

IFA REPRESENTATION 2/19



Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS) – CP 19/3

The IFA welcomes the opportunity to comment on OPBAS' further consultation on fee structure issued on 14 March 2019.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

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We are recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.

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General comments

1. As mentioned in our previous responses to OPBAS' fees consultations (CP 17/35 (October 2017) and CP18/32 (October 2018), the IFA strongly believe in a consistent, fair, proportionate, accountable, transparent and risk-based AML supervisory regime which is in the public interest. These objectives are also aligned to OPBAS' objectives and regulatory principles set out in s. 3B of FSMA. The most relevant regulatory principles which are of relevance to OPBAS' consultations regarding fees are repeated below for the sake of completeness:
 - The need to use our (OPBAS) resources in the most efficient and economic way
 - The principle that a burden or restriction should be proportionate to the benefits
 - The principle that we should exercise our functions as transparently as possible
 - Compatibility with the duty to promote effective competition in the interests of consumers
2. However, we are extremely concerned that these regulatory principles are not being followed by OPBAS as detailed below. We were also concerned and disappointed to learn that our response (and that of other professional bodies) to the CP 18/32 consultation on fees was not considered in the feedback document included in CP19/13 due to the fact that we had submitted our response using the online form provided by the FCA which was incorrectly linked to a previous consultation. We have been provided with assurances by the FCA that this error will not be repeated in this consultation.

Resources

3. First, to date, it is not possible to assess whether OPBAS' resources are being used in the most efficient and economic way since there is no business plan for OPBAS. While there is a FCA Business Plan for 2019/20 which details objectives, priorities, activities, fees and how it operates, no equivalent document exists for OPBAS.
4. The FCA Business Plan for 2019/20 published on 17 April 2019 states that its Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is 'challenging weaknesses as and when we find them, making clear that we will take further action where a Professional Body Supervisor (PBS) has not addressed any issues we have identified within a reasonable time.' and that 'We have started information and intelligence sharing, and collaborative working between PBSs with an initial focus on the accountancy sector.' How OPBAS will achieve these objectives remains unclear. Furthermore, information and intelligence sharing between PBS already takes place as previous FATF MERs have indicated. While we have always supported and welcomed information and intelligence sharing cross sector and from law enforcement it is not clear what activities OPBAS will undertake in this area nor how its activities and resources will be prioritised to support information and intelligence sharing. Therefore, we are of the view that OPBAS should have its own business plan since OPBAS' remit, scope, objectives, activities, priorities and resources are very different to that of the FCA.
5. We are therefore, particularly keen to understand what activities OPBAS staff will be undertaking sooner rather than later and certainly before the finalisation of any costs to be borne by professional bodies, their members and ultimately their clients. To date, the IFA has had limited interaction with OPBAS staff other than through its supervisory visit which lasted 2.5 days and involved 4 members of OPBAS staff.
6. Furthermore, we would be interested to understand whether 'value for money' (VFM) is central to OPBAS' mission or not. FCA's mission is centred on the concept of value for

money which is described as 'committed to achieving value for money in addressing harms and delivering our objectives.' While OPBAS is 'housed' at the FCA, OPBAS' remit and that of the FCA are very different. Clarity regarding OPBAS' mission in this regard is essential.

7. OPBAS' chosen supervisory visit approach does not appear to be in line with VFM since it focuses only on weaknesses. While we appreciate the need to address identified weaknesses as quickly as possible, the concept of value for money looks at efficiencies and continuous improvement. Sharing best practice from accountancy and legal supervisors on an anonymous basis would help in the identification of efficiencies and would be in the spirit of continuous improvement. By focusing on weaknesses alone, best practice from supervisors is not shared or considered which may affect supervisors AML strategies and also OPBAS's own objectives of monitoring the quality and consistency of the professional bodies' supervisory activities. So, in our view, a key and important value for money activity is not being considered by OPBAS in its current approach.
8. We also note that the FCA consults with the sector when developing its business plan. Should OPBAS develop a business plan in line with the FCA regulatory principles, the IFA would be happy to input into such a consultation.

