HM TREASURY CONSULTATION: SETTING THE STRATEGY FOR UK PAYMENTS

RBSG has seen Payments Council's response to HM Treasury's consultation "Setting the Strategy for UK Payments".

We support the recommendations made by the Payments Council, which are not repeated in detail in this response.

There are, however, a number of key points which we consider to deserve particular emphasis, and these are set out below.

Purpose of Consultation

The Payments Council was established in 2007 with three broad objectives:-

- To ensure the operational efficiency, effectiveness and integrity of UK payments systems,
- To ensure that those payments systems are open and transparent, and
- To develop and implement a strategy for their future development

RBSG believes that the first two objectives have demonstrably been met, but that Payments Council has not been completely successful in respect of the third. Whilst development and implementation of the National Payments Plan has certainly contributed to the evolution of UK payment systems, and whilst development of the proposed Payments Roadmap will provide further clarity in terms of strategic objectives, we do understand the concerns expressed regarding the introduction of Faster Payments, and, particularly, over the cheques initiative. Indeed, we too have, on occasion, been frustrated by the relatively slow progress made on key issues, and we welcome this opportunity to improve both the quality and speed of decision-making on payments issues.

RBSG therefore acknowledges the drivers for the current review – indeed, before the present Consultation commenced, we had already joined in discussions between Payments Council and the Bank of England around the potential to introduce a senior-level body with a remit to influence the strategic direction of the UK payments industry.

Options for Future Development

The Consultation sets out three broad Options:-

- Enhanced Self Regulation – essentially, building on the existing Payments Council model
- Creation of a Payments Strategy Board – a new public body, overseen by the FCA, with a remit to set strategy across the UK payments industry
- Creation of a New Regulator – to oversee UK payment systems

Like Payments Council, however, RBSG sees potential merit in a 'hybrid' of Options 1 and 2 – setting up a senior body with a strategic remit (i.e. not unlike the proposed

Payments Strategy Board), but doing it straight away, on a voluntary basis, rather than waiting for legislation.

We believe that, by implementing the enhancements set out in Option 1 (many of which were already under consideration following publication of the Cave Report on Payments Council's governance arrangements), and establishing a new "Senior Body" on a voluntary basis, it is possible to derive the benefits from both Options.

<u>The New "Senior Body"</u>

RBSG agrees with Payments Council that the suggested remit of the PSB should actually form part of PC's own objectives, with the proposed Senior Body having a responsibility to ensure that these objectives are met.

We believe that a voluntary Senior Body, with a membership including the FCA, HM Treasury and the Bank of England, together with industry representatives and appropriate independent stakeholders, would be able to drive progress effectively. Whilst such a Senior Body would not have legal powers to underpin its decisions, the expectation would clearly be that such decisions are taken forward by the Payments Council Board (which does have the authority to take decisions which are binding on its larger Members).

We agree that the new Body should have a remit to review the full spectrum of UK payment systems, including cards, and support the proposal that Payments Council should work to forge closer relationships with the UK Cards Association, and the card schemes (Visa and Mastercard).

It is important, however, to emphasise, that the role of the new Body would be strategic, and therefore confined substantially to reviewing strategic direction, and two/three major initiatives per annum. Going into further detail would risk the new Body becoming involved in work which is properly within the remit of Payments Council, with the resultant potential for duplicated effort, and confused decision making.

Finally, we confirm that we do not see it as part of the role of either the new Body, or of the Payments Council, to act as a spokesman for the payments industry. Whilst, as pointed out in Payments Council's response, very little of their current activity could be described as being undertaken from a 'trade association' perspective, we will work with them to ensure that any such activity is undertaken elsewhere.

Kevin Brown
Managing Director, Global Head of Transaction Services Product,
International Banking
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11 October 2012

CONFIDENTIAL

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By email: PaymentsConsultation@hmtreasury.gsi.gov.uk

12 October 2012

Dear Sir/Madam

CONSULTATION RESPONSE
SETTING THE STRATEGY FOR UK PAYMENTS

1. Tesco Bank

1.1. Tesco Bank began as Tesco Personal Finance (TPF), a joint venture set up between Tesco plc (Tesco) and Royal Bank of Scotland plc (RBS) in 1997. In 2008, Tesco acquired RBS's stake in TPF and subsequently introduced the trading name Tesco Bank, which is now a wholly-owned Tesco subsidiary.

1.2. We aim to be the financial services provider of choice for Tesco customers by giving them good service, great value and by rewarding their loyalty. These are important features of our parent's focus on customer service, which have shaped our entry into the financial services market.

1.3. Our long-term goal is to create a full-service retail bank for Tesco customers. We are the UK's largest supermarket bank with 6.5 million customer accounts. Tesco Bank products include insurance, savings accounts, personal loans, credit cards and mortgages. We sell our products and services through multiple channels, of which the internet and telephone account for the majority of sales.

1.4. Tesco Bank is an agency bank and a full member of the Payments Council. Like other agency banks, we access the UK payments networks by partnering with a large bank with established direct network access.

2. Enhancing the Payments Council

2.1. Tesco Bank welcomes the opportunity to engage with HM Treasury's Banking and Credit Team as part of its consultation – 'Setting the Strategy for UK Payments'. We support Government's view that the strategy for UK payments should be improved to ensure that systems and services meet the current and future needs of consumers, businesses, other users and the wider economy without imposing disproportionate regulatory costs on businesses.

2.2. We support option one of the 'Setting the Strategy for UK Payments Consultation'. An enhancement of the existing Payments Council structure can offer improvements to the existing UK payments make up without adding further complexity to financial services regulation. The creation of a new payments regulator is also likely to delay the delivery of improvements for customers.

2.3. By enhancing the Payments Council's existing structure we believe positive results can be delivered for customers - the ultimate beneficiaries of a stable, representative and fair payments network. To achieve this outcome for customers, we believe that the following issues must be addressed:

- Equality of service and access to payments networks
- Representation, governance and accountability of the Payments Council

3. Equality of service and access to payments networks

3.1. The Payments Council should have a more equitable structure and working mechanism. In our experience, the Payments Council's strategy and decision making processes are influenced by the large incumbent banks, with little account taken of the needs of those connecting indirectly to payment schemes (agency banks). As a consequence, agency banks' ability to offer the same level of service as banks directly accessing the payments network is limited. For example, while the introduction of faster payments has been beneficial for customers, agency banks are unable to process payments in real-time 24x7, making them less responsive to customers' needs than banks with direct access to the payments networks.

3.2. The requirements of agency banks should not be a secondary consideration to those accessing the payments network directly, who are relatively few in number. To ensure that the payments system enables agency banks to compete for customers on equal terms, we propose that the Payments Council should have a duty to ensure that the connectivity model (direct or agency) does not reduce the range or functionality of services available to customers, regardless of how their financial service provider connects into the payments network.

3.3. To ensure the financial services market operates on a level playing field, steps should be taken to remove the structural disadvantages new entrants face in accessing the payments network. New payments services, such as the Central Account Switching Service and mobile payments could foster genuine competition and innovation in the market, and it is of urgent importance that they do not inadvertently disadvantage agency banks and their customers. We would also expect that the two banks involved in a customer switching current account would share the cost of each transfer.

3.4. More should be done to help smaller banks make necessary cost provisions to participate directly in the payments networks. While it is possible for agency banks to apply to access the payments network directly, the cost, requirements and benefits are not transparent, making it challenging for applicants to make an informed choice. The application itself is only initiated when a potential applicant enters into a non-disclosure agreement with the individual payment schemes to discuss commercial terms. We believe this process should be more transparent and reflect the size of a financial service provider's business. This would enable agency banks to understand the benefits and investment associated with accessing the payments network directly. As it stands, smaller banks with aspirations for growth are unable to gauge if direct access to the payments network is an affordable investment. The process and IT requirements involved in migrating to a direct connection should also be transparent.

4. Representation, governance and accountability of the Payments Council

4.1. As we have already outlined, the current Payments Council structure does not currently offer a level-playing field for agency banks, which inhibits smaller banks' ability to compete for customers. To ensure the payments network delivers for customers, the balance of representation on both the Payments Council boards and individual scheme boards should be addressed.

4.2. There are relatively few banks connecting directly to the payments network and yet they dominate the decision-making bodies involved. We would support the following change in composition to ensure payments strategy is both fair and representative of the needs of customers in the UK:

- Direct representation of agency banks on Payments Council Board
- Agency bank representation on the boards of each of the main payment schemes
- User forum representation on the boards of each of the main payment schemes
- Bank of England and HM Treasury should formally meet with the Payments Council Board twice annually in order to improve oversight and delivery of payments strategy.

4.3. Considering the decision-making process within the Payments Council, it is our view that a reduction in the veto threshold is unlikely to materially improve the quality of decision making. As detailed, a more effective intervention would be to broaden the membership of both payment scheme boards and the overall Payments Council boards to address the balance between large banks with direct access to payment schemes, those with indirect access and end users of the service.

4.4. In terms of the future funding of the Payment Council, we do not see this as a concern. We support the principle of the Payments Council being funded by the main users of payment schemes services – typically the banks – as it is today. While the five largest banks provide 80% of the Payments Council funding, most of these institutions recover significant costs through their sponsorship of agency banks.

Yours faithfully,

Julie McClelland

Julie McClelland
Director of Change & Enterprise Services

Dear Sir/Madam,

please find below Toynbee Hall's response to the consultation on setting the UK's payments strategy.

Question 1

Do you agree that the creation of a Payments Strategy Board:

- should be the lead option for reform;
- provides the appropriate balance between Government intervention, impact and cost; and
- effectively tackles the issues the Government has set out?

Please provide evidence where appropriate to support your answer.

We do believe that the creation of a Payments Strategy Board should be the lead option for reform. We are represented on the Payments Council Consumer Forum and were closely involved in the process of the consultation and move towards phasing out cheques. Despite the considerable effort of the Payments Council staff involved in the Consumer Forum, the consistently strong concern expressed by Forum members about the impact of the withdrawal of cheques on specific groups neither alted the phasing out of cheques not led to the creation of alternatives. Whilst we judge that the Payments Council staff attempted to listen to Forum member views, we assess that the current structure and lack of independent oversight meant that consumer views were not able to achieve the impact they deserved in this important debate. We believe that the proposed structure would ensure that significant payments changes would need approval from a wider range of stakeholders than just the payments industry, and thus believe that the proposed solution would be more likely to tackle the issues set out by the Government.

Toynbee Hall

Sian Williams
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HMT Consultation on setting the strategy for UK payments

Response from The UK Cards Association

October 2012

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The closing date for this consultation is: **10 October 2012**

Your details

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Introduction

The UK Cards Association welcomes the Government's proposal to deliver improved mechanisms that aim to ensure that proposed changes in the UK payments landscape are properly subject to an examination against public interest objectives. We have limited our response to specific areas in which we have a direct interest.

The UK Cards Association shares the Government's vision for the future where retail payments are responsive to consumer demand (particularly from younger consumers) and where traditional card payments are increasingly displaced at point-of-sale in the long term by payments originated and/or accepted from/by other form factors (predominantly mobile devices such as mobile phones) using portable payment applications that are fully interoperable. In parallel, we can see that consumers will continue to migrate to e-commerce at the expense of point-of-sale using payment products with a market for new methods for P2P payments also emerging. This vibrant market, resulting from healthy competition between payment providers, is likely to deliver real benefits to consumers and retailers alike. The dynamic nature of the payments market makes it extremely difficult to predict with any precision how products and services will develop and be used in future.

