
FIRST SUPERVISORY NOTICE

To: **EPayPro UK Limited**

Reference Number: **911398**

Address: **26 Dingwall Road, Apt 1101, Croydon, CR9 0XF**

Date: **4 January 2024**

1. ACTION

- 1.1 For the reasons given in this First Supervisory Notice, and pursuant to regulation 12(1) of the Payment Services Regulations 2017 (SI 2017/752) ("PSRs"), the Financial Conduct Authority ("the Authority") has decided to vary the authorisation granted to EPayPro UK Limited ("the Firm" or "EPayPro") by imposing the following Requirements ("the Requirements") with immediate effect.

Restriction on charging a Compliance Fee

- (1) The Firm must stop charging its clients a monthly compliance fee (the 'Compliance Fee') and must stop and deducting the fee from the funds it holds for its clients (the 'client funds').
- (2) The Firm must not, without the prior written consent of the Authority, introduce any new fee of charging structure which has the purpose or effect of reducing client funds.

Retention and notification requirements

- (3) By 4pm on 22 January 2024, the Firm must write to all clients informing them of the imposition of these Requirements and their effects, including that it will be ceasing to charge the Compliance Fee. The wording of this communication is to be first agreed with the Authority.

- (4) The Firm must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated activities carried on by it. These books and records must be retained in a form and at a location within the UK to be notified to the Authority by 4pm on 15 January 2024. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request.

Duration

- (5) These Requirements shall remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

2. REASONS FOR ACTION

- 2.1 The Authority has concluded, based on the facts and matters described below that, in respect of the Firm, it is necessary to exercise its power under regulation 12(1) (d) of the PSRs to impose the Requirements on the Firm because the Firm:

- (1) may not to have complied with the requirements of the PSRs;

- (2) may have relied on a variation term in its term and conditions with consumers (the "T&Cs"), where in the Authority's view, there is a significant risk that a court would consider that variation term to be unfair, under the Consumer Rights Act 2015 ("CRA"); and

- (3) may have introduced a term into its T&Cs, where in the Authority's view, there is a significant risk that a court would consider the term that was introduced to be unfair, under the CRA.

3. DEFINITIONS

The definitions below are used in this First Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"API" means authorised payment institution;

"the Authority" means the Financial Conduct Authority;

"CRA" means the Consumer Rights Act 2015;

"the Firm" means EPayPro UK Limited;

"FSN" means a First Supervisory Notice;

"Handbook" means the Authority's online handbook of rules and guidance (as in force from time to time);

"PSRs" means the Payment Services Regulations 2017;

"Requirements" means the terms imposed on the Firm by this First Supervisory Notice as outlined in section 1 above;

"T&Cs" means the terms and conditions given to consumer by EPayPro UK Limited; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

- 4.1 The Firm was incorporated on 17 December 2014.
- 4.2 The Firm received authorisation on 9 September 2020 as an authorised payment institution ("API") under the PSRs to provide payment services. The Firm holds permissions to provide the following payment services:
- (a) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
 - (b) Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
 - (c) Issuing and/or acquiring of payment instructions.
 - (d) Money remittance.
- 4.3 The Firm also holds a passport that enables it to provide financial products or services, set up a base, or carry on its permitted activities in Gibraltar. The Firm has two directors.
- 4.4 The Firm provides money remittance services to individuals in the UK and internationally.
- 4.5 The Firm informed the Authority by email on 21 February 2023 that the Firm holds customers' funds across two safeguarding accounts. As of 24 August 2023, it held the following balances:
- (1) Bank A €1,323,685
 - (2) Bank B €103,109
- 4.6 The Firm also holds an operational account with each of Bank A and Bank B.

Failings and risks identified

- 4.7 On 16 September 2023, the Firm notified the Authority that it had changed its T&Cs.

