
Minutes

**Minutes of the meeting of the
PAYMENT SERVICES STAKEHOLDER LIAISON GROUP
Held on 12 July 2016, 9.00 – 11.00
At Committee Room 37. FCA, 25 The North Colonnade, London**

Present:	Graeme Mclean, FCA (Chair) Nilixa Devlukia, FCA Andrew Laidlaw, FCA Nicholas Webb, FCA Jack Wilson, FCA Nishan Sundaram, FCA Vicky Parr, FCA Jody Whitehorn, FCA Bhavna Shavdia, FCA Measha Patel, HM Treasury Millie Richardson, Association of Foreign Exchange and Payment Companies	Elizabeth Fraser, Payments UK Briony Krikorian-Slade, UK Cards Association Walter McCahon, BBA Faith Reynolds, FCA Consumer Panel & Consumer Network Tim Minall, UK Acquirers Ali Imanat, Financial Fraud Action UK Michel Vaugiac, European Payment Institutions Federation Vedrana Kovacevic-Jalisi, Electronic Money Association Hamish MacLeod, Mobile UK	
Apologies:	Andrew Hopkins, Building Societies Association Lorna Rossi, GSMA Andy Maciver, FDATA	Dominic Thorncroft, AUKPI Ruth Wandhöfer, European Banking Federation Payments Regulatory Expert Group	
Minute No.			Actions
1	<p>Introduction</p> <p>The Chair welcomed participants and said that the purpose of the Stakeholder Liaison Group (SLG) is to engage with relevant stakeholders as the FCA develops its approach and guidance in response to the revised Payment Services Directive (PSD2). The Chair noted the following points:</p> <ul style="list-style-type: none"> • The FCA would not be taking any questions or addressing issues related to the recent European Union referendum result. The FCA's statement on this matter was read out. • The role of the SLG is not to address concerns or issues that can only be addressed through the final text of PSD2 or HM Treasury's implementing regulations. 		
2	HM Treasury gave a brief update explaining that a 6 week consultation on the regulations is planned to commence in		

	August.	
3	<p>Terms of Reference</p> <p>The Terms of Reference for the group (see minute 10) were agreed by the SLG.</p>	
4	<p>Aims and objectives for FCA implementation</p> <p>The Chair noted that appropriate and early engagement with stakeholders was crucial to ensuring the FCA's development of the payment services regime took appropriate account of the interests of affected firms and consumers. This engagement has already begun with a Call for Input on existing FCA payment services guidance in February. The FCA intends to consult on revised guidance for payment services in the first half of 2017, following the Treasury's consultation on its implementing regulations. The combined knowledge and experience of SLG participants will be valuable in order to ensure that the FCA's changes to rules and guidance are developed in a way which supports firms by providing clarity where possible and responds to consumer interests.</p> <p>The Chair invited views from the SLG on useful discussion areas for future meetings. Participants raised:</p> <ul style="list-style-type: none"> • how payment service providers could ensure the systems they were developing for authentication would be still be compliant in 2018. It was noted that the content of the European Banking Authority's Regulatory Technical Standards for Strong Customer Authentication would become clearer this summer and should be finalised by January 2017 • the extension of scope (article 2) in the context of the EU referendum • risks for consumers in light of new payment services • access to payment account services (article 36) • future proofing of guidance • new exclusions under PSD2. 	
5	<p>Blocking of funds (Article 75)</p> <p>The Chair invited participants to consider issues raised by changes in PSD2 relating to the blocking of funds on a card-based payment account when the transaction amount is not known in advance (article 75). The following points were made:</p> <ul style="list-style-type: none"> • There are different contexts for blocking of funds which need to be considered. A common example is for hotel stays but blocking also occurs at fuel dispensers (only for a short period) and when online payments are made. • It was suggested that the amount blocked is currently 	

