



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 5

REGULATION OF PAYMENT SYSTEMS

Enforcement and appeals

71 Meaning of “compliance failure”

In this Part “compliance failure” means a failure by a participant in a regulated payment system to—

- (a) comply with a direction given under section 54, or
- (b) comply with a requirement imposed under section 55 or 56.

72 Publication of compliance failures etc

- (1) The Payment Systems Regulator may publish details of a compliance failure by a participant in a regulated payment system.
- (2) The Payment Systems Regulator may publish details of a sanction imposed under section 73.

73 Penalties

- (1) The Payment Systems Regulator may require a participant in a regulated payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty—
 - (a) must be paid to the Payment Systems Regulator, and
 - (b) may be enforced by the Payment Systems Regulator as a debt.

- (3) The Payment Systems Regulator must prepare a statement of the principles which it will apply in determining—
- (a) whether to impose a penalty, and
 - (b) the amount of a penalty.
- (4) The Payment Systems Regulator must—
- (a) publish the statement on its website,
 - (b) send a copy to the Treasury,
 - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
 - (d) in applying the statement to a compliance failure, apply the version in force when the compliance failure occurred.

74 Warning notices

- (1) Before imposing a sanction on any person the Payment Systems Regulator must—
- (a) give the person a notice in writing (a “warning notice”),
 - (b) give the person at least 21 days to make representations,
 - (c) consider any representations made, and
 - (d) as soon as is reasonably practicable, give the person a notice in writing stating whether or not it intends to impose the sanction.
- (2) In subsection (1) any reference to imposing a sanction is a reference to—
- (a) publishing details under section 72(1), or
 - (b) requiring the payment of a penalty under section 73.

75 Injunctions

- (1) If, on the application of the Payment Systems Regulator, the court is satisfied—
- (a) that there is a reasonable likelihood that there will be a compliance failure, or
 - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,
- the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Payment Systems Regulator, the court is satisfied—
- (a) that there has been a compliance failure by a participant in a regulated payment system, and
 - (b) that there are steps which could be taken for remedying the failure,
- the court may make an order requiring the participant, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Payment Systems Regulator, the court is satisfied—
- (a) that there may have been a compliance failure by a participant in a regulated payment system, or
 - (b) that a person may have been knowingly concerned in a compliance failure,
- the court may make an order restraining the participant or the person (as the case may be) from dealing with any assets which it is satisfied the participant or person is reasonably likely to deal with.

- (4) The jurisdiction conferred by this section is exercisable—
 - (a) in England and Wales and Northern Ireland, by the High Court, and
 - (b) in Scotland, by the Court of Session.
- (5) In this section—
 - (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
 - (b) references to remedying a failure include mitigating its effect, and
 - (c) references to dealing with assets include disposing of them.

76 Appeals: general

- (1) A person who is affected by any of the following decisions of the Payment Systems Regulator may appeal against the decision—
 - (a) a decision to give a direction under section 54 (other than a general direction),
 - (b) a decision to impose a requirement under section 55 (other than a generally-imposed requirement),
 - (c) a decision to exercise its power under section 56, 57 or 58,
 - (d) a decision to impose a sanction.
- (2) In subsection (1) the reference to imposing a sanction is a reference to—
 - (a) publishing details under section 72(1), or
 - (b) requiring the payment of a penalty under section 73.
- (3) If the decision is a CAT-appealable decision, the appeal must be made to the Competition Appeal Tribunal in accordance with section 77.
- (4) A “CAT-appealable decision” means—
 - (a) a decision to give a direction under section 54,
 - (b) a decision to impose a requirement under section 55, or
 - (c) a decision to publish details under section 72(1).
- (5) If the decision is a decision to impose a penalty on the person under section 73, the appeal must be made to the Competition Appeal Tribunal in accordance with section 78.
- (6) If the decision is a CMA-appealable decision, the appeal must be made to the Competition and Markets Authority (“the CMA”) in accordance with section 79.
- (7) A “CMA-appealable decision” means—
 - (a) a decision to impose a requirement under section 56,
 - (b) a decision to vary an agreement under section 57, or
 - (c) a decision to impose a requirement under section 58.
- (8) The permission of the CMA is required for an appeal to be made in accordance with section 79.
- (9) The CMA may refuse permission for an appeal only if—
 - (a) the appeal is made for reasons that are trivial or vexatious, or
 - (b) the appeal has no reasonable prospect of success.

