



HM Treasury

Payment account contract termination and freedom of expression

Policy statement

July 2023

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Chapter 1

Payment account contract termination rules and freedom of expression in financial services

1.1 In December last year, the Government committed to gather evidence on the balance of rights and obligations between users and providers of payment services alongside the Government's statutory review of the Payment Services Regulations 2017. This was in response to PayPal's temporary suspension of a number of payment accounts including those of the Free Speech Union last year, and amendments tabled to the then Financial Services and Markets Bill (now Act). The Government committed to expediting a review of the rules on payment account contract terminations in the process, with means for returning to Parliament ahead of the Government's formal response to the Call for Evidence. The Call for Evidence closed on 7 April 2023, and the Government has now analysed the feedback it has received in relation to this topic.

1.2 This policy statement sets out the feedback and evidence the Government has collated on the subject of contract termination and freedom of expression, and the Government's proposed reforms to strengthen requirements relating to payment account contract terminations.

1.3 The Government has been unequivocal in its clear view in its comments responding to publicity concerning recent high-profile account terminations that banks and other payment service providers – which occupy a privileged place in society – should not be terminating contracts of payment account facilities on grounds relating to users' exercising of their right to lawful freedom of expression. The Government strongly supports this fundamental right afforded to all people in British society and will take the action necessary to protect it.

Findings from the Call for Evidence

1.4 The Call for Evidence received over 60 responses, with approximately half responding to the Government's questions about rules on account termination and consideration of freedom of expression in the provision of payment services.

1.5 A diverse range of perspectives have been taken into account, including those of credit institutions (banks and building societies), e-money and payment service providers, business groups and trade associations, and consumer and advocacy groups.

1.6 There was a broad, principled consensus across responses in support of users of payment accounts being provided with a fair notice period and their right to expect open communication in instances where a provider initiates a termination of a payment account contract. By contrast financial services firms that responded generally felt that the current framework worked well in this regard, striking an appropriate balance between the rights of their users and account providers' capacity to manage their commercial risk freely.

1.7 Some industry voices went further however, stressing the importance of providers of payment accounts retaining their right to decide for themselves who they provide their services to, and when they may terminate a contract and close a payment account. Several providers made clear their concern that interference in this delicate balance could undermine providers' capacity to effectively comply with statutory requirements in financial crime and illicit finance legislation.

1.8 Conversely, advocacy and consumer groups, including several respondents who considered they had been subject to unclear contract terminations, were of the view that the rules on notice and termination could be strengthened to provide users with greater transparency and means for appeal. Feedback pointed to an ambiguity in the current regulations that allows for circumstances in which a shorter notice period can be stipulated in framework contracts. It was additionally noted by consumer groups in particular that their members had at times reported a termination of their banking services with limited information as to why their provider had done so.

1.9 As for the Government's question on the need for protections for freedom of expression in cases of account termination specifically, most who responded were not of the view that bespoke requirements were necessary, with some financial services firms actively cautioning against doing so. Consumer groups noted that there were some – but reported not many – cases of their users believing that a denial or termination of service was motivated by their or their organisation's lawful views or beliefs.

The Government's proposed reforms, and next steps

1.10 The Call for Evidence did not provide definitive evidence to confirm – or otherwise – the suggestion by some that accounts were being closed for political reasons. Given the lack of clarity regarding cases of payment account contract termination and having assessed the effectiveness of the current regulatory framework on payment account contract terminations, the Government considers that changes are merited to strengthen the requirements placed on providers of payment accounts to ensure that an adequate notice period and a clear reason are provided to users in cases of contract termination.

1.11 The Government recognises the importance of providers of payment accounts being able to make their own commercial decisions regarding the provision of their services, and also recognises their established rights in relation to general contract law and obligations under financial crime legislation. These principles in mind, the

Government intends to make changes to existing regulations with the objective of:

1. **Improving transparency for users in receiving a clear understanding why their payment account contract has been terminated**, by stating in regulation that a clear and tailored explanatory reason must be given, unless to do so would be unlawful.
2. **Requiring that payment account providers must provide at least 90 days' notice when choosing to terminate a contract**, unless for a serious and uncorrected breach (such as non-payment) or other serious occurrence **and clarifying that clauses in user agreements purporting to allow termination for other matters** (such as brand protection) **cannot be used to circumvent this**.

Lesser termination periods would exceptionally continue to be allowed, for example where a provider is obliged to terminate the contract to comply with the law, in particular, financial crime law. Parties would also continue to be allowed to terminate a contract without notice in line with existing general principles of contract law (such as where the contract was found to have been made with someone without capacity). This clarification would seek to reduce the level of ambiguity about when notice periods apply, but still provide space for immediate termination as established in wider UK law.

A longer, 90-day notice period will ensure that users have greater time to communicate with their provider, appeal to the Financial Ombudsmen Service (FOS) where they feel necessary and give a longer period for users to seek an alternative account and communicate this to their sources of income (particularly in the case of microenterprises who must communicate with their own customers).

1.12 The operationalisation of these proposals will require consideration of the respective obligations placed on providers of payment accounts, and the Government will work closely with the Home Office, National Crime Agency, and Financial Conduct Authority (FCA) as part of bringing forward any changes to legislation.

1.13 The scope of application of the above measures is being considered but it is anticipated that they would apply to contracts concluded from the date the changes are brought into effect. The Government intends to enact these changes to the relevant regulations via secondary legislation through the powers granted in the Financial Services and Markets Act 2023, as part of the Government's programme in building a Smarter Regulatory Framework for UK financial services.

1.14 In addition to these intended reforms to process and conduct requirements relating to payment account contract terminations, the Government is resolute in its position that financial services should be provided without discrimination as to a user's lawful views or expression

of beliefs. The Government will continue to monitor and seek evidence around payment account terminations and explore options for further action. If evidence emerges the Government will not hesitate to act.

1.15 The Government is also aware of concerns that the regulations relating to Politically Exposed Persons (PEPs) are being applied in a disproportionate manner by some financial institutions. The Government is clear that these regulations relate to money laundering and anti-corruption and do not provide grounds for account closure on the basis of political views. The Government is also clear that a consumer being a domestic PEP should not be the basis for firms refusing to provide banking services in the absence of other risk factors. The reforms set out in this policy statement are intended to apply in relation to all customers' payment accounts.

1.16 In addition, the Government has committed to clarifying in law the distinction between domestic and non-domestic PEPs, in order to make clear that, in the absence of other risk factors, firms must apply a lower level of enhanced due diligence to domestic PEPs. The FCA is undertaking a review of its guidance on PEPs and financial institutions' adherence to this guidance, and will take action during the course of the review where it identifies serious non-compliance.

1.17 Alongside this body of regulations, the FCA and FOS respectively hold competencies with regard to issuing guidance on fair treatment in the provision of financial services, and in managing users' disputes with their account providers, including in cases of payment account termination.

1.18 The Government will formally respond to its Call for Evidence on the Payment Services Regulations 2017 later in 2023.

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