

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

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

By email to: cp17-35@fca.org.uk

4 January 2018

Dear Mr Cheesman

**Recovering the costs of the Office for Professional Body Anti-Money Laundering
Supervision (OPBAS): fees proposals (CP17/35)**

Please find attached our response to the above consultation. If you have any questions,
please contact me.

Yours sincerely

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BAR STANDARDS BOARD

REGULATING BARRISTERS

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

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?

It is difficult to comment without details of the application process and associated costs. The fee should reflect the cost to OPBAS of assessing an application so that costs are not subsidised by the Bar Standards Board (BSB) and other Professional Body Supervisors (PBSs), and the application process should be proportionate to risk.

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?

Broadly, we agree with your analysis of the different measures. The basis chosen will need to reflect that:

- the majority of barristers are self-employed;
- most Bar Standards Board (BSB) entities are small (fewer than 5 persons); and
- most of the Bar does not do work that engages the Money Laundering Regulations.

We think that the preferred option is therefore the most appropriate.

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?'

The AML Supervisors have discussed how this might be applied in practice, so as to achieve consistency. There has been a suggestion to proceed on the basis of counting:

- Sole practitioners
- Beneficial Owners, Officers and Managers in firms.

We would support this approach as it aligns with information that we already hold, or plan to collect from March 2018, and roles that we already recognise for regulatory purposes.

In our case, we would interpret this as follows:

- Practising self-employed barristers carrying out work that engages the MLRs, whether working from chambers or as sole practitioners. (Although chambers are required to register, they are not authorised by the BSB, and take a range of legal forms. HM Treasury have always regarded self-employed barristers as individually responsible for compliance with the MLRs, in line with the BSB Handbook. Therefore there has been no requirement for chambers to appoint a responsible officer or a nominated officer and they cannot be said to have relevant employees). As explained in question 5, we will collect this data annually in March at Authorisation to Practise (renewal of practising certificates) commencing in 2018.
- Sole traders in BSB entities that carry out work that engages the MLRs.
- Designated roles, as defined in Part 6 of the [BSB Handbook](#), in BSB entities that carry out work that engages the MLRs, ie. Owners, Managers, Head of Legal Practice (HOLP) and Head of Finance and Administration (HOFA), where held by different people.

It is likely that any practising employed barristers carrying out relevant work will be working in organisations regulated by the BSB, the FCA or other PBSs, and would be excluded to avoid double counting.

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?

Please see our response to question 3.

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?

We understand that PBSs with no more than 6,000 relevant supervised persons (using the methodology described above) would only pay the minimum fee, in which case we think that £5,000 is a reasonable and proportionate contribution.

We anticipate that the Bar of England and Wales will fall into this category. You asked for clarity about the numbers that we have previously reported to HM Treasury in the Annual Supervisor Returns. We reported the total number of practising barristers and BSB entities we supervise as opposed to relevant persons who carry out work that engages the Money Laundering Regulations. The figures we reported in the return were as follows:

- Total number of practising barristers as at 1 December 2016 -15,899. Of these:
 - 12,757 barristers are self-employed, comprising 529 sole practitioners and the remainder practising from 409 chambers alongside other self-employed barristers.
 - 2,897 are employed barristers. These are practising barristers who work either under a contract of employment (eg. as in-house lawyers providing services only to their employers or as employees of legal firms that provide services direct to the public), under a written contract for services for a determinate period, or by virtue of an office under the Crown (such as the Crown Prosecution Service) or in the institutions of the

European Union. Some may be working in BSB entities. Some may be working in companies regulated by the FCA or other PBSs.

- 245 operate in dual capacity (both employed and self-employed)
- Number of BSB entities authorised as at 31 March 2016 – 47.

The majority of barristers and entities do not do work that engages the MLRs. We plan to capture accurate data about which practising barristers carry out work that engages the MLRs during our annual Authorisation to Practise (AtP) process in March 2018.

We note that, in the roundtable meeting of 1 December, a comment was made that the indicative fee figures quoted are likely to increase because they were based on total numbers supervised by PBSs rather than relevant persons, and the cost of £2 million was a working estimate, rounded up to the nearest half million. It was also noted that the business plan would form part of the FCA's published business plan. Our response to this consultation is based on the figures provided. We would expect OPBAS to be transparent and publish its own business plan and budget for consultation with the PBSs, as the Legal Services Board does.

OPBAS expects supervisors to participate in existing information sharing arrangements such as the Financial Crime Information Network (FIN-NET) and Shared Intelligence Service (SIS), which would double (or more) the fixed fee of £5,000. The BSB is currently not a member of these networks and there is no requirement in the MLRs to subscribe to them.

We would need to have a clear business case if we were to subscribe to these services; the costs of accessing these networks must be proportionate to the risk presented by the Bar and provide genuine added value to the way we supervise the Bar and share information with other stakeholders.

We have real concerns that the cost-benefit to the BSB's achievement of its regulatory objectives has not been demonstrated and that incorrect assumptions are being made about the volumes of transactions/intelligence which we are likely to contribute to/draw from the systems - it is likely to be extremely low. We have limited resources to monitor such systems and indications are that the NCA regard the Bar as low risk and has little information to share with us. We would like an opportunity to test the systems so we can get a better understanding of how we might use them and give an informed view about them.

As regulators, we are under close financial scrutiny and we adopt robust budget planning processes to ensure that we can justify our expenditure against our strategic priorities and so that we secure the best value and level of regulation for the funds we have available. We would expect to put any requirement to subscribe to an external network through the same level of scrutiny and to be able to take our own decision as to whether it is necessary (and to be able to justify that decision if challenged). The BSB does not think, therefore, that subscription should be made compulsory.

Q6: Do you believe we should spread recovery of the set-up costs and accumulated costs of OPBAS over two years?

We agree that the set-up cost should be spread over an appropriate period. We understood from the round table meeting on 1 December that start-up costs will not be charged on top of the fixed fee of £5,000 for smaller PBSs that are not subject to the variable rate, so this is unlikely to affect the BSB.

We think that the PBSs should be charged retrospectively rather than in advance, to avoid fluctuations resulting from over-estimates of costs, particularly in the first few years whilst the work is being scoped. The Legal Services Board follows a similar model and we believe that OPBAS should adopt the same approach.

We note that the data you require should be reported annually as at 31 December before the fee year and submitted within two months, by 28 February. Please note that we will collect data from barristers annually in March.

Bar Standards Board
4 January 2018