



FLA RESPONSE TO THE JOINT MONEY LAUNDERING STEERING GROUP CONSULTATION ON THE PROPOSED NEW ANTI-MONEY LAUNDERING GUIDANCE

The Finance & Leasing Association (FLA) is the main representative organisation for the UK consumer credit, motor finance and asset finance sectors, and the largest organisation of its type in Europe. We welcome the opportunity to respond to the JMLSG's consultation. FLA has played an important part in preparing the Guidance with Martin Hall, FLA's Director-General, chairing the Editorial Panel which oversees the revision of the guidance. He has however treated the FLA's sectoral guidance at arm's length.

FLA's members comprise banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms. The facilities they provide include finance leasing, operating leasing, hire purchase, conditional sale, personal contract purchase plans, personal lease plans, secured and unsecured personal loans, credit cards and store card facilities.

FLA's motor and consumer members are regulated by the CCA. Firms which are subsidiaries of parent banks comply with their company's governance rules (group compliance) and so also come under the FSA's supervision regime. Some firms are FSA-regulated to sell general insurance but are not subject to the FSA Money Laundering Sourcebook. Asset Finance (and lending and factoring) is wholly unregulated unless a firm is a bank or a non-bank subsidiary of a bank and is subject to prudential supervision.

FLA members achieved £93.4 billion of new business in 2004. Of this £25.0 billion was provided to the business sector and £68.4 billion was provided to the consumer sector. In the above total is £18.3 billion of finance provided to the motor sector. FLA members financed at least 50% of all new car registrations in the UK in 2004.

1. OVERALL COMMENTS

We welcome the draft guidance particularly the new web-based approach which will enable businesses to more easily navigate through different aspects of the guidance. Equally the move to a more risk-based approach is to be commended.

We contend that the sector specific guidance is not as practical as it should be. FLA's contributions were deliberately prescriptive so as to make a firm's obligations clear. Other sections lack clarity. We also have concerns about the legal basis and costs relating to the requirement to identify additional credit card and store card holders.

Our main issue on the main body of the guidance is that capturing country of residence / origin information provides a better indication of potential terrorist activity than the nationality of the customer.



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2. SPECIFIC COMMENTS

Q1 Does the proposed guidance offer firms the comfort they expect in relation to their obligations under the Money Laundering Regulations and the Proceeds of Crime Act? If not, why not?

Generally yes, although the way the legislation is structured, a firm could follow the guidance but yet have no safe harbour. In effect, the legislation does not provide any reassurance that if a firm conforms then it will not be held liable.

Q2 Is the scope of the proposed guidance right? If not, where should this be changed?

We particularly welcome the concept of sectoral guidance, though in practice some of the detail and scope could be improved (see our comments below).

Q3 Is there likely to be a serious, adverse impact (whether in terms of cost or otherwise) of the changes proposed? If so, please explain why, and, if possible, quantify this impact.

On the whole there will be no more than what is currently required to comply with the guidance. However there are two areas where there are cost implications:

- Collecting nationality information would require systems' changes (see response to Q8).
- The introduction of due diligence on additional cardholders and system changes in order to capture address and date of birth information (see response to Q12). Presently our members only capture name on their systems and the card is issued to the primary cardholders' address.

Q4 What issues do you see in getting senior management buy-in to the risk-based approach?

There are two possible eventualities. A business may consider itself low risk and therefore decide that it need only comply with the minimum requirements. Alternatively, a bank may, for example, decide that it is risky to be low risk and, in order to cover themselves, do more than is necessary.

It is clear that senior management will be nervous about their new responsibilities and will initially herald a period of uncertainty. The key is to educate senior management about the importance of tackling money laundering in a proportionate manner. Has the JMLSG considered whether it could do anything over and above chapter 3 of the guidance to assist in this aim? For example, a targeted campaign to senior management reminding them of their responsibilities.

Q5 A risk-based approach carries an inherent risk that it may lead to inconsistencies of approaches across firms, and therefore to an unlevel playing field. Are there grounds for introducing more prescription, to reduce this risk?

There is scope for inconsistency of approach between sectors. The sectoral guidance on asset finance and motor finance is more prescriptive than some of the others. We would argue that the guidance for other sectors in Part II should be more prescriptive.

Q6 Would you wish there to be further practical guidance, in addition to that in Part I and the relevant sectoral guidance in Part II, on how a risk-based approach should be put in place? If so, what form would this take?

Practical guidance is very important for business. This is reflected in the guidance produced by FLA on the asset finance and motor finance sectors. If other parts of the industry do not adopt such an approach then they may require additional guidance.

Q7 Do you support the separation of the requirements to obtain specific information from a potential customer from the requirements to verify some of this information?

Yes, FLA member businesses have always made this distinction.

Q8 Do you support the introduction of a requirement to obtain a customer's date of birth and nationality? If not, why not?

There is no issue with collecting a customer's date of birth. This is a data protection requirement when conducting a credit search.

