

Note



30 October 2009

RESPONSE BY THE PAYMENTS COUNCIL TO "THE BANK OF ENGLAND'S OVERSIGHT OF INTERBANK PAYMENT SYSTEMS"

The Payments Council is the organisation that sets strategy for UK payments. It has been established to ensure that UK payment systems and services meet the need of users, payment service providers and the wider economy. The Payments Council has three core objectives:-

- to have a strategic vision for payments and lead the future development of co-operative payment services in the UK;
- to ensure payment systems are open, accountable and transparent; and
- to ensure the operational efficiency, effectiveness and integrity of payment services in the UK.

The Payments Council is a membership organisation funded by its members, with an independent chairman.

The relationship between the Payments Council and the Bank of England is very important to us and we were glad to see it acknowledged in the consultation paper. We appreciate the inter-action which we have with the Bank and have benefitted from the presence of a Bank observer on our Board. We look forward to the development of this relationship, especially given our remit for issues of cross-scheme integrity. We have established a senior committee, involving the contracted schemes and practitioner representatives, to deal with these cross-scheme issues. We will continue discussions with the bank over the dividing line between our respective roles so that our activities compliment each other.

We will leave individual schemes to comment on the implications for their operations of the Bank's proposals for oversight. We have some general comments to make.



General Approach

It is important to remember that the payment systems worked very well during the extreme market convulsions in late 2008. The Bank's informal oversight of the payment system has also been constructive and beneficial to all concerned. This new regulatory framework is not a response to a failure, either of the systems themselves or their overseers.

That makes it especially important for these proposals to build on what already exists and to avoid unnecessary change or regulatory imposition. We are pleased that the core of the oversight role will continue to revolve around the main CPSS Core Principles; and we equally hope that any additional requirements, for example through the additional principles, will be proportionate and flexibly applied. The payment systems are all different, catering for different types of customer, with different payment mechanisms and presenting different risks to the financial system. This has to be reflected in the way in which they are overseen.

The Bank also needs to appreciate the limits on the role of the scheme operator. Their direct relationship is with the members of their scheme. In most cases, they do not have complete visibility of what business is being transacted and for whom by the members. At times, within the description of the additional principles, there are apparent suggestions that the system operators may be expected to take on additional responsibilities and involve themselves more in the underlying business transacted through the scheme. This could represent a fundamental shift in the relationship between the scheme, its members and other participants and would have major repercussions – technical, legal and business. Such a development would have to be considered very carefully from the standpoint of proportionality.

Additional Principles

Draft Principle XI

We feel that the risks to be addressed by this principle are most likely to be incurred by systems where the infrastructure provider is not owned by the same institutions as are scheme members; or where there a variety of processors serving the market. We hope that the application of the principle will take into account different ownership structures and the different levels of risk which these bring to the system.

Draft Principle XII



We believe that the work of our scheme co-ordination committee will assist in identifying the sort of technical dependencies to which this principle refers.

Draft Principle XIII

We have concerns about the potential implications of this requirement. As far as the system operator is concerned, its primary relationship is with the scheme members. It does not have an audit or supervisory role over the relationship between that member and its customers and in most, though not every, scheme it will not have visibility of that relationship. Clearly schemes can and do place expectations on their members which affect their conduct of business; but they have no powers to direct third parties. This lies beyond the scope of their rules.

We believe that there needs to be significantly more explanation of what the overseer is expecting to achieve before we can be confident that it can be delivered without significant disruption to business.

Draft Principle XIV

We accept that the practice of out-sourcing has expanded significantly. We believe that the contracted schemes already have designed arrangements to give them appropriate relationships in these circumstances and we believe that they should prove adequate for the purposes of this principle. We accept the inclusion of this principle.

Compliance

We have noted the comment by the Bank that failure to observe a principle is not itself a compliance failure; this is an important point because of the variety of payment schemes which are potentially covered by these requirements. It has always been accepted in the previous regime that schemes could partially comply with a principle, with no implication that they were somehow failing to meet the standard appropriate to them. This pragmatic approach should be maintained in the new regime.

Oversight Process

We believe that the proposed process, which builds extensively on what has gone before, is fit for purpose and proportionate.

Horizon Scanning



In an area as fast-changing as payments, there is a need for the Bank to look out for new risks posed by new operators. We believe that the Payments Council would be well placed to help with this work.

Consultation

We strongly believe in the importance of good consultation before the Bank publishes Principles or Codes of Practice and we would expect to be amongst the consultees. We would hope that the consultation would itself follow best practice and not be as short as one month (as in this case).