

RESPONSE TO THE IMPLEMENTATION OF THE PAYMENT SERVICES DIRECTIVE: A CONSULTATION DOCUMENT

The Payments Council

The Payments Council welcomes the opportunity to respond to this important consultation concerning the implementation of the Payments Service Directive in the UK.

The Payments Council is the organisation that sets strategy for UK payments. It was established in March 2007 to ensure that UK payment systems and services meet the needs of users, payment service providers and the wider economy.

The Payments Council has three core objectives:

- to lead the future development of co-operative payment services in the UK in order to ensure that the payment system as a whole meets the needs of payment service providers, users and the wider economy,
- to ensure that the payment system is open, accountable and transparent; and
- to ensure the operational efficiency, effectiveness and integrity of payment services in the UK.

Initial tasks

One of the Payments Council's first tasks has been managing a full public consultation process, leading to the creation and adoption of a National Payments Plan. We launched a consultation on the National Payments Plan in November 2007 and are delighted to have received over eighty responses from a wide range of stakeholders, such as Citizens Advice, the Association for Corporate Treasurers and the British Retail Consortium, to name a few. We are currently analysing these responses – which in line with our transparency objective will be made available on our website – and expect to announce the resulting actions in spring 2008.

Supporting HM Treasury and FSA

Consistent with its strategic aim, the Payments Council has a key role in thought leadership and is keen to influence legal and regulatory developments, including those deriving from the European authorities, to ensure that they will aid the development of UK payments. We



are therefore very pleased to support, and to continue supporting, HM Treasury in this way, and intend to similarly support the Financial Services Authority (FSA) in its role as the UK's competent authority for Payment Services Providers (PSPs).

Framing our response

This formal response to HM Treasury's consultation on implementation of the PSD in the UK therefore forms part of the wider dialogue we have been having with them and latterly with the FSA. We have framed it in two broad parts; first, some fundamental general observations and then, our responses to specific questions raised. We have not answered questions which sought views on policy options in and around the effect of the new regulatory and prudential regime for payment institutions, as we felt the institutions directly affected would be better placed than us to comment on these.

This response has been shaped with input from our members actively participating in the PSD Working Group. A full list of Payments Council members can be found on our website at www.paymentscouncil.org.uk. We are aware that some members will also be submitting their own responses.

General observations

We support the open, consultative and thorough approach HM Treasury have adopted towards the PSD, as demonstrated in the Consultation Document. The document itself is comprehensive and a model for other EU Member States to follow. It demonstrates a real understanding of the issues involved and a real desire to ensure that UK implementation is balanced, principles-based and proportionate.

We strongly advocate that as implemented in the UK (and indeed throughout the rest of the EU and the EEA), the PSD must create a balanced framework which allows for freedom and flexibility to innovate and develop operational efficiencies. It must also ensure a level playing-field as between different PSPs. But most of all, it must be proportionate and principles-based.

Proportionality will be key to implementation of the PSD. For example, one of the PSD's objectives is transparency of terms and conditions and information around specific payment transactions. In the UK, much of this information is already made available to consumers; hence we should be careful to ensure that the additional information requirements of the PSD enhance, and do not detract from (e.g. by information overload or unnecessary duplication of information) current UK market practice and are implemented in a way which meets the needs of users. Ensuring adequate protection of consumers must be balanced with the need to avoid gold-plating and to allow businesses the flexibility to operate and innovate in a competitive market. A good example of such innovation is the UK's new Faster Payments Service, which will be introduced in May 2008. This will introduce faster



transaction times – a same day service – which goes significantly further than the D+1 requirement under the PSD.

A principles-based (or risk-based) approach, rather than detailed regulations, will also be key to implementation, provided, of course, it is coupled with effective and proportionate enforcement: it will best foster the future development of UK payments, as well as avoid difficulties arising from unforeseen applications of specific provisions in the PSD. We must at all costs avoid fixed, unbending regulation with no obvious benefits to users, which could otherwise stifle innovation and efficiencies.

