PSR Payment Systems Regulator

Revised penalty statement

October 2023

Contents

1 Introduction

1.1 The Payment Systems Regulator (PSR) has the power to impose various sanctions in respect of a 'compliance failure' – that is, a failure to comply with a regulation or a direction we enforce. We can:

a. publish details of a compliance failure

b. impose a financial penalty

c. publish details of a financial penalty

1.2 This document sets out the principles we will apply when deciding whether to exercise those powers, whether to impose a penalty, and when determining its amount.

1.3 We have the power to impose a penalty and powers of publication described above under the following legislation:

- Sections 72 and 73(1) of the Financial Services (Banking Reform) Act 2013 (FSBRA)
- Regulations 5 and 6 of the Payment Card Interchange Fees Regulations 2015 (PCIFRs)
- Regulations 126 and 127 of the Payment Systems Regulations 2017 (the PSRs 2017)

1.4 FSBRA defines a compliance failure as a failure by a participant[1] in a regulated payment system[2] to comply with:

1. a direction given by us under section 54 of FSBRA
2. a requirement imposed by us under section 55 or 56 of FSBRA

1.5 The PCIFRs define a compliance failure as a failure by a regulated person[3] to comply with:

1. an obligation or prohibition imposed by the Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions as retained EU law (UK Interchange Fee Regulation (IFR))[4]
2. a direction given by the PSR under Regulation 4 of the PCIFRs

1 A 'participant' is defined by section 42 of FSBRA.

2 A 'regulated payment system' is a payment system that has been designated by order of the Treasury under section 43 of FSBRA.

3 A 'regulated person' under the PCIFRs is a person on whom an obligation, prohibition or restriction is imposed by any provision of the IFR (Regulation 2 of the PCIFRs).

4 Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions was converted into UK law by the European Union (Withdrawal) Act 2018 (EUWA) and 'onshored' by a statutory instrument (the onshoring SI), which amended provisions to make them operate effectively after the UK's withdrawal from the EU. The IFR as it now applies in the UK came into effect at the end of the implementation period, on 31 December 2020. In this statement, we use the term 'IFR' to refer to the provisions that apply in the UK as a result of the onshoring amendments to the retained EU law.

1.6 The PSRs 2017 define a compliance failure as a failure by a regulated person[5] to comply with:

1. a 'qualifying requirement' – that is, an obligation, prohibition or restriction imposed by Regulation 61 of the PSRs 2017 (information on ATM withdrawal charges) or Part 8 of the PSRs 2017 (access to payment systems and bank accounts), with the exception of the obligation imposed on the Financial Conduct Authority (FCA) by Regulation 105(5) of the PSRs 2017)[6]
2. a direction we give under Regulation 125 of the PSRs 2017

1.7 This statement of principles will apply to any compliance failure under FSBRA, the PCIFRs or the PSRs 2017 that occurred or is continuing on or after the date of adoption of this penalty statement.

1.8 A reference to a compliance failure in this document means one of the different types of compliance failure described in paragraphs 1.4 to 1.6.

1.9 A reference to a 'subject' means a 'participant' under FSBRA, a 'regulated person' under the PCIFRs or a 'regulated person' under the PSRs 2017.

1.10 We will apply this statement of principles when imposing a penalty for a compliance failure. This does not mean that we will always impose the same penalty for similar compliance failures. Our penalties may differ on a case-by-case basis.

1.11 We are required to prepare this statement of principles under section 73(3) of FSBRA, Regulation 6(3) of the PCIFRs and Regulation 127(3) of the PSRs 2017.

1.12 You can find further details of our procedures, including rights of appeal, in the following documents:

- *Powers and Procedures Guidance*
- *Guidance on the PSR's approach to monitoring and enforcing compliance with the Interchange Fee Regulation*
- *The Payment Services Regulations 2017 – the PSR's approach to monitoring and enforcement*

1.13 We will review this statement of principles from time to time and revise if necessary. Any revised statement will be issued for consultation and published.

5 A 'regulated person' under the PSRs 2017 is a person on whom a 'qualifying requirement' is imposed (Regulation 123 of the PSRs 2017).

6 Regulation 123 of the PSRs 2017.

2 Deciding whether to impose a penalty

2.1 We will consider the full circumstances of each individual case when determining whether to impose a financial penalty.

2.2 Below is a list of factors that may be relevant for this purpose. The list is not exhaustive, and not all of these factors may be applicable in a particular case. There may also be other factors, not listed here, that are relevant in an individual case.

