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FCA CP26/23
Consumer Duty: Scope and Proportionality

Financial Conduct Authority
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Response from
The Payments Association

Introduction

The Payments Association (“TPA”) welcomes the opportunity to respond to the Financial Conduct Authority's consultation, CP26/23, Consumer Duty: scope and proportionality, published on 29 June 2026 and closing on 18 September 2026. TPA represents payment institutions, electronic money institutions and their service providers across the UK payments ecosystem, and a significant proportion of our membership is directly affected by how the Duty applies to payments and e-money business.

This response reflects discussion at a dedicated TPA members' workshop on CP26/23 kindly hosted by our member Linklaters, together with written submissions from members. As TPA's membership spans the full payments and e-money value chain, including acquirers, issuers, e-money institutions, open banking providers and their advisers, and holds a correspondingly diverse range of views, this response cannot and does not claim to represent the position of every member on every question.

We are grateful to the contributors to this response, which has been drafted by Robert Courtneidge on behalf of TPA's policy team ahead of the FCA's closing date. We would also like to thank the FCA for its continuing engagement with industry throughout this process. We hope this response supports the shared goal of making the UK the best place in the world for payments businesses to reside and flourish.

CP26/23 poses 29 questions. Most bear directly on payments and e-money business and are answered in full below. Questions 24 to 26, which concern the interaction between the Duty and PROD 3, are aimed primarily at investment product manufacturers; we answer them briefly and would defer to investment-focused trade bodies for detailed technical comment.

In accordance with the FCA's request, The Payments Association confirms that it consents to being named as a respondent to this consultation, and that this response is not confidential.

Emma Banymandhub
CEO
The Payments Association

Executive summary

TPA's five tests for CP26/23

Ahead of drafting detailed answers to each consultation question, TPA tested the FCA's proposals against five criteria developed at our members' workshop. We use these five tests to structure our answers below.

- Coverage. Focus this response on the questions that matter most to payments and e-money members, while giving shorter answers on Questions 24 to 26, which are aimed primarily at investment manufacturers.
- Territorial scope. Test whether “usual residence”, defined by address on file, works for digital-first payments and e-money onboarding, and ensure any UK-only application of the Duty can be implemented without raising discrimination law risk.
- Distribution chain and manufacturer classification. Stress-test the new principal and secondary manufacturer test, and the wider distribution chain provisions, against real Banking-as-a-Service, embedded finance, agent structures and newer models such as stablecoins and alternative payment methods before the FCA finalises drafting.
- Exclusions. Confirm that the payments-specific exclusions, in particular merchant acquiring, match how members actually operate. Members' preferred fix is to treat merchant acquiring as inherently business-to-business from the outset, rather than relying on a conditional exclusion that, as drafted, is narrower in practice than the FCA may intend.
- Proportionality. Support the FCA's proportionality principles for information gathering and board reporting, and consider whether TPA should develop a sector information-sharing template, as the FCA has invited.

These five tests inform the three recommendations set out in our conclusion below.

General observations

A scope and proportionality exercise, not a rewrite of the Duty

Members support the FCA's framing of this consultation as a targeted exercise in scope and proportionality, and note that the FCA is deliberately not reopening the four Duty outcomes themselves. We would caution against this consultation being used, by any respondent, as a vehicle to revisit the substance of the Duty rather than its boundaries and its proportionate application.

Whether this addresses a payments-sector problem

Members separately questioned whether the territorial scope change addresses a problem that payments and e-money firms actually experience in practice, noting that it may have originated in concerns raised by wholesale or asset management business rather than by the payments sector itself. We raise this not to object to the proposal, but so the FCA can confirm the intended beneficiaries and the evidence behind it, and so members can better judge whether the compliance cost of adapting to a new territorial test is justified.

Where this response is concentrated

As set out in our introduction, we have concentrated our detailed answers on the questions covering territorial scope, which firms and products the Duty applies to, roles across distribution chains, exclusions and technical corrections. Questions 24 to 26, on the interaction between the Duty and PROD 3, have limited direct relevance for most payments and e-money members and we answer them only briefly.

Response to consultation questions

CP26/23 sets out 29 questions. We answer them below in the FCA's own wording and in the order the FCA has posed them.

Q1: How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

Members ask the FCA to align, where possible, the territorial tests it uses across the Duty and sectoral regimes such as the Payment Services Regulations and Electronic Money Regulations, so firms are not required to run two separate territorial assessments for the same customer relationship.

