

Email Statements in UK Regulatory Compliance

DISCUSSION PAPER

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 **STRIATA**

A question often asked is whether there are any regulations prohibiting the sending of statements via email, or whether any UK regulatory bodies might object to replacing paper statements with electronic statements. This paper addresses these concerns specifically for Financial Services companies.

The Regulations

There are no specific laws that govern the production or mandatory requirements for statements. Within the financial services industry there are three codes of conduct or regulatory bodies which should be considered as well as the contractual terms and conditions of each product

The overall conclusion of our research is that there are no regulations that mandate the delivery of a **paper** statement. Therefore where certain regulations require the “sending” or “delivery” of a statement, the paper version can be substituted for an electronic version at will.

We have also not found any legislative requirement to ask permission from the user to substitute the paper version with an electronic statement.

The Banking Code

The role of the Banking Code Standards Board¹ is to monitor and enforce the banking codes and to ensure subscribers provide a fair deal to their personal and small business customers.

There are 2 codes: the Personal Banking Code and the Business Banking Code. The wording for both is identical as far as statements are concerned in the Codes’ *Section 9 – Statements*.

- 9.1** To help you manage your account and check entries on it, we will give you regular account statements unless this is not appropriate for the type of account you have (such as an account where you have a passbook).
- 9.2** We will normally give you a statement every month, every three months or at least once a year. You can ask us to give you account statements more often than is normally available on your type of account, but there may be a charge for this service.
- 9.3** If you have a card which allows you to withdraw money from your account, we will provide you with account statements at least every three months if you have used the card.

¹ <http://www.bankingcode.org.uk>

There is no mention of whether the statement has to be on paper, or even how it should be delivered. An important word used in the Code is 'give' i.e. 'we will give you a statement'. Strictly speaking, online banking portals fall foul of this code, since users are forced to 'collect' their statements. In cases like this, the bank does not 'give' customers their statements.

We realise that this is just a matter of semantics, however online access to statements has not been officially declared an approved "delivery" process as yet.

The British Banker's Association defines a statement as²:

"A bank statement is a record of all of your transactions which the bank has processed on your behalf through your account since your last statement."

Their website further explains why a statement is issued and how frequently they are sent. There is no indication provided of how the statement should be presented, although frequently used phrases include 'sent', 'send' and 'give'.

Financial Services Authority

The FSA is an independent body that regulates the financial services industry in the UK³. Two of the relevant principles of regulation for the FSA are:

- Innovation, and;
- Competition

These two principles cover avoiding unnecessary regulatory barriers to entry or business expansion. Competition and innovation considerations play a key role in the FSA's cost-benefit analysis work. Innovation involves, for example allowing scope for different means of compliance so as not to unduly restrict market participants from launching new financial products and services.

The FSA is generally considered to be a 'light-touch' financial regulator, particularly when compared to the US Securities and Exchange Commission and other European regulators. An example of this can be seen in their Consultation Paper 'Implementing the Electronic Commerce Directive'⁴, where no mention is made of electronic statements because this is seen as too detailed. Accordingly, the FSA has no specific rules or regulations regarding how member banks issue statements. This was confirmed in a lengthy telephone call to the FSA on 19 May 2009.

² <http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=139&a=366&artpage=all>

³ <http://www.fsa.gov.uk/>

⁴ <http://www.fsa.gov.uk/pubs/cp/cp129.pdf>

Instead, they refer to 4 key principles when regulating any activity:

- Systems;
- Controls;
- Security;
- Treat the Customer Fairly.

For details on how Striata complies with the principles of Systems, Controls and Security, please see the Striata document “Striata_Security_Overview.pdf”

In their white paper on Data Security⁵, the FSA has made it clear that they are in favour of electronic commerce:

“We noted during our visits a general shift in the financial services industry – including in small firms – from holding customer data in paper files to the electronic scanning and filing of correspondence. There are clear benefits in terms of efficiency and customer service for businesses that scan documents.”

Treating Customers Fairly (TCF)

Although TCF is an FSA-specific initiative⁶, we have listed this code of conduct separately, since treating customers fairly is a business best practice. The FSA have confirmed that as long as this code is adhered to, there is little to no chance of the FSA being concerned with specific business practices.

Striata believes that Treating Customers Fairly would include:

- Allowing the customer the choice of electronic or paper statements;
- Allowing the customer to change their mind about electronic statements.

Other Regulatory Bodies

While not directly related to any specific regulation, we believe it is important to point out the following supporters of electronic statements.

Bank of England

There is evidence that the Bank of England prefers electronic to paper⁷:

“S11 and S12 capture views on the importance of data dissemination: specifically the relative importance of electronic and printed dissemination. The responses showed that users felt electronic availability was much more important than the printed format. Some of the comments received from users noted that the ability to

⁵ http://www.fsa.gov.uk/pubs/other/data_security.pdf

⁶ <http://www.fsa.gov.uk/Pages/Doing/Regulated/tcf/>

⁷ <http://www.bankofengland.co.uk/statistics/ms/articles/art2sep05.pdf>

print from a standard online format is more important than receiving printed outputs. These results and comments have led the Bank to cease sending out paper copies of the statistical releases from the start of 2006.”

UK Border Agency

The UK Border Agency accepts electronic statements as evidence⁸:

“For the purpose of the points-based system an online bank account is one that operates over the internet only and sends your bank statements to you electronically (for example over the internet or through email).

If you wish to use electronic bank statements from an online bank account as evidence, these statements must always be accompanied by:”

Conclusion

There is no law, regulation or advisory in the UK that prohibits replacing paper statements with electronic statements. As long as the electronic statement is issued in a controlled manner with appropriate security and the customer is given a choice, there is no UK regulatory body which would object.

⁸ <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier1/poststudy/dependantapplications/assessmentoffunds/#header3>

About Striata

Striata's Secure eDocument Delivery and Email Bill Presentment & Payment (EBPP) are solution sets that deliver a rapid reduction in operational costs, quicker payments and an enhanced customer experience.

Striata revolutionises the way bills, statements, policies, collection notices, letters, payslips and other high volume system-generated documents are delivered and paid. Registration requirements are eliminated by emailing feature rich, interactive, encrypted documents directly to the inbox and enabling innovative 1-click electronic payment from within the document itself.

Direct email delivery of bills and statements dramatically increases customer adoption of electronic documents, paper turn off and ePayments. This enables Striata's clients to achieve rapid ROI; complement their existing self-service and communication strategies; significantly reduce paper output and to meet their carbon footprint/environmental impact targets.

As a leading international provider of electronic messaging since 1999 with more than 200 blue chip customers, Striata has operations in New York, London, Sydney, Johannesburg Hong Kong and partners in North, Central & South America, Europe and Asia Pacific.



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