

# Implementation of the revised Payment Services Directive (PSD2): draft Approach Document and draft Handbook changes

The Building Societies Association  
response to FCA CP17/11

Restricted  
8 June 2017

# Introduction

The Building Societies Association (BSA) represents all 44 UK building societies. Building societies have total assets of over £364 billion and together with their subsidiaries, hold residential mortgages of over £282 billion, 21% of the total outstanding in the UK. They hold over £260 billion of retail deposits, accounting for 18% of all such deposits in the UK. They employ approximately 40,000 full and part-time staff and operate through approximately 1,550 branches.

The BSA welcomes the opportunity to respond to the FCA consultation on the implementation of the revised Payment Services Directive (PSD2) and draft changes to the Approach Document and Handbook.

## Summary of our response

- There is a need for further guidance on what elements of the PSR 2017 apply to non-Payment Accounts.
- We are concerned over the proposals to provide or make available a monthly statement. We wish to see the current arrangements continue, but if that is not an option, we would support the move to monthly statements over the requirement to send out notifications immediately after every transaction on a Payment Account.
- We are concerned that the proposed changes to complaint handling times will create a two-tier process, which will be confusing for customers and a significant burden for firms.
- We call for more clarity around the fraud reporting requirements.
- We are broadly supportive of the remaining proposals.

## **Our response to CP17/11 questions**

**Q1. Do you agree with our interpretation of the commercial agent exclusion and its application to the business models as set out in the draft PERG text (Appendix 1)? If not please explain why not and suggest an alternative approach.**

A1. No comment.

**Q2. Do you have any comments on our proposed limited network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed limited network exclusion notification (draft direction and draft template in Appendix 2)?**

A2. No comment.

**Q3. Do you have any comments on our proposed electronic communication network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed electronic communication network exclusion (draft direction and draft template in Appendix 2)?**

A3. No comment.

**Q4. Do you agree with the proposed guidance related to the definition of AIS and PIS in PERG 15.3? Are there any business models which you believe could be inappropriately viewed as in or out of scope in light of our guidance? If so, please provide us with details of these business models.**

A4. Yes, we agree with the proposed guidance related to the definition of AIS and PIS in PERG 15.3. We are not aware of any business models which could inappropriately fall in or out of scope of the guidance.

**Q5. Do you have any other comments on the perimeter guidance we propose? If you disagree with any of the guidance we have proposed, please explain why.**

A5. The membership continue to have mixed views regarding Question 16 of PERG 15.3 "What is a payment account". Some would welcome more detailed guidance. However, the Association recognises that it would be difficult to provide more extensive guidance, as this may tie the regulator's hands as new products and features come to the market which may not fit within a more detailed narrow definition. Therefore, on balance, we support the retention of the existing text under Question 16.

We are concerned about the proposed additional text regarding providers of non-payment accounts. It is not clear whether or not this means that the PSR 2017 will apply to individual transactions on a non-payment account or the account as a whole. We would welcome more clarity on this point.

**Q6. Do you agree with the proposed approach to implementing the new authorisation requirements for authorised PIs, and authorised EMIs, and the registration requirements for RAISPs? If not, please explain why not and suggest an alternative approach.**

A6. No comment.

**Q7. Do you agree with our proposal to require prospective small PIs and small EMIs to provide us with information relating to security, fraud and sensitive payments data?**

A7. No comment.

**Q8. Which parts of the EBA Guidelines on authorisation and registration (currently in draft form) do you believe should be applied to applicants to become small PIs or small EMIs? Is there anything else we should consider?**

A8. No comment.

**Q9. Do you agree with our proposed approach to change in qualifying holdings for authorised PIs including that authorised PIs use the change in control forms already used by EMIs and FSMA forms? If not, please explain why not and suggest an alternative approach.**

A9. No comment.

**Q10. Do you agree with the guidance we propose in Chapter 8 of the revised Approach Document in relation to changes to information requirements, rights and obligations and other changes? If not, please explain why not and suggest an alternative approach. Please provide the paragraph number when commenting on specific wording.**

A10. Linked to Q5 of this response, PERG Question 16 states that “If you are a provider of non-payment accounts, you may still be carrying on the payment services in paragraphs 1(c) and (d), for example if you execute credit transfers out of those non-payment accounts. Chapter 8 of the Approach Document provides guidance on how the PSRs 2017 conduct of business requirements apply to you.”

We believe there is a general lack of clarity as to what elements of PSR 2017 the FCA believe do or do not apply to non-payment accounts.

Paragraph 8.22 states “For provision of accounts that are not payment accounts (for example some savings accounts) the requirements in Parts 6 and 7 of the PSRs 2017 do not generally apply, and so BCOBS will apply to the retail banking service.”

Paragraph 8.23 goes on to state “The PSRs 2017 do apply to payment transactions within the scope of the PSRs 2017 that are made to and from such accounts.” It is not explicit whether the accounts referred to here are non-payment accounts or payment accounts.

Further paragraphs, such as 8.57 and 8.102 which had derogated non-payment accounts by specifically referencing payment accounts have been amended which reduces the clarity of the intended scope.

