Anti-money laundering supervisory review: consultation

A response by
The Chartered Institute of Legal Executives

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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 was to ensure that representation and regulatory matters were 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 been 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 government's proposal as part of this consultation.

2. Main general points

2.1. As with the 'Anti-Money Laundering supervisory regime: response and call for further information' in April this year, the focus of this response is a general one on the government's intention to introduce a new Office of Professional Body AML Supervision (OPBAS). CILEx understands the government's rationale for creating OPBAS and appreciates what it is intended to bring to AML supervision. However, we continue to have some reservations that the intended outcomes to be enabled by its creation will not actually come to fruition nor is any evidence offered to support the supposition that the anticipated benefits will come to fruition.

Lack of clarity

2.2. These residual concerns are in part sustained due to the relative paucity of detail in the present consultation and the uncertainty around other elements of what will comprise the overall AML supervisory regime. For example, CILEx welcomes the fact that there will be proper focus on the regulations and arrangements which will enable the FCA to raise funding for OPBAS from Professional Body Supervisors (PSBs) through a separate consultation in the autumn and the fact that the government has been clear that the costs of OPBAS '*must be proportionate'*[1]. However, it is difficult in the context of this consultation to make a proper assessment of the proportionality, impact and cost of the new regime without the important element of 'cost' being clearer[2].

2.3. Similarly, the new Money Laundering Regulations 2017 have yet to properly bed down[3] and the full range and scope of the changes they bring has yet to be fully appreciated. Not only that, but the FCA are themselves, of course, also currently consulting on some of the detail of how they will host OPBAS[4] and the outcome of their response to that consultation will to a great extent refine their expectations in relation to anti-money laundering supervision. There remains some uncertainty, therefore, as to what that looks like in practice.

Impact Assessment and evidence

2.4. CILEx appreciates that this consultation is accompanied by an impact assessment; however, we do not see the approach in this particular consultation as satisfactory: it states that it '*seeks evidence to support the government's impact assessment'*[5]; CILEx believes that the consultation should itself come with evidence that supports the approach being consulted on rather than evidence being sought retrospectively.

2.5. This is particularly the case when considering the fact that the impact assessment is itself overwhelming positive, placing the focus of the consultation on '*the magnitude of* [the] *savings'* that will be delivered by the new regime, yet not offering any evidence as to why it is assumed there will be such savings. CILEx can see what the potential benefits[6] of the regime

[1] Consultation paper, section 2.4.
[2] The FCA's current consultation 'OPBAS: a sourcebook for professional body supervisors' estimates the running costs for OPBAS to be £2m per year though the basis of how the total amount will be apportioned between the 22 supervisors is as yet unknown.
[3] Only taking effect as they did on 26 June 2017
[4]As 2 above, issued July and closing 23 October 2017
[5] Section 3.1
[6] *'There will be benefits to businesses as professional body AML supervisors adopt a more consistent approach to supervision, and as AML guidance is streamlined.'* Impact Assessment, page 3.

could be. Indeed, in common with the other supervisors, it and its devolved regulator CILEx Regulation, already works closely with other legal sector supervisors to ensure there is consistency of approach and clarity in guidance offered to members, through such fora as the Legal Affinity Group. It is also fair to say that the onset of OPBAS has the potential to formalise this joint working more quickly than it may have otherwise have developed.

2.6. However, OPBAS would only be accelerating a modus operandi that is already there and continuing to develop and it is therefore questionable whether its formal ongoing existence, with the associated infrastructure and costs that it brings, is proportionate to achieving this outcome. Indeed, the consultation paper itself implicitly acknowledges the risk of duplication of effort by the advent of OPBAS when it, for example, talks about OPBAS's role to '*request this*[7] *information from PBSs on the Treasury's behalf and submit a consolidated summary to Treasury…'.* Having a fully developed separate office to do something that could as easily happen directly between Treasury and the supervisors starts to look disproportionate to the actual added value that it might deliver.

2.7. The paper acknowledges PBSs' expertise when it says it '*recognises and appreciates the strengths PBSs bring to the UK's AML supervisory regime, especially though their in-depth understanding to their sectors'*[8] and, as previously stated (and acknowledged in the consultation paper) the LSB-style oversight regulatory approach does have the capacity to offer a more proportionate and arguably cost-effective solution by effectively '[dovetailing] *with existing government oversight of professional bodies*'[9].

2.8. The Impact Assessment itself states: '*The Treasury considered a number of options to improve the oversight of the AML supervisory regime, including creating a new organisation or increasing resources within an existing organisations*[10]*. The latter option reduced the cost of increasing oversight substantially.'*[11] This has been interpreted as the best option is to provide that extra resource to the FCA but equally there was the option of providing that resource to sector regulators to cover AML supervision. CILEx appreciates that government is, though, now committed to the delivery of OPBAS and we only revisit this point because of the other potential risk that, unscoped as it is, the impact and burden on some supervisors might not be '*proportionate and considerate of the burdens it could place on the PBSs'*[12] and cause them to

[7] Information from supervisors for Treasury's Annual Supervision Report.
[8] Section 3.1
[9] Section 3
[10] Typo in original version
[11] Impact Assessment, page 4, penultimate bullet point.
[12] Section 2.1

step down from that role.

