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Insights

THE SHIFT TO ENHANCED SUPERVISION: WHAT PAYMENTS AND E-MONEY FIRMS NEED TO KNOW

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THE FCA'S MOVE FROM FORMAL ENFORCEMENT TO ENHANCED SUPERVISION

The FCA has significantly reduced the number of formal enforcement actions that it takes. Instead, the FCA is changing strategy, with more emphasis on exercising its supervisory tools. Although this may sound less intimidating than enforcement, supervisory actions can have equally serious consequences for firms and carry fewer procedural safeguards.

Payment services and e-money firms are likely to be in the frontline of this trend. This is due to the nature of the risks they represent, including their proximity to consumers and exposure to financial crime.

When faced with enhanced supervisory action, the next steps taken by a firm are often critical. This is because in a worst-case scenario, the FCA can impose restrictions that threaten the viability of the firm itself. Below is what we think you need to know about this evolving area.

WHAT ARE THE MAIN AREAS OF SUPERVISORY FOCUS WE EXPECT THE FCA TO LOOK AT THIS YEAR?

Payments and e-money firms are faced with a growing list of compliance obligations, some of which are new this year. These include:

- the "supplementary regime" for safeguarding, which is intended to enhance protections for customer funds and takes effect on 7 May 2026;
- the Consumer Duty, particularly the need to ensure customers receive "fair value" for fees and charges;
- maintaining adequate financial crime controls;
- the PSR's reimbursement requirements for APP fraud carried out through FPS and CHAPS;

- the FCA's operational resilience regime, where firms should have been operating their important business services within their impact tolerances from 31 March 2025; and
- new "debanking" requirements, which take effect on 28 April 2026.

In light of the above, the likelihood of supervisory intervention is increasing in the sector. Indeed, the FCA has publicly stated that it expects the number of supervisory cases related to deficient safeguarding to increase, at least in the short-term, as it takes action to ensure that firms comply with its new supplementary regime.

Below we explore the supervisory toolkit available to the FCA if it has concerns about a firm's compliance.

WHAT ARE THE FCA'S KEY SUPERVISORY TOOLS?

VREQS & OIREQS

A voluntary requirement (a "**VREQ**") is where a firm voluntarily agrees with the FCA to accept a restriction or obligation on its business. This could mean stopping certain business activities, or ceasing the onboarding of new customers. Although they are "voluntary" requirements, the term is a misnomer: in practice, firms often have little choice but to accept the FCA's proposal.

VREQs are frequently published on the FCA's register. This can attract negative press attention and customer departures.

Should a firm not "voluntarily" enter into a VREQ, the FCA can escalate matters by mandating an own initiative requirement (an "**OIREQ**"), which is likely to be even more restrictive or damaging to the business than a VREQ (not to mention any refusal to enter into a VREQ will almost certainly damage ongoing relations with the FCA).

Although VREQs and OIREQs are typically both made public, one of the reasons an OIREQ is likely to be more damaging is that it will be published on the FCA Register as a Final Notice. This is often reported on by the press and can cause severe reputational damage (alongside the damage already caused by restrictions on business activities imposed through the requirements themselves).

SECTION 166 REVIEWS

These are also frequently referred to as 'skilled persons' reviews, named after the relevant section in the Financial Services and Markets Act 2000 which governs them. During a Section 166 review, an independent third-party expert will review an area of the firm's business where the regulator has concerns, such as financial crime controls, Consumer Duty compliance, and risk or governance frameworks.

A regulator may either appoint a Section 166 reviewer directly or require a firm to do so. The third-party will produce a formal report for the regulator, setting out their findings and typically some recommended remedial actions.

Although not inherently punitive, a Section 166 review indicates serious concerns from the FCA that a firm may be falling short of the required standards. If a firm does not properly implement the recommended remedial actions, it is not uncommon for this to form the FCA's basis for the imposition of a VREQ or an OIREQ, so it is key that firms heed the outcome of a skilled person review.

That being said, Section 166 reviews can be a useful tool for the regulator and businesses alike, as they can paint a better image of a company's inner workings from an objective viewpoint with high levels of technical expertise. The business can also continue operating as usual while preparing a remedial plan to restore the regulator's confidence in the firm, unlike what is typically the case with a VREQ/OIREQ.

Section 166 reviews also benefit from not being made public, giving the regulator and business time to investigate any issues without fearing any associated complications and reputational harm.

Accordingly, whilst the cost of these reviews can be unwelcome, they are preferable in comparison to other measures, such as VREQs/OIREQs.

INFORMATION GATHERING AND INVESTIGATION POWERS

The FCA also has a broad range of investigative powers which can compel a firm to produce information and documents.

Whilst responding to requests can involve a substantial amount of management time, failure to comply is punishable by criminal sanctions. Moreover, such failures can themselves cause the FCA to form a negative view of a firm's compliance culture and trigger escalation to more intrusive measures, or a full investigation being launched.

ARE THERE ANY CASES OF THIS HAPPENING RECENTLY?

On 21 January 2026, Guavapay Limited, a small e-money institution, entered compulsory liquidation. This followed a VREQ agreed with the FCA in September 2025 driven by AML concerns.

The terms of the VREQ prohibited Guavapay from, amongst other things, onboarding new customers and issuing new e-money without the FCA's prior written consent.

This illustrates how serious the impact of enhanced supervision can be: restrictions can have repercussions for a firm's revenue and, by extension, solvency.

IS IT POSSIBLE TO APPEAL?

It is not straightforward to challenge the FCA's exercise of its supervisory powers and, for the reasons explained above, firms may struggle to survive during any appeal process.

For a VREQ, the main opportunity for challenge is during the negotiation phase as it is technically "voluntary". Firms should constructively engage with the FCA and discuss what measures are a proportionate means of addressing its concerns.

With an OIREQ, the firm will have an opportunity to make written representations to the FCA. After that, they will then have a right to appeal the outcome of these representations to the Upper Tribunal or, in exceptional cases matters can be referred for judicial review.

ARE THERE ANY TIPS FOR FIRMS ON NAVIGATING THIS PROCESS?

- If approached by the FCA, early communication is crucial. Relevant FCA staff may be unfamiliar with a firm's business model, especially given that innovation is a hallmark of the payments sector. Being able to clearly explain how your business operates and key risks are addressed, e.g. using a short deck that avoids technical jargon and helps to establish credibility, may ease some of the FCA's concerns.
- Instruct a law firm with appropriate expertise at the outset. It is not always clear what the FCA is trying to achieve, and you may not have much time to prevent the imposition of damaging restrictions. External counsel can provide valuable assistance in framing relevant communications, particularly where it is necessary to concede past mistakes whilst giving the FCA comfort that any proposed remediation will ensure they do not reoccur.
- Share any information and documents requested by the FCA in a focused way, with accompanying explanation to avoid misunderstandings. Again, external counsel can help with effective regulatory engagement.

BCLP have helped many firms navigate this difficult area. If you require assistance, please do reach out to John Budd, Polly James or your usual BCLP contact.

EMERGING THEMES

We anticipate a pivotal year for investigations and enforcement

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