Burden and Competition

9. We are of the view that the most recent consultation does not distribute the cost recovery between relevant fee-payers as fairly as possible. The three PBS which supervise 69% of the individuals and pay 94% of the costs are likely to be responsible for the biggest firms with larger turnovers and staff. By not factoring the turnover of supervised businesses into the cost recovery model because it 'proved too complicated or impractical', the FCA is disproportionately affecting smaller firms and is arguably being anti-competitive.
10. If OPBAS' mission is to address harm and delivering its objectives (VFM), then arguably the harm that could be caused by a firm with a smaller turnover with limited activities is significantly less than that caused by firms with significantly higher turnover and more complex activities. Therefore, it is the level of fees that is earned by firms that, in our view, is the best indicator of the activities giving rise to the risks being identified by the government. The variable rate must therefore take into account the average turnover of supervised businesses. Having a variable rate which is not linked to the average turnover of supervised firms increases the regulatory costs to smaller firms disproportionately relative to the activities that the firm undertakes.
11. The FCA acknowledges in paragraph 2.22 that metric of supervised individuals for recovery of fees tends to 'overstate the impact of sole practitioners and undertake the impact of BOOMs within firms.' To replace the current proposed rule with a fee-rate of £20.59, subject to a minimum charge of £5,000 further exacerbates this issue. A per BOOM flat rate fee without a minimum fee for all PBS would increase the burden on sole practitioners even more than it does already.
12. The proposed removal of the minimum fee for all professional bodies (PBS) and the introduction of a fee-rate of £20.59, subject to a minimum charge of £5,000 takes no account of the profile of the PBS supervised population nor does it take into account of FTAF's risk based approach to supervision, which includes an assessment of probability (likelihood) and impact (harm).

Transparency

13. Third, in our responses to previous consultations, we have strongly urged the FCA (OPBAS) to provide details of its governance, priorities, activities and expenditures. To date, there has been a lack of transparency regarding these areas. While the lack of transparency is referred to in the FCA's feedback to CP 18/32 consultation issued in October 2018, no details are forthcoming. The estimated running costs by OPBAS have decreased from £2m to £1.4m suggesting that perhaps the previous estimates were not as robust as they should have been. In terms of details, the FCA stated in its latest consultation that the running costs are 'employment costs, together with an appropriate share of our overheads such as accommodation, IT and common services.' We are concerned and disappointed at the lack of transparency by the FCA on OPBAS' running costs of £1.4m and set up costs of £0.5m over 2 years (most recent estimates). Furthermore, the FCA's explanation on how the £20.59 fee rate per individual is derived is limited (at best).
14. In contrast, FCA's 2018/19 Business Plan contains significant detail of its operational activities and finances. We cannot understand why OPBAS operational activities and finances are not as transparent as the FCA's, in spite of repeated requests by the IFA and others, for transparency.
15. From attending a round table fee discussion with the FCA, HM Treasury, HMRC and accountancy and legal sector professional bodies on 1 December 2017, it is our understanding that running costs consist of staff of 10 associates, 1 manager, recharging of 3 FCA AML policy colleagues and a 20-30% uplift. Since this date, no further details of current and future staff numbers have been provided. Furthermore, we are aware that there has been a significant turnover of staff at OPBAS as well as changes in governance and reporting lines. However, there has been no communication regarding how these changes have affected OPBAS' priorities, activities, operations and finances.

