

Legal & Regulatory Working Group

Payments Innovation Forum (PIF) 2024



Competition Law Notice

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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 – 19 April 2024

1. HM Treasury/Home Office: Refresh the Money Laundering and Terrorist Financing National Risk Assessment
2. PSR consultation: APP scams reimbursement requirement – compliance and monitoring
3. Outcome of FCA/Payments Trade Bodies Quarterly Liaison Meeting
4. FCA: Financial Resilience Survey (final phase) results
5. EU roundup
 - a) Update on the CDD exemption for low-value e-money products
 - b) PSD3: Pan EU-association activity in relation to the concept of agents and distributors
6. A.O.B.

1. HM Treasury/Home Office: Refresh of Money Laundering and Terrorist Financing National Risk Assessment

2. PSR consultation: APP scams reimbursement requirement – compliance and monitoring

PSR consultation: APP scams reimbursement requirement – compliance and monitoring

- **In summary**

- The PSR is consulting on proposals for all PSPs in scope of the reimbursement requirement policy to report data and information to Pay.UK, so that it can effectively monitor and manage compliance with the FPS reimbursement rules.
- The consultation also sets requirements for how this data must be provided, and how it will be managed. This includes proposing to require PSPs to use Pay.UK's reimbursement claim management system (RCMS) to collate, retain and provide data to Pay.UK by requiring PSPs to comply with the Faster Payments Scheme rule that will require its use.

- **Key proposals**

- **Requiring all PSPs to register with Pay.UK by 20 August 2024** – this means providing specific information to Pay.UK to facilitate a PSP's onboarding to the RCMS. This will involve a process by which a PSP, in conjunction with Pay.UK, creates one or more user accounts on the RCMS, undertakes any relevant testing and is capable of using the RCMS to comply with the FPS reimbursement rules.
- **Requiring all PSPs to comply with the FPS RCMS rule**, which will require them to use the RCMS. This is to ensure both direct and indirect PSPs (members and non-members of the Faster Payments Scheme) are brought into scope of the FPS RCMS rule.
- **Require PSPs to comply with the FPS RCMS rule by 1 May 2025**
- **Data reporting requirements** – establish the data and information that PSPs must collate, retain and provide to Pay.UK in a separate document, *Faster Payments APP scams compliance data reporting standards (CDRS)*. Specific Direction 20 will require PSPs to comply with the CDRS.

PSR consultation: APP scams reimbursement requirement – compliance and monitoring

- **Key proposals (continued)**

- **Reporting standard A** – require PSPs to i) collate and retain all data specified in the CDRS, and ii) report on a limited set of this data to give Pay.UK oversight of core compliance metrics. Any of the data PSPs collate and retain to be provided to Pay.UK on request.
- **Reporting standard B** – require PSPs to report all data specified in the CDRS to give Pay.UK holistic oversight of PSP compliance across all metrics; effective for all PSPs from 1 May 2025.
- **Information and record keeping provisions** – i) require PSPs to assure themselves, in a manner required by Pay.UK and set out in its FPS rules, of the accuracy and quality of the reported data; ii) require PSPs to provide timely responses to appropriately scoped and reasonable requests for data and/or information from Pay.UK, and iii) require PSPs to comply with record-keeping obligations and store data and information on secure systems.
- **Data reporting principles – scope of claims reported:** Any consumer issue that may potentially be within scope of the reimbursement requirement must be collated, retained and provided to Pay.UK. PSPs will not be required to report issues that are unambiguously not in scope.
- **Contingency arrangements** – reporting requirements will vary depending on the period for which the RCMS is unavailable. If it is unavailable for 30 days or more, reporting standard A applies. If it is unavailable for less than 30 days, reporting must be undertaken by PSPs using the method Pay.UK specifies in the FPS rules.
- **Process for amending the CDRS** – a notice of intention to change the CDRS will be published on the PSR website. Any changes will come into effect no sooner than 30 days following confirmation of them. The PSR will consult on any material changes.