We note that following PSD1 implementation the then FSA felt it necessary to issue letters setting out concerns around how the scope of PSR 2009 had been interpreted in relation to non-payment accounts. To avoid this, the FCA may wish to consider ways in which it can be clearer as to what elements of PSR 2017 apply to non-payment accounts in its approach document. This could include tables such as those in paragraph 2.27.

**Q11. Do you agree with the two versions of the guidance we propose in Chapter 8 of the revised Approach Document relating to monthly statements, including the guidance which assumes the Treasury exercises the member state option? If not, please explain why not and suggest an alternative approach.**

A11. A move towards requiring explicit consent from customers to provide or make available a monthly statement could have major implications for societies and lead to annoyance for customers. We understand that current practice is for firms to state in the framework contract whether they will provide or make available a statement to a customer when there have been transactions on an account. The customer grants consent by agreeing the framework contract. This allows firms flexibility to cater for a range of customer needs. Requiring explicit consent, over and above simply covering it in the wording of the framework contract, will add friction to the customer experience and increase the likely move towards the default option of sending notifications after every transaction. The volume of transactional information may make this unworkable and could lead to customers being ‘spammed’ with frequent information.

The direction of travel for customers is towards frequently checking their accounts via a variety of channels e.g. online, via a mobile app or at an ATM. We are not aware there is a customer desire to be provided with a monthly statement every time there has been a transaction on a savings account for example. It should also be noted that the majority of

savings customers will be used to receiving annual statements and may be irritated by receiving monthly statements, particularly when the frequency of transactions is lower on savings products compared to other products such as current accounts. One of our members has advised us that over half their savings customers are not registered for online banking and hence would need to be provided with a paper statement.

Under PSD1, a society can choose whether to provide or make available a monthly statement to customers. Our interpretation of the PSD2 changes are that the customer should be able to request to be provided with a monthly statement whenever there has been a transaction out of their account. If the FCA and Treasury are not minded to accept this then the least worst option would be for the Treasury to exercise its member state option to require monthly statements rather than require notifications after every transaction.

Judging from the discussions at a recent FCA PSD2 stakeholder liaison group meeting on this subject, it is clear that there is considerable confusion over what is being proposed and the implications. We would welcome further discussion with the FCA and Treasury on this issue.

**Q12. Do you agree with our proposed Handbook changes to implement the PSD2 complaints handling requirements? If not, please explain why not and suggest an alternative approach.**

A12. We are concerned that the proposed changes to DISP to reflect PSD2 requirements would create a two-tier complaints process, potentially confuse customers and create a significant burden on firms.

We support the FCA's proposal 4.31 that DISP 1.5 will apply to PSD and EMD complaints, and that SRCs should continue to be provided for these complaints as a sensible measure that will allow the majority of these complaints to be settled quickly and at low cost.

For a complaint not resolved via DISP 1.5, firms currently have 8 weeks to provide a final response to customers. Under the proposal 4.32, firms would need to send a final response within 15 business days for PSD2 related complaints. This creates a two-tier process for PSD and non-PSD complaints. We feel this will cause confusion for customers who may not understand why seemingly similar financial products are being treated differently. We note the FCA has suggested that firms may wish to apply the 15-day requirement to non-PSD2 complaints as well so as to avoid having a two-tier process. However, we anticipate that moving all complaints to the PSD2 timelines would be a significant burden for firms.

We are concerned about the competition and reputational impacts of the industry using two different timescales for complaints handling. It will pressure all firms to move towards the PSD2 timescales for all complaints and this will have an impact on smaller firms with more limited resources.

**Q13. Do you agree with our proposed changes to the timeline for referrals to the Financial Ombudsman Service? If not, please explain why not and suggest an alternative approach.**

The concerns set out in response to Q12 also apply here.

In addition, we need clarification with regard to the handling of complaints with both PSD2 and non-PSD2 elements as multiple subject complaints are a frequent part of complaint handling. In particular, we would like guidance on the following -

- Should firms write to customers twice regarding the right to seek redress at the Financial Ombudsman Service (both at 15 days for PSD2 and 40 days for the non-PSD2 element)? Issuing this information to customers twice would cause the customer confusion and would be costly for firms.
- Where elements of the same complaint go to the Ombudsman within different timeframes, will the Ombudsman be treating these elements separately or altogether as part of the same complaint? Where different elements of the complaint are treated in accordance with different timeframes, the potential for confusion for all parties seems high.

An alternative would be to apply the PSD2 'exceptional circumstances' timeframe to all complaints (i.e. issue a final response within 35 days).

**Q14. Do you agree with our proposed changes to BCOBS? If not, please explain why not and suggest an alternative approach.**

A14. We largely support the proposed changes to BCOBS. However, we are concerned by the suggestion that firms may wish to consider adopting Strong Customer Authentication (SCA) for non-Payment Accounts (BCOBS 5.1.10B G). While we recognise that the wording leaves this up to individual firms to decide, we feel a wider push to force firms to adopt SCA beyond the requirements of PSR 2017 could amount to gold plating and would put considerable burden on firms.