Invoices

16. The consultation has omitted to clarify what invoices will be issued when and what for. According to paragraph 4.1, the 2018/19 invoice will be issued from August 2019 onwards and the 2019/20 invoice will be issued in December 2019 or January 2020. Given that OPBAS fees will have to be passed on directly to our supervised population, and most of the PBS have a renewal process of October- March, we strongly urge OPBAS to finalise the fee consultation as soon as possible so that the fees can be appropriately factored in our renewal process. This point has been raised at previous consultations but appears to have been ignored.
17. Smaller PBS cannot absorb OPBAS fees and will definitely have to pass on these costs to their supervised populations. Larger PBS may be able to absorb some of these fees for regulatory activity and pass on smaller costs to their supervised population. To have a level playing field for all PBS regarding OPBAS costs/fees, PBS should be required to be transparent on fees to their supervised populations and make it known that these additional costs relate directly to OPBAS and are therefore not based on supervisory or firm activity.

Unintended consequences

18. The current proposal relating to fees may cause some members and member firms of professional bodies to cease their membership. While these individuals and firms may end up being supervised by HMRC, they will not be required to conform to the same strict technical,

ethical, or general practice standards nor will they be subject to regulatory and disciplinary processes. HMRC currently relies on tax agents of professional bodies to communicate its key messages to clients and is also working on a tax agent strategy, which includes professional body membership tax agents. The implications of loss of professional body membership as result of AML supervision and monitoring costs should be considered in light of HMRC's tax agent strategy and AML strategy in order to ensure that government objectives, priorities and activities are aligned.

19. While HMRC has stated that it will adhere to the OPBAS Source Book, there is no formal oversight in place to monitor this that we are aware of, creating glaring inconsistencies in the accountancy sector. Loss of membership for professional bodies may increase the risk that individuals and firms are not supervised for compliance with the Money Laundering Regulations 2017. We understand that HMRC is now starting to police the perimeter and may identify individuals and firms that are not supervised. However, there is still a risk that those individuals and firms are not identified, potentially increasing the money laundering and terrorist financing risks in the UK.

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? Please support your view with evidence demonstrating the impact on the viability of professional body supervisors and on the individuals they supervise.

20. The replacement of the current rule with the rule that gives a fee-rate of £20.59, subject to a minimum charge of £5,000 would increase supervisory costs based on our BOOM numbers from £5,000 to £46,000, nearly a 10 fold increase. This cost would have to be directly passed on to our supervised population. Currently, we expect to increase IFA member firms AML supervision fees by 34% on average. A third of this increase is directly attributable to OPBAS fees and the remainder is directly attributed to additional staff resources for AML supervision and monitoring required by the Money Laundering Regulations and the OPBAS Source Book for Professional Body AML Supervisors.
21. As per the latest submission to HM Treasury, the majority of firms we supervise have client fee income below £250,000 (85%). About 50% of our firms are sole practitioners, 9% partnerships and the remainder corporates practices. 94% of firms have one office in the UK, 4% have two offices, 2% of firms have between 3 and 6 offices. Only 15% have clients based or operating overseas, generally in low risk jurisdictions. None of our firms undertake audit, investment and probate business.
22. Given the nature of the activities undertaken by our firms and the size of firms in terms of turnover, a 34% average increase in AML supervisory fees, a third of which is directly attributed to OPBAS is significant and in our view disproportionate to the size of the firms and the activities being undertaken by these firms.
23. Therefore, we would strongly support maintaining the current rule from the two previous FCA consultations which sets a minimum fee for all PBSs of £5,000 plus a variable fee rate on individuals above 6,000 of £41.65 for 2018/19 (assuming this cost takes into account latest estimates of running costs and set up fees). The introduction of such a significant change in the rule for OPBAS recovery of costs at this stage of the consultation process which started in October 2017 without robust evidence to support the change in rationale is not acceptable.
24. In addition to the above, PBS's are also required to subscribe to the Shared Intelligence Service (SIS) and pay an annual fee adding to the overall costs that PBS's will be required to pass on to those that they supervise.

25. As discussed above, such a change in rule for recovering OPBAS costs would be a disproportionate burden to smaller supervised firms and has no bearing on the money laundering risks associated with the those firms based on FATF's recent draft guidance on risk based approach for accountants.

Contact details

Should you wish to discuss our responses further, please contact Anne Davis by email at anned@ifa.org.uk