

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

**Consultation Paper**

CP18/32\*\*

October 2018



## How to respond

We are asking for comments on this Consultation Paper (CP) by 14 December 2018.

You can send them to us using the form on our website at: [www.fca.org.uk/cp18-32-response-form](http://www.fca.org.uk/cp18-32-response-form).

**Or in writing to:**

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London E20 1JN

**Telephone:**

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**Email:**

[cp18-32@fca.org.uk](mailto:cp18-32@fca.org.uk)

### How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

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# 1 Summary

## Why we are consulting

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- 1.1** We propose charging a fee-rate in 2018/19 for recovering the costs of establishing and running the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), which is housed within the FCA. We are consulting on this, following our consultation on the framework of OPBAS fees in consultation paper CP17/35, published in October 2017<sup>1</sup> and policy statement PS18/9 published in April 2018.<sup>2</sup> We are also consulting on the timetable for reporting future data and confirming the minimum fee structure on which we consulted in CP17/35.

## Who does this affect?

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- 1.2** This consultation paper (CP) applies to the professional body supervisors (PBSs) listed in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) and professional bodies considering applying to be listed. It will also be of interest to designated professional bodies.
- 1.3** It contains no material directly relevant to retail financial services consumers.

## Context

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- 1.4** The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2018 (the OPBAS Regulations) give the FCA the power to recover the costs of OPBAS's supervisory activities from the PBSs. We are funded entirely by the fees and levies recovered from the bodies we regulate and do not receive any funding from other sources, so our costs for setting up and operating OPBAS have to be recovered from its PBSs.
- 1.5** When we finalised the fees rules through PS18/9, we couldn't set the fee-rate for 2018/19 as we had yet to gather the data. One of the main features of the instrument was the definition of the metric on which we will base our fees and we had no data under this definition. We asked the PBSs to submit their data to us, using the new definition, to make sure that they were all reporting consistently.
- 1.6** We couldn't confirm the minimum fee structure for the same reason. We needed the new data to test out the suggestion, made during the consultation, that costs could be distributed more fairly if we had no minimum fee.

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<sup>1</sup> *Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision: fees proposals* (CP17/35, October 2017)

<sup>2</sup> *Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision – feedback to CP17/35* (PS18/9, April 2018)



- 1.7** Deferring the consultation has allowed us to calculate the fee-rate with up-to-date information on the OPBAS running costs for 2018/19.

## Summary of proposals

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- 1.8** Our proposed fee-rate and timeline for reporting are presented in Chapter 2 along with the minimum fees issues.

## Equality and diversity considerations

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- 1.9** We do not think that the proposals in this CP adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 1.10** In the meantime we welcome your comments on any equality and diversity considerations you believe may arise.

## Next steps

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- 1.11** Please consider our proposals and send us your comments on the questions in this CP by 14 December 2018. Use the online response form [www.fca.org.uk/cp18-32-response-form](http://www.fca.org.uk/cp18-32-response-form) on our website or write to us at the address on page 3 of this document.
- 1.12** We will consider your comments and publish our feedback, along with our rules, in a policy statement in January 2019.

## 2 Fee-rate for 2018/19 and minimum fee structure

### (Draft instrument in Appendix 1)

#### 2.1 In this chapter we:

- present the outcome of the data collection exercise
- set out the revised OPBAS costs for 2018/19
- confirm the minimum fee structure
- consult on a variable fee-rate for 2018/19
- consult on the reporting timetable for future fees data