PSR consultation: APP scams reimbursement requirement – compliance and monitoring

- **Other proposals**

- The consultation also proposes amendments to:

- Specific Direction 19 to place reasonable limits on how Pay.UK can use the information it receives as part of compliance monitoring.
 - Specific Requirement 1 to clarify the circumstances in which Pay.UK is required to notify the PSR of proposed changes to its rules, that compliance with the reimbursement requirement and rules is ancillary to their execution, to clarify what steps must be completed before a claim can be closed and clarify the PSR's policy intent where an APP scam claim features multiple receiving PSPs.

The consultation closes at **5pm** on **28 May 2024**

3. FCA/Payments Trade Bodies Quarterly Liaison Meeting – 25 March 2024

FCA Liaison Meeting: Operational Resilience Update

- **Operational Resilience**

- The FCA is focused on firms' readiness for the March 2025 deadline. Important Business Services and Impact Tolerances annual reviews should have taken place since 2022. Firms should now focus on testing severe but plausible scenarios.
- Firms should consider **third party reliance**. The FCA will not be prescriptive in terms of how far down the supply chain firms should go, but firms need to understand their supply chain and the impact of a third party on the firms' activities → *"You are only as good as your weakest link"*.
- The FCA wants firms to be open and honest in self-assessments about their ability to stay within their impact tolerances. Firms need to think creatively if they are not, i.e., with plans B, C, D etc.
- The FCA intends to share good practice/areas for improvement at some point this year.

FCA Liaison Meeting: Policy Update

- **Policy Update**

- HM Treasury intends to transfer the firm facing requirements in the current regulatory framework in the EMRs/PSRs into the FCA Handbook. This is part of HMT's National Payments Vision activity, in parallel with the FCA's own programme of activities. The FCA is dependent on HMT in terms of timings but is *"alive to the complexities"*.
- The FCA is at early-stage thinking regarding the implementation of the rules into the FCA Handbook and will engage with trade associations shortly. The FCA will consider setting up a dedicated stakeholder liaison group, as they did for the PSRs.
- **Action** → the FCA asked for details of **where the current rules are problematic** and/or what the FCA could do differently, and which are specific to a particular area, e.g., commercial cards, acquiring, to ensure plans are cognizant of different areas. There was a suggestion from the trade associations for the FCA to consider generic rules for all but with some more specific rules for certain types of PSP.
- The FCA confirmed that the Open Banking elements of the PSRs have not been deprioritised but are outside the scope of this work; they will be dealt with separately as part of JROC and considered in parallel.

FCA Liaison Meeting: Safeguarding

- **Safeguarding**

- The FCA will consult on safeguarding, which will follow a CAAS style regime, within the next few months.
- The FCA has concerns about firms, particularly firms' lack of documentation showing procedures and identification of funds subject to safeguarding. There is a lingering uncertainty following Ipagoo and Allied Wallet regarding the **status of safeguarded funds**.
- Generally, the FCA proposes to:
 - Create a statutory trust which would require firms to have steps in place with banks to protect funds;
 - Identify when the obligation to safeguard starts and ends, which will require firms to improve their books and records;
 - Codify the existing safeguarding guidance into prescriptive rules;
 - Introduce rules around resolution packs, improved controls and governance, an obligation to undertake annual audits, and explicit diversification steps that must be taken when funds are held as an investment.
- The FCA will also be seeking banks' views on the proposed changes to the safeguarding regime.
- The FCA has no intention of removing the choice for firms to use high quality investments/insurance as an alternative to holding funds in an account, and will consider the interplay between different safeguarding methods → the trade associations asked if the FCA could provide clarity regarding the approach firms can take when using bank account alternatives for reconciliation [in the absence of clear guidance, firms are often overholding funds to cover safeguarding funding requirements].