Members raised a related consistency point: if a cross-border payment transaction does not require safeguarding under the Payment Services Regulations, there is no clear basis for the Duty to apply to it either. Anchoring the Duty's territorial test to the safeguarding test already familiar to payments and e-money firms would avoid a third, separate territorial assessment on top of the two already in use.

Q2: Do you agree with our proposal to limit the Duty's territorial scope in relation to the usual residence of retail customers? Do you have any comments on our approach to defining usual residence?

Members agree that usual residence, judged by address, is a sensible anchor in principle. However, address on file is not always a reliable indicator for payments and e-money customers, given digital-first onboarding, customers without a fixed address, expatriates and digital nomads. We ask the FCA to confirm what a firm should do where usual residence cannot be reliably established from the information gathered at onboarding.

Members also raised a more fundamental question about how a UK-only application of the Duty would work in practice. Most firms currently apply the Duty across their entire customer base regardless of residence, and segregating overseas customers out of the Duty's protections raises a real risk of falling foul of race and nationality discrimination legislation if handled without care. We ask the FCA to address this risk directly in its guidance, rather than leaving firms to manage it alone.

Beyond the edge cases already noted, members pointed to the parallel drawn by the EU's CRD6 regime for customers who relocate mid-relationship, for example a UK customer who later moves to the EU. We ask the FCA to confirm how usual residence should be reassessed, if at all, when a customer's circumstances change after onboarding.

Rather than a single fixed test, members would prefer the FCA to give firms latitude to apply a sensible, proportionate residency measure suited to their own customer base and onboarding journey. The FCA has previously tailored the Duty's application thoughtfully to reflect the non-standard structure of the cryptoasset sector, and members would welcome the same approach being extended to payments and e-money business, which has its own non-standard, often cross-border customer relationships.

Q3: Are there other requirements we should consider to avoid the risk that products/services intended only for sale outside the UK are sold to customers usually resident in the UK?

Members did not identify additional requirements beyond clear target market documentation at the point of manufacture, but ask the FCA to confirm how this interacts with the manufacturer and distributor split addressed in our answers to Q12 to Q16 below, since manufacturers and distributors often have different visibility of a customer's actual location.

Q4: Do you agree with our proposals to continue to apply the Duty to some business where customers are usually resident outside the UK?

Members broadly agree, subject to the point made in our answer to Q2 above on establishing usual residence with confidence.

Q5: Are there any other consumers, products or services where the Duty should still apply outside the UK?

Members did not identify further categories, though we note the point made in our answer to Q3 on target market documentation.

Q6: Do you have any comments on our proposed changes to the 'Application outside the UK' section of Chapter 2 of the non-Handbook guidance?

Members ask that the revised guidance include a worked payments example, for instance a UK-authorized e-money institution issuing to a mixed UK and non-UK customer base, since mixed propositions of this kind are common in payments and e-money and the guidance as drafted uses examples drawn from other sectors.

Q7: Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?

Members welcome consolidating scattered application rules into a single PRIN 3A chapter, which is a clear structural improvement, though legal certainty in practice will depend on the worked examples that accompany it. We ask that these include at least one drawn from a full payments distribution chain, covering issuer, processor, scheme, acquirer and merchant, and extending to newer models such as stablecoins and alternative payment methods, rather than relying solely on examples from investment or insurance distribution. Members noted that delivering consistent outcomes across every party in a chain of this length and variety is difficult in practice, and that the FCA's own payment services and e-money approach document already maps this complexity through its four- and five-party models; we would encourage the FCA to build its worked examples directly from that existing map. The Bank of England's recent systemic stablecoin safeguarding consultation showed that granular, sector-specific examples of this kind produce better outcomes than abstract principles alone.

Q8: Do you have any comments on the proposed approach to defining 'retail market business'?

Members ask the FCA to confirm whether the revised definition captures technical and infrastructure providers, such as payment processors and technical service providers, in the way those firms would themselves expect. Many members in this category currently operate on the assumption that they sit outside the Duty's core obligations, and any change to that position would have significant operational consequences.

Q9: Do you have any comments on our proposed changes to the 'product' definition?

Members had no significant concerns with the proposed changes, subject to the point on infrastructure providers raised in our answer to Q8.

