



ICAS RESPONSE
CP17/35 RECOVERING THE COSTS OF THE OFFICE FOR
PROFESSIONAL BODY ANTI-MONEY LAUNDERING SUPERVISION
(OPBAS): FEES PROPOSALS

Submission Date: 4 January 2018

ICAS welcomes the opportunity to comment on the Financial Conduct Authority's Consultation on Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fees proposals.

Background to ICAS

ICAS received its Royal Charter in 1854 and is the oldest professional body of accountants in the world. We were the first body to adopt the designation 'Chartered Accountant' and the designatory letters 'CA' are the exclusive privilege of Members of ICAS in the UK.

ICAS is a professional body for over 21,000 Members who work in the UK and in more than 100 countries around the world. Our CA qualification is internationally recognised and respected. We are a highly respected regulator.

ICAS became approved as an Anti-Money Laundering (AML) supervisory body on 15 December 2007 and is empowered under the Money Laundering Regulations 2017 ("MLRs") to regulate and monitor the accountancy firms and trust and company service providers which are owned and controlled by ICAS Members. As indicated in our 2016 Return, we supervise approximately 1,000 firms (we use the term 'firm' to include both incorporated and unincorporated legal entities as well as sole practitioners operating either with staff or entirely on their own).

We are a Recognised Supervisory Body (RSB) for statutory company audit in the UK (supervised by the Financial Reporting Council (FRC)), and received similar status in relation to Local Audit on 1 November 2015. We are also a Designated Professional Body for incidental investment business and consumer credit (supervised by the Financial Conduct Authority (FCA)) and a Recognised Professional Body for insolvency licensing and regulation (supervised by the Insolvency Service).

As supervisor for AML/Counter-Terrorist Financing (AML/CTF), we welcome the opportunity to provide information in response to this consultation.

While the creation of OPBAS will have a significant impact on the Firms that we regulate and our practising Members, the ICAS Royal Charter requires that we act in the public interest. Our proactive projects and responses to consultation documents are therefore intended to place the general public interest first.

We consider the public interest, in this case, is to ensure that the high standards of the professional body (PB) supervisors and the collaboration and information sharing between them, and statutory supervisors, law enforcement agencies and others, helps to ensure the effective operation of the UK AML/CTF regime.

Consultation response

Executive Summary

- As indicated in previous consultation responses to both HM Treasury and OPBAS, we welcome the establishment of an oversight body to encourage consistency across the supervised sector.
- We will support the establishment of OPBAS in ensuring consistency across AML supervisors, and look forward to working closely with it, but we caution against the increased financial impact and burden that such enhanced regulation could bring about
- We remain concerned over the public interest risk, resulting from the decision to permit a significant proportion of the accountancy sector to avoid the indirect oversight of OPBAS, due to HMRC not being scoped into oversight. On one hand, certain users of accountancy services will be influenced by price, and firms supervised by HMRC will have no additional OPBAS costs to pass onto clients. Similarly, the prospect of increased regulatory oversight by the Professional Body ("PB") supervisors, and underwriting the costs of OPBAS, may force some of PB accountants to cease membership and set up their firms in the unregulated market. ICAS continues to encourage the public to make sure their adviser is a CA (ca.icas.com) as there are significant consumer benefits in using a qualified and regulated profession.
- Consequentially, due to its limited scope, OPBAS may find it very difficult to achieve its objectives and the UK AML/CTF regime is at risk of criticism by FATF. The Government is asked to reconsider the proposed scope of OPBAS and to work with HMRC to identify a workable solution.
- However, we remain concerned that there does not appear to have been a full regulatory Impact Assessment before the decision was made, and that there will be significant unintended

consequences for the sector. We consider the proposed OPBAS set-up and operational costs to be excessive from the outset. There appears to be no work programme or business plan to support these costs.

