FCA Quarterly consultation No 26 – CP19/33

BSA response

Restricted
6 February 2020

Building Societies Association

Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 6 credit unions. Building societies have total assets of £415 billion and, together with their subsidiaries, hold residential mortgages almost £330 billion, 23% of the total outstanding in the UK. They hold over £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

We welcome the opportunity to respond to *FCA Quarterly Consultation No 26* (CP19/33).

Our response is only with regard to the proposed amendment set out in Chapter 6 of CP19/33 to amend the guidance in Q16. of Chapter 15.3 of the Perimeter Guidance Manual (PERG) relating to the definition of “Payment Account”.

The BSA does not have any comments regarding the other proposals in CP19/33.

BSA response to CP19/33 Q6.1 “Do you agree with our proposed change to Q16 of Chapter 15.3 of PERG?”

We have serious concerns about the proposed amendment to the guidance on the definition of a “Payment Account” set out in PERG. We understand the desire to incorporate the findings of the Court of Justice of the European Union (CJEU) on Case 191/17 into the guidance in PERG, but we believe that condensing the CJEU’s findings into one sentence, without any of the wider context around the case or even referencing the case in the footnotes, risks causing confusion and a danger that firms may misinterpret the new guidance to mean that many accounts which have previously been defined as non-Payment Accounts should now be defined as Payment Accounts.

As the FCA states in 6.7 of CP19/33, the CJEU ruling focuses on what functions are not in scope of a Payment Account rather than what is in scope. The CJEU determined that online savings accounts should not be considered Payment Accounts under EU law if the only access which they provide to the funds is through a separate current account. While it is clear that this particular type of saving product is not in scope of the definition, it does not follow that all savings accounts which can send and/or receive money direct are therefore Payment Accounts.

Many of our members offer savings accounts similar to the one described in the case, which require customers to designate a current account in order to move money into and out of the account. This type of savings account is clearly not a Payment Accounts under the CJEU's findings. We welcome this finding and we agree that it should be incorporated into PERG.

However, some building societies offer savings accounts which offer more functionality and flexibility, but are also clearly not Payment Accounts. This can range from savings products which accept electronic deposits direct, but require a designated current account for withdrawals, through to savings products which permit direct deposit and withdrawal without the need for a designated current account, but which have other limitations (such as limiting the number of withdrawals which can be made in a year). Under the current guidance in PERG these savings products are deemed to be non-Payment Accounts. Our concern is the proposed amendment to PERG could be interpreted wrongly and in extremis (without wider knowledge of the CJEU's findings) as meaning that these types of accounts could now fall within the definition of a Payment Account. As a consequence of this, societies may decide to further limit the functionality of the accounts to ensure that they continue to fall outside of the definition of a Payment Account. This would clearly be detrimental to customers, but may be preferable to passing on the cost to customers of the systems changes needed to bring the accounts in line with PSD2 requirements.

Instead of the proposed amendment, it might be clearer to use the following underlined text from ING-DiBa Direktbank Austria Niederlassung der ING-DiBa AG, which states –

"Article 4(14) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC must be interpreted as meaning that a savings account which allows for sums deposited without notice and from which payment and withdrawal transactions may be made solely by means of a current account does not come within the concept of 'payment account'."

This makes it clear that these types of savings accounts are not Payment Accounts, without implying that other types of savings accounts are therefore Payment Accounts.

Alternatively, the FCA should consider adding background and guidance in PERG to further clarify the proposed amendment, so that it is not read in isolation and therefore subject to misinterpretation.

The FCA should also make it clear the remaining guidance on the definition of a Payment Account in PERG is not trumped by the proposed amendment and that the key to determining whether or not an account is a Payment Account is still primarily to focus on its underlying purpose.

The FCA states in 6.8 of CP19/33 that it is "… proposing these changes so our guidance accurately represents the functionalities of a "payment account" under PSD2 in line with the judgement of the CJEU and is not inadvertently misleading." We would argue that the proposed amendment is inadvertently misleading because, without any other context or guidance, it can be misinterpreted. Many of our members have expressed concern about the proposal and we believe their concern is because of misinterpretation. Far from adding clarity, the proposed amendment has caused confusion.

The cost benefit analysis in CP19/33 states the FCA "…consider it unlikely that it will lead to costs for firms". However, if firms were to determine, rightly or wrongly, that the proposed amendment means their non-Payment Account products are now Payment Accounts, there would be a very considerable cost to firms and their members. For example, systems changes to cater for the different requirements around the notification of interest rate changes on these products would take time to implement and be costly. The requirements may also have potential prudential implications (in that firms may not be able to implement rate changes as quickly as they currently can under the Banking Conduct Of Business Sourcebook rather than PSD2).

Another factor which may have an impact on costs is the timeframe for the implementation of the proposed amendment. CP19/33 does not state when the proposal will be implemented. Should the proposal require systems changes then a long implementation period would be necessary. The shorter the implementation period, the greater the cost of implementation.

In 6.12 of CP19/33, the FCA concludes that the proposals will not impact mutual societies any differently to any other authorised persons. We would argue that, if an unintended consequence of the proposal is to redefine current non-Payment Accounts as Payment Accounts, this will have a disproportionate effect on building societies. The majority of our members define their savings products as non-Payment Accounts. Banks on the other hand primarily offer Payment Accounts, such as current accounts and certain instant access savings accounts. Therefore, the potential impact of the change would disproportionately impact building societies compared to banks.

In conclusion, we do not believe the FCA recognises the potential confusion and cost the proposed amendment may cause. The fact that the proposal is set out in a quarterly consultation together with other largely inconsequential proposals indicates that the FCA does not consider the amendment will have much impact. We would argue that further consideration and consultation with the industry is necessary to avoid the potential unintended consequences we have set out in this response. The BSA would welcome the opportunity to be involved in these further conversations.

By Andrew Hopkins
Policy Manager
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

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 £420 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.