

**Anti-money laundering supervisory regime: response to the consultation and  
call for further information**

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

**April 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 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 has been concerned that this arrangement, which applies to the legal sector through the Legal Services Act, has 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 points**

- 2.1. 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) as a concept rather than addressing the specific questions posed. In doing so, CILEx has also had the benefit of a meeting (with its related materials) of various other professional body supervisors hosted by the FCA, for which it is grateful. This response also therefore draws upon some of the discussions and clarification covered at that meeting.
- 2.2. CILEx appreciates that there needs to be consistency and effectiveness of approach across sectors to ensure that the risks of money laundering and terrorist finance are met. However, CILEx believes that the response of creating OPBAS, as set out in the paper, is an unsophisticated and disproportionate response that will not deliver what is intended but instead will

add to related regulatory burdens and costs for no discernible improvement.

- 2.3. The approach is unsophisticated because it fails to take into account the varied sectors and professionals subject to AML supervision. A one-size fits all approach is inappropriate and likely to be actually fit no-one.
- 2.4. The approach is also disproportionate because it fails to take into account that variety of sectors and professions subject to AML supervision: in the case of CILEx, it is likely that less than 100 members will be affected. Those that work in their own firms (a minority) do so on a small SME scale; yet the FCA model of regulation tends to be applied to and be more appropriate and effective for large firm regulation.
- 2.5. Despite that mismatch, as a Professional Body Supervisor, CILEx will be expected to financially support OPBAS through a fee levied (by a formula yet to be agreed and consulted on) from all Professional Bodies which is anticipated to support an office based at the FCA in Canary Wharf, London, with a staff of up to 20<sup>1</sup> personnel. No evidence, data, or formal risk or impact assessments have been offered as the basis for how an OPBAS of this scale can effectively, proportionately and appropriately applied to market segments of this size.
- 2.6. The principle of ‘oversight regulation,’ such as that envisaged by Treasury, can deliver the consistency and effectiveness of approach which these proposals appear to want to achieve but the rationale for the actual proposals seems ill-thought out and heavy-handed. CILEx, of course, has experience of oversight regulation in the legal services sector through the Legal Services Board (LSB). There is real merit in Treasury and FCA looking at that model<sup>2</sup> (and the models in other sectors) to see how effective oversight regulation can work effectively and not disproportionately.
- 2.7. The LSB model is also one that is actually reducing in cost over time<sup>3</sup> as the LSB is publicly committed to delivering value for money in discharging its functions, which it sees as ‘vital’ precisely because it is funded by the profession. The scale of the OPBAS operation as referred to above<sup>4</sup> is excessive in comparison. The LSB does its work, in part, through

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<sup>1</sup> As suggested by FCA representatives during debate at the meeting of Professional Bodies on 4 April 2017

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[http://www.legalservicesboard.org.uk/news\\_publications/LSB\\_news/PDF/2013/20130611\\_LSB\\_Sets\\_Out\\_Its\\_Approach\\_To\\_Overseeing\\_Regulation.pdf](http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2013/20130611_LSB_Sets_Out_Its_Approach_To_Overseeing_Regulation.pdf)

<sup>3</sup> The LSB’s indicative budget for 2017/18 represents a 44% reduction from when the LSB first started operating.

<sup>4</sup> Paragraph 3.5.

mechanisms such as its Regulatory Performance Standards Framework<sup>5</sup>; it may be that some of the outcomes desired through the OPBAS model of oversight regulation, could, for the legal services sector at least, be achieved by adapting the LSB approach.

- 2.8. The OPBAS model as currently set out though seems to fly in the face of other government priorities to reduce regulatory burdens and cut red-tape and, worse still, risks duplicating regulation (the oversight regulation by the LSB) or at least gold-plating it, adding costs to the system, which will be passed on to those being supervised, without mitigating the risks it is meant to.
- 2.9. The appropriateness of delegating what is statutory regulation to Professional Bodies, whose focus is professional regulation, is also at least questionable as a matter of principle. CILEx suggests therefore that another alternative option to be explored, should an LSB-centred approach be dismissed, might be to further extend Treasury's remit to provide focus on this piece of statutory cross-sector regulation where the expertise truly resides.
- 2.10. In terms of costs and logistics, although it has been said that no decisions have been made on either the funding formula or the structure/population of OPBAS, some of the emerging ideas are causing CILEx concern. The 'call for further evidence' refers throughout to the validity of a risk-based approach to regulation and yet the emerging view seems to be that this would not be appropriate. Instead, the emerging view favours relating the formula to 'relevant persons'; whilst there is merit in making this the reasonable basis, there are general issues for the legal sector in particular around identifying which practitioners are actually undertaking work which engages the regulations. Regulators are no doubt looking at how better related data can be captured in the future but it is already too late to do that for January 2018<sup>6</sup> in terms of the timetable for annual regulatory returns. Similarly, the budget cycles of professional bodies are likely to vary and they may at least require costing information and timings quickly to feed into their respective processes. From CILEx's point of view, there is the added element of the need to consult the profession on proposed budgets and obtain LSB approval to factor in.
- 2.11. Lastly, and in relation to regulatory risk in general associated with the proposals, CILEx is concerned that, for the legal sector in particular, there is no 'supervisor of last resort' in the event that a current supervisory body decides to withdraw from that role. There is a risk that, should the proposed

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<sup>5</sup> [http://www.legalservicesboard.org.uk/Projects/Regulatory\\_Performance/Index.htm](http://www.legalservicesboard.org.uk/Projects/Regulatory_Performance/Index.htm) .

<sup>6</sup> This is when it is understood OPBAS will go live and the data will be needed as the basis of the first funding invoices to be issued in September 2018.

supervisory arrangements prove so problematic, a critical mass of such bodies withdraw thus creating uncertainty and regulatory risk as to how and by whom that role will be discharged going forward.

### 3. Summary and Conclusion

3.1. In summary, CILEx's view are:

- i. In offering these proposals, Treasury needs to better understand the responsibilities and regulatory arrangements that apply in the legal services sector as a consequence of the Legal Services Act 2007 and therefore their impact on these current government proposals;
- ii. The current proposals as are a blunt instrument that will not deliver the intended outcome of consistency and effectiveness of approach but will instead add to regulatory burden and costs for no improvement;
- iii. There no evidence, data or formal risk or impact assessments offered as the supporting rationale for the introduction and modus operandi of OPBAS;
- iv. The model seems inconsistent with the de-regulatory and 'cutting red tape' agendas of government;
- v. Other oversight regulation models may be more proportionate and appropriate and as effective and Treasury and FCA should investigate them as part of the evidence gathering referred to above;
- vi. The appropriateness of delegating statutory regulation to Professional Bodies, whose focus is professional regulation, is questionable as a matter of principle;
- vii. The likely timetable for the implementation of OPBAS is likely to be problematic for many Professional Bodies.

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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