Q10: Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

Members agree that 'distribution chain' has never been defined in the Handbook and that a clear definition is overdue. We ask that the definition explicitly address B2B service providers, such as payment processors and technical service providers, whose role is commonly to support other regulated firms rather than to interact with retail customers directly.

Q11: Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn't have a role in relation to one or more of the four Duty outcomes?

Members agree with the principle and ask that it be tested explicitly against agency and distributor models. For example, an agent with no role in product design should not inherit obligations under the products and services outcome, and the guidance should say so directly.

Q12: Do you agree with our proposals for updating our rules on material influence?

Members agree that moving from 'material influence' towards a role-based test should reduce ambiguity. We ask the FCA to confirm that this change does not inadvertently widen scope for firms that today rely on a limited-influence argument to sit outside the Duty's manufacturer obligations.

Q13: Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?

Members consider substantive control a workable dividing line in principle, but note that payments products such as co-branded cards, embedded finance propositions and Banking-as-a-Service stacks often involve genuinely shared control between commercial partners. We ask the FCA to test its list of substantive control factors directly against these arrangements before finalising the rule.

Q14: Should we consider making similar changes to the rules in DISC and PROD?

Members ask that any changes to DISC and PROD be aligned with the Duty's manufacturer classification, so that firms are not required to apply two different tests to the same product governance relationship.

Q15: Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?

The written-agreement requirement for principal manufacturers is reasonable on a forward-looking basis, but retrofitting it across existing agent, distributor and BIN sponsorship agreements could represent a significant one-off cost for members. We ask the FCA to provide a transitional period and, where possible, to accept that existing commercial agreements which already evidence the substance of the parties' roles need not be fully rewritten to comply.

Q16: Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?

Members ask the FCA to clarify how the rule applies where a technical partner in an outsourced arrangement, for example, a Banking-as-a-Service platform supporting a white-label card programme, in practice holds more operational control than the outsourcing firm that remains principal manufacturer under the proposed test. The rule as drafted assumes the outsourcing firm retains that control, which does not always match commercial reality in embedded finance arrangements.

Q17: Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?

Members welcome the FCA's explicit recognition that merchant acquiring generally falls outside the Duty, and welcome the indirect access provider and safeguarding account exclusions, which correctly treat infrastructure-layer roles as out of scope. We ask the FCA to confirm that the drafting of the indirect access and safeguarding exclusions matches how correspondent and sponsor relationships actually operate in practice.

On merchant acquiring specifically, members consider the exclusion narrower in practice than the FCA may intend. As drafted, it applies only where the merchant client does not meet the definition of a retail customer for the payments sector. That definition is anchored to the existing micro-enterprise threshold of annual turnover or balance sheet total not exceeding €2 million, which in practice captures the great majority of independent merchants, hospitality businesses and smaller retailers that acquirers serve. These merchant clients are not consumers in any meaningful sense: the relationship is a commercial, business-to-business one, not the retail relationship the Duty is designed to protect.

Members also stressed that merchant acquiring is not really a consumer relationship at all: the acquirer's customer is the merchant, not the cardholder or payer, and the current drafting's focus on the merchant's size misses this point entirely. Buy-now-pay-later flows illustrate the problem clearly. Where a payer chooses a BNPL provider at the point of sale, the acquirer has no practical means of assessing that payer's vulnerability or affordability, and is entirely reliant on the BNPL provider's own underwriting. Treating the acquirer as though it owes Duty obligations to that payer does not reflect where in the chain that responsibility can actually be discharged.

Members separately flagged payout flows, for example FX merchants paying customers out via Visa Direct or Mastercard Send, as another route by which acquirers are pulled into retail scope despite the underlying merchant relationship being business-to-business throughout. The current drafting addresses the status of the merchant but not the status of anyone further down the payment chain who receives the payout, so this route remains unresolved even where the merchant itself qualifies for the micro-enterprise carve-out.

The practical effect is that the exclusion the FCA intends to provide is significantly narrower than it appears on its face, and continues to impose Duty obligations, and the associated compliance cost, on a large share of ordinary merchant acquiring business without a corresponding consumer protection benefit. Members described the current pattern of conditional exclusions more broadly as resembling Swiss cheese: carved out in principle but reintroduced by exception in practice. Members would prefer a bright line to judgement-heavy scoping; we recognise the FCA has been resistant to bright lines in the past, but judgement-heavy scoping of this kind is genuinely difficult for firms to apply with consistency and confidence.