### Data collection exercise 2018

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- 2.2** Fee-payers are grouped into fee-blocks. Each fee-block collates businesses with similar activities, reducing the risk of cross-subsidy. PBSs are in a single fee-block, D2. Some of them are also in fee-block D1 as Designated Professional Bodies (DPBs). The costs and cost-recovery of fee-blocks D1 and D2 are ring-fenced, so there is no cross-subsidy. OPBAS invoices will be late this year, so PBSs which are also DPBs will be billed separately, but in future they will receive single invoices with both items.
- 2.3** Each fee-block uses a metric, known as a tariff measure, to distribute cost recovery between the fee-payers. The tariff base for fee-block D2 is 'supervised individuals'. These are defined in FEES Appendix 2 Annex 2 Part 1. Our definition is made up of 2 elements:
- beneficial owners, officers and managers (often referred to as BOOMs), as defined at regulation 3 of the MLRs
  - sole practitioners who are relevant persons under the MLRs
- 2.4** We wrote to all PBSs, asking them to submit data to us under this definition for fees purposes (explained in PS18/9).
- 2.5** The PBSs have submitted figures to us and we appreciate the work they put into achieving this at short notice. We said in CP 17/35 that we thought the figures for 'supervised individuals' had previously been overstated because some PBSs reported total membership rather than restricting the figures to individuals supervised under the MLRs. Without a prescribed definition, it was reasonable for each body to make its own interpretation. The new figures confirmed this. The total reported figure fell from 217,884 to 81,216. The distribution is similar, with 69% of the individuals supervised by 3 PBSs as opposed to 72% supervised by 2 in the previous data set. In our original data set, the largest PBS accounted for 62% of the supervised individuals, but its share in the re-defined database is 32%.



## Revised Costs for 2018/19

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- 2.6** OPBAS started operating in February 2018, so when we consulted in September 2017, we relied on cost estimates prepared nearly 6 months earlier. We quoted a figure for 2018/19 running costs of £2m. We also have to recover £500,000 of OPBAS project set up costs. We proposed spreading the cost recovery 2 years. This made a total annual funding requirement (AFR) of £2.25m to be recovered through fees.
- 2.7** We are now halfway through the financial year so our budget takes account of actual expenditure on OPBAS over its first 6 months. The total has been revised down from £2m to £1.4m, and the AFR to be recovered in 2018/19 is £1.65m.

## Minimum fee structure

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- 2.8** We are confirming the minimum fee structure we consulted on in CP17/35 as a fee of £5,000 up to a threshold of 6,000 supervised individuals. All PBSs must pay the minimum fee. Those supervising more than 6,000 individuals will pay £5,000 plus the variable rate per individual above the threshold.
- 2.9** When we addressed the consultation responses in PS18/9 we did not finalise the minimum fee structure because, in the absence of reliable data, we were unable to test an important suggestion. This was to remove the minimum fee and charge all PBSs a variable rate for a fairer distribution of cost recovery between fee-payers.
- 2.10** We have now tested this model on the data submitted by PBSs. The structure we consulted on generates a fee-rate of £45.49. This falls to £25.91 without the minimum fee but that benefits only the 2 largest fee-payers, who pay 21% - 26% less, and the smallest fee-payer which sees its fee reduce by 90%. All other fee-payers would see increases between 12% - 2,000%. In PS 18/9, we said we considered a fee of £10,000 to be too high for the smallest PBSs but, with no minimum fee threshold, this would be the charge for supervising only 386 individuals. A PBS supervising 1,000 individuals would pay £25,910 in fees against £5,000 as consulted on. We are concerned about the affordability of this model for the PBSs with fewer supervised individuals and how it might affect competition. We don't think this presents a fair distribution of cost recovery and so we have decided to retain the minimum fee structure that we consulted on.
- 2.11** We also considered adapting the structure. The lower reported total of supervised individuals reduces the number of variable-rate fee-payers above the minimum fee threshold of 6,000 from 5 to 3. Cutting the threshold to 3,000 restores the original pattern, bringing the number of variable rate fee-payers to 6. This reduces the fee-rate to £37.46 but this helps only the 2 largest fee-payers, with small reductions of 5% and 10%. In contrast, the 3rd fee-payer would see an increase of 68% because the lower rate and the introduction of 3 new, but small, fee-payers does not outweigh the extra charge of paying for 3,000 additional individuals. We concluded that the disadvantages of cutting the minimum fee were greater than the advantages.