1. The nature, seriousness, duration, frequency and impact of the compliance failure.
2. The subject's behaviour after the compliance failure has been identified.
3. The subject's previous disciplinary record and compliance history.
4. Our guidance and other published materials: generally, we will not take action against a subject for behaviour that we consider to be in line with guidance or other materials published by us pursuant to our statutory functions and duties, and which were current at the time of the behaviour in question
5. Action we or a relevant regulator have taken in previous similar cases.
6. Action another relevant regulator proposes to take on the same case: where another regulator proposes to act on the compliance failure we are considering, we may decide that its action would be adequate to address our concerns. Sometimes it may still be appropriate for us to take our own action
7. Whether the compliance failure in question relates to a new issue on which neither we nor another regulator has issued guidance or statements.

2.3 If we impose a financial penalty, we will normally also publish details of the compliance failure.[7]

2.4 We may decide to only publish details of a compliance failure, without imposing a penalty.

2.5 In deciding whether this is an appropriate approach, we will consider all the relevant circumstances of the case, including the nature and seriousness of the compliance failure and its impact on the aims of the relevant regulation or direction.

7 Under section 72(1) of FSBRA, we may publish details of a compliance failure and details of a penalty imposed under FSBRA. Under Regulation 5 of the PCIFRs, we may publish details of a compliance failure under the PCIFRs. Regulation 5 of the PCIFRs also gives us the power to publish details of a penalty imposed under the PCIFRs. Regulation 126 of the PSRs 2017 gives us the power to publish details of a compliance failure under the PSRs 2017. Regulation 126 of the PSRs 2017 also gives us the power to publish details of a penalty imposed under the PSRs 2017.

2.6 We may also consider some or all of the following factors when deciding on whether to impose a penalty:

1. Whether publication of the compliance failure alone would **not** be enough to deter others from committing the same or similar compliance failure.
2. Whether the subject has derived an economic benefit (including made a profit or avoided a loss or cost) as a result of the compliance failure. If so, the subject should not retain it.
3. The seriousness of the compliance failure (by nature or degree). The more serious the compliance failure, the more likely we are to impose a penalty.
4. We are more likely to impose a penalty where a subject has a poor disciplinary history. This would include its history with the PSR, but we may consider the subject's disciplinary record with other regulators.
5. Whether the subject has brought the compliance failure to our attention. If so, we may be more likely to consider only publishing details of the compliance failure.
6. Whether the subject has cooperated with us: that is, immediately admitting the compliance failure and taking steps to put in place effective remedial action. If so, we may be more likely to consider only publishing details of the compliance failure.
7. Whether imposing a financial penalty would have a serious impact on the subject. This would only be a consideration that would cause us to waive a financial penalty in exceptional circumstances.
8. How to achieve consistency with other regulators and in our own approach. We may be influenced by our decisions in previous cases as to whether a penalty is appropriate.

2.7 Where we impose a financial penalty, we will usually also publish the details. We will only refrain from doing this in exceptional circumstances.

3 Determining the appropriate level of the financial penalty

3.1 We base our penalty-setting regime on the following general principles:

- **Disgorgement:** A subject should not benefit from any compliance failure.
- **Discipline:** A subject should be penalised for wrongdoing.
- **Deterrence:** Any penalty should deter the subject and others from committing further or similar compliance failures.
- **Disincentivising non-compliance:** A penalty should remove any financial incentive for a subject not to comply with its obligations. The cost of a compliance failure should significantly exceed any financial benefit the subject may have derived from it.

3.2 When we calculate a penalty, we consider two elements that make up the whole amount:

1. **First element:** Disgorgement of any benefit the subject received as a result of its compliance failure (see paragraphs 3.7 to 3.9).
2. **Second element:** A financial penalty reflecting the seriousness of the compliance failure.

3.3 The second element, the financial penalty, is calculated as follows:

- **Step 1:** We determine a figure that reflects the seriousness of the compliance failure and the size and financial position of the subject (see paragraphs 3.10 to 3.18).
- **Step 2:** Where appropriate, we adjust the step 1 figure to take account of any aggravating or mitigating circumstances (see paragraphs 3.19 and 3.20).
- **Step 3:** Where appropriate, we increase the amount arrived at after steps 1 and 2, to ensure that the penalty is effective as a deterrent (see paragraph 3.21).
- **Step 4:** If applicable, we may apply one or both of the following factors to the figure we arrive at after following steps 1, 2 and 3:
  - A settlement discount (see paragraphs 3.22 and 5.1 to 5.12)
  - An adjustment based on any serious financial hardship that we consider the penalty would cause the subject, or if the penalty could adversely impact the stability of, or confidence in, the UK financial system (see paragraphs 3.23 and 4.1 to 4.8)

3.4 A settlement discount is only ever applied to the financial penalty element. It is **not** applied to any disgorgement element.

