



# Response by TISA to FCA's Consultation on Financial Crime Updates (CP 24/9)

Sophie Legrand-Green

Policy Executive

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## About TISA

**The Investing and Saving Alliance (TISA)** is a unique, rapidly growing membership organisation for UK financial services.

**Our ambition is to improve the financial wellbeing of all UK consumers.** We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry**. We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **financial inclusion, consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **Governance, Conduct and Culture, Consumer Duty, MiFID II, CASS, ESG/RSI, Operational Resilience, Financial Crime Prevention**, and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.



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## Responses to Consultation Questions

### Question 1: Do you agree with the suggested drafting as set out in this Consultation Paper?

We are broadly comfortable with the proposed additions as they add extra context and guidance about key elements of process, which is very useful. There are however a couple of areas which could be enhanced or adjusted as follows:

#### Section 3 - CDD / Ongoing Monitoring

3.2.3 Self assessment questions, third bullet: the drafting doesn't quite make sense. Presumably it should read 'For cryptoasset business, how are risks of different types of cryptoasset (e.g. anonymity-enhanced or privacy coins) or wallet solutions *assessed and addressed*?'

3.2.5A - Poor Practice (table) - "A firm does not verify that a counterparty firm is monitoring customer activity." The terminology used here may be misinterpreted. We have no issue with saying that firms need to 'verify' outsource providers working on their behalf, but the requirement to 'verify' is too strong a term when considering corporate investors (nominees, platforms etc), because whilst firms can ask corporate investors questions and seek assurances about key points, they cannot verify in the purest sense. We would also draw attention to the equivalent language that has been adopted in the good practice column of 7.2.3 in respect of sanctions, which says "A firm only relies on other firms' screening (such as outsourcers or intermediaries) after taking steps to satisfy themselves this is appropriate". We recommend that the same language is adopted when looking at the corresponding poor practice, as this more accurately reflects the approach taken and is consistent.

3.2.5B, first line, should read "The FCA found that 3 key parts of the bank's"

There is also an inconsistent approach to either naming or leaving anonymous the firms that have been subject to prior failings, when citing examples or case studies. For example the bank in 3.2.5b is clearly identifiable but un-named, where other smaller firms are specifically (re)named in 3.2.14 / 16 / 17, and then again there is a mixed approach between anonymous (6.2.5 / 6.2.7) and named (5.2.4 / 5.2.5 / 6.2.6) in other sections. We recommend that a consistent approach should be taken throughout the FCG to either naming or not naming for fairness reasons.

#### Section 4 - Fraud

4.2.1 - Fraud – We propose that a new item is added to the 'poor practice' column to reflect recent publicised instances of individuals being prosecuted for fraud<sup>1</sup>. To cover this, we recommend that a specific poor practices covers the scenario where a single employee has authority to transact on behalf of the company with little or no independent oversight in place.

#### Section 5 - Data Security

5.2.3A – We propose that examples covering the ability to restore systems following an incident are expanded to include a requirement that the restoration is done in a timely manner, as we think this is an important factor.

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<sup>1</sup>[Limavady: 'Insatiable greed' of woman who defrauded company of more than £450K - BBC News](https://www.bbc.com/news/uk-england-merseyside-54907267)

<https://www.bbc.com/news/uk-england-merseyside-54907267>

[Tamworth women jailed over £634k will fraud - BBC News](https://www.bbc.com/news/uk-england-merseyside-54907267)

[Oxford Bus company employee jailed for stealing £700k - BBC News \(ampproject.org\)](https://www.bbc.com/news/uk-england-merseyside-54907267)



5.2.3A – We propose that the ‘poor practice’ column is expanded to include the following example of a poor practice: having inadequate controls to revoke access for staff that leave the firm or move to another department and no longer require it.

#### Section 7 - Sanctions

7.2.1 or 7.2.3 – we propose that a new item is added to the good practice column in either table covering the following requirement: a firm should review its sanctions solution(s) for effectiveness on a periodic basis and should use external expertise as appropriate.

7.2.2A – The consultation proposes that the following good practice should be added in at 7.2.2A: “The firm is able to identify activity that is not in line with the customer profile or is otherwise suspicious and ensures that these are reported quickly to the nominated officer for timely consideration.” We think this example of a good practice point would be better placed in 3.2.5 (CDD/ongoing monitoring).

#### Cryptoasset Businesses

As noted, the FCA has conducted extensive work as cryptoasset businesses have come within the FCA’s purview. This work includes the FCA’s [Cryptoasset AML / CTF regime: feedback on good and poor quality applications | FCA](#). For consistency, we think the FCG should specifically signpost this feedback so that useful material on relevant good and poor practices are joined up.

**Question 2: For future iterations of the Guide which chapters in the Guide would you like us to consult on or provide further guidance? Are there any financial crime topics currently not in the Guide that you would like us to consult on in the future?**

It would be helpful for the FCA to set out its workplan and estimated timeline in respect of the Economic Crime and Corporate Transparency Act (ECCTA). We understand that it may take some time for the new requirements to be embedded and for best practices to be established, and that the FCA may wish to undertake a review of practices to help inform future FCG content. It would be good to understand how the FCA expects to approach this and any associated timelines.

In addition, to this longer term piece of work, we would also like to take the opportunity to call upon the FCA to consider some initial, minimum high-level requirements in respect of the ECCTA, that could be included in the FCG at this stage. For example, firms could should have a policy documenting its approach and controls in respect of the new corporate fraud offence. Such requirements are fairly straightforward and could be used to guide ECCTA implementation, with further, more detailed guidance to follow.