Our greatest concern with the implementation of the PSD is ensuring that it is evenly transposed across all Member States. This is vital for the PSD to meet its core objective – creating a truly competitive and highly efficient payments market within the EU – and to allow the full benefits of maximum harmonisation to be realised, both by PSPs (in terms of passporting rights and common standards and business practices across the EU) and users (so that they enjoy a consistent experience and consistent levels of consumer protection). There are three aspects to even transposition:

(a) a common date in all Member States for the Directive to come into force – we strongly advocate a single implementation date of 1 November 2009, and would discourage Member States from seeking to implement early (it simply will not work in practice given the end-to-end nature of many of the requirements);

(b) common (and practical) interpretation of scope, defined terms and provisions – there remain differing potential interpretations of some key terms and concepts (such as “payment account”, and “framework contract”) which, if allowed to continue, would impact significantly on the benefits of the PSD. We must also guard against regulation by the 'backdoor', whereby changes to the scope of the PSD agreed during its negotiation – such as the exclusion of so-called one 'leg-in/one leg-out' transactions (where either the payer's or payee's PSP is outside the geographical scope of the PSD) – are brought back in under the guise of 'best practice': these transactions were excluded for the very credible reason that an EU Directive cannot seek to regulate activities and entities outside the EU and the EEA. It is in any event always open to providers to decide to offer more favourable terms to users than those required by the Directive, including potentially to adopt certain PSD-like practices in respect of out-of-scope transactions where this makes practical and commercial sense.

(c) principles-based and pragmatic implementation – even transposition must be accompanied by principles-based regulation and effective and proportionate enforcement.

One final general point to make is that we are aware there is some concern from stakeholders that the faster transaction times required under the PSD will open up payment systems to potentially greater fraudulent activity. In developing the Faster Payments



Service, we have recognised the risk that the service – by its very speed – could open up new opportunities for the fraudster. The authorities appreciate this and consider that the balance of public interest lies in a quicker payments service. However, what the industry has done is develop counter measures and have accordingly encouraged members to develop a “strong front door” to prevent fraud occurring in the first place, which they have done in addition to a series of other security measures. It is also important to add that liability for any fraudulent transactions will continue to sit with the bank unless the customer has been negligent or complicit in the fraud. This guarantee is enshrined in the 2008 edition of The Banking Code.

We therefore very much support HM Treasury and the FSA in their continuing work at EU level to ensure even and harmonised transposition of the PSD through the Commission-chaired Member State Transposition Working Group. We would encourage HM Treasury to lobby for Transposition Working Group meetings to continue to ensure early resolution of key interpretative issues as this would be extremely helpful for implementation assessment and planning activities. Many PSPs are now engaged in these activities given that the deadline for implementation of the PSD is now less than 18 months away.

Response to questions

Chapter 2: Scope of the Directive and definitions used

4. Do you agree with the suggested interpretation of the payment service activities covered by the PSD annex?

Generally, there remains a need across all Member States to develop, refine and agree common interpretation of the scope of the Directive and certain other key definitions and provisions. We are keen to provide whatever support we can to HM Treasury in their important work with the Commission through existing channels to achieve this objective. Additionally, we will be participating fully in the parallel work of the PSD Implementation Expert Group that has been established by the payment industry at European level to propose consistent interpretations of key provisions and encourage a co-ordinated EU-wide implementation of the PSD.

We do agree with and support the suggested interpretation of the payment service activities within the Consultation Document, particularly the reference to ‘current accounts’.

However, we do have specific concerns surrounding how the term “payment account” is ultimately interpreted by the Commission and the Transposition Working Group.



Definition of “payment account” and the impact of a broad interpretation

Our view has always been that, from a credit institution perspective, the current account was the primary type of account that the definition of “payment account” was seeking to capture (noting of course that the aim of the PSD is primarily to regulate payment transactions, not accounts). We believe that this was also the view of the European Parliament and Council when they finalised the wording of the text during the negotiation process.

However, our understanding is that the Commission is now seeking to interpret this provision in a very broad way that includes any accounts capable of making or receiving payments and therefore potentially all savings accounts (though to our understanding there is no similar suggestion covering mortgage accounts, which we recognise as a valuable step-forward).

The application of the full requirements as set out in Titles III and IV to savings accounts would cause a range of negative and unintended consequences that we believe would have the effect of reducing the ability of banks and building societies to offer a wide range of attractive types of savings accounts – such an account offering an interest ‘bonus’ in return for making no more than a limited number of withdrawals, or an account offering a preferential rate in exchange for a 90 day notice period for withdrawals. It is key both for users and for industry that the PSD is not deemed to apply to aspects of business that it was not designed and negotiated to cover. We would ask HM Treasury to support us by resisting this possible broad interpretation of “payment account” in discussions in the Transposition Working Group.