Members debated two ways to fix this. The first is to clarify and strengthen the existing exclusion, for example along the lines set out above. The second, which members preferred, is to frame merchant acquiring as inherently business-to-business from the outset, so that it falls outside the definition of retail market business entirely, rather than relying on a conditional exclusion that has to be defended and could be narrowed later. An activity that is out of scope by definition is more durable than one that is only excluded by a list, since it is easier to add an activity to a list of exclusions if a gap is later found than to defend an existing entry against being removed. Members also cautioned that any exclusions list risks becoming outdated as payment models, including newer entrants such as stablecoins and alternative payment methods, continue to evolve.

If the FCA does not accept this broader reframing, members' fallback position, at minimum, is for the FCA either to remove the retail customer definition as a qualifying condition for the merchant acquiring exclusion, or to exclude merchant acquiring from Consumer Duty scope in full, irrespective of merchant size. TPA is coordinating with its Merchant Payments working group to establish how widely this concern is shared across the acquiring community and would welcome the opportunity to discuss it further with the FCA before this response is finalised.

Members separately flagged sub-paragraph (11) of the FCA's proposed exclusions rule as a specific risk in its own right: as drafted, it may create more uncertainty than it resolves about

which adjacent payment transactions fall within scope. We would rather test this point now than face a harder question on it in two years' time.

Q18: Are there any other activities where we should consider exclusions on a similar basis?

Members suggest the FCA consider explicit exclusions for other payments infrastructure roles that, like merchant acquiring and indirect access provision, sit behind the retail relationship rather than within it: technical message routing, card scheme processing, and open banking third party providers acting purely as a conduit for a payment instructed elsewhere.

If the FCA introduces further exclusions of this kind, we ask that it avoid repeating the drafting approach used for merchant acquiring, where a conditional carve-out tied to the existing retail customer definition narrows the exclusion considerably in practice. A new infrastructure exclusion that is undermined by the same conditionality would not achieve its intended effect.

More fundamentally, members would prefer the FCA to address these roles through a clear, principle-based test for what counts as retail market business in the first place, rather than by continuing to grow a list of named exclusions. A list-based approach will always lag behind new payment models, including stablecoins and other alternative payment methods that do not map neatly onto the activities the FCA has named so far.

Q19: Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

Members ask that the revised guidance work through the merchant acquiring exclusion by worked example, showing how the retail customer definition is applied to a small independent merchant, so firms can apply the exclusion consistently pending any change to its scope.

As with the application provisions addressed in our answer to Q7 above, we would also welcome this guidance drawing on the FCA's own four- and five-party payment chain models, consistent with the granular, example-led approach that produced better outcomes in the Bank of England's recent systemic stablecoin safeguarding consultation.

Q20: Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.

Members agree and consider reasonable reliance on other firms in the chain to be exactly the clarification that agents and distributors in payments have been asking for. We ask the FCA to give further guidance on what 'good faith' and a 'clear indication of harm' mean in practice, since these remain judgement calls that firms will need to apply consistently in real escalation scenarios.

Members noted that a typical payments chain, spanning issuer, processor, scheme, acquirer and merchant, and now extending to stablecoins and alternative payment methods, makes delivering fully consistent outcomes across every party genuinely difficult in practice. Reasonable reliance on other firms in the chain is a necessary and welcome recognition of that reality.

Q21: Do you agree with our proposals to better reflect how firms' support for consumers in vulnerable circumstances will differ depending on their role in distribution chains?

Members agree that scaling vulnerability responsibility by role makes sense for products, but note that in payments, signals of vulnerability, for example, transaction patterns indicating financial difficulty, often surface at the processing or infrastructure layer rather than at the

distributor. We ask the FCA to address this in guidance so infrastructure-layer firms are clear on what, if anything, they are expected to do with such signals.

The buy-now-pay-later example raised in our answer to Q17 above illustrates this point well: a merchant acquirer has no practical means of assessing a payer's vulnerability at the point of sale and is reliant on the BNPL provider's own underwriting. Guidance should recognise that vulnerability oversight sits most naturally with the firm that actually has the relationship and the data needed to exercise it.

Q22: Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty?

