

**PAYMENT SERVICES AND ELECTRONIC MONEY (PRINCIPLES FOR  
BUSINESSES AND CONDUCT OF BUSINESS) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”), including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 138C (Evidential provisions); and
    - (d) section 139A (Power of the FCA to give guidance);
  - (2) regulation 120 (Guidance) of the PSRs;
  - (3) regulation 60 (Guidance) of the EMRs; and
  - (4) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 August 2019.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Banking: Conduct of Business sourcebook (BCOBS)	Annex C

**Citation**

- E. This instrument may be cited as the Payment Services and Electronic Money (Principles for Businesses and Conduct of Business) Instrument 2019.

By order of the Board  
24 January 2019

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*currency transfer service* a *payment service* or the issuance of *electronic money* that involves a currency conversion. For the purpose of this definition ‘currency conversion’ has the same meaning as it has in the *Payment Services Regulations*.

*electronic money customer* (in *BCOBS*):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) a *charity* which has an annual income of less than £1 million.

*payment service customer* (in *BCOBS*):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) a *charity* which has an annual income of less than £1 million.

*payment service or electronic money promotion* an invitation or inducement to:

- (a) enter into an agreement for the provision of a *payment service*;
- (b) initiate a *payment order*; or
- (c) acquire *electronic money*,

that is communicated in the course of a regular occupation or business activity.

Amend the following definitions as shown.

*client* ...

(B) in the *FCA Handbook*:

...

(1A) in relation to payment services or electronic money in addition to (1), includes a person to whom a payment service provider or electronic money issuer provides, intends to provide or has provided:

(a) a payment service;

(b) a service in the course of issuing electronic money; or

(c) a service connected to a service in (a) or (b).

*customer* ...

(B) in the *FCA Handbook*:

(1) (except in relation to SYSC 19F.2, ICOBS, a credit-related regulated activity, regulated claims management activity, MCOB 3A, an MCD credit agreement, CASS 5, PRIN in relation to MIFID or equivalent third country business, DISP 1.1.10-BR, PROD 1.4 and PROD 4) and in relation to payment services and issuing electronic money (where not a regulated activity) a client who is not an eligible counterparty for the relevant purposes.

...

(8) in relation to payment services or issuing electronic money (where not a regulated activity) a client who is:

(a) a consumer;

(b) a micro-enterprise; or

(c) a charity which has an annual income of less than £1 million.

*firm* ...

(11) (in PRIN 2) includes an electronic money institution, an EEA electronic money institution, a payment institution, a registered account information service provider and an EEA registered account information service provider.

Home  
State  
regulator

...

- (7) in relation to an EEA authorised payment institution or an EEA registered account information service provider, the competent authority designated in accordance with article 22 of the Payment Services Directive as being responsible for the authorisation or registration and prudential supervision of that EEA authorised payment institution or EEA registered account information service provider.
- (8) in relation to an EEA authorised electronic money institution, the competent authority designated in accordance with article 3 of the Electronic Money Directive as being responsible for the authorisation and prudential supervision of that EEA authorised electronic money institution.

private  
person

- (1) except in relation to a rule made under section 137A of the Act as applied by Schedule 3 to the Electronic Money Regulations or Schedule 6 to the Payment Services Regulations, (as defined in article 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2000 (SI 2001/2256)):

...

- (2) in relation to a rule made under section 137A of the Act as applied by Schedule 3 to the Electronic Money Regulations, as defined in regulation 72(3) of those regulations:
- (a) any individual, except where the individual suffers the loss in question in the course of issuing electronic money or providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but not a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

- (3) in relation to a rule made under section 137A of the Act as applied by Schedule 6 to the Payment Services Regulations as defined in regulation 148(3) of those regulations:
- (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but not a government, a local authority (in the *United Kingdom* or elsewhere) or an international organisation.

*regulatory system* (1) ...

(2) in *PRIN* and in *BCOBS* in addition to (1), the arrangements for regulating *payment service providers* and *electronic money issuers* in or under the *Payment Services Regulations* and *Electronic Money Regulations*, including conditions of authorisation or registration set out in those regulations, the *Principles* and other *rules*, codes and guidance, including any relevant directly applicable provisions of a Directive or Regulation.

...