## Periodic fee for 2018/19

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- 2.12** The periodic fee is calculated by deducting the minimum fees from the total to be recovered, and deducting up to the first 6,000 supervised individuals reported by each PBS from the total number of supervised individuals. Dividing the balance of the costs by the balance of individuals generates a rate per individual.
- 2.13** When we consulted in October 2017, we quoted a rate of £10 - £20 per individual but warned that it might go above £40 if the over-reporting was as great as we believed. There had been substantial over-reporting but we are also recovering slightly less than we originally anticipated. Using the revised figures, the rate is, as explained in paragraph 2.10, £45.49 per individual. This is payable above the minimum fee threshold of 6,000 supervised individuals.

**Q1: Do you have any comments on our proposed variable fee of £45.49 per supervised individual?**

## Timetable for reporting fees data

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- 2.14** We are consulting on the timetable PBSs should follow for reporting the number of individuals they supervise. Regulation 51 and Schedule 4 of the MLRs require them to collect this figure and the Treasury ask them to include it in an annual supervision questionnaire. As we explained in CP17/35, the count of supervised persons under the MLRs is not defined as tightly as in the FCA fees manual, so the figure in the Treasury questionnaire and the figure required for fees may not correspond. However, we believe it will be easier for PBSs to calculate their fees data as part of the same process, rather than undertaking a separate exercise, and so we have decided to align our timetable with the Treasury's.
- 2.15** The Treasury questionnaire is based on the financial year 6 April – 5 April, but they do not specify the date on which the supervised persons should be counted. We know that the PBSs survey their memberships at different times of the year and without necessarily linking the surveys to a specific date. We don't think it is practical to prescribe a reporting date. Instead, we propose asking firms to send us the latest figure available during the 12 months ending 5 April preceding the relevant fee-year. This will often be the figure they reported to the Treasury, but some PBSs may need to modify it to meet our definition.
- 2.16** The Treasury have set a deadline of 31 October for submission of the questionnaire so we are proposing the same date.
- 2.17** The Treasury have issued the supervision questionnaire for 2017/18. This should be the basis for our 2019/20 fees but it is already too late for us to ask PBSs to give us their figures by 31 October. We have included a transitional provision in the instrument to give an extension to 28 February 2019.

**Q2: 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?**



## Next steps

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**2.18** The next steps are:

- this consultation closes on 14 December 2018, all responses will be reviewed
- we will set the final fee-rate at the January 2019 Board and give feedback on the consultation responses in a policy statement
- we will issue invoices in the first quarter of 2019
- from 2019/20 onwards, OPBAS fees will fall within the normal cycle of fees consultation



## 3 Questions in this paper

- Q1:** Do you have any comments on our proposed variable fee of £45.49 per supervised individual?
- Q2:** 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?



## 4 Compatibility statement

### Compliance with legal requirements

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- 4.1** Although OPBAS fees will not be charged under the FSMA regime, we have to make sure our proposals are compatible with the FCA's wider statutory duties, so this annex explains our reasons for concluding that they are compatible with relevant requirements under the Financial Services and Markets Act 2000 (FSMA). A cost benefit analysis of OPBAS was conducted in Guidance consultation GC17/7, 'Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors', published in July 2017.
- 4.2** When consulting on new rules, we are required by section 138I(2)(d) of FSMA to explain why we believe they are compatible with our strategic objective, advances 1 or more of our operational objectives, and has regard to the regulatory principles in s.3B of FSMA. We are also required by s.138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 4.3** This annex sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (s.1B(4)). This duty applies where promoting competition is compatible with advancing our consumer protection and integrity objectives.
- 4.4** It also includes our assessment of the equality and diversity implications of these proposals.