3.5 When we use this statement of principles to determine a penalty, we recognise that the penalty must be proportionate to the compliance failure. We may decrease the penalty calculated after steps 1 and 2 if we consider it disproportionately high given the seriousness, scale and effect of the compliance failure. In determining any deterrence uplift at step 3, we will also ensure that the overall penalty is not disproportionate.

3.6 We list the factors and circumstances we will consider when determining the appropriate level of a penalty below. The list is **not** exhaustive. Not all these factors will apply to every case, while in some cases other factors, not listed here, may be relevant.

Our framework for determining the level of a penalty

First element: disgorgement

3.7 We will aim to deprive a subject of the financial benefit derived directly from, or attributable to, the compliance failure (which may include any profit made and loss or cost avoided) where it is practicable to quantify this. We may also charge interest on the disgorgement.

3.8 We will aim to deprive the subject of **all** the financial benefit derived from activities that relate to payment systems and services, where the subject's business model is dependent on a compliance failure, or where the compliance failure is central to the subject's business.

3.9 Where a subject agrees to carry out a remedial programme (which may include compensating those who have suffered a loss or not realised a profit as a result of the compliance failure), or where we decide to impose a redress programme, we will take this into consideration. In such cases, the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

Second element: the penalty

Step 1 – the seriousness of the compliance failure

3.10 We calculate a figure for a penalty that reflects the seriousness of the compliance failure. This penalty will be separate from, and in addition to, any disgorgement – see paragraphs 3.7 to 3.9.

3.11 A compliance failure may cause costs or harm to others, in addition to the financial benefit the subject derives. In many cases, the amount of revenue a subject generates from a particular business activity is indicative of the harm or potential harm caused by its compliance failure.

3.12 In such cases, we will determine a figure based on a percentage of relevant revenue. Where appropriate, we may consider a subject's 'billings' (that is, the revenues invoiced to third parties) on the relevant business activity – for example, where revenue information is not available or differs from billings.

3.13 Relevant revenue means the gross revenue the subject derived from the business activity in the United Kingdom to which the compliance failure relates. This will normally be the revenue gained during the entire duration of the compliance failure. If a compliance failure lasts less than a year, or is a one-off event, we will use revenue realised during the 12 months preceding the end of the compliance failure.

3.14 When we have determined the relevant revenue, we will then decide the percentage of that revenue that will form the basis of the penalty.

3.15 We will apply a percentage to the relevant revenue to determine the figure for step 1 of the penalty calculation. The percentage chosen will reflect how serious the compliance failure is.

3.16 The percentage chosen will be on a sliding scale of 0% to 20%, expressing the following bands of seriousness:

Table 1: calculating a figure for step 1

Seriousness	Percentage of revenue applied
Lesser seriousness	0 to 6
Moderate seriousness	7 to 13
High seriousness	14 to 20

3.17 We recognise that in some cases there may be more suitable metrics that more accurately reflect the harm or potential harm that the compliance failure caused. If we choose not to use revenue as a basis to calculate a penalty, we may apply a different percentage scale and/or a different methodology to determine an appropriate figure for step 1.

3.18 The following factors may guide us in judging the seriousness of a compliance failure and determining the appropriate level of financial penalty:

1. **Deterrence:** When determining the appropriate level of penalty, we will keep in mind our main goal of promoting high standards of regulatory behaviour by deterring subjects and others from committing further or similar compliance failures.
2. **The nature of the compliance failure:** We consider the following factors may be relevant.
    - The nature of the obligation or requirement which was not complied with.
    - The length and/or frequency and/or repetition of the compliance failure.[8]
    - The extent to which the subject's senior management were aware of the compliance failure, the nature and extent of their involvement in it, and the timing and adequacy of any steps taken to address it. Below is a non-exhaustive list of factors that may indicate that an individual holds a senior management position for these purposes.
        - Whether the individual was tasked with making decisions that impact on the subject's ability to comply with the relevant obligation – for example, decisions relating to the development and/or implementation of policies and systems that enable the subject to comply with the relevant obligation.
        - Whether the individual was part of a group of individuals that was tasked with making decisions of the same nature as those outlined above.