*rule* (in accordance with section 417(1) of the *Act* (Definitions)) a rule made by the *FCA* or the *PRA* under the *Act* (including as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*), including:

- (a) a *Principle*; and
- (b) an *evidential provision*.

## Annex B

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Introduction

##### 1.1 Application and purpose

Application

...

- 1.1.1A G The Principles also apply to certain *payment service providers* and *electronic money issuers* that are not *firms*. PRIN 3.1.1AR sets out the application of the Principles to these persons. The references to a firm in PRIN 2 includes such persons.

Purpose

- 1.1.2 G The Principles are a general statement of the fundamental obligations of firms and the other persons to whom they apply under the regulatory system. This includes provisions which implement the Single Market Directives. They derive their authority from the FCA's rule-making powers as set out in the Act, including as applied by the Payment Services Regulations and the Electronic Money Regulations, and reflect the statutory objectives.

...

Link to fit and proper standard ~~in the threshold conditions~~

...

- 1.1.4A G For persons authorised or registered under the Payment Services Regulations or the Electronic Money Regulations, the relevant "fit and proper standards" are the standards set in those Regulations.

Taking group activities into account

- 1.1.5 G Principles 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the FCA) 11 (Relations with regulators) take into account the activities of members of a firm's group. Compliance by another person to whom the Principles apply with Principles 3, 4 and 11 can also be affected by the activities of other persons who are members of their group. This does not mean that, for example, inadequacy of a group member's risk management systems or resources will automatically lead to a firm contravening Principle 3 or 4. Rather, the potential impact of a group member's activities (and, for example, risk management systems operating

on a *group* basis) will be relevant in determining the adequacy of the *firm's* risk management systems or resources respectively.

#### Standards in markets outside the United Kingdom

- 1.1.6 G As set out in *PRIN 3.3* (Where?), *Principles 1* (Integrity), *2* (Skill, care and diligence) and *3* (Management and control) apply to world-wide activities in a *prudential context*. *Principle 5* (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the *UK financial system*. In considering whether to take regulatory action under these *Principles* in relation to activities carried on outside the *United Kingdom*, the *FCA* will take into account the standards expected in the market in which the *firm or other person to whom the Principles apply* is operating. *Principle 11* (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under *Principle 11* in relation to cooperation with an overseas regulator, the *FCA* will have regard to the extent of, and limits to, the duties owed by the *firm or other person* to that regulator. (*Principle 4* (Financial prudence) also applies to world-wide activities.)

...

#### Consequences of breaching the Principles

- 1.1.7 G Breaching a *Principle* makes a *firm or other person to whom the Principles apply* liable to disciplinary sanctions. In determining whether a *Principle* has been breached it is necessary to look to the standard of conduct required by the *Principle* in question. Under each of the *Principles* the onus will be on the *FCA* to show that a *firm or other person* has been at fault in some way. What constitutes “fault” varies between different *Principles*. Under *Principle 1* (Integrity), for example, the *FCA* would need to demonstrate a lack of integrity in the conduct of a *firm's or other person's* business. Under *Principle 2* (Skill, care and diligence) a *firm or other person* would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under *Principle 3* (Management and control) a *firm or other person* would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the *firm or other person* had failed to take reasonable care to organise and control its affairs responsibly or effectively.
- 1.1.8 G The *Principles* are also relevant to the *FCA's* powers of information-gathering, to vary a *firm's Part 4A* permission or authorisation or registration under the *Payment Services Regulations* or *Electronic Money Regulations*, and of investigation and intervention, and provide a basis on which the *FCA* may apply to a court for an injunction or restitution order or require a *firm or other person* to make restitution. However, the *Principles* do not give rise to actions for damages by a *private person* (see *PRIN 3.4.4R*).

...



## 1.2 Clients and the Principles

...

Approach to client categorisation

- 1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit-related regulated activities, payment services and issuing electronic money (where not a regulated activity) in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into *customers* and *eligible counterparties* will depend on whether the firm is carrying on *designated investment business*, *insurance risk transformation* and activities directly arising from *insurance risk transformation*, or other activities, as described in PRIN 1.2.3G.*

...

## 3 Rules about application

### 3.1 Who?

...