- In relation to the future fee proposals we are concerned that the consultation questions are limited in scope and do not invite comment on some of the more significant concerns identified by the PB Supervisors. We have included a number of these concerns in the 'General' section below.
- Having considered the various options for the fee-allocation model we consider that the most appropriate measure is the use of "approved persons", which was not proposed in the consultation. This benefits from being:
 - a defined term in Regulation 26 of the Money Laundering Regulations 2017 ("MLRs");
 - reflective of the size of supervised firms;
 - already captured supervisory information, following the approval process which needs to have taken place by 26 June 2018;
 - more narrowly focussed than "relevant employees" by focussing on the key personnel in the firm responsible for AML compliance, and who will be the focus of ongoing monitoring by the PBs.

General Comments

Proportionality

In the compatibility statement in the consultation (paragraphs 9 to 11, Annex 2) it is suggested that OPBAS works to a principle that a burden or restriction should be proportionate to the benefits. At present all we have seen is an indication of the costs and perhaps some statements of undefined benefits such as greater consistency leading to better forestalling and prevention of money laundering. As far as we are aware no detailed cost/benefit analysis has been exposed for consultation. While we understand Treasury's desire for more consistency, we are struggling to identify a balanced cost/benefit when the whole sector is not going to be subject to OPBAS supervision.

Transparency

In the compatibility statement in the consultation on transparency (paragraphs 12 and 13, Annex 2) it is stated that OPBAS should exercise its functions as transparently as possible. Such transparency seems only to apply to the areas on which OPBAS has concerns (paragraph 12). We would urge OPBAS to be equally transparent about the areas of concern shared by the professional body supervisors

Absence of a full cost benefit analysis

In the original call for information response dated 20 July 2017, it is clear that the Government's Regulatory Policy Committee (RPC) required making a decision on the establishment of OPBAS without a detailed cost-benefit analysis. The Consultation Stage Impact Assessment, published on the same date, did not include any financial cost or benefit figures. It is therefore of concern that the decision appears to be have been taken by the Government on the basis of incomplete information. Indeed, on reaching its decision, the RPC noted the lack of information contained within the Impact Assessment, including a lack of consideration of the different options and requested that certain information be made available on the final stage Impact Assessment (IA). To our knowledge, no final stage IA has yet been made public. We had expected to see some IA within the FCA consultation papers.

We still support the creation of OPBAS but are concerned that there has been insufficient analysis, including consideration of the increased financial impact and burden that such enhanced regulation could bring about; and whether financial benefits are likely to outweigh the financial costs.

Cost structure

Understanding the cost structure of OPBAS is essential to those who are expected to pay for it. Particularly for a professional body of chartered accountants, it is unimaginable that we would agree to a fee levy to recover costs which have not been fully explained to us.

At present the operational costs quoted of between £2M and £2.5M seem excessive in a start-up situation. It is appreciated that London staffing costs and other costs are weighted but this only gives rise to consideration as to why it is necessary to house OPBAS in London and not at some other FCA UK office.

Some general information was given at the recent roundtable discussion about staff numbers, overhead inclusion etc. but that is not sufficient information upon which to base a decision. In any business situation one would expect to see the full business plan setting out start-up and recurring costs, accompanied by a detailed work programme outlining what the focus is for the apparently large number of staff being recruited. In the interests of transparency, and in line with other supervisors, such as the Financial Reporting Council, we would request that the operational budget is open to public consultation. We would also welcome a published work plan in order that we fully understand OPBAS' focus in the first years of operation and its intending staffing and resourcing.

Unintended consequences: Compatibility with the duty to promote effective competition in the interests of consumers

In the compatibility statement in the consultation (paragraphs 15-16) one of the stated aims is to ensure that OPBAS promotes effective competition in the interests of consumers.

By excluding HMRC, the default supervisor, the costs of OPBAS will be borne only by the PB supervisors, and in turn by their regulated qualified accountants, and ultimately their clients. This may result in an unlevel playing field, meaning that qualified accountants have to pass on enhanced regulatory fees to their clients, becoming comparatively more expensive. This will have an impact on competition. There is significant public interest risk to members of the public who use an unqualified person, that is someone is not qualified by examination, and are not accountable for upholding the highest technical and ethical standards. Qualified accountants are already significantly concerned that unqualified operators under-cut on costs, because they aren't bearing the cost of being regulated, and this will increase those fee pressures.

