

# Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fees proposals

**Consultation Paper**

CP17/35\*\*

October 2017



## How to respond

We are asking for comments on this Consultation Paper (CP) by 8 January 2018.

You can send them to us using the form on our website at: [www.fca.org.uk/cp17-35-response-form](http://www.fca.org.uk/cp17-35-response-form).

Or in writing to:  
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### How to navigate this document onscreen



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takes you to helpful abbreviations

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# 1 Summary

## Why we are consulting

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- 1.1** This consultation paper (CP) sets out our proposals for recovering the costs of establishing and running the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), which the government intends to house within the FCA. We are funded entirely by the fees and levies recovered from the bodies we regulate. We do not receive any funding from other sources.

## Who this applies to

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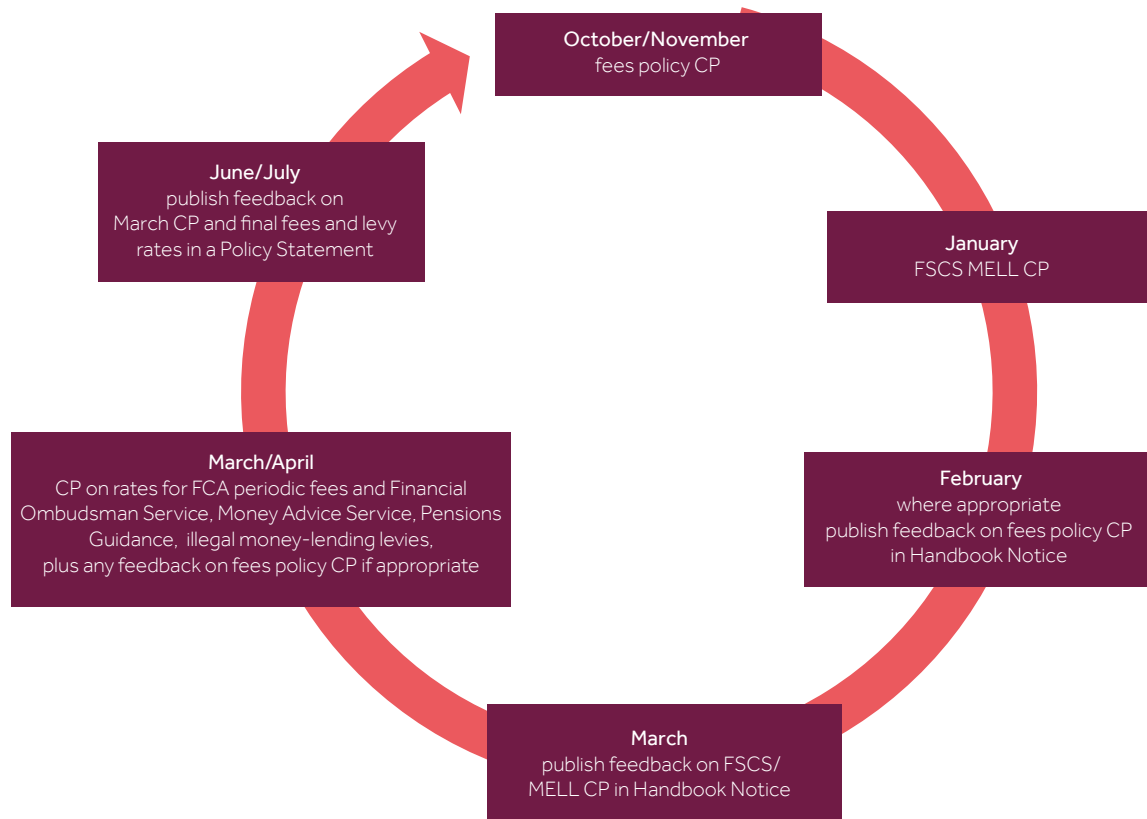
- 1.2** The CP applies to the professional body supervisors listed in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) and bodies considering applying to be listed. It will also be of interest to designated professional bodies.
- 1.3** It will also be of interest, for information only, to firms registered under the Money Laundering Regulations and not authorised by the FCA for any other activities, since we have taken the opportunity to set out in the FEES Manual the charges payable by them.
- 1.4** The CP contains no material directly relevant to retail financial services consumers.

## The wider context of this consultation

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- 1.5** This CP does not fit directly into our annual cycle of consultation on fees but any future fees proposals relating to OPBAS, and changes in the fee rates, will be consulted on through the standard cycle so professional body supervisors should be aware of it:
- October/November – we consult on any changes to the policy on how fees and levies are raised. We provide feedback on the responses received to this consultation in the following February/March Handbook Notice or the March/April CP.
  - January – we consult on the Financial Services Compensation Scheme (FSCS) management expenses levy limit (MELL). This is a joint consultation with the Prudential Regulation Authority (PRA). We provide feedback on responses received in the March Handbook Notice.
  - March/April – we consult on FCA periodic fees rates for the next financial year (1 April to 31 March) and any proposed changes to application fees or other fees. We also consult on the Financial Ombudsman Service general levy, Money Advice Service, Pensions Guidance and illegal money-lending levies for the next financial year.

- June/July – we publish feedback on the responses received to the March CP together with final fees and levy rates in a policy statement.