The Payments Council has a unique role in overseeing the contracted schemes (BACS, CHAPS, FPS and the Cheque & Credit Clearing Company). These particular schemes have a special status within the UK as they provide the supporting mechanisms that give a number of other competing retail payment providers (both networks and proprietary arrangements) the ability to achieve settlement with retailers and between other scheme participants. Their existence depends upon this ability. The Payments Council has a critical role in ensuring the integrity of these contracted schemes and that they are accessible to a wide range of participants, including those involved in the creation and operation of competitive retail payment mechanisms.

It is also entirely appropriate for the Payments Council to ensure that the contracted payment infrastructure is developed and exploited to its full potential, in a way which delivers innovative services that meet the needs of consumers and drives efficiency in the payments market. The Payments Council has very clear and specific objectives to achieve positive change in the payments industry by way of a collaborative approach, attempting to balance the needs of the economy and consumers while also ensuring that regulatory requirements, competition concerns and any systemic risk issues are adequately addressed in proposals for change.

We note, however, that it is inevitable that some of these proposed innovations, although co-operative in nature, will compete to varying degrees with alternative payment products developed by alternative network providers (including global networks such as Visa, MasterCard. American Express etc.) in a competitive market.

This underlines dilemma that the Payments Council faces when confronting issues that have a potential competitive element. This results in certain inherent difficulties for the Payments Council to simultaneously fulfill its obligations to set the strategy for all payments – including card/retail payments – while simultaneously offering competing payment solutions in the market. For the same reasons it can be difficult for market participants in the competitive space to work co-operatively with the Payments Council on initiatives where they seek competitive advantage from particular innovations.

This is a difficult issue to resolve, and in this context we agree with HMT that there is merit in the establishment of a new body of senior representatives that hold all payment network providers to account from a public interest perspective. This would, of course, include bodies such as the Payments Council itself that has specific responsibilities for the future development of co-operative payment services in the UK but also other network and payment infrastructure providers that operate in the UK. We believe that this would help to facilitate the proper consideration of high-impact UK payment issues or decisions being contemplated by the payments industry from a viewpoint which is neither specifically regulatory or prudential. These perspectives are already provided for in the proposed regulatory framework for payments.

Whether the Government prefers to take the route of proceeding with an enhanced version of option 1 or some variation of option 2, we feel that that there is considerable merit in establishing a senior independent body, bringing together HM Treasury, the Bank of England, the Financial Conduct Authority and independent directors to ensure that payment industry decisions, the impact of which might have significant implications for consumers and the economy, are taken after having properly considered these wider public interest considerations, thereby increasing public confidence that high impact decisions are balanced and effective. This is of universal benefit to Government, consumers and industry.
With regard to specific questions in the consultation document:

Question 1
Do you agree that the creation of a Payments Strategy Board:

- **should be the lead option for reform;**
- **provides the appropriate balance between Government intervention, impact and cost; and**
- **effectively tackles the issues the Government has set out?**

Please provide evidence where appropriate to support your answer.

We agree that there is merit in introducing an additional mechanism that provides a means of ensuring that there are sufficient checks and balances in place such that (i) the public interest is sufficiently represented in the payments industry's key objective setting and decision-making processes and (ii) to hold the industry to account for delivery against agreed objectives.

We concur with the Government's view that option 2 is potentially the most credible option that is likely to deliver optimal outcomes without the need for significant additional investment in a radically different approach to the regulation of payments requiring the creation of a new regulator to sit alongside the FCA and Bank of England, who already have regulatory responsibilities in this area. In our view option 3 is likely to be cumbersome, costly and unnecessary given the oversight functions currently residing with the FCA, OFT and Bank of England. It is also the most complex option to implement and we anticipate that a lengthy process would be required to agree the scope, objectives and design of a utility–style regulator.

While option 1, continued self-regulation through enhancement in the way in which the Payments Council operates, is attractive in that it can be quickly and efficiently implemented without the need for enabling legislation, it does not seem to us that it will ultimately provide the independence or clarity that we feel is required to deliver an effective mechanism. It may, however be that the Government could usefully consider this as a possible interim solution that could be put in place while arrangements are made to fully establish a Payments Strategy Board. .

We note that, following the Martin Cave governance review, a wide range of changes are being implemented by the Payments Council, the objective of which is to increase the resources available to its independent directors such that they are able to evaluate and challenge proposals. In addition, we understand that substantive changes have been made to the constitution of the various forums used to engage with consumers, businesses and other stakeholders so as to ensure that they have a much more effective and significant influence on the Payments Council's decision-making process. These and other enhancements will deliver benefits irrespective of the option that is ultimately chosen.

Nevertheless, we do recognise that the major drawback of option 1 is that it could be perceived as having delivered no major change so far as public interest oversight is concerned.

For that reason, we agree – on balance – that option 2 is the most sensible approach to pursue. We believe that the Payment Strategy Board's (PSB) independence from the Payments Council will allow it to interact more effectively with a broad range of payment network providers without the constraint of having to be wary of competitive issues which necessarily arise when encouraging the expansion, evolution or development of particular payment mechanisms. In our view, a wholly independent body would be well placed to consider the interaction between competitive and collaborative developments in the market when addressing any key strategic issues.

However, in a complex payments landscape, it is essential that the remit of the PSB and its relationships with existing entities, including the Payments Council and other players within the payments market, are clearly defined so that the extent of oversight and accountabilities are completely understood by all parties.

In our view the PSB needs to be composed of a reasonably small number of senior representatives capable of effectively representing the public interest. We do not agree with the proposal that the PSB should be exclusively appointed by and overseen by the FCA. We can see that there is a possibility of conflicts of interests arsing given the FCA's regulatory responsibilities in this area. Given that the primary role of the PSB is to examine issues from a public interest perspective we feel that it is essential that the PSB is ultimately accountable to the public. In order to achieve unambiguous accountabilities through Ministers to Parliament we believe that HMT should exercise a key and primary role in oversight of the PSB.
In order to effectively achieve its purpose we feel that is essential that the composition of the PSB includes representation from HM Treasury, the Financial Conduct Authority and the Bank of England. These entities, as well as participating directly, might also benefit from appointing independent directors on a tripartite basis. We consider that the presence of these entities is important, not only in providing the credible authority for the PSB, but also in the reasonable expectation that, from time to time, one or other of these three entities will be keen to ensure that they have an appropriate presence to pursue issues of concern via the PSB. Participation in this way also ensures that any recommendations made by the Payments Council are acted on without the need to introduce formal binding regulatory powers.

Question 2
The following questions relate to the changes the Government would expect the Payments Council to implement under Option 1. Some changes will also be considered if the Government proceeds with Option 2.

The UK Cards association does not have a view on these issues.

Question 3
a. Do you agree with the proposed remit for a new Payments Strategy Board?

The consultation paper sets out in paragraph 5.24 a proposed remit for the Payments Strategy Board (PSB) as being to:

- promote the development of new and existing payment networks (to encourage innovation and collaboration in the payments industry);

- encourage the payments networks to operate for the benefit of all users; and
- promote access to payment networks by the industry on reasonable terms (to ensure, for example, that agency arrangements do not stop smaller banks from accessing the payments systems on fair terms).

However, it appears to us that the fundamental objective of the measures being considered by HMT is to ensure that the right decisions are being taken by the industry (and the Payments Council in particular) with due regard for all stakeholders and that the industry is held to account for delivery against a set of objectives that would include those listed above.

Consequently, while we completely agree that the PSB should aspire to ensure the achievement of innovation and competition, we do not consider that the PSB itself should primarily be tasked with setting strategies or instigating policies. We believe that setting objectives and the execution of development plans are more appropriately undertaken by the Payments Council and other network providers. We have a reasonable expectation that any ambiguity in the extent to which the PSB will be involved in setting rather than influencing the outcome of set strategies is likely to impede the effectiveness of any arrangement, resulting in confusion and an adversarial relationship between the PSB and industry.

This means that it does not have to have the requisite detailed technical knowledge or experience needed to deliver any significant payment innovation and what capabilities are needed to achieve it. In our view it would be difficult, if not impossible, for a single body to have a sufficiently detailed understanding of all of these issues without extensive reference to those entities in the payment market with responsibility for their actual implementation. The Payments Council or payments networks have these relationships with their members or customers that, in our view, make them more suited to the role of initially proposing strategic development.

In our view the role of the PSB should be primarily around oversight. This would include:

- Reviewing the objectives and future plans of the Payments Council and other network providers against a series of applicable public interest tests, including those set out at para 5.24;
- Assessing the relative prioritisation of competing objectives and plans from a public interest perspective;
- Holding the Payments Council and other payment network providers accountable for delivering against these objectives;
- Providing an opportunity for challenge that can be easily accessed by impacted stakeholders;

- Identifying issues not addressed by existing objectives and future plans where change or innovation might be required;
- Considering issues and complaints raised by individuals or groups of payment users or through commissioned research which might indicate opportunities for beneficial change.

We believe that the PSB needs to have a remit that enables it to consider the full spectrum of payment methods, not just those contracted to the Payments Council.

b. Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a method could work most effectively.

We agree that the Payments Strategy Board's role should be to make recommendations rather than act as a regulator making binding decisions. If the latter were to be the favoured approach, we predict that a likely outcome would be the emergence of an adversarial role between the PSB and industry, with inevitable recourse to judicial review where divergence in views could not be resolved. As stated above we consider that if the PSB includes representation from HM Treasury, the Financial Conduct Authority and the Bank of England it is likely that any recommendations are not resisted unless there are very strong and compelling, evidence based reasons, for resistance. In any event, we believe that there should be an obligation on the independent directors of the Payments Council or any other relevant payment network provider to give due regard to any recommendation of the PSB.

c. Do you agree that the Payments Strategy Board should include senior industry representatives, non-industry representatives and independents? What do you consider to be the right composition of the Board?

We believe, on the basis that the Payments Strategy Board's primary purpose is to make recommendations as part of a challenge process in response to strategic plans developed by the industry, that it is desirable for the PSB to be completely independent from the industry. Its objective is to scrutinise decisions through a public interest prism.

Independent directors should be recruited on the basis that they provide a range of experience and expertise that enable them to represent the public interest. These individuals may well have existing or previous experience in the payments industry. However, we do not think it is desirable or necessary to single out individual payment service providers or payment network providers to sit on the PSB. In our view it would be difficult to determine a set of appropriate criteria for selection from the

industry that was not divisive. This is particularly so when the composition of payments markets is rapidly evolving and attracting new entrants.
We note that HMT estimates in the consultation paper that there are 441 credit institutions, 183 payment institutions, and 18 electronic money institutions currently eligible for membership of the Payments Council. We imagine that it would be impossible to find a small number of industry directors to reflect this diversity and comprehensively represent the views and concerns of all stakeholder groups.

The Payments Council and others should work closely with the PSB to ensure that industry views are taken into account in any review process. We can see merit in the CEO of the Payments Council having a seat on the PSB, or at least acting in the capacity of a non-voting observer, given the Payments Council's very unique position.

