



De-banking: The Consumer Duty focus

Anthea Bowater and Sharon Tong consider what the FCA's Update Report means for de-banking and the Consumer Duty

In its report in September 2023 (and as discussed in our previous article “De-banking: Difficult decisions”),¹ the UK’s Financial Conduct Authority (FCA) investigated the reasons why firms were suspending and/or closing customers’ accounts, including whether there was any evidence to suggest they were doing so because of political views expressed by customers.

A year on, the FCA has published its follow-up report “UK Payment Accounts Access and Closures: Update” (‘the Update Report’),² as part of the FCA’s continued public commitment to maintaining appropriate access for consumers to financial services.

In the Update Report, the FCA confirmed that there was still no evidence of firms de-banking customers over political beliefs or other lawfully expressed views. In addition, the Update Report reported on other wider concerns related to banking access, including the reasons for the declining usage of basic bank accounts (BBAs), how “reputational risk” is used in firms’ account access decisions, and engaging with consumer groups and charities to understand their experiences and the experiences of those they represent.

The most interesting aspect of the report is the FCA’s views on how the Consumer Duty interacts with de-banking, and the FCA’s expectations of how firms should be improving their policies on de-banking customers in light of this duty.

The FCA’s general expectations in light of the Consumer Duty

Under the Consumer Duty – which came into force on 31 July 2023 for open products and services, and exactly a year later for closed products and services via a new Principle 12 – firms are required to act to deliver good outcomes for retail customers. The cross-cutting rules which supplement Principle 12 require firms to act in good faith towards retail customers, avoid causing foreseeable harm to retail customers, and enable and support retail customers to pursue their financial objectives.

In the context of account access decisions – which include the denial, suspension or termination of a customer account – the FCA explains in the Update Report that it expects firms to:

1. have up-to-date internal policies and procedures and
2. consider how its interactions with a customer can support the customer’s objective to open, use, and enjoy the benefits of a customer account.

This contributes to improving both access to payment accounts for retail consumers, and firms’ ability to monitor and oversee account access decisions.

The FCA expects all employees that make decisions about whether to decline or terminate an account to have adequate training and follow up-to-date guidance on the reasons which may justify these decisions.

Financial crime risk may be a legitimate reason for denying or terminating accounts, where firms act proportionately to the risk identified, but the FCA warns against denying or terminating accounts on spurious or unfairly biased grounds, or for discriminatory reasons.

Internal policies about account access decisions should be based on reasonable and well-considered grounds.

Where account access decisions are automated, the FCA expects firms to monitor these systems and mitigate risks of biases or worse outcomes for specific groups of customers, e.g. firms’ systems flagging key words which are identified with a certain race and this then being used as a basis for denying new accounts.

In terms of customer interactions, a firm is expected, where possible, to provide clear communications to customers so that they understand the reasons for the firm’s decision, the impacts of the decision, and the next steps customers should take. In terms of next steps, the FCA expects firms to provide relevant support where possible and highlight options that are available to the customer e.g. the availability of BBAs and firms who provide them. The FCA also expects firms to give customers the required level of notice for their decisions and inform them of their right to complain.

The FCA is also looking into consumers without payment accounts and understanding further the issues that unbanked consumers are facing

Update Report findings and detailed expectations

In the Update Report, the FCA made the following specific findings and set out its related expectations (where relevant) considering the Consumer Duty.

BBAs are not well-known to customers and BBA customers are treated inconsistently – The FCA expects firms to make clear the availability of BBAs and to improve access for prospective customers to BBAs, which includes:

- providing clear information on the identity documentation required to apply for BBAs
- evaluating the reasonableness of identification requirements and whether new customers are denied access unreasonably as a result
- proactively considering whether a customer who is ineligible for a general customer account should be eligible for a BBA instead
- reducing unnecessary hard credit checks which impact a customer’s credit rating
- providing reasons for decisions on offering, refusing, or terminating a customer’s accounts.

