

**FCA Consultation – ‘Recovering the costs of the Office for Professional Body
Anti-Money Laundering Supervision (OPBAS): proposed fee rates for 2018/19**

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

December 2018



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 2017 for Chartered Legal Executives in England and Wales. CILEx has delegated the responsibility of the application of money laundering-related rules to its independent regulator CILEx Regulation Ltd.
- 1.3. This is because CILEx is 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 us, and other Supervisory Authorities in the legal sector, through the Legal Services Act, as well as the regulatory approach and its prevailing direction in the sector, are not well understood in the context of our role in current AML regulation, future regulatory arrangements¹ and the associated expectation of OPBAS. As we have previously stated in past consultations, the Professional Body Supervisors (PBSs) vary in structure, size of regulated community and modus operandi. That PBSs therefore only contribute a proportionate level of their processes and resources to OPBAS, as reflects their relative size and

¹ Which will be affected by, for example, the Legal Services Board's revision of the Internal Governance Rules [s30 Legal Services Act] which guide/limit the influence of a representative body on its delegated regulator; currently out for consultation see https://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm

actual level of regulatory risk, and do not carry disproportionately large burdens, remains a priority and that carries over into the thinking about the proposed fees structure.

2. General points

- 2.1. As with previous related consultation responses, 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. CILEx is a member of the Legal Sector Affinity Group and the AML Supervisors' Forum and is committed to supporting a realistic, risk-based approach to regulating an AML regime.
- 2.2. However, it remains the case that the FCA's proposals in this consultation paper could be clearer: in the Compatibility Statement accompanying the consultation², there is reference to the '*principle that we should exercise our functions as transparently as possible*'. But there remains a lack of clarity around how the running costs of OPBAS have been estimated and the relationship to the infrastructure that is needed to support the planned supervision activities³ that it will undertake or how the effectiveness of its performance will be measured.
- 2.3. That said, CILEx has been pleased to engage with OPBAS in relation to the fee-setting proposals and envisages that this discussion will remain ongoing and reviewed on the basis of actual experience in reality, following implementation.

² Paragraph 4.11, page 11

³ Also unknown.

3. Responses to specific questions

Question 1: Do you have any comments on our proposed variable fee of £41.03 per supervised individual?

- 3.1. This links to the general comments above⁴: CILEx remains concerned that there is a lack of transparency as what is actually being funded in terms of the operations and running costs for OPBAS. This is important because it is practitioners themselves, and ultimately their clients, who bear the costs of regulation. Legal sector regulators are required to be clear that their costs and charges are both proportionate and only cover reasonable and proper regulatory activities. It is not possible to make that judgement in respect of OPBAS's operating model; that transparency is not there.
- 3.2. In the same way, making a judgement about the level of per head cost (per supervised individual) is also difficult. Again, as stated above⁵, the size of supervised population varies dramatically between supervisors: the level of minimum fee of £5,000⁶ seems reasonable (though even that may seem high to those with only tens of supervised individuals or fewer compared to the thousands for some PBSs) and CILEx broadly supports the principle of this minimum fee approach.
- 3.3. However, CILEx would support all initiatives to try and further reduce the £41.03 per supervised individual (above the 6,000 threshold) as we are aware that the proposed fee structure has created a significant new costs burden for some of the larger PBSs. Such initiatives should include real analysis of and clarity around OPBAS's operating costs to ensure that they are as proportionate and economical as they could be. Having no transparency or visibility of any OPBAS forward activity plan also makes it impossible to determine if the fee structure is pitched right.

⁴ Para 2.2

⁵ Para 1.4

⁶ Up to a threshold of 6,000 supervised individuals

3.3.1. OPBAS may also wish to assure itself of comparative regulatory cost per supervised individual. For example, the levy CILEx pays to fund the Legal Services Board was £18.83 per authorised person in 2016/17, which was a decrease of 12.6% on the previous year.⁷ In this light the fee of £41.03 per person for OPBAS, more than double that of a comparator regulator, would be seen as excessive.

3.4. CILEx is disappointed that a proper open conversation about this and the relationship to the size of the overall regulated population could not have been facilitated by OPBAS as part of this consultation process, and surprised that OPBAS felt unable to be transparent about that when the PBSs, individually and collectively, were prepared to share data about the sizes of their supervised population.

Question 2: 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?

3.5. CILEx agrees with the proposal to align the most recent count of supervised individuals in the 12 months ending 5 April, to be submitted by 31 October, to setting the OPBAS fee.

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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7

https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2017/20170717_LSB_Costs_State_ment_2016-17.pdf