There is also no reason why the PSB should not invite participation from any relevant stakeholders that can assist with deliberations on specific topics on an issue-by-issue basis. In our view the payments market is sufficiently complex, and increasingly so, to preclude the possibility of a single or small number of individuals having the requisite knowledge to helpfully contribute to the range of issues before the PSB.

As stated previously we feel that feel that there is considerable merit in the FCA, the Bank of England and the Treasury being directly represented on the Payments Strategy Board.

d. Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be?

We believe that in the overwhelming majority of cases the industry will work co-operatively to support the Payment Strategy Board. However, in the event that any entity chooses to be less co-operative, we believe that the Payments Strategy Board should have legal powers that compel any payment service provider, payment network operator to supply the requisite information. It may be that this power could be under existing (or modified) provisions currently available the Financial Services Authority.

e. Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry?

We have no particular view on this issue.

f. Should the FCA have any further controls over the Payments Strategy Board?

We do not believe that it is necessary for the FCA to have direct controls over the Payments Strategy Board. As set out previously we see the benefit of the PSB as being wholly independent of the FCA in order that it an exercise a role representing a broader public interest rather than replicating any regulatory responsibilities exercised by the FCA.

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10th October 2012

HM Treasury Consultation: Setting the strategy for UK payments

Following consultation with our members, ***Vendorcom, The Cards & Payments Community*** in Europe, is pleased to make the following submission in response to the HM Treasury Consultation: Setting the strategy for UK payments.

We have structured our response in three sections:

- An introduction to Vendorcom
- General views on the proposed policy design
- Answers to the specific consultation questions

1. An introduction to Vendorcom

Vendorcom is a membership organisation which represents key stakeholders in the cards and payments industry in Europe. Its primary aims are to promote innovation, create a platform for thought leadership, provide a forum for knowledge sharing and issues resolution for its members and encourage capability development in both individuals, companies as well as across the entire cards & payments industry.

Since its inception in 2003, Vendorcom has supported the cards & payments industry by providing a coherent and representative voice and by acting as a single point of authoritative and credible information for its members. In addition, it ensures that decisions made by industry influencers take into account the issues and concerns of solution providers who, in turn, collaborate constructively with existing working bodies in the cards & payments industry.

Almost 100 companies are full members of Vendorcom in Europe and take advantage of all the community has to offer. In addition there are over 500 companies who have participated in the community's quarterly thought leadership conferences and special interest groups in the past 12 months. These organisations include ***card schemes, acquiring banks, payment processors, payment service providers, hardware/software solutions providers, systems integrators, consultancies, security specialists, merchants/retailers*** and indeed representatives from all key stakeholder groups in the European payments industry. In total, more than 1600 organisations in the cards & payments industry are involved in our Community in Europe.

We have strong engagement from charities, having recently introduced our ***Charities in Payments*** membership, giving these organisations the opportunity to have all the benefits of membership of the Community free of charge. The Community's ***Collaborative Corporate Responsibility*** programme is designed to create opportunities for all stakeholders in the cards and payments industry to contribute to initiatives that will make a positive impact on the wider community in which we operate. We have specifically been supporting pioneering initiatives as The Big Society Network's Spring Giving programme, Pennies Foundation and Give Change Make Change as well as engaging with organisations such as the RNIB, AgeUK and the National Funding Scheme to explore how the payments community in the UK can contribute positively in such diverse areas as supporting the visually impaired, understanding the needs of an aging population and bringing innovative funding opportunities to the arts.

Our activity in this area has been particularly strong in the aftermath of the UK Payments' cheque debacle which set back relationships with such important interest groups who are significantly impacted by the payment industry's activities.

We work collaboratively with other associations including UK Payments, European Payments Council, EURIM and the PCI Security Standards Council.

2. General views on the proposed policy design

Vendorcom welcomes this review based on the fact that all of its members, not just those based in the UK, are affected by the activities of the Payments Council. The success or failure of many organisations' core business plans is predicated on the strategies set by this organisation.

It is widely accepted that the Payments Council and in particular the UK Cards Association (and its predecessor, APACS) has, historically, played an important role in creating a consensus and common approaches to delivering new payments initiative in the UK market. In recent years, however, that consensus has almost entirely been lost, with individual corporate interests of the main UK Payments stakeholders coming to the fore resulting in greater fragmentation, incoherent strategy, and a failure to gain widespread acceptance of transformational, innovative and cost effective initiatives.

This in turn has resulted in the absence of a stable foundation which would provide the basis on which businesses, both solutions suppliers and retailers/merchants, would invest in the development and deployment of new technology. The common foundation on which the UK payments landscape is built has not significantly developed since the last significant government intervention resulting in the plan to implement Chip & PIN in 2002.

We have received some comments relating to the consultation document which are worth noting as general observations to provide some context to the more detailed comments on each of the specific options.

In section 2.1 it is stated that, 'Under the present regulatory system, the Payments Council, a membership body funded by the payments industry…'. It should be pointed out that the 'payment industry' extends a very long way beyond the narrow group of organisations who fund the Payments Council.

There is widespread acceptance of the sentiments expressed in the consultation document reflected by comments such as:

- '…caused considerable anxiety..' (2.1);

- '…deep, unnecessary and unacceptable concern amongst bank customers…', '…Payments Council had communicated poorly with the public…', '…given the Payments Council is dominated by the banks and other payments industry members, consumers were entitled to be suspicious of the motives of the Payments Council…' (2.2);
- '…dissatisfaction with the way the proposed abolition of cheques was handled by the Payments Council.' (2.3);
- '…has not been able to inspire confidence in this area to date.' (2.6);
- 'The development of payment services across the industry has at times been slow. In such cases there may be losses to the wider economy where consumers and businesses cannot benefit from the latest innovations.'(4.8);
- '…has the potential to cause distortions in competition…' (4.14);
- '…Payments Council has not been as successful as originally intended in terms of either developing new and existing services …' (4.18);
- '…Payments Council's decision making has been slowed by the need to work by consensus.' (4.24);
- 'The Payments Council could also improve its performance in delivering specific projects. (4.25).

These statements reflect well the general frustration that the cheque debacle has cast a long cloud over the good efforts of those who would like to see innovation and change, cost effectiveness and a great customer experience at the core of what is a fundamental part of our national critical infrastructure at the heart of a strong economy. They are also in stark contrast to the positive view of the Payments Council's leadership, strategic development and management of the UK Chip & PIN programme in 2003 and 2004.

There is universal sympathy with the document's underlying premise of 'no "do nothing" option.'

Option 1: Enhanced Self-Regulation

The current structure of the Payments Council does not provide a representative body for the wide ranging cards and payments industry. With this industry rapidly diversifying, the inherent legacy/establishment representation in the current structure is likely to become even more out of touch and less representative.

In its own review conducted by Professor Martin Cave the Associate Members of the Payments Council suggested that the Board should reflect a wider spectrum of the Payments Industry than the UK Banks to provide expertise on payments.

These could include:

- Payment Schemes operating in the UK e.g. American Express, China UnionPay, Discover, MasterCard, Visa,
- Traditional payment solutions suppliers
- Emerging players in the payments space – social media companies, mobile operators, digital wallet providers,…
- Interested parties and lobby groups e.g. Charities such as AgeUK, Consumers' Association, RNIB,…
- Academia with payments / security / identity experience – Cambridge University, Royal Holloway,…

- Government departments with a strong payments interest: BIS, Transport, Treasury, Work & Pensions,…
- Other Payments Industry bodies e.g., EPC, PCI SSC, Vendorcom …
- Retail trade associations, e.g. BRC, BSSA, HEDNA, IFSF, IMRG,…

A new revenue model would have to be adopted to allow this to happen but it was thought the Schemes would supply much of this funding. The other groups could potentially have an agreed spokesman to attend Board meetings to make the Board number workable. This model could lead to a need for fewer Independent Directors.

There is generally a more positive view of the Payments Council by those Vendorcom members who are Associate Members of the Payments Council. The benefits of Associate Membership are understated in the consultation document. Associate Membership brings benefits to organisations in a number of ways:

- Access to data and reports on the UK Payments Market;
- Face to face briefings with e.g. Members of Parliament on specific topics at e.g. breakfast briefings;
- Regular meetings providing updates on the Payments Councils projects plus information on key developments in the industry;
- Attendance at a number of conferences which provide in-depth information on key topics in the industry;
- Opportunities to contribute to Payments Council thinking and strategy development in areas like risk. For Associate Members who are the UK/European arm of international companies this provides opportunities to supply the Payments Council with methodologies used in other markets that could be developed for the UK;
- Networking opportunities.

The consultation document focuses strongly on the Payments Council's error of judgement with regard to the withdrawal of cheques by 2018 as the basis for change. They did consult widely on this and it is clear that in other markets cheques have either been eliminated or are in decline and will never be used by Generation Y consumers. Cheques are extremely slow and costly to use in a market that increasingly is looking to be either real time or near real time. The credible alternatives were not specified effectively enough to cheque users but the emergence of new services like Pingit from Barclays means their decline will continue. If the UK adopts a version of the Check21 system used in the US this could improve processing times immeasurably.

Whilst it will be important to revisit the cheque debate, it is more important to focus on the restructuring of the Payments Council in order to ensure its authority ahead of the many equally important changes that will be necessary in the payments environment in the next five years.

The consultation document accurately reflects the problems with the current structure of the Payments Council. It is unrepresentative, constrained by vested interest and has an inadequate perspective on the changes affecting the market. It has however recognised those deficiencies and is making significant changes to ensure that it is fit for the challenge ahead.

Option 2: Creation of a Payments Strategy Board

Whilst many of the key features outlined in the consultation document are all seen as necessary it is unclear as to why these cannot simply be applied to the structure and the workings of the Payments Council. A restructured Payments Council could focus on the functioning of the existing critical infrastructure whilst a new entity, within the control of the Payments Council, could address the objectives described as the remit of the PSB, as outlined in section 5.24 of the consultation document.

The suggested funding method is likely to compound the basic flaw in the funding model of the Payments Council.

We would propose the evaluation on a hybrid Option 1 & 2.

Option 3 The Creation of a new regulator to oversee payments structures

Whilst we recognise that this is not set out as a specific option within the consultation document it is explained in almost as much detail as the other options and has therefore been reflected on by many of our members.

The general view, concurring with that expressed in the consultation document, is that this is not a realistic option.

Whilst many of the features of the cards and payments infrastructure perform in a similar way to many of the utilities and services that are currently under the supervision of a regulator in the UK, payments does not have nationally bounded 'consumers' and, as such, is inappropriate for this type of oversight.

The European and, in many cases, global basis of cards and payments mean that a national stance, as has been the approach taken in recent years by the Payments Council on matters such as payment equipment certification and the Single Euro Payment Area has added considerable cost to the UK payments scene, stifled innovation and slowed the adoption of payments technologies that would have been of benefit to the UK retailer and consumer.

It would be dangerous to apply the thinking of a report from 12 years ago which whilst visionary in its day is not relevant to the industry today. In recent years, the interoperable standards in contactless and mobile payments together with the rollout of the global Payment Card Industry's security requirements and the expanded Faster Payments Service and have created a new landscape. Also a host of new players including mobile operators, Amazon, PayPal, Google, social media networks, are entering the payments market and this, together with a wholly different regulatory landscape in Europe where the advent of Payment Institutions created by the Payment Services Directive has transformed the way companies operate internationally.