**1.6** We will be publishing our annual CP on wider fees policy in November.

## Summary of proposals

- 1.7** Chapter 2 sets out our proposals for a structure of fees for recovering the costs of OPBAS from professional body supervisors once it is established in early 2018. We are not consulting on fee rates but we quote indicative ranges to help the bodies with their business planning.
- 1.8** We also refer to an editorial adjustment which does not require consultation. Because the OPBAS Regulations fall outside the Financial Services and Markets Act 2000 (FSMA), we are putting the levy to recover its costs into a separate appendix attached to the FEES manual. We have taken the opportunity to add a further appendix setting out the fees payable by firms registered with us under the MLRs. These fees are also outside FSMA so are not in the FEES manual and can be difficult to find. This is for information only since we are not changing the fee rates which were published in July.<sup>1</sup>

<sup>1</sup> PS 17/15 *FCA regulated fees and levies 2017/18* (July 2017)

## Equality and diversity considerations

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- 1.9** Overall we do not think that the proposals in this CP adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final requirements.
- 1.10** In the meantime we welcome your comments on any equality and diversity considerations you believe may arise.

## Next steps

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- 1.11** Please consider our proposals and send us your comments on the questions in this CP by 8 January 2018. Use the online response form [insert link] on our website or write to us at the address on page 3 of this document.
- 1.12** We will consider your comments and publish our feedback, along with our requirements, in our Handbook Notice in February or March 2018.



## 2 Fees proposals

### *(Draft instrument in Appendix 1)*

- 2.1** In March 2017 the government announced its intention to create the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). The government intends to house OPBAS within the FCA, from where it will oversee the adequacy of the anti-money laundering (AML) supervisory arrangements of the 22 professional body AML supervisors (the 'professional body supervisors') listed in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs). On 20 July the government published a draft of the Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 (the OPBAS Regulations) to give powers and responsibilities to OPBAS. On 24 July we published a consultation, setting out a new draft sourcebook with guidance on how professional body supervisors can meet their obligations in relation to AML supervision.<sup>2</sup> We anticipate that OPBAS will be established by early 2018.
- 2.2** This chapter sets out our proposals for recovering the costs of running OPBAS from the professional body supervisors it will supervise under the OPBAS Regulations. This is expressed as a 'charge' under the OPBAS Regulations. For ease, we refer to those charges as 'fees' in this chapter and in the draft OPBAS instrument in Appendix 1.
- 2.3** The professional body supervisors will be grouped into a fee-block for fees purposes. We use fee-blocks to link fee-payers conducting similar activities so that we can target cost recovery in the most effective way. We allocate our regulatory and supervisory costs to each fee-block and recover them through periodic fees (variable annual fees), based on a metric known as a 'tariff base', common to fee-payers in the fee-block. The most common tariff measure is income. The tariff base is intended to be an objective, transparent and simple measure that can be consistently applied across the fee-block to ensure a fair distribution of cost recovery. The total amount we wish to recover from a fee-block is known as the annual funding requirement (AFR), and is based on operational costs. The fee rate is calculated by dividing the AFR by the total value of the tariff data reported by all of the fee-payers in the fee-block. The intention is to distribute cost recovery within each fee-block on the basis of the size of each fee-payer according to its tariff data.
- 2.4** We consult on fee rates each March or April. We finalise the rates through a policy statement (PS) in June, so that invoices can be issued from July. Each October or November we consult on more general fees policy proposals. Consultation on OPBAS fees will as explained below follow a separate timeline for 2018/19, so the consultation paper (CP) we issue in March/April 2018 on the rates applicable from 1 April 2018 will not include OPBAS fees.
- 2.5** Firms which paid £50,000 or more in FCA fees in any year pay their fees on account. In April they make an advance payment, equivalent to half the previous year's total annual fee. In September they are invoiced for the balance of the final rate following consultation. When we collect the first OPBAS fees in 2018/19, there will be no previous year's fee on which to base the on-account procedure. There will therefore be a single payment in the autumn of 2018 to cover the 2018/19 costs, even for the

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<sup>2</sup> GC17/7: Proposed guidance on a sourcebook for professional body supervisors on anti-money laundering supervision (July 2017)

larger fee-payers. From 2019/20 onwards we propose that the larger professional body supervisors will pay on an on-account basis in April and September.

- 2.6** Some professional body supervisors already pay FCA fees as Designated Professional Bodies (DPBs). They should note that there will be a clear distinction between the costs and cost-recovery of the two functions. There will be separate fee-blocks with the fees separately identified on their invoices. If they paid more than £50,000 as a DPB, that will not be used as the basis for an on-account OPBAS payment.
- 2.7** The powers given to us by the OPBAS Regulations to recover our costs fall outside FSMA and so we are not making fees rules under FSMA. Consequently, the provisions in Appendix 1 technically will not form part of the Handbook FEES manual. For ease of reference, however, we are putting them into the Handbook as Appendix 2 to the FEES manual.
- 2.8** We are also taking the opportunity to include as Appendix 3 of the FEES manual the fees for firms in fee-block G.1 which are registered with us under the MLRs since these have in the past been difficult to find. This is purely an editorial adjustment which does not require consultation. We are not changing their fees, which were consulted on in April and published in July this year.
- 2.9** Our proposals in this chapter cover:
- Application fees – we propose to charge a fee for reviewing and processing applications received from professional bodies who wish to be added to the list of professional body supervisors in Schedule 1 to the MLRs.
  - Periodic fees – we propose a structure for annual fees and invite comments on the data sources and definitions we are proposing as a basis for distributing cost recovery fairly between the professional body supervisors.