As the cost and regulatory burden of operating as an unqualified accountant is much lower than a qualified accountant, professionally qualified accountants may start choosing to resign their membership as a consequence of this policy. A number of accountancy sector supervisors, in either losing members, or finding the regulatory burden too much, may also decide to exit the market.

We fully support the establishment of OPBAS and consider that these risks can be addressed by ensuring that OPBAS has powers of supervision over the full accountancy sector. If this necessitates a strategic review of the role of HMRC within AML supervision of the sector then this should be considered by the Government.

Consultation 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?

In the absence of any detailed relevant information about the OPBAS cost structures and work involved it is difficult to say whether any amount is fair or reasonable. However, looking at the general market place and using our own experience of regulatory applications, the figure mentioned seems very high. The charge will presumably reflect the level of work involved and the proposed fee is perhaps equivalent to 10 hours of time of a large firm partner or a greater number of hours at a senior manager level. Either way, if it is taking 10 hours or longer to complete an application process then the process is too complex and needs to be reviewed. We do not agree that it would be comparable to determining a moderately complex application under FSMA.

Question 2: 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?

We believe you have appropriately considered the possible tariff bases and generally we would agree your conclusions in respect of each measure, although we propose an alternative measure which we consider to be more appropriate.

In particular, we agree that a flat fee would be disproportionate for bodies of different sizes. Whilst a fee based on "relevant persons" would be simple to administer, we concur that this does not give sufficient regard to the different sizes of firms being supervised, which range from sole practitioners with no staff, to the UK businesses of the largest global accountancy and legal practices. We would also agree that the "resource" and "income" bases are also inappropriate.

As highlighted in the FCA's consultation, membership numbers would not be an appropriate measure. ICAS is a global organisation with a significant proportion of membership based outside the UK, and therefore outside the scope of the UK AML/CTF regime. Further, the vast majority of our UK members are in business rather than in practice and are also outwith the scope of this regime. Only those members who are engaged in the public practice of accountancy by way of business in the UK are currently directly supervised. Membership as a fee base also fails to recognise that many supervised firms (or "relevant persons") are made up of mixed membership professionals and could lead to the risk of significant overlaps or gaps.

We have, however, significant concerns over the proposed measure of "supervised persons who are individuals" as explain in our response to Question 3 below.

We would advocate the use of "Beneficial Owners, Officers and Managers" ("approved persons" as defined in Regulation 26 or "BOOMs" as referred to by a number of bodies) as explained in our response to Question 3.

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'?

The justification for adopting the above measure is due to the inclusion of the following wording in Regulation 51 and Paragraph 1 Schedule 4 in relation to the provision of supervisory information:

- Regulation 51: *"(1) A supervisory authority within regulation 7 must collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4."*
- Paragraph 1, Schedule 4: *"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")."*

Paragraph 1, Sch.4 MLRs effectively assumes that all members of a self-regulatory organisation are supervised. That is not necessarily so. Only those who are engaged in the public practice of accountancy (in our case) by way of business in the UK are supervised. For ICAS that means less than 10% of our membership.

This statement in Schedule 4 therefore requires amendment.

Paragraph 2 appears to relate to individuals as opposed to other legal entities conducting public practice. As previously noted, we treat both as 'firms' as that seems to be the most effective method of identifying the entities. It is in fact the entities which we are required to supervise not individuals in those entities and that point seems to have been lost among the information requirements of Schedule 4.

This use of this flawed definition as a fee measure would therefore be inappropriate. It also does not recognise that many supervised firms are mixed practices, i.e. have principals and employees with different professional body memberships. Further, it would be impossible for a supervisory body to keep track of the movements in employees who are not members of the professional body, as suggested by the consultation, and as explained further in the response to Question 4.