Any regulatory body could not exist as an independent authority focused solely on the UK.

3. Answers to the specific consultation questions

Question 1

Do you agree that the creation of a Payments Strategy Board:

- should be the lead option for reform,
- provides the appropriate balance between Government intervention, impact and cost, and
- effectively tackles the issues the Government has set out?

We do not agree that a Payments Strategy Board focused on the UK Payments market should be the lead option for reform or that it provides the required balance. Strategy in payments is an international business and such a body could not operate in isolation focusing solely on the UK. It would have to take input from SEPA regulations as a minimum. It could also add further complication as to where the roles of the other regulatory bodies (The Bank of England, the Financial Services Authority, HM Treasury and the Office of Fair Trading) already overseeing the payments market finish and where accountability to the PSB starts.

If this is the Government's preferred solution it will need a much clearer definition of the players it regulates including Payment Institutions created under the PSD, mobile operators, as well as the many emerging organisations who are bringing solutions to market that could circumvent the traditional payment networks and current regulatory controls and impact the basic integrity of this critical infrastructure in terms of security and receipts to the exchequer.

As stated above, we favour a restructured Payments Council which embraces the remit of the PSB.

Question 2

The following questions relate to the changes the Government would expect the Payments Council to implement under Option 1. Some of the changes will also be considered if the Government proceeds with Option 2.

a) Do you agree that the current remit and objectives of the Payments Council are broadly appropriate? If not, how should they be enhanced?

   They are broadly appropriate.

b) How can a clearer separation of the Payments Council's strategy setting and trade body representative functions be best achieved?

   The Payments Council cannot be a strategy setting and trade body with the current make-up of its Board. It also needs to take notice of International developments. It does not represent 'the payments industry'. Wider representation of all stakeholders and removal of the veto is essential.

c) Do you agree that the Payments Council should commit to publishing annual progress reports against its objectives, supported by regular, independent performance reviews?

   The Payments Council already reports to Associate Members on progress on their projects at the User Forums and on their website as well as through written communications and at their conferences. These should be freely available to all stakeholders in the payment industry and other interested parties. Any reviews of the Payments Councils performance should include reviews by Associate Members as well as independent bodies (though the Government needs to specify who they believe should undertake these reviews - and it should not be the existing regulatory bodies in Payments. The roles of the Payments Council, UK Cards Association and the other companies involved in the Payments Council web and their interactions also need to be clarified.

d) Do you agree that any two independent directors should have a right of veto over board decisions? The Government invites views on how the Payments Council's board can be strengthened further.

   The veto constrains the work of the Payments Council and has inhibited the UK's adoption of new market benefitting initiatives. The Board should be widened and should not be made up of organisations with direct commercial vested interest in the strategy that is adopted.

e) Do you agree that the existing user forums should be given enhanced functions and autonomy by being upgraded to independent User Councils?

Giving greater powers to the User Forums is only meaningful if the Board structure is changed so that the banks have less opportunity to dismiss the views of the Associate Members.

f) How can Payments Council funding be put on a long term, secure footing?

There are various suggestions for funding options:

- Direct government funding since payments strategy defines a fundamental component of the national critical infrastructure;
- A levy on Payments Institutions as defined in the PSD;
- Funding through payment schemes, acquirers and payment processors, i.e. organisations which have a direct 'levy' on the payment transaction.

g) How should a reconstituted Payments Council be given the means to enforce decisions more effectively in a self-regulatory environment?

The payments landscape has changed so fundamentally that the ability of a body to enforce anything is unrealistic. The focus should be on basic levels of security, technical interoperability and the integrity of receipts to the treasury creating a viable platform on which innovation and investment will thrive. Anything else that would attempt to perpetuate the isolation of the UK market strategy is unhelpful. In any case such an isolationist stance is not possible in an international business like payments where European legislation and global interoperability also applies.

h) How can the membership of the Payments Council be broadened most effectively

Create a reason to participate. There is no compelling reason for the majority of interested players in the UK or European payments industry to engage with the Payments Council in its current form. Any benefits such as those outlined above, have not been well publicised.

Question 3

a) Do you agree with the proposed remit for a new Payments Strategy Board?

Yes, the remit is laudable. It should not however have to be executed within a separate body. A reconstituted Payments Council could deliver this.

b) Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a method could work most effectively.

Yes, recommendations, persuasion and encouragement is the only way forward in a rapidly changing environment where solutions providers, particularly innovators and start-ups are delivering increasingly market empathetic solutions to retailers and consumers.

c) Do you agree that the Payments Strategy Board should include senior industry representatives, non-industry representatives and independents? What do you consider to be the right composition of the Board?

The Board should predominantly be composed of independent individuals with no direct commercial vested interest in the strategies that are proposed.

d) Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be?

Yes. Market statistics and other industry-wide metrics should be available to the reconstituted Payments Council on a regular basis. Further financial and company information should be able to be requested on a similar basis to the freedom of information act.

e) Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry?

If 'the payments industry' can be defined and a fair, efficient and equitable levy mechanism can be applied then yes, that is probably the best mechanism. Further refining of the funding options based on the findings of this consultation will be helpful.

f) Should the FCA have any further controls over the Payments Strategy Board?

Additional FCA controls over the Payments Strategy Board would further complicate the already fragmented UK Government regulatory intervention in the UK market against a backdrop of increasingly international influence in areas such as SEPA and PCI.

We look forward with interest to the outcome of this much needed and valuable consultation and affirm Vendorcom's commitment to working constructively with all stakeholders and influencers in the UK and European payments ecosystem.

Yours sincerely,
For Vendorcom

Paul Rodgers

Chairman

Visa Europe response – Setting the strategy for UK payments

October 2012

About Visa Europe

Visa Europe is the leading European payment system that makes money flow more easily, quickly and securely between consumers, retailers, businesses and governments. A not-for-profit membership association, Visa Europe is owned and operated by more than 3,700 European member financial institutions.

There are 115 million Visa debit, credit and commercial cards in the UK. £1 in every £3 spent in the UK is now spent on a Visa card. Across Europe, there are 445 million Visa cards, and in the 12 months ending September 2011, those cards were used to make purchases and cash withdrawals to the value of €1.7 trillion. 14% of consumer spending at point of sale in Europe is with a Visa card, and almost 80% of that is on Visa debit cards. Visa enjoys unsurpassed acceptance in over 200 countries around the world.

For more information, visit www.visaeurope.com.

Consultation response

Thank you for the invitation to respond to the consultation document, "Setting the strategy for UK payments". As a payment technology company, Visa Europe does not consider itself as a 'payment scheme' as per the definition provided in the Glossary of the consultation.

We have not responded to the detailed questions but agree there is a need for reforming the regulation and governance of payment networks in the UK, particularly those relating to the Payments Council.

In terms of the options for change outlined in the consultation document, we believe that the most appropriate approach would be a combination of options 1 and 2.

There is, in our view, a role for a body to bring together the parties that use or are part of the payment environment in the UK to co-ordinate non-competitive issues for the benefit of consumers and retailers alike. For such a body to be effective, however, it is our view that it should have no vested interest in any of the potential payment solutions. Given that, we also support the movement for the Payments Council to be separated from any contractual relationships with payment scheme companies.

The payments landscape is changing. We anticipate that areas of rapid change in payments will occur particularly in contactless, mobile and e-commerce. We are investing significantly – €100m per year – in the development of Visa Europe systems and infrastructures to support these technologies. As well as new products and services being delivered, the market is likely to experience a range of new entrants. Due to this, the governance that supports and oversees current UK payments activity and future strategy needs to be broadened to be more reflective of the dynamics and major contributors, as well as having the agility to adapt as circumstances change.

The current constitution of the Payments Council consists primarily of the UK's larger financial institutions but may not effectively represent other significant payment providers or payment network suppliers. As a consequence the objectives of encouraging innovation and competitive solutions to the benefit of UK consumers cannot be satisfactorily met. Visa Europe plays a significant role in meeting the current and future payment needs of the UK. Card related transactions, other than cash, represented 50% of the transaction volumes in the UK in 2010.

Visa Europe is supportive of participating in a Payment Council body that makes recommendations on the future direction of UK payments.

HMT Consultation on setting the strategy for UK payments

Submission by VocaLink Limited

Introduction and background

VocaLink welcomes this opportunity to contribute to the HMT consultation, "Setting the strategy for UK payments", dated July 2012.

By way of background, VocaLink is a provider of bulk retail electronic clearing and settlement processing services to the UK financial services industry. VocaLink provides the processing infrastructure that underpins the Bacs, Faster Payments and LINK ATM systems and processes approximately 9 billion transactions per annum, accounting for circa £4.5 trillion per annum in payment values.

Given the importance of the Payment Systems to the proper and efficient functioning of the UK economy, it is important that an environment is created which enables the Payment Systems to innovate and which will allow payment service providers to respond effectively to the increasing expectations of end-customers for new, efficient and secure payments services. The UK has many world class retail payments infrastructures which underpin the proper and efficient running of the economy and which are the envy of much of the rest of the World. However, it is recognized that these infrastructures can be slow to innovate; are not responsive enough to end user requirements; and do not provide truly open access to new payment service provider entrants. In answering the concerns outlined in the consultation document the HMT should ensure that any solution proposed addresses these issues, thereby best securing the long term competitive and efficient functioning of the UK payment systems.

Question 1

Do you agree that the creation of a Payments Strategy Board:

- *should be the lead option for reform;*
- *provides the appropriate balance between Government intervention, impact and cost; and*
- *effectively tackles the issues the Government has set out?*

Response

(a) Complexity of Governance

It is noted that the creation of a Payments Strategy Board ("**PSB**") is HMT's preferred option. While VocaLink understands the objective of creating a senior-level strategy board, in implementing the PSB, the HMT needs to be cognisant of not adding a further layer of governance. If the PSB is to act as a catalyst for greater innovation and unity among payment industry stakeholders in delivering strategic payment objectives, then it is imperative that the system of payment governance is simplified and that the PSB does not add increased complexity to an already complex payments governance structure.

A key problem with the existing structure of payments governance is that there are few incentives for payment service providers to collaborate in order to increase the use of the payment systems and deliver more efficient and innovative payment services to consumers. Often, such industry collaboration will necessitate large investment requirements (especially in relation to internal systems) and the consensus driven governance structure is designed such that decisions on strategic payment developments are capable of being veto'd or delayed by many different stakeholders resulting in the rate of change often being dictated by the pace of the slowest / most reluctant. This problem is further exacerbated by the 'free banking' environment which entrenches the payment infrastructures as a cost centre within banks and other payment service providers rather than providing an opportunity for profit generation which, in turn would incentivize innovation. By contrast, other national payment infrastructures (such as the card schemes) have greater autonomy the result of which is demonstrated by rate of innovation and speed to market experienced in those other markets.

As outlined, there is a risk that the PSB will not address the aforementioned structural issues which are collectively holding-back strategic payment infrastructure innovation. Moreover, absent any other simplification of the payments system governance introducing the PSB risks further increasing the existing complexity which may result in the rate of innovation slowing down even more, thereby creating a less competitive environment which may ultimately become detrimental to the consumer. It is also unclear what role the Payments Council ("**PC**") would play in a new structure. The consultation document's intention appears to be separate the setting of strategy from the PC, but this fails to acknowledge that this was the original purpose behind separating processing from the scheme companies and the scheme companies from the Payments Council. If industry strategy were now to be set by the Payments Strategy Board, and the scheme companies continued to set individual payment scheme strategies, then the role of the Payments Council could become very limited.

