

Legal & Regulatory Working Group

Payments Innovation Forum (PIF) 2024



Competition Law Notice

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 – 27 June 2024

1. Outcome of FCA Quarterly Liaison Meeting held on 20 June:
 - i. Impact of the General Election on policy proposals
 - ii. Safeguarding
 - iii. APP Fraud and payments delays
 - iv. Consumer Duty
 - v. Access to Bank Accounts
2. Consumer Duty – Member Survey
3. A.O.B.
 - PSR's letter to FPS participants on APP scams reimbursement

1. Outcome of FCA Quarterly Liaison Meeting

Outcome of FCA Quarterly Liaison Meeting

Impact of the General Election on Payments Policy Proposals

- The FCA is unable to confirm the legislative timetable for e.g., Statutory Instruments related to payment delays, the Payment Service Contract Termination Bill, and the repeal of the RTS on SCA, **until the new government is in place**. The FCA is also unable to confirm what the new government's legislative priorities will be.
- The FCA will continue to progress its own priorities which includes proposed changes to the safeguarding regime. The FCA does not expect the general election to impact the consultation publication date, which is expected to be within the next few months. However, the FCA recognises that there are aspects of the safeguarding proposals that are dependent on legislative change.
- **Open Banking work is in 'limbo'**, given that the Data Protection and Digital Information Bill did not get passed during the wash-up period. The smart data elements of the bill need to be reintroduced in a new bill to parliament. The JROC work will need to be signed off by the Economic Secretary to the Treasury; the FCA is unable to agree a response to the consultation on the recommendations for the future entity (and the interim entity) until a new minister is in place, similarly with changes to the governance of Open Banking through the JROC.
- The FCA continues to engage with HM Treasury, particularly to understand what the new government's priorities will be, including on the timelines for the National Payments Vision; the FCA is unable to give any insight to the timelines at this stage, similarly in connection with the review of the PSRs and EMRs.

Outcome of FCA Quarterly Liaison Meeting

Access to Bank Accounts

The associations provided the FCA with their respective member responses the Access to Bank Accounts survey.

Key findings:

- Majority of members surveyed tend to be well established and heavily focused on compliance. Very few member firms have been de-risked.
- A small minority of members had approached multiple banks for safeguarding purposes, but the average was 2. The majority felt that the associated costs were reasonable and as expected. Most tend not to approach Tier 1 banks, on the basis that they are likely to fall foul of their risk appetite. Payments firms are being refused accounts if they could not demonstrate that they would generate certain minimum volumes. UK Finance reported that crypto firms are finding it even more challenging open accounts.
- The **length of time it takes to secure an account is very long** – typically 6-9 months, and sometimes longer for complex business models, e.g., where agents and distributors are involved. These timeframes make opening a safeguarding account very challenging, even more so if a firm is de-risked with a 3-6 month notice period. The risk is ever present, and this does not bode well for operational stability or the sector. .
- The associations asked the FCA to think carefully about changes to the safeguarding regime, given that the relationship between banks and PSPs can be 'delicate'.

Outcome of FCA Quarterly Liaison Meeting

Access to Bank Accounts - continued

FCA response:

- Firms in start-up mode, that are capable of meeting standards, need to be sure they have access to accounts. This is something the FCA will consider.
- The FCA is very alive to the market concentration issue, having seen the turmoil created when providers exit the market, but pleased to see that many firms have more than one safeguarding account, and the individual operational risk has been partially mitigated.

Outcome of FCA Quarterly Liaison Meeting

Access to Bank Accounts

- The FCA asked if the application of a CASS style regime would make it easier to obtain bank accounts.

Association response:

- The associations are concerned that the banks would not want to support a CAAS style approach; the banks have made it clear that they do not support such a model and would need to change their minds to support it now.
- There is a need to understand whether banks have an issue with the safeguarding regime as it works currently; a CAAS style regime will not lead to banks making more accounts available.

Outcome of FCA Quarterly Liaison Meeting

Safeguarding –Audit Requirement

- The FCA has engaged with the **ICAEW** (Institute of Chartered Accountants in England and Wales) and given them a broad overview of the safeguarding proposals in connection with the safeguarding audit requirement.
- Additional rules and guidance will be provided to set out the role auditors will play in the monitoring of firms' compliance with the requirement. This will help the FCA to identify any issues with a firms' safeguarding arrangements and provide the FCA and firms with an opportunity to review and remedy weaknesses.
- The FCA proposes to codify the requirement for a safeguarding audit in rules and extend it to all firms that are required to safeguard customer funds.
- The FCA has also engaged with the **Financial Reporting Council** to discuss the possibility of developing an **audit standard**.
- **User testing** will be carried out during the consultation period, providing an opportunity for the FCA to understand the extent to which the requirement makes sense, and provides the data the FCA needs to achieve the aspirations of the proposals. It is not known if user testing will focus on all aspects of the proposals or just the audit requirement as this is still being discussed. **Volunteer firms** will be sought from across the sector.
- The final rules are not likely to be finalised until **early 2025** – the FCA acknowledges that the timing of when the audit rules comes into force needs careful thought, to ensure as much lead time as possible for new audits.

