

Chapter 19

Non-FSMA powers

19.32 The Payment Accounts Regulations 2015

- 19.32.1** The *Payment Accounts Regulations 2015* ("the *PARs*") implemented the Payment Accounts Directive. They entitle *consumers* who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle *consumers* to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.
- 19.32.2** The *PARs* impose various obligations on payment account providers, such as a duty to disclose certain information when offering a packaged account to a *consumer* (i.e. the costs and fees of the products or services included in the package). They also introduce an obligation to offer a switching service between payment accounts. The *PARs* also require *credit institutions* designated by Her Majesty's Treasury to provide eligible *consumers* with access to basic banking services.
- 19.32.3** As the requirements arise under the *PARs* and not under the *Act*, the *PARs* create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*.
- 19.32.4** The *FCA's* approach to taking enforcement action under the *PARs* will reflect its general approach to enforcing the *Act*, as set out in ■ EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment of subjects under investigation when exercising its enforcement powers.
- Information gathering and investigation powers**
- 19.32.5** Part 1 of Schedule 7 to the *PARs* applies many of the provisions of the *Act* in relation to the *FCA's* investigation and information-gathering powers to the *FCA's* functions under the *PARs*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *PARs*.
- 19.32.6** For example, the *FCA* will, if appropriate, notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the *PARs* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the PARs

- 19.32.7** The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices*, *decision notices* or other written notices to be given under the *PARs* as set out in ■ DEPP 2 Annex 1 and ■ DEPP 2 Annex 2. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3.
- 19.32.8** For decisions made by *executive procedures*, the procedures to be followed will be those described in ■ DEPP 4.
- 19.32.9** Paragraph 1 of Schedule 7 to the *PARs* applies the procedural provisions of Part 9 of the *Act* (with some modifications), in respect of matters that can be referred to the *Tribunal*, and Paragraph 4 of Schedule 7 to the *PARs* applies Part 26 of the *Act* to *warning notices* and *decision notices* given under the *PARs*.

Public censures and the imposition of penalties

- 19.32.10** When determining whether to take action to impose a penalty or to issue a public censure under the *PARs*, the *FCA*'s policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in ■ DEPP 6.5, ■ DEPP 6.5A, ■ DEPP 6.5D and ■ DEPP 6.7.
- 19.32.11** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *PARs* to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the *FCA*'s settlement process and the *settlement discount scheme*.
- 19.32.12** The *FCA* will apply the approach to publicity that is outlined in ■ EG 6.