(b) Operating Models

According to the Impact Assessment accompanying the consultation document, the expected composition of the PSB is 10-15 part-time board members, with a support staff of 10-15 "industry experts and researchers". The size of team suggests an operation that would start to compete with the PC in key areas. Either the PSB would need to be a small, focused organization or it would need expressly to take on the work of the PC (leaving the PC to operate solely as a trade association).

There are a number of alternative operating models that could be considered (these are not mutually exclusive):

(i) The PSB sets the overall strategic direction for the cross industry / UK critical payment developments (e.g. resolution regimes, account portability, etc), leaving the PC responsible for lower level operational development. However this also has challenges: if the industry is focused on delivering the significant changes then the lower-level issues will be constantly crowded out; this has been experienced with the lack of progress on many of the issues identified in the National Payments Plan;

(ii) The PSB considers the broader structural issues such as economic effectiveness, social inclusion, market failure etc, and then defines the problem areas for the PC to propose solutions;

(iii) The PSB adopts a quasi-oversight role in relation to the PC, enabling the PSB to block certain courses of action but not commission work in its own right. This concept has worked well in other industries, and could work as follows:

    The FCA sets up the PSB as a guarantee company (e.g. Payments Strategy Limited ("PSL")) as part of the PC structure. The directors of PSL can be drawn from the same pool of people whom the FCA (or HMT) has in mind as per the consultation document. PSL is then given a shareholding in Payments Council Limited which has certain special rights attached to it in relation to certain Payment Council reserved matters (Payment Industry Principles) concerning strategy-setting etc. The constitution of the Payments Council would need to be amended in order to provide PSL with the right to receive copies of board meeting papers and notice of all Payments Council general meetings. The independent directors of the Payments Council could have expressly included in their engagement terms an obligation to uphold the Payment Industry Principles and a right to escalate a matter relating to the principles to a meeting of the shareholders of Payments Council (including PSL as a shareholder) at which

PSL would be able to exercise its ‘golden vote’ to veto a decision, to the extent that the matter under consideration would have a detrimental impact on the principles.

This type of approach would ensure that the PC retained responsibility for the whole of payments (including strategy) but would also provide a safeguarding mechanism in the guise of the PSL, which could step in to ensure that the PC did not do anything contrary to the principles of driving strategy etc.

The diagrams at Appendix 1 set out the existing payments governance structure, VocaLink's understanding of the HMT's preferred Option 2 model.

(c) Access to Payment Systems

In VocaLink’s view, HMT should take advantage of the opportunity created by its review of payments strategy to address access to payments systems, which is not covered in the document. This is fundamental to achieving a more competitive retail banking sector, and requires HMT to address the Scheme Rules and the regulation of Collateral and Pre-Funding arrangements with the Bank of England.

Question 2

The following questions relate to the changes the Government would expect the Payments Council to implement under Option 1. Some of the changes will also be considered if the Government proceeds with Option 2.

2(a) *Do you agree that the current remit and objectives of the Payments Council are broadly appropriate? If not, how should they be enhanced?*

Response

Whilst the Payments Council governance structure may be appropriate for overseeing that the provision of the UK payments services is stable, secure and reliable, it is not an effective mechanism through which to set the strategic vision for the payments industry or to drive innovation.

However, VocaLink recognises the benefits of having a central payments industry trade body, which is able to provide an oversight role to ensure that the Payments Systems are operated in a manner which is consistent with the Core Principles and which recognises the views of the various payment industry stakeholders. In this respect, VocaLink considers that the scope of the Payments Council's objectives should be restricted to:

- ensuring that the payment systems are open, accountable and transparent; and
- ensuring the operational efficiency, effectiveness and integrity of payment services in the UK.

The Payments Council remit should not include providing a strategic vision for payments or to lead the future development of co-operative payment services in the UK.

2(b) *How can a clearer separation of the Payments Council's strategy setting and trade body representative functions be best achieved?*

Response

This has been addressed in the response above.

2(c) *Do you agree that the Payments Council should commit to publishing annual progress reports against its objectives, supported by regular, independent performance reviews?*

Response

Yes, we believe that regular independent performance reviews, conducted against published criteria, would represent an important improvement to transparency and governance.

2(d) *Do you agree that any two independent directors should have a right of veto over board decisions? The Government invites views on how the Payments Council's board can be strengthened further.*

Response

We believe that the independent directors should have a right of veto for two or more acting in unison, but also that they should have the capacity to introduce new initiatives to the board under their own authority, acting as the champion for user views raised in the enhanced User Councils.

2(e) *Do you agree that the existing user forums should be given enhanced functions and autonomy by being upgraded to independent User Councils?*

Response

We have no comment on this question.

2(f) *How can Payments Council funding be put on a long term, secure footing?*

Response

Funding for the administration of the central office functions through UK Payments Administration works effectively.

Funding for development of new projects tends to be drawn by calls on members in proportion to their size, which can act as a drag on innovation (due to the reluctance of some members to contribute) and to partisan behaviour.

Funding for the Payments Council should reflect whatever new status it achieves. If it is re-purposed as a trade body then the current membership fee structure is appropriate. If it retains a broader role then funding should be provided via the Payments Strategy Board, if it acts as the execution body for the Board.

2(g) *How should a reconstituted Payments Council be given the means to enforce decisions more effectively in a self-regulatory environment?*

Response

In its current role as a membership-driven trade body, it would be difficult to confer powers of enforcement on the Payments Council without specifically lending it regulatory powers.

2(h) *How can the membership of the Payments Council be broadened most effectively?*

Response

We have no comment on this question.

Question 3

3(a) *Do you agree with the proposed remit for a new Payments Strategy Board?*

Response

We have concerns regarding the proposed remit, as set out in the response to Question 1.

3(b) *Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a method could work most effectively.*

Response

This has been covered in the response to Question 1.

3(c) *Do you agree that the Payments Strategy Board should include senior industry representatives, non industry representatives and independents? What do you consider to be the right composition of the Board?*

Response

We agree that the PSB should have balanced representation between large banks, smaller banks, payments service providers, end-user groups and the government.

3(d) *Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be?*

Response

We have no comment on this question.