8 We will normally account for the duration of the compliance failure by considering the revenue over the whole period of the compliance failure. There may be circumstances where we will also consider it as a seriousness factor. This will typically be where we consider an alternative metric that does not in itself account for the length of the compliance failure.

- If the individual was part of such a group of individuals, whether they were a key decision maker in that group.
- The individual's role, including their relative level of seniority at the firm and what they had oversight of.
- Whether, given the circumstances – including, for example, the nature of their role – the individual concerned ought to have been tasked with the decision-making responsibility referred to above, either individually or as part of a group of individuals.

3. **The impact or potential impact of the compliance failure** on the following may be relevant:
   - Competition in the market for payment systems or the markets for services provided by payment systems.
   - Innovation in the market for payment systems or the markets for services provided by payment systems, or the markets for infrastructure to be used for the purposes of operating payment systems.
   - The interests of those who use, or who are likely to use, services provided by regulated payment systems.
   - The aims of the (IFR) and the PSRs 2017.
4. **Whether the compliance failure was reckless:** The following factors may indicate that a compliance failure was reckless. This list is not exhaustive.
   - The firm's senior management, or a responsible individual, appreciated there was a risk that their actions or inaction could result in a compliance failure, and failed adequately to mitigate that risk.
   - The firm's senior management, or a responsible individual, were aware there was a risk that their actions or inaction could result in a compliance failure but failed to check if they were acting in accordance with the firm's internal procedures.
   - The firm's senior management, or a responsible individual, were aware of a risk that a result would occur, and it was unreasonable for them to take that risk, having regard to the circumstances as they knew or believed them to be.
5. **Whether the compliance failure was deliberate:** The following factors may indicate a compliance failure was deliberate. The list is not exhaustive.
   - The compliance failure was intentional, in that the firm's senior management, or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a compliance failure.
   - The firm's senior management, or a responsible individual, knew that their actions were not in accordance with the firm's internal procedures.
   - The firm's senior management, or a responsible individual, sought to conceal their misconduct.
   - The firm's senior management, or a responsible individual, committed the compliance failure in such a way as to avoid or reduce the risk that the compliance failure would be discovered.
   - The compliance failure was repeated.

Step 2 – mitigating and aggravating factors

3.19 We may increase or decrease the amount of the financial penalty arrived at after step 1 (but not including any amount to be disgorged) to take into account factors that aggravate or mitigate the compliance failure.

3.20 The following list of factors may have the effect of aggravating or mitigating the compliance failure:

1. Whether the subject notified us or other regulators of the compliance failure swiftly and comprehensively.
2. Whether the subject cooperated swiftly, effectively and comprehensively with us or any other relevant regulator during the investigation of the compliance failure, and the impact of this on our ability to conclude our investigation into the compliance failure promptly and efficiently.
3. Any remedial steps the subject has taken or committed to take since the compliance failure was identified, and how promptly and effectively these steps are carried out.
4. Whether the subject has arranged its resources in such a way as to enable or avoid disgorgement and/or payment of a financial penalty.
5. Whether the subject had previously been informed of our concerns about the issue or behaviour in question.
6. Whether the subject had previously assured us or another relevant regulator that it would perform a particular act or engage in particular behaviour relating to the compliance failure, or refrain from a particular act or behaviour.
7. The subject's previous disciplinary record and general compliance history with us or another relevant regulator or authority.
8. Action taken against the subject by another relevant regulator or authority that is relevant to the compliance failure in question.
9. Whether our guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials.
10. Whether the subject has taken adequate steps to achieve a clear and unambiguous commitment to compliance with our regulatory requirements and/or directions. We would expect to see this throughout the organisation (from the top down), and for the subject to have taken appropriate steps relating to identifying and assessing regulatory risk, mitigating those risks and reviewing those activities.[9]

9 The mere existence of compliance activities will not be treated as a mitigating factor. The subject will need to demonstrate that the steps taken were appropriate to the size of the business concerned and its overall level of regulatory risk. It will also need to present evidence on the steps it took to review its compliance activities, and change them as appropriate, in light of the events that led to the investigation at hand. We will not, subject to some exceptions, ordinarily regard the existence of a compliance programme as a factor to warrant an increase in the amount of the penalty to be imposed against that subject for the compliance failure. The exceptions include situations where the purported compliance programme had been used to facilitate the compliance failure, to mislead us or another relevant regulator or authority as to the existence or nature of the compliance failure, or had been used in an attempt to conceal the compliance failure.