**Q15. Do you agree with our proposal to extend complaints reporting to payment institutions and e-money businesses and to introduce a new reporting form for all PSPs? If not, please explain why not and suggest an alternative approach.**

A15. No comment.

**Q16. Do you agree with our proposals for reporting of statistics on fraud relating to different means of payment? If not, please explain why not and suggest an alternative approach.**

A16. An area of concern for us is the lack of clarity around the fraud reporting requirements in SUP 16 Annexes 27ED (REP017) and 27FG. We do not believe it is clear whether the payers, payee or both PSPs are required to report the fraudulent activity. There is a note to suggest that all PSPs in the payment chain may be required to report the fraud. It is not clear how a payee's PSP would know the fraud type and may rely upon the payer's PSP to inform them. Also, these fraud rate figures may trigger some of the exemptions from Strong Customer Authentication requirements; so if a payee's PSP is a recipient of a fraudulent payment, but has performed its controls appropriately it seems unreasonable that those figures be taken into account and potentially remove access to the exemptions.

**Q17. Do you agree with our proposed changes to the reporting we collect from payment institutions and e-money institutions? Do you also agree to the reduction of reporting frequency for e-money institutions from twice yearly to annually? If not, please explain why not and suggest an alternative approach.**

A17. No comment.

**Q18. Do you agree with our proposal to require authorised payment institutions to submit the annual controllers report (REP002) and annual close links report (REP001)? If not, please explain why not and suggest an alternative approach.**

A18. No comment.

**Q19. Do you agree with our proposed guidance on PSPs' access to payment account services, as set out in chapter 16 of the revised Approach Document? If not, please explain why not and suggest an alternative approach. Is there anything additional that it would be useful for us to provide in our guidance?**

A19. Yes, we agree with the proposed guidance.

**Q20. Do you agree with how we propose to implement the requirement to provide duly motivated reasons when refusing or withdrawing access, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach.**

A20. Yes, we agree with the proposals.

**Q21. Do you agree with the guidance we set out in Chapter 17 of the revised Approach Document, including the proposals for guidance set out above? If not, please explain why not and suggest an alternative approach.**

A21. Yes, we agree with the guidance and have no further comments.

**Q22. Do you agree with our proposals to direct the form, content and timing of notifications that must be provided where access has been denied to provider of AIS and PIS, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach.**

A22. Yes, we agree with the proposals.

**Q23. Do you agree with our proposed requirements for FSMA firms seeking to provide AIS or PIS? If not, please explain why not and suggest an alternative approach.**

A23. Yes, we agree with the proposed requirements for FSMA firms seeking to provide AIS or PIS.

**Q24. Do you agree with our proposed approach to supervising the PSRs 2017? If not, please explain why not and suggest an alternative approach.**

A24. Yes, we agree with the proposed approach to supervising the PSRs 2017.

**Q25. Do you agree with our proposed consequential changes to the Handbook? If not, please explain why not and suggest an alternative approach.**

A25. Yes, we agree with the proposed consequential changes to the Handbook.

**Q26. Do you have any comments on the wider revisions to the Payment Services and E-money Approach Documents? Are there any omissions or aspects that are unclear in the revised Approach Document?**

A26. No, we do not have any further comments.

#### **Payment Systems Regulator questions**

**Q27. Do you agree with the Payment Systems Regulator's proposed approach to access to payment systems? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?**

A27. Yes, we agree with the PSR's proposed approach to access payment systems.

**Q28. Do you agree with the Payment Systems Regulator's proposal to replace our General Direction 3 with a new Direction under the PSRs 2017, requiring annual compliance reports from the payment systems operators about their compliance with regulation 103 of the PSRs 2017? If so, what should the compliance reports contain? If not, should we rely on complaints only for monitoring compliance with regulation 103?**

A28. No comment.

**Q29. Do you agree with the Payment Systems Regulator's proposal to require initial information from IAPs to help us understand the criteria and governance processes they have in place to comply with regulation 104 of the PSRs 2017? If not, please explain why not and suggest an alternative approach.**

A29. No comment.

**Q30. Do you agree with the Payment Systems Regulator's proposed approach to monitoring compliance with Regulation 61 of the PSRs 2017? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?**

A30. No comment.

**Q31. Do you agree with the Payment Systems Regulator's proposals on how we will exercise our powers to enforce compliance with the PSRs 2017, as set out in our PSRs 2017 Powers**

**and Procedures guidance? If not, please explain why not and suggest an alternative approach.**

A31. Yes, we agree with the proposed approach.

**Q32. Do you agree that the Payment Systems Regulator's Enforcement Decisions Committee should be appointed to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017? If not, please explain why not and suggest an alternative approach.**

A32. Yes, we agree with the proposed approach.

By Andrew Hopkins  
Policy Adviser  
andrew.hopkins@bsa.org.uk  
02075205913

York House  
23 Kingsway  
London WC2B 6UJ

020 7520 5900  
@BSABuildingSocs  
www.bsa.org.uk

BSA EU Transparency Register No: 924933110421-64

[www.bsa.org.uk](http://www.bsa.org.uk)

The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £345 billion, and account for approximately 20% of both the UK mortgage and savings markets