

PAYMENT SERVICES INSTRUMENT 2009

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes:
- (1) the rules and guidance in Annexes A and E to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
 - (2) the rules, standard terms and guidance in Annexes A and E to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 226A (Consumer Credit Jurisdiction);
 - (b) section 227 (Voluntary Jurisdiction);
 - (c) section 229(4A) (Awards);
 - (d) section 230 (Costs);
 - (e) paragraph 8 (Guidance) of Schedule 17;
 - (f) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (g) paragraph 16B (The Consumer Credit Jurisdiction) of Schedule 17; and
 - (h) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.
- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 5 to the Payment Services Regulations 2008 (SI 2009/209) (“the Regulations”);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 5 to the Regulations;
 - (f) section 210(1) (Statements of policy) as applied by regulation 86(6) of the Regulations;
 - (g) section 226 (Compulsory Jurisdiction);
 - (h) section 229 (Awards);
 - (i) section 395(5) (The Authority’s procedures) as applied by paragraph 7 of Schedule 5 to the Regulations;

- (j) paragraph 13 (Authority's procedural rules) of Schedule 17;
 - (2) regulation 93 (Guidance) of the Payment Services Regulations 2009 (SI 2009/209); and
 - (3) the other powers referred to in Schedule 4 of the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules, standard terms and guidance made by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force as follows:
- (1) the amendments in Part 1 of Annex A come into force on 1 May 2009; and
 - (2) the remainder of the instrument comes into force on 1 November 2009.

Notes

- G. In the Annexes to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Amendments to the Handbook

- H. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
General Provisions (GEN)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E
Dispute Resolution: Complaints sourcebook (DISP)	Annex F

Material outside the Handbook

- I. The Enforcement Guide (EG) is amended in accordance with Annex G to this instrument.

Citation

- J. This instrument may be cited as the Payment Services Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited
13 March 2009

By order of the Board of the Financial Services Authority
26 March 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

Part 1: Comes into force on 1 May 2009

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>agent</i>	(in relation to <i>payment services</i>) a <i>person</i> who acts on behalf of a <i>payment institution</i> in providing <i>payment services</i> . [Note: article 4(22) of the <i>Payment Services Directive</i>]
<i>authorised payment institution</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> included by the <i>FSA</i> in the <i>FSA Register</i> as an authorised payment institution pursuant to regulation 4(1)(a), or a <i>person</i> deemed to have been granted authorisation by the <i>FSA</i> by virtue of regulation 121 of the <i>Payment Services Regulations</i> .
<i>EEA authorised payment institution</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to provide <i>payment services</i> in accordance with the <i>Payment Services Directive</i> .
<i>framework contract</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a contract for <i>payment services</i> which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account. [Note: article 4(12) of the <i>Payment Services Directive</i>]
<i>money remittance</i>	(in accordance with regulation 2(1) of the <i>Payment Service Regulations</i>) a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where: (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another <i>payment service provider</i> acting on behalf of the payee; or (b) funds are received on behalf of, and made available to, the payee. [Note: article 4(13) of the <i>Payment Services Directive</i>]
<i>payment institution</i>	an <i>authorised payment institution</i> , an <i>EEA authorised payment institution</i> or a <i>small payment institution</i> .

[**Note:** articles 4(4) and 26(3) of the *Payment Services Directive*]

payment service (in accordance with regulation 2(1) of, and Schedule 1 to, the *Payment Services Regulations*):

- (a) Any of the following activities when carried out as a regular occupation or business activity:
 - (i) services enabling cash to be placed on a payment account and all of the operations required for operating a payment account;
 - (ii) services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;
 - (iii) execution of the following types of payment transaction:
 - (A) direct debits, including one-off direct debits;
 - (B) payment transactions executed through a payment card or a similar device;
 - (C) credit transfers, including standing orders;
 - (iv) execution of the following types of payment transaction where the funds are covered by a credit line for the *payment service user*:
 - (A) direct debits, including one-off direct debits;
 - (B) payment transactions executed through a payment card or a similar device;
 - (C) credit transfers, including standing orders;
 - (v) issuing payment instruments or acquiring payment transactions;
 - (vi) *money remittance*;
 - (vii) execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the *payment service user* and the supplier of the goods or services.
- (b) The following activities do not constitute payment services:
 - (i) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
 - (ii) payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;

