

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: TR16/3: Fair treatment for consumers who suffer unauthorised transactions

Lead regulator: FCA

Date of assessment: 13 March 2017

Commencement date: July 2015

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

The thematic review (TR) considered whether consumers were being treated fairly in relation to unauthorised transactions¹, and whether consumer protections in place (under the Payment Service Regulations 2009 and Consumer Credit Act 1974) were effective in delivering fair outcomes for customers.

The review found that firms were generally meeting their legal requirements and were making good efforts to deliver fair customer outcomes. Firms tended to err on the side of the customer when reviewing claims. The review identified areas of good practice, including: fraud prevention, customer communications and oversight of unauthorised transactions. We also recognised that assessing claims of unauthorised transactions requires firms to make finely balanced judgements and implement complex legal requirements. There were areas where some firms needed to implement improvements to bring them up to the required standard: the content of terms and conditions, lengthy claims processes, the development of effective Management Information.

Which type of business will be affected? How many are estimated to be affected?

The TR covered unauthorised transactions made using a payment service that is regulated by the Payment Services Regulations (2009) that implemented the Payment Services Directive. This affects retail banks and providers of credit cards. 140 providers of current accounts and 33 providers of credit cards according to FCA data.

¹ Transactions from your current, card-based or instant-access savings account where you have not authorised the transaction or your bank cannot prove you were at fault.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2015	July 2015	10	0	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

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Non-compliance

Predominantly, the thematic review reminded firms of existing requirements. As such, where firms incurred costs, in the most part this would have been in relation to non-compliance with existing rules. As compliance with existing regulatory requirements is assumed as part of the Enterprise Act, any costs incurred by firms bringing themselves to a compliant standard have not been considered, as this would in effect be double-counting the costs of implementing the original rules.

Firms that were non-compliant with pre-existing rules may have faced costs from additional staff training; changes to processes and procedures; system changes (in limited circumstances for process improvements or development of Management Information, etc.); and changes to oversight processes. The main costs to implement the rule changes would and should have been made ahead of the Payment Services Regulations being implemented in 2009.

Familiarisation

For the familiarisation cost estimate below, we have assumed that the TR will be read by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates. In addition, we assume that the speed of reading technical text is 50-100 words per minute is based on EFTEC (2013), "Evaluating the cost savings to business revised EA guidance – method paper".

All firms covered by the review (173 firms) would be expected to familiarise themselves with its content, we estimate this one-off cost to be approximately **£16,600**.

Cost calculation: there are 173 firms in scope and we expect it would take approximately 2 hours to read the (9,000 word) document. Using an hourly rate of £48, the total cost is £16,608 (=48x2x173). We arrived at this estimate based on our broader supervisory knowledge of how firms respond to our thematic reports.

Costs and benefits from examples of good practice

Providing examples of good practice can impose costs on firms as it sets an implied standard which we would like firms to move towards. As we mean for it to change firm behaviour, this may require costs to firms. However, it is also possible for examples of good practice to benefit firms, for example, by highlighting a practice that would improve efficiency, lowering cost. The review suggested a number of areas of good practice that may have benefits for previously compliant firms. We expect these improvements, if implemented, would have been largely cost neutral because most suggested improvements would lead to more efficient working processes, reducing costs in the long-run. However no costing data was collected at the time of the review and it is considered disproportionate to collect the data now, some twenty months since publication. Some good practice examples are shown below:

Examples of Good Practice		Benefits and Possible Costs of adopting Practice
3.13 and box	Firms collaborating with each other and industry bodies to help minimise risks to consumers and identify emerging risks	A better understanding of emerging risks should provide firms with a greater opportunity to mitigate those risks.
3.27 box 1	Firms collaborating with industry bodies to handle risk of CPAs in merchant behaviour	A better understanding of risks in merchant's behaviour should provide firms with a greater opportunity to mitigate those risks. The expectation is that such collaboration would take place during existing trade association meetings and, as such, would be cost neutral.
3.30	Firms performing consumer research with customers that suffered unauthorised transaction to understand experiences.	This should improve the firm's processes and should lead to better customer communications, based on greater understanding of the experiences of consumers who have suffered unauthorised transactions.
3.34 box	Using dedicated teams and named claims handlers for vulnerable customers	The time taken to deal with vulnerable customers should not increase (it may decrease due to the team's expertise), and the total number of claims will not be affected either.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

Link to Thematic review: Fair treatment for consumers who suffer unauthorised transactions:
<https://www.fca.org.uk/publication/thematic-reviews/tr15-10.pdf>

Link to Robert Half salary centre:
<https://www.roberthalf.co.uk/news-insights/salary-centre-2016>