

BRIEFING NOTE



PAYMENT SERVICE PROVIDERS [PSPs] FCA : CORONAVIRUS AND SAFEGUARDING CUSTOMERS' FUNDS: PROPOSED GUIDANCE FOR PAYMENT FIRMS

'FCA acts to strengthen protections for customers using payment firms'

'The legislation is prescriptive in how firms must manage and maintain safeguarding arrangements'

*Four questions in the consultation exercise that clearly expect agreement from PSPs, termed as follows –
'Do you agree ... ? If not, please explain why.'*

Nothing new is proposed, the 'new' guidance will be that already set out in the Approach Paper

5 June 2020 is the deadline for this short consultation centred on the Approach Paper (the existing guidance) – safeguarding provisions are at Chapter 10 (covered in an earlier Briefing Note)

FCA will then send a further 'Dear CEO letter' to PSPs

There are links to all the key documents below, emphasis added to quotations from FCA documents

Consultation: the four questions –

- 1. 'Do you agree that we should provide additional guidance on safeguarding, managing prudential risk, and wind-down plans? If not, please explain why.'*
- 2. 'Do you agree with our proposed guidance on safeguarding? If not, please explain why.'*
- 3. 'Do you agree with our proposed guidance on managing prudential risk? If not, please explain why.'*
- 4. 'Do you agree with our proposed guidance on wind-down plans? If not, please explain why.'*

It is self-evident that the expected answers are Yes

FCA themes are familiar –

Safeguarding

- Correct segregation, labelling and identification of 'safeguarding accounts'
- Proposed acknowledgement letter from providers of safeguarding accounts
- Prompt reconciliations, identification of safeguarded funds '*at any time and without delay*'
- Safeguarding obligation is immediate on receipt of client funds
- Equivalent safeguards for 'unallocated funds'
- Annual compliance audits
- Requirement not to mislead customers as to the limited extent of the protection afforded by safeguarding

Prudential risk management

- Improved governance and controls
- Accurate and ongoing calculation of capital adequacy, prompt response to FCA queries
- Emphasis on the deduction of intra-group receivables from own funds
- Need to meet 'conditions of authorisation'
- Importance of committed credit lines, disregard of intra-group uncommitted credit lines
- Resolution plans on insolvency

Safeguarding

Keeping records and accounts and making reconciliations

'A firm should keep records and accounts necessary to enable it to identify what relevant funds the firm holds, **at any time and without delay.**'

'**Relevant funds**' for the purposes of the Payment Services Regulations 2017 (PSR) are –

'(i) sums received from, or for the benefit of, a **payment services user** for the execution of a payment transaction, and (ii) sums received from a **payment service provider** for the execution of a payment transaction for the execution of transaction on behalf of a payment service user'

Safeguarding accounts

PSPs must clearly identify these accounts which means the account name should include the word 'safeguarding' or 'client'.

The credit institution must acknowledge formally that an account it holds is a safeguarding account.

FCA proposes a form of acknowledgement letter.

Proposed acknowledgement letter for PSPs to obtain from safeguarding banks and custodians

It is self-evident that PSPs should obtain this letter immediately from the firms that hold their safeguarding accounts.

The letter proposed by FCA ensures the clear identification of Safeguarding Accounts.

Selection, appointing and reviewing third parties

The Approach Document gives specific guidance as to the 'due skill, care and diligence' that PSPs should exercise in appointing credit institutions (and others) to hold safeguarding accounts. There is a need for periodic review.

Start of the safeguarding obligation

'... firms must have organisational arrangements to minimise the risk of loss of customer funds through fraud, misuse, negligence or poor administration.'

This guidance is directed by FCA to Electronic Money Issuers (EMIs).

Unallocated funds

Although unallocated funds are not 'relevant funds', the guidance is that these funds 'should be protected according to Principle 10 of [the FCA's] Principles for Business'.

This means clear segregation from the PSP's own funds until the funds are either [1] returned by the PSP to the customer or [2] the payment service is provided (when the unallocated funds become 'relevant funds').

Annual compliance audit

The FCA provides the following clarification –

'... firms ... should arrange **specific annual audits of their compliance with the safeguarding requirements** under the PSRs/EMRs' **and**

'whenever there are any changes to their business model ...'

A firm must also ensure that its 'proposed auditor has sufficient skills, resources and expertise in auditing compliance with the safeguarding requirements under the PSRs ... '.

Disclosure to customers on treatment of funds on insolvency Consumer Protection from Unfair Trading Regulations 2008 (the 2008 regulations) Financial Services Compensation Scheme (FSCS)

FCA gives detailed guidance on this issue –

'... firms [need] to be careful to avoid giving customers misleading impressions about how much protection they will get from safeguarding requirements'

FCA refers to a firm's need to comply with the 2008 regulations.

Firms must avoid giving the impression that a customer is protected by the FSCS when it is not. This will be in most cases.

Prudential risk management

Governance and controls

The need for 'robust governance arrangements' is detailed and emphasised.

Capital adequacy

FCA emphasises the need for firms to 'calculate their capital requirements and resources on an ongoing basis [and on request by FCA]' with emphasis on the need to deduct intra-group receivables from own funds [CET1].

Liquidity and capital stress testing

'Firms should carry out liquidity and capital stress testing' to ensure 'they can continue to meet their **conditions of authorisation** and own funds requirements'.

Risk-management arrangements

FCA stresses the need for firms to have access to **committed credit lines** and for firms not to include **uncommitted intra-group credit lines**.

Wind-down plans

This deals with resolution matters on liquidation

Firms must have effective plans to manage resolution issues –

1. 'funding to cover the solvent wind-down of the firm, including the return of all customer funds
2. realistic triggers to start a solvent wind-down
3. the need for any counterparties (ie **merchants**) to find alternative providers
4. realistic triggers to seek advice on entering an insolvency process, and
5. information which would help an administrator or liquidator to quickly identify customer funds and return them as a priority'

25 May 2020

References –

most recent first

FCA : Coronavirus and safeguarding customers' funds: proposed guidance for payment firms

<https://www.fca.org.uk/publications/guidance-consultations/coronavirus-safeguarding-customers-funds-proposed-guidance-payment-firms>

FCA : Proposed acknowledgement letter for banks and custodians

<https://www.fca.org.uk/publication/guidance-consultation/coronavirus-safeguarding-customers-funds-annex-1-safeguarding-bank-custodian-acknowledgement-letter.pdf>

FCA acts to strengthen protections for customers using payment firms – press release

<https://www.fca.org.uk/news/press-releases/fca-acts-strengthen-protections-customers-using-payment-firms>

FCA : Non-Bank PSP : Requirements for Safeguarding of Customers' Funds : 'Dear CEO letter' 4 July 2019

<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-non-bank-payment-service-providers-requirements-for-safeguarding-of-customer-funds.pdf>

FCA : Payment Services and Electronic Money – Our Approach : 3 June 2019

The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011

<https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>

Payment Services Regulations 2017 [SI 2017/752] interactive version

<http://www.legislation.gov.uk/uksi/2017/752/contents/made>

Payment Services Regulations 2017 reg 23 safeguarding

<http://www.legislation.gov.uk/uksi/2017/752/regulation/23>

Payment Services Directive 2015 [(EU)2015/2366] [PSD2]

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2366>

Consumer Protection from Unfair Trading Regulations 2008 [SI 2008/1277]

<http://www.legislation.gov.uk/uksi/2008/1277/contents/made>