	<p>at the discretion of the merchant and is based on an estimation of the payment that will be due at the conclusion of the transaction. However, a participant noted the functionality does exist to ensure customers are informed of the exact amount of funds being blocked (as per the PSD2 requirement).</p> <ul style="list-style-type: none"> • It was suggested that flexibility for merchants in blocking amounts was important, for example, in contexts such as online gambling, where it might not be known what the tangible good is worth at the outset. Furthermore, less flexibility for the merchant in blocking funds may impact merchants' willingness to ship goods. • With regard to what is in scope of 'card-based payment transaction', it was suggested that the definition used in the Interchange Fee Regulations (IFR) was helpful. There was a question as to whether the definition was future-proof. It was noted that the IFR definition is broad capturing payments made on 'card schemes infrastructure'. • Circumstances were discussed in which the payment account which is initially 'blocked' is not used to complete the transaction, e.g. when a card is used at the hotel reception desk but the bill is settled in cash, or with a different card. In such circumstances, it was suggested that there are automatic trigger periods after which blocked funds are released which are issuer specific. It was suggested that for credit cards this typically happens after 7 days and for debit cards after 5 days but can vary depending on the context. The majority of these 'pre-authorized' transactions get 'captured' (i.e. an order is subsequently received) but if not, the funds are released at the trigger point. A card industry trade association suggested that they did not see many complaints about card blocking indicating that the current system works well. • The SLG discussed the need to understand consumer harm when funds are blocked without the consumer's understanding of how much is made unavailable of their credit or debit resulting in them entering an unauthorised overdraft, or spending limit. 	
<p>6</p>	<p>Acquiring: what is captured?</p> <p>The Chair invited participants to consider what is captured under the new definition of acquiring in PSD2 (article 4(44)), which is also referred to in recital 10. Views were invited on how the changes should be reflected in FCA guidance. The following points were made:</p> <ul style="list-style-type: none"> • Since the definition does not mention 'card' transaction, there is an implication that it is broader 	

	<p>than the acquiring of card transactions. The group was asked what other types of activity and business model might be captured within the definition.</p> <ul style="list-style-type: none"> • One participant suggested that there is a clear distinction between 'traditional scheme based acquiring' (i.e. for card payment transactions) and 'new' types of acquiring which do not involve cards. Traditional acquiring occurs either in the 3 or 4 party card scheme model. • Participants discussed PSD2 recital 10 which states that the definition should 'ensure that merchants receive the same protection regardless of the payment instrument used, where the activity is the same as the acquiring of card transactions'. It was suggested that the protections that exist for card-based transactions (merchant gets a payment guarantee) may not be available for non-card transactions. It was noted that not providing card-equivalent protections should not by itself place a service outside the PSD2 definition of acquiring. A provider of acquiring services under the definition would need to meet their PSD2 obligations. There would be a need to ensure that services that met the criteria for acquiring did not fall outside the perimeter. • It was noted that there are tensions around benefits for consumers vs retailers when different payment methods are used in terms of the balance of risks. 	
<p>7</p>	<p>Reporting statistical data on fraud.</p> <p>The Chair invited participants to provide input on the type of data to be collected on fraud under article 96(7). The SLG was asked what data is already collected by firms and how existing data collected could be aligned with new reporting obligations under PSD2. The following points were made:</p> <ul style="list-style-type: none"> • One representative of a trade association explained that its organisation already collected very detailed data on fraud covering a range of payment methods and types of fraud. • Other trade associations also collected fraud data from their PSPs. The FCA would follow up with participants on their fraud data collecting. • It was suggested that there may be a risk of 'double counting' under the reporting obligation in PSD2, as more than one PSP may be involved in the transaction. The FCA would consider this in developing its reporting. • One trade association had created a set of standards and definitions to ensure that data provided by its members was comparable. It was suggested that a 	<p>ALL</p>