### Our objectives and regulatory principles

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- 4.5** The fee-rate we are proposing in this consultation is not intended to advance our operational objectives. However, the fees collected will enable us to fund our activities. The proposal will indirectly advance our operational objectives of:
- delivering consumer protection - securing an appropriate degree of protection for consumers
  - enhancing market integrity - protecting and enhancing the integrity of the UK financial system
  - building competitive markets - promoting effective competition in the interests of consumers
- 4.6** We also think that the proposal is indirectly compatible with our strategic objective to ensure the relevant markets function well. For the purposes of our strategic objective,

'relevant markets' are defined by s.1F of FSMA. In the rest of this annex, reference to objectives means both our strategic objective and operational objectives.

**4.7** In preparing the proposal set out in this consultation, we have had regard to the regulatory principles set out in s. 3B of FSMA. The most relevant regulatory principles are considered below.

**The need to use our resources in the most efficient and economic way**

**4.8** We have tried to keep the fees structure as simple as possible to avoid unnecessary administrative costs. The fee we are consulting on will enable us to recover our costs.

**The principle that a burden or restriction should be proportionate to the benefits**

**4.9** The fee-rate we are consulting on fits into the framework for OPBAS fees that we consulted on earlier in the year. After testing alternative scenarios, we believe it distributes cost recovery between the relevant fee-payers as fairly as possible.

**4.10** We have set the reporting date to meet the Treasury's timeline for regulatory reporting so that the PBSs do not have to carry out a separate exercise for fees.

**The principle that we should exercise our functions as transparently as possible**

**4.11** In Chapter 2 we explained the thinking behind the fee-rate that we are consulting on, and the different models of minimum fee we have looked at.

**4.12** In formulating these proposals, we have had regard to the importance of minimising the extent to which it is possible for a business carried on (i) by an authorised person or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) of FSMA). The levy we propose will assure the operation of OPBAS, whose remit is to make sure the MLRs are effectively implemented.

### **Expected effect on mutual societies**

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**4.13** We do not believe any of our consultation proposals will have a direct impact on mutual societies.

### **Compatibility with the duty to promote effective competition in the interests of consumers**

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**4.14** Our fees enable us to fund our activities, including our duty to promote effective competition in the interests of consumers. We have tried to minimise distortion to competition by basing the fees on the number of persons supervised under the MLRs. We can then spread cost recovery as fairly as possible across all fee-payers and charge lower fees to the smaller PBSs which supervise fewer persons.



## Equality and diversity

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- 4.15** We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. We believe the policy proposals in this CP do not raise equality or diversity questions but we welcome comments on any equality and diversity issues you believe may arise.



## Annex 1

### Abbreviations used in this paper

<b>AFR</b>	Annual funding requirement
<b>AML</b>	Anti-money laundering
<b>BOOMs</b>	Beneficial owners, officers and managers, as defined at Regulation 3 of the MLRs
<b>CP</b>	Consultation Paper
<b>DPB</b>	Designated Professional Body (designated by order under s 326(1) of FSMA)
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	FEES Manual
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>MLRs</b>	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (these replace the Money Laundering Regulations 2007)
<b>OPBAS</b>	Office for Professional Body Anti-Money Laundering Supervision
<b>OPBAS Regulations</b>	Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017
<b>PS</b>	Policy statement

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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# Appendix 1

## OPBAS fees instrument

**FEES (OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING  
SUPERVISION) (No [2]) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the power under Regulation 27 (costs of supervision) of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017;
  - (2) the power under Regulation 102 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and
  - (3) the power in section 139A of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [1 February 2019].

**Amendments to the Handbook**

- C. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

**Notes**

- D. In the Annex to this instrument, a “note” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision made pursuant to:
- (1) Regulation 27 of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Regulations 2017; or
  - (2) Regulation 102 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

**Citation**

- E. This instrument may be cited as the Fees (Office for Professional Body Anti-Money Laundering Supervision) (No [2]) Instrument 2019.

By order of the Board  
[date]

## Annex

## Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless indicated otherwise.