3(e) *Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry?*

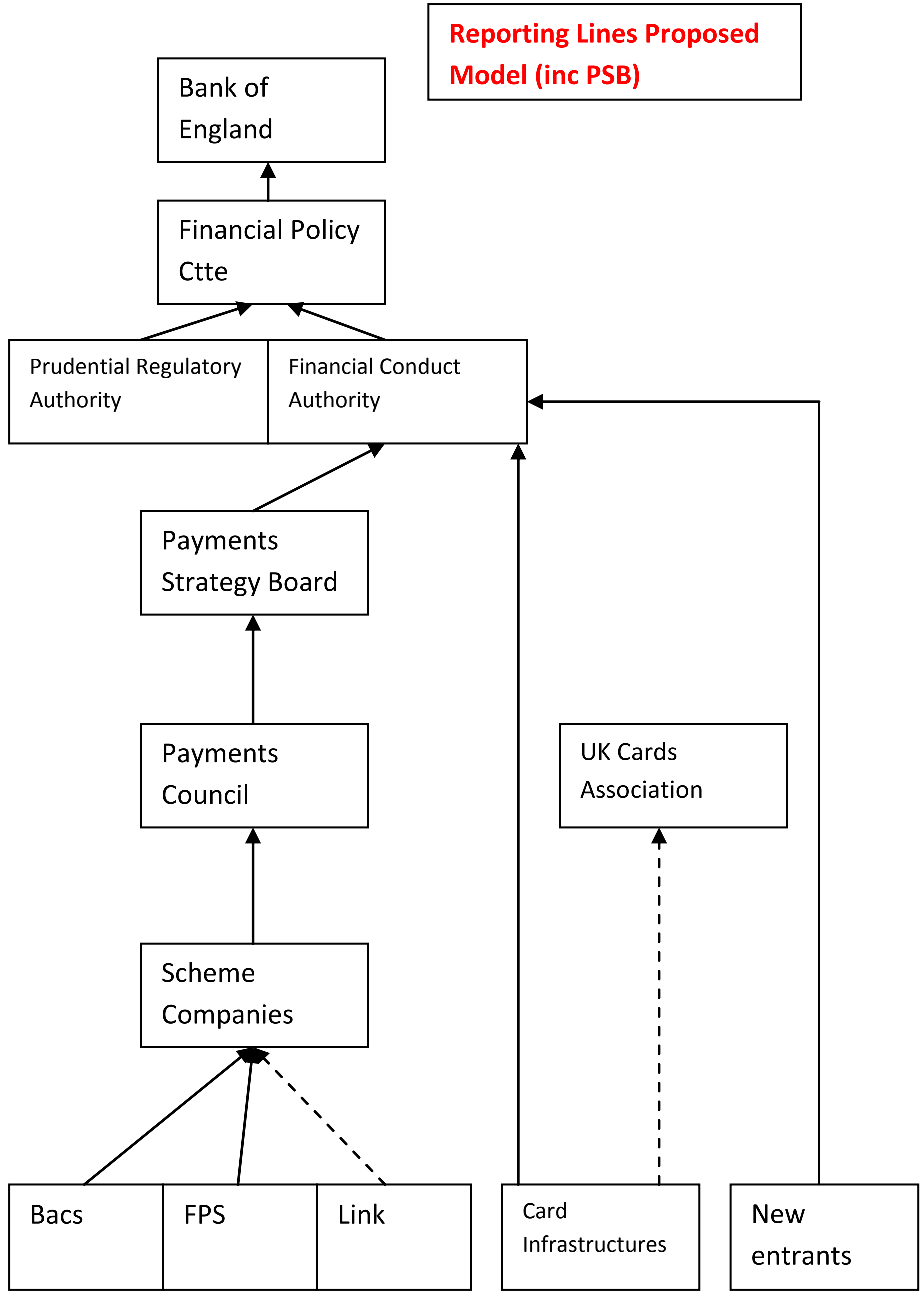
Response

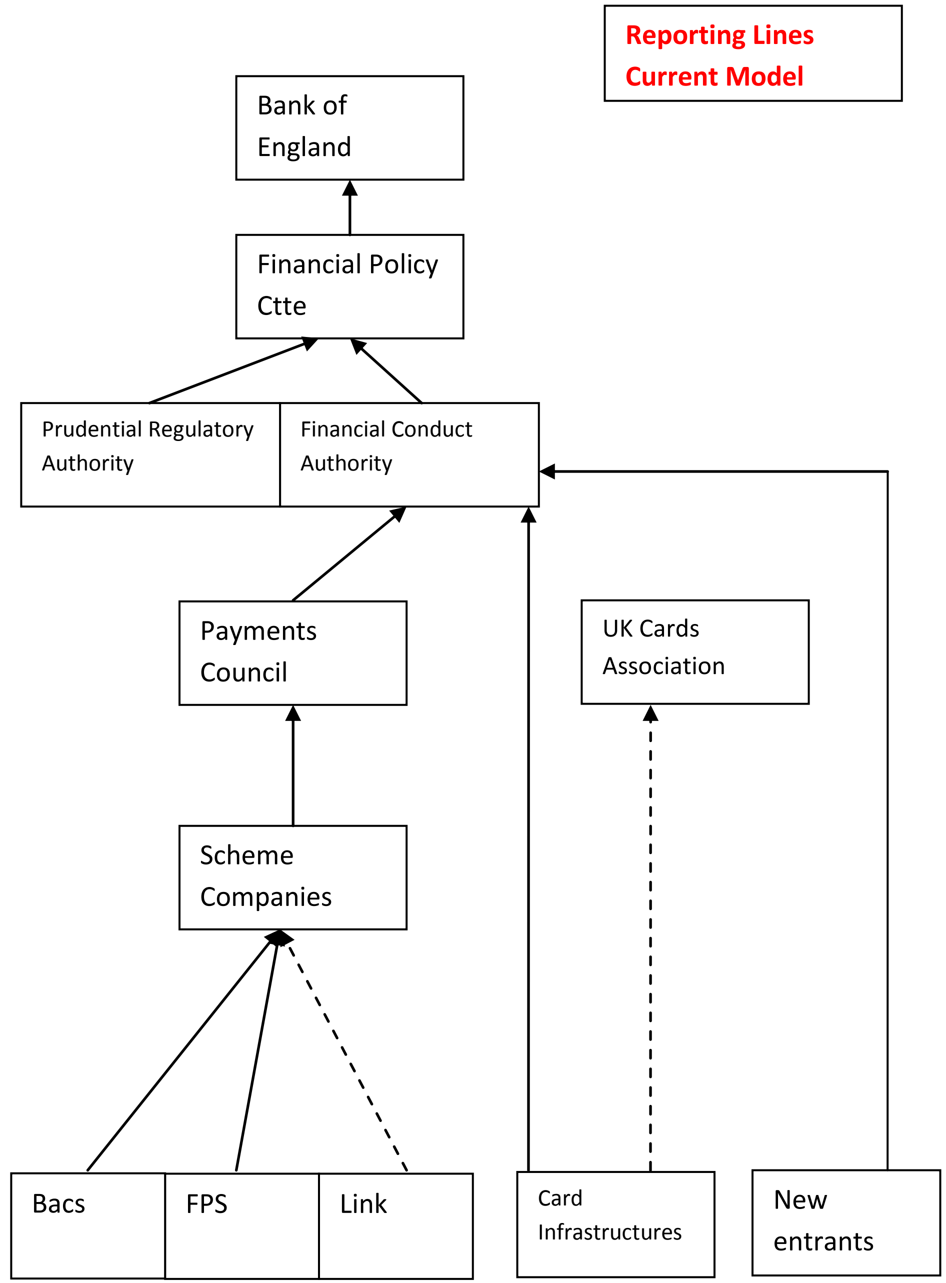
It should be funded independently of current arrangements for funding the Payments Council and schemes, which are both funded predominantly by the largest banks by virtue of their payments volume.

3(f) *Should the FCA have any further controls over the Payments Strategy Board?*

Response

We have no comment on this question.


Reporting Lines Proposed Model (inc PSB)
Bank of England
Financial Policy Ctte
Prudential Regulatory Authority
Financial Conduct Authority
Payments Strategy Board
Payments Council
UK Cards Association
Scheme Companies
Bacs
FPS
Link
Card Infrastructures
New entrants


Reporting Lines Current Model
Bank of England
Financial Policy Ctte
Prudential Regulatory Authority
Financial Conduct Authority
Payments Council
UK Cards Association
Scheme Companies
Bacs
FPS
Link
Card Infrastructures
New entrants

Which?, 2 Marylebone Road, London, NW1 4DF
Date: - 9th October 2012 Response by: 'Pula Houghton, Director of Public Policy and Consumer Markets

Consultation Response

Payments Consultation
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Setting the strategy for UK payments

Introduction

Which? is an independent, not-for-profit consumer organisation with around 1.3 million subscribers and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

The failings of the current regime have been significant. As such, our instinct is that the payment system should come under a stricter regulatory approach. In our opinion, there is a strong case for moving to statutory regulation and that is our preferred approach. At this stage, we reluctantly accept that amongst the proposed options, Option 2 maybe the most feasible approach. However, we are sceptical as to whether this will actually manage to create a more end-user focused regime as the current proposals do not give sufficient powers to the Payments Strategy Board (PSB). Instead, the proposals risk replacing one ineffective self-regulatory regime by another, which could result in reputational damage for the new Financial Conduct Authority (FCA).

Which? therefore wants at a minimum:

- A balanced PSB with a majority of independents, amongst whom some will exercise clear consumer representative functions;
- The PSB to be able to make binding recommendations backed up by credible sanctions - reliance on voluntary commitments will undermine the PSB's ability to achieve positive outcomes for end users;
- Decisions at board level to be taken through formal voting where necessary, especially where decisions are likely to materially affect consumers;

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- The FCA to act as the regulatory backstop for PSB decisions and to exercise enforcement powers and sanctions.

Without these changes we would find it difficult to support the direction of travel.

In this document, we do also make a small number of comments on reform of the Payments Council should the Treasury decide to implement Option 1. However, it should be noted that we do not support this approach and we have a clear preference for the second option, provided the Treasury commits to substantial changes to the proposal.

Questionnaire

Q1 Do you agree that the creation of a Payments Strategy Board:

- *should be the lead option for reform;*
- *provides the appropriate balance between Government intervention, impact and cost; and*
- *effectively tackles the issues the Government has set out?*

We reluctantly agree that the creation of a PSB should be the preferred option for reforming the current payments landscape. More details and commitments on the exact composition and balance of the board, its remit and its powers are however needed to ensure that the PSB attains the objectives laid out by the government and delivers a better deal for consumers than the Payments Council has in the past.

Whether or not the PSB will strike the right balance between intervention, impact and cost will depend on the issues it is seeking to address as well as the format of the Board. These factors will also determine whether the PSB is actually effective at achieving the government's objectives of making payments operate for the benefit of consumers, promoting innovation, facilitating competition and open access and ensuring that payment systems are stable, reliable and efficient.

One of our central concerns is the difficulty of achieving a satisfactory balance between industry, independents and consumer representatives on the Board. Under the Payments Council's current arrangement, this balance is not being achieved. Industry stakeholders with a share of more than 5% of the total payments volume automatically get a seat on the Board, whereas medium and smaller industry players elect their representatives. There are therefore a total of 11 industry representatives and 4 independent voting directors. If the PSB is to be a credible addition to the landscape then it will need to achieve a much better balance and we outline our suggested approach under Q3.c.

We are also concerned about the absence of any enforcement powers. In our response to the Payments Council's consultation on their governance structure at the end of 2011, we highlighted the absence of any enforcement powers, along with industry dominance of the Board, as the major stumbling blocks to the effectiveness of the Council's decision-making. We recommended a greater role for the FCA in supervising the work of the Council and also argued that the Council be given enforcement powers. This lack of enforcement in the system is still a weakness and we elaborate on this point under Q3.b.

Q2.a. Do you agree that the current remit and objectives of the Payments Council are broadly appropriate? If not, how should they be enhanced?

The remit of the Payments Council broadly covers innovation, inclusion and integrity. We think that these topics are broadly appropriate but that the competition aspect of payments innovation is sometimes less well pronounced. In our view, the remit should not just cover innovation in itself (regardless of *who* innovates) but should seek to harness innovation developed outside the narrow confines of the banking industry which dominates the Council.

We are not convinced that the Council has been very successful in the past at promoting innovation outside the banking sector. When the Council first proposed the creation of a mobile payments platform, the idea was to make this platform available only to banks and their customers. The current proposals for the mobile payments platform reflect this. In our view, the Council has missed a trick to promote competition by not seeking to include non-bank providers such as telecommunication or technology companies from the outset. There are still no concrete commitments on when the new platform will be expanded to others.

In terms of its inclusion objective, the Council appears to have had some success but, despite the existence of a financial inclusion policy, the Council has on instances failed to promote the interest of consumers. This was most significantly highlighted when the Royal Bank of Scotland (RBS) decided to restrict basic bank account holders' access to non-RBS ATMs. The poor handling of the cheques cancellation date is another case in point.

Q2.b. How can a clearer separation of the Payments Council's strategy setting and trade body representative functions be best achieved?

In our view, the Payments Council should not have any trade body representative functions. The purpose of a trade body is to present and defend the interests of its members. The Council's objectives however do not square with this as they require the Council to ensure that payments work for end users. As the interests of end users may sometimes not be in the commercial interest of the Council's members (for instance in the case of ATM access for basic bank account holders), we do not believe that having trade body representative functions is feasible. It will lead to confused accountabilities and presents a massive conflict of interest.

Many of the Council's members are already part of trade bodies, most notably the British Bankers' Association (BBA) and UK Cards. We are not opposed to the payments industry creating their own trade body specifically focused on payments, but think that this should be kept entirely separate from the Payments Council. In order to ensure the integrity of any self-regulatory scheme, we believe it is essential that representative functions are kept apart and have separate governance structures. If the Council were to continue having a representative function, it would further undermine the interests of end users by making it harder for consumers to advocate their own interests.

Q2.c. Do you agree that the Payments Council should commit to publishing annual progress reports against its objectives, supported by regular, independent performance reviews?

The Payments Council publishes an Annual Review that highlights some of the key achievements and projects that it has been working on over the year. The Annual Review is however relatively limited in scope and does not systematically match these achievements against the objectives set in the National Payments Plan. For instance, last year's review states nothing about their achievements on financial inclusion.

Whilst we generally agree with the Payments Council's objectives, we would expect the new PSB to set much more ambitious targets and we would support regular independent reviews of the Payments Council's work against these targets. In our view, the Council itself lacks the ability - through its constitution and industry dominance - to critically evaluate its own performance. We therefore think it necessary that independent reviews are commissioned.

There should also be a much greater use of independent cost-benefit analyses in the development of existing or new payment services. With regard to the switching service that the Council is currently developing, we have been disappointed by the lack of any cost-benefit analysis investigating the merits of portable account numbers. Instead the issue has simply been brushed off without properly taking into account the views of consumers. The decision-making process in general has been quite opaque.

Q2.d. Do you agree that any two independent directors should have a right of veto over board decisions? The Government invites views on how the Payments Council's board can be strengthened further.

We would prefer for the government to implement an improved version of Option 2 and therefore do not expect that the Payments Council Board will exist in its current form in the future. However, we would like to feed in our views on the veto powers of the independent directors should the Treasury decide to pursue Option 1 alone.

In our response to the Council's governance review we expressed our concern that the Board has never formally voted on decisions. Instead they are taken by consensus, which means that no decision, in the past, has ever been put to a formal vote and subsequently, none of the independent directors has ever made use of their veto powers.

Fundamentally, the problem is that the Council is taking decisions by consensus, thereby obliterating the usefulness of any veto powers. The checks and balances that the independent directors are supposed to exercise through these powers are hence undermined. Reducing the number of independent directors' required to exercise a right of veto is not going to change anything about this as long as the Board is not formally required to vote.

If the present structure of the Council was to be maintained and the Payments Council Board continue to exist, we would argue that any decisions that potentially have a material impact on a group of consumers or other end users should be subject to formal voting procedures. We recognise that not all decisions taken by the Board will require formal voting. However, if there is an end-user interest involved, the decision should be put to a formal vote. In this case we would support the proposals by the Treasury to require the consent of just two independent directors to exercise a veto right.