## Application fees

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- 2.10** Professional body supervisors which are already listed under Schedule 1 of the MLRs at the time the OPBAS Regulations come into force will not be charged an application fee. These proposals relate only to those professional bodies which apply to be listed after OPBAS becomes operational.
- 2.11** The OPBAS Regulations will require professional bodies to apply to OPBAS if they wish to be listed as AML Supervisors under Schedule 1 of the MLRs. OPBAS will review the application and make a recommendation to the Treasury as to whether the professional body should be added to the list. Based on that recommendation the Treasury will decide whether to add the professional body to the list, and will proceed accordingly.
- 2.12** We have not fully determined what will be involved in reviewing each professional body's application to be listed under the MLRs and making a recommendation to the Treasury. Each one is likely to vary. OPBAS will need to review the information required to assure itself that the professional body has adequate governance, systems and controls, and the knowledge and experience to act as a supervisory body. It will



also spend time on correspondence and in meetings with the professional body to understand the AML risk of the sector the body would supervise.

**2.13** On the basis of our current understanding of the work involved, we believe it would be comparable to determining a moderately complex application under FSMA, for which we charge £5,000. If experience shows that dealing with applications costs more or less than this then we may have to review our charge.

**2.14** This will be a one-off fee for reviewing the application irrespective of whether the application is successful or not. There will be no reimbursement if the application is unsuccessful. If a professional body is listed, it will become liable to pay periodic fees. Its first fee will be pro-rated to cover the remaining months of the fee year.

### Periodic fees

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**2.15** We will need to recover from the professional body supervisors through periodic fees both:

- the annual running costs of OPBAS from 2018/19 onwards, and
- the costs we have incurred in implementing the project and operating OPBAS up to 31 March 2018.

We estimate the costs below:

Annual running costs from 1 April 2018	£1.7m – £1.9m
Project set-up costs up to November 2017	£200,000
Operational costs from November 2017 to March 2018	£600,000 – £700,000

**2.16** We plan to recover the accumulated costs over two years. To model our fees we have rounded the figures to the nearest £million so our working assumption is recovery of £2.5m in 2018/19 – 2019/20 and £2m from 2020/21 onwards. We will have definitive figures when we set the final fee rates in 2018. Meanwhile, in Question 6 below, we invite views on the period over which we should spread recovery of the accumulated costs.

**2.17** Our objective is to distribute cost recovery between fee-payers on a fair basis. We need to define as simple a tariff measure as possible, which all the professional body supervisors can report to us accurately and consistently. We set out below the different options we have considered for OPBAS. For clarity, 'supervised persons who are individuals' is our preference. We welcome comments on these and any suggestions for alternative measures.

### Flat fee

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**2.18** Dividing the fee equally between all fee-payers is a simple way of sharing the costs provided they are all of a similar size. It does not give a fair distribution when, as with professional body supervisors, there is a wide range of fee-payers because it disproportionately affects smaller fee-payers with limited resources.



## Relevant persons (as defined in regulations 3 and 8 of the MLRs)

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- 2.19** The definition of 'relevant persons' in the MLRs rests on the business activity and profession being carried on by a person (legal or natural) and includes auditors, insolvency practitioners, external accountants and independent legal professionals. Each of the professional bodies listed in Schedule 1 to the MLRs is the supervisory authority for relevant persons who are members of, or are regulated or supervised by, it.
- 2.20** The professional body supervisors are required under regulation 51 and Schedule 4 of the MLRs to collect the information they consider necessary to perform their supervisory functions, including the information specified in Schedule 4. We expect that this information will encompass data on the number of relevant persons they supervise. Setting periodic fees on the basis of the number of relevant persons each organisation supervises would have the advantage of being defined by statute in the MLRs and using data that the organisations already hold.
- 2.21** A disadvantage is that relevant persons can be firms or individuals or both. There is a risk that a count of relevant persons would give the same weight to large corporations as to small partnerships or self-employed individuals. Under this measure, a small professional body supervisor overseeing a small sector and supervising a large number of small firms could be unfairly burdened with fees compared to a larger professional body supervisor which supervises large firms. Finally, not all professional body supervisors supervise firms. Some supervise individuals only.

## Supervised persons who are individuals

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- 2.22** A count of supervised persons who are individuals appears in principle to offer a more accurate measure of the scale of the professional body supervisors' responsibilities under the MLRs than a count of firms. Regulation 51 and Schedule 4 of the MLRs require professional body supervisors to collect data on 'persons', which includes the individuals they supervise as well as firms, and to distinguish between them. This information is included in the annual reports the professional body supervisors already submit to the Treasury. Like the count of firms, this is data defined and collected under statute and maintained by all the professional body supervisors which will be overseen by OPBAS. It is our preferred measure and we have included a definition in Appendix 1.
- 2.23** When data are being used to calculate fees, it is essential that they are supplied on a consistent basis by all fee-payers. However, following discussions with professional body supervisors about the returns they make to the Treasury, it appears to us that the wording 'supervised persons who are individuals' in Schedule 4 to the MLRs has been interpreted inconsistently:
1. 'The number of persons subject to the supervision of the supervisory authority, or in the case of a self-regulatory organisation, the number of its members ("supervised persons").
  2. The number of supervised persons who are individuals.'
- 2.24** The term 'self-regulatory organisations' includes the professional body supervisors who will be overseen by OPBAS. The underlined wording at (1) could be interpreted to mean that they should report their total membership, without having to disaggregate



those members supervised under the MLRs. Paragraph (2) could be read merely as separating individual members from corporate members, again, irrespective of relevant person status.

