

## UK FCA Link-up Payment Services Directive with Open Banking

By Nick Mackay, for Reg-Room LLC, January 10, 2018

At a press conference on Wednesday, the UK Financial Conduct Authority (FCA) issued a late warning that the new EU *Payment Services Directive* (PSD2) will be implemented in the UK on Jan. 13, 2018. At risk of being forgotten by the industry, given the rush to implement MIFID, the PSD may also have a wide-ranging impact. The FCA noted the role of financial technology “FinTech” firms, due to the interaction with new open banking standards that the UK has taken a leading position on.

### New PSD2 Services

PSD2 requires *Account Servicing Payment Service Providers* (ASPSPs), such as banks, building societies, credit card issuers and e-money institutions to permit access to their customers’ account information for 2 new kinds of third party provider, where customer consent has been obtained: 1) *account information service providers* (AISPs); and 2) *payment initiation service providers* (PISPs).

PISPs will allow customers to make payments directly from their bank accounts, without the need for a debit or credit card. This could lead to quicker and cheaper ways of making payments, along with increased transparency and consistency in the charges for cross-border payments.

AISPs will provide customers consolidated information from one or more current or other accounts. These could aggregate useful data on spending habits, payments and budgeting across accounts held with different institutions.

The sorts of sites that might be able to exploit these types of data, include price comparison sites, which can enable customers to compare products, or make a switch on their behalf, as well as accounting services which access accounts to pay consumer bills.

If a customer gives consent to an AISP or PISP, banks will not be allowed to block these firms from accessing that customer’s accounts, unless they suspect fraud or unauthorised access. In such cases, FCA must be notified by the bank in question. The customer’s consent can be withdrawn at any time.

Businesses wishing to operate as AISPs or PISPs must be registered with the FCA. The authorisations gateway opened in October to enable authorisation before January 13, and 40 applications have so far been submitted. The FCA has up to three months to determine an application and will look at a firm’s security policies, governance, systems and controls, (see [Reg-Track #33115](#)).

### Link with Open Banking

Although PSD2 and open banking are often referred to in the same breath, it is important to clarify the distinctions.

Open Banking [requirements](#) were imposed by the Competition and Markets Authority (CMA) on the current accounts of the nine largest UK banks. They required the development of an *application programming interface* (API) to standardize data, also to be rolled out on January 13. (see [Reg-Track #36386](#)).

However, PSD2 is wider in scope, applying to all payment accounts. It provides the framework within which Open Banking will operate and sets out the rules under which the new regulated services are supervised. PSD2 also applies to all providers of payment accounts that are accessible online (not just those of the nine large banks).

These two initiatives share the same goals of increased competition and innovation (see [Reg-Track #36486](#)). But Open Banking is the facilitator via which the objectives of PSD2 may be put into effect. FCA and HMT encourage all PSD firms to work towards using the Open Banking API standards as the basis on which secure API access to other payment accounts can be provided in the future.

However, 5 of the 9 banks mandated to develop the API notified the CMA that they are going to miss the January deadline. Bank of Ireland, Barclays, HSBC, RBS and Santander were issued with a revised [timeline](#) by the CMA. Allied Irish Bank, Danske, Lloyds Banking Group and Nationwide will be ready to start on time.

### **Consumer Protection and Security**

Better consumer protection is at the heart of PSD2. The EU regulatory technical standards (RTS) issued in November, on strong customer authentication require two forms of identification from users to access online payment accounts (see [Reg-Track #36435](#)). This could be based on a password, your mobile phone or a fingerprint. The key risks the FCA will be looking for firms to focus on are: IT security, fraud, cyber-breaches and misconduct.

FCA will assess that PSD2 firms meet the security requirements of the EBA authorisation guidelines (see [Reg-Track #36936](#)). Firms should have security measures to guard against cyber-attacks, as well as robust systems, policies and processes for security, access to data, governance, business continuity and outsourced services.

Firms will need to submit major incidents reports, which will be reviewed by the FCA at individual firm level and across the sector, along with annual operating and security risk assessments.

If something does go wrong, consumers should turn to their bank or provider to claim. The new rules reduce the maximum consumer liability for unauthorised transactions to £35, down from £50. This cap applies unless the payer has acted fraudulently or has deliberately or negligently failed to comply with the conditions of use (or failed to notify the PSP without undue delay).

Consumers' complaints to PSPs must be resolved within 15 days, unless exceptional circumstances apply. In these cases, the complaint must still be resolved within 35 days and the firm must send the payer a holding letter in the interim.

It should also be noted that the *General Data Protection Regulation* (GDPR) come into force on May 25, 2018. The GDPR introduces stricter obligations on persons who process or control personal data (NB. most AISPs will be data controllers). The FCA has confirmed that it has not identified any conflict between the GDPR and PSD2 and, where they overlap, they will apply cumulatively to AISPs.

### **Transitional Period Controls**

Although PSD2 will be in effect from January 13, 2018, the EC RTS on strong customer authentication will not be fully in force until the second half of 2019 and its content is not yet finalised. The period until the RTS applies therefore represents a transitional period. The FCA and Treasury jointly published expectations of firms during this period. They expect firms to adhere to the principles of safety and security in the draft RTS, namely:

- Transmit personal credentials and data securely, in ways that safeguard against risks of interception;
- To be transparent and open about their identities when interacting with one another, which will limit the potential for criminal actors to operate; and

- Ensure that data is stored in ways that mitigate the risks of illegitimate access, and credentials are only held if permitted under PSD2.

During the pre-RTS period, payment service providers should not block the access of authorised AISPs and PISPs except for evidenced reasons of unauthorised or fraudulent access. This includes not blocking access via 'screen scraping' unless the provider provides another suitable access route. They should also not take steps to dissuade customers from using the newly regulated services and AISPs and PISPs should be open and transparent about their identities when dealing with customers.

### Registration Deadline

Firms which started to operate as AISPs or PISPs on or after Jan. 12, 2016, that wish to continue operating after Jan. 13, 2018, must be registered or authorised by the FCA in advance of the Jan. 13 deadline.

However, firms which operated as AISPs or PISPs before Jan. 12, 2016, will be able to continue operating without registration or authorisation prior to the RTS coming into force, although they will not benefit from the right of access provided for in PSD2. The FCA strongly encourages such firms to apply to be registered or authorised as soon as possible, preferably well ahead of the RTS application.

### What Next?

The next milestones in the PSD2 timeline include the applicability of the GDPR, on May 25, 2018, and the regulatory technical standards, in the second half of 2019.

Their impact will depend on the extent to which customers are prepared to trust firms to provide the necessary consent. Credit and debit cards will not disappear quickly, and it may take a while before a few popular applications emerge. It also remains to be seen if such applications will be driven by existing banks or new entrants who can move more swiftly. HSBC has announced that it is testing a platform that lets its customers see all their accounts in one place, no matter who the provider is, with participants being able to add accounts from up to 21 different banks (including Santander, Lloyds and Barclays).

In the meantime, FCA is bolstering its payments capability, extending engagement with existing payment services institutions and preparing to supervise the newly regulated AISPs and PISPs. As customer consent is the cornerstone of PSD2 and Open Banking, the FCA will want to see how firms help their customers understand exactly what it is they're consenting to, including: the degree of access they are providing to their account; what account data will be shared and with whom; and how their information will be used (see [Reg-Track #36386](#)).

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