

# BAR STANDARDS BOARD

REGULATING BARRISTERS

25 April 2019

## **Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): Further consultation on fees structure**

Response to Consultation Paper [CP19/13](#)

***Do you agree that we should remove the minimum fee structure and charge all professional body supervisors a flat rate of £20.59 per supervised individual, subject to a minimum charge of £5,000? Please support your views with evidence demonstrating the impact on the viability of professional body supervisors and on the individuals they supervise.***

1. We do not agree that the minimum fee structure should be removed for the reasons set out below.
2. Please note that for completeness, as advised by yourselves, we have repeated some comments that we made in response to your last consultation (CP18/32) due to the fact that our response to that consultation was not read by you until after this consultation (CP19/13) was published.

### *Impact on our budget*

3. Last year we budgeted an amount of £5,000 following the outcome of the previous consultations. Our budget for 2019/20 has already been set on this basis. The removal of the minimum fee structure would result in the BSB paying approximately three times the amount that we budgeted for each year. Given the agreed low risk profile of the Bar, we believe that the increase in the fee that would arise from the revised proposal would be disproportionate to both the scale of our regulation in this area of activity and the level of oversight required by OPBAS. Either way, it is not sustainable for the BSB to have continuing uncertainty when setting our budget and OPBAS really does now need to take a decision on its fees.

### *Impact on individuals that we supervise*

4. We intend to absorb the OPBAS fee as part of the Practising Certificate Fee that is payable by all barristers, as a cost of regulation. We do not intend to pass the fee on to individual practitioners. This reflects the fact that all practising barristers and BSB entities are able in principle to conduct work that engages the Money Laundering Regulations. Indeed, the cab-rank rule means that (subject to certain limitations) they cannot refuse to accept instructions (rules rC29-30 of the [BSB Handbook](#)). Therefore whilst the OPBAS calculation methodology is based on the number of self-employed barristers and beneficial owners, officers and managers (BOOMs) in entities that conduct work that engages the Money Laundering Regulations (MLRs), any increase in the fee will affect *all* 16,600 practising barristers.

### *Impact on volatility in the variable rate*

5. In your consultation you have said that you will re-use the 2018/19 data for 2019/20. It is not clear if you intend to use updated data annually thereafter. Barristers are asked to declare when renewing their practising certificate in March each year if they are undertaking, have current instructions or in the last 12 months have undertaken work which falls within the scope of the MLRs. Entities make the same declaration when renewing their authorisation in March.
6. We think that the calculation should be based on figures declared annually because the exact number of supervised individuals under the MLRs will fluctuate from year to year, particularly given the cab rank rule (see paragraph 4 above).
7. It is important to recognise, however, the potential for volatility of the variable rate under the proposed methodology. Using a minimum band reduces the impact of volatility.

### *Impact on our resources*

8. As we have previously discussed with you, 2018 was the first time we asked barristers to make this declaration and we anticipated that there would be over-declaration. A significant amount of resource was therefore allocated to the period during and following the renewal process in 2018 to carry out work to improve the accuracy of the data. This included:
  - Identifying some 200 barristers who had made an incorrect Trust and Company Service Provider (TCSP) declaration. (We prioritised getting accurate data on TCSPs as the cluster of highest risk and to ensure that the register maintained by HMRC is fully accurate).
  - Engaging with around 40 other barristers through our spot check of compliance with the requirement to get a DBS check.
  - Responding to queries from barristers to help them to make an accurate declaration.
9. There is further work to be done to improve the accuracy of the data, but with such low numbers, the pay-off for us is limited. Our focus now is on actively supervising compliance with the MLRs in the areas that we have identified as highest risk, rather than on cleansing the data further where we suspect that an inaccurate declaration has

been made. If a variable rate is used, we will need to shift resources back to cleansing the data in order to ensure we are not paying too much in OPBAS fees. We do not think that this is the best use of our time.

#### *The challenge in finding a methodology that reflects the variation in the regulated population*

10. The current methodology (a minimum threshold of 6,000 BOOMs and a variable rate above that) mitigates the inherent problem that we have discussed in the Supervisors Forum in finding a methodology that takes into account the fact that the supervised population amongst all PBSs varies widely, ranging from sole/self-employed practitioners to very large firms with many fee earners.
11. The professions that are predominantly made up of sole practitioners/self-employed individuals are disproportionately penalised by a per-capita methodology. The Bar of England Wales is predominantly self-employed, but barristers commonly work in association in chambers. As chambers are not legal entities that we regulate, the barristers in them are all counted individually where they conduct work that falls within the Money Laundering Regulations. Consider a chambers of 50 barristers. If they all declare that they carry out work that engages the MLRs, that would result in an OPBAS fee of 50 times the variable rate. If they were a BSB entity, the number of BOOMs that we report would be much lower. Given the numbers in the Bar that carry out work that falls within the MLRs, this imbalance is mitigated when the minimum threshold is set at 6,000 BOOMs/sole practitioners.

#### *Transparency in the OPBAS budget*

12. It is difficult to comment as to whether a variable rate of £20.59 would (were it to be adopted) be appropriate because the OPBAS budget is not supported by a business plan (other than a high-level plan in the FCA business plan). 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 and the Office of Legal Complaints do (both of whom levy the legal sector approved regulators annually to cover their operating costs).
13. 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, particularly as cost estimates dropped by a third in the first year from £2m to £1.4m.

#### *Hidden costs of regulation*

14. OPBAS expects supervisors to participate in existing information sharing arrangements such as the Financial Crime Information Network (FIN-NET) and the FCA's Shared Intelligence Service (SIS), which would double (or more) the fixed fee of £5,000.
15. At an earlier stage in this consultation process, there was an indication that the OPBAS fee would include access to SIS. We are now being asked to pay separately for this service, which would add another £2,000 in the first year and £3,000 thereafter (plus VAT, which cannot be recovered). Having tested SIS on a trial basis, we are not able at this stage to make a sufficiently strong business case for subscribing to SIS, therefore this would represent an additional cost of regulation. We have a responsibility to

minimise the cost of regulation and all elements of our budget are subject to close scrutiny to ensure that they are proportionate and represent good value for money. 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 have not been given access to trial FIN-NET. We are highly likely therefore to not subscribe to SIS or FIN-NET if these are at an additional cost to the OPBAS Fee.

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