

# Legal & Regulatory Working Group

Payments Innovation Forum (PIF) 2024



# Competition Law Notice

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Meeting participants are reminded that this meeting must adhere to competition law rules and as such no confidential or commercially sensitive information must be shared directly or indirectly between competitors.

**Please do not share any confidential or commercially sensitive information** and please do not ask questions that could lead to other participants to sharing confidential or commercially sensitive information about their organisation.

A written agenda has been circulated in advance and all discussion must keep to the agenda.

Please read our **Competition Law Guidelines** for further information:

[Competition Law Guidelines - Payments Innovation Forum](#)

# Agenda – 18 July 2024

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1. Consumer Duty Annual Board Report – What the FCA expects
2. PSR/FCA Call for Information: Big tech and digital wallets
3. APP scam reimbursement requirement – Compliance and Monitoring policy statement
4. PSR draft guidance consultation – APP scams and civil disputes
5. FOS complaints data 2023/4

# 1. Consumer Duty Annual Board Report – What the FCA expects

# Consumer Duty Annual Board Report – What the FCA expects

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## **Annual Board Report Deadline → 31 July 2024**

- All firms in scope of the Consumer Duty are required to demonstrate, through the Annual Board Report, that they are delivering good outcomes for their customers which are consistent with the Duty (Principle 12) and PRN 2A of the FCA Handbook, at least annually.
- To comply with the requirements, the Report should include:
  - The results of the monitoring the firm has undertaken over the year to assess whether their products and services are delivering expected outcomes in line with the Duty, any evidence of poor outcomes, including whether any group of customers is receiving worst outcomes compared to another group, and an evaluation of the impact and the root cause;
  - An explanation of any risks or issues arising that would prevent the firm from complying with the Duty, and an overview of any actions the firm has taken to address any risks, and
  - An explanation of how the firm's future business strategy is consistent with acting to deliver good outcomes under the Duty.

## Consumer Duty Annual Board Report – What the FCA expects

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**Before signing off the Report, the Board (or equivalent governing body) must:**

- Agree the action required to address any identified issues or risks.
- Confirm that it is satisfied that the firm is complying with its obligations under Principle 12 and PRN 2A.
- Agree any action required to address poor outcomes experienced by customers and agree whether any changes to the firm's future business strategy are required.
- These steps involve the Board providing **robust and objective challenge** – the Report testifies to the FCA how a firm complies with the Duty.

# Consumer Duty Annual Board Report – What the FCA expects

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## Components of the Board Report

- The FCA has not specified a format for the Board Report. Instead, firms should prepare Reports which are proportionate to the risk they pose to customers and the market. Areas to consider include:
  - **Governance**
    - What are the roles of your firm's various lines of defence and how does the firm ensure individuals throughout the organisation (including those in control and support functions) understand their role in delivering the Duty?
    - Does your firm's purpose align with its obligations under the Duty (whether publicly articulated or not) – how is it embedded and understood throughout the organisation?
    - Are your staff empowered/feel safe to challenge and raise issues where they feel the firm might not be acting to deliver good outcomes for customers? Are those challenges listened to and acted on?
    - Is the Duty being considered in all relevant discussions, such as strategy and remuneration? Are customer outcomes a key lens for Risk and Internal Audit?
    - How is your firm making sure that remuneration and incentive structures drive good outcomes for customers?

# Consumer Duty Annual Board Report – What the FCA expects

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Areas to consider (continued):

- **Customer Outcomes**

- How does the firm define good outcomes (over the short, medium and long term) for customers using its products and services?
- How have you assessed whether products and services are delivering good outcomes for customers? What data do you have? e.g. metrics and results of monitoring the firm has undertaken/MI to demonstrate compliance with the cross-cutting rules (the FCA may ask to see the firms' MI and dataset used to prepare the findings of the Report).
- Have you identified key risks to your ability to deliver good outcomes to customers and have you put appropriate mitigants in place?
- How is the external environment changing and how will it impact on the firms' ability to deliver good outcomes for customers?
- Are certain groups of consumers getting different outcomes? If so, why? What is driving poorer outcomes?
- What actions is the firm taking to improve outcomes? Who is accountable for this work, when will it take place, and what will improvement look like?



## 2. PSR/FCA Call for Information: Big tech and digital wallets

[cp24-9-cfi-digital-wallets-july-2024-v2.pdf \(psr.org.uk\)](#)

## PSR/FCA Call for Information: Big tech and digital wallets

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- **Background:**

- The use of digital wallets has grown rapidly – it is likely that more than 50% of UK adults use a digital wallet to some extent. The share of retail payments that involve a digital wallet is also increasing. An estimated 14% of POS terminal transactions and 38% of e-commerce transactions, by value, involved a digital wallet in 2023.
- Drivers of these trends include smartphones and associated wearable devices, e.g., smart-watches. At the same time, big tech firms have expanded into the payments space. The widespread and increasing use of their digital wallets represents one of the most significant ways that they are impacting consumers and businesses that use payments.
- Experiences overseas provide an indication of the opportunities that digital wallets present for the UK, e.g. consumers in other countries can make in-store transactions using digital wallets that are integrated with account-to-account payment systems. At the same time, digital wallets have attracted the attention of regulators, with both the EU Commission and US Department of Justice taking action against Apple with regard to alleged business practices relating to Apple Pay.
- The PSR and FCA are looking for information and evidence to understand the opportunities and risks that the increasing popularity of digital wallets creates.

