

# Association of Accounting Technicians response to the FCA consultation CP17/35: Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fee proposals

## 1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the FCA consultation paper on Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): fee proposals, published in October 2017.
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit.
- 1.3. AAT has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by AAT's 4,250 licensed accountants.

## 2. Executive summary

- 2.1. **AAT strongly supports the UK's drive to combat money laundering and terrorist financing and recognises that establishing a consistent, risk based supervisory regime in the UK is paramount.** However, the current proposal for OPBAS is inadequate to successfully achieve any of these objectives.
- 2.2. **AAT continues to be extremely concerned that the risks of continuing with the implementation of OPBAS, as proposed, have not been sufficiently managed by either the government or FCA.** AAT noted in its response to the FCA Guidance consultation GC17/7 that the FCA has acknowledged these risks in the consultation document under the section headed '*Unintended consequences of our intervention*', but no measures have subsequently been put in place to mitigate against them.
- 2.3. **The proposed regime will lead to a destabilisation of the regulated sector.** The additional charges for professional body supervisors will likely be passed on to each body's respective members and in turn subsequently to members' clients. This will provide an unfair advantage to unqualified, non-professionals who are not required to hold Professional Indemnity insurance, abide by a Code of Professional Ethics, be subject to robust 'fit and proper' checks or disciplinary process, or undergo quality review activities and be required to engage in ongoing continuous professional development. This does not support the public interest nor does it support the government's aim of making the UK's financial system a hostile environment for illicit finance. It is clearly not in the public interest if professional service providers leave their highly regulated membership body environments and/or their clients move to non-professional providers in order to avoid paying higher fees.
- 2.4. **Whilst AAT welcomes the provision of some detail around the likely level of fees that the professional body supervisors will be required to pay, there are still elements that remain vague.** The absence of more detailed information means that the professional body supervisors are still left with uncertainty around planning for the impact of the fees they will be required to pay. Given that OPBAS will commence in its oversight of the professional body supervisors in 2018, and mindful that many bodies may have to seek to recover the additional costs of supervision from their membership, the absence of definitive detail at this stage puts undue pressure on the professional body supervisors to have to bear the initial burden of the increased costs without having sufficient time to either communicate or impose potential subsequent changes in membership fees to their respective supervised communities.

- 2.5. **There is a palpable sense that the options outlined for establishing the tariff base in the consultation document have been considered from the primary perspective of solving the problem of covering OPBAS's operational costs.** There are a number of concerns raised in response to the FCA Guidance Consultation, GC17/7 that remain unresolved. Until it is suitably defined as to how the creation of OPBAS will establish a consistent, risk based supervisory regime in the UK then irrespective of the fees to be paid by the professional body supervisors the value that will be derived in return for those payments is very unclear.

### 3. AAT response to the consultation paper

- 3.1. Despite AAT's continued opposition to the creation of OPBAS as proposed – in keeping with other supervised bodies - and the significant threat it presents to the public interest, AAT has sought to answer the consultation questions to the best of its abilities.

#### **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 for self-regulatory organisations in Schedule 1 to the MLRs?**

- 3.2. As an existing professional body supervisor under Schedule 1 of the MLRs AAT recognises that it would not be required to pay an application fee. Whilst this may appear a logical approach, AAT welcomes this, and considers it appropriate given that as one of the existing cohort of professional body supervisors AAT has worked hard as part of a collaborative effort to improve the impact of supervision within the profession.
- 3.3. In supporting the fees to be charged for new applications, AAT notes that at this stage the details of what will be involved in reviewing each new application has yet to be determined. AAT assumes that as a minimum any new criteria would be guided by what the existing professional body supervisors were required to demonstrate in seeking to obtain that status. Mindful that the criteria behind the review for new applications has yet to be determined, it is difficult to grasp how accurate any assumptions that the FCA has already made in terms of the work involved so as to be able to compare it with a moderately complex application under FSMA. AAT does however acknowledge that flexibility with this is referenced by way of potentially reviewing the charge should the assumptions made be inaccurate when dealing with the reality of processing these applications.
- 3.4. With the subsequent liability for new professional body supervisors to pay periodic fees, the first of which would be pro-rated to cover the remaining months of the year, AAT assumes that a decision on which of the options will be taken up is required before new applications will be received. AAT notes that at 2.40 of the consultation document there is a possible expectation that OPBAS will begin to operate without the fees option issue being fully resolved.