- (iii) the professional physical transport of banknotes and coins, including their collection, processing and delivery;
- (iv) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;
- (v) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction;
- (vi) money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account;
- (vii) payment transactions based on any of the following documents drawn on the *payment service provider* with a view to placing funds at the disposal of the payee:
 - (A) paper cheques of any kind, including traveller's cheques;
 - (B) bankers' drafts;
 - (C) paper-based vouchers;
 - (D) paper postal orders;
- (viii) payment transactions carried out within a payment or securities settlement system between *payment service providers* and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;
- (ix) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by *persons* referred to in (h) or by investment firms, *full credit institutions*, collective investment undertakings, asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
- (x) services provided by technical service providers, which support the provision of *payment services*, without the provider entering at any time into possession of the funds to be transferred, including:
 - (A) the processing and storage of data;
 - (B) trust and privacy protection services;
 - (C) data and entity authentication;
 - (D) information technology;
 - (E) communication network provision; and

- (F) the provision and maintenance of terminals and devices used for *payment services*;
- (xi) services based on instruments that can be used to acquire goods or services only:
 - (A) in or on the issuer's premises; or
 - (B) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services,and for these purposes the "issuer" is the person who issues the instrument in question;
- (xii) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the *payment service user* and the supplier of the goods and services;
 - (A) payment transactions carried out between *payment service providers*, or their agents or *branches*, for their own account;
 - (B) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a *payment service provider* other than an undertaking belonging to the same group;
 - (C) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the *framework contract* with the customer withdrawing money from a payment account, where no other *payment service* is conducted by the provider.

[**Note:** articles 3 and 4(3) of, and the Annex to, the *Payment Services Directive*]

Payment Services Directive

Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market.

payment service provider

- (1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Service Regulations*) any of the following *persons* when they carry out a *payment service*:
 - (a) an *authorised payment institution*;
 - (b) a *small payment institution*;
 - (c) an *EEA authorised payment institution*;

- (d) a *full credit institution*;
- (e) an *e-money issuer*;
- (f) the Post Office Limited;
- (g) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the *United Kingdom*, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (h) government departments and local authorities, other than when carrying out functions of a public nature.

[**Note:** article 1(1) of the *Payment Services Directive*]

- (2) (in *DISP*) as in (1) but excluding a *full credit institution* and an *e-money firm*.

payment service user (in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* when making use of a *payment service* in the capacity of either payer or payee, or both.

[**Note:** article 4(10) of the *Payment Services Directive*]

Payment Services Regulations the Payment Services Regulations 2009 (SI 2009/209).

small payment institution (in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* included by the *FSA* in the *FSA Register* pursuant to regulation 4(1)(b) of the *Payment Services Regulations*.

Amend the following definition as shown.

branch ...

- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*) a place of business of a *payment institution*, other than its head office, which forms a legally dependent part of the institution and which carries out directly all or some of the transactions inherent in its business. For the purposes of the *Payment Services Regulations*, all places of business set up in the same *EEA State* other than the *United Kingdom* by an *authorised payment institution* are to be regarded as a single *branch*.

[**Note:** article 4(29) of the *Payment Services Directive*]

Part 2: Comes into force on 1 November 2009

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

micro-enterprise an enterprise which:

- (a) employs fewer than 10 *persons*; and
- (b) has a turnover or annual balance sheet that does not exceed €2 million.

In this definition, “enterprise” means any *person* engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed *persons* and family businesses engaged in craft or other activities, and *partnerships* or associations regularly engaged in an economic activity.

[**Note:** article 4(26) of the *Payment Services Directive* and the Annex to the *Micro-enterprise Recommendation*]

Micro-enterprise Recommendation Recommendation 2003/361/EC of the Commission of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.

Amend the following definitions as shown.

Compulsory Jurisdiction the jurisdiction of the *Financial Ombudsman Service* to which *firms* and *payment service providers* (and certain ~~unauthorised~~ other persons as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.

consumer (1) (except as specified in this definition) any natural person acting for purposes outside his trade, business or profession.

[**Note:** article 2 of the *Distance Marketing Directive*, article 2 of the *Unfair Terms in Consumer Contracts Directive* (93/13/EEC), ~~and~~ article 2 of the *E-Commerce Directive*, and article 4(11) of the *Payment Services Directive*]

...

consumer credit activity any one of the following activities carried on by a *licensee* ~~or~~ firm or payment service provider:

- (a) ...

