

# New Safeguarding Guidance

Are you ready for the second EU  
Payment Services Directive (PSD2)?

# What does PSD2 mean for your business?

## The second EU Payment Services Directive (PSD2) is required to be in place by 13 January 2018.

HM Treasury will transpose PSD2 into UK Legislation in the Payment Services Regulations 2017 (PSRs 2017), which will replace the Payment Services Regulations 2009. The FCA has issued an updated Approach Document to incorporate the changes introduced by PSD2. The Approach Document is presently in draft form following the consultation period that ended on 8 June 2017.

Although PSD2 does not introduce any changes to the safeguarding requirements, the FCA has taken the opportunity to expand its guidance in this area, providing more detail and clarity and confirming what should be best practice. This table details the additional information provided by the new draft guidance compared with the old guidance.

New guidance	Old guidance	Comments
There is no de minimis threshold for safeguarding relevant funds.	A de minimis threshold of over £50 was applied	Ensures that all customers are protected in the event of an insolvency
Institutions combining payment and non-payment services will need to be clear in their prior information to customers about whether, when and in what way the different elements of the funds will be protected through safeguarding.	No guidance	Provides clarity
Provides guidance as to when safeguarding begins. For cash payment transactions this is when it is handed over to the payment institution. For funds received through a payment system safeguarding must begin when the funds are credited to the institution's account with the payment system.	No guidance	Provides clarity
Provides guidance as to when the safeguarding requirement ends. Generally this is when funds are paid out to the payee.	No guidance	Provides clarity
Provides guidance as to safeguarding for customer funds received through an agent. This starts when the funds are received by the agent.	No guidance	Provides clarity
Provides guidance on when to advise the FCA on any change in the method of safeguarding used by an institution.	No guidance	Provides clarity
Provides clarification on how segregation of funds should be carried out. There should be physical segregation of relevant funds as soon as they are received. Noting the different funds within the accounting records is not sufficient.	No guidance	Provides clarity
Provides guidance on how to deal with relevant funds received mixed with fees. The relevant funds must be transferred into a segregated account the same day. There must be no commingling overnight.	No guidance	With on-line businesses that operate 24/7, it may not be possible to eliminate commingling overnight. We have raised this issue with the FCA

New guidance	Old guidance	Comments
The draft approach document states that relevant funds can be held with the Bank of England.	New option	We have asked the FCA to explain how this will work in practice
Provides clarification that institutions can use the same account to segregate funds up to the end of the day following receipt and then to continue to hold funds in that account as long as it meets the requirements of a safeguarding account.	No guidance	Provides clarity
Explains that a few institutions may not need to hold a safeguarding account due to their business model. To allow this they would need to retain appropriate evidence to demonstrate that they will never hold relevant funds after the end of the day following receipt.	No guidance	Provides clarity
Explains that if a guarantee is used to provide safeguarding protection, the guarantor must assume primary liability. (Often a guarantor only assumes a secondary liability, where the guarantor only becomes liable if the business defaults).	No guidance	Provides clarity
Explains that where the insurance or guarantee methods are used to provide safeguarding, the institution must make arrangements to ensure that the proceeds of the policy or guarantee will fall outside the insolvent estate. One way of doing this is for the insurance policy or guarantee to be written in trust.	No guidance	Provides clarity
Explains that institutions should have in place records to show and explain their compliance with safeguarding obligations. This should include documentation in relation to the safeguarding process and the related systems and controls.	No guidance	Provides clarity
Institutions should ensure an appropriate individual has responsibility for the safeguarding process ensuring that every aspect of the safeguarding procedure is compliant.	No guidance	We take an appropriate individual to be someone who has the relevant experience and knowledge of the safeguarding requirements of the PSD2 as well as holding a management position in the firm.
Net safeguarding is a process by which amounts equivalent to relevant funds are held in a safeguarding account, without each individual transaction passing through that account. Where such safeguarding methodology is used there should be a reconciliation between the actual amounts safeguarded and the amounts that should be safeguarded at least once every business day.	No guidance	Provides clarity
States that an institution's approach to safeguarding reconciliations must be documented and signed off at board level.	No guidance	Provides clarity
Explains that reconciliation discrepancies must be corrected on the same day that they are identified.	No guidance	Provides clarity

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