

FCA - Implementation of the Revised Payment Services Directive

Introduction

The Financial Conduct Authority (FCA) has [published a consultation](#) on the implementation of the revised Payment Services Directive (PSD2). The UK government is required to pass PSD2 into UK law by 13 January 2018 which it plans to in the form of the *Payment Services Regulations 2017*.

Due to ABCUL lobbying, the government has elected to exempt credit unions from these regulations, however, whilst credit unions will be exempt from PSD2 directly, the FCA are making a number of changes to the Banking: Conduct of Business Sourcebook (BCOBS) which applies to credit unions [\[1\]](#) in relation to how they conduct business with members, this currently covers areas such as communications and financial promotions.

The FCA are proposing to extend selected PSD2 measures to BCOBS in order to align certain consumer protections across both PSD2 firms and exempt firms such as credit unions. We focus on the potential changes affecting credit unions in the briefing below.

ABCUL has submitted a response based on feedback from members. This consultation is now closed. Please provide any questions or feedback to Matt Bland (matt.bland@abcul.org / 0161 819 6946) or Daniel Arrowsmith (daniel.arrowsmith@abcul.org / 0161 819 6996).

Changes for credit unions

Security of electronic payments

The FCA proposes to make a new rule and guidance in BCOBS 6 which would require credit unions to consider explicitly the risk of fraud involved in allowing customers to make electronic payments. Firms would be required to have appropriate procedures and safeguards to ensure payments can be carried out in a safe and secure manner.

The FCA also proposes to include guidance in BCOBS stating that firms should use procedures to verify the identity of a banking customer or the validity of a particular payment instrument proportionate to the risks involved.

Unauthorised transactions

Under BCOBS 5.1.12R a banking customer may be made liable for a maximum of £50 in respect of an unauthorised transaction. The FCA proposes to align this limit with the new maximum in PSD2 which is £35.

In addition, the customer would not be liable in the following circumstances:

- The loss, theft or misappropriation of the payment instrument was not detectable by the payer [member] prior to the payment, except where the payer acted fraudulently; or
- The loss was caused by acts or omissions of an employee, agent, or branch of a payment service provider or entity which carried out activities on behalf of the payment service provider [i.e. credit union or outsourcing partners].

The FCA has decided not to replicate regulations in PSD2 which means that the payer is not liable for any losses where their payment provider does not require strong customer authentication due to it imposing a disproportionate regulatory burden on PSD2 exempt firms such as credit unions.

Incorrect payment routing information

BCOBS currently states that where a payment is made to the wrong recipient because the customer provided the incorrect payment information (e.g. sort code and account number) the firm must make reasonable efforts to recover the sums involved.

There are additional requirements under PSD2 which the FCA proposes to extend to exempt firms, these are:

- The payee's firm must co-operate with the payer's firm in its efforts to recover funds, in particular by providing to the payer's firm all relevant information for the collection of funds.
- If the payer's firm is unable to recover the funds it must, on written request provide the payer with all relevant information for the payer to claim repayment of funds.

This would increase credit union's obligations where its members misdirect payments or receive misdirected payments from another firm.

Conclusion

As a result of ABCUL lobbying, the UK has exercised its option to exempt credit unions from PSD2 and the majority of the consequent regulatory changes. However, as discussed above, the FCA is consulting on aligning some of the rules and guidance contained in BCOBS with some of the new standards contained within PSD2.

ABCUL has submitted a response based on feedback from members. **This consultation is now closed.** Please provide any questions or feedback to Matt Bland (matt.bland@abcul.org / 0161 819 6946) or Daniel Arrowsmith (daniel.arrowsmith@abcul.org / 0161 819 6996).

ABCUL – April 2017

[1] Because credit unions are exempt from the PSRs 2017, the conduct provisions of BCOBS will apply to them in respect of their retail banking services, except where expressly disappplied (see [BCOBS 1.1.5R](#))