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14 April 2023

Submitted online: PaymentServicesCfE@hmtreasury.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to HM Treasury's Payment Services Regulations Call for Evidence

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA, but we are responding to this Call for Evidence on Payment Services Regulations because payments are essential to consumers.

We believe it is crucial that HM Treasury put the consumer at the centre of this Review to ensure that the sector earns and retains trust and properly serves its purpose. In doing so, we would urge HM Treasury to keep front of mind two key considerations.

Firstly, payments touch everyone – unlike many other financial services and products – they are not optional, nor are they for the privileged, sophisticated, or affluent few. Payments are crucial to each and every UK citizen and have to be accessible to and used and trusted by all types of consumer – whether or not they are financially, legally, or digitally literate. The Payments sector needs to serve *everybody* in the United Kingdom, enabling them to pay and be paid – or it serves none of us.

Secondly, public trust in money is key. This trust depends in large part on the public's ability to receive, store and pay out money – payments. **All** providers engaged in these activities, regardless of size, must therefore be held to similarly high standards. Strict regulation and supervision must underpin their participation in the payments market if payments are to be safe, serve the consumer and wider economy – and, indeed, if trust is to be retained in money itself.

Present Risks

The status quo puts public trust, accessibility, and safety at risk. This is not acceptable.

In recent years a flood of private money has poured into the payments sector, fuelling the ambitions of a host of new entrants, and inflating their valuations. This has led to new forms of payment and fresh competition, both of which we welcome. However, in the rush to attract and support this investment, many new entrants have failed to meet the standards the sector demands. Furthermore, the risks they and their products introduce have not always been fully understood or adequately addressed.

Increased competition has stimulated a rush for customer acquisition, while failing to translate into lower costs or greater value, particularly for smaller businesses.¹

Furthermore, it is now manifest that there is insufficient focus on standards and safety in the sector, as demonstrated by the serial failures in combating fraud and financial crime, in conduct and prudential risk management and even basic record keeping. Like the FCA, the Panel are “concerned that many payments firms do not have sufficiently robust controls and that as a result some firms present an unacceptable risk of harm to their customers and to financial system integrity.”²

To avoid this, the regulatory gateway for payments **must** be toughened as a matter of priority. To uphold public trust payment firms should be required to receive full authorisation and made subject to all the usual basics of FCA regulation: PRINC, SYSC, DISP, SMCR and so forth. There should also be much clearer accountability on the FCA to regulate the conduct of payment firms. At the centre of this should be the consumer duty, which should unambiguously apply, and which would create accountability on firms for the value they deliver to customers, for the support they offer and for the understanding and limitations of their service. This would, at a stroke, require firms to

- Consider which payment options are likely to suit which sets of consumers and transactions
- Make sure consumers understand different payment options
- Consider “friction-right” consumer journeys rather than competing solely on minimising friction
- Account for the fair value of their products, including how they monetise people’s data and share its value
- Support customers when things go wrong
- Build a culture of consumer engagement and research

Consumers

The Panel was disappointed to note that the Call for Evidence’s questions for Stakeholders are largely directed at industry providers not consumers. This is disappointing given how central payments are to consumers – and how central consumer trust is to the sector. As stated above, HM Treasury must put the consumer at the centre of this Review. Rather than providing question by question answers to the Call, the Panel instead sets out in this letter concrete reflections on future payments policy which we hope will be given proper consideration.

The Panel’s overarching points on the Call are:

- **Priorities** The proposed priorities and objectives must start with appropriate trust and protection for consumers; this should be supported by resilience and

¹ The average merchant service charge for card payments was 0.6% of each transaction in 2018, but the smallest merchants paid over four times more on average than very large ones. <https://www.bankofengland.co.uk/paper/2023/the-digital-pound-consultation-paper>

² FCA Portfolio Letter: FCA priorities for payments firms, 16 March 2023. <https://www.fca.org.uk/publication/correspondence/priorities-payments-firms-portfolio-letter-2023.pdf>

integrity and choice and competition. Agile and proportionate regulation must be subordinate to these primary goals and aimed primarily at providing the regulator with the appropriate tools for supervising this dynamic and fast changing sector.

- **Costs, Risks and Accessibility** Payments are a pre-requisite for societal participation, and they are the first (and in many cases effectively the only) touchpoint that many consumers have with financial services. It is therefore critical that payments, including the ability to pay, be paid and to store money, are made easily accessible, safe and affordable on as risk-free a basis as possible to all. This does not preclude the emergence and provision of more sophisticated or costly forms of payment, nor does it preclude alternative forms of storing money. However, the provision of basic, low risk and low cost, banking and payment services should be universally accessible and made manifestly available to all. Where higher risk or higher cost payment services, including pre-funded payment services are made available, their risks should be clearly, transparently, and visibly stated.