11. Whether the failure was due in whole or in part to the actions of a third party, and whether the subject was, or ought to have been, aware of this, and whether it took, or ought to have taken, reasonable steps to avoid the compliance failure.
12. The subject's size, financial resources and other circumstances.

Step 3 – adjustment for deterrence

3.21 We may increase the penalty if we consider that the figure arrived at after step 2 would not be effective in deterring the subject, or others, from committing further or similar compliance failures. Circumstances where we may do this include, but are not limited to, the following circumstances:

- We think the value of the penalty is too small in relation to the compliance failure to meet our aim of credible and effective deterrence.
- Previous action by us or another relevant regulator or authority in respect of the same or similar issues has failed to improve the subject's behaviour and/or relevant industry behavioural standards.
- We think there is a risk that the subject or others will commit further compliance failures in the future unless we increase the penalty.

Step 4 – discounts

3.22 We and the subject may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, we will reduce the amount of the financial penalty we would otherwise have imposed. The reduction will reflect the stage at which the agreement was reached. The settlement discount does not apply to the disgorgement of any benefit calculated under the first element – see paragraphs 3.7 to 3.9. For further details of our policy on settlement discounts, see paragraphs 5.1 to 5.12.

3.23 For details of our policy on serious financial hardship, see paragraphs 4.1 to 4.8.

4 Serious financial hardship

4.1 Only in exceptional cases would we grant a discount to a penalty based on a claim of serious financial hardship for the reasons set out in paragraphs 4.2 to 4.5.

4.2 We note that many payment service providers authorised by the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA) are subject to their own prudential requirements.

4.3 We expect the organisations subject to obligations we enforce to have made effective arrangements to call on their owners, shareholders, guarantors, direct participants and so on for sufficient funds to meet their debts and liabilities when necessary. This would cover a debt owed to us as a penalty for a compliance failure.

4.4 We aim to ensure that financial penalties are proportionate to the compliance failure. We recognise that penalties may affect subjects differently. Accordingly, we may consider a reduction if the proposed penalty would cause the subject serious financial hardship, and/or if it could adversely impact the stability of, or confidence in, the UK financial system.

4.5 We will liaise with the Bank of England before deciding on any claim that imposing a penalty on a participant (as defined in section 42 of FSBRA) could adversely impact the stability of, or confidence in, the UK financial system, or when we consider that such a risk exists.

4.6 Where a subject claims that paying the penalty imposed by us will cause it serious financial hardship and/or could adversely impact the stability of, or confidence in, the UK financial system, we will consider a reduction only if:

- the subject provides verifiable evidence to support its claim in a full, frank and timely manner
- the subject cooperates fully in answering any questions we ask about its financial position

4.7 The onus is on the subject to satisfy us that payment of the penalty will cause it serious financial hardship and/or that it could adversely impact the stability of, or confidence in, the UK financial system.

4.8 We may decide that a compliance failure is so serious it would **not** be appropriate to reduce the penalty, even where the subject can demonstrate that payment would cause it serious financial hardship. We will consider all the circumstances in determining whether this course of action is appropriate, including the following factors:

- Whether an individual who can control or has material influence over the subject's management or operation (an 'Individual Controller'):
  - directly derived a financial benefit from the compliance failure and, if so, its extent
  - acted fraudulently or dishonestly with a view to personal gain

- Whether previous action by us in respect of similar compliance failures has failed to improve industry standards.
- Whether a subject or Individual Controller has spent money, dissipated assets or otherwise used financial structures in anticipation of enforcement action by us or another relevant regulator or authority with the aim of frustrating or limiting the impact of enforcement action taken by us or other regulators or authorities.

5 Settlement discount

5.1 Any settlement discount does not apply to disgorgement of any financial benefit derived directly from the compliance failure (see paragraphs 3.7 to 3.9).

5.2 Subjects may be prepared to agree the amount of any financial penalty and other conditions that we seek to impose by way of such action.

5.3 We recognise the benefits of such agreements, which can potentially secure earlier protection for the service-users[10] or parties that the PSRs 2017 and IFR are intended to benefit. They can also save both us and the subject the costs of contesting the financial penalty.

