

Questions and answers on OFT's role in enforcing Part 8 of the Payment Services Regulations

19 October 2009

1. **What are the Payment Services Regulations (PSRs)?**

The PSRs have three main components:

- a prudential authorisation regime for payment institutions
- conduct of business rules covering information requirements, rights and obligations for payment providers and end-users, and
- a provision stipulating that rules governing access to payment systems should be non-discriminatory. This provision is contained in Part 8 of the PSRs.

The Payment Services Regulations derive from the Payment Services Directive. The Directive had the aim of achieving a Single Market in retail payment services which would provide fair and open access to payments markets, and increasing protection for consumers.

2. **What is OFT's role in enforcement?**

The OFT is responsible for enforcing Part 8 of the PSRs. Part 8 concerns access to payment systems in the UK. OFT does not have a role in either the authorisation regime or the conduct of business rules.

3. **What exactly does Part 8 require, or prohibit?**

Part 8 requires that rules or conditions governing access to payment systems must be objective, proportionate and non-discriminatory, and must not prevent, restrict or inhibit access to payment systems more than is necessary to ensure the safety and stability of the system. Part 8 also prohibits certain types of rules or conditions that could:

- restrict effective participation in other payment systems

- discriminate between different authorised payment institutions, or different small payment institutions, in relation to the rights, obligations or entitlements of participants in the payment system, or
- impose any restrictions on the basis that a person is not of a particular institutional status.

4. Which payment systems are subject to Part 8?

Part 8 does not apply to payment systems that are designated as systemically important under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 – which includes CHAPS and BACS. Part 8 also does not apply to so-called proprietary three party payment systems, which are not membership-based systems or to payment systems that serve one group of companies where one company enjoys control over others in the group (such as a bank group). There are currently a number of payment systems in the UK that will have to comply with Part 8 when it comes into force in November including the UK's ATM system, LINK, the electronic payment system called Faster Payments,¹ and the Visa and MasterCard credit and debit card systems.

5. Which bodies should be granted fair and open access to payment schemes under the PSRs?

Part 8 only applies to rules and conditions on access to a payment system by authorised Payment Institutions and small Payment Institutions.

6. Are all rules which restrict access prohibited?

No. Rules that prevent, restrict or inhibit access are allowed if they are necessary to protect the system against specific risks, or to protect the financial and operational stability of the system and can be applied in a way that is objective, proportionate and non-discriminatory.

7. How will the OFT enforce this legislation?

If the OFT has reasonable grounds for suspecting that a rule breaches the Part 8 access requirements, it can carry out an investigation, including requiring documents and information to be provided to it. If the OFT finds that a rule breaches the Part 8 access requirements, it can impose a fine of an amount it

¹ The Faster Payments Service is currently seeking designation as 'systemically important' under the Settlement Finality Directive. From 1 November the Faster Payments Service will need to comply with Part 8 until it achieves that status.

considers appropriate on such person (or persons, including companies) as it considers appropriate. It may also give such directions as it considers appropriate to such person or persons as it considers appropriate. The directions can:

- require the person to change any rule or condition so that it no longer contravenes the law, and
- relate to the conduct of a person in implementing any rule or condition.

8. Is there an appeal process?

Appeals against directions made by the OFT, or the levels of fines will be heard by the Competition Appeals Tribunal.

9. What will OFT's approach to enforcement be?

We will pay close attention to the context of any potentially restrictive rules on access. Before making a decision that a rule falls foul of the access requirements in Part 8, we will conduct an investigation and if the rule could have an effect on the financial and operational stability of the system, we will consult with the Bank of England and the Financial Services Authority. The OFT will normally also consider liaising with the Payments Council, the body with responsibility for setting the strategy for the UK payments industry in respect of schemes that come under its umbrella.

10. How will this affect consumers?

There is no direct effect on consumers. However, Part 8 will ensure that barriers to entry to payment schemes are not introduced, which in turn will mean that consumers will have a greater choice of payment institution provider. This in turn should lead to lower prices and more product choice.