



Bar Council response to Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS): further consultation

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the FCA consultation paper CP18/32 entitled *Recovering the costs of OPBAS: further consultation on fees structure*¹.
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

Overview

4. In January 2018 we responded² to *Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fees proposals (CP17/35)*³. We

¹ Financial Conduct Authority (2019) *Recovering the costs of the Office for Professional Body Anti-money-laundering Supervision (OPBAS): further consultation on fees structure*. Available here: <https://www.fca.org.uk/publication/consultation/cp19-13.pdf>

² Bar Council response to *Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fees proposals (2018)*. Available here: https://www.barcouncil.org.uk/media/627788/bar_council_response_to_recovering_the_costs_of_the_office_for_professional_body_anti-money_laundering_supervision_fees_proposals.pdf

³ Financial Conduct Authority (2017) *CP17/35: Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fees proposals*. Available here: <https://www.fca.org.uk/publication/consultation/cp17-35.pdf>

expressed agreement with the principle of a minimum fee and indicated that we did not object to the sum proposed, which was set at £5,000 per Professional Body Supervisor (“PBS”). That remains our position.

5. In October 2018 we responded to *Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS): proposed fee rates for 2018/19* (CP18/32)⁴, which concerned the proposed variable fee that OPBAS intended to charge PBSs. We said that we took no issue with the methodology used to arrive at the proposed variable fee of £41.03 per supervised individual, save that, as mentioned in our response to CP17/35, no evidence of the running costs of OPBAS had been provided⁵. That remains a concern.

Question 1:

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

6. We have seen no evidence which leads us to revise our view that the minimum fee structure set out in CP17/35 is the fairest way to assess contributions from PBRs to OPBAS. The threshold of 6,000 supervised individuals required before the variable fee begins to operate is reasonable and evidence-based. Paragraph 2.22 of CP19/13 provides the justification for setting the threshold figure at 6,000 supervised individuals. We agree with that approach, and prefer it to the alternative proposal of a variable fee of £20.59 with a minimum charge of £5,000, which will inevitably favour larger PBSs at the expense of smaller ones.

7. We are not privy to data which would allow us to assess how the proposed variation to the fees structure would affect the BSB’s economic viability.

Bar Council⁶ April 2019

⁴ Financial Conduct Authority (2018) CP18/32: Recovering the costs of the Office of Professional Body Anti-Money-laundering Supervision (OPBAS). Available here: <https://www.fca.org.uk/publication/consultation/cp18-32.pdf>

⁵ Bar Council (2018) Bar Council Response to recovering the costs of OPBAS: proposed fee rates for 2018/19. Available here: https://www.barcouncil.org.uk/media/709099/bar_council_response_to_recovering_opbas_fees.pdf

⁶ Prepared for the Bar Council by the Money Laundering Working Group

*For further information please contact:
Melanie Mylvaganam, Senior Policy Analyst: Legal Affairs, Practice and Ethics
The General Council of the Bar of England and Wales
289-293 High Holborn, London WC1V 7HZ
Direct line: 020 7092 6804
Email: MMylvaganam@BarCouncil.org.uk*