...

where at the time of the act or omission complained of:

- (g) the *licensee* ~~or~~ firm or payment service provider was:

- (i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
 - (ii) authorised to carry on an activity by virtue of section 34A of that Act; ~~and~~ or
 - (iii) in accordance with regulation 26(2) of the *Payment Services Regulations*, was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and
- (h) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the *Act*;

and expressions used in the Consumer Credit Act 1974 (as amended) have the same meaning in this definition as they have in that Act.

FSA Register

The public record, as required by section 347 of the *Act* (The public record) and regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), of every:

- (a) ...
- (aa) *authorised payment institution and its EEA branches*;
- (ab) *small payment institution*;
- (ac) *agent of an authorised payment institution or small payment institution*;
- (ad) *credit union, municipal bank and the National Savings Bank where such persons provide a payment service*;

...

respondent

- (1) (in *DISP*) a *firm* (except a *UCITS* qualifier), *payment service provider*, licensee or *VJ* participant covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

...

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.1.6 R A *firm* will not be subject to a *Principle* to the extent that it would be contrary to the *UK's* obligations under a ~~*Single Market Directive*~~ European Community instrument.

...

3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* to credit institutions and e-money issuers (see Parts 5 and 6 of the *Payment Services Regulations*).

...

4.1.1 G *PRIN 3.1.6R* ensures that the *Principles* do not impose obligations upon firms which are inconsistent with a ~~*Single Market Directive*~~ European Community instrument. ...

Annex C

Amendments to the General Provisions (GEN)

In this, Annex underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

- 5.1.1 G This chapter contains:
- (1) *guidance for firms and authorised payment institutions, and their appointed representatives, agents or tied agents on the circumstances in which the FSA permits ~~firms and their appointed representatives or tied agents~~ them to reproduce the FSA logo;*
- ...
- ...
- 5.1.3 G *GEN 5 Annex 1G is a general licence, which sets out the circumstances in which the FSA permits ~~firms and their appointed representatives or tied agents~~ a person to whom this chapter applies to reproduce the FSA and keyfacts logos. ~~A firm, appointed representative or tied agent~~ Such a person need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.*
- 5.1.4 G The FSA has no policy to allow use of the logos by a ~~firm, appointed representative or tied agent~~ person to whom this chapter applies other than as set out in GEN 5 Annex 1G. If, however, ~~a firm, appointed representative or tied agent~~ such a person wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the FSA for an individual licence, giving full reasons why it considers the FSA should grant the licence.

5 Annex 1G Licence for use of the FSA and keyfacts logos

Application	
1.1	The FSA grants this licence to <i>firms, <u>authorised payment institutions</u>, <u>appointed representatives, agents</u> and <u>tied agents</u>.</i>
...	
Permission to use the FSA logo	
3.1	<i>A UK domestic firm, its <u>appointed representatives</u> and <u>tied agents</u>, and an <u>authorised payment institution</u> and its <u>agents</u> are permitted to use the FSA logo:</i>

	(1)	as part of a statement by that <i>person</i> , in a letter or electronic equivalent, that the <i>firm</i> it or, in relation to an <i>appointed representative, agent</i> or <i>tied agent</i> , <u>its principal</u> , is authorised and regulated by the <i>FSA</i> ; or
	(2)	if required to do so by the <i>FSA</i> .
...		
Further conditions on the use of the FSA and keyfacts logos		
5.1	The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or keyfacts logos are displayed does not:	
	(1)	in any way imply that the <i>FSA</i> is endorsing the <i>firm licensee</i> or its <i>appointed representatives, tied agents</i> or products, services or communications (see also <i>GEN</i> 1.2.2R(1)); or
	(2)	misrepresent the <i>firm's</i> or its <i>appointed representative's</i> or <i>tied agent's licensee's</i> relationship with the <i>FSA</i> or present false information about the <i>FSA</i> ; or
	...	
Use of the FSA logo by appointed representatives		
6.1	<u>[deleted]</u>	
...		

...