	<p>similar set of definitions would be helpful for the PSD2 reporting, although it would need to be broader in order to remain relevant to the different types of PSPs.</p> <ul style="list-style-type: none"> • There was a discussion about what type of information would be useful for the FCA to collect and whether this should be different to what is already collected by industry. While it was suggested that information about <i>how</i> individual customers were defrauded might be useful, it was noted that such data collection would be costly (on top of the refunds industry already provide in cases of unauthorised transactions). • Since firms already collect fraud data it was suggested that additional reporting of this data should not place much additional burden on PSPs. 	
8	<p>Meaning of ‘accessible online’</p> <p>The Chair invited participants to provide their thoughts on the meaning of ‘accessible online’ in the context of articles 65, 66 and 67 in PSD2. These articles concern obligations on the account servicing payment service provider (ASPSP), relating to confirmation of availability of funds, payment initiation and account information, which apply only if the payment account provided by the ASPSP is ‘accessible online’. The following points were made:</p> <ul style="list-style-type: none"> • One participant provided a number of interpretations given by members of their payments trade association. This included a view that accessible online means accessible through all common types of online devices, e.g. computer, mobile phone, tablet. There was a presumption that payment accounts accessible via telephone banking did not constitute accessible online and a question mark over whether access via other methods should be considered. One member suggested that a payment account should be deemed accessible online if the customer had an ‘online account agreement’ with its PSP. There was consideration of the machine to machine communication used internally in banks’ systems. There was also an assumption that the definition of payment account would continue as under PSD1. • It was suggested that if a customer had not set up online banking (and therefore did not themselves have online access) then account information or payment initiation services should not have access to payment information, or the ability to initiate a payment. • It was suggested that there should be a future discussion of the data protection and consent issues raised by account information and payment initiation 	

	services.	
9	<p>Any other business</p> <p>The Chair thanked everyone for attending and noted the dates of future meetings:</p> <ul style="list-style-type: none"> • 13 September – 14.30 - 16.30 • 12 October – 14.30 – 16.30 • 2 November – 14.30 – 16.30 • 14 December – 14.30 – 16.30 	

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Terms of reference

Participants

FCA:

Chair – Graeme McLean
 Alternate Chair – Andrew Laidlaw
 Banking & Payments Policy – Nilixa Devlukia
 General Counsel’s Division – Jody Whitehorn
 Ops/Business Planning – Daniel Buckland
 Supervision– Rezwan Malik

External:

- HM Treasury
- Association of Foreign Exchange and Payment companies
- Association of UK Payment Institutions
- Electronic Money Association
- Mobile Broadband Group
- Payments UK
- GSMA
- UK Cards Association
- Building Societies Association
- British Bankers Association
- European banking Industry Payments Regulatory Expert Group
- Financial Data and Technology Association (FDATA)
- British Retail Consortium
- FCA Consumer Panel
- UK Acquirers
- European Payment Institutions Federation
- Financial Fraud Action UK

Aim

The aim of the SLG is to ensure productive liaison between the FCA (as competent authority) and the payment services

sector in order to support the successful implementation of the revised Payment Services Directive by 13 January 2018.

Role and purpose

The SLG is comprised of relevant trade associations and representatives of other groups affected by or interested in the implementation of PSD2 (such as consumers and business customers).

The SLG is intended as a forum to enable stakeholders to facilitate the FCA's engagement with the payments industry as it develops its approach to implementation of PSD2. The SLG will provide the FCA with information and advice about payment services for policy and operational planning purposes.

The SLG will provide input into determining how stakeholders are best supported to comply with the PSD2 regime. The SLG will assist in the development of the FCA's revised Approach Document, perimeter guidance and any related Handbook changes.

The FCA will keep the SLG updated on progress of implementation. The SLG will aim to ensure that payment services firms are aware of PSD2, understand its requirements and the FCA's proposed regulatory approach and are adequately prepared for its implementation.

Scope of activity

The SLG will inform the FCA's decision making and will assist in ensuring that PSPs and other affected payments firms are aware of the requirements of PSD2.

The scope of the SLG will be limited to issues relevant to the FCA's role as competent authority.

Membership

The SLG will be made up of stakeholders representing the diversity of interests that are affected by PSD2, including the payments industry and customers.

Members may nominate alternates for any meeting or request that an additional colleague attend with the prior approval of the Chair.

The FCA may consider new applications for membership of the SLG. Such applications should be duly motivated. The FCA reserves the right to refuse such applications.

Meetings and operating

The SLG will normally meet every six weeks. Scheduled

meetings can be brought forward or cancelled if necessary. The SLG may also review by written procedure issues that do not warrant a full meeting.

The meetings will be chaired by Graeme Mclean (Head of Banking, Lending & Distribution Policy, FCA) with Andrew Laidlaw as alternate (Manager Banking and Payments). FCA staff will act as secretariat

FCA will endeavour to issue agendas and any meeting papers at least 5 working days in advance of the meeting. The agenda will also be published on our website.

Draft minutes will be circulated by the secretariat for agreement of the SLG within 5 working days of the meeting. They will subsequently be published on the FCA website.