- 4.8 On 6 October 2023, the Firm provided more information to the Authority about the change to the T&Cs and indicated that the change was to introduce a Compliance Fee for all customer accounts.
- 4.9 In its email of 6 October 2023, the Firm also confirmed that it had transferred €194,00 from a safeguarding account held with Bank A to its operational account at Bank B. The Authority understands that this transfer represents the first month of the Firm charging the Compliance Fee to all customer accounts and deducting this from client money held with the Firm.
- 4.10 The Authority has serious concerns about the Firm's decision to introduce and deduct the Compliance Fee from customer accounts by a unilateral variation to the T&Cs. In doing so, the Authority has serious concerns that the Firm:
- (a) may not have complied with the requirements of the PSRs;
 - (b) may have relied on a variation term, where in the Authority's view, there is a significant risk that a court would consider that variation term to be unfair under the CRA; and
 - (c) may have introduced a term into its T&Cs, where in the Authority's view, there is a significant risk that a court would consider that term to be unfair, under the CRA.

Requirements of the PSRs to vary a framework contract

- 4.11 For the purposes of the PSRs, the T&Cs are a 'framework contract'.
- 4.12 Regulation 50 of the PSRs provides that notice of any proposed changes to the existing terms of a framework contract must be provided to the payment service user no later than two months before the date on which they take effect.
- 4.13 Based on the information provided to Authority by the Firm, the Firm only provided its customers with 7 days' notice of the variation via its website before the changes to the T&Cs took effect.
- 4.14 Therefore, it appears that the Firm may not have complied with the requirements of the PSRs, in undertaking the variation.

Fairness of the variation of the term operated to introduce the Compliance Fee term

- 4.15 The T&Cs were entered into by consumers on or after 1 October 2015, therefore the CRA applies to the T&Cs.
- 4.16 Section 62 of the CRA sets out the test to determine whether a contract term is unfair. Under Section 62(4), a term is unfair if "...contrary to the

requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer".

4.17 The fairness test requires a holistic assessment of the term comprising two key elements:

- (1) Whether there is significant imbalance to the detriment of consumers;
and
- (2) Whether any imbalance arises to contrary to good faith, which requires assessing whether the Firm could reasonably assume the consumer would have agreed to the term, taking into account all the circumstances existing at the time the contract was entered into.

4.18 Section 68 of the CRA sets out the requirement for transparency. Under Section 64(3) of the CRA, a term is transparent if *"it is expressed in plain and intelligible language and (in the case of a written term) is legible"*.

4.19 The Firm has operated term 21.1 of the T&Cs to vary the T&Cs to introduce the Compliance Fee. Term 21.1 states:

"We reserve the right to revise, amend or replace these Terms and conditions from time to time."

4.20 The Authority has serious concerns that a court would consider this variation term to be unfair, because the Firm could not reasonably assume that a consumer would agree to such a term in individual contract negotiations. This is because in the Authority's view, the term:

- (1) Lacks sufficient transparency as it does not set out the reasons why the T&Cs may be varied. As a result, we are concerned that the average consumer would be unable to determine when entering into the contract if, how and on what basis the terms may be varied, and the economic consequences of those changes.
- (2) Does not provide for any advance notice to be given to consumers of a change to the T&Cs.
- (3) Is drafted more broadly than is necessary to achieve the Firm's legitimate commercial interests and does not take into account the legitimate interests of the consumer.
- (4) Resembles the types of terms listed in Schedule 2 of the CRA, which is a list of terms which may be considered unfair. In particular, it resembles the terms:
 - a. At paragraph 11 of Schedule 2 to the CRA which states *"A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract."*

- b. At paragraph 13 of Schedule 2 to the CRA which states "A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any of the characteristics of the goods, digital content or services to be provided".

