
STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

PART 9

The Financial Conduct Authority

Supervision and enforcement

Monitoring and enforcement

- 108.**—(1) The FCA must maintain arrangements designed to enable it to determine whether—
- (a) persons on whom requirements are imposed by or under Parts 2 to 7 or regulation 105 (access to bank accounts) are complying with them;
 - (b) there has been any contravention of regulation 138(1) (prohibition on provision of payment services by persons other than payment service providers), 139(1) (false claims to be a payment service provider or exempt) or 142(1)(a) or (2) (misleading a regulator).
- (2) The arrangements referred to in paragraph (1) may provide for functions to be performed on behalf of the FCA by any body or person who is, in its opinion, competent to perform them.
- (3) The FCA must also maintain arrangements for enforcing the provisions of these Regulations.
- (4) Paragraph (2) does not affect the FCA's duty under paragraph (1).

Reporting requirements

- 109.**—(1) A person must give the FCA such information as the FCA may direct in respect of its provision of payment services or its compliance with requirements imposed by or under Parts 2 to 7 or regulation 105 (access to bank accounts).
- (2) Information required under this regulation must be given at such times and in such form, and verified in such manner, as the FCA may direct.
- (3) A direction under paragraph (2) must specify the purpose for which the information is required, as appropriate, and the time within which the information is to be given.
- (4) Each authorised payment institution, small payment institution and registered account information service provider, and each credit institution and electronic money institution which is authorised in the United Kingdom and provides payment services, must provide to the FCA statistical data on fraud relating to different means of payment.
- (5) Such data must be provided at least once per year, and must be provided in such form as the FCA may direct.
- (6) The FCA must provide such data in an aggregated form to the European Banking Authority and the European Central Bank.

Public censure

110. If the FCA considers that a person has contravened a requirement imposed on them by or under these Regulations, the FCA may publish a statement to that effect.

Financial penalties

111.—(1) The FCA may impose a penalty of such amount as it considers appropriate on—

- (a) a payment service provider who has contravened a requirement imposed on them by or under these Regulations; or
- (b) a person who has contravened regulation 138(1) (prohibition on provision of payment services by persons other than payment service providers), 139(1) (false claims to be a payment service provider or exempt) or 142(1)(a) or (2) (misleading a regulator).

(2) The FCA may not in respect of any contravention both require a person to pay a penalty under this regulation and cancel their authorisation as a payment institution or their registration as a small payment institution or account information service provider (as the case may be).

(3) A penalty under this regulation is a debt due from that person to the FCA, and is recoverable accordingly.

Proposal to take disciplinary measures

112.—(1) Where the FCA proposes to publish a statement under regulation 110 or to impose a penalty under regulation 111, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed statement or state the amount of the proposed penalty.

(3) If, having considered any representations made in response to the warning notice, the FCA decides to publish a statement under regulation 110 or to impose a penalty under regulation 111, it must without delay give the person concerned a decision notice.

(4) The decision notice must set out the terms of the statement or state the amount of the penalty.

(5) If the FCA decides to publish a statement under regulation 110 or impose a penalty on a person under regulation 111, the person concerned may refer the matter to the Upper Tribunal.

(6) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act apply in respect of the imposition of penalties under regulation 111 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the 2000 Act (disciplinary measures) and the amount of penalties under that Part of that Act.

(7) After a statement under regulation 110 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the 2000 Act (third party rights) (as applied by paragraph 10 of Schedule 6 to these Regulations).

Injunctions

113.—(1) If, on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed by or under these Regulations; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the FCA, the court is satisfied—

(a) that any person has contravened a requirement imposed by or under these Regulations; and
(b) that there are steps which could be taken for remedying the contravention,
the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

- (3) If, on the application of the FCA, the court is satisfied that any person may have—
(a) contravened a requirement imposed by or under these Regulations; or
(b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

Power of FCA to require restitution

114.—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a payment service provider (referred to in this regulation and regulation 115 as “the person concerned”) has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to the person concerned as a result of the contravention; or
(b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require the person concerned, in accordance with such arrangements as the FCA considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the FCA to have accrued;
(b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
(c) in a case within both of those paragraphs, to the profits appearing to the FCA to have accrued and to the extent of the loss or other adverse effect.
(3) In paragraph (2) “appropriate person” means a person appearing to the FCA to be someone—
(a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
(b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Proposal to require restitution

115.—(1) If the FCA proposes to exercise the power under regulation 114(2), it must give the person concerned a warning notice.

(2) The warning notice must state the amount which the FCA propose to require the person concerned to pay or distribute as mentioned in regulation 114(2).

(3) If, having considered any representations made in response to the warning notice, the FCA decides to exercise the power under regulation 114(2), it must without delay give the person concerned a decision notice.

- (4) The decision notice must—
- (a) state the amount that the person concerned is to pay or distribute;
 - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
 - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (5) If the FCA decides to exercise the power under regulation 114(2), the person concerned may refer the matter to the Upper Tribunal.

Restitution orders

116.—(1) The court may, on the application of the FCA, make an order under paragraph (2) if it is satisfied that a person has contravened a requirement imposed by or under these Regulations, or been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to them as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the person concerned to pay to the FCA such sum as appears to the court to be just having regard—

- (a) in a case within sub-paragraph (a) of paragraph (1), to the profits appearing to the court to have accrued;
- (b) in a case within sub-paragraph (b) of that paragraph, to the extent of the loss or other adverse effect;
- (c) in a case within both of those sub-paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the FCA in pursuance of an order under paragraph (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) In paragraph (3), “qualifying person” means a person appearing to the court to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

(5) On an application under paragraph (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

- (a) establishing whether any and, if so, what profits have accrued to them as mentioned in sub-paragraph (a) of that paragraph;
- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in sub-paragraph (b) of that paragraph; and
- (c) determining how any amounts are to be paid or distributed under paragraph (3).

(6) The court may require any accounts or other information supplied under paragraph (5) to be verified in such manner as it may direct.

(7) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(8) Nothing in this regulation affects the right of any person other than the FCA to bring proceedings in respect of the matters to which this regulation applies.

Complaints

117.—(1) The FCA must maintain arrangements designed to enable payment service users and other interested parties to submit complaints to it that a requirement imposed by or under Parts 2 to 7 of these Regulations has been breached by a payment service provider.

(2) Where it considers it appropriate, the FCA must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).