**App 2      ~~Office for professional body anti-money laundering supervision~~ Professional Body Anti-money laundering Supervision fees**

**App 2.1    Introduction**

...

Glossary of definitions

App 2.1.6    In this Appendix and in FEES TP 21, an expression in bold (other than in headings and titles) has the meaning given in FEES Appendix 2 Annex 3G.

...

**App 2.3    Periodic fees imposed under Regulation 27 of the OPBAS Regulations**

...

Information on which fees are calculated

App 2.3.8    A **professional body supervisor** must send to the FCA the information required under Part 1 of FEES Appendix 2 Annex 2, ~~(as at the date specified in Part 2 of FEES Appendix 2 Annex 2)~~ on which the periodic fee payable by the **professional body supervisor** is to be calculated.

[Note: Regulation 27 of the **OPBAS Regulations**]

App 2.3.9    A **professional body supervisor** must send to the FCA in writing the information required under FEES App 2.3.8 ~~as soon as reasonably practicable after the date specified as the review date in FEES Appendix 2 Annex 2, and in any event within two months of that date~~ on or before 31 October preceding the relevant fee year.

[Note: Regulation 27 of the **OPBAS Regulations**]



App 2.3.10 If a **professional body supervisor** fails to send to the **FCA** the information required under *FEES* App 2.3.8 ~~within two months of the review date specified in *FEES* Appendix 2 Annex 2~~ by the date specified in *FEES* Appendix 2.3.9, the **FCA** may use the information provided by the **professional body supervisor** under Regulation 51 and Schedule 4 to the **MLR** or Regulation 27 of the **OPBAS Regulations** as the basis for calculating fees payable by the **professional body supervisor**.

[Note: Regulation 27 of the **OPBAS Regulations**]

...

**App 2**      **Periodic fees imposed under Regulation 27 of the OPBAS Regulations for**  
**Annex 2**    **the period 1 April 2019 to 31 March 2020**

...

Part 2

<p>This table sets out the review date for a <b>professional body supervisor’s</b> fees. A <b>professional body supervisor</b> is required to send to the <b>FCA</b> the information in Part 1 of this Annex as at the review date set out below, as soon as reasonably practicable, and in any event <del>within two months of</del> by the date shown in <del>this table</del> <i>FEES</i> App 2.3.9 and/or any relevant transitional provision.</p>	
<p><b>D.2 Professional body supervisors</b></p>	<p>The <u>most recent</u> number of supervised individuals (calculated in accordance with Part 1) <del>as at [the]</del> <u>during the twelve months ending 5 April</u> before the relevant <b>fee year</b>.</p>

Part 3

This table sets out the tariff rates applicable to **professional body supervisors**.

Fee payable in relation to [2018/2019]	Amount payable (£)
<p>Minimum fee, payable by all <b>professional body supervisors</b> subject to the <b>OPBAS Regulations</b>.</p>	<p>£5,000</p>
<p>Variable fee, payable by <b>professional body supervisors</b> where the</p>	<p>£<del>[the]</del>45.49 multiplied by the total number of supervised individuals in excess of the threshold of <del>[the]</del>6,000.</p>

number of supervised individuals is 6,000 or more.	
[ <b>Note:</b> references to ‘the number of supervised individuals is to those supervised individuals calculated in accordance with Part 1.]	

After FEES TP 20 (Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2019/20) insert the following new TP 21. The text is not underlined.

**TP 21 Transitional provisions relating to the payment of fees in 2019/20, taking effect on [1 February 2019]**

These transitional provisions will apply to **professional body supervisors** only for the 2019/2020 **fee year**.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
21.1	<i>FEES</i> App 2.3.9	R	A <b>professional body supervisor</b> must send to the <i>FCA</i> in writing the information required under <i>FEES</i> App 2.3.8 on or before 28 February preceding the relevant <b>fee year</b> .	From [1 February 2019]	[1 February 2019]

