

Feedback Statement

FS16/12

Call for Input: the FCA's approach to the current payment services regime



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Contents

Abbreviations used in this paper	3
1 Introduction	5
2 Summary of feedback	7
3 Our response	11
4 Next Steps	12
Annex	
1 Non-confidential responses	13

In this Feedback Statement we report on the main issues arising from Call for Input: the FCA's approach to the current payment services regime

Please send any comments or enquiries to:

Banking and Payments Policy
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 1000

Email: Paymentservices@fca.org.uk

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Abbreviations used in this paper

Cfi	Call for Input
EBA	European Banking Authority
PSD2	The Revised Payments Services Directive
PSRs	Payment Services Regulations
PSR	Payment Systems Regulator
PSP	Payment Service Provider
PAD	Payment Accounts Directive
RTS	Regulatory Technical Standards

1. Overview

Introduction

- 1.1** We published a Call for Input (Cfi) on the FCA's approach to the current payment services regime¹ in February 2016. The Cfi sought views from firms, trade bodies and other interested parties on our current guidance to help firms comply with the payment services regime. This includes the Payment Services Approach Document² and the Perimeter Guidance Manual (PERG 15).³
- 1.2** This feedback statement sets out:
- a summary of the feedback we received
 - our response
 - next steps

Background

- 1.3** In December 2015 the EU published Directive 2015/2366: a revised Payment Services Directive (PSD2). This updated the rules for payment service providers (PSPs) to reflect market and technological changes since the first Directive was adopted in 2007. The Treasury will be responsible for transposing the Directive into national law by 2018.
- 1.4** In light of these changes we intend to update our Approach Document and PERG 15. Before doing so, we issued a Cfi to better understand stakeholders' views on our existing guidance. In particular, we sought views on:
- whether regulated firms, or those seeking authorisation or registration, found the guidance useful
 - how well the guidance has kept pace with market developments and the growth in payment services
 - areas where we could provide further guidance or give additional clarity

1 www.fca.org.uk/news/call-for-input-payment-services-regime

2 www.fca.org.uk/publication/archive/payment-services-approach.pdf

3 handbook.fca.org.uk/handbook/PERG/15.pdf

- whether the guidance on relevant pieces of legislation and their interaction with the payment services regime is up-to-date
- the impact of having two separate and overlapping approach documents for the payment services and the e-money regimes⁴
- the payment services e-learning module⁵

4 www.fca.org.uk/publication/archive/emoney-approach.pdf

5 fca.intuition.com/lms/content/imported_PSD/index.html

2. Summary of feedback

- 2.1** We received 18 responses from stakeholders including payment service providers, trade bodies and other interested parties. Their comments covered a range of issues. We have summarised their feedback below.

How useful is the guidance?

- 2.2** Respondents were broadly happy with the current guidance. They said they found it a useful and comprehensive source of information, both during the authorisation process and when providing services. Some respondents asked us to add practical examples and diagrams to help them understand complex areas.

Market developments and the growth in payment services

- 2.3** We know that since the guidance was published in 2009 there have been market developments which affect the way firms provide payment services. Respondents pointed to a number of examples of where our guidance could be developed to take these changes into account.
- 2.4** Most notably, respondents considered that there are now new payment types and related technologies which it would be useful for the guidance to make reference to. This includes contactless and mobile payments, online and mobile banking, digital currencies and cheque imaging. Respondents suggested we could clarify whether these new developments fall within the regulatory perimeter. Some respondents pointed to the need to ensure the guidance does not favour any particular technological solution over another and that it should be flexible enough to accommodate future developments.
- 2.5** Some respondents suggested that the guidance could be updated to take into account developments or new business models in providing payment services that were not foreseen in the existing guidance. For example, we could give further clarity on merchant acquiring, which has seen development in the use of aggregators. Respondents suggested that we could update the merchant acquiring diagram in annex 5 and provide further clarity on how the conduct of business requirements apply (these are set out in chapter 8 of the Approach Document). They also suggested that further clarity about payment services benefiting from exemptions where business models have evolved would be helpful.

