

IFA REPRESENTATION 08/17



Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) consultation

The IFA welcomes the opportunity to comment on the Recovering the costs of the Offices for Professional Body Anti-Money Laundering Supervision (OPBAS) published on 27 October 2017.

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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Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small- to medium-sized enterprises or in micro and small- to medium-sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with 35,000 members and students in 80 countries.

The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter and regulator and is an awarding organisation recognised by Ofqual, the UK public body responsible for maintaining and monitoring standards for general and vocational qualifications and examinations. We offer a programme of professional qualifications and education as well as resources, events, training and seminars.

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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Major points

General comments

1. As mentioned in our previous consultation responses to HM Treasury and the FCA, we strongly believe in a consistent, fair, proportionate, accountable, transparent and risk-based AML supervisory regime which is in the public interest.
2. We strongly urge the FCA (in future OPBAS) to provide expenditure and activity details of set up and running costs not just an estimate of total set- up and running costs. 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. This level of detail does not explain the activities OPBAS staff will be undertaking as part of their oversight role of professional bodies and what support professional bodies will be receiving from OPBAS. For example, the FCA in the Isle of Man provides supervisors training on legislation and guidance, periodic updates including any changes in anti-money laundering legislation.
3. The introduction of OPBAS was justified on the grounds of having inconsistencies between supervisors which criminals may look to exploit, simplifying the amount of guidance which businesses have to follow and removing the unnecessary burdens without having a material impact on the fight against money laundering (<https://www.gov.uk/government/news/uk-tightens-defences-against-money-laundering>). To date, HM Treasury has failed to provide factual evidence to substantiate and support these claims, which the IFA has found extremely disappointing, frustrating and of major concern.
4. Given the above context , 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.
5. It is also our understanding from attending the round table fees discussion referred to in paragraph 2, that OPBAS will liaise with HMRC to ensure consistency of supervision in the accountancy and legal sectors.
6. While we have in previous consultation responses to HM Treasury and the FCA suggested many times that HMRC be brought into the scope of OPBAS oversight in order to avoid creating a “two-tier system”, oversight of HMRC via informal mechanisms is not transparent nor is it fair or proportionate since professional bodies, members and their clients will be charged fees which relate to running costs of OPBAS oversight on HMRC. It seems to us that this is trying to deal with a problem via the back-door and we would propose that OPBAS should charge fees to HMRC for their oversight or clearly explain why they will not be charged such fees.
7. The final regulations and associated impact assessment for setting up OPBAS have yet to be published. We are assuming that any revisions in estimates regarding set-up and running costs of OPBAS will be included in HM Treasury’s revised impact assessment. As raised with HM Treasury, the IFA was extremely concerned about the lack of detail, both in terms of benefits and cost, in the impact assessment and the underlying assumptions being made in the impact assessment as detailed below. Our comments are also supported by the Regulatory Policy Committee “The quality of the assessment would have been improved by including more detailed discussion of the options considered for the creation of OPBAS. The IA should have explained more on the structures of the new institution and the design of the oversight system. The IA should have also explained more clearly why the proposed policy is likely to be most efficient way of complying with the Directive.”
8. While the consultation document covers new applications for AML supervisory status, it does not cover requests by AML supervisors to cease being supervisors, the process and fee implications on the supervisor which is leaving and remaining supervisors. For the sake of completeness, the FCA (OPBAS) should consider this and include guidance on this in the final fees proposal.

Specific questions

Question 1: 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?