- 2.25** Consequently we believe some professional body supervisors may report all of their active membership. Others may have attempted to focus on relevant employees within firms that are relevant persons – ie individuals whose work is relevant to their employers' compliance with the MLR requirements. However, they may not use the same criteria to identify these relevant employees. Some may report those individuals who have passed a fit and proper persons test under the MLRs. Others may report only those members who are authorised to take client money. Such inconsistencies are immaterial so long as the reports are providing contextual information only, but if that same information is used to calculate fees, they could generate an unfair distribution of cost recovery. Our impression is that the legal professional body supervisors may have tended to report total active membership, whereas accountancy professional body supervisors may have tried, whether consistently or not, to report sole traders who are relevant persons and relevant employees. If so, lawyers may be over-represented in the total population, allocating to the legal professional body supervisors a disproportionate share of cost recovery.
- 2.26** In addition, individuals supervised by one organisation may be relevant employees of a firm supervised by another organisation. Similarly individuals who are members of a particular body for legal or professional reasons may be supervised for the purposes of the MLRs by a different body. Both of these scenarios raise a risk of double-counting.
- 2.27** We have attempted to introduce greater consistency through the draft definitions and guidance in Appendix 2 of the draft instrument, and welcome comments from professional body supervisors on this and any additional guidance that might be required to ensure consistent reporting.

## Membership

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- 2.28** If providing consistent data on relevant persons or individuals supervised under the MLRs proves problematic, it might be reasonable to apportion cost recovery according to the total membership of the professional body supervisors, so a body with fewer members would pay a lower fee. This would not take account of their responsibilities under the MLRs but would scale their fees in proportion to their relative size.
- 2.29** Professional body supervisors already maintain their own records of membership so this has the advantage of being relatively straightforward to collect to capture the practising professionals for whom each body has some direct responsibility, though not exclusively for AML activities.
- 2.30** However, although one might expect a rough equivalence between a professional body supervisor's presence in the total pool of professionals and the extent of MLR-related supervision it has to conduct, this may not be the case. Some professions may be more likely to engage with the MLRs than others. A professional body supervisor could therefore incur high fees based on a large membership, even though most of its members undertake little or no AML-related activity. Furthermore, some bodies will have inactive or retired members, or members overseas. Further refinement might

be needed to focus on active UK membership, and definitions of active practice in different professions may not be comparable.

## Supervisory resources

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- 2.31** Apportioning cost recovery on the basis of the resources the professional body supervisor devoted to overseeing its members' AML compliance, measured as full-time equivalent staff, would relate the fee directly to the work the professional body supervisor carries out under the MLRs. This could in theory mean that, if a professional body supervisor encounters a number of serious failings which take up a lot of supervisory time, then the cost of that is apportioned to the professional body supervisor.
- 2.32** However, this measure could penalise the professional body supervisors that devoted greatest resources to performing their role, creating perverse incentives. For example, if a professional body supervisor spends a good deal of time engaging with OPBAS to be open and ensure that their supervisory activities are robust, they could incur higher fees.
- 2.33** Furthermore, this metric would create a great deal of volatility as the resources applied to AML supervision by different professional body supervisors might vary each year, making it difficult to plan and budget.

## Income

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- 2.34** Another option could be to apportion the fee on the basis of professional body supervisors' income, so a professional body supervisor with a lower income would pay a lower fee. Income is the most common tariff base the FCA uses. This is often a fair and proportionate proxy for the regulatory impact of an institution, but the measure is tightly defined as arising from specific regulatory activities.
- 2.35** Professional body supervisors may receive income from many sources. The breakdown of their revenue from different member categories may depend upon individual accounting conventions, so that we might have to specify a standard reporting methodology for valid comparisons between professional body supervisors.
- 2.36** In our discussions with professional body supervisors about fees and membership, they have indicated that they do not apportion or break down their membership fee on the basis of AML activity. Therefore estimating the share of the revenue arising from members subject to AML supervision could add a further layer of complexity and potential inaccuracy.
- 2.37** We set out below our proposals for consultation.



## Minimum fee

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- 2.38** As with other FCA fee-payers, we believe the smaller professional body supervisors should pay a minimum fee only. The bodies with a larger supervised community would pay the minimum fee plus a variable rate. Some of the professional body supervisors are, on any measure, small and our costs will eventually be passed back to their members. We do not want the impact of that fee to cause a barrier to entry for professionals. We believe that £5,000 would represent a reasonable contribution towards our costs from these smaller bodies.
- 2.39** On the basis of the Treasury returns, we understand that 75% of the professional body supervisors account for less than 11% of the total number of supervised individuals. The largest of these supervises less than 6,000 individuals. We believe these are the professional body supervisors which should pay the minimum fee only and so the current data indicates that 6,000 individuals would be the minimum fee threshold. Professional body supervisors supervising fewer than this would therefore pay £5,000, but the larger professional body supervisors would pay £5,000 plus a variable rate calculated from the number of individuals supervised above the threshold. So that professional body supervisors can see where they stand in terms of the current data, we are quoting 6,000 individuals as the indicative minimum fee threshold but we are not in a position to consult on that figure because the defining point for the smallest professional body supervisors may change when we have better data.
- 2.40** The minimum fee is payable by all fee-payers. If finalising the tariff base takes longer than anticipated, we will collect the minimum fee from all professional body supervisors in 2018/19, so that we recover £110,000 to reduce slightly the accumulation of costs. Deferring cost recovery in this way would increase the accumulated costs to be recovered from the larger variable rate fee-payers in later years.