- 2.6** A number of respondents highlighted the issue of prospective PSPs' ability to secure payment account services (needed for safeguarding) and the issue of 'de-risking'⁶.
- 2.7** As well as market developments, respondents also said that regulatory initiatives such as the FCA's Cash Savings Market Study⁷ and the UK implementation of the Payment Accounts Directive⁸ had created new rules and guidance for PSPs which our guidance should take into account. They also suggested that we should incorporate or reference guidance developed by industry bodies since 2009.

Further guidance or clarification

- 2.8** Overall, respondents found the Approach Document and PERG 15 useful and comprehensive. However, they also suggested specific areas where we could provide further clarity or additional guidance. Broadly, most feedback concerned the Approach Document guidance on appointment of agents (chapter 5), Passporting (chapter 6) conduct of business requirements (chapter 8), safeguarding (chapter 10) and complaints handling (chapter 11). Respondents also suggested greater clarity in parts of PERG 15 would be helpful.
- 2.9** Feedback about appointment of agents concentrated on our guidance on the process for payment institutions carrying out fitness and propriety reviews of their proposed agents. There was also a request for further clarity on the distinction between agents and those who carry out operational functions (outsourcing).
- 2.10** We also received comments on different areas of the conduct of business requirements guidance. This included requests for clarity on:
- the permitted practices for PSPs in relation to value dating
 - liability for unauthorised direct debit transactions where these are settled through agents
 - the 13 month cut-off time for customers to notify their PSPs of unauthorised transactions and how this relates to more favourable terms, for example under the UK Direct Debit Scheme

Respondents also said that we could give further guidance about cases where customers give an incorrect unique identifier (such as mis-typing account details), known as 'misdirected payments', in light of recent industry work to address the issue.⁹ Some respondents asked that we make it clearer which information requirements apply when transactions involve foreign exchange or an account which is not a payment account. Finally, they suggested we provide further clarity on providing information 'on paper or another durable medium'.

- 2.11** A number of respondents asked us to clarify safeguarding requirements, including on acceptable methods for safeguarding, when safeguarding obligations come to an end and obligations on segregating funds.

⁶ The FCA published research in to this issue in May 2016, www.fca.org.uk/news/fca-research-into-the-issue-of-derisking

⁷ www.fca.org.uk/news/cash-savings-market-study

⁸ www.fca.org.uk/news/ps16-20-payment-accounts-regulations-2015-feedback-on-cp167-final-handbook-changes-finalised-guidance

⁹ www.paymentsuk.org.uk/projects/payments-made-error

- 2.12** They also asked for further clarity on how firms should treat complaints about payment services.
- 2.13** In chapter 2 of the Approach Document we set out the payment services which are covered by the PSRs. The first two of these services involve placing cash on a payment account or withdrawing cash from it. We provide further guidance on these payment services in PERG 15. A number of respondents asked us to provide more detail on what constitutes a payment account (this is currently covered in question 16 of PERG 15).

Interaction with other legislation and rules

- 2.14** The PSRs sets out comprehensive rules for the provision of payment services, but PSPs also need to comply with other relevant EU and UK legislation. The Approach Document includes reference to a number of key pieces of legislation which firms should consider alongside the PSRs. We are aware that there have been a number of relevant regulatory and legislative developments since 2009. We asked respondents to provide details of any new rules where they considered additional guidance would be useful.
- 2.15** Respondents pointed to changes in the consumer credit regime, where the FCA took over from the Office of Fair Trading as regulator for the consumer credit industry in 2014. Some respondents suggested that cross references in the payment services guidance between the PSRs and the new consumer credit sourcebook (CONC)¹⁰ would be useful. Under the current regime, specific provisions of the PSRs do not apply if the contract under which a payment service is provided is also a regulated agreement under the Consumer Credit Act. Respondents suggested we provide further guidance on where provisions were dis-applied. They also mentioned the change from the Consumer Rights Act replacing the Unfair Terms in Consumer Contracts Regulations 1999.
- 2.16** Stakeholders also suggested we provide guidance on changes brought about by the Financial Services (Banking Reform) Act 2013, including ring-fencing legislation. They further suggested the new General Data Protection Regulations; the Interchange Fee Regulations, Payment Account Regulations and the Single Euro Payments Area initiative as changes which we should include in the updated guidance.
- 2.17** Finally, they suggested we could give more clarity on the interaction between the PSRs and the Banking Conduct of Business sourcebook (BCOBS). BCOBS sets out conduct of business rules which complement the PSRs, and applies to retail deposit taking, unless this is contrary to the provisions of the Payment Services Directive.

