-money laundering arrangements managed by individual supervisors.

#### Encouraging Collaboration and information sharing

- 3.5. It is in relation to this though, that there is some lack of clarity about how this will be achieved by OPBAS in practice. For example, a key objective for OPBAS which is to be welcomed is '*to encourage collaboration and information sharing between professional body supervisors, statutory supervisors, law enforcement agencies and others*'<sup>7</sup>. Whilst welcomed, it is not clear how OPBAS will facilitate an improvement in this area. Supervisors already have good networks in which to do this, such as the Legal Sector Affinity Group and the AML Supervisors Forum, and it will be useful to understand how OPBAS can enhance these existing networks.
- 3.6. Membership of SIS and FINNET are envisaged<sup>8</sup> but CILEx believes that this membership cannot be assumed as relevant or proportionate for all supervisors in the future; in an environment that is rightly intended not to be prescriptive, it may be that certain supervisors would see this membership as disproportionate in relation to the activities and risks of the proportion of its membership engaged in relevant activities. This is before the question of related cost is considered<sup>9</sup>.
- 3.7. Whilst not imposing any prescriptive methods and processes on supervisors is welcomed, the Sourcebook could reasonably offer more detail about how it will achieve this main outcome<sup>10</sup>. This assist in the assessment of the performance of OPBAS and assessing if it genuinely is able to meet its stated objectives.

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<sup>5</sup> Ibid, page 17

<sup>6</sup> Ibid, pages 4 and 9

<sup>7</sup> Ibid, para 1.10, page 4

<sup>8</sup> Ibid, para 3.5, page 8

<sup>9</sup> See para 3.15 below

<sup>10</sup> Ibid, para 1.10, page 4

## Measuring Success

- 3.8. However, it is not clear how the effectiveness of OPBAS will be measured<sup>11</sup>. The FCA acknowledges that, in relation to any future evidence of falling levels of offences or their costs '*establishing a link to the creation of OPBAS will be challenging*'<sup>12</sup>; there is no other rationale offered as to what the anticipated benefits and likely deliverables will actually be. It would be useful to understand why, in this context, the FCA does '*believe that costs imposed by its creation are proportionate to the potential benefits...*'<sup>13</sup>.
- 3.9. Making this assessment in future will no doubt in part be informed by the content of the Annual Questionnaire<sup>14</sup> all supervisors will be required to submit to OPBAS. However, it would be useful if either an example of the planned template for the questionnaire and/or an indication of the likely content required and the use to which this will be put could also be set out in the Sourcebook.

## Professional bodies, their delegated regulators and supervisor roles

- 3.10. The Sourcebook does not appear to sufficiently recognise that there are variations in the relationships between the named professional body supervisors and their regulators to whom they delegated their regulatory functions, including the application of money laundering-related rules<sup>15</sup>.
- 3.11. As with other regulatory issues, there is a role for professional bodies as representative organisations to keep their memberships informed, share information, promote good practice etc. However, core regulatory activities such as supervision (understanding the application of the regulations to the appropriate parts of the regulated community) and enforcement (ensuring compliance and initiating disciplinary action in the event of non-compliance under the Code of Conduct) are devolved regulatory functions for regulators. The Sourcebook could be tighter in its understanding of these relationships and therefore also in its interpretation of the application of the regulations.

## Question 2: Do you have any comments on the FCA's cost-benefit analysis?

- 3.12. CILEx reiterates what it has said in other related consultations: it is disappointing that there are not as yet any greater detail relating to the costs of OPBAS and the associated fees structure that will be recovered from

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<sup>11</sup> Ibid, para 1.14 page 4 and paras 3.8-3.9 page 9-10

<sup>12</sup> Ibid, para 3.9, page 9

<sup>13</sup> As above

<sup>14</sup> Ibid, pages 30-31

<sup>15</sup> Paras 1.2 and 1.3 above refer

supervisors. There is no basis offered in the paper as to how the annual OPBAS running costs of £2m<sup>16</sup> per year have been calculated. Nor is there any further detail as to how the fee per supervisor will be calculated. Combined with the lack of clarity around how OPBAS's performance will be measured, the paper does not really offer any basis to make an informed cost-benefit analysis.

- 3.13. It is not effectively possible therefore to make any judgment of whether or not the creation of OPBAS adds any more value to the arrangements currently undertaken by the supervisors. There is no doubt that the problems the UK economy faces are real<sup>17</sup> and that regulators in all sectors have a role to play in meeting this challenge. However, the paper makes no convincing case in its cost-benefit analysis that effectively delegating responsibility for statutory regulation to professional regulators is proportionate or, under the vague proposed scope of OPBAS, effective.
- 3.14. Further discussion and understanding of the legal sector (as opposed, for example, to the accountancy sector) would probably be beneficial here. For example, CILEx members, themselves regulated, can and do work for unregulated firms. The Solicitors' Regulation Authority is looking to change its regulations to similarly permit solicitors to also work in unregulated entities. Whilst all regulators work hard to oversee those they regulate and have clarity when that is within the unregulated sector, there must be a question of what it is reasonable for a professional regulator to have in terms of regulatory reach over a firm it does not regulate in relation to statutory regulation. In such circumstances, it is reasonable to question whether in fact government should fund oversight arrangements such as OPBAS rather than professional bodies, the vast majority of whose members are not guilty of money laundering.
- 3.15. It is not clear either how the figures arriving at the average incremental cost per supervisor have been reached, particularly as they relate to numbers of man-days. More details around the calculations would be useful; for example, there were discussions with the FCA over the summer at which it was suggested that the costs of SIS/FINNET would be off-set against the costs of OPBAS but this is not explicitly referred to here.
- 3.16. It is helpful that the FCA acknowledges that supervisors will have to take on extra tasks<sup>18</sup>, and therefore costs, once the OPBAS regime is in place but the Sourcebook could usefully offer more detail of, for example, the level, type and triggers for OPBAS enquiries, investigations and reviews envisaged in

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<sup>16</sup> Consultation, para 3.2, page 8

<sup>17</sup> As referred to at para 3.8 on page 9 of the consultation

<sup>18</sup> Ibid, para 3.3, page 8

order to assist supervisors in managing those extra tasks and costs.

#### 4. Conclusions

- 4.1. The need for there to be enhanced co-ordination in the face of increasing levels of money laundering is unarguable and there is much to be welcomed in the OPBAS approach. However, it would be helpful for there to be a greater level of detail and clarity in the proposals, particularly as this is to inform the content of what should be a practical and helpful Sourcebook.
- 4.2. There remains uncertainty as to the likely cost of the new arrangements, both generally and therefore on a per supervisor basis. In the absence of that clarity, it makes it all the harder for supervisors to comment and plan on practical arrangements (and their potential associated costs); it is also not clear what the FCA envisages OPBAS success looking like.
- 4.3. CILEx's full proper view of the OPBAS model cannot really be completed until (a) there is some further detail of OPBAS's practical work offered and (b) sight of the proposals for the basis of levying fees from the supervisors<sup>19</sup> to recover its operating costs.

Please contact the individual below for further contributions that may be required from the answers provided.

#### For further details

Should you require any further information, please contact;

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<sup>19</sup> In the autumn, as per para 1.20, page 6