## Tariff base

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- 2.41** Our preferred measure is 'supervised persons who are individuals', a figure the professional body supervisors already provide to the Treasury, although as discussed above perhaps not consistently. It is essential that all professional body supervisors take the time and trouble to review their data and ensure that they are reporting in accordance with our definition. The draft definition in Appendix 1 seeks to ensure that the professional body supervisors:
- report both self-employed individuals who are relevant persons and relevant employees,
  - apply consistent criteria to identify the relevant employees, and
  - avoid double counting where two professional body supervisors are supervising the same individuals.
- 2.42** The data must be sent to us in time for us to calculate the fee rates. We propose that the data should be reported as at 31 December before the fee year and submitted within two months, by 28 February. For 2019/20 therefore, the data would be collected as at 31 December 2018 and sent to us by 28 February 2019. However, as we do not expect to finalise the definition before March 2018, we will have to collect the data for

the first full fee year 2018/2019 after February 2018. We will set the deadline when we ask the professional body supervisors for their data, probably in the second quarter of 2018 with a view to issuing invoices in autumn 2018.

- 2.43** There is a risk that not all the professional body supervisors may be able to provide revised figures in time for us to set the rates. To avoid one or two professional body supervisors delaying everyone else, we are consulting on a provision that, if any organisation is unable to supply data under our definition by the due date, it must submit the latest figure it provided to the Treasury (or, going forward, to OPBAS).

### Indicative variable fee rate

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- 2.44** We are unable to propose a variable fee rate at this stage because we are consulting on the definition. Once that is settled we will ask the professional body supervisors to submit data to us using the prescribed definition which we will use to calculate a rate for consultation. We expect this request to be made in late spring/early summer 2018. However we appreciate that professional body supervisors would like to see indicative figures to help them with their business planning. Using the data we have to hand, which we acknowledge may not be consistent, we believe the final rate might be within the range of £15 to £25 per supervised individual if we were to recover £2.5m in 2018/19 – 2019/20. The rate would be between £10 and £20 per supervised individual once we are recovering our annual running costs only from 2020/21 onwards, assuming a total cost of £2m per year. The minimum fee would not be affected, so would remain at £5,000.
- 2.45** A tighter definition of supervised individuals is more likely to reduce the total count of individuals than increase it which would push up the headline rate. If there was an overall reduction of 50% in the number of reported individuals, this would take the rate per individual above £40.

### Consultation questions

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- 2.46** Our consultation questions are set out below.
- Q1:** Do you have any comments on our proposed application fee of £5,000 for professional bodies that wish to be added to the list of self-regulatory organisations in Schedule 1 to the MLRs?
  - Q2:** Do you have any comments on the different measures we have considered for the tariff base for OPBAS fee-payers? Are you aware of any other measures we should consider?
  - Q3:** Can you suggest any improvements to the definition of our preferred measure for OPBAS fees of 'supervised persons (under the MLRs) who are individuals'?
  - Q4:** Can you suggest ways of consistently identifying those individuals who are supervised by professional body



**supervisors as relevant employees of relevant persons?  
Are there risks of double-counting? If so, how can we  
avoid them?**

- Q5: Do you think we should set a minimum fee for the OPBAS levy? If so, is £5,000 a reasonable contribution from those professional body supervisors paying minimum fees only?**
- Q6: Do you believe we should spread recovery of the set-up costs and accumulated costs of OPBAS over two years?**

## Next steps

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**2.47** The next steps are:

- This consultation closes on 8 January 2018. All responses will then be reviewed.
- We expect to set the application fees and minimum fees and finalise the definition from which the variable rate will be calculated, and provide feedback on the consultation responses in a Handbook Notice in February or March 2018.
- After publishing the Handbook Notice, we will write to the professional body supervisors, asking them to submit data to us on the basis of our definition. We expect the deadline to be in late spring/early summer 2018.
- In June or July 2018 we will consult on the definitive fee-rate and minimum fee threshold calculated from the data the bodies have submitted to us.
- In September or October 2018 we will finalise the rate and issue the invoices soon afterwards. Fees will be payable within 30 days of the invoice.

## Annex 1

### Questions in this paper

- Q1:** Do you have any comments on our proposed application fee of £5,000 for professional bodies that wish to be added to the list of self-regulatory organisations in Schedule 1 to the MLRs?
- Q2:** Do you have any comments on the different measures we have considered for the tariff base for OPBAS fee-payers? Are you aware of any other measures we should consider?
- Q3:** Can you suggest any improvements to the definition of our preferred measure for OPBAS fees of 'supervised persons (under the MLRs) who are individuals'?
- Q4:** Can you suggest ways of consistently identifying those individuals who are supervised by professional body supervisors as relevant employees of relevant persons? Are there risks of double-counting? If so, how can we avoid them?
- Q5:** Do you think we should set a minimum fee for the OPBAS levy? If so, is £5,000 a reasonable contribution from those professional body supervisors paying minimum fees only?
- Q6:** Do you believe we should spread recovery of the set-up costs and accumulated costs of OPBAS over two years?



## Annex 2

# Compatibility statement

### Compliance with legal requirements

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1. Although OPBAS fees will not be charged under FSMA, we have to ensure that our proposals are compatible with our wider statutory duties and so this annex explains our reasons for concluding that they are compatible with relevant requirements under the Financial Services and Markets Act 2000 (FSMA). A cost benefit analysis of OPBAS was conducted in Guidance consultation GC17/7, *Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors*, published in July 2017.
2. When consulting on new rules, we are required by section 138I(2)(d) of FSMA to explain why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in s.3B of FSMA. We are also required by s.138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out our view of how the proposals are compatible with our duty to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. This annex further includes our assessment of the equality and diversity implications of these proposals.

