

Dear Marion

I am writing in response to your consultation on the changes to the *Sourcebook for professional body anti-money laundering supervisors – criminality checks* included in the FCA Quarterly consultation No. 28 CP20-7. Our response to the questions in the consultation is detailed below.

Q4.1: Do you agree with our expectations of the term ‘sufficient information’? If not, why?

We agree that in order to meet the requirements of the Money Laundering Regulations 26 (7) (b) which was amended on 10 January 2020, self-regulatory bodies require a criminal record check of beneficial owners, officer or manager of the relevant firm or a relevant sole practitioner at the application stage by the Disclosure and Barring Service (DBS), Disclosure Scotland (DS) or Access Northern Ireland (Access NI) of beneficial owners, officer or manager of the relevant firm or a relevant sole practitioner. The IFA, and other accountancy AML supervisors, have been undertaking this approach since 26 June 2017 as requested by HM Treasury. At the time, HM Treasury guidance on regulation 26 to professional bodies stated that a self-declaration of unspent criminal convictions for offences in Schedule 3 to the Money Laundering Regulations 2017 (MLR 2017) is not adequate proof for compliance.

Regarding evidence of UK residency for the previous 5 years from the date of application, we are of the view that this statement needs clarifying since this could be interpreted as having a right to reside in the UK for the previous 5 years from the date of application. We understand that this statement relates to having a full address history for the last five years from the date of application (without any gaps). This is what is required for criminal records checks by the various agencies.

Q4.2: Do you agree with our expectations regarding applicants who are residing or have resided overseas? If not, why?

While we understand that the challenges of obtaining DBS/DS/Access to NI criminality checks for individuals who have lived overseas for 12 months or more, further guidance is needed on how to assess whether ‘robust measures have been taken’ for criminality checks.

Having a ‘statutory declaration’ as a bare minimum seems counter-intuitive given that ‘self-declarations’ (‘statutory declarations’) are not regarded as sufficient information for UK residents but deemed to be acceptable for overseas residents who may be operating in high risk jurisdictions for money laundering/terrorist financing. In making this statement, OPBAS appears to be giving the impression that overseas accountants can be trusted more than UK accountants.

Therefore, in order to be consistent with the UK, our view is that a 'statutory declaration' should be a very last resort and the OPBAS expectations and guidance should be clearer on what other mechanisms can be explored for obtaining criminality checks for overseas residents, for example, guidance on gov.uk. OPBAS should also provide guidance to professional bodies as to what happens if other countries do not provide sufficient information and whether all countries should be considered on the same basis or whether country money laundering and terrorist financing risks should also be considered.

Q4.3: Do you agree with our expectations regarding the obligation and approach to the monitoring of criminality checks? If not, why?

As part of our application process, we have found it more efficient and effective to request the applicant to provide evidence of a criminality check rather than delegate this process to the firms. However, we welcome flexibility on this to allow firms to oversee the process and therefore, support this element of the guidance.

We have for some time been undertaking a risk based approach to criminality checks as part of our ongoing AML supervisory monitoring approach in order to meet the requirements of MLR 2017 regulation 26 and therefore support this expectation.

However, we do not support the proposed good practice requirement to require criminality checks to be renewed within 5 years of the date of application for the following reasons:

- it is contrary to the risk-based approach to supervision embedded in the MLRs;
- Insufficient evidence as to why 5 years is best practice and helps towards the prevention of money laundering and terrorist financing. DBS checks are out of date as soon as they are issued. To date, we have none of our members/potential applicants have been identified as having a relevant criminal offence under the MLRs via a DBS check. Identification of relevant criminal offences has been more successful via open source research and information sharing mechanisms of professional bodies which have existed for years.
- Insufficient evidence as to why DBS checks need to be renewed every 5 years given that professional bodies, as part of their on-boarding of new members and renewal process require the completion of a fit and proper form by their members. This additional requirement suggests that OPBAS does not trust professional accountants to be honest and truthful when completing a fit and proper form;
- lack of clarity regarding who should be responsible for monitoring the 5 year renewal and whether the 5 year renewal is from the date of application for membership or date of the last DBS check. There could potentially be a significant administrative burden and cost on professional bodies and also firms, depending on number of BOOMS and changes in firm structures of undertaking a 5 year renewal of DBS

checks. We believe there is little evidence to support that this best practice requirement would deter potential criminals; and

- regulatory and disciplinary unenforceability since this is an OPBAS best practice requirement not a legal or regulatory requirement by government or the professional bodies.

OPBAS' expectations and guidance in this area needs to be based on evidence and proportionate to the money laundering risk/terrorist financing risk we are trying to address. These requirements must also be in line with requirements and expectations of statutory supervisors, something which is not clear in this consultation.

Q4.4: Do you agree with our expectation that the requirements in Regulation 26 are considered to apply to all existing BOOMs and relevant SPs? If not, why?

Yes, we agree with this expectation which we have been implementing since the implementation of the MLR 2017.

HM Treasury guidance on regulation 26 to professional bodies stated that a self-declaration of unspent criminal convictions for offences in Schedule 3 to the MLR 2017 is not adequate proof for compliance for MLR 2017 regulation 26.

However, as was stated at the time of HM Treasury's interpretation of MLR 2017 regulation 26, we have had no evidence to suggest that criminals are operating as BOOMs of our member firms since regulation 26 and criminality tests were introduced.

Q4.5: Do you agree with our expectation that a PBS factors into its supervision the fact that an existing BOOM or relevant SP has chosen not to apply for approval under Regulation 26? If not, why?

Yes, we agree with this expectation. Indeed, this has been incorporated as part of our risk-based approach to supervision and monitoring for some time now. Should the firm structure change, firms are required to inform the IFA of these changes and DBS checks of BOOMs required and monitored as part of a risk-based supervisory approach.

Q4.6: Are there any other matters you wish to be considered for guidance on compliance with Regulation 26?

Any changes being introduced as best practice guidance relating to regulation 26 by OPBAS should also be a best practice requirement for all the statutory supervisory bodies, thereby ensuring consistency of approach. While statutory bodies are not within the scope of OPBAS' remit, accountants and legal professionals should not have different requirements to the other sectors within the scope of money laundering such as financial services and real estate which arguably have a higher risk of money laundering due to the volume and value of transactions in those sectors.

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Furthermore, HMRC should also adhere to the same OPBAS standards regarding the accountancy sector, which would include any changes in best practice requirements relating to regulation 26. HMT, as part of the economic crime plan actions, should discuss with HMRC its plan for issuing its self-assessment report against the OPBAS Source Book publicly available in the interests of transparency and level playing field with the accountancy professional bodies.

If you have any queries regarding, please do not hesitate to contact me anned@ifa.org.uk

Yours sincerely,

Anne Davis
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IFA