Interpreting the scope of “payment account” – a possible solution

One of the issues that may have impacted on the ability to reach a consensus on this matter at Transposition Working Group level so far is that different terminology is used in differentiating between types of savings accounts in different countries.

Therefore, instead of discussing ‘types’ of accounts we believe it would be more productive and appropriate to focus on the underlying purpose of an account and the functionality that it offers. Provisions in terms and conditions that actively discourage the use of an account for making payments - such as the lack of a debit card, a limit on the permitted frequency of withdrawals, notice periods for withdrawals or limiting the amount that can be placed in an account - are all characteristics which we believe can validly be used in identifying account types that should not be characterised as “payment accounts” under the PSD.

We believe that developing a set of objective tests based on purpose and functionality would be the most effective and proportionate way of determining which account types should not be classed as “payment accounts”. We would be very willing to work with HM



Treasury and the Commission in developing such an approach. This would also avoid the future need to ask the Commission and UK authorities what is within and outside of scope on a case-by-case basis. Consumers would be clear on what service to expect from their provider, and it will be easier for PSPs to ensure their compliance with the PSD requirements.

5. Do you agree with the interpretation of negative scope? Are you aware of activities or business models that might unintentionally fall within scope of the PSD?

Until all definitions and outstanding issues on interpretation are resolved, we remain unclear on the full reach of the Directive and would wish to maintain some flexibility in our response. Some areas still require further analysis and testing to determine the possible impact of PSD implementation. We would be happy to assist HM Treasury with this exercise, and we await the outcome of the remaining Transposition Working Group meetings.

PSPs will need to bear in mind that the list of payment transactions and services included in the PSD's negative scope under Article 3 should be read widely; transactions and services falling outside the scope of the PSD are not limited to only those specifically mentioned in this list. The overall intent of the Directive and core principle of regulating payment services also needs to be taken into account.

Our informal understanding of the Commission's position is that they have made the following helpful clarifications in relation to scope:

- Mobile payments – only payments where the mobile operator is purely an intermediary between the payer and the provider of the goods or service are within scope.
- “Limited network” – includes instruments such as store cards, canteen cards, cards for buying petrol, “Club Med” cards, membership cards and transport cards, so these are therefore out of scope.
- Credit card cheques are out of scope.

However, we would request confirmation that the presence of an element of ‘cash-back’ would not exclude a card transaction from PSD provisions. Our working assumption and the interpretation that makes customer communication simpler, is that it would not.

Another payment activity that we see as being outside of scope (but would welcome confirmation) is the use of bank-owned cash machines by non-customers to access funds (only 37% of cash machine transactions in 2007 were undertaken at own-bank cash machines). As outlined in the Consultation Document, the use of independent cash



machines by customers is clearly out of scope because they are simply providing the physical unit from which cash can be accessed without the operator entering into possession of the customer's own funds. This would be the same situation as a customer of Bank A using a cash machine owned by Bank B to withdraw cash from their account. No additional data is transferred between the card issuer and the cash machine owner whether the machine is bank or building society owned or independently owned. On this basis, we believe that this type of activity should also be treated as negative scope.

We also believe that the drafting of Article 3(o), whilst perhaps unclear, can be read as a further indication that these transactions are indeed out of scope, as the ATM-owning bank is not conducting "other payment services" in relation to the particular transaction with the cardholder.

Going forward, we believe that the Payments Council will be in a strong position to advise HM Treasury and the Commission on future innovations in UK payments that may fall within scope of the PSD.

6. Are there any concerns or issues that you would wish to raise with respect to the interpretation of any definitions in the Directive?

As mentioned in our response to question 4, the definition of "payment account" is a key concern to us. Currently there is a risk that the definition could (in our view inappropriately) be seen as covering any type of account regardless of that account's main purpose.

We would welcome confirmation that "durable medium" includes methods of communication other than paper, such as electronic methods of email or disclosure via a website. Whilst Recital 24 is helpful, the way it relates to the definition of durable medium would benefit from clarification from the Commission.

We would also request confirmation of our conclusion that a "framework contract" can be made up of a series of elements in a modular fashion. If an additional service is requested by a customer, we believe that it should be possible to add the specific terms and conditions as an additional module, thus allowing the new service to be made available immediately (on the basis that this addition would not be regarded as a 'change' requiring 2 months prior notice in the sense envisaged in Article 44). This approach would also allow for one-off transactions under a "framework contract" as discussed later in our response to question 23.