FCA Liaison Meeting: Safeguarding (continued)

- **Safeguarding**

- The FCA will not provide emergency safeguarding accounts for firms who have had their accounts closed. [e.g., in situations such as Nvayo, which lost its safeguarding account when the FCA took enforcement action against the firm].
- The FCA will not cover the application of the FSCS to funds held by firms as part of this work.

FCA Liaison Meeting: APP Fraud Regime

- **APP Fraud Regime**

- The FCA is working with HM Treasury on the Statutory Instrument that will implement the permitted delay to outbound transactions. The delay can only be used to contact law enforcement and the payer about the payment in question. The Statutory Instrument is expected to be published in August 2024 and come into force in October 2024.
- **Action** → the FCA asked for information on any SCA or TRA solutions that cannot be implemented at present which could be beneficial and the FCA should consider.

FCA Liaison Meeting: Supervision Update

- **Bank De-risking**

- From feedback the FCA has received from banks, the primary reason for de-risking is in connection with financial crime → the trade associations suggested that imposing more rules on EMIs/PIs will do little to solve the problem; there is a need for banks to better understand EMI/PI business models.

- **APP Fraud:**

- The FCA wants firms to be more innovative in detecting and warning customers about potential fraud, such as early flags using AI or other transaction monitoring tools → the FCA views static warnings as insufficient and more needs to be done.
- The FCA confirmed that it will undertake Skilled Person reviews on firms regarding who is managing the firms' fraud prevention.

FCA Liaison Meeting: Consumer Duty update

- **Consumer Duty**

- The Consumer Duty remains a key focus – the FCA recommends firms watch the speech given by Sheldon Mills in February: [Consumer Duty: the art of the possible in a year | FCA](#)
- FCA work is ongoing to ensure the Duty is applied across all parts of a firm and sees a mix of good/less good practice. Areas of good practice include where firms see the Duty as an opportunity to build better customer service – these firms segment properly and consider the application of the Duty through the entire product journey. The FCA will set out its findings in the summer.
- The trade associations requested clarity/guidance on factors for firms to take account when, e.g., considering what constitutes a good customer outcome, or how to evidence a good customer journey when the customer has been using the product for a long time.

FCA Liaison Meeting: Authorisations update

- **Authorisations**

- The FCA acknowledges that there is a high rejection rate, but the pass rate is improving. At the end of 2023, the pass rate was 15% with the lowest approval rate among SPIs at c.4%.The FCA is seeing fewer but better-quality applications. The hiring of key individuals is improving.
- The FCA operates an early/high growth hub where it provides increased supervision and education on the FCA's expectations for applications. Additionally, the FCA is providing more online information for applicants, which the FCA expects applicants to read, including dedicated webpages for EMIs and PIs, information in the Approach Document, and dedicated Consumer Duty webpages.
- **Action** → the FCA asked for details of items that would be helpful for applicants for the FCA to include and/or clarify on the dedicated webpages.
- **Outsourcing:**
 - the FCA's view is that there is no prohibition on intra-group outsourcing, but firms must show the UK entity can adequately oversee and hold the outsourced provider to account in intra-group outsourcing arrangements. As a rule of thumb, decision makers must be in the UK, e.g., CEO, MLRO and there must be an effective leadership/operational board in the UK

FCA Liaison Meeting: A.O.B.

- **Trade Associations (TA)**

- In the Policy Statement of changes to the SCA/RTS Perimeter Guidance, ASPSPs were given 18 months to implement dedicated interfaces. A number of firms have not done so and are not complying with FCA requirements → **The FCA will look into this**
- Does the FCA have any plans to undertake an AML thematic review? → **No**
- JROC recently sent a letter seeking funds from firms, which came as a surprise → **The FCA will follow up on this and provide more information**
- Will the Senior Managers Regime be considered as part of the Smarter Regulatory Framework (SRF)? → **Not now, but it may be considered at a later stage of implementing the SRF**

- **FCA**

- The FCA asked if TA members could complete the FCA survey on stablecoins, even if they are not intending to engage in this activity.
- The FCA confirmed its intention to hold bi-lateral sessions with each TA and will contact each one with further information.