Q2.e. Do you agree that the existing user forums should be given enhanced functions and autonomy by being upgraded to Independent User Councils?

Which? supports the idea of independent user councils. We have been present at the Consumer User Forums ever since the inception of the Payments Council. In our response to the governance review we highlighted our concerns about the current working relationship between the Consumer User Forum and the Board. We were critical that there was no direct relationship with the Board and that it was not clear how information and feedback gathered from the User Forums was used by the Board.

The Council has made some changes as a result of the consultation such as discussing User Forum feedback during Board meetings, shortening the period between the User Forum meetings and the Board meetings and relaying information back from the Board through minutes.

However, the decision-making process at Board level is relatively opaque - User Forums are only ever informed about decisions/projects that have already been made. They have very little influence over the Council's agenda in general and little power in suggesting issues that the Board should address. Again, in our view the main problem is the industry dominance of the Board, which means that there is little if any receptiveness for topics that concern end users but that might not be commercially relevant to Board members.

For instance, the issue of ATM access for basic bank accounts holders was very fervently discussed on several occasions in the Consumer User Forum. Attendees, including ourselves, argued that the Board should take a stronger stance against this move by banks that undermines the long-standing efforts of consumer groups to improve financial inclusion. Yet nothing has happened as a result and the topic was, as far as we are aware, not even discussed at Board level.

We would therefore welcome any move to give the User Forums more powers and establish a more direct relationship between the User Forums or Independent User Councils and the Board, including the ability for the User Councils to suggest projects for the Board. We recognise that this will also require greater input and work from the consumer representatives in the User Councils but are confident that engagement will improve if User Forums are given the ability to influence decision-making.

In addition to this, we would like to see at least some of the independent directors directly representing the User Councils they head. The independent directors could act as the messengers for the User Councils and formulate the suggestions of the User Councils into coherent proposals for actions or research subject to approval by the User Council attendees. This would allow the User Councils to have a unified voice as well as resolving the issue of how to commit resources to influencing the Board by requiring the independent directors to take a more active role in decision-making and policy formulation on behalf of the User Councils.

We recognise that this will lead to discussions over the exact denomination of the independent directors. In the past, concerns have been raised that direct alignment of directors with the User Councils would result in them no longer being independent. We accept this view and would suggest that these independent directors be called differently, though we do not have any suggestions as to what their title should be. We will continue referring to them as independent directors throughout this document for the sake of simplicity.

Q2.f. How can the Payments Council funding by put on a long term, secure footing?

As mentioned earlier, we support the Treasury's proposals to create a PSB (subject to important changes) but should the Treasury, as a result of the responses to this consultation decide otherwise, we would like to see the funding being provided by the industry as it has in the past.

However, more assurances are needed. For instance, it should be made clear that members cannot simply withdraw funding from the Payments Council because they disagree with a decision or the general direction of the Council. If the Payments Council is reformed and end users are given more powers to influence, it is quite likely that some decisions might not get the approval of all industry players. This should however not mean that payment services providers are able to withdraw their funding.

This however raises some important questions about the feasibility of the current structure of the Payments Council. Currently, the Council is a voluntary membership organisation. This means that members can withdraw from the Council and hence refuse their funding. We do not believe that this structure is feasible any longer if the Council is serious about meeting the needs of all end users.

In order to prevent members from removing their funding or leaving the organisation, it is necessary that membership is made mandatory instead. This is not currently considered under the Treasury's Option 1 but is in our view necessary. Mandated membership will also be necessary under Option 2.

However, we would agree that mandated membership might not be necessary for all payment services providers but that mandating should be proportional to the weight of the members in the payments industry. We do not have any specific views as to where the threshold for mandated membership should be set. In deciding the threshold it will be important to take into account the potential impact that any withdrawal, individual or collective, would have on the funding of the Council.

Q2.g. How should a reconstituted Payments Council be given the means to enforce decisions more effectively in a self-regulatory environment?

We have mentioned our proposals for changes to the Council under Option 1 in the previous questions. To summarise, we think that in order to make the Council meet its objectives more effectively in a self-regulatory environment it is necessary at a minimum to:

- put a greater emphasis on outcomes for payment users and financial inclusion;
- remove from the Council any trade body representative functions it may have;
- commission regular independent reviews and annual progress reports that match achievements against genuinely ambitious targets for improving end user experiences;
- reform the decision-making process away from decisions by consensus to effective voting on decisions that will have a material impact on consumers;
- reduce the number of votes required from independent directors to exercise a veto right to two, provided decisions are actually voted on;
- enhance the powers of the User Forums to allow them to set agenda items and influence the decisions of the Board through the independent directors representing them;
- expand the role of the independent directors to make them directly aligned with the interests of the User Forums they represent and giving them the duty to formulate proposals on behalf of these Forums; and
- make membership mandatory for some payment services providers to ensure the long-term and sustainable funding of the organisation.

Even with these reforms, we remain sceptical as to whether self-regulation in all aspects of payments can continue and therefore we would only argue for the above changes if the Treasury decided that Option 1 was the way forward rather than our preferred option – Option 2. We have in the past expressed our dissatisfaction with the way the Council has handled issues such as the implementation of Faster Payments and the restriction of access to

ATMs. Despite the greater influence that consumers and other end users could potentially make under the reforms of Option 1, we do not think that a changed structure that continues to be reliant on self-regulation would have made any difference to the resolution of the aforementioned issues.

The greatest weakness of the Council remains, even under Option 1, the absence of enforcement powers and sanctions for failure to comply with the decisions of the Board. Whilst it gives more influence to end users, they still remain primarily recipients of Board decisions and there are no consequences for members failing to implement any of the suggestions they receive from the User Forums.

Currently, there are few self-regulatory schemes that manage to enforce decisions in an effective way. However, one successful example is the Advertising Standards Authority (ASA). Decisions by the ASA are almost always adhered to although the body does not have any formal enforcement powers. There are several reasons for its effectiveness (amongst others that complaints are consumer-driven and may therefore enjoy greater public scrutiny) but one crucial element within the ASA structure is that the Office of Fair Trading (OFT) acts as a regulatory backstop. If companies do not comply with ASA rulings, the ASA can refer them to the OFT who can exercise proper enforcement.

In our view, a similar system needs to exist for payments regulation regardless of whether Option 1 or 2 are implemented. If the Council is reformed, for it to be effective, it needs to have a similar backstop in the shape of the FCA taking enforcement action. Similarly, for Option 2, which we prefer, there needs to be a regulatory backstop if companies do not follow the recommendations. This can either be achieved by giving the PSB powers to sanction and enforce or by having the FCA exercise these powers instead.

Q2.h. How can the membership of the Payments Council be broadened more effectively?

No comment.

Q3.a. Do you agree with the proposed remit for a new Payments Strategy Board?

We generally agree with the remit of the proposed PSB and particularly welcome the focus on the experience of end users, which we think is lacking from the current decision-making by the Payments Council. However, we are concerned about the absence of any mention of financial inclusion.

We believe that access is an important aspect of the end user experience of payments services. Recent attempts to phase out cheques without providing a suitable alternative and the continued controversy around ATM access show that financial inclusion is still an important topic in payment services. It is not just important to state that payments must operate for the benefit of all users but there should be an explicit reference to financial inclusion.

We would therefore also like to see a greater emphasis placed on the Council's financial inclusion policy, which we think needs to be given greater consideration by the PSB than it has been given under the Payments Council.

Q3.b. Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a method could work most effectively.

We have under Q2.d. elaborated on our concerns regarding the current decision-making process within the Payments Council's Board, which relies on consensus. Our main concern is the overbearing presence of industry and the absence of any formal voting requirement. This means that decisions rarely, if ever, go challenged.

As the Treasury itself has noted in its consultation document *"the Payments Council's decision making has been slowed by the need to work by consensus. It seems to give undue weight to individual large members in determining whether a particular proposal by the Payments Council should be taken forward. [...] As a result, there has been a tendency for decision-making to be at the pace dictated by the slowest and the biggest banks"*.

We think that the problem posed by the need or desire to seek consensus will be even more accentuated under the new proposals for a PSB. The new Board will include a much larger variety of stakeholders and interest groups that at times will have mutually irreconcilable interests or objectives. As a result, it could prove even more difficult to come to a common position on recommendations to be made to the industry. This will slow down the process of making recommendations and may result in compromise positions that neither party is satisfied with and that might not be adequate solutions to the problem at hand.

We would therefore suggest that recommendations be made in the same way that we proposed decisions be made under Q2.d, namely by formal voting. We do not rule out attempts to seek consensus and would even recommend that consensus-seeking should be the first recourse. However, there will be times when the interests of end users will be very different from those of the industry and where decisions are likely to affect consumers, they should be put to a vote.

In question 3 (c) below, we elaborate on our suggested composition of the PSB. If the PSB is to vote on recommendations rather than seek consensus, it is important that the composition is balanced and that end users views are properly accounted for.

Apart from the question of *how* recommendations are reached, it is also important to address the question of mandating versus recommending. As mentioned earlier, one of the main problems with the effectiveness of the Payments Council is the absence of any enforcement powers and sanctions. We think that this remains a problem under the proposals for a PSB and that the problem could in fact be a much greater one as recommendations are more likely to take into account the views of end users, which may be in conflict with the commercial interests of the Council members. It is therefore vital that the PSB make binding decisions and these are backed up by credible sanctions for non-compliance. These sanctions should be administered by the FCA who must act as a regulatory backstop where members fail to comply.

We agree and accept that this will move the PSB closer to being a proper regulator than under the existing Treasury proposals. However this is necessary if the Treasury wants to ensure that the mistakes of the past are not repeated and that the new arrangements for payments regulation actually have a positive impact on end users. The proposed arrangements of simply making recommendations public and asking companies to publish

Which?

their argument for not following the recommendation do not go far enough. There need to be stronger incentives for members to follow the recommendations.

Q3.c. Do you agree that the Payments Strategy Board should include senior industry representatives, non industry representatives and independents? What do you consider to be the right composition of the Board?

The PSB Board should not be, and should not attempt to be, a replica of the existing structure of the Payments Council board. In our view, a satisfactory balance on the PSB board can only be achieved if the number of industry representatives is lower and the number, and range, of other voices is increased. Specifically, the number of independent directors should be increased to outnumber industry representatives by 1, i.e. if there should be a majority of independent directors. We would want a majority of independent directors because we do not think that the PSB can achieve the objective of making payments work for its end users without those end-users being adequately represented by the independent directors. It is good practice in self-regulatory and regulatory schemes to have a majority of independents at Board level to ensure that the scheme achieves its objectives and acts as a proper counter-balance to industry.

Our proposition would be to have specific independent directors nominated to represent each of the key user groups - consumers, SMEs and large corporates. There should also be additional independent directors not representing any User Forum (non-affiliated directors).

There should not necessarily be separate consumer representatives but instead some of the independent directors should act as consumer representatives. Any attempt to create a balance on the PSB needs to take into account of the fact that there are far fewer consumer representatives with an expertise in payments or financial services available for these types of functions. Most consumer groups will not have the resources to commit a representative to the Board.

