

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Payments Policy team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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By email: CPSafeguarding@fca.org.uk

Dear Sir / Madam

Financial Services Consumer Panel response to 'Coronavirus and safeguarding customers' funds: proposed guidance for payment firms'

The Financial Services Consumer Panel welcomes the FCA's proposed guidance for payment firms on coronavirus and safeguarding customers' funds.

The Panel is supportive of the FCA taking pre-emptive action to address shortcomings in how some payments firms have implemented the Electronic Money Regulations 2011 or Payment Services Regulations 2017 in relation to safeguarding customers' funds. The FCA's proposed guidance provides additional clarity to help firms meet the FCA's expectations, and protect customers' funds. This proactive approach is far preferable to waiting for firms to fail before taking action when it is too late to ensure that customers' money is returned to them. The Panel notes that the guidance has been drafted in the context of the Covid-19 pandemic, but considers that it should remain after the crisis has eased since the issues it covers will remain despite the context changing.

While the Panel recognises that the payments market continues to develop at pace, and offers the prospect of innovative services which may stand to benefit consumers, it is important that potential consumer harm is addressed quickly and decisively. The Panel notes that in July 2019 the FCA published its multi-firm review of payments firms¹ and an associated 'Dear CEO letter'², both of which highlighted similar concerns to those which have prompted this latest set of additional guidance. The Panel recommends that the FCA actively supervises compliance with the additional guidance and stands ready to take swift enforcement action where firms continue to fail to follow the rules and guidance. In addition, it will be important that payments firms going through the FCA's authorisations gateway are reminded that they must have appropriate policies in place to safeguard customers' funds, and are actively monitored to ensure they do so.

The Panel also notes that it can be challenging for sectors which are new to FCA regulation to fully appreciate what this entails. This is likely to be particularly the case in nascent sectors where many of the firms may be new and / or small. The Panel encourages the FCA to think creatively about how to engage these sectors to ensure that messages about regulation land within their intended audiences.

¹ <https://www.fca.org.uk/publications/multi-firm-reviews/safeguarding-arrangements-non-bank-payment-service-providers>

² <https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-non-bank-payment-service-providers-requirements-for-safeguarding-of-customer-funds.pdf>

Rather than respond to the questions posed, the Panel would like to make the following comment about the section of the draft guidance relating to '*Disclosing information on treatment of funds on insolvency to customers*'. The Panel recommends that this part of the additional guidance needs to be made much stronger to ensure that customers are provided with prominent messaging about what, if any, protections apply to the payment product which they are considering using.

Most customers will "buy" e-money or load prepaid cards/ wallets thinking that they have bought "money", and that it is theirs, and theirs alone. They will not be thinking that they are subject to any risk. Furthermore, since they are purchasing payment instruments it is unlikely that they will concern themselves with long-term issues such as the insolvency of the provider, as they might if they were buying investment instruments. Given this, there is the risk that a payment firm could comply with the letter of the draft guidance, but include this information in a Legal section or one dedicated to insolvency rather than upfront. This is not appropriate or sufficient. The FCA should be more prescriptive and require providers to state clearly that the deposits made to them are safeguarded (and how) but that customers' money would be at risk if the firm were to become insolvent. Firms should also make clear that these funds are not covered by the FSCS. This information should be sequential, not separated or hidden in small print within the terms and conditions.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel