
CHIEF EXECUTIVE

David Mulholland

David Cheesman
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

13 December 2018

Dear David,

Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS): proposed fee rates for 2018/19

The Bar of Northern Ireland welcomes the opportunity to respond to the Financial Conduct Authority's consultation on the proposed fee rates for OPBAS in 2018-19. The Bar previously provided feedback relating to the amended data definition proposed as a measure for calculating OPBAS fees in April 2018 and responded to the FCA's October 2017 consultation paper (CP17/35) on the framework of OPBAS fees in January 2018.

We note that paragraph 2.6 references the previously quoted running costs figure for 2018-19 of £2 million alongside the £500,000 project set up costs, resulting in a total annual funding requirement (AFR) of £2.25 million to be recovered through fees. The recognition at 2.7 that the running costs to be recovered have been revised down from £2 million to £1.4 million meaning that the AFR to be recovered in 2018-19 is £1.65 million is to be welcomed. However, we would reiterate the point made in our previous consultation responses to the FCA that the set-up costs have never been explained in detail to supervisors who have had no visibility or input into OPBAS expenditure to date.

The Bar recognises the constructive attempts made by the FCA to arrive at the most appropriate method of cost recovery in conducting this consultation exercise with professional body supervisors. However, we remain concerned that the FCA still has not provided adequate transparency or any detailed breakdown on the costs that are to be incurred by OPBAS. Despite the reduction in running costs, the AFR remains excessive and we object to being required to fund OPBAS when few discernible savings or benefits will be gained by the supervisors who must fund it.

We have previously highlighted to both HM Treasury and the FCA that there should be greater clarity around the operating model and budget for OPBAS, following established

CHIEF EXECUTIVE

David Mulholland

good practice amongst other supervisors. Despite the anticipated reduction in the AFR, the short section on revised costs at 2.6-2.7 does little to allay our concerns around whether the fees for PBSs can be shown to be justifiable, controlled and value for money. We still believe that the FCA should provide a full budget breakdown for OPBAS and ensure transparency around how cost efficiency and effective governance within the organisation will be assessed and proven.

In addition, the Bar remains disappointed that the approach being adopted in seeking to ensure compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) still largely represents a 'one size fits all' that does not translate across the diverse supervisory landscape. The reported figures for supervised individuals provided by PBSs which are referenced at paragraph 2.5 illustrate that 69% of the 81,216 individuals reported are supervised by 3 PBSs; this represents the higher risk sectors which should be a greater focus for the MLRs yet small PBSs operating in very low risk sectors, such as the Bar of Northern Ireland, find themselves subject to requirements which are simply not applicable to the work of the independent referral Bar.

Whilst we welcomed the amended data definition relating to sole practitioners proposed by the FCA in April 2018, it is worth restating that the Bar remains an independent referral Bar with no form of direct public access in Northern Ireland and barristers are not permitted to hold or handle client money meaning that this is a uniquely low-risk group of individuals. As reported to HM Treasury in October 2018, the Bar supervises just one sole practitioner who may fall within the remit of the MLRs.

1. Do you have any comments on our proposed variable fee of £41.03 per supervised individual?

We note the confirmation detailed in paragraph 2.8 of the minimum fee structure consulted on in CP17/35 as a fee of £5,000 up to a threshold of 6,000 supervised individuals. Given that the Bar supervises one sole practitioner as detailed in our most recent reported figures to HM Treasury, we will not be required to pay the proposed variable fee of £41.03 per supervised individual. There is a mention at paragraph 2.9 that the FCA considered the removal of the minimum fee with the suggestion of charging all PBSs a variable rate for a "fairer distribution" of cost recovery between fee-payers. Paragraph 2.10 states that the fee-rate fell to £25.91 per individual without a minimum fee which would have represented a much more reasonable cost to the Bar of Northern Ireland in supervising just one sole practitioner.

CHIEF EXECUTIVE

David Mulholland

However, we recognise the concerns around affordability outlined at 2.10 for other small PBSs and therefore reluctantly accept the application of a minimum fee. We would highlight that the minimum fee of £5,000 is still an extremely high levy given our very limited level of exposure. It is worth noting that as a small supervisor the Bar will be disproportionately impacted by this fee alongside all of the indirect costs of OPBAS that we will be required to absorb. The internal costs of engaging with OPBAS in addition to HM Treasury are not inconsiderable and thus any additional levy places a further burden on our limited resources. This is especially so given that we have only one supervised individual and yet are subject to a levy of £5000, making our per-capita costs disproportionately high with no fair means of recovering these costs from our supervised population. Therefore we believe that the £5,000 must be a maximum fee rather than a minimum fee as any increase to this in the future would have a detrimental effect on the Bar and our members.

- 2. Do you agree that for fees purposes professional body supervisors should report the most recent count of supervised individuals in the 12 months ending 5 April each year and submit the figure to us by 31 October of the year preceding the relevant fee-year?**

The Bar will conduct an annual exercise in April of each year to validate any individuals falling within the remit of the MLRs and would have no difficulty in complying with the timetable for reporting fees data.

If I can be of any further assistance in this matter at this time, please do not hesitate to contact me.

Yours sincerely,



David Mulholland
Chief Executive