



# FCA publishes Consultation Paper on changes to safeguarding requirements for payments and e-money firms

01 October 2024

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## Background

Last week (26th September) the FCA published a [Consultation Paper](#) (CP24/20) proposing changes to safeguarding requirements for payments and e-money firms.

Payment institutions, e-money institutions and credit firms that issue e-money ("**Payments Firms**") are required to protect funds received in connection with making a payment or in exchange for e-money issued ("**Relevant Funds**"). Payments Firms may choose to safeguard Relevant Funds either through segregation (holding them at a bank, segregated from the Payments Firm's funds) or taking out an insurance policy or comparable guarantee to cover any shortfall in Relevant Funds. The requirements are designed to protect customers if a Payments Firm fails, ensuring that customers receive the value of their e-money as soon as possible. The protections offered by the safeguarding regime are crucial, because holders of e-money are not protected by the Financial Services Compensation Scheme.

## Why the Consultation?

The FCA sees poor safeguarding practices that can or do lead to losses to customers when Payments Firms fail. According to the FCA, for firms that became insolvent between Q1 2018 and Q2 2023, there was an average shortfall of 65% in funds owed to clients. The FCA puts this down to Payments Firms not properly following existing requirements, and to those requirements being insufficiently detailed. The Consultation is designed to address those issues.

## The FCA's proposals

The Consultation proposes the replacement of the current safeguarding regime in two phases.

The final rules will see the current statutory regime (contained in the Electronic Money Regulations ("**EMRs**") and Payment Services Regulations ("**PSRs**")) replaced with rules in the FCA Handbook, providing the regulator with greater flexibility. Importantly, the end-stage rules will impose a statutory trust over safeguarded funds, automatically and without the involvement of the courts.

The first phase will see the introduction of interim rules intended to:

- improve compliance with the existing requirements (third parties – Payments Firms will need to consider whether the use of them is appropriate);

- support more consistent record-keeping (strengthening rules on reconciliations and books and records, including a requirement to have a resolution pack); and
- enhance reporting and monitoring requirements (monthly regulatory returns and annual safeguarding compliance audits).

The second phase will see the existing regime replaced by one which adapts the approaches in the existing Client Assets Sourcebook ("**CASS**"). These final rules will:

- impose a statutory trust over safeguarded funds, so that consumers remain the beneficial owners, and the Payments Firm acts as trustee; and
- strengthen other elements of safeguarding requirements, such as setting more stringent criteria for safeguarding by way of insurance policies and comparable guarantees and ensuring the policy is written in trust.

### **Next steps**

The FCA plans to publish final interim rules with an accompanying policy statement within the first 6 months of 2025, but has not indicated a timeline for implementation of the end-state rules.

The revocation of the current safeguarding requirements in the PSRs and EMRs, and the imposition of a statutory trust over client money held by Payments Firms, represents a significant overhaul which will see additional compliance, systems and controls, and legal obligations imposed on Payments Firms.

Affected Payments Firms will need to pay close attention to newly-implemented rules at both the interim stage and the end stage, in order to meet the FCA's enhanced requirements for safeguarding client money.

The Consultation will be open for responses until 17 December 2024.