We would also appreciate confirmation that not every nuance of the service that is agreed between the customer and the provider amounts to a term of the "framework contract". The alternative view would result in an overly broad application of Article 44. So, for example, we do not think the credit limit that applies to an individual account should be viewed as a part of the "framework contract". Credit limits are by their nature set by the bank and may



need to be altered without significant delay at the bank's discretion on a customer-by-customer basis. There are strict procedures in place and industry policy (as outlined in The Banking Code) for providing unsolicited credit limit increases.

8. Do you agree that credit unions should be exempt from all of the PSD?

We are fully supportive of credit unions and the integral role they play in ensuring financial inclusion for those that don't have access to mainstream banking. It is important to acknowledge that their business model does differ to that of the banks and therefore may not be compatible with Titles III and IV. On this basis we agree that they should be exempt from all of the PSD.

Chapter 3: Title II: The Prudential Regime

12. Do you agree that ongoing capital requirements should be applied for payment institutions already included under the consolidated supervision of credit institutions? Do you intend to passport your services? If so, please provide details.

We believe that a flexible and proportionate approach should be taken by the FSA as is usual practice under other regulations.

Chapter 4: Access to payment systems

21. Do you agree with the interpretation of the scope and aim of Article 28 on access to payment systems, and the schemes that will be affected in the UK? Are there other payment systems that may be affected?

Yes, we do agree with HM Treasury's interpretation of Article 28. The Faster Payments Service is not included in the list of payment systems and it will be operational by November 2009 (it is scheduled to come on stream on 27 May 2008). The intention is for the Faster Payments Service to apply for SFD designation as soon as possible after its launch.

22. What are the merits of an ex ante or an ex post approach to implementation of Article 28 on access to payment systems? Are there any other approaches that should be considered?

The proposals (and ensuing conclusions) in the Banking White Paper on financial stability and protecting depositors clearly need to be considered when looking at the regulatory approach to Article 28. Any change in oversight of payment systems will have a bearing on how this article is enforced. If oversight of payment systems were to be split between the Bank of England and the FSA and the OFT takes on the role of overseeing the application of Article 28, then transparency and joined-up working between the three bodies will be essential to ensure successful and clear operation.



An ex ante approach would give a limited amount of legal certainty to a payment system and its operator ahead of implementation so would carry with it less risk. There are, however, concerns that this approach would not work in a pan-European context as different national authorities would be reviewing the payment systems ahead of implementation so there may be instances of inconsistency. An example of this approach is the competition regime under the Financial Services Act 1986. We believe that it did not actually reduce the number of post-hoc reviews, it simply slowed down the initial process.

In line with the OFT's approach under the Competition Act, Enterprise Act and general European law, we would expect the ex post approach to be used for the PSD with the continued ability for companies to approach the OFT for informal advice and guidance ahead of implementation.

Chapter 5: Titles III and IV conduct of business rules

23. Is any clarification needed in relation to any of the information requirements and how they relate to a given payment method or business model?

There is a clear overlap between the information requirements of the PSD and those that currently sit in The Banking Code. We note your comments elsewhere in the Consultation Document that it is expected that the Code will be revised in light of PSD implementation. The three Code sponsors – APACS, the British Bankers Association (BBA) and the Building Societies Association (BSA) – will certainly be working closely with the FSA on this.

We are aware that HM Treasury is liaising with the Department for Business, Enterprise and Regulatory Reform (BERR) on the requirement overlaps between PSD and the Consumer Credit Act and Directive. We are happy to be involved in any discussions where an industry input or perspective would be of assistance.

Article 37 describes a prior information provision that is lighter for single payment transactions than for “framework contracts”, which is also reflected in Recitals 23 and 25. However, Article 37(2) could be read as requiring the same level of disclosure as a “framework contract” and we request confirmation that the reference to “where applicable” in Article 37 provides for information to be disclosed only where it is of real relevance to the single payment transaction.

Turning to “framework contracts”, we believe that there is potential ambiguity in the drafting of Article 48 (1)(a), for which we seek clarity. In our view it is essential that the payee's PSP has a role in determining which elements transferred with the payment transaction it is “appropriate” to pass onto the payee. We would argue that such flexibility is essential in ensuring compliance with data protection law and protecting the payer from any potential threat of identity theft – whilst also allowing the differing needs of different types of users



and the potential practical constraints of certain communication channels to be taken into account.