## PSR/FCA Call for Information: Big tech and digital wallets

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- **Call for Information :**

- **Are digital wallets working well for consumers, businesses and other users of payments?** e.g., benefits for users versus any features in the supply of digital wallets that mean payments don't work as well as they could; for instance, Apple and Google operate the main mobile ecosystems and may be able to determine how rival digital wallets operate with mobile devices. Do practices such as limiting access to mobile functionality raise barriers to entry – risking higher fees, worse services and less innovation? If so, are they justified by security/convenience benefits?
- **Are there any disincentives or other barriers to digital wallets integrating account-to-account payments?** The way digital wallets provide access to payment systems could determine how they compete, e.g., what fees will be involved and how will the payment system used to complete a transaction be chosen?
- **Do digital wallets raise any significant consumer protection or market integrity issues?** Digital wallets may affect financial resilience and systemic risk within the financial system – e.g., if they were to suffer an operational failure or outage.

### 3. APP scam reimbursement policy – Compliance and Monitoring policy statement

[ps24-3-fps-app-scams-reimbursement-compliance-and-monitoring-july-2024.pdf \(psr.org.uk\)](#)

## APP scam reimbursement policy – policy statement and updated legal instrument

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### Final policy positions:

- All PSPs are required to register with Pay.UK by **20 August**; Pay.UK has released **additional information about the registration process** [here](#)
- The [CDRS](#) (Compliance Data Reporting Standards) sets out the data and information that PSPs must collate, retain and provide to Pay.UK. All directed PSPs are required to comply with the CDRS record keeping requirements from 7 October, regardless of which reporting standard is in place. The PSR has made some **minor amendments to the CDRS** in response to feedback received through their earlier consultation:
- **Reporting standard A** in the CDRS will come into effect on 7 October 2024; the PSR has amended the date that in-scope PSPs must submit the first report to Pay.UK to 6 January 2025.
- The PSR has confirmed the data contained in **Reporting standard B** in the CDRS, so that it's clear to directed PSPs what it will contain should the PSR decide to bring it into effect. The PSR is not confirming the date for reporting standard B to come into effect and intends to consult on this in late 2024.
- The PSR has not made any changes to requirements on in-scope PSPs in relation to **information and record-keeping provisions**, i.e., that PSPs should assure themselves (in the manner required by Pay.UK and set out in the FPS rules) of the accuracy and quality of reported data, comply with the record keeping obligations and store data and information on secure systems. **The PSR has made minor changes** to require PSPs to provide timely responses and reasonable requests for data and information to Pay.UK, where Pay.UK has reasonable grounds to suspect the PSP is not compliant, and also to the record-keeping obligations that apply to in-scope PSPs.

## APP scam reimbursement policy – policy statement and updated legal instrument

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### Final policy positions (continued):

- **Data reporting principles – scope of claims reported:** the PSR has not made any changes to the reporting boundary for information only, as set out in the earlier consultation. The draft CDRS was interpreted by some consultation respondents as requiring PSPs to include any and all consumer issues in their reporting. This was not the PSR's intent. The PSR has made a **minor amendment** to CDRS to make clear that only claims that are in scope for assessment must be reported. The PSR makes clear that even if claims deemed in scope for reporting are assessed and then deemed as not reimbursable, they must still be included in the data reported to Pay.UK. This is because for such claims, it may not be possible for the PSP to determine whether they are out of scope from the initial consumer contact.
- **Process for amending the CDRS** – the PSR has changed its approach in response to feedback received, i.e., if amendments to the CDRS are required after 7 October 2024, the PSR will consult on them and bring any changes into effect no sooner than 90 days after they are confirmed.

## 4. APP scams and civil disputes – draft guidance consultation

## APP scams and civil disputes – draft guidance consultation

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- The PSR is consulting on draft guidance to support PSPs in their assessment of **whether an APP scam claim raised by a consumer is not reimbursable** under the reimbursement requirement because it is a private dispute. It applies to claims for payments made via Faster Payments and CHAPS.
- The draft guidance sets out factors that PSPs should consider when assessing, in light of the facts available, whether a claim solely relates to a civil dispute and does not fall within the requirement to reimburse.
- **The guidance is indicative only**; civil disputes and scams might look very similar, so each case needs to be considered in accordance with the facts available.
- The **guidance does not specify evidentiary requirements**; PSPs should continue to have regard to the best practice guide to support their assessment of a reimbursable APP scam.
- The consultation is open until **8 September** and the PSR aims to publish the final guidance later in September.
  - [CP24/10 Consultation on draft guidance on supporting the identification of APP scams and civil disputes | Payment Systems Regulator \(psr.org.uk\)](https://www.psr.org.uk/CP24/10-Consultation-on-draft-guidance-on-supporting-the-identification-of-APP-scams-and-civil-disputes)



## 5. FOS Complaints Data 2023/4

## FOS Complaints Data 2023/4

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- The Financial Ombudsman Service (FOS) has published its annual complaints data which shows the volume of complaints received and overall uphold rates between 1 April 2023 and 31 March 2024.
  - [Annual complaints data and insight 2023/24 \(financial-ombudsman.org.uk\)](https://www.financial-ombudsman.org.uk/annual-complaints-data-and-insight-2023-24)
- The total number of **new complaints about banking and payments has reached the highest level in at least a decade** (the last peak was in 2015/16 which was driven by packaged bank accounts)
- The total number of new complaints was 80,137 (compared to 61,995 in 2022/23). The increase is largely due to concerns about credit cards and current accounts as well as **complaints about fraud and scams**. In particular, consumers complained about **customer service/administration**, followed by perceived unaffordable or irresponsible lending.
- **Current accounts** are the most complained about product (30,635 new complaints) and over a fifth of complaints were from victims of fraud and scams, of which **around half were about APP scams**
- Prepaid cards had the highest uphold rate at 49%

6. A.O.B.