Schedule 4

Powers exercised

Sch 4.1G

...	
The following powers in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Section 69 (Statement of policy), including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i>
	...
	Section 169(9) (Investigations etc in support of overseas regulator), including as

	<u>applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i></u>
	<u>Section 210 (Statements of policy), including as applied by regulation 86(6) of the <i>Payment Services Regulations</i></u>
	<u>Section 395(5) (The Authority's procedures), including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i>.</u>
...	
The following power in the Act <u>has powers have</u> been exercised by the <i>FSA</i> to give the other guidance in <i>GEN</i> :	
	Section 157(1) (Guidance)-
	<u>Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>.</u>
In this Schedule, references to <i>GEN</i> include the <i>Glossary</i> .	
...	

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, all the text is new and is not underlined.

Exception: contracts for payment services

- 5.1.13A R Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of *COBS 5 Annex 1R*.

[**Note:** article 4(5) of the *Distance Marketing Directive*]

- 5.1.13B G Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to FSA material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

...

Regulated Activities Order	Description	Handbook reference	Decision maker
...

<u>Payment Services Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 9(7) and 14</u>	<u>when the FSA is proposing to refuse an application for authorisation as an authorised payment institution, or for registration as a small payment institution, or impose a requirement</u>		<u>Executive procedures</u>
<u>Regulations 9(8)(a) and 14</u>	<u>when the FSA is deciding to refuse an application for authorisation as an authorised payment institution, or for registration of a small payment institution, or impose a requirement</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 10(2) and 10(3)(a) and 14</u>	<u>when the FSA is proposing or deciding to either cancel an authorised payment institution's authorisation, or to cancel a small payment institution's registration, otherwise than at that institution's</u>		<u>RDC</u>

	<u>own request*</u>		
<u>Regulations 11(6), 11(9), 11(10)(b) and 14</u>	<u>When the FSA is exercising its powers to vary a person's authorisation on its own initiative</u>		<u>RDC or Executive procedures</u> <u>See also DEPP 3.4 (Note 1)</u>
<u>Regulation 24(2)</u>	<u>when the FSA is proposing to refuse to register an EEA branch</u>		<u>Executive procedures</u>
<u>Regulation 24(3)(a)</u>	<u>when the FSA is deciding to refuse to register an EEA branch</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 24(2) and 24(3)(a)</u>	<u>when the FSA is proposing or deciding to cancel the registration of an EEA branch*</u>		<u>RDC</u>
<u>Regulation 29(9)</u>	<u>when the FSA is proposing to refuse an application for registration as an agent</u>		<u>Executive procedures</u>
<u>Regulation 29(10)(a)</u>	<u>when the FSA is deciding to refuse an application for registration as an agent</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 30(2) and 30(3)(a)</u>	<u>when the FSA is proposing or deciding to remove an agent from the FSA Register otherwise than at the request of a payment institution*</u>		<u>RDC</u>
<u>Regulations 86(1) and 86(3)</u>	<u>when the FSA is proposing, or deciding, to impose a financial</u>		<u>RDC</u>

	<u>penalty*</u>		
<u>Regulations 86(1) and 86(3)</u>	<u>when the FSA is proposing, or deciding, to publish a statement that a payment service provider has contravened the Payment Services Regulations*</u>		<u>RDC</u>
<u>Regulations 89(1) and 89(3)</u>	<u>when the FSA is proposing or deciding to exercise its powers to require restitution*</u>		<u>RDC</u>
<u>Regulation 121(7)</u>	<u>when the FSA is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</u>		<u>Executive Procedures</u>
<u>Regulation 121(8)</u>	<u>when the FSA is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Schedule 5 paragraph 1</u>	<u>when the FSA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the Payment Services Regulations (Note 2)</u>		<u>RDC</u>
<u>Schedule 5 paragraph 1</u>	<u>when the FSA is proposing or deciding to impose a financial penalty against a relevant person (Note 3)</u>		<u>RDC</u>
<p><u>Notes:</u> <u>(1) The RDC will take the decision to give a notice exercising the FSA's own initiative power if the action involves:</u> <u>(a) removing a type of activity from an authorisation or registration; or</u> <u>(b) refusing an application to include a type of activity in an authorisation or registration; or</u> <u>(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or</u> <u>(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.</u></p>			

For all other types of action the decision to give a notice will be taken by FSA staff under executive procedures.

(2) The *Payment Services Regulations* do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.

(3) The *Payment Services Regulations* do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.

