

**FCA Consultation – ‘Recovering the costs of the Office for Professional Body
Anti-Money Laundering Supervision (OPBAS): further consultation on fees
structure**

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

April 2019



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. CILEx is keen to continue to highlight these regulatory arrangements and the practical consequences which apply 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. 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 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, appreciates what it is intended to bring to AML supervision and, as a member of the Legal Sector Affinity Group and the AML Supervisors' Forum, 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. There remains a lack of clarity around how both the set-up and the running costs of OPBAS have been estimated and the relationship to the infrastructure which is needed to support the planned supervision activities¹ that it will undertake or how the effectiveness of its performance will be measured. Whilst there has been some further detail supplied in this consultation compared to the previous ones, it is only at a head-line level with no real granularity.
- 2.3. Better sight and understanding of OPBAS's proposed plans would be useful particularly in the context of other emerging developments, specifically what effects, if any, result from the recent Financial Action Task Force's Mutual Evaluation Report of the UK's anti-money laundering and counter-terrorist financing regime and/or the recent Treasury Select Committee report on The UK's AML Supervisory Landscape.
- 2.4. That said, CILEx has been pleased to engage with OPBAS in relation to the fees-setting proposals and envisages that this discussion will remain ongoing and reviewed on the basis of actual experience in reality, following implementation.

¹ Also unknown.

3. Responses to specific questions

Question 1: Do you agree that we should remove the minimum fee structure and charge all PBSs a flat rate of £20.59 per supervised individual, subject to a minimum charge of £5,000?

- 3.1. This links to the general comments above²: 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. This is also the case when making a judgement about the level of per head cost (per supervised individual); it is problematic because the size of supervised population varies dramatically between supervisors. As stated in previous consultation responses, the level of minimum fee of £5,000³ 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).
- 3.3. CILEx has previously stated support for any initiatives to try and further reduce the cost per supervised individual (above the 6,000 threshold) so that the proposed fee structure does not create a significant new costs burden for some of the larger PBSs as the previous proposals have done. Whilst this latest consultation does seek to do that, it is not accompanied by any 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 very hard to determine if the fee structure is pitched right.

² Para 2.2

³ Up to a threshold of 6,000 supervised individuals

- 3.4. The consultation paper itself acknowledges that ‘pitching’ the cost per supervised individual is problematic⁴ when it notes the previous warnings of PBSs that ‘*any definition of supervised individuals might weight costs recovery against smaller PBSs supervising sole practitioners*’. Logically, the new proposal must have this adverse effect, but it must also mean that, although the proposal seeks to spread costs more evenly, more PBSs will pay a greater fee compared to the previous proposal. For CILEx, the small number of its supervised individuals means that only the £5,000 minimum charge will be incurred under the new proposal and therefore no material difference to the minimum fee proposal.
- 3.5. As we have previously stated, CILEx believes that PBSs should pay a contribution to OPBAS proportionate to the size and risks associated with their supervised community; of course, this varies quite considerably between PBSs. It may be that no formula is perfect; it cannot satisfy all PBSs. But CILEx believes that there is a significant omission from the current formula: it does not take into account the relative regulatory risks per section of supervised population nor how PBSs are managing that risk through the processes they have developed.
- 3.6. That and greater transparency of OPBAS’s costs model, its plans and intended deliverables would be a more helpful context in which to settle the fees structure.

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;

Simon Garrod
Director of Policy &
Governance
simon.garrod@cilex.org.uk
01234 845725

⁴ Para 2.5