Combining the payment service and e-money approach documents

- 2.18** Firms authorised under the Electronic Money Regulations 2011 also come under some provisions of the PSRs. We currently provide separate Approach Documents which give guidance to firms on the PSRs and the E-money Regulations, both of which e-money firms may need to refer to. For example, the PSRs contain conduct of business rules that apply to electronic money issuers when they provide payment services. We asked if having two separate documents presented any difficulties. Most respondents to the question could see benefit in combining the documents.

¹⁰ www.handbook.fca.org.uk/handbook/CONC.pdf

Payment services E-learning

- 2.19** We provide an online e-learning module for payment service providers. It covers the scope of the PSRs, the authorisation and registration process, conduct of business requirements and complaints handling. We asked CFI respondents if they used the e-learning and if so, if they found it useful. Most respondents said it was useful and suggested we update it to accommodate changes in PSD2. Indeed, some respondents had incorporated the training into their own organisation's training. However, respondents suggested that we could increase awareness of the e-learning module among the intended audience.

3. Our response

- 3.1** We are grateful for the detailed feedback and the suggestions that respondents provided. We will consider this input carefully as we update and develop the existing guidance for PSD2. We want our guidance to continue to provide comprehensive information to PSPs and to be as user-friendly as possible. As respondents have suggested, we will consider where we can give further practical examples and illustrations in the Approach Document and PERG.
- 3.2** We will take into account the changes in the market so that the updated guidance addresses new technologies and business models for providing payment services. We will also look to provide appropriate guidance on the relevant legislation or regulatory initiatives which have happened since we published the original guidance.
- 3.3** Following comments from respondents, we intend to combine the two approach documents on payment services and electronic money. We will ensure the combined document clearly signposts different PSPs to the sections which are relevant to them. We will also update the learning module to cover changes as a result of PSD2. We will consider how to raise awareness of the training for relevant PSPs.

4. Next Steps

- 4.1** We are working closely with the Treasury as they transpose the revised Directive into UK regulations. We are also working at the European level, alongside other Member States' competent authorities to assist the European Banking Authority (EBA) as it develops Guidelines and Regulatory Technical Standards (RTS) based on the mandates set out in PSD2. We are using responses to the CfI to inform our work with both the Treasury and the EBA. We are also liaising closely with the Payment Systems Regulator (PSR) on relevant provisions in the Directive.
- 4.2** In addition to considering the detailed responses to the CfI, we are actively engaging industry and other interested parties through our Payment Services Stakeholder Liaison Group.¹¹ The first meeting of the re-convened group was held in July 2016. We are also undertaking research to understand the types of firms which may fall within the regulatory perimeter because of PSD2's revised scope. Once we have developed our approach to the revised payment services regime, we will issue a consultation on necessary Handbook changes and updated guidance in 2017. Our aim is to publish final guidance to help PSPs comply with the revised regime as far as possible in advance of January 2018, when most provisions of PSD2 come into effect.

¹¹ www.fca.org.uk/firms/payment-services-e-money-stakeholder-liaison-groups

Annex 1

Non-confidential responses

Accuity

Compliancy Services Limited

Finance & Leasing Association

Financial Services Compliance Limited

Lloyds Banking Group

London Compliance Solutions Ltd.

MoneyGram

Nationwide Building Society

Payments UK

The Association of Foreign Exchange and Payments Companies

TransferWise

Visa

Worldfirst

Financial Conduct Authority



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25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
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