This proposed structure would mean that the industry representatives will be required to represent the industry as a whole rather than their own organisations as it would be impossible to achieve a healthy balance between industry and end users if all big industry players are to have a seat on the Board.

If the Treasury eventually decides against our proposal to make decisions binding (as suggested above) and to re-balance the PSB, it becomes unlikely that consumer groups would agree to be represented. Without the ability to make binding decisions and do so in a re-balanced Board, Which? would not want to be party to bad compromise decisions that do not achieve the best outcomes for consumers.

Q3.d. Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be?

Given all the previous suggestions for improvements to the existing propositions, we do not think it is feasible for the PSB to have information gathering powers. It will be very difficult to implement or enforce this proposition if not all industry players are represented on the PSB. It is likely that some bigger players will refuse to grant access to this information to a Board where their competitors are represented. Although making information gathering enforceable may resolve this issue, we do not necessarily think that it is feasible.

Our proposition would be to give the information gathering powers directly to the FCA rather than the PSB as the latter may be less successful in the light of the legitimate concerns that insight from some businesses may be shared across the PSB. By giving the powers to the FCA, the problem of some businesses not being willing to share information with potential competitors represented on the PSB would be resolved. The FCA would instead gather that information on behalf of the PSB and would use its own expertise on payments to analyse the information and relay it back to the PSB without identifying individual companies.

The FCA should be able to gather information about any aspect of a payments system that is relevant to making an informed recommendation. For instance, the FCA needs to be able to retrieve basic data on the processing of payments (volume, value, speed of processing, etc.) and payment services providers' IT systems, as well as information that is relevant in deciding what the impact of a new proposition would be on consumers.

For instance, in the example of cheques, the FCA could investigate what the costs are of providing cheques to consumers and what the costs of electronic alternatives would be on individual banks. The regulator would also be able to assess whether current cheque handling is efficient or whether there are ways of making the process more cost-effective. In fact, in the case of cheques, having these information gathering powers could have made the whole process of phasing out cheques a lot more transparent. It could have helped to identify to what extent the procurement on cheques is causing problems to banks and whether they are able to provide alternatives. Having this information would have reduced a lot of the uncertainty surrounding the setting of an end date for cheques.

The effectiveness of the FCA's information gathering powers will however also depend on what tools it has to enforce these. We think that firstly, the FCA should set a time limit for the provision of information. Companies will be asked to provide relevant information within a set period of time. If they fail to do this, the FCA should be able to impose sanctions (such as naming and shaming, discretionary requirements and monetary penalties).

Q3.e. Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry?

Currently the payments Council is funded through membership fees. We agree that a levy is probably more appropriate especially if the Treasury decides against our proposal to make membership mandatory. An industry-wide levy will create greater certainty around the funding of the PSB.

Q3.f. Should the FCA have any further controls over the Payments Strategy Board?

As mentioned above, we believe that the information gathering powers can be most effectively used if they are exercised by the FCA rather than the PSB. The size of the Board needs to be controlled to ensure it remains effective at making decisions. This means that representatives from some companies will not be members of the PSB and might therefore refuse to share information with it, especially if their competitors are represented in the PSB.

In our view, the recommendations of the PSB should also be enforceable rather than voluntary. If the PSB wants to achieve significant change from the way the Payments Council has handled decision-making and if it wants to promote the needs of end users, than it is crucial that it can enforce decisions. The absence of sanctions and enforcement powers would otherwise result in having a regulator that is no different to its predecessor. The Treasury's proposals do not currently address this deficiency. As the proposals stand, members can ignore recommendations that require them to take actions that may not be seen as being in their commercial interests.

We would therefore argue that the recommendations of the PSB need to be backed up with an ultimate sanction for non-compliance. These sanctions should be exercised not by the PSB but through the FCA who regulates the financial services industry. Overall, we think that the powers of the PSB need to be enhanced by giving the FCA a greater role. The FCA should also act as a regulatory backstop to the PSB.

Good morning,

Please find below a response to the above consultation from Wolverhampton City Council.

regards

Simon
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For and on behalf of the Director for Delivery

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Question 1
Do you agree that the creation of a Payments Strategy Board:
• should be the lead option for reform;

Yes

• provides the appropriate balance between Government intervention, impact and cost; and effectively tackles the issues the Government has set out? **Yes**

Please provide evidence where appropriate to support your answer.
The PSB will provide a regulated body to ensure the Payment Council itself is informed and receives recommendations that reflects the needs of those affected by the decisions made.

This will ensure that the decisions made are accountable either agreeing with the recommendations made to it or explaining why the recommendation was not adopted.

Question 2
The following questions relate to the changes the Government would expect the Payments Council to implement under Option 1. Some of the changes will also be considered if the Government proceeds with Option 2.

a Do you agree that the current remit and objectives of the Payments Council are broadly appropriate? If not, how should they be enhanced? **Yes**

b How can a clearer separation of the Payments Council's strategy setting and trade body representative functions be best achieved?

Re clarification of the remit per role should be achieved to define the separation and accountability or remove the strategy setting functions to a new body.

c Do you agree that the Payments Council should commit to publishing annual progress reports against its objectives, supported by regular, independent performance reviews? **Yes**

d Do you agree that any two independent directors should have a right of veto over board decisions? The Government invites views on how the Payments Council's board can be strengthened further. **Yes** e Do you agree that the existing user forums should be given enhanced functions and autonomy by being upgraded to independent User Councils? **Yes**

f How can Payments Council funding be put on a long term, secure footing? **This should be agreed by the Payments Council**.

g How should a reconstituted Payments Council be given the means to enforce decisions more effectively in a self-regulatory environment?

Consider a structured decision model based process to be applied to the Council

h How can the membership of the Payments Council be broadened most effectively?
Extending the vote to smaller bodies or mandating the span of information a new board would present to the council.

The council should be informed by a more representative consultation through a new board, any consultation should detail full impact assessment to the council.
The council is then accountable for the decision it makes either in taking forward the recommendation or by providing the reason why the Council chose not to accept the recommendation and how they intend to remedy any impact to the smaller bodies.

Question 3
a Do you agree with the proposed remit for a new Payments Strategy Board? **Yes**

b Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a method could work most effectively. **Yes**

c Do you agree that the Payments Strategy Board should include senior industry representatives, non industry representatives and independents? What do you consider to be the right composition of the Board? **Yes**

d Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be? **Yes**

Mandate that information requested from the PSB be provided, similar to FOI

e Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry? **Yes**

f Should the FCA have any further controls over the Payments Strategy Board?
They should have a non-voting right to attend the Decision making board

Yorkshire Building Society's responses to the HM Treasury UK Payments Strategy Consultation

Question 1

We agree that creation of a Payments Strategy Board under the terms outlined in the Consultation appears to be the most cost-effective option for the development of a coherent UK payments strategy. We believe that this will be of greater benefit to financial organisations, other businesses and consumers than under the present approach adopted by the Payments Council.

We believe that the biggest banks have an undue level of influence in the Payments Council and are given a disproportionate opportunity to drive payment solutions and other initiatives that are of greatest benefit to themselves in the first instance, without having to ensure that other organisations are able to derive similar benefits to allow them to deliver the best customer service.

For example, not all of the major banks implemented a comprehensive faster payments solution at the same time and agency services solutions varied markedly from bank to bank. The Payments Council should have ensured that the banks implemented a more standardised approach to what was in effect a regulatory requirement - especially as the big banks form the majority of the membership! There is a similar lack of co-ordination in relation to other industry-wide initiatives e.g. electronic ISA transfers and account switching services where different banks are clearly at different stages of development of their own solutions, or have differences of opinion regarding what the service proposition should entail.

The end result for organisations like ourselves is variable quality and frequency of communication and information across the various banks that we deal with, and service offerings from the banks that often look and feel like an 'afterthought'. The Payments Council must be directed to applying greater focus to the co-ordination of banks' activities in relation to payment services and delivery of clear, consistent and regular updates regarding payments industry initiatives (as well as delivering effective agency solutions) to all interested parties and we believe that the Payments Strategy Board should be mandated to ensure that this takes place.

Question 2

a) Our view is that the Payments Council's remit should concentrate on prioritising the development and implementation of payments industry initiatives that have been recommended by the Payments Strategy Board and accepted as desirable by the payments industry as a whole, and driving initiatives through to launch in line with plans and with solutions that will be universally beneficial across the industry.

b.) Strategy setting should be restricted as in (a) above. If the Payments Council also has responsibility for devising initiatives there is more scope for conflicts of interest to emerge (e.g. some banks may reject proposals, that other banks approve, due to cost or other issues, despite the potential value to the industry overall) and for individual banks to develop their own solutions with insufficient consultation with their peer organisations. This approach tends to dilute the positive impact of an initiative across the industry.

c.) Yes - Payments Council objectives should be clearly-defined and measurable, and performance against objectives assessed independently and regularly. An annual report seems reasonable.

d) Yes - this gives the independent board members a more powerful voice than at present (where all 4 independent members have to veto decisions for this to be effective). The Payment Council's board would be strengthened by the inclusion of representatives from a wider cross-section of the payments industry (e.g. agency banks and other financial organisations, SME's and consumer groups) as full voting members.

e) Yes - provided the User Councils were given a mandate to decide on the approach to a specific aspect of an industry initiative for endorsement by the Payments Council.

f) We do not have a definite view on this issue - a combination of levies against all firms and Central Government funding would seem a reasonable approach provided there was linkage between the projects driven by the Payments Council and the value delivered to payments industry as a whole and consumers.

g) By means of a wider full membership which in return for voting rights regarding prioritisation of initiatives formally agrees to abide by Council decisions and implement them, in consultation with the rest of the membership. This would facilitate a greater degree of decision enforcement by the membership as a whole. Non-compliance should result in expulsion from the Council.

h) As in (d) - there needs to be greater and wider participation across the payments industry, although individual organisations will have to be prepared to commit the resource that this will entail to increase the effectiveness of the Council and achieve an ultimately greater payback from the initiatives engaged.

Question 3

a) Yes - we believe that the Payments Strategy Board should be responsible for identifying and evaluating payment services initiatives and for making recommendations to the payments industry regarding those initiatives that it believes should be taken forward.

b) Yes - we think that a Payments Strategy Board recommendation should carry sufficient weight, as payment industry members will be required to justify why a recommendation has not been accepted and in any event Board activities will be overseen by the FCA.

c) Yes - we believe that the Board should not be comprised exclusively of industry representatives and should include a wide cross-section of the industry (as mentioned in (d) and (h) above), although we have no definite view regarding the right composition of the Board

d) As in 2(g) above - Payment Council voting members should be mandated to provide appropriate information in return for voting rights - enforcement would be by the membership as a whole against non-compliant organisations, who would run the risk of expulsion. It is difficult to be prescriptive about which information should be the subject of a formal gathering power, but items such as transaction volumes for specific payment services and estimated project costs and resources are generally relevant to any payment initiative.

e) It appears from the costs outlined in the Impact Assessment (Option 2 - creation of the Payments Strategy Board) that an additional annual FCA levy of approx. £5K would need to be paid by each of 406 firms that comprise the bulk of the payments industry (according to the Impact Assessment) for Board funding. This seems reasonable.

f) As in 2(c) - Payments Strategy Board activity/output should be reviewed independently with regular reports and feedback to the FCA regarding performance and effectiveness.

David Judson

Banking Services Consultant