#### **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 other measures we should consider?**

- 3.5. AAT is not aware of other measures that should be considered.
- 3.6. With regards to the different measures that have been considered in the consultation document, AAT's view on each is detailed below:
- the flat fee approach would likely see the smaller bodies stepping down from their roles as professional body supervisors subsequently putting the wider AML framework at risk, and by extension impacting on those individuals currently supervised by one of these smaller professional body supervisors
  - the detail in the consultation document highlights issues with relevant persons approach; as detailed at 2.21, there is a disadvantage with this option in that relevant persons could be firms, individuals or both. If larger corporations were given the same weight as small partnerships or self-employed individuals then this could result in the smaller professional body supervisors being unfairly burdened, and moreover throws up a further challenge given that some supervisors do not supervise firms
  - AAT notes that FCA has highlighted that the wording 'supervised persons who are individuals' in Schedule 4 to the MLRs has been interpreted inconsistently. AAT does not

report on all of its active membership, instead AAT only supervises those for whom AML supervision is relevant (namely AAT members that are licensed to practice). AAT notes the point made at 2.25 of the consultation document regarding the legal profession potentially being over-represented, however this raises a question as to whether the distinction is to do with those that are licensed to practice? On that basis, it could be argued that given that a licence to practice is a requirement in the legal profession, there is a rationale behind the reporting of a wider membership figure for the legal profession. There are elements of this approach that apply to the minimum fee option in that there needs to be clarity and consistency in establishing the number of individuals supervised; any current ambiguities need to be resolved in order for this to be a suitable option

- following the meeting with OPBAS held on 01 December 2017, at which AAT was represented, it appeared that there was still no real understanding or agreement on what figures OPBAS' charges would be based upon, or upon the definition of which persons would fall under the supervisory remit of each body. As previously stated, AAT only supervises those individual members which AAT licenses to practice, and would oppose any widening of that definition in terms of OPBAS's fee-charging mechanisms
- the Membership option could, as outlined at 2.30, result in a disproportionate fee for bodies like AAT that have a larger total membership population but currently are required to supervise a much smaller percentage of that total population. As identified in the consultation document, where a sizeable proportion of members of a professional body undertake little or no AML-related activity, the inclusion of these members as a mechanism for identifying the tariff would be arbitrary, unfair and bear absolutely no relation to the risk
- it is AAT's view that the point raised in 2.32 about the supervisory resources approach creating perverse incentives for bodies to scale back on the resources they devote to the professional body supervisor responsibilities make this a wholly inappropriate option to pursue
- whilst the income option represents the most common tariff base that the FCA uses, given that in this instance it would need to be closely defined by the proportion of income generated explicitly by AML supervisory activity, as outlined in 2.36, the challenge with this will be for professional body supervisors to identify that proportion, thus creating a layer of complexity and inaccuracy (or potentially erroneous reporting)
- AAT recognises that the minimum fee option is potentially a clean and simple approach, however if it is used in isolation then based on current figures it will leave a significant gap between the income likely to be generated and the costs that need to be covered. AAT notes that the indicative variable fee rate is yet to be established so the precise scale of the gap is difficult to establish. This option is similarly impacted however by the considerations around the definition of 'supervised persons who are individuals' as this could result in some of the professional body supervisors who currently supervise fewer than 6,000 individuals seeing the fee increase if the net for those individuals to be included is widened
- AAT notes the detail provided on the indicative variable rate at 2.44 and 2.45 of the consultation document. In order to identify these potential rates per supervised individual the FCA must already have a view on the size of the supervised population but again there is reference to the inconsistency behind that data, AAT considers that engaging in a consultation on fees without having addressed this potential inconsistency is not helpful in that it results in further uncertainty about what each of the professional body supervisors may reasonably expect to be required to pay

