



UK "de-banking": FCA update report on payment accounts access and closures

10 September 2024

The FCA has published a report setting out its findings from follow-up work on payment account access and closures, together with the results of independent research on the experiences some of the most financially excluded consumers face when accessing and using financial products and services. The FCA focuses on the need for improved access to Basic Bank Accounts and for firms to review onboarding/offboarding customer journeys and associated policies and procedures through a Consumer Duty lens.

What should firms be thinking about and how can Hogan Lovells help?

- In the coming months, the FCA expects firms to be able to show that concerns flagged in the report have already been addressed or will be addressed in a reasonable timeframe. These include:
 - Improving awareness of the availability of Basic Bank Accounts (BBAs) among customers, and making it easier for them to get a BBA where they are eligible (e.g. when they are offboarded from a non-basic account).
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 - The extent to which customer onboarding and offboarding journeys meet Consumer Duty requirements.
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 - How firms communicate a decision to deny or terminate account access.
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 - Ensuring decisions on account access are not based on political beliefs or other views lawfully expressed.
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 - Firms understanding what reputational risk means for their business in the context of account access, and ensuring they have policies in place that support this.

- - Ensuring financial crime controls are proportionate to the risks identified and that firms do not follow a generic approach.
- - Paying particular attention to customers' characteristics of vulnerability.
- While the Consumer Duty does not require a firm to provide a particular customer with a particular product, compliance with the Consumer Duty generally should mean firms are more careful before reaching any decision to deny or close an account. In particular, firms should focus on the governance and oversight of account access decisions (especially where these are automated), and the extent to which firms collect appropriate data and management information to support this.
- With financial inclusion also a particular area of interest for the new government, this is likely to remain a hot topic for the foreseeable future. Firms would be wise to tackle any necessary improvements sooner rather than later.
- We have significant experience in supporting firms on related projects – including in relation to Consumer Duty requirements - from undertaking initial gap analysis work, project managing and supporting the implementation of a rolling program of enhancements and operational changes.
- The combination of our legal and consulting teams provides you with a full range of services, and clear guidance on how the solutions can be applied within the business. If you would like to discuss how we can help you, please reach out to any of the people listed in this article or your usual Hogan Lovells contact.

What's next?

- As part of its ongoing supervisory work, the FCA welcomes engagement with firms on how they might effect changes in response to the report and what specific implications these changes are likely to have for them.
- We have yet to see final regulations to amend the Payment Services Regulations 2017 (PSRs) following [draft regulations](#) published by HM Treasury in March 2024 and await next steps under the new government.

Read on for a more detailed look at the FCA's report findings and a recap of a related development on pending changes to payment service contract termination rules.

What are the FCA's findings in its follow-up report?

The [report](#) follows on from the FCA's September 2023 report, '[UK Payment Accounts: access and closures](#)', which detailed its findings from an initial review of issues relating to payment account access in light of some high-profile examples of so-called "de-banking" which had caused concerns that account providers might have terminated customers' payment accounts because of their political beliefs or lawfully expressed views. Take a look at our previous [Engage article](#) for more on the 2023 report.

In summary, the FCA's thematic findings from its follow-up work are:

- Basic Bank Account (BBA) customer journeys varied, leading to differences in apparent rejection rates, and firms were poor at making customers aware of BBAs.
- Data on account access was limited or unclear and the form in which it was collected varied significantly from firm to firm.
- The FCA did not see evidence of political beliefs or other views lawfully expressed being used as a rationale for account denial, suspension or termination. However, this conclusion remains based on the evidence that the FCA has seen and caveated by the limitations with data and record-keeping noted above.
- 'Reputational risk' is used in varying ways by different firms to deny or close accounts. In some cases the label of 'reputational risk' did not seem to correlate with significant risks to the firm's standing but instead to other concerns eg about staff safety. In other cases, the actual rationale was not clear, raising concerns about firms' record-keeping. The FCA states that a 'broad, inconsistent and, at times, poorly controlled reliance on reputational risk as a criterion' could potentially mean that firms are not acting in good faith, as required by the Consumer Duty. The FCA noted that firms:
 - 'invariably' lacked clear internal guidance on where reputational risk may be a determining factor in the onboarding/offboarding context; and
 - often also lacked clear, meaningful data on reasons for account denials/terminations, meaning they may struggle to effectively monitor customer outcomes.