### Our objectives and regulatory principles

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5. Our proposals set out in this consultation are not intended in themselves to advance our operational objectives. However, they will enable us to fund the activities we need to undertake. Therefore, these proposals will indirectly advance our operational objectives of:
  - delivering consumer protection – securing an appropriate degree of protection for consumers
  - enhancing market integrity – protecting and enhancing the integrity of the UK financial system
  - building competitive markets – promoting effective competition in the interests of consumers



6. We also consider that these proposals are indirectly compatible with our strategic objective of ensuring that the relevant markets function well because they will again enable us to fund the activities to meet it. For the purposes of our strategic objective, 'relevant markets' are defined by s.1F of FSMA. In the rest of this annex, reference to objectives means both our strategic objective and operational objectives.
7. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s. 3B of FSMA. The most relevant regulatory principles are considered below.

### **The need to use our resources in the most efficient and economic way**

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8. Our proposals for consultation in this CP are about the basis on which we set fees to recover our costs rather than the way we carry out our business. We have sought to keep the fees structure as simple as possible to avoid unnecessary administrative costs.

### **The principle that a burden or restriction should be proportionate to the benefits**

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9. Our proposed framework for OPBAS fees is intended to distribute cost recovery between the relevant fee-payers on an equitable basis, and we are inviting comments on how our definitions could be improved.
10. The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation
11. We are proposing to base OPBAS fees on the individuals supervised by professional body supervisors, rather than firms, to take account of the different responsibilities undertaken by them and would welcome views on any alternative approaches we might consider, or other issues we should be aware of.

### **The principle that we should exercise of our functions as transparently as possible**

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12. Our explanation of the ambiguities we have identified in the data required for OPBAS fees is intended to be as comprehensive and open as possible, to generate discussion with the potential fee-payers on practical solutions to the concerns we have raised. We believe the discussion will help professional body supervisors to understand the thinking behind our proposals and we invite them to identify any opportunities for clarifying our definition to take account of the way they maintain or report their own data.
13. In formulating these proposals, we have had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or (ii) in contravention of the general prohibition, to be used for



a purpose connected with financial crime (as required by s. 1B(5)(b) of FSMA). The fee we are proposing will assure the operation of OPBAS, whose remit is to enhance the effective implementation of the Money Laundering Regulations.

### Expected effect on mutual societies

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14. We do not believe any of our consultation proposals will have a direct impact on mutual societies.

### Compatibility with the duty to promote effective competition in the interests of consumers

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15. Our fees enable us to fund our activities, including our duty to promote effective competition in the interests of consumers.
16. The changes we are proposing are intended to improve the targeting of our cost recovery, so that we apply our fees as fairly as possible across all fee-payers. Targeting our cost recovery should help to minimise any distortions to competition.

### Equality and diversity

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17. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. We believe the policy proposals in this CP do not raise equality or diversity questions but we welcome comments on any equality and diversity issues you believe may arise.

## Annex 3

### Abbreviations used in this paper

<b>AFR</b>	Annual funding requirement
<b>AML</b>	Anti-money laundering
<b>CP</b>	Consultation Paper
<b>DPB</b>	Designated Professional Body
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	FEES Manual
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>MLRs</b>	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (these replace the Money Laundering Regulations 2007)
<b>OPBAS</b>	Office for Professional Body Anti-Money Laundering Supervision
<b>OPBAS Regulations</b>	Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017
<b>PS</b>	Policy statement

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



# Appendix 1

## Draft OPBAS fees instrument

**FEES (OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING  
SUPERVISION) INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the powers under Regulation 7 (power to require information) and Regulation 25 (costs of supervision) of the Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017;
  - (2) the power under Regulation 102 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and
  - (3) the power in section 139A of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- C. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.
- D. In the Annex to this instrument, a “note” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision imposing charges pursuant to Regulation 25 of the Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017.

**Citation**

- E. This instrument may be cited as the Fees (Office for Professional Body Anti-Money Laundering Supervision) Instrument 2018.

By order of the Board  
[*date*] 2018

## Annex

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text, unless otherwise stated.

## 1 Fees Manual

### 1.1 Application and Purpose

...

1.1.1F G FEES Appendix 2 applies to the following *persons* required to pay fees to the FCA:

- (1) a *person* applying to become a professional body listed in Schedule 1 to the *Money Laundering Regulations*; and
- (2) professional bodies listed in Schedule 1 to the *Money Laundering Regulations*.

1.1.1G G FEES Appendix 3 applies to *MLR persons* registered with the FCA that are not *authorised persons*.

...

After FEES Appendix 1 (Unauthorised Mutuals Registration Fees Rules) insert the following new Appendices. The text is not underlined.

## 2 Office for professional body anti-money laundering supervision fees

### 2.1 Introduction

#### Application

App 2.1.1 G This appendix applies to every **professional body supervisor**.

App 2.1.2 G The purpose of this appendix is to set out the requirements for **professional body supervisors** to pay the application and periodic fees which, together, will provide the funding for the **FCA's** functions under the **OPBAS Regulations**.

App 2.1.3 G Regulation 25 of the **OPBAS Regulations**, in summary, provides that the **FCA** may impose charges on:

- (1) an applicant applying to become a **professional body supervisor**;  
and

- (2) an existing **professional body supervisor** to recover its costs of supervision.
- App 2.1.4 G (1) The application fee which will be payable by an applicant applying to become a **professional body supervisor** is set out in *FEES* Appendix 2 Annex 1.
- (2) The detail of the periodic fees which will be payable by **professional body supervisors** is set out in *FEES* Appendix 2 Annex 2.
- App 2.1.5 G In this appendix:
- (1) a “D” in the margin or heading indicates that the provision is a direction, which creates binding obligations;
- (2) a “note” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision imposing charges pursuant to Regulation 25 of the **OPBAS Regulations**; and
- (3) a “G” in the margin indicates that the provision is guidance, which is designed to throw light on a particular aspect of a direction or the provisions imposing charges, but is neither binding nor an exhaustive description of a **professional body supervisor’s** obligations.