9. OPBAS needs to recover the yearly running costs through annual fees they charge new applicants and existing supervisors.
10. We support the proposal that professional body supervisors which are already under Schedule 1 of the MLRs at the time the OPBAS Regulations come into force should not be charged an application fee since OPBAS will not be incurring any running costs in this regard. Furthermore, these supervisors have already been approved by HM Treasury as having adequate governance, systems and controls, and the knowledge and experience to act as a supervisory body.
11. We also support the proposal that application fees for professional bodies to be added to schedule 1 of the MLRs should be non-refundable. This is in line with the FCA's current tariffs for new applicants and can be justified on the grounds that costs have been incurred in making this assessment which need to be recovered, irrespective of whether the applicant is successful or not.
12. However, we have some concerns regarding the proposed flat rate fee of £5,000 which will be charged for applicants to be added to schedule 1 of the MLRs. This flat rate fee does not take into account the size and complexity of the application. Furthermore, as stated in paragraph 2.12, OPBAS "has not fully determined what will be involved in reviewing each of the professional body's application to be listed under the MLRs."
13. This proposal, therefore, seems not to be aligned to FCA's current strategy of charging different application fees depending on the complexity of the application (£1,500 straightforward application, £5,000 moderately complex application, £25,000 complex application).
14. The fee being proposed for new applications appears to equate to the FCA authorisation fee for moderately complex applications. Given that the FCA is proposing that OPBAS should recover its running costs and that the FCA has not yet fully determined what the new application process will involve, it seems surprising that a flat fee is being proposed for all applicants, irrespective of the size and complexity of the application.
15. Therefore, we recommend that the FCA undertakes further work in this area to understand what is involved in reviewing applications to be added to schedule 1 of the MLRs and whether particular activities and/or complexities increase the amount of work which will have to be undertaken by OPBAS to assess new applicants.
16. On the grounds of fairness, proportionality and transparency, it would not be appropriate for existing supervisors on schedule 1 of the MLRs who have already been approved by HM Treasury, to be required to subsidise the cost of OPBAS' review, assessment and recommendation to HM Treasury regarding their suitability as an AML supervisor.

Question 2: Do you have any comments on the different measures we have considered for the tariff basis for OPBAS fee-payers? Are you aware of any other measures we should consider?

17. We support the FCA's preferred measure of using supervised persons who are individuals as a tariff basis since this would be a fairer basis for supervisors like the IFA who oversee a small sector and supervise a large number of small firms. Furthermore, a tariff based on individuals rather than firms could potentially apply both to the accountancy and the legal sector. For example, barristers working in the legal sector are individuals and do not have their own firms.
18. However, the definition of relevant persons proposed in the consultation which is "lifted" straight from the MLR is not specific enough for professional bodies to determine who falls in the scope of supervised individuals. The FCA might like to refer to the Accountancy Affinity Group (AAG)'s paper on

Criminality Checks which includes a more detailed definition of beneficial owners, officer or manager (BOOMs) which has been shared with the FCA and also HM Treasury.

19. FCA should bear in mind that gathering information on supervised individuals, whatever the agreed definition, may require procedural and system changes by professional bodies which cannot happen overnight. Therefore, a transition period for collating this information will be necessary. Given that most accountancy sector professional bodies annual renewal cycles run from September to March, the transition period for collating this information via annual returns may have to be longer than one year, depending on the definition.

Question 3: Can you suggest any improvements to the definition of our preferred measure for OPBAS fees of 'supervised persons' (under the MLRs) who are individuals?

20. As referred to above, we would support the FCA adopting the AAG proposed definition of beneficial owners, officer and manager (BOOMs) as the definition of individual supervised persons.

Question 4: 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?

21. To identify supervised individuals and avoid risks of double-counting, since 2007 the Accountancy Affinity Group has agreed that supervision should be at a "firm" level which includes sole traders. Supervision on this basis deals with the following circumstances:
- Individuals within a firm holding membership of more than one professional body;
 - Operation of mixed firms, whereby partners within that firm hold membership of more than one professional body;
 - Current perception of the default supervisor as a possible supervisor of choice, not necessity.
22. Therefore, we proposed that professional bodies gather information on supervised individuals (definition yet to be finalised) related to the firm they supervise. According to the AAG agreement, there should only be one AML supervisor for each firm and therefore, this would avoid the risk of double counting.

Question 5: 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 a minimum fee only?

23. For the IFA, given that we are small professional body supervising a large number of small firms, we would think that the minimum fee OPBAS levy of £5,000 is a reasonable fee.
24. We would also encourage the FCA/OPBAS to review this minimum fee as part of the annual cycle to ensure that the system is fair, proportionate and transparent to all supervisors.

Question 6: Do you believe we should spread recover of the set-up costs and accumulated costs of OPBAS over two years?

25. In view of the fact that the FCA has not quantified the set-up costs of OPBAS and its associated activities, we propose that the set-up costs for OPBAS should be spread over 5 years to allow the larger professional bodies to spread the costs over a longer period of time and minimise the impact to them on their membership.
26. In addition, we would urge the FCA to be more transparent and provide greater detail about the set-up costs, not just in terms of amounts and a full breakdown by type of expenditure but also the types of activities that have been undertaken.