



LEADING TREASURY
PROFESSIONALS

The Association of Corporate Treasurers

Comments in response to
***A new regulatory framework for payment systems
in the UK, PSR CP14/1***
Payment Systems Regulator,
November 2014

January 2015

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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The ACT welcomes the establishment of the new Payments Systems Regulator and its three statutory objectives (covering competition; development and innovation; operation in the interests of service-users). We note that for each of these three objectives a core element is the interests of service-users. The ACT sees this strong focus on end users as very helpful for corporate users.

The old Payments Council has generally done a good job at bringing payments industry participants together where collaboration is needed, but perhaps the pace of progress and new developments has been a little slow. The time is now ripe for a new PSR who has more powers and who is expected to intervene more forcefully.

By and large the ACT regards the UK payments systems as working well. Over the past decade or so transaction costs have fallen; payment methods have proliferated; speed of cleared payment has improved dramatically; payments have successfully and generally moved from resource intensive and insecure methods (cheque and cash) to rapid and secure electronic means (direct debit/credit, and internet banking). But the key questions remain could the systems be working even better, providing better quality of service, more variations and flexibility, better reliability, and more cost effectively?

We note that the PSR has concerns which include the ownership structure, pace of innovation and access to payment systems. We share these concerns to the extent that even if the current systems are not broken there is a danger that some of the issues identified in the consultation papers could be holding back the service offered to end users. However we do recognise that sometimes improvements and new systems are made available in the retail user space which the retail users are themselves very slow to embrace. For the large scale corporate service-users changes to their customer IT systems can be costly while for smaller retailers in particular it may not be economically efficient to take up new payment methods.

The consultation flags the vertical ownership structure of the payments industry and that “the incentive for an individual PSP to support collective innovation via an Operator may be weak, since their competitors are also likely to benefit from any such innovation. Some argue that the slow pace of innovation stems from the ownership structure of interbank payment systems.”

For the ACT this is the key point. It may be that the current structures are not causing an immediate problem but inherently they do have the potential to create problems. For this reason the preventative actions and general intentions of the PSR are good. The action plan for the moment seems proportionate, but can be reviewed over time to determine if it is too light or unnecessarily onerous on the industry.

Ensuring that conditions are such as to allow and promote competition lies behind many of the PSR objectives. We observe that the Energy industry has proven that competition does not necessarily mean consumer satisfaction, lower costs, or certainty of supply. This might imply that from time to time the PSR will need to intervene somewhat in the style of Ofwat, acting as super customer.

For companies the key attribute of a good payments system is reliability and this is recognised by the existing banks and Operators. Service users may feel less confident about the reliability of a new entrant or of a new service. This does imply that the benefits of competition and innovation could in practice prove more difficult than expected to bring to fruition.

Furthermore for end-users the service provided by the bank they use for payments is perhaps the biggest determinant of how they view payments. In theory this part of the payments system is a fully competitive market, but in reality the complicated logistics for companies wishing to change banks means that competition is muted. It will be important to foster competition, and to deliver reliability, at the level of the bank / customer interface as well as further up the payments infrastructure.

For the future development of payments industry strategy the PSR is proposing a Payments Strategy Forum with the PSR taking an active part in this. We welcome this Forum and its intention to have the interests of end users very much at the forefront. Do bear in mind that service users are a diverse group. Within reason payment processes need to be inclusive and their introduction and management not biased towards any class of service-user.

The idea that the PSR will embark on specific market reviews is also welcomed, including the first one to review ownership of and competition in the provision of infrastructure. Occasional in depth reviews will be a useful tool. We note that your consultation paper makes very little mention of the central infrastructure providers, despite the fact that the ownership of some infrastructures creates the potential for conflicts of interest similar to the situation for operators. We have no evidence of any problems but on the face of it the ownership in particular of Vocalink by a group of major banks could be disadvantageous for end users. Therefore your market review of infrastructures is timely.

Response to specific questions

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Overall the ACT supports your approach. In particular we see the use of in depth market reviews as a powerful tool to examine specific areas that are in some way not working in the best possible way. The concept of using the PSR powers in a proportionate way is important too, since as the general comments at the start of our response implied the UK payments systems are not fundamentally broken, but rather are generally working well.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

The ACT supports your proposal to go for option 1 and the formation of a new Payments Strategy Forum, and in particular that the PSR will take an active role on this.



SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We welcome the intention to involve service users, but since service users are a very diverse group it may be necessary from time to time to engage in specific outreach beyond the Forum members themselves.

The payment providers are a small group of entities for whom payments is a profit earning business. On the other hand for corporates payments are simply one small element in an overall business that makes its profits through its main operations. There is less incentive for corporates to take an active part in driving payments strategy. Care will be needed to ensure that the service user involvement in the Forum is truly representative.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

No comment

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

No comment

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems for more details*)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

The ACT comments from the point of view of corporate users of payment systems, so therefore we welcome the intention for a strong focus on service-users. This will not be easy or straightforward for Operators to achieve, but through the raft of measures proposed and the repeated mention of and (where possible) the involvement of service-users we do hope that the culture across the whole industry will move in this direction.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

By and large we agree with your benefits and costs for Operators to achieve greater representation of the interests of service users, however you may be under-estimating the logistical difficulty of gathering users' feedback. Users are a diverse group with differing degrees of interest in how payments work. Those with the time and inclination to take an active role in providing feedback to Operators may well not be typical of the wider universe of users.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We are not aware of any actual cases of detriment from this sort of conflict, but from the point of view of good practice we support your proposed direction.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Your proposal not to issue directions on other possible conflicts seems proportionate. The fact that conflicts and standards of behaviour are high on the agendas of financial institutions at the moment should be sufficient.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

In general terms we agree with your assessment of benefits and costs of avoiding this sort of conflict of interest.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Theoretically the proposal for publishing board minutes looks helpful in delivering transparency but we do wonder if this is proportionate and indeed effective. This is going to lead to some very brief and guarded board meetings with the real management taking place outside of board meetings. Rather than full board minutes might it be sufficient for a synopsis of key decision to be published with a statement as to how service user interests or public interest matters were considered?

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The Supporting Paper 3 states that "Publication of minutes means that PSPs and other service-users become more aware of the decisions that are taken by Operators' boards and the basis on which these decisions are made, this may lead them to have greater certainty regarding future developments in payment systems." That statement may well be true for PSPs but we very much doubt if many end-users are sufficiently involved in the developments planned by Operators to review minutes as a matter of routine. Their interface would rather tend to be with their banks or other payment providers and the manner in which those interfaces are working.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

From the end user perspective it is difficult to comment on the detail of any access requirements that a PSP has to fulfil with the Operators. However we would agree that open and fair access must in principle be built into the systems.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

From the end user perspective it is difficult to comment on the detail of any reporting rule that the PSR may devise to ensure that the Operators are applying their access rules appropriately. However we would agree that the PSR should have the means to monitor Operators.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

No comment

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

No comment

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

No comment



Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees for more details*)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Since there are various European initiatives on interchange fees in train at the moment we are content with the PSR approach which we summarise as a wait and watch approach but with the possibility of taking appropriate action if the IFR is delayed.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools for more details*)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

The ACT is responding from the point of view of corporate end-users of payment systems. It is good that the PSR intends to hold the industry to account and therefore must have suitable regulatory tools. Others will be in a better position to comment on the detail of such tools and principles. We do not comment on the remaining questions in SP6.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

No comment

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

No comment

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

No comment

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

No comment

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

No comment

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

No comment

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

No comment

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The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury operating in the public interest under Royal Charter. We provide the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.

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The Association of Corporate Treasurers, established by Royal Charter



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