The FCA also highlighted some specific stakeholder feedback:

- **Some firms' approach to the implementation of financial crime controls can create difficulties for consumers:**
 - Charities and non-profit organisations the FCA spoke to reported difficulties in obtaining and maintaining a payment account, with complex governance structures often making due diligence harder for firms. The regulator intends to hold a roundtable with charity representatives and firms to discuss these issues and potential solutions.
 - Firms' financial crime risk tolerances appeared to lead to certain business sectors (such as pawnbrokers, defence companies, and adult entertainment companies) being treated as higher risk or being designated as ineligible for a payment account.
 - Concerns were raised by external stakeholders that certain key words may be flagged by firms' systems and might be leading to account denials. For example, representatives of Muslim communities were concerned that they were more likely to have an application for a payment account rejected if they had a 'Muslim-sounding' name.

However, regarding reports that small businesses (eg cash-intensive businesses) are sometimes denied accounts on the basis of the perceived compliance costs, the FCA clarifies that - other than with respect to BBAs - firms are entitled to refuse to onboard or retain a customer because they consider that it would be uneconomical for them to do so.

- **Some customers in vulnerable circumstances are experiencing worse outcomes regarding account access:** The report highlighted a number of challenges discussed at two roundtables that those consumers faced in obtaining and maintaining an account, eg some individuals with learning disabilities being denied an account because the firm assumed that they needed a power of attorney, while others were denied an account because they could not show a common form of ID (such as a utility bill with their address on it). Firms agreed at the roundtables that they needed to do more to improve consistency of treatment of these customers, and that they could improve the extent to which support is tailored to their circumstances. The FCA encouraged firms to share good practice in this area, helped by trade bodies.

What areas does the FCA expect payment account providers to now focus on?

Basic Bank Accounts (BBAs) – awareness and eligibility.

- Firms need to improve awareness of the availability of BBAs among their existing and prospective customers. The FCA is not prescribing how to do this as it expects that different firms will take different approaches. In light of the consumer understanding outcome rules under the Consumer Duty, the FCA also expects firms to consider whether they need to test the effectiveness of their communications on BBAs to ensure they're clear.
- It is the FCA's view that it is currently too difficult for those who are eligible for a BBA to obtain one (even if they are aware of this type of account). Firms need to make it easier for customers to choose to apply for a BBA if they are eligible in accordance with the eligibility criteria under the PARs.
- Where a BBA provider terminates a payment account (eg for reputational risk concerns), the FCA expects them to consider whether that customer then becomes eligible for a BBA.
- Under the Consumer Duty (and SYSC 6.3.7(5)G), the FCA expects all firms providing payment accounts to make sure customers understand what steps they need to take to provide acceptable forms of non-standard ID and that they are encouraged to do so. Lack of accepted ID was one of the barriers to opening accounts and accessing banking identified in the research report '[Exploring financial exclusion](#)' that was published alongside the FCA's follow-up report.
- Firms need to consider how to adapt the BBA customer journey to reduce the risk of a customer who eventually obtains a BBA (after being rejected for a full payment account) having their credit file adversely affected by hard credit checks being performed as part of their payment account application. In the longer-term, the FCA intends to work with the industry to explore solutions to the issues arising in this complex area.

Payment account access policies and procedures and Consumer Duty.

- Firms need to review relevant policies and procedures through the lens of the Consumer Duty, if they have not already done so. Generally speaking, firms need to ensure their decisions on account access are based on reasonable and properly considered grounds (including where they are citing 'reputational risk' as a basis for account denial or termination – see further 'Reputational risk' below).
- This means having appropriate internal policies in place that reflect firms' obligations under the Consumer Duty, in particular under the cross-cutting obligations in PRIN 2A.2 (act in good faith,

avoid causing foreseeable harm, and enable and support customers to achieve their financial objectives).