Paragraph 2 of Article 48 can be read as mandating the provision of either monthly statements or that information regarding individual payment transactions must be made available without undue delay – i.e. meaning that the option is one or the other. However, we read this article as meaning that it should still be possible (but would welcome confirmation on this point) for statements to be provided on a less frequent basis, as agreed with the customer at the outset of the relationship, so long as the information is made available to customers in the interim period. Requiring monthly statements could constitute a significant change for some types of accounts, leading to extra costs that could either prevent the availability of such accounts or – were such costs to be passed on to the customer - make them less attractive.

Question 27 later on in the Consultation Document refers to the possible Member State derogation of requiring providers to supply information on paper once a month, free of charge. We strongly support HM Treasury in choosing not to exercise this derogation; paper is not necessarily the most suitable or efficient means of supplying information. For example, many customers who bank online have opted not to receive paper statements and are very comfortable to receive statements by other means. Additionally, exercising this derogation would go against the aim of society in general for us all to be more environmentally aware.

It is important that there is an efficient way of dealing with the situation where a one-off payment transaction is requested by a customer in cases where an existing “framework contract” exists. As mentioned in our response to question 6, we seek confirmation that a modular approach can be used - whereby the specific terms and conditions relating to the requested one-off payment transaction can be given to the customer as an addition to (not a change to) their existing contract.

We would welcome clarification that interest penalties for the early termination of a “framework contract” would not be prohibited by requirements in Article 45(2) that terminations be free of charge. This is particularly key in respect of ‘notice accounts’ where a better rate of interest is offered in return for notice being given when a withdrawal is required. This notice can range from 7 days up to and including 120 days and instant access to funds can sometimes be subject to an interest penalty. If Article 45(2) were to be applied in these cases then it would require a major change to the conditions and features of these accounts in a way which would reduce their attractiveness – which we do not believe would be welcomed by consumers. As mentioned earlier in our response, we believe that this represents a further supporting reason why such accounts should clearly not be regarded as “payment accounts” for the purposes of the PSD.



We also ask for clarification on whether banks would need to write to existing customers retrospectively to supply new “framework contracts”. Guidelines produced for the implementation of MiFID confirmed that such ‘repapering’ wasn’t required in that context and we would hope for the same conclusion in respect of the PSD.

One final but important comment to this question relates back to the issue of “payment account”. Until we have clarification on what types of accounts this covers then we cannot guarantee that other issues regarding information requirements will not arise. A wider definition could mean overlap with other directives (such as MiFID or the forthcoming mortgages directive), resulting in dual regulation.

24. Do you agree with making Title III provisions compulsory when payment service providers deal with micro-enterprises, as for consumers?

On balance, we are sympathetic towards treating micro-enterprises as for consumers.

We note that doing so would essentially convert the current voluntary position in the UK into a regulatory requirement and expand its scope - presently, the Business Banking Code provides protection equivalent to that of consumers for businesses with an annual turnover of under £1 million in the UK whereas the European definition of ‘micro-enterprises’ captures a wider set of businesses.

We would, however, highlight three practical issues which would need to be taken into account if this derogation is used: first, we would note that there would be some practical impacts from a harmonisation perspective if the UK’s position in this respect was ‘out of kilter’ with that of other Member States. Secondly, the definition of “micro-enterprise” in the PSD focuses upon the enterprise’s size at the time of conclusion of the payment service contract, and does not allow for such enterprises to grow beyond the need for consumer protection (the only practical solution to this would for the enterprise concerned to enter into a new “framework contract” at that time, which seems unnecessary administrative work).

Finally, careful consideration will need to be given to the current scope of and access to the Financial Ombudsman Service and the Financial Services Compensation Scheme and their availability to micro-enterprises; our concern here is again the practical one of being able to clearly differentiate between consumers, micro-enterprises (both those eligible and those not eligible for the FOS or FSCS) and corporates (see also our response to question 28 below).

25. Do you think that the UK should exercise the right to adjust thresholds for low-value payment instruments in Article 34(1) for national payment transactions?

Yes, we do think that the UK should exercise this derogation. Although we support maximum harmonisation, strategically we are determined to encourage innovation in UK



payments and we are concerned that the low thresholds set here (EUR30 and EUR150) could hold back innovation, particularly as the formal review to be undertaken of the implementation and impact of the PSD (including these thresholds) will not occur until 2012.