Annex F

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Introduction

This part of the *Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *payment service providers*, *licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms*, *payment service providers*, *licensees*, and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Background

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons* carrying on *regulated activities* (*firms*) or providing *payment services* (*payment service providers*) and which are covered by the *Compulsory Jurisdiction* (~~*firms*~~);

...

...

Application to payment service providers

1.1.10A R This chapter (except the *complaints record rule* and the *complaints reporting rules*) applies to *payment service providers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

- 1.1.10B G
- (1) In this sourcebook, the term *payment service provider* does not include *full credit institutions* or *e-money firms* (which are covered by this sourcebook as *firms*), but it does include *small e-money issuers*.
 - (2) Although *payment service providers* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial*

Ombudsman Service should this be necessary.

...

Exemptions for firms and payment service providers

- 1.1.12 R (1) A firm or payment service provider falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FSA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

...

...

1.2 Consumer awareness rules

Publishing and providing summary details

- 1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:
- (1) publish appropriate summary details of their internal process for dealing with *complaints* promptly and fairly;
 - (2) refer *eligible complainants* ~~in writing~~ to the availability of these summary details ~~at, or immediately after, the point of sale; and:~~
 - (a) in relation to a payment service, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the Payment Services Regulations; or
 - (b) otherwise, in writing at, or immediately after, the point of sale; and
 - (3) ...
- 1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2)(b) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*.

Content of summary details

- 1.2.3 G ...

...

Financial Ombudsman Service logo

1.2.5 G ...

DISP 1 Annex 2G

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules
...
<u>payment service provider in relation to complaints concerning payment services</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>EEA branch of a UK payment service provider in relation to complaints concerning payment services</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>incoming EEA</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>	<u>Does not</u>

<u>authorised payment institution providing cross-border payment services from outside the UK</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>	<u>apply</u>
<i>licensee</i>	...	...	...	...	...
...

...

2.1 Purpose, interpretation and application

Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities and payment services*, and covers:

...

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities*;

- (1A) *payment services*;

...

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G ...

Activities by payment service providers

2.3.2A R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a payment service provider in carrying on:

- (1) payment services; or
- (2) consumer credit activities;

or any ancillary activities, including advice, carried on by the payment service provider in connection with them.

General

2.3.3 G ~~Complaints about acts or omissions by a firm include complaints about acts or omissions~~ those in respect of activities for which the firm or payment service provider is responsible (including business of any appointed representative or agent for which the firm or payment institution has accepted responsibility).

...

2.3.5 G The Compulsory Jurisdiction includes complaints about the UK end of ‘one leg’ payment services transactions, i.e. services provided from UK establishments that also involve a payment service provider located outside the EEA. The Compulsory Jurisdiction also includes complaints about payment services irrespective of the currency of the transaction.

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The Ombudsman can consider a complaint under the Voluntary Jurisdiction if:

- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

- (1) activities which (at 1 November 2009) were payment services or would be payment services if they were carried on from an establishment in the United Kingdom;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

...

- 2.5.4A G DISP 2.5.1R(2)(l) includes complaints about the EEA end of ‘one leg’ payment services transactions, i.e. services provided from EEA establishments that are subject to the territorial jurisdiction of the Voluntary Jurisdiction (see DISP 2.6.4R(2)) that also involve a payment service provider located outside the EEA. It also includes complaints about payment services irrespective of the currency of the transaction.

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

- 2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*) or of a *payment service provider (including agents of a payment institution)* carried on from an establishment in the *United Kingdom*.
- 2.6.2 G This:
- (1) includes incoming *EEA firms*, incoming EEA authorised payment institutions and *incoming Treaty firms*; but
 - (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom*.

...

Eligible complainants

- 2.7.3 R An *eligible complainant* must be a *person* that is:
- (1) a ~~private individual~~ consumer;
 - (2) a ~~business, which has a group annual turnover of less than £1 million~~ micro-enterprise;
 - (a) in relation to a complaint relating wholly or partly to payment services, either at the time of the conclusion of the payment service contract or at the time the complainant refers the complaint to the respondent; or
 - (b) otherwise, at the time the complainant refers the complaint to the respondent;
 - (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or

- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.