Members agree, and consider that this should reduce bilateral data-gathering exercises between PSPs and distributor networks. TPA will consider whether to propose an industry-standard information-sharing template for members, consistent with the FCA's stated welcome for this kind of initiative.

Q23: Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes?

Members agree. We ask the FCA to confirm, in guidance, the minimum board reporting expected from a payments firm with a genuinely limited Duty role, so that this proportionality principle can be applied with confidence rather than firms over-reporting out of caution.

Q24: Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice?

This question, together with Q25 and Q26 below, concerns the interaction between the Duty and PROD 3, which is aimed primarily at investment manufacturers subject to PROD 3 and the Consumer Composite Investments regime. Most TPA members have no direct exposure to PROD 3 and did not raise specific areas for clarification; we would defer to investment-focused trade bodies for detailed technical comment on this and the following two questions.

Q25: Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty?

Members with adjacent exposure, for example embedded investment or savings propositions distributed through a payments app, would welcome the FCA's 'rely on existing arrangements, do not duplicate' principle being applied consistently wherever a payments firm distributes, but does not manufacture, a product already subject to PROD 3.

Q26: Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms?

Members with investment-adjacent exposure had no further comments beyond the point raised in our answer to Q25.

Q27: Do you agree with our proposed approach to making the technical clarifications in this chapter?

Members agree with the approach in principle. Deleting PRIN 3.2.8R matters specifically for payments members, since that rule currently ties the Duty's application to the coverage of sectoral rules such as the Payment Services Regulations and Electronic Money Regulations, and the FCA's own consultation acknowledges this creates uncertainty. We ask the FCA to confirm, ideally by way of a mapping table, that every payments-specific exclusion firms rely on today under the current drafting has a clear equivalent in the FCA's replacement provisions, so nothing is inadvertently lost in the simplification.

Q28: Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

This question is outside the direct experience of most payments and e-money members, and we have no comment.

Q29: Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

Members support removing the 'Duty champion' expectation as a welcome, low-cost governance simplification. We ask the FCA to review FG22/5 for other outdated or ambiguous references specific to payments and e-money that could usefully be cleaned up alongside these technical fixes.

Conclusion: three recommendations to the FCA

Drawing together the answers above, if TPA were to make only three recommendations to the FCA on CP26/23, they would be:

1. Treat merchant acquiring as inherently business-to-business. Our preferred fix is to place merchant acquiring outside the definition of retail market business from the outset, since the acquirer's customer is the merchant, not the payer, and the relationship has no real consumer equivalent. Failing that, at minimum, remove the retail customer definition as a qualifying condition for the merchant acquiring exclusion, or exclude merchant acquiring from Consumer Duty scope in full, irrespective of merchant size. As drafted, the conditional exclusion is significantly narrower in practice than it appears, because the great majority of independent merchants fall within the existing micro-enterprise threshold used to define a retail customer.

2. Test the new classification rules against how payments products are actually built. Provide payments-specific worked examples for the new PRIN 3A application chapter and the principal and secondary manufacturer test, covering Banking-as-a-Service, embedded finance, agent or distributor chains and newer models such as stablecoins and alternative payment methods, and confirm by mapping table that deleting PRIN 3.2.8R does not narrow any exclusion payments firms rely on today.

3. Set a proportionate methodology for usual residence, not a single fixed test. Confirm what a payments or e-money firm should do where a digital-first customer's usual residence cannot be reliably established from onboarding information or changes after onboarding, and address directly the risk that segregating overseas customers out of Duty protections could raise discrimination law concerns if handled without care, so the proposed territorial scope changes can be applied with confidence.

TPA and its members stand ready to support the FCA's continued engagement with industry as this work progresses, including through TPA's Merchant Payments and Regulatory working groups, and we would welcome the opportunity to discuss any of the above in further detail.

About The Payments Association

The Payments Association is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA/PSR, HM Treasury, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of digital and face-to-face events including our annual PAY360 and FC360 conferences, our PAY360 Awards dinner, PA@The City, CEO round tables, webinars, working group events and training activities.

We run stakeholder working groups spanning Cross-Border, Digital Currencies, ESG, Financial Crime, Financial Inclusion, Merchant Payments, Open Banking, Regulatory, Agent Commerce and Payments Infrastructure. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

Our Payments Intelligence team and our working groups aim to produce regular thought-leadership for our membership and beyond. These include data-driven reports, articles, video interviews and podcasts. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

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