#### Glossary of definitions

- App 2.1.6 G In this appendix, an expression in bold (other than in headings and titles) has the meaning given in *FEES* Appendix 2 Annex 3G.

## 2.2 Application fees imposed under Regulation 25 of the OPBAS Regulations

### General

- App 2.2.1 A **person** making an application to the **FCA** to become a **professional body supervisor** must pay to the **FCA**, in full and without deduction, the fee specified in *FEES* Appendix 2 Annex 1.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

### Method of payment

- App 2.2.2 Application fees must be paid by the method specified in *FEES* Appendix 2 Annex 1.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

### Due dates

- App 2.2.3 A **person** making an application to become a **professional body supervisor**

must pay the application fee on, or before, making the application.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

Refunds

App 2.2.4 G Application fees paid under this appendix are not refundable.

## 2.3 Periodic fees imposed under Regulation 25 of the OPBAS Regulations

General

App 2.3.1 A **professional body supervisor** must pay to the **FCA**, in full and without deduction, the periodic fee applicable to it under *FEES* Appendix 2 Annex 2 for a **fee year** during which, or part of which, the relevant professional body is included in Schedule 1 to the **MLR**.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

Calculating the fee in the professional body supervisor's first year

App 2.3.2 A **professional body supervisor** added to Schedule 1 to the **MLR** during the course of a **fee year** must pay the fee calculated in accordance with *FEES* App 2.3.3.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

App 2.3.3 Apply the formula  $(A+B) \times C$ , where:

- (1) A = the minimum fee set out in Part 3 of *FEES* Appendix 2 Annex 2;
- (2) B = the variable fee due for the full **fee year**, calculated in accordance with Part 3 of *FEES* Appendix 2 Annex 2; and
- (3) C = the number of calendar **months** (inclusive) between the calendar **month** during which the **professional body supervisor** was added to Schedule 1 to the **MLR** and the last calendar **month** of that **fee year**  $\div 12$ .

[**Note:** Regulation 25 of the **OPBAS Regulations**]

- App 2.3.4
- (1) A **professional body supervisor** which has not been required by *FEES* App 2.3.8D to submit the actual information set out in *FEES* Appendix 2 Annex 2 before the commencement of a given **fee year** must pay a fee based on estimated information calculated in accordance with *FEES* Appendix 2 Annex 2 as at 31 December preceding the relevant **fee year**.
  - (2) The estimated information referred to in (1) is the information provided by the **professional body supervisor** in the course of its application to be added to the list of professional bodies in Schedule 1 to the **MLR**.



[**Note:** Regulation 25 of the **OPBAS Regulations**]

Time of payment

- App 2.3.5 If a **professional body supervisor's** periodic fee for the previous **fee year** was at least £50,000, it must pay its periodic fee for the current **fee year** in two instalments as follows:
- (1) an amount equal to 50% of the periodic fee payable for the previous **fee year** by:
    - (a) 1 April; or
    - (b) if the invoice for the periodic fee is received after 1 March, within 30 **days** of the date of the invoice, in the **fee year** to which that sum relates; and
  - (2) the balance of the periodic fee due for the current **fee year** by:
    - (a) 1 September; or
    - (b) if the invoice for the periodic fee is received after 1 August, within 30 **days** of the date of the invoice, in the **fee year** to which that sum relates.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

- App 2.3.6 G *FEES* App 2.3.5 applies in relation to periodic fees payable by a **professional body supervisor** under this appendix only. It does not relate to periodic fees payable as a **designated professional body**.
- App 2.3.7 If a **professional body supervisor's** periodic fee for the previous **fee year** was less than £50,000, it must pay the periodic fee within 30 **days** of the date of the invoice for the **fee year** to which that sum relates.

[**Note:** Regulation 25 of the **OPBAS Regulations**]

Information on which fees are calculated

- App 2.3.8 D A **professional body supervisor** must send to the **FCA** the information required under Part 1 of *FEES* Appendix 2 Annex 2 (as at the date specified in Part 2 of *FEES* Appendix 2 Annex 2) on which the periodic fee payable by the **professional body supervisor** is to be calculated.
- App 2.3.9 D A **professional body supervisor** must send to the **FCA** in writing the information required under *FEES* App 2.3.8D as soon as reasonably practicable after the date specified as the review date in *FEES* Appendix 2 Annex 2, and in any event within two **months** of that date.
- App 2.3.10 G If a **professional body supervisor** fails to send to the **FCA** the information required under *FEES* App 2.3.8D within two **months** of the

review date specified in *FEES* Appendix 2 Annex 2, the **FCA** may use the information collected by the **professional body supervisor** under Regulation 51 and Schedule 4 to the **MLR** as the basis for calculating fees payable by the **professional body supervisor**.

**App 2  
Annex 1**      **Application fee imposed under Regulation 25 of the OPBAS Regulations**

[**Note:** Regulation 25 of the **OPBAS Regulations**]

Part 1: Application fees payable to be included in Schedule 1 to the Money Laundering Regulations

<b>Transaction</b>	<b>Amount payable (£)</b>
Application to be added to the list of professional bodies in Schedule 1 to the <b>MLR</b>	[£5,000]

Part 2: Method of payment of application fees

<b>Payment method</b>	<b>Additional amount or discount applicable</b>
Electronic credit transfer	None

**App 2  
Annex 2**      **Periodic fees imposed under Regulation 25 of the OPBAS Regulations for the period 1 April 2018 to 31 March 2019**

[**Note:** Regulation 25 of the **OPBAS Regulations**]

Part 1

This table sets out the tariff base for the **professional body supervisor** fee-block. The tariff base in this Part is the means by which the **FCA** calculates the annual periodic fees payable by a **professional body supervisor** to the **FCA**.