The fall-off in the use of cash, the closure of bank branches and the growth in digitally-based commerce have combined to pull (and push) more and more UK consumers into using non-cash forms of payment, including consumers on lower incomes and those who are less digitally or financially literate. Any review of payments regulation should take care to look at the payments landscape from this particular consumer angle, carefully examining how well the payments sector is serving the poorest and most vulnerable. This review should examine, for instance, how the cost, promotion, provision, and usability of basic bank accounts compares to the cost, promotion, provision and usability of pre-paid cards and other basic e-money forms targeted at the same consumer groups. Taking into account the comparative risks in these different product types, the review should consider whether the target consumers are being fairly served and are enabled and empowered to make informed choices, whether either basic bank account services need revisiting and/or whether a simplification of the payment's regime (including safeguarding) might be needed.

- **Cash.** Whilst we recognise that this Review is focused on more innovative forms of payment, we do not believe that cash should be ignored in any discussion on payments. Cash remains an important payment method for many consumers and the Panel believes that all consumers should be given the choice of using cash as a method of payment, and that those who depend on cash should be able to continue to access essential services. As we stated in our response to HM Treasury's September 2021 Access to Cash Consultation³, HM Treasury must continue to work closely with the FCA and other regulators to ensure they possess the appropriate powers to ensure the sustainable long-term provision and the easy, accessible, and cost-free exchangeability of cash.
- **Protections** We do not believe that the pursuit of innovation, growth and competition should result in lower protections for consumers. For payment providers, the same level of risk should attract the same level of regulation. For consumers, the same protections should apply, irrespective the size, maturity, or legal nature of the provider. In this respect, we would encourage HM Treasury to revisit the Safeguarding regime and, in particular, where, and how it is used. We would question whether this complex and risky regime is appropriate for backing

³ https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_access_to_cash_consultation_20210928.pdf

what are promoted to the most vulnerable (and likely poorest) of consumers as being the most basic and accessible payment accounts.

- **Fraud** Having robust and effective fraud controls in place should be a condition of operating in UK payment systems. Payments must be safe, and they must be trusted. Preventing fraud within the payment system is key to ensuring consumer confidence, to minimising consumer harm as well as to reducing criminality overall. While much welcome work is underway by the FCA and PSR, including their proposal to make reimbursements mandatory for victims of APP fraud, the protections for consumers making interbank payments are insufficient and improvements need to be implemented. Protections should be clear and consistent and apply across the board.

A high standard of consumer protection must also exist for consumers where they use other emerging payment methods and providers. The move to fast and frictionless payments brings significant risks to consumers, making it easier for consumers to spend and more difficult for transactions to be reversed. There should be a clear, efficient and consistent process for settling disputes and obtaining redress for both consumers and SMEs. Rules should be industry-wide, enforceable, and success metrics clearly defined and measured.

- **Open Banking** The transition to Open Banking payments provides an opportunity to introduce real competition and choice for consumers – but only if it is done right. Open Banking payments must offer a competitive alternative to card payments-in particular, in terms of charges paid by merchants and businesses- if they are to deliver meaningful change. They must offer a real economic advantage and choice for consumers, small businesses, and the wider economy. They must also be safe and trusted – and there must be a well-understood protection regime, solidly underpinned by comprehensive rules, liability, and redress regimes.

Before concluding, we would like to take this opportunity to set out our view of what a well-functioning payments landscape looks like for UK consumers. As in all areas of financial services, we believe payments firms should have a duty to act in the best interests of consumers. The market, and therefore this review, should also be guided by the following principles:

- **Accessibility** - All UK consumers must be able to pay and be paid. The system must be accessible to all.
- **Fairness and affordability** - The cost of making payments should not exclude particular consumers, businesses of transaction types. It should not cost more for the poorest to pay.
- **Reliability** - Individual payment systems must be robust and reliable with appropriate redundancy measures in place to ensure continuity of service in case of need.
- **Sustainability** – The Payment System should be operated on an economically sustainable basis. The failure of individual payment systems should not result in consumer losses.
- **Safety, security and consumer protection** – Individual payment systems must be safe and secure. The Payment System should offer at least a minimum level of protection to consumers, including against fraud and losses as a result of firm failure.
- **Transparency** – Individual payment systems’ costs and protections must be clear and easily understandable. Individual payment systems should offer full transparency about how end users’ data is used, by whom and to what end.

Helen Charlton

Chair of the Financial Services Consumer Panel