Outcome of FCA Quarterly Liaison Meeting

Safeguarding –Audit Requirement – continued

Association questions/comments:

- Does the FCA intend to define or qualify what constitutes an audit firm, given the current guidance is vague. Will an audit firm be a member of the ICEAW?
- Will the FCA consider the potential capacity challenges and costs associated with an ICAEW-only approach?
 - There will be a 'slight departure' from the current lack of prescription, underpinned by a desire to make clear what constitutes an audit firm. The consultation sets out a cost-benefit analysis for industry comment.

Outcome of FCA Quarterly Liaison Meeting

APP Fraud and Payment Delays

- The FCA is preparing for the government's amendment to the PSRs (to extend the amount of time a PSP has to process a payment where there are reasonable grounds to suspect fraud) on the basis that the new government will want to lay the final version of the amendment before parliament soon after the election, ensuring that the regulations can come into force by Oct-24 when the reimbursement requirement comes into effect.
- The FCA has been tasked with issuing guidance to address issues raised around the applicability of existing regulation, such as the ability to refuse payments. The FCA expects to consult in Sep-24 and publish the guidance in Nov-24.
- The FCA's approach to reporting and monitoring will be based on ad-hoc data requests and surveys in the short term, to see if the amendment is helping to reduce fraud. There may be more formal requirements at a later stage.
- The associations reported back that some of their membership believed the new D+4 rules were potentially unnecessary, as they believed they always had the right to delay a payment and override D+1 for financial crime concerns.
- The FCA believes that the new rules ought to apply to a broader set of financial crime concerns around fraud and dishonesty, not just APP fraud.

Outcome of FCA Quarterly Liaison Meeting

Consumer Duty – Initial Association Feedback

- The most significant positive impact reported by members is that the firm has become more customer-centric, both commercially and culturally. There is more consideration around customer support and consumer vulnerabilities. Customer communications have also improved.
- The most significant challenges were common across all member firms:
 - Interpreting how to apply the Consumer Duty in a payments context – none of the examples provided in guidance apply to the payments sector
 - MI (Management Information) complexities; firms have been challenged in putting together a sustainable, coherent set of metrics – there is still much work to be done.
- The FCA reported that they had seen lack of proper engagement with the fair value assessment requirement – firms have been assessing their fees, but not then applying an assessment as to whether they were ‘fair’.

2. Consumer Duty Member Survey

Consumer Duty Member Survey

- What have been the most significant positive impacts of the new Consumer Duty on your firm so far? (e.g., customer satisfaction, customer retention, financial performance)
- Are there any obstacles preventing your firm from applying the Consumer Duty to existing products and services? (e.g., regulatory complexity, operational disruptions, resource constraints, cost-benefit analysis)
- How has compliance with the Consumer Duty impacted your compliance costs and processes? (e.g., increased costs, streamlined the processes, improved risk-management, minimal impact)
- Have you introduced or modified any specific product features or services to better meet the needs of consumers under the Consumer Duty? (e.g., improved accessibility, personalised products, improved customer support)
- What testing and review processes are in place to assess whether products and services deliver good customer outcomes? (e.g., customer feedback survey, compliance audit, automated monitoring tools)
- Have you noticed a reduction in customer complaints since implementing the Consumer Duty?
- Has the Consumer Duty helped in identifying and mitigating risks related to consumer harm? If so, how?
- How are you progressing with preparations for the Annual Board Report and are you clear on what it needs to cover?

6. A.O.B.

PSR letter to FPS participants on APP scams reimbursement

- The PSR has set out three key areas for firms to focus their implementation activities over the coming months to ensure effective and timely implementation by 7 October:
 - 1. Understanding the new reimbursement requirements** – PSPs need to consider whether the new rules apply to them either as a sending PSP or as a receiving PSP providing a relevant account to a service user. The requirements apply to both direct and indirect participants.
 - 2. Claim management and data reporting through Pay.UK** – Pay.UK has developed a tiered approach to the functionality of the reimbursement claims management system (RCMS) to support firms' onboarding in readiness for 7 October. Firms need to register with Pay.UK as soon as possible if not already done so.
 - 3. Consumer awareness** – firms need to be transparent in communicating the reimbursement requirement to consumers and take proactive steps to notify them of the protections available under the requirement. Firms should also consider how consumers will be able to report fraud, and to make the process as simple and accessible as possible, taking into account the needs of vulnerable customers.