4. FCA Financial Resilience Survey (final phase) Results

Resources:

[The Financial Resilience Survey data | FCA](#)

FCA Financial Resilience Survey (final phase) results

- **In summary:**

- The FCA has published the results of the final phase of the Financial Resilience Survey.
- The survey began in light of COVID-19 and has continued through several crises, providing the FCA with valuable insights about the financial resilience of thousands of firms the FCA prudentially regulates.
- From 1 January 2024, the survey was replaced by **FIN073**, a new baseline financial resilience regulatory return which ensures the FCA has regular, up-to-date baseline financial resilience information for solo-regulated firms.
- The FCA has now published results for over 13,000 firms, aggregated to market level, which includes information on liquidity resources, inflows and outflows, profit, and impact from the current macroenvironment.
- The survey results reflect FCA findings from 533 e-money issuers and payments firms.

5. EU Roundup

CDD exemption for low-risk, low-value e-money products

- **Background**

- Article 12 of AMLD5 currently allows low-value, low-risk e-money products, such as e-money gift cards, to be sold and used without verifying the identity of the customer. The exemption enables uncomplicated access to these products and supports financial inclusion and data privacy. It also provides consumers with a simple, low cost and efficient way to try to new low-risk payment methods for low value transactions.
- Since 2022, PIF has jointly lobbied MEPs alongside other bodies including the GCVA, EMA and the European Payment Institutions Federation, to retain the exemption in the EU's AML/CTF proposal. If the exemption were to be removed, every person using an e-money product would be required to verify their ID even for small value transactions. We provided evidence of the use cases that would be impacted, such as refugee cards, if the exemption is not retained.
- The **EU Parliament** later proposed an exemption, which would exclude certain types of e-money products from CDD in Article 15(3), but it was, in the association's view, too narrow and establishes further requirements which are difficult to meet in practice, e.g., it is strictly limited to the purchase of goods and services in a single Member State (which jeopardises the concept of passporting), and it's unclear how it would apply to the online use of e-money. We called on the EU Parliament to remove the limitation to a single Member State as well as a reference to a "direct commercial relationship with a professional issuer", which is not always the case in e.g., e-money gift card models.
- The EU **Council** has since introduced a new recital 6a which refers to certain prepaid models and explains that products falling under the PSD2 limited network exemption are not covered by the scope of the EU AMLR. However, many products that rely on the current CDD exemption under AMLD5 today *are* in scope of PSD2 – it is therefore very important that an exemption for e-money products, in addition to the Article 3k exemption of PSD2, is retained.

CDD exemption for low-risk, low-value e-money products

- **Update**

- The **limitation to a single member state** as well as the **requirement to have a direct commercial relationship** have been **removed** in the final rounds of negotiations → <https://data.consilium.europa.eu/doc/document/ST-6220-2024-REV-1/en/pdf>
- The exemption must be approved a national competent authority, i.e. its not a given, issuers can't just apply the exemption
- Next steps are to ensure the exemption works in practice, ensuring risk factors guidelines eventually set by AMLA make sense and do not hinder firms. The association coalition will continue to provide substantial input.

PSD3: Concept of agents and distributors

- The joint association coalition is exploring potential next steps to communicate the need for a clear distinction between the concept of agents and distributors.
- Under PSD3, e-money and payments institutions will be subject to the same licensing and authorisation requirements, imposing the same requirements for both agents and distributors. A clear distinction is needed, and very important, because agents and e-money distributors have very different functions/activities.
- The challenge to address is in making sure any suggestions we make are not overly complex. The more complex, the greater the risk that it gets lost in the political process. We also need to keep in mind that understanding of the industry, particularly the e-money business model, is very low. We need to ensure that the current concept of a distributor remains unchanged.

6. A.O.B.