<b>D.2 Professional body supervisors</b>  Professional bodies listed in Schedule 1 to the Money Laundering Regulations.	<b>Supervised individuals</b>  The number of supervised persons who are individuals as set out in paragraphs 1 and 2 of Schedule 4 to the <b>MLR</b> .
	“The number of supervised persons who are individuals as set out in paragraphs 1 and 2 of Schedule 4 to the <b>MLR</b> ” includes:  (1) the number of “relevant persons” (as defined in Regulation 3 of the <b>MLR</b> ) who are: (a) members of it, or regulated or supervised by it;

	<p>and (b) are individuals;</p> <p><b>PLUS</b></p> <p>(2) the number of “relevant employees” (as defined in Regulation 21(2)(b) of the <b>MLR</b>) appointed by a relevant person.</p> <p>In accordance with Regulation 21(2)(b) of the <b>MLR</b>, a relevant employee is an employee whose work is:</p> <p>(a) relevant to the relevant person’s compliance with any requirement in the <b>MLR</b>, or</p> <p>(b) otherwise capable of contributing to the:</p> <p style="padding-left: 40px;">(i) identification or mitigation of the risks of money laundering and terrorist financing to which the relevant person’s business is subject; or</p> <p style="padding-left: 40px;">(ii) prevention or detection of money laundering and terrorist financing in relation to the relevant person’s business.</p> <p>Where an individual is supervised under the <b>MLR</b> by more than one <b>professional body supervisor</b> and the organisations concerned have agreed which one of them will include that individual in its count of supervised individuals, the remaining organisation(s) may exclude such individual from their count of supervised individuals.</p>
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Part 2

<p>This table sets out the review date for a <b>professional body supervisor’s</b> fees. A <b>professional body supervisor</b> is required to send to the <b>FCA</b> the information in Part 1 of this Annex as at the review date set out below, as soon as reasonably practicable, and in any event within two <b>months</b> of the date shown in this table.</p>	
<b>D.2 Professional body supervisors</b>	<p>The number of supervised persons who are individuals (calculated in accordance with Part 1) as at 31 December before the relevant <b>fee year</b>.</p>

Part 3

This table sets out the tariff rates applicable to **professional body supervisors**.

<b>Fee payable in relation to 2018/2019</b>	<b>Amount payable</b>
---------------------------------------------	-----------------------

	<b>(£)</b>
Minimum fee, payable by all <b>professional body supervisors</b> subject to the <b>OPBAS Regulations</b> .	[£5000]
Variable fee, payable by <b>professional body supervisors</b> where the number of supervised individuals is 6,000 or more.	£[ ] multiplied by the total number of supervised individuals in excess of the threshold of 6,000. [See Note]
[Note: references to ‘the number of supervised individuals’ is to those supervised individuals calculated in accordance with Part 1]	

**App 2  
Annex  
3G**

**Glossary of definitions**

The following words or terms used in *FEES* Appendix 2 appearing in bold (other than headings and titles) have the meanings given to them below.

<b>Expression</b>	<b>Definition</b>
<b>day</b>	a period of 24 hours beginning at midnight.
<b>designated professional body</b>	a professional body designated by the Treasury under section 326 of the Financial Services and Markets Act 2000 (Designation of professional bodies) for the purposes of Part XX of that Act (Provision of Financial Services by Members of the Professions); the following professional bodies have been designated in the Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001 (SI 2001/1226):
(a)	The Law Society of England & Wales;
(b)	The Law Society of Scotland;
(c)	The Law Society of Northern Ireland;
(d)	The Institute of Chartered Accountants in England and Wales;

	(e)	The Institute of Chartered Accountants of Scotland;
	(f)	The Institute of Chartered Accountants in Ireland;
	(g)	The Association of Chartered Certified Accountants;
	(h)	The Institute of Actuaries;
	(i)	The Council for Licensed Conveyancers; and
	(j)	The Royal Institution of Chartered Surveyors.
<b>FCA</b>	Financial Conduct Authority.	
<b>fee year</b>	1 April to 31 March inclusive.	
<b>MLR</b>	the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).	
<b>month</b>	(in accordance with the Interpretation Act 1978) a calendar month.	
<b>OPBAS Regulations</b>	the Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 (SI XXXX/XX).	
<b>person</b>	(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a <i>partnership</i> ).	
<b>professional body supervisor</b>	one of the professional bodies listed in Schedule 1 to the <b>MLR</b> .	

**App 3 Fees payable by persons registered under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

**App 3.1 Fees for persons registered under the Money Laundering Regulations**

Application and periodic fees

App 3.1.1 G Regulation 102 of the *Money Laundering Regulations* provides the *FCA* with the power to charge fees to *MLR persons* to recover the cost of carrying out its functions under those regulations. The *FCA* will charge an application fee when a registration form is submitted to it. The *FCA* will also charge an annual periodic fee. These charges are set out in this Appendix.

App 3.1.2 G

(1)	<b>Application fee:</b>		
	[Editor's note: to be introduced and consulted on in March 2018]		
(2)	<b>Periodic fee:</b>		
	<b>Activity group</b>	<b>Fee-payer falls in the activity group if:</b>	<b>Fee payable in 2017/18</b>
	G.1	it is registered with the <i>FCA</i> under the <i>Money Laundering Regulations</i> or any predecessor legislation	£438

