

# Response to FCA CP 24/28

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Operational Incident and Third Party Reporting

# INTRODUCTION.

As one of the UK's leading providers of compliance consultancy and regtech services Cosegic is delighted to respond to this Consultation Paper.

Our award-winning services help firms in the payments and E-money sectors that are subject to regulation by the Financial Conduct Authority or the Prudential Regulation Authority to become authorised, manage their ongoing compliance and regulatory obligations and empower their staff with focused compliance training.

What makes us stand out is the skill and expertise of our team, which includes ex-regulators, industry practitioners and subject matter experts. Through the breadth and depth of their collective expertise and experience we offer an outstanding service, interpreting the regulations, providing practical, usable advice and solutions that work for your business and the regulator – and ensuring that compliance makes a positive contribution to your business.

Specialist consultant led services helping to minimise the regulatory burden and using technology to reduce the cost of compliance, provide transparency and traceability and deliver management information that enables more informed risk and compliance management decisions. Our Payment Services Practice has a dedicated team of consultants specialising in payments and, in particular, supporting clients with applications for authorisation and ongoing compliance with the Payment Services Regulations and E-Money Regulations

Since the setting up of our Payments Practice over 9 years ago Cosegic has assisted hundreds of payments firms from across the sector, ranging from small payment institutions to banks, giving us a unique insight into the sector and the issues faced by firms.

Our Senior Advisor - Payments is John Burns, one of the UK's foremost compliance experts in payment services. He was heavily involved in the negotiation and implementation of the first Payment Services Directive and the second E-Money Directive and has worked in senior positions for the Association of Payment and Clearing Services, the Payments Council, the Financial Services Authority (now the FCA) and major banks, including Lloyds. At the FSA, John was the first editor of the Approach Document and the author of Chapter 8 on Conduct of Business and Chapter 10 on Safeguarding.

## 1. Overview

In general the proposed mechanisms and processes for reporting operational incidents and outsourcing arrangements appear both proportionate and appropriate. Recent high profile operational failures by major consumer banks in the payments space have highlighted the importance of operational resilience, and given the FCA's stated aim of being a data led regulator, the importance of having standardised information on both the nature of incidents and the dependencies to outsourced providers is clear.

We are therefore supportive of the FCA's proposals and have made a few suggestions for improvement.

## 2. Responses to the Questions

**Question 1: Do you have any comments on the cost benefit analysis including our assumptions, assessment of costs and benefits to firms, consumers, the market and third parties?**

We have no comments on this.

**Question 2: Do you agree with the proposed definition of an operational incident?**

In our view the proposed definition of an operational incident appears appropriate, as long as the thresholds adopted are sensible.

**Question 3: Do you agree with the thresholds for firms to apply when considering reporting an operational incident to us? Are there other factors firms should consider when reporting operational incidents?**

The thresholds proposed appear sensible, and consistent with the matters to be considered under the FCA's Operational Resilience requirements. It might be helpful to give some guidance on how firms assess what constitutes an "adequate service" as opposed to the full service level normally provided by the firm. Some changes to the guidance under the Operational Resilience requirements to facilitate consistency may be needed.

**Question 4: Do you agree with the proposed approach to standardise the formats of incident reporting?**

Yes. A standardised approach on the basis proposed appears sensible.

**Question 5: Do you agree that we are being proportionate and is collecting the right information at the right time to meet its objectives? Is there other information that should also be collected for a better understanding of the operational incident?**

The information collected and the timescales proposed appears appropriate. It may be useful to also ask firms who are in the scope of the FCA's Operational Resilience regime whether the incident has breached the firm's impact tolerance threshold

**Question 6: Do you agree with the proposed definition of third party arrangements?**

It is noted that the proposed definition of third party arrangements does not specifically include intra-group arrangements, although the definition of material third party arrangements does. For consistency we would suggest that both definitions should include intra-group arrangements.

**Question 7: Do you agree with the proposed definition of material third party arrangements?**

Yes. This seems sensible.

**Question 8: Do you have any comments on our proposed notification requirements including the impact on the number of arrangements that will be reported?**

Given the level of outsourcing and the dependencies on such arrangements for the provision of services to customers, it is important that the FCA has a proper overview of the totality of the situation in the market. The notification requirements therefore appear proportionate and appropriate and the specifying of a template should both clarify the requirements for firms and facilitate analysis by the FCA.

**Question 9: Do you think the mechanism to submit and update the structured register of firms' material third party arrangements is proportionate?**

The proposed requirements to maintain and submit a structured register of firms' material third party arrangements closely echoes the requirements in the EU's Digital Operational Resilience Act (DORA). As above, the provision of this information appears necessary to enable the FCA to have proper oversight of the amount, nature and potential risk of outsourcing, both at an individual firm level and in the market overall.

**Question 10: Do you have any comment on the template which includes the information on third party arrangements to be shared with us?**

The provision of templates (as set out in Appendix 3) should aid firms in understanding the information required and the format for submission. It may be worth considering adding a field asking for the firm's own assessment of the risk involved and their reasoning, to understand whether and to what extent this echoes the FCA's own view.