- 3.7. In recognition of FCAs preferred option for its tariff base being the 'supervised persons who are individuals', AAT would express the need for urgency around establishing clarity on that definition. If the fees are to be applicable in 2018, mindful about when bodies will have to make decisions on setting their relevant membership fees and annual budgets, to issue the consultation so close to the end of 2017 without that clarity puts each of the professional body supervisors in an uncertain position.

**Question 3 - Can you suggest any improvement to the definition of our preferred measure for OPBAS fees of 'supervised persons (under the MRLs) who are individuals?'**

- 3.8. As referenced above, it is AAT's view that the fees applicable to each professional body supervisor ought to relate to those who are directly and specifically responsible for compliance with MLR requirements as is presently the case. In the AAT's case this is extended to all licensed members.

- 3.9. AAT recognises that the FCA will need to ensure that the set up and running costs for OPBAS are covered, and the flexibility in the variable fee rate (once the clarity around the 'supervised persons' has been established) provides a mechanism to ensure that. However, it is worth pointing out that there is no specific detail contained in the consultation document that explains how the annual running costs of £1.7-£1.9m have been calculated.
- 3.10. AAT's primary concern therefore is that there must be a clear risk-based structure that backs up any extension to the proportion of the membership of the professional body supervisors to be brought under supervision.

**Question 4 - Can you suggest ways of consistently identifying those individuals who are supervised by a professional body supervisors as relevant employees of relevant persons? Are there risks of double-counting? If so how can we avoid them?**

- 3.11. AAT considers that this would be almost impossible to ascertain as it would require a degree of self-declaration, and would mean that there could easily be the scenario whereby a larger organisation will have multiple employees needing to be supervised who could conceivably be supervised by multiple bodies which would drive up the costs of compliance for this organisation. It is questionable as to whether the increase in compliance costs for an organisation like this would be seen to be proportionate to the level of enhanced confidence that the supervision would provide. This could not be seen to be proportionate based on an evaluation of risk.

**Question 5 - Do you think that we should set a minimum fee for the OPBAS levy? If so, is £5k a reasonable contribution from those professional body supervisors paying the minimum fees only?**

- 3.12. AAT considers that, dependent upon how the wider proposals for professional body supervisors' fees is finalised, having a minimum fee for the OPBAS levy has some value. At 2.39 in the consultation document it states that the FCA understands that 75% of the professional body supervisors account for less than 11% of the total individuals supervised. On that basis a number of the professional body supervisors will only be required to pay the minimum fee. This would see the remaining 25% of the professional body supervisors being required to make significantly greater contributions to the operating costs of OPBAS.
- 3.13. Given the need to define who qualifies as 'supervised persons who are individuals' and the apparent intent of OPBAS to re-draw those boundaries, AAT suggests that the point made above is moot.
- 3.14. Moreover, given the numbers referenced in the consultation document, if the current arrangements were retained in terms of AAT supervising its licensed members only, assuming that the same would apply to other PSBs, an annual return of £110,000 plus whatever is generated through the application of the variable rate to the larger bodies will fall well short of the fees required to be generated to cover OPBAS costs.

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

- 3.15. It is difficult to answer this question with the information currently available. Dependent on the outcome of the definition of 'supervised persons who are individuals', that may result in driving many of the smaller PSBs to opt out of ongoing supervision. Were that to happen then it won't necessarily matter what is proposed regarding the accumulated costs.
- 3.16. In principle however, and based on what is currently known, this would seem to make sense. AAT notes that this may then be further delayed (i.e. not applied for 2018/19) if the FCA is unable to establish the basis for the tariff in the shorter term.

#### 4. About AAT

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,250 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

#### 5. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Adam Williamson, AAT Head of Professional Standards, at:

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