

FCA to crack down on conduct in the payment services and e-money sectors

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The FCA published a consultation paper on 1 August 2018 to revamp its rules and guidance for payment service providers (“PSPs”) and e-money institutions, alongside proposing a crack down on the marketing and promotion of currency conversion services.

The proposals are designed to tackle recent concerns over confusing and misleading marketing material and exchange rates shown by some e-money and non-bank payment service providers, and to bring the wider money lending industry under consistent FCA rules, ultimately regulating the standards customers can expect.

Background

PSPs and e-money firms have previously been regulated under separate EU legislation, which meant that they were not subject to the FCA’s Principles of Business (the “Principles”). This led to discrepancies in the levels of service in the industry, with FSMA authorised banks and firms subject to different requirements for providing essentially the same service.

In addition, banks are subject to the Banking Code of Business Sourcebook (“BCOBS”), which sets out strict requirements for the advertising and promotion of services. By contrast, some non-regulated lenders were promoting their services in a way that was considered to be misleading to customers and would not be acceptable if BCOBs applied. The FCA was particularly concerned about currency conversion tools on providers’ websites, which showed currency conversions at interbank rates, which are usually far more favourable than the rates actually offered to retail customers.

Objectives

With the Payment Services Regulations 2017 extending the FCA’s powers to cover PSPs and e-money firms, the FCA has set about addressing the following objectives:

- To bring the different regulatory regimes into line and to standardise the service levels provided by all money lenders.
- To clamp down upon misleading advertising and marketing by PSPs and e-money firms, in line with the FCA’s objectives of promoting fair competition in the market and providing adequate protection for customers.

Proposals

In order to achieve this, the FCA have proposed the following changes:

- To extend the Principles to PSPs and e-money firms. There are 12 principles of business under the FCA rules, including integrity, care, skill, customer interests, market conduct and financial prudence.
- To extend BCOBS to PSPs and e-money institutions, meaning that all communications and promotions must be clear, fair to customers, and not misleading.

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- Any firms breaching the Principles or the BCOBS requirements will be subject to the FCA's disciplinary and enforcement powers under FSMA.
- New rules and guidance will be introduced dealing with currency exchange and transfer services, to ensure that any comparison rates must be presented in a clear and fair way.

The FCA's Executive Director of Strategy and Competition, Christopher Woolard, characterised this as "a measured intervention - for many it will simply reflect current good practice and ensure that they are subject to the fundamental obligations that we expect of regulated firms. For some, however, it should be a clear signal that through our rules, supervisory and enforcement action, we will not tolerate customers being misled or being treated unfairly".

The Proposals set out in the Consultation Paper are currently open for consultation until 1 November 2018, with a policy statement expected in January 2019.

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