Risk and stepping down of supervisors

2.9. Whilst the paper states that '*the government's primary intention is not to reduce the number of PBSs'*[13]*,* the paper does contemplate that possibility and it would have been helpful to have had a more thorough assessment of that risk, its potential impact and mitigation. There is, of course, the added complication and risk for legal firms that, were one of those supervisors to step down, there is no default supervisor to step in as there would be for accountancy bodies in the form of HMRC. However, that risk is there, as acknowledged in the paper by reference to accountancy PBSs cautioning that *'their members may move to be supervised by HMRC'*[14] and therefore that potential risk should be impact assessed.

2.10. The paper acknowledges the risk and does offer some mitigation when it says that the government '*will ensure an organisation (or organisations) stand ready to supervise legal services providers should the need arise'*[15]*.* It would be helpful to have more detail here as this is material to mitigating any associated risks that arise. Any alternative supervisor will, for example, charge to cover the costs of taking on that function and that will introduce extra cost into the supervisory regime.

2.11. There is not much detail in the paper about what the actual 'burden' of OPBAS on PBSs might actually be in practice, nor what it would actually do in order to begin to assess the likelihood of this happening. There are various references in the draft regulations[16] to information requests and information gathering[17], requiring a PBS to appoint a skilled and independent individual to produce a report[18] etc, and the need for much direct intervention is down-played but more detail would be useful.

2.12. The possible impact of the risk of a supervisor stepping down needs greater scoping as, if that was to be realised, there is even greater potential for regulatory burdens to be increased, as practitioners undergo 'dual regulation'[19] and/or there are added burdens placed upon OPBAS to ensure

[13] Section 3.1
[14] Section 2.4
[15] Section 3.1
[16] The Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017
[17] Ibid, s7
[18] Ibid s13
[19] ie AML supervision through the new supervisory authority and all other professional regulation through their existing professional regulator

proper integration of the new supervisor.

2.13. So, whilst there is undoubtedly the potential for benefits to derive from the new regime, there is at least some risk that there could be adverse consequences to it. The consultation paper itself expressly refers to the application of *'a risk-based approach to supervision';* CILEx is therefore of the view that there is a responsibility for a better evidence base to be offered in support of the new regime which at least tries to scope out risk and contain evidence and mitigation for it.

3. Responses to specific questions

3.1. As referred to above[20], the AML supervisory role for CILEx has been devolved with other regulatory functions, to the independent ring-fenced regulator CILEx Regulation. Most of the detail in relation to the specific questions posed in this consultation will therefore be for them to supply, based on their practical experience of discharging these functions. We therefore offer some observations below but also refer Treasury to the general points above for context.

Question 1: Do the draft regulations deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?

3.2. The draft regulations have the potential to deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs but 'the devil is in the detail' and the detail in the consultation paper is largely absent: CILEx believes that that potential is threatened by an insufficient Impact Assessment and proper risk-based planning.

Question 4: Putting the cost of staff aside, does your business incur additional costs to help your staff understand AML guidance, for example expenditure on consultants? If so, how much does this cost a year on average? Please round your answer to the closest £100.

3.3. Both CILEx and CILEx Regulation do incur additional business costs in order to enable staff to understand AML principles and develop guidance for our members, the regulated community, so they are able to properly comply with the regulations. Treasury has had a role in assisting CILEx with signing-off the guidance we produce but, in recent times, that process has been

[20] Para 1.2

unsuccessful with our latest draft guidance staying withTreasury before, 5 months later, a response saying approval in the circumstances was not possible.

Question 5: do you expect your collaboration with other businesses to increase once AML supervisors' expectations are aligned? If so, how much might this save your business a year, on average? Please round your answer to the closest £100.

3.4. Yes – we anticipate that collaboration with other businesses will continue to increase but, for the reasons above, we are not assuming that this will necessarily result in savings, much less be able to quantify that '*to the closest £100*'.

3.5. In relation to **Questions 6, 7 and 8**: CILEx is of the view that, given the lack of detail in relation to changed supervision regime, the absence of detail on what the costs of OPBAS will be and how those funds will be raised, the lack of experience yet had under the new regulations that came into force only in June, CILEx considers it unrealistic to be able to quantify responses to these questions '*to the closest £100*'. As stated above, taking into account these unknowns as well as potential risks, we would anticipate resources, investment and costs to increase in connection with AML supervisory activity. That said, even before the advent of the OPBAS concept, CILEx, in common and in liaison with the other legal sector supervisors, has been and will continue to work towards bringing the costs down and increasing the benefits of joined-up working through information sharing and continuity of approach.

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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