2.7.4 G ~~A business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession. A subsidiary of a corporate group will be eligible only where the corporate group as a whole meets the turnover test. In determining whether an enterprise meets the tests for being a *micro-enterprise*, account should be taken of the enterprise's 'partner enterprises' or 'linked enterprises' (as those terms are defined in the *Micro-enterprise Recommendation*). For example, where a parent company holds a majority shareholding in a *complainant*, if the parent company does not meet the tests for being a *micro-enterprise* then neither will the *complainant*.~~

[Note: Articles 1 and 3 to 7 of the Annex to the *Micro-enterprise Recommendation*]

...

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

- (1) the complainant is (or was) a customer or *payment service user* of the *respondent*;
- (2) the complainant is (or was) a potential customer or *payment service user* of the *respondent*;

...

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *payment service provider*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
- (a) the *firm* itself has *permission* to carry on; or
- (ab) the *firm* or *payment service provider* itself is entitled to carry on under the *Payment Services Regulations*; or
- (b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

...

DISP TP 1

Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
20	...	...	...	...	...
<u>21</u>	<u>DISP 2.7.3R</u>	<u>R</u>	<p><u>A person is also an eligible complainant if:</u></p> <p>(a) <u>it is a business with a group annual turnover of less than £1 million at the time it refers the complaint to the respondent;</u></p> <p>(b) <u>the complaint relates to a contract or policy entered into by or for the benefit of the complainant before 1 November 2009; and</u></p> <p>(c) <u>if the complaint had been made immediately before 1 November 2009 the respondent was subject to, or participated in, the Ombudsman's jurisdiction in respect of the activity to which the complaint relates.</u></p>	<u>From 1 November 2009</u>	<u>1 November 2009</u>
<u>22</u>	<u>DISP 2.7.3R</u>	<u>G</u>	<p><u>Transitional provision 21R applies together with the other eligibility rules in DISP 2.7. So, for example, a person who is an eligible complainant under the transitional provision, will not be an eligible complainant if the complaint does not arise from</u></p>	<u>From 1 November 2009</u>	<u>1 November 2009</u>

			<u>matters relevant to one of the relationships set out in <i>DISP</i> 2.7.6R.</u>		
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Annex G

Amendments to the Enforcement Guide (EG)

In this Annex, the text is all new and is not underlined.

After EG 19.89 insert the following new text.

Payment Services Regulations 2009

- 19.90 The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the *Payment Services Regulations*. The *Payment Services Regulations* impose requirements including, amongst other things, obligations on *payment service providers* to provide users with a range of information and various provisions regulating the rights and obligations of payment service users and providers.
- 19.91 The FSA's approach to enforcing the *Payment Services Regulations* will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the *person* who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 19.92 The regulatory powers which the *Payment Services Regulations* provide to the FSA include:
- the power to require information;
 - powers of entry and inspection;
 - power of public censure;
 - the power to impose financial penalties;
 - the power to prosecute or fine unauthorised providers; and
 - the power to vary an authorisation on its own initiative.
- 19.93 The *Payment Services Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*. The FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the FSA's approach are described below.

The conduct of investigations under the Payment Services Regulations

- 19.94 The *Payment Services Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Payment Services Regulations*.
- 19.95 The FSA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Payment Services Regulations* and the reasons

for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA expects to carry out a scoping visit early on in the enforcement process in most cases. The FSA's policy in civil investigations under the *Payment Services Regulations* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Payment Services Regulations

- 19.96 The *RDC* is the FSA's decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP 2 Annex 1G*. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under Regulations 11(6), (9), and (10)(b) (including as applied by Regulation 14).
- 19.97 For decisions made by *executive procedures* the procedures to be followed will be those described in *DEPP 4*.
- 19.98 The *Payment Service Regulations* do not require the FSA to have published procedures to launch criminal prosecutions. However, in these situations the FSA expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.
- 19.99 The *Payment Service Regulations* require the FSA to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*.
- 19.100 Certain FSA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Payment Services Regulations

- 19.101 When imposing or determining the level of a financial penalty the FSA's policy includes having regard to relevant factors in *DEPP 6.2.1G* and *DEPP 6.5*.
- 19.102 As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the *Payment Services Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See *DEPP 5*, *DEPP 6.7* and *EG 5* for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Payment Services Regulations)

- 19.103 The *Payment Services Regulations* apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response

to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the *FSA* will follow the procedures described in *DEPP 7*.