Fairness of the Compliance Fee term

- 4.21 The Firm introduced the Compliance Fee by varying the T&Cs to add term 11.4. Term 11.4 states:

"For that purpose, the Company has introduced additional Compliance Fees on each Customer account in the amount of 100EUR per month in order to cover the costs of such additional compliance and regulatory requirements. These dedicated fees will apply from September 1, 2023 and will be debited from the customer funds held with Epaypro UK Ltd as long as the Customer maintains the account with the Company of the balance on the Customer account remains positive. In some cases where the Company incurs additional costs in relation to the specific Customer the Compliance Fees may be increased further for such customers. The Company reserves its rights to change the amount of Compliance Fees at any time with 1 (one) week notice to its customers prior to the application of the new amount of the relevant fees and charges. In case as the result of the drawdowns of the Compliance Fees the balance on the Customer account is insufficient to cover such fees, the Company may in its own discretion close such Customer account without notice."

- 4.22 Supervision has serious concerns that a court would consider this term to be unfair for the reasons set out in paragraph 4.20 above and, because in the Authority's view, the term:

- (1) Only provides for one weeks' notice of any changes in the fee level, which in our view is insufficient time for consumers to act if they didn't want to pay a fee at the revised level (for example, by closing their account with the Firm).
- (2) The fee appears to be disproportionately high, as referred to below.
- (3) The term does not appear to have been brought to the consumer's attention before they entered into the contract; and €100 fee that is payable monthly is not a reasonable amount especially as the Firm has given two undertakings to us which state that it has ceased all regulated payment services. In particular, we consider that €100 is a disproportionately high fee that when charged monthly.
- (4) It appears that the term has been introduced without complying with the applicable notice requirements (for example, under the PSRs).
- (5) Resembles the type of term listed at paragraph 15 in Schedule 2 of the CRA, which states: "A term which has the object or effect of permitting

a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.”

- 4.23 Under Section 51(2) of the CRA, if no price is agreed for a service, then the consumer is required only to pay a reasonable price. In our view a €100 fee that is payable monthly is not a reasonable amount especially as the Firm has given two undertakings to us which states that it has ceased all regulated payment services. We consider that €100 is a disproportionately high fee that when charged monthly is highly likely to exceed the costs the Firm incurs in conducting the activities referred to in the term. The activities listed in the term all appear to be one-off activities which would not incur an ongoing monthly cost to the Firm.

5. CONCLUSION

- 5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.

Analysis of failings and risks

- 5.2 The Authority has serious concerns that the Firm may:
- (1) not have complied with the requirements of the PSRs;
 - (2) have relied on a variation in its terms and conditions with the consumers, where in the Authority’s view, there is a significant risk that a court would consider that variation term to be unfair, under the CRA; and
 - (3) have introduced a term into its T&Cs, where in the Authority’s view, there is a significant risk that a court would consider the term that was introduced to be unfair, under the CRA.
- 5.3 For the reasons set out above, the Authority considers that it is desirable to act to protect the interests of consumers by imposing the Requirements to stop the Firm charging the Compliance Fee on an ongoing basis.

Summary

- 5.4 The Authority has concluded, considering the matters set out above, that it is necessary to exercise its own-initiative power pursuant to regulations 12(1)(d) of the PSRs to impose the Requirements. The Authority considers that the Requirements are a proportionate and appropriate means to address the current risks.

Timing and duration of the Requirements

- 5.5 It is necessary to impose the Requirements to take immediate effect given the ongoing risk of loss or other adverse effects for consumers resulting

from the Firm continuing to charge the Compliance Fee despite concerns being raised by the Authority and requests for it to stop on a voluntary basis.

- 5.6 The Authority considers that it is necessary for the Requirements to remain in place until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

6. PROCEDURAL MATTERS

Decision maker

- 6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.3.7G and DEPP 4.1.7G.
- 6.2 This First Supervisory Notice is given to EPayPro UK Limited under regulations 12(6) and (7) of the PSRs.
- 6.3 The following statutory rights are important.

Representations

- 6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations, but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 22 January 2024 or such later date as may be permitted by the Authority. Any notification or representations should be sent to [] and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

The Tribunal

- 6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service

website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>.

- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to [] and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 The Firm should note that section 391(5) of the Act, as applied by paragraph 10 of Schedule 6 of the PSR, requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 For more information concerning this matter generally, contact [].
- 6.12 Any questions regarding this matter generally or the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Head of Department, Payments and Digital Assets

ANNEX

RELEVANT STATUTORY PROVISIONS

Payment Services Regulations 2017

1. Regulation 12(1)(d) of the PSRs provides that the Authority may vary a person's authorisation if it appears to the Authority that the variation is desirable in order to protect the interests of consumers.
2. Regulation 11(2) of the PSRs provides that a variation under this regulation may be expressed to take effect (a) immediately, if the notice given under paragraph (6) states that that is the case or (b) on such date as may be specified in the notice. Regulation 11(3) of the PSRs provides that a variation may be expressed to take effect immediately or on a specified date only if the Authority, having regard to the ground on which it is exercising the power under paragraph (1), reasonably considers that it is necessary for the variation to take effect immediately or, as the case may be, on that date.

Financial Services and Markets Act 2000

3. Section 391 of the Act, as varied by paragraph 10 of Schedule 6 to the PSRs, provides that:
 - (a) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
 - (b) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (c) Information is to be published under this section in such manner as the Authority considers appropriate.

Consumer Rights Act 2015

4. Section 51(2) of the CRA provides that where a contract to supply a service does not expressly fix a price or state how it will be fixed, the consumer must pay a reasonable price for the service and no more.
5. Section 62 of the CRA requires contract terms to be fair. An unfair term of a consumer contract is not binding on the consumer. A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. Whether a term is fair is to be determined: (a) taking into account the nature and subject matter of the contract; and (b) by reference to all the circumstances existing when

the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.

6. Section 64 of the CRA excludes a term of a consumer contract from an assessment for fairness where the term specifies the main subject matter of the contract or the assessment is of the appropriateness of the price payable under the contract by comparison with what is supplied under it, but only if the term is transparent and prominent. A term is transparent if it is expressed in plain and intelligible language and (in the case of a written term) is legible. A term is prominent if it is brought to the consumer's attention in such a way that an average consumer would be aware of the term.
7. Schedule 2 of the CRA provides a list of consumer contract terms which may be regarded as unfair. Paragraph 11 of Schedule 2 to the CRA states that a term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract may be unfair. Paragraph 13 of Schedule 2 provides that a term which has the object or effect of enabling the trader to unilaterally without a valid reason any characteristics of the goods, digital content, or services to be provided may be unfair.

RELEVANT HANDBOOK PROVISIONS

8. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
9. EG 19.20 outlines the Authority's approach to enforcing the provisions of the PSR. EG 19.20.5 provides that the PSR, for the most part, mirror the Authority's investigative, sanctioning and regulatory powers under the Act and that the Authority has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act.
10. The Authority considers that the powers under regulation 12(1) of the PSRs are like those under sections 55J and 55L of the Act and that the provisions of EG 8 "*Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms*" are applicable.

Imposing requirements on the Authority's own initiative

11. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
12. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its

formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)) or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).

13. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
14. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
15. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider:
 - (1) EG 8.3.4(1) includes the extent of any loss, or risk of loss, or other adverse effect on consumers.
 - (2) EG 8.3.4(4) includes the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
 - (3) EG 8.3.4(8) includes the firm's conduct including whether the firm identified the issue (and if so, whether this was by change or as a result of the firm's normal controls and monitoring).
 - (4) EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Decision Procedure and Penalties Manual (DEPP)

16. DEPP 2 Annex 2 provides that when the Authority is exercising its powers to vary a person's authorisation on its own initiative it will follow its executive procedures.

17. DEPP 2.5.7G provides that an Authority staff under executive procedures will take the decision to give a supervisory notice exercising the Authority's own-initiative powers (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity), including where the action involves a fundamental variation or requirement.