- 3.1.1A R PRIN also applies:
- (1) to an *electronic money institution*, an *authorised payment institution*, a *small payment institution* or a *registered account information service provider*; and
  - (2) with the exception of Principle 4, and only in so far as responsibility for the matter in question is not reserved by the *Payment Services Directive*, *Electronic Money Directive* or other EU instrument to the person's Home State regulator, to an *EEA authorised electronic money institution*, an *EEA authorised payment institution* and an *EEA registered account information service provider*.

...

- 3.1.6 R *A firm or other person will not be subject to a Principle to the extent that it would be contrary to the UK's obligations under an EU instrument.*

...

- 3.1.8 G *The Principles will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which Principle 6 may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and the *Electronic Money Directive* to ~~*credit institutions*~~ *payment service providers* and *electronic money issuers* (see Parts 6 and 7 of the*

*Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or applied by the *Consumer Credit Directive* (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).

### 3.2 What?

...

3.2.1B R Other than with respect to a *firm* that is a *credit union*, *PRIN* also applies with respect to:

- (1) the provision of *payment services*;
- (2) issuing of *electronic money* (where not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and
- (3) activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).

3.2.1C G Issuing of *electronic money* will therefore be covered under either *PRIN* 3.2.1AR(1) where it is the regulated activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*, or under *PRIN* 3.2.1BR where it is not that regulated activity.

...

3.2.2-A G *PRIN* applies to the communication of promotions concerning *payment services* and *electronic money*.

3.2.2A R *PRIN* 1 Annex 1, *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of *credit-related regulated activities* or *regulated claims management activities*, or to the provision of *payment services* or the issuing of *electronic money* (where not a regulated activity).

3.2.3 R Subject to *PRIN* 3.2.4R, *Principles* 3, 4 and (in so far as it relates to disclosing to the *FCA*) 11 (and this chapter) also:

- (1) apply to *firms* with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
- (2) for *firms* and other *persons* that are subject to the *Principles*, take into account any activity of other members of a *group* of which the *firm* or other *person* is a member.

...

### 3.3 Where?

Territorial application of the Principles

...

- 3.3.3 R *PRIN 3.3.1R applies to electronic money institutions, EEA authorised electronic institutions, payment institutions, registered account information service providers and EEA registered account information service providers as if the references to a firm were references to a person within that description, and references to an appointed representative were to an agent of such a person within the meaning of the Payment Services Regulations.*

### 3.4 General

Clients and the Principles

...

- 3.4.3 G ...

- (5) *PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the provision of payment services or the issuing of electronic money where it is not a regulated activity. Client categorisation does not apply in relation to carrying on of those activities. The definitions of customer in relation to those activities reflects the scope of the corporate opt out under the Payment Services Regulations.*

...

References to “regulators” in Principle 11

- 3.4.5 R Where *Principle 11* refers to “regulators”, this means, in addition to the *FCA*, other regulators with recognised jurisdiction in relation to *regulated activities, payment services and electronic money* whether in the *United Kingdom* or abroad.

## Annex C

**Amendments to the Banking: Conduct of Business sourcebook (BCOBS)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**1 Application****1.1 General application**

The general application rule

...

Application to payment services and electronic money

1.1.1A **R** In addition to the general application rule, Chapter 2 of BCOBS applies to a firm (other than a credit union), an electronic money institution, an EEA authorised electronic institution, a payment institution, a registered account information service provider and an EEA registered account information service provider with respect to the provision of payment services or issuance or redemption of electronic money carried on from an establishment maintained by it or its agent in the United Kingdom and activities connected with those activities. These persons are referred to collectively in Chapters 1 and 2 of BCOBS as “providers”.

Limitations on the general application rule and BCOBS 1.1.1AR

...

1.1.5A **R** BCOBS 2 (Communications and financial promotions) does not apply to the provision of payment services, the issuance of electronic money or activities connected to those activities by a credit union, except to the extent that the activity is connected to the activity of accepting deposits from banking customers.

Exclusion of liability

1.1.6 **R** A firm or a provider must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a banking customer, a payment service customer or an electronic money customer unless it is reasonable for it to do so and the duty or liability arises other than under the regulatory system.

...

