

Protocol between the Financial Conduct Authority and the Payment Systems Regulator on the enforcement of Regulation 105 of the Payment Services Regulations 2017

Purpose and scope

1. The Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) (individually, an Authority and together the Authorities) are both competent authorities for the purposes of Regulation 105 of the Payment Services Regulations 2017 (PSRs 2017), 'Access to Bank Accounts'.
2. This Protocol (protocol) sets out a specific framework for co-operation between the Authorities in exercising their powers to monitor and enforce compliance with Regulation 105. It sets out the role of each Authority, and explains the Authorities' intention to work together towards the shared purpose of ensuring compliance with the requirements in Regulation 105 of the PSRs 2017.
3. The Authorities have separate but overlapping mandates in relation to payment services and payment systems in the UK, including those set out under the PSRs 2017. Pursuant to Regulation 147 of the PSRs 2017, the Authorities must take such steps as they consider appropriate to co-operate with each other for the purposes of the exercise of their functions under the PSRs 2017 and to prevent unnecessary duplication of work.
4. Each Authority will act independently and remain responsible for its own decisions in relation to the enforcement of Regulation 105. This will always be subject to the requirement for each Authority to have regard to the need to use its resources in the most efficient way, as required under Regulations 106 and 124 of the PSRs 2017. The actions of each Authority may have implications for the objectives of the other and its duties under the PSRs 2017 or more widely. It is therefore essential that the Authorities work together when exercising their individual functions in relation to Regulation 105.
5. The general framework for co-operation and co-ordination between the FCA and the PSR is set out in the Memorandum of Understanding between the FCA, the PSR, the PRA and the Bank of England. This does not apply to the Authorities exercising their powers under the PSRs 2017.
6. The arrangements set out in this Protocol may be revised in the light of experience. The Authorities will review these arrangements from time to time and at least every two years to evaluate their continuing fitness for purpose. This Protocol may be revised by agreement between the Authorities.

Role of the Authorities

The FCA

7. The FCA is established under the Financial Services and Markets Act 2000 (FSMA) as the conduct regulator in the financial services sector. It is responsible for regulating the provision of payment services under the PSRs 2017 and the issuance of e-money under the EMRs 2017. This includes being the single prudential regulator of non-bank payment service providers and e-money firms.
8. The FCA has a single strategic objective to ensure that the markets for financial services function well. It also has three operational objectives:
 - a. to secure an appropriate degree of protection for consumers;
 - b. to protect and enhance the integrity of the UK financial system; and
 - c. to promote effective competition in the interests of consumers.
9. The FCA regulates payment services pursuant to the Payment Services Directive 2015 (Directive 2015/2366/EU) (PSD2), which was implemented in the UK by the PSRs 2017. Under the PSRs 2017 and Electronic Money Regulations (EMRs), the FCA authorises or registers payment institutions, such as money remitters and non-bank credit card issuers and e-money institutions. It also supervises payment and e-money institutions in relation to their prudential and other requirements. The FCA supervises all payment service providers, including banks and payment institutions, in relation to the conduct of business requirements under the PSRs 2017.

The Payment Systems Regulator (PSR)

10. The PSR is an independent regulator responsible for the regulation of UK payment systems designated by HM Treasury. It was established under the Financial Services (Banking Reform) Act 2013 (FSBRA) with statutory objectives¹ that include:
 - a. to promote effective competition in the market for payment systems;
 - b. to promote the development of , and innovation in, payment systems; and
 - c. to ensure that payment systems are operated and developed in a way that takes account of and promotes the interests of those who use, or are likely to use, services provided by payment systems.
11. The PSR is also the competent Authority under Part 8 of the PSRs 2017 in relation to the monitoring and enforcement of provisions governing direct and indirect access to payment systems (Regulations 103 and 104). The PSR shares competency for monitoring and ensuring compliance with Regulation 105 with the FCA in relation to access to payment account services. In

¹ See section 49 FSBRA.

addition, the PSR will be responsible for ensuring compliance with certain information requirements relating to ATM withdrawal charges under Regulation 61 of the PSRs 2017.