- The policies should be supported by staff training, monitoring and record-keeping procedures to ensure they are being followed in practice.
- The FCA expects that the required governance and oversight of account access decisions will include collecting and recording adequate and accurate data on account access decisions (including keeping a record of the reasons for the decision) to inform appropriate management information (MI), enabling robust oversight of account access outcomes to ensure they are acting to deliver good outcomes for retail customers.
- Firms should also keep a record, for an appropriate duration, of the decision-making process/policy it is following and of any significant changes to the process/policy (SYSC 9.1.1R and 9.1.5G).
- Firms should consider properly what information they need to thoroughly understand their customers' outcomes and issues they may be facing, including those of vulnerable customers (see further 'Vulnerable customers' below).
- Where firms use automated systems to screen account applications, they should be able to appropriately monitor those systems to mitigate the risk of unintended consequences and worse outcomes for specific customer groups.
- The Duty does not require a firm to provide a particular customer with a particular product, but the FCA is of the view that compliance with the Duty generally should mean firms are more careful before reaching any decision to deny or close an account.
- In line with the consumer understanding requirements of the Duty, the FCA thinks that firms' communication of a decision to deny or terminate an account should:
 - give reasons for the firm's decision (provided this does not conflict with the firm's financial crime obligations);
 - be likely to be understood by the customer receiving it, including use of an appropriate format;
 - highlight any options or help available to the customer including, where applicable, the potential availability of a BBA and the firms who provide them;
 - give customers at least the contractually required level of notice; and
 - inform customers of their right to complain.

Reputational risk

- The FCA has decided that it would not be appropriate or proportionate for it to prescribe reasons or procedures for firms to follow when considering whether they wish to enter into, or continue with, a commercial relationship with any particular customer. However, it expects firms to:

- have a clear definition of reputational risk and how it should be used in the context of account access, which is understood by relevant staff;
- be able to satisfy themselves that, when reputational risk is cited as a reason for an account denial or termination, the customer represented a material reputational risk to the firm's business;
- consider what monitoring is required, and intervene appropriately if they identify that internal policies are not being applied consistently; and
- maintain adequate records of account denial or termination decisions for reputational risk.

Financial crime controls

- Firms are reminded of the FCA's existing expectations that they act proportionately to the risks they identify and that they do not apply a generic approach to risk management - this applies in the context of account access.
- The FCA expects firms to consider applicable guidance when establishing, implementing and maintaining their anti-financial crime systems and controls. Specific reference is made to its [Financial Crime Guide](#).

Vulnerable customers

- Firms need to provide customers with characteristics of vulnerability with an appropriate level of care in light of those characteristics. Reference is made to both the [FCA's Guidance for firms on the fair treatment of vulnerable customers](#) (Vulnerability Guidance) and the Consumer Duty which builds on this.
- Firms should have appropriate systems and controls in place to ensure their actions, policies and procedures are not resulting in systematically poor outcomes for any cohort of customers, paying particular attention to those customers with characteristics of vulnerability. Examples provided by the FCA in the report are that firms:
 - should be careful in arriving at a conclusion that a particular customer lacks capacity to operate their payment account; and
 - should ensure that customers without a permanent address are made aware that they have alternative options for meeting identification requirements for account opening. Lack of a fixed address was one of the barriers to opening accounts and accessing banking identified in the '[Exploring financial exclusion](#)' report.

Political beliefs and views lawfully expressed

- Firms must be confident that decisions on account access are not based on political beliefs or other views lawfully expressed, in accordance with their relevant legal and regulatory obligations relating to discrimination - in particular the Equality Act and PARs.

What about account access issues for customers falling outside the FCA's remit?

- **Legal right or 'universal service obligation' (USO) to payment accounts for larger organisations and charities:** The FCA points out that its recommendations would only cover

customers to whom the Consumer Duty and other regulatory requirements apply. This leaves a gap in relation to some larger charities that might be experiencing payment account access issues. Some stakeholders suggested this might be addressed by the introduction of a legal right or USO to a payment account for larger organisations and charities. The FCA noted in its September 2023 report that a similar right exists in some other countries, eg France and Belgium. However, it clarifies that the decision on whether or not to introduce such a legal right lies with the Government and Parliament.

