

The Payment Services Directive 2015 and Regulations 2017 – a supplement to *Consumer Financial Services Complaints and Compensation, 2nd ed*

The Payment Services Directive 2015 and its UK implementing Payment Services Regulations 2017 continue a trend of imposing unremarkable complaint handling requirements in slightly obscure ways on various finance-related providers. There are, though, a few quirks which will require computer system and procedural adjustments.

Having a complaints procedure – firms and regulators

The complaints provisions require both regulators and payment service providers to have procedures for receiving complaints about the latter, prior to any dispute being referred to an ADR procedure or court. Preamble paragraph (98) of the Directive covers firms and (99) tackles regulators.

Regulators' procedures

Piously, paragraph (99) of the Directive requires procedures to be put in place through which it would be possible to pursue complaints and ensure that “appropriate, effective, proportionate and dissuasive penalties are imposed”. Under Article 99 of the Directive, procedures must allow users “and other interested parties including consumer associations” to submit complaints about Directive infringements. Any reply from the regulator has to tell the customer of any available ADR procedures.

The Financial Ombudsman Service has no powers to punish firms and cannot actually be accessed by those users who are not eligible complainants. So, UK Regulations 117 and 133 provide that the FCA and the Payment Services Regulator (the latter a subsidiary of the former) must maintain arrangements to enable any interested parties to complain about breaches of the Parts 2-7 of the Regulations. Both must include in any reply details of FOS where appropriate. In practice, that has more to do with receiving enforcement information.

Article 5 of the Directive insists that when a firm applies for authorisation, it supply the procedure that will be used to “monitor, handle and follow up a security incident and security related customer complaints”. This appears in Schedule 2, paragraph 6 of the UK Regulations.

Payment service providers' procedures and dispute resolution – *Consumer Financial Services Complaints and Compensation, 2nd ed, at para. 2.2*

Article 101 of the Directive deals with dispute resolution. The UK Regulation 101 makes it clear that it applies to complaints from ineligible complainants. It then copies out Article 101(1) and (2) of the Directive with the paragraph numbering set out differently.

Article 101(1) of the Directive requires providers to have adequate “complaint resolution procedures” for the settlement of complaints by users in relation to rights and duties under Titles III and IV”. (This becomes Parts 6 and 7 of the Regulations in Regulations 101(2).) The Directive insists on regulators monitoring provider's performance here (Article 101(1) line 1). The procedures must apply everywhere in the EEA where the provider offers payment services and available in an official

language of the state concerned or another if agreed between the provider and user (Regulation 101(3)).

Disclosure of the dispute resolution options – in practice, FOS *Consumer Financial Services Complaints and Compensation*, 2nd ed, at para. 2.4

Under Article 101(3) of the Directive, providers have to tell users of at least one ADR entity competent to deal with disputes concerning Titles II and IV duties. They do not actually have to submit to a binding decision from such an entity for cases beyond the FOS' jurisdiction, typically because the complainant is not eligible. This material must appear in a "clear, comprehensible and easily accessible way on the provider's website, at the branch and the in contract, specifying how further material on the ADR entity (usually FOS) can be accessed and the conditions for using it. Regulation 101(8) sensibly only requires disclosure if the provider uses such services. Regulation 101(9) requires providers to make available in a clear, comprehensive and easily accessible way on the provider's website, branches and terms and conditions: the 35 business day deadline, how to obtain further material about any dispute resolution provider and the conditions for using such services. This in practice will involve complying with DISP 1.2.1R.

Responding to complaints - *Consumer Financial Services Complaints and Compensation*, 2nd ed, at para. 6.3

Article 101(2) of the Directive is the key provision. States must require providers to make "every possible effort to reply on paper or if agreed between provider and user another durable medium (regulation 101(4)). The response must address all points raised within 15 business days of the complaint's receipt (regulation 101(5)).

Time-limits for responses after 15 business days *Consumer Financial Services Complaints and Compensation*, 2nd ed, at paras 4.5.1-2

If in exceptional situations, for reasons beyond the provider's control, the response has to be delayed, the firm has to write a holding letter, "clearly indicating the reasons for a delay in answering" and specifying the deadline by which the user will receive the final reply (regulation 101(6)). The deadline given must not exceed 35 business days which is in usual conditions, seven weeks (regulation 101(7)). This is not strictly speaking a deadline for responding complaints so much as a latest date to be inserted in the holding letter. Nevertheless, the essential meaning should be apparent. The Directive allows states to have rules on dispute resolution that are more advantageous than these.

FOS - *Consumer Financial Services Complaints and Compensation*, 2nd ed, cap 9

Article 102(1) of the Directive requires adequate independent impartial transparent and effective ADR procedures to exist for setting disputes between users and providers and their appointed representatives in line with the ADR Directive which only covers consumers. This is all taken care of by the existing Financial Ombudsman Service arrangements.