**2 Communications ~~with banking customers~~ and financial promotions****2.1 Purpose and Application: Who and what?**

2.1.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. *Principles 6 and 7 also apply to an electronic money institution, an EEA authorised electronic money institution, a payment institution, a registered account information service provider and an EEA registered account information service provider with respect to provision of payment services and the issuance of electronic money.* This chapter reinforces these requirements by requiring a *firm* and these other providers to pay regard to the information needs of *banking customers, payment service customers and electronic money customers* when communicating with, or making a *financial promotion or a payment service or electronic money promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

...

2.1.3A R This chapter applies to a provider:

(1) communicating with a payment service customer or an electronic money customer in relation to the provision of a payment service or the issuing of electronic money and activities connected with those activities; or

(2) communicating a payment service or electronic money promotion.

...

## 2.2 The fair, clear and not misleading rule

2.2.1 R A *firm* or other provider must take reasonable steps to ensure that a communication, ~~or a financial promotion or payment service or electronic money promotion~~ is fair, clear and not misleading.

2.2.2 G The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a *banking customer, a payment service customer or an electronic money customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a communication addressed to a *consumer*.

...

2.2.5 G A communication, ~~or a financial promotion or payment service or electronic money promotion~~ should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:

(1) that term is capable of being a fair, clear and not misleading description of it; and

- (2) the firm or other provider communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

2.2.5A G A communication, or *payment service or electronic money promotion* relating to a *currency transfer service* is likely to be misleading if it presents an exchange rate in a way that is likely to give the impression that the rate is available to a *person* or a class of *persons* if that rate is unlikely to be obtained by that *person* or class of *persons* with respect to a typical transaction.

2.2.5B G The inclusion of wording in a communication or *payment service or electronic money promotion* to the effect that an exchange rate shown is not available to particular *customers* will not necessarily prevent the presentation of the exchange rate being misleading.

...

## 2.3 Other general requirements for communications and financial promotions

...

2.3.1A R A provider must ensure that each communication made to a *payment service customer* or an *electronic money customer* and each *payment service or electronic money promotion* communicated by it:

- (1) includes the name of the provider;
- (2) is accurate and, in particular, does not emphasise any potential benefits of a *payment service or electronic money* product without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important information, statements or warnings.

2.3.2 G The name of the firm or other provider may be a trading name or shortened version of the legal name of the *firm*, provided the *banking customer*, *payment service customer* or *electronic money customer* can identify the firm or provider communicating the information.

2.3.3 G In deciding whether, and how, to *communicate* information to a particular target audience, a firm or other provider should take into account the nature of the *retail banking service*, the *payment service* or *electronic money product*, the *banking customer's*, *payment service customer's* or *electronic money customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication, ~~or financial~~

*promotion or payment service or electronic money promotion* in the sales process.

2.3.4 G If a communication, *financial promotion or payment service or electronic money promotion* names the *FCA, PRA* or both as the regulator of a *firm or other provider*, and refers to matters not regulated by the *FCA, PRA* or both, the *firm or other provider* should ensure that the communication, ~~or~~ *financial promotion or payment service or electronic money promotion* makes clear that those matters are not regulated by the *FCA, PRA* or both.

2.3.5 G When communicating information, a *firm or other provider* should consider whether omission of any relevant fact will result in information given to the *banking customer, payment service customer or electronic money customer* being insufficient, unclear, unfair or misleading.

...

2.3.7A G If a communication or a *payment service or electronic money promotion* compares a *payment service* or service in relation to *electronic money* with one or more other *retail banking service, payment service* or service in relation to *electronic money* (whether or not provided by the provider), the provider must ensure that the comparison is meaningful and presented in a fair and balanced way.

2.3.7B R If a communication or *payment service or electronic money promotion* compares the cost of a *currency transfer service* with the cost of a service provided by any other provider or providers (whether identified or not):

(1) the comparison must be meaningful and presented in a fair and balanced way; and

(2) the *firm* or other provider must be able to substantiate the claims made.

2.3.7C G For the purpose of *BCOBS 2.3.7BR* the cost of a *currency transfer service* includes:

(1) any charges payable in relation to the currency conversion;

(2) any charges payable in relation to a connected *payment service or electronic money issuance*; and

(3) the margin between the exchange rate that would be offered to a majority of *persons* of the class at whom the promotion is directed and a currently applicable interbank exchange rate, calculated using an independently published interbank spot rate.