Data on account access was limited or unclear – The FCA expects firms to keep records of the decision-making process and the reasons for account access decisions, as well as policies to evidence compliance with the Consumer Duty, both internally and to the FCA (where requested). This can evidence whether their decisions are made in line with the firm’s documented approach. ▶

Using “reputational risk” as a reason for account

access decisions – The FCA expects firms to have well-considered and up-to-date policies which guide account access decisions. The FCA does not prescribe definitions, but expects firms to have a clear and consistent approach on the definition and application of “reputational risk”, and it says that this reason should only be relied on when there is a “material reputational risk to the firm’s business”. The FCA also expects firms to have appropriate training for employees, good record-keeping, and adequate monitoring of how reputational risk is used to deny or terminate account access, so firms can intervene accordingly if internal policies are not applied consistently.

Inconsistent approach to vulnerable customers – The FCA received feedback from consumer groups and charities that identified several improvements required to support the needs of vulnerable customers. This includes maintaining robust policies on identification and approach to vulnerable customers, and training staff on all levels (including branch staff) appropriately to avoid account denials where firms are making incorrect assumptions about a customer’s capacity, or not managing the needs of customers with learning disabilities, cognitive difficulties, or mental health challenges.

In terms of next steps, the FCA is also looking into consumers without payment accounts and understanding further the issues that unbanked consumers are facing. Firms can ensure a complete record-keeping of reasons for account denials for unbanked customers to assist the FCA in this further analysis.

Gap in account access protection

Finally, the FCA considered account access protection for customers outside of its remit. For businesses other than microenterprises or charities with a turnover of more than £1 million that are not protected by the Consumer Duty, the FCA noted that a “universal service obligation” or a legal right to payment accounts may be a solution for them, although it is up to the Government and Parliament to consider this solution.

Internal policies about account access decisions should be based on reasonable and well-considered grounds

Review internal policies

There has traditionally been limited guidance from the FCA and case law on account access decisions, aside from two well-known High Court cases.

In *N v The Royal Bank of Scotland* (which we discussed in our previous article), the Court found that RBS’s decision to terminate the customer’s account was within the range of what was honest, rational and reasonable due to its financial crime concerns, regardless of the availability of

other decisions RBS could have made. It therefore did not need to determine the precise standard a firm needs to meet when exercising this type of contractual discretion, as RBS had met all potentially applicable standards.

In *Uzbekov v Revolut*, a more recent case, the High Court struck out a “de-banking” claim which served no objectively useful purpose. While Revolut had closed Mr Uzbekov’s account due to media reports indicating Mr Uzbekov’s potential involvement in money laundering, there was no financial loss from the closure and Revolut had ultimately closed the account by acting in good faith in seeking to comply with anti money laundering legislation (even if these financial crime concerns may have been, at trial, shown to be unfounded).

The High Court gave short shrift to Mr Uzbekov’s argument that there was public interest in his case due to the importance of upholding the integrity and propriety of the banking industry. Whilst there may be issues raised by “de-banking” cases, the Court was clear that regulators are better placed to investigate than the Court, and the Financial Ombudsman Service provides a more established and appropriate mechanism to deal with individual “de-banking” complaints.

However, despite the relative lack of litigation and case law on de-banking, firms may like to consider reviewing their internal policies on account access decisions and how those policies are being applied in practice in light of the FCA’s recent focus and apparently increased expectations given the Consumer Duty. In particular, firms should check that decisions made on individual accounts are being recorded adequately so that they are able to defend any potential action and demonstrate the firm’s compliance with the Consumer Duty in this area, particularly where the decision is a nuanced one. ●



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1. Anthea Bowater and Piers Reynolds, ‘De-banking: Difficult decisions’, inCOMPLIANCE, November 2023, P.16
2. FCA, UK Payment Accounts Access and Closures: Update, September 2024: <https://www.fca.org.uk/publication/corporate/uk-payment-accounts-access-closures-update.pdf> – accessed November 2024