General co-operation principles

12. In order to monitor and ensure compliance with Regulation 105, the Authorities aim to facilitate effective co-operative working. This may include:
- a. meeting and communicating regularly, at appropriate levels of seniority, to discuss matters relating to Regulation 105;
 - b. consulting one another at an early stage on any issues that might have significant implications for the other Authority;
 - c. consulting and liaising to reduce duplication of effort, in order to avoid, where possible, both Authorities opening parallel investigations into the same issue and promoting appropriate action by the Authority best placed to investigate an issue (subject to any legal requirements or restrictions);
 - d. sharing (for comment) at an early stage draft documents pertaining to the enforcement of Regulation 105, whether relating to a particular case or otherwise;
 - e. co-ordinating enforcement action as necessary and co-operating in all ways permitted by law to ensure the effective and consistent enforcement of Regulation 105;
 - f. working together to appropriately resolve any issues arising from ensuring compliance with Regulation 105 or, more generally, in relation to co-operation between the Authorities.

Receiving and sharing notifications and complaints

13. Under Regulation 105 of the PSRs 2017, credit institutions are required to notify the FCA when they refuse or withdraw access to payment account services from a payment service provider. Under Regulation 105(5), the FCA must share the reasons for refusal with the PSR, in all cases (unless the PSR informs the FCA that it does not wish to receive them).
14. The FCA will share all notifications with the PSR as soon as reasonably possible when it receives them, unless the PSR indicates that it does not wish to receive any particular notification. If the PSR receives a notification from a credit institution in error, the PSR will share it with the FCA as soon as reasonably possible.
15. Each Authority 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 Regulation 105 has been breached.

16.If an Authority receives a complaint from a payment service provider in relation to its access to payment account services or any other complaint relating to Regulation 105, it will share the complaint with the other Authority as soon as reasonably possible.

Case opening and investigation

17.The Authorities shall arrange to meet periodically to discuss the notifications and complaints received, any issues raised and views on whether any issues or cases should be investigated further and any next steps.

18.Each Authority will make its own decision as to whether to open and investigate a case of non-compliance with Regulation 105. Before making a final decision on whether to open a case, an Authority should obtain and take into account the other Authority's views. The two Authorities may hold an informal case opening meeting to discuss each Authority's views on opening a case and next steps, including the nomination of a case lead for one or both Authorities.

19.The determination of whether an Authority will investigate any case should be based on assessing:

- a. whether the issues raised in the particular case fall within the Authority's general mandate;
- b. each Authority's experience in dealing with any similar issues which may be involved in the case; and
- c. whether it is well placed to investigate and take action.

20.Where one or both Authorities consider an issue or case should be investigated under Regulation 105, the Authorities will endeavour to reach agreement on which Authority is best placed to conduct the investigation. They will seek agreement in a spirit of constructiveness and cooperation. If an agreement cannot be reached, the matter should be escalated within each Authority and a meeting between the two Authorities at an appropriate level of seniority should be organised to discuss whether one or both Authorities should investigate.

21.Where investigation is decided upon, each organisation should notify the other of a primary contact in relation to the investigation.

The role of investigating Authority

22.Where an Authority decide to investigate a case, that Authority will deal with any notification or complaint received in accordance with its own internal procedures, and keep the other Authority informed about its decision-making process and the outcome.

23. The investigating Authority will, to the extent permitted by law,² engage with the other Authority in open dialogue and share relevant information as appropriate. This engagement may include attendance by the other Authority at internal meetings held by the investigating authority, in order to discuss the case. Attendance by the other Authority at any meeting is at the discretion of the investigating Authority but requests to attend should be considered by the investigating Authority in the spirit of cooperation. In any event, the two Authorities will endeavour to meet regularly or as often as required to discuss any ongoing cases.
24. Each Authority will share information relating to the monitoring of Regulation 105 with the other to the extent permitted by law, whether or not it proposes to open a case.
25. Each Authority may provide assistance to the investigating Authority in the interests of the effective enforcement of Regulation 105, to be agreed on a case by case basis.
26. As a consequence, where it has been agreed or determined that one of the Authorities is to investigate a particular Regulation 105 case, that investigating Authority can receive appropriate practical assistance and support in the handling of the case, to be agreed on a case-by-case basis, from the other Authority.
27. The investigating Authority should seek and take account of views or concerns raised by the supporting Authority before reaching a final decision on a case. For this purpose, the investigating Authority should endeavour to share any draft decision with the supporting Authority, where possible allowing sufficient time for the other Authority to provide comments before taking a final decision and/or publishing any document.

² Pursuant to Regulation 135 of the PSRs 2017, sections 81 to 93 of the Financial Services (Banking Reform) Act 2013 (information and investigation powers and disclosure of information) apply for the purposes of the PSR's functions under the PSRs 2017. Pursuant to Regulation 147(2), sections 348, 349 and 352 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information by FCA, PRA, etc.), as amended by the PSRs 2017, apply to disclosures by the FCA.