5.4 We may therefore reduce the penalty we might otherwise have imposed to reflect the timing of any settlement agreement.

5.5 Where we think it is appropriate to do so, we will discuss the amount of the penalty with the subject with the aim of reaching such an agreement. The penalty will be calculated using the principles set out above.

5.6 This starting figure (resulting from steps 1, 2 and 3) will take no account of the existence of the settlement discount.

5.7 Where we decide to apply a settlement discount, the penalty will be calculated as follows:

1. **Starting figure:** The sum reached after following steps 1, 2 and 3, excluding disgorgement.
2. **Settlement discount**: A percentage reduction of the starting figure.
3. **Penalty to pay**: The starting figure – penalty discount + disgorgement.

5.8 The settlement discount cannot be more than 30%.

5.9 There may be occasions when the subject considers that it would have been possible to reach an earlier settlement, and accordingly the penalty should be reduced by a greater percentage. For example, we may decide not to pursue enforcement action in respect of all the acts or omissions that we previously alleged were part of the compliance failure. The subject could argue that if our action had begun on this basis, it would have agreed an appropriate penalty at an earlier stage and should therefore benefit from a greater discount. Equally, we may consider that greater openness from the subject could have resulted in an earlier settlement.

5.10 This type of argument may compromise the value of early settlement and incentivise subjects to raise disputes as to when an agreement might have been possible. Therefore, we will not normally reduce a penalty on the basis that settlement could have been achieved earlier.

10 Service-users are defined by section 52 of FSBRA.

5.11 However, in exceptional cases we may accept that there has been a substantial change in the nature or seriousness of our action against the subject concerned. In this case, if we are satisfied that an earlier agreement would have been possible if we had commenced our action on a different basis, we may decide that the settlement discount should reflect an agreement at the earlier stage.

5.12 In cases where we apply a settlement discount to the penalty, we will set out the fact of settlement and the level of the discount in the final decision notice.

6 Apportionment

6.1 If we are proposing to impose a financial penalty on a subject for two or more separate compliance failures, we will consider whether it is appropriate to identify how the penalty is apportioned between them in our warning and final decision notices. Apportionment will not, however, generally be appropriate in other cases.

7 Payment of financial penalties

7.1 Financial penalties will be paid to the Treasury after deducting our enforcement costs.[11]

7.2 Financial penalties must be paid within the period (usually 14 calendar days) stated on the final decision notice.

7.3 Our policy on reducing a penalty to avoid causing a subject serious financial hardship is set out in paragraphs 4.1 to 4.8.

7.4 We will consider agreeing to defer the due date for payment of a penalty or accepting payment by instalments if, for example, the subject requires time to raise funds so it can pay the full penalty within a reasonable period. Each case will be treated on its facts, and we will not grant extra time where the subject could or should have organised its business affairs to allow it to pay on time.

7.5 We will remain vigilant to any attempt by subjects to avoid or pass on the financial consequences of any penalty to third parties in circumstances where it would be unlawful or inappropriate to do so.[12] In this context, it should be noted that the Bank of England is not a 'participant' within the meaning of section 42 of FSBRA, so subjects should not attempt to pass on any liability for penalties to the Bank of England, whether directly or indirectly, as a cost recoverable from the Bank.

7.6 Where appropriate, we will consider using our applicable powers to deprive a subject of the ability to pass on the financial burden of a penalty to a third party.

7.7 In meeting their obligation to pay a penalty, subjects must satisfy themselves that their arrangements are consistent with public policy.

7.8 For example, subjects who are also bound by Chapter 6 of the General Provisions module of the FCA Handbook (GEN)[13] must follow rules prohibiting them from entering into, arranging, claiming on or making a payment under a contract of insurance that is intended to have, or has, the effect of indemnifying a relevant party against a financial penalty.

7.9 We expect subjects who are subject to GEN to comply with those rules as relevant to the payment of penalties we impose. We would typically expect subjects who are not subject to GEN to comply with these general principles.

11 Payment of penalties to the Treasury less enforcement costs is facilitated by Schedule 4, paragraph 10(1) of FSBRA, Regulation 136(3)(d) of the PSRs 2017 and Regulation 15(3)(e) of the PCIFRs (as appropriate, depending on the type of compliance failure).

12 This includes, for example, any attempt by a subject to avoid liability for a penalty by withdrawing from participation in a payment system or card payment system after a penalty is imposed or when a penalty appears reasonably likely.

13 See *FCA Handbook*, Chapter 6.

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