We believe that the language in the above paragraphs has deflected your consideration away from the most obvious fee measure, which is also set out in the MLRs under Regulation 26.

It is the entity which has to apply to the self-regulatory organisation for supervision. In doing so, the organisation is required under Regulation 26 to approve all persons who are beneficial owners, officers or managers of the entity ("approved persons" per Regulation 26(9), or referred to as "BOOMs" by some bodies). Every supervisor should know which "approved persons" it has approved as part of its supervision application process.

We are acknowledging that at the recent roundtable discussion a representative from the legal sector suggested that the "approved person" measurement wouldn't work for the legal sector and there was some general nodding of agreement from legal colleagues. We are unclear why this should be. Every supervisor has to approve "approved persons" and if the argument is that mostly the legal sector work as individuals then they are each an "approved person".

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?

As mentioned in our response to Question 3, we would not advocate the use of a fee measures which brings in “relevant employee” given not only the problem of a consistent definition, as highlighted in the consultation paper, but also from the impossibility of keeping track of employee movements in our supervised firms, where the majority of employees are unlikely to be members of our, or possibly any, professional body. A “relevant employee” could be a relatively junior member of staff but who is, nevertheless, client-facing.

It would be cost prohibitive in time and financial resources for self-regulatory organisations to capture and keep information on such employees up to date.

It would be more appropriate to recognise what happens in practice i.e. that the responsibility for compliance with the MLRs, including the compliance of the “relevant employees” rests with a smaller number of key defined individuals in the firm i.e. “the approved persons”. We believe that adoption of the “approved person” measurement is the most appropriate and the legal requirement to ensure criminality checking of all such persons actually strengthens this protocol.

Further this is an appropriate measure because this reflects where PB AML supervision effort will be focussed. When conducting monitoring visits, for example, the monitoring effort will be focussed on those key personnel in the firm and not the wider employees in the firm.

We would accept that initially a number of bodies may not actually be fully aware of the number of “approved persons” they have due to the fact that entities have until 26 June 2018 to apply for supervision. However, for the majority in the accounting profession (and we expect the legal profession), the number of principals (i.e. officers) is well-established, the number of beneficial owners will be small (and broadly consistent to the officers) and the number of managers capable of estimate. It should therefore be possible for every supervisor to provide initial data of the total “approved persons” to facilitate a fee calculation. Any estimated number can be firmed up post 26 June 2018

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 minimum fees only?

We do agree that a minimum fee should be set but it is not possible to say that £5,000 is reasonable or fair for reasons previously noted. However, it is believed that the FCA’s minimum fee for a Designated Professional Body is £10,000.

The absence of data available to us makes it difficult to say if 6,000 supervised persons is the upper scale to which a minimum fee should be applied. The minimum number will also be dependent on the final definition agreed for individuals in the firm.

It seems that taking 75% of the supervisors into that category on a somewhat arbitrary scale may be unfair on the handful of remaining larger supervisors who would then pick up the bulk of the costs. We note the arguments set out that the issue of risk is greater among such bodies. We do not necessarily accept that. No consideration of risk mitigation appears to have taken place. The larger bodies are well established organisations in the main operating across multiple disciplines and dealing with various oversight regulators already including the FCA. They have been supervising AML since at least 2007 and have already well-developed risk procedures in that area as well as others such as audit. In contrast for many smaller supervisors AML may be their first or only exposure to population supervision and working with an oversight regulator. It could be argued therefore that the risks with smaller bodies are indeed greater.

Perhaps there is scope for considering a fee calculation on a rising flat fee scale to a maximum level before tripping into a flat fee plus variable when the maximum scale level is exceed. For illustration only:

< 1000 approved persons	£5,000
1001- 2500	£7,500
2501- 4000	£10,000
4001 - 6000	£12,500

>6000

£12,500 plus capitation fee on excess

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

We believe that this may be helpful. However, we would wish to see exactly what those set up costs are and how they are to be apportioned. While the scale fee discussed above may be a method for recovery of ongoing annual costs, perhaps another look should be taken at how the set up costs are recovered.