Collecting nationality information would require systems' changes and could require "opt-in consent" were it classified as sensitive data (pertaining to racial or ethnic origin) under the Data Protection Act. Capturing country of residence / origin information provides a better indication of potential terrorist activity than the nationality of the customer.

Furthermore, there may be negative customer reaction to questions regarding nationality as the majority of our customers are UK nationals who may resent this question being asked when they are entering into a loan agreement.

Q9 Do you agree with the proposal to restrict the listing of acceptable documents to a few representative examples? If not, why not?

We are happy with the list provided in the guidance as the emphasis is now on the verification of ID. Businesses can still rely on other documentation as part of their credit risk procedures.

Q10 Do you support the proposed greater use of electronic verification? If not, why not? Are there additional conditions that should be placed on the use of electronic verification? If so, please say what these should be, and why?

Yes. This is already reflected in the guidance.

Q11 Do you support the proposals for using the verification work carried out by other regulated firms? If not, why not?

We are supportive in principle but we need clear guidance on what is required. We would want assurances that regulators endorsed the use of certification.

We believe that paragraph 5.5.26 (source of funds as evidence) is only valid for low risk products where the criteria have been clearly defined as per the approach adopted in the sectoral guidance on asset finance and motor finance.

There should be a requirement to attach copies of evidence to the certificate of introduction so that it can be retained for five years after the relationship is terminated. Otherwise, the other party might end the relationship first and destroy the evidence before the first party has terminated their relationship.

Q12 Do you find the proposed sectoral guidance approach helpful and understandable?

Do you have comments on the detail of any of the sectoral guidance?

Yes it is helpful and understandable. As mentioned above, other sections of sectoral guidance should be more prescriptive as per the asset and motor finance sections.

Paragraph 2.27 on additional credit card holders: we believe that the requirement to identify additional card holders runs contrary to:

- Regulation 114 of the Representation of the People (England and Wales) Regulations 2001 which prohibits the use of the full Electoral Roll for identification purposes of additional card holders; it is not a permitted use under the regulation.
- Data Protection Act consents would be required to be captured for these credit searches. We consider there are issues with regard to excessive processing of data where credit is not being granted.

We would highlight that there is no requirement to identify additional card holders in either money laundering legislation or the FSA money laundering rules. No other European state has a requirement to identify additional card holders and the Irish Money Laundering Guidance Notes categorically state there is no requirement to do so.

The requirement would also go against the FSA's ID Working Group Progress Report's recognition of a "fear factor" in firms, which had perhaps led to a too conservative approach to identification and verification, that the process was onerous for Customers, and that a single identity document was preferable, without a need to verify address.

There is also the question of costs associated with the due diligence including credit bureau and sanction checking but more significantly, system changes in order to capture address and date of birth information with little or no perceived benefit to the fight against money laundering.

In terms of other detailed points on Part II:

- Paragraph 2.6 could be expanded to reflect the fact that credit limits are generally

lower than on credit cards and, as the spend can only be made within the retail organisation, the money laundering risk is much lower than with a credit card and this could be reflected in the risk-based approach to due diligence on these products.

- Add 'standard ID' in paragraph 8.18: "The identification of non personal customers e.g. partnerships, companies, associations etc. should be in accordance with the **standard ID** procedures set out in Part I, chapter 5."
- Paragraph 9.14: "The features of asset finance are generally that no monies are advanced to the customer, but are paid into a supplier's bank account to fund the purchase of an asset which is made available under contract to the customer. Repayments by the customer are usually made from **other their** bank accounts by direct debit; in most cases, repayments in cash are not encouraged."
- Section 12 (trade finance) defines factoring and discounting but does not offer any AML guidance on them. This an example of a lack of practical guidance.

Q13 Are there any sectors not included in Part II that you believe merit inclusion?

There needs to be guidance for personal lending and business lending. The section on retail banking is too general. There needs to be more product specific practical guidance. We would be prepared to contribute to this.

Also there is no guidance for mortgages.

Q14 What are your views on the timing of the introduction of the new guidance? How do you see the withdrawal of the 2003 Guidance Notes being effected?

The only timing issue relates to the time needed for any system changes if the proposed collection of the customer's nationality is taken forward.

There may overlap with the Third Money Laundering Directive which may be implemented in the UK as early as mid-2006 which is around the same time as this guidance is produced. Indeed we may have a clearer idea of the lead-in period by the end of July.

Q15 What are your views on the need for a Helpdesk, and how it should be financed?

We would support a 'user pays' facility. However, some of FLA's member companies bar all members of staff from making premium rate calls to prevent staff fraud. An alternative would be to charge organisations via a dedicated account.

Q16 Having seen the web-based version of this consultation draft, do you find it helpful, and would you use it? If not, why not?

The web-based version of the consultation draft is excellent.

3. FLA CONTACT DETAILS

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27 June 2005

More more about FLA please visit our e-politix micro-site at
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