We also note that in relation to prepaid payment instruments, the derogation in Article 34(2) allows Member States to adjust the thresholds up to EUR500 for all payment transactions, not just national ones. For similar reasons and given the risk profile associated with these products, we think the UK should exercise this discretion also.

26. Do you agree with the approach of not imposing further requirements on conditions for termination, as provided for in the derogation under Article 45(6)?

Yes, as these are only minimum standards: competition will drive some PSPs to provide more favourable terms.

27. Do you agree with the approach of not imposing additional requirements concerning the provision of information on paper, as provided for in Articles 47(3) and 48(3)?

Yes, we do agree. As mentioned previously in answer to question 23, paper is not always the most appropriate medium for communicating information to customers.

28. Do you agree with the Government's intention of disapplying access to out-of-court procedures only where the payment service user is a corporate and not a micro-enterprise?

Yes, we do agree. As mentioned above in our response to question 24, careful consideration will need to be given to the current scope of and thresholds for access to the Financial Ombudsman Service and the Financial Services Compensation Scheme and their availability to micro-enterprises, particularly to ensure consistency of treatment across the different regimes. It would for example be confusing if, in relation to a small business's current account, access to the FOS depended upon whether its complaint related to deposit-taking or the provision of payment services.

29. Do you agree with the approach of not exercising the derogation to forbid or limit the right of payees to request charges for payers' use of a given payment instrument?

Yes, we do agree with not exercising this derogation, as we believe that payees should, subject to compliance with transparency obligations, be free to make such charges, or equally to offer discounts, in order to facilitate a competitive market.



This transparency is critical to the user; one of the objectives of the Payments Council is to promote transparency and ensure that the consumer has an understanding of the costs of different payment instruments.

30. Do you think the UK should exercise the right to reduce or increase the thresholds permitted for low value payment instruments under Article 53(1) for national payment transactions?

Yes, see our response to question 25 above.

31. Do you agree with the approach to derogations in relation to Article 61 of the Directive on the user's liability (i.e. to maintain current UK standards)?

Yes, not least as these standards are well-known and currently enshrined in The Banking Code on a voluntary basis (and in the Consumer Credit Act for credit tokens).

32. Do you agree with the approach of not legislating beyond the maximum execution times set by the Directive?

Yes, we do agree, for a number of reasons, but essentially because we strongly believe that competition (as enhanced by the PSD) will drive PSPs of all types to offer more efficient and cost-effective payment execution, and that there is no reason to force such improvements by legislative intervention. By way of example, the UK's Faster Payments Service which will shortly become operational, and will allow same-day online or telephone payments, all day every day. The Payments Council will also continue to play a key role in ensuring the efficiency and innovation of payment systems in the UK.

33. Do industry groups intend to produce codes of practice on PSD implementation for their members? To what extent can this be based on any existing trade association standards?

We would strongly support the development of industry guidance on PSD implementation. APACS has done this in the past with other European payments legislation, and such co-operation was a proven success.

However, before starting work on any such guidance, we believe there would need to be both progress made in resolving outstanding differences of interpretation as to scope, defined terms and provisions at a European level and also greater clarity around how the FSA as the UK's competent authority intends to approach its regulation of these new requirements. Thereafter, we would be very keen to work with HM Treasury, the FSA, other interested stakeholders and trade bodies, in producing guidance on PSD implementation.



34. How do you think the PSD rules will interact with existing consumer credit legislation, and any other existing conduct of business legislation?

While the information provisions of The Banking Code will largely be superseded by the PSD, there is other statutory legislation – such as the Consumer Credit Act and Directive – with which the PSD will have to run in parallel. Banks will need to be aware of the need to comply with all necessary requirements at all times.

Other legislation that needs to be taken into account include: the Distance Marketing Regulations, which require information regarding the supplier's details, product details and contract particulars to be made available to the customer is bound by a contract; the Unfair Terms in Consumer Contract Regulations, which overlap with Articles 44 and 45 on changing and terminating contracts; and the Unfair Commercial Practices Directive, which could lead to a PSP being liable to a criminal sanction if it were to be found in breach of the PSD's prior information provisions. Depending upon the agreed interpretation of the defined term "payment account", the PSD's requirements in relation to payments would sit alongside requirements that relate to the underlying account or to the related product in relation to which a payment is being made (which may result in potential overlaps with, for example, MiFID and the FSA's Mortgage Conduct of Business rules).

Elements of the PSD's information requirements remain at this stage unclear and require clarification of interpretation. Pending