

Summary of feedback received

July 2017

Consultation title	Treatment of politically exposed persons (PEPs) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
Date of consultation	16 March 2017 to 18 April 2017
Summary of feedback received	<p>We received 43 responses to our guidance consultation from a wide range of respondents, including a government department, firms, consumers, public bodies, anti-corruption campaigners, legal professions and trade associations on behalf of their members.</p> <p>All but one respondent were supportive of the FCA providing guidance to firms we regulate about how to meet their obligations to treat PEPs on a risk-based, differential basis.</p> <p>There was, however, significant divergence among respondents about how the FCA could best support a risk-based approach while meeting the policy intention behind the requirement to provide guidance.</p> <p>Respondents commented on all parts of the guidance and we have summarised the feedback under the following headings:</p> <ul style="list-style-type: none"> • The definition of a PEP • The definition of family members • How risk factors should be handled • Guidance on risk-based systems and controls • Higher risk factors • Lower risk factors • Application of enhanced due diligence (EDD) in lower risk situations • De-risking • PEPs involved in companies <p>All responses pointed to areas that they did not think the guidance works as intended but these comments were mostly general in nature and most did not include specific amendments for us to consider.</p>

Definition of a PEP

Some industry respondents were concerned that limiting the definition of a PEP in the guidance would mean that firms would not be able to apply the definition of a PEP outside the UK where risks of corruption may be high at lower levels of government. Many respondents requested clarification on many of the definitions that were unclear in the draft Money Laundering Regulations, particularly what is a 'prominent public position' and definitions of an 'international organisation', 'members of parliament or similar legislative bodies' and 'junior or mid-ranking'. They asked that the final guidance be clear what is and is not within those definitions.

The definition of family members

Some respondents shared the experience that their families had experienced and argued that it is disproportionate to apply the definition too broadly in lower risk cases. Other respondents pointed to how corrupt PEPs have made use of close or wider family members to hide their ownership of assets and were concerned that a closely drawn definition might miss such people.

How risk factors should be handled

Respondents generally agreed with the lists of low and high risk factors. Some welcomed the reference to the UK as a low-risk jurisdiction while others provided evidence that they said showed that the UK should not be treated as low risk.

Overall, respondents from the industry requested greater detail in how they should consider the risk factors when coming to an overall assessment of risk. One respondent raised concerns that the risk factors for higher risk jurisdictions might give rise to discrimination. Some others wanted to understand the interplay between this and guidance on risk factors published by the European Supervisory Authorities and guidance on PEPs published by the Financial Action Taskforce (FATF).

Guidance on risk-based systems and controls

Some respondents sought greater clarity in the guidance on FCA's expectations on the appropriate systems and controls for assessing the risks of PEPs and how the FCA interprets 'senior management' for the purposes of signing off relationships with PEPs.

Higher risk factors

One respondent was concerned that the higher risk factors were not suitable and provided evidence from their own research of additional factors that they felt should be in the guidance.

Lower risk factors

Responses from consumers supported the guidance, stating explicitly that the guidance should automatically consider PEPs in the UK, their family members and known close associates as low risk. Some industry responses disagreed with this approach, providing evidence that pointed to there being some risk among UK PEPs.

Industry respondents noted a lack of lower risk factors covering the nature of the business relationship or product. Some industry responses pointed to products they consider carry low corruption risk such as child savings products or low transaction relationships with PEPs, and asked that these extra factors are flagged in the final guidance.

Application of enhanced customer due diligence (EDD) in lower risk situations

Respondents asked the FCA to provide more guidance on how to reduce the EDD measure in lower risk situations, particularly about how to satisfy source of wealth/source of funds checks.

De-risking

Some respondents were concerned about the statement in the guidance about FCA's expectations on rejecting or closing accounts. While some welcomed this statement others pointed to the potential unintended consequences of the current drafting might extend, rather than reduce, risk aversion in the financial services industry.

PEPs involved in companies

Some respondents asked for clarification of how to deal with situations where a PEP is involved in a company/organisation and whether they should be required to treat such companies as if they are PEPs and apply enhanced due diligence.

Response to feedback received

The Money Laundering Regulations (MLRs) require firms to apply a risk-based approach to all their systems and controls. This involves judgement on the part of firms, based on information they have collected, their risk appetite and any other factors that are relevant. Our guidance is intended to support, but not replace, a firm's judgement.