77 Appeals to Competition Appeal Tribunal

- (1) This section applies where a person is appealing to the Competition Appeal Tribunal (“the Tribunal”) against a CAT-appealable decision.
- (2) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (3) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (4) In determining an appeal made in accordance with this section, the Tribunal must apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Tribunal must either—
 - (a) dismiss the appeal, or
 - (b) quash the whole or part of the decision to which the appeal relates.
- (6) If the Tribunal quashes the whole or part of a decision, it may refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling.
- (7) The Tribunal may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.
- (8) The effect of a decision to publish details under section 72(1) is suspended by the making of an appeal against the decision (and the details may not be published until the appeal has been determined).
- (9) The effect of any other CAT-appealable decision is not suspended by the making of an appeal against the decision.
- (10) In this section and section 78 “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.

78 Appeals in relation to penalties

- (1) This section applies where a person is appealing to the Competition Appeal Tribunal (“the Tribunal”) against a decision to impose a penalty under section 73.
- (2) The person may appeal against—
 - (a) the imposition of the penalty,
 - (b) the amount of the penalty, or
 - (c) any date by which the penalty, or any part of it, is required to be paid.
- (3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) The Tribunal may do any of the following—
 - (a) uphold the penalty;
 - (b) set aside the penalty;
 - (c) substitute for the penalty a penalty of an amount decided by the Tribunal;

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- (d) vary any date by which the penalty, or any part of it, is required to be paid.
- (6) If an appeal is made in accordance with this section, the penalty is not required to be paid until the appeal has been determined.
- (7) Subsections (2), (5) and (6) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.
- (8) Except as provided by this section, the validity of the penalty may not be questioned by any legal proceedings whatever.
- (9) In the case of an appeal made in accordance with this section, a decision of the Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Payment Systems Regulator.

79 Appeals to Competition and Markets Authority

- (1) This section applies where a person is appealing to the Competition and Markets Authority (“the CMA”) against a CMA-appealable decision.
- (2) In determining the appeal the CMA must have regard, to the same extent as is required of the Payment Systems Regulator, to the matters to which the Payment Systems Regulator must have regard in discharging its functions under this Part.
- (3) In determining the appeal the CMA—
 - (a) may have regard to any matter to which the Payment Systems Regulator was not able to have regard in relation to the decision, but
 - (b) must not, in the exercise of that power, have regard to any matter to which the Payment Systems Regulator would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The CMA must either—
 - (a) dismiss the appeal, or
 - (b) quash the whole or part of the decision to which the appeal relates.
- (5) The CMA may act as mentioned in subsection (4)(b) only to the extent that it is satisfied that the decision was wrong on one or more of the following grounds—
 - (a) that the Payment Systems Regulator failed properly to have regard to any matter mentioned in subsection (2);
 - (b) that the Payment Systems Regulator failed to give the appropriate weight to any matter mentioned in subsection (2);
 - (c) that the decision was based, wholly or partly, on an error of fact;
 - (d) that the decision was wrong in law.
- (6) If the CMA quashes the whole or part of a decision, it may either—
 - (a) refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling, or
 - (b) substitute its own decision for that of the Payment Systems Regulator.
- (7) The CMA may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.
- (8) Schedule 5 contains further provision about the making of appeals in accordance with this section.

80 Enforcement of requirement to dispose of interest in payment system

- (1) A requirement imposed under section 58 is enforceable by civil proceedings brought by the Payment Systems Regulator for an injunction or for interdict or for any other appropriate relief or remedy.
- (2) Civil proceedings may not be brought to enforce a requirement imposed under that section unless—
 - (a) the time for bringing an appeal against the decision to impose the requirement has expired and no appeal has been brought within that time, or
 - (b) the person on whom the requirement was imposed has within that time brought such an appeal and the appeal has been dismissed or withdrawn.