

## JACOB GHANTY'S PAYMENT SERVICES AND E-MONEY COLUMN: NOVEMBER 2016

This document is published by Practical Law and can be found at: [uk.practicallaw.com/w-004-4776](http://uk.practicallaw.com/w-004-4776)  
Request a free trial and demonstration at: [uk.practicallaw.com/about/freetrial](http://uk.practicallaw.com/about/freetrial)

Jacob Ghanty is a partner in K&L Gates LLP's financial services practice. On a regular basis, Jacob shares his views with Practical Law Financial Services subscribers on topical payment services and electronic money issues.

In his November 2016 column, Jacob considers some UK domestic initiatives occurring in the payments, e-money and wider financial services sectors.

While there remains uncertainty as to the long-term status of EU law in English law, this column considers some of the UK developments where there is comparative clarity.

*Jacob Ghanty, Partner, K&L Gates LLP*

### RESOURCE INFORMATION

#### RESOURCE ID

w-004-4776

#### RESOURCE TYPE

Article

#### STATUS

Law stated as at 07-Nov-2016

#### JURISDICTION

United Kingdom

### FCA'S RESPONSE TO CMA'S RECOMMENDATIONS ON RETAIL BANKING

On 3 November 2016, the FCA published its response to recommendations proposed by the Competition and Markets Authority (CMA) in its final report into the effectiveness of competition in the retail banking market. The report sets out various remedies to address issues found by the CMA, as well as recommendations for action by the FCA.

The FCA has said it will take action in a number of areas: promoting innovation through the Open Banking standard; improving service through the publication of service quality information to consumers; prompting increased customer engagement; improved transparency for overdraft users; and delivering a competitive market for small and medium-sized entities (SMEs).

It appears that the FCA's initiative in relation to "prompting increased customer engagement" should be taken literally. Prompts, as the FCA states, are dedicated messages sent to consumers and can be periodic or triggered by certain events. The intention is to encourage changes in consumers' attitudes or behaviours specifically in relation to shopping around or reviewing their accounts. The CMA recommends that the FCA undertakes a research programme in conjunction with a selection of personal and business current account providers to identify those prompts that are most likely to increase customer awareness of the potential benefits of switching and prompt

customers to consider their banking arrangements. The FCA has also been recommended to use its rule-making powers (subject to the results of the research programme) to implement a series of prompts to be communicated to customers. Accordingly, providers of retail bank account services are potentially looking at a requirement to prompt their customers to shop around for alternative services or products. This kind of measure demonstrates the CMA's belief that the older and larger banks do not have to work hard enough to win and retain customers and the difficulties faced by new and smaller providers in attracting customers.

The FCA has already begun the first stage of its work in this area, with a view to bringing forward proposals for consultation during 2018.

Furthermore, the FCA has identified additional potential areas of focus beyond those recommended by the CMA. These are high-cost credit and the wider retail banking competitive landscape. In relation to high-cost credit, the FCA intends to examine arranged and unarranged overdrafts in the context of the wider consumer credit market and in comparison to other products. The FCA has acknowledged that the area of overdrafts is contentious. Overdrafts will apparently form a separate section of the Call for Input on the high-cost short-term credit price cap review and will ask questions on wider issues relating to high-cost credit. The FCA states that the review will look at the potential "waterbed" effect of taking action on specific high-cost credit products, particularly on firm behaviour and consumer welfare.

---

## FCA UNVEILS SUCCESSFUL SANDBOX FIRMS ON THE SECOND ANNIVERSARY OF PROJECT INNOVATE

It appears that the FCA has pulled off something of a coup through Project Innovate, with some overseas regulators apparently green with envy at the success of the regulatory sandbox and other elements of the project. On 7 November 2016, the FCA marked the second anniversary of Project Innovate by announcing numerous firms that have been successful in their applications to begin testing in the first cohort of the regulatory sandbox.

To remind ourselves, the regulatory sandbox aims to create a "safe space" (the FCA's words, not mine) in which businesses can test innovative products, services, business models and delivery mechanisms in a live environment while ensuring that consumers are appropriately protected.

Out of 69 firms from a broad range of sectors, geographies and sizes, 24 applications were deemed to meet the FCA's eligibility criteria. These include early stage start-ups, challengers and incumbent firms.

Such has been the success of the sandbox that the FCA will open its doors to a second wave of applicants from 21 November 2016, with the application period closing on 19 January 2017.

### Legal solutions from Thomson Reuters

Thomson Reuters is the world's leading source of news and information for professional markets. Our customers rely on us to deliver the intelligence, technology and expertise they need to find trusted answers. The business has operated in more than 100 countries for more than 100 years. For more information, visit [www.thomsonreuters.com](http://www.thomsonreuters.com)