We appreciate that firms want certainty, and we have clarified to the extent we can while recognising that guidance needs to be useful for the whole of the financial services sector. In addition, firms are explicitly required by the MLRs to assess and mitigate their own risks as they feel appropriate. We have, therefore, had to balance the requests for more detailed guidance from the industry against the importance of the risk-based approach and

in light of the policy intention behind the requirements to provide guidance.

In relation to the definition of a PEP and which PEPs should be treated as low risk, the FCA understands that the policy intention points to those holding public office in the UK as being low risk because of the checks and balances that exist in parliamentary, audit and journalistic scrutiny and the extent to which the UK's focus on anti-corruption has created a lower risk environment.

While the 4th Money Laundering Directive (4MLD) does not distinguish between 'domestic' and 'foreign' PEPs, FATF standards do make a distinction. FATF states that domestic PEPs should be identified and that the level of due diligence applied should be commensurate with the individual risks of a business relationship. Our judgement that UK PEPs pose a lower risk of corruption is supported by Transparency International's Corruptions Perceptions Index, which ranks the United Kingdom in the top 10 countries globally, with perceptions having improved since 2012. In addition, many other countries have provided, either via guidance and/or statute, for a risk-based and differential approach to domestic PEPs versus foreign PEPs (these include Hong Kong, Canada and Singapore). And, in May 2017, the Wolfsberg Group issued guidance for global banks which stated that 'Typically, foreign PEPs may pose a higher risk compared to domestic PEPs'. We therefore consider that our position that UK PEPs should be treated as lower risk is consistent with FATF standards. It should also be noted that the EU is currently discussing targeted measures to amend 4MLD, so that EEA PEPs are only subject to standard customer due diligence measures unless other risks are apparent.

As such we think that it is right that the guidance explicitly requires that only a small number of office holders in the UK are to be treated as PEPs and where they are then they, their family members and close associates should be subject to the lowest levels of enhanced due diligence.

Risk factors that point to either higher or lower risk should be assessed in the round and given appropriate weight by firms. Firms should not automatically treat a customer as higher risk just because of one factor alone without good justification.

Changes made to the guidance as a result of feedback received

We have made a number of changes to provide further guidance, and clarify uncertainties in the draft guidance.

In our guidance consultation we noted that the Government has set further requirements on the FCA to provide guidance on the treatment of PEPs in Regulation 48 of the draft Money Laundering Regulations. While the draft guidance covered many of these points, we have updated it further to ensure that the final version meets these obligations. Respondents were also helpful in pointing out where they considered we had failed to meet these

obligations.

Some respondents requested that we reorder the guidance to make it read better for users and we felt that was a reasonable request. Users of the guidance should remember that the guidance should be read as a whole when meeting their AML obligations.

Definition of a PEP

We have provided further guidance that restricts the application of PEP in the UK to only national or local governments and very senior officials but allows firms to continue to interpret the PEP definition according to the risks that they assess. Guidance cannot cover all possibilities and firms will need to use their judgement on a case-by-case basis when interpreting our guidance.

The definition of family members

We have amended the guidance, in light of significant level of response, to assert that we believe family members ought to include brothers or sisters. We have also added further text on how a firm might apply, on a risk-based approach, the definition more broadly to wider family where evidence points to there being a risk.

How risk factors should be handled

We have clarified that firms should consider all relevant factors when coming to a conclusion of whether a PEP, family member or known close associate is higher or lower risk.

Guidance on the risk-based systems and controls

We have produced a new chapter that sets out the broad obligations in the MLRs and how we expect firms to assess and document risk in relation to PEPs. This includes examples of sources of information that a firm might use and our expectation on levels of sign-off for higher and lower risk PEP relationships

Application of enhanced customer due diligence (EDD) in lower risk situations

We have not made any changes in relation to this as we expect firms to apply measures on their own assessment of risk and so steps in lower risk situations will vary.

De-risking

The guidance requires firms to apply a proportionate and risk-based approach on a case-by-case basis. As such, we have retained text in the guidance about our expectations on access to services but have clarified the statement in line with the recitals of the 4th Money Laundering Directive, while also stating where

the Money Laundering Regulations require a firm to not open or cease a business relationship.

Status of the guidance

Some respondents asked whether the guidance would be approved by the Treasury in the same way that guidance issued by the Joint Money Laundering Steering Group. We have confirmed with the Treasury that they do not intend to approve this guidance. We have added a new introductory paragraph that clarifies this.

[You can access the full text of the guidance consulted on](#)