**Question 3: Do you foresee any unintended consequences from the proposals?**

Whilst not strictly relevant to the current consultation, we would like to take the opportunity to draw attention to the unintended consequences of Article 5F Article 5f(1) of Council Regulation (EU) 833/2014, which allows Russian nationals that are EU resident to be out of scope of the sanction restrictions, whilst UK residents are caught by it.

This discrepancy has the potential to cause considerable consumer duty issues for impacted investors, as well as give rise to operational issues for UK firms, because this nuanced situation is being handled by workarounds, which can be cumbersome and time-consuming. We understand Switzerland has already been granted an exemption and we would like to take the opportunity to urge the UK Government and



official sector to work to achieve the same exemption for the UK, so that UK consumers and UK firms are not disadvantaged.

**Question 4: Do you agree with our cost benefit analysis and conclusion? If you do not, please provide an explanation, including any estimated costs or benefits that may be relevant.**

We do agree with the cost benefit analysis undertaken by the FCA, but believe it could be more-encompassing and transparent by incorporating the following factors and considerations.

We think there are additional policy rationales for the FCA's intervention, which should be included in the consultation and cost benefit analysis (CBA); namely, to provide certainty, clarity and consistency across FCA regulation and guidance (e.g. given with more general approach to regulating crypto, and clarifying how the Consumer Duty operates alongside more detailed Financial Crime requirements).

We also note that the term 'Quality of Life' is used in the CBA. The way in which this term is used is not familiar and would benefit from clarity on its definition and scope. It is not immediately clear that the FCA is talking about the FCG's 'quality of life' (i.e. the document's usefulness), rather than consumers' financial wellbeing / quality of life. If this is this a term the FCA will be adopting more generally in its CBAs, we think it would be beneficial to provide more context on precisely what this phrase is intended to capture.

The benefits section of the CBA should link back to the policy objectives: i.e. the benefits should further and deliver those stated objectives. This piece is currently missing. As previously mentioned, the desire to have certainty, clarity and consistency across FCA regulation and guidance should be noted as being a benefit: if firms and consumers have certainty in a regime, they can trust it and feel confident to make decisions. For example, businesses can decide to invest in new resource or equipment to enhance their compliance, or individuals will have greater certainty that their personal ID documents will be held securely and that firms are taking steps to protect them from financial crime.

It might also be useful to link the FCA's CBA to their desired [outcomes and metrics](#) – and consider how the interventions might further those stated outcomes.

We would also appreciate greater transparency as to how the FCA has arrived at its estimated costs: perhaps the FCA could include detail of its data sources or the methodology applied. This would help firms assess and comment on CBAs. On the costs contained in the consultation's CBA, given most of the proposed content is derived from reviews of what firms are actually doing now, the costs may be overstated. We appreciate that this may not be the case for all firms, but for larger, more sophisticated firms, the new proposals for the FCG are unlikely to lead to new substantive requirements.

Finally, we think it would be useful for the FCA to monitor the actual costs of implementation, to help confirm and refine the accuracy of its cost estimations, both in respect of this piece of work, but also future CBAs and cost estimates.

**Question 5: Do you agree with the comments on the assessment of the equality and diversity considerations?**

No, we do not agree. We think there are some aspects of the proposals that have the potential to impact consumers with protected characteristics.

For example, some of the proposed guidance relates to additional customer support, including real-time human interfaces. These requirements are presumably aimed at those that are not digitally enabled or capable and / or would prefer human interactions and support. Has the FCA considered whether this



requirement will impact specific cohorts of consumers with protected characteristics (e.g. adults within a certain age bracket, or with certain vulnerabilities)? Whilst this requirement may increase costs for firms, has the FCA considered whether the best practice to have human interfaces is worthwhile because it will lead to improved consumer outcomes for individuals that are more likely to have certain protected characteristics?

More generally, has the FCA researched and considered whether individuals with particular protected characteristics and more or less likely to be victims of financial crime, and where individuals are more likely to be victims of crime, has the FCA considered this when suggesting controls that target the mitigation of this harm for that cohort of consumers? This type of analysis would help make policy interventions targeted and proportionate.

Further examples of how the current proposals may impact individuals with particular protected characteristics are the requirements that relate to increased automation and innovation in respect of CDD and transaction monitoring. There is a balance to be struck here: as more processes are digitised and automated, there is a risk that certain cohorts of consumers become victims of overzealous automated controls, which can lead to their financial exclusion. For example, if a consumer does not have certain types of ID, or if they are not particularly tech savvy and quick to respond to an automated alert, they may find that their account has been blocked. Has the FCA considered whether individuals with protected characteristics are likely to be more or less impacted by the increased adoption of digital, automated processes and what checks and balances might be good business practice to minimise this outcome? We recommend that the guidance includes something specific on this, such as an example of good business practice is to pilot new approaches and demonstrate 'appropriate testing', or that a poor outcome would be to implement a new approach or new software solution without testing its impact on customers that may not be tech savvy.

We also note that the FCA has not made reference to vulnerable customers in its consultation, which is a key tenet of the Consumer Duty. We think this is a missed opportunity and we would encourage the FCA to consider potential impacts that their proposals may have on vulnerable customers. The FCA's proposals seek to remind firms that the Consumer Duty must be considered alongside financial crime obligations. We think that this aim would be furthered if the FCA were to include examples of good and poor practices of financial crime approaches, processes and controls that could impact vulnerable customers (in either a good or poor manner). We would encourage the FCA to consider their proposals in light of these potential impacts and how best they can use their policy interventions to advance equality of opportunity for all consumers.