- **Recommendations for other bodies:** The FCA reiterates some specific recommendations for other bodies from its 2023 report:
 - **Companies House reform:** The FCA points out that matters to which it has referred in its report can support the significant work underway to reform Companies House. It also supports the banking industry's call for greater checks by Companies House to support the fight against fraud and financial crime. This could reduce the risk of subsequent account termination and may help firms to operate ongoing financial crime monitoring.
 - **DCMS and DSIT work on digital ID:** The FCA encourages the Department of Culture, Media and Sport (DCMS) and the Department for Science, Innovation and Technology (DSIT) to develop a strategic approach to identity verification, including voluntary digital identity, and explore further the barriers to broader adoption of these approaches. The FCA recognises that the July 2024 King's Speech included a commitment to provide 'secure and trusted digital identity products and services from certified providers'. As for the suggested Companies House changes, these measures could help firms in their on-boarding decisions as well as helping to calibrate ongoing financial crime monitoring controls.

What about Politically Exposed Persons (PEPs)?

The FCA refers to its recently published [review](#) of the treatment of Politically Exposed Persons (PEPs) to clarify that the treatment of PEPs specifically is not within the scope of this review and is covered in that separate review. Take a look at our [Engage article](#) for more on the PEPs review findings.

Next steps for firms

- The FCA expects payment account providers, including firms it did not engage with as part of this review, **to take account of the expectations outlined above and consider how this might impact their businesses**. If necessary, they should make improvements to ensure that they are meeting the expectations. The FCA recognises that the amount of work this will entail is likely to vary from firm to firm. However, in the coming months it would expect firms to be able to evidence that the matters about which it raises concerns in the report have already been addressed or will be addressed in a reasonable timeframe.
- The FCA also specifies that it expects firms to **review their customer journeys for onboarding and offboarding, as well as the associated policies and procedures, through the lens of the Consumer Duty**. Following this review, the FCA would expect firms to be able to evidence how

they have made sure that the relevant customer journeys and policies and procedures are consistent with the Consumer Duty's cross-cutting rules and are delivering good outcomes.

Next steps for the FCA

- **Financial Lives Survey changes:** In its 2023 report, the FCA committed to expanding and refining the questions in its Financial Lives Survey (FLS) about consumers without payment accounts, and to do further work to understand some of the underlying and interrelated issues about unbanked consumers identified in its FLS data. It has added new questions to the FLS to help understand 'unbanked' consumers' perspectives and expects to have initial findings from this soon. It will review them and determine if further research is needed.
- **Further work to help unbanked consumers:** The FCA has asked firms to continue working on resolving account access difficulties for these consumers (as explained in the findings and expectations sections of the report outlined above), but can take further action if it later determines that changes made have been ineffective or inadequate.
- **Engagement with firms:** The FCA would welcome engagement with firms regarding how they might effect changes in response to the report and what specific implications these changes are likely to have for them. This will form part of its ongoing supervisory engagement with relevant firms.

Pending changes to payment service contract termination rules

In another related development, in July 2023 the previous government committed to changing the requirements on payment service providers (PSPs) when terminating payment service contracts. In March 2024, HM Treasury published [draft regulations](#) amending the Payment Services Regulations 2017 (PSRs) to do this.

The reforms will increase from 2 months to 90 days the notice period PSPs must give customers when terminating a framework contract concluded for an indefinite period. While there are some exceptions, PSPs will also be required to give customers a detailed and specific explanation of the reason for termination so their customer understands why their contract is being terminated. Banks and other PSPs will need to consider making changes to their terms and offboarding processes to reflect these new requirements.

The previous government had intended these changes to enter into effect 'as soon as practicable'. However, this did not happen before the July 2024 General Election and next steps under the new government are now awaited.

For more on the draft regulations, take a look at [this Engage article](#).

If you would like to discuss any aspect of the above developments, please get in touch with any of the people listed above or your usual Hogan Lovells contact.

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