



FCA QUARTERLY CONSULTATION NO 28 (CP20/7)

Issued 17 July 2020

ICAEW welcomes the opportunity to comment on the consultation document *CP20/7 FCA Quarterly Consultation No 28* published by the Financial Conduct Authority in June 2020, a copy of which is available from this [link](#).

Our response is solely in respect of our role as a Supervisory Authority under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, supervising approximately 11,000 firms.

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

1. We agree that ‘sufficient information’ should exclude acceptance of self-declaration for a new application for a new BOOM and by default requires a criminal record check to be obtained by the individual.
2. However, we do consider it acceptable that a larger, multi-partner firm obtains and reviews the certificates and declares, on behalf of the firm, that none of the BOOMs in that firm have any relevant criminal convictions. The supervisory authority can sample check those certificates to gain the assurance that the declaration is valid (as is suggested in paragraph 4.9 of CP20/7).
3. We do not agree that ‘sufficient information’ should include evidence of UK residency within the previous 5 years. We are unclear what evidence we must obtain to demonstrate this. We also believe that the matter is addressed within the DBS application process itself as those that have lived outside of the UK for a prolonged period may not be able to obtain a criminal record check certificate.

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

4. We agree and this is in line with our current procedures. We use the lists provided at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants> as our starting point for an equivalent check.

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

5. We do not agree with your expectations regarding the obligation and approach to the monitoring of criminality checks. They go beyond the requirements of regulation 26 which set out the obligations of the supervisory authority at the point of ‘application’. The legal obligation for the ongoing validity of the approval falls on the firm (regulation 26 (4)) and there is an ongoing obligation on the individual and firm to notify ICAEW, as supervisory authority, of any subsequent relevant criminal convictions (regulation 26 (9)).
6. The expectations also contradict discussions with HM Treasury during late 2017 when it was made clear that the criminal record checks were a one-off exercise, a message which the professional body supervisors have delivered to their supervised populations.

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?

7. Yes, we agree.

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?

8. We do not agree with this expectation. We are unclear how the situation can arise of an individual being in a seemingly more junior role that also meets the definition of an officer or manager. The accountancy professional body supervisors have set out clear definitions for both an 'officer' and a 'manager' in the context of regulation 26 and they are senior individuals at either director/principal level and/or individuals responsible for the direction of AML policy and checking compliance (ie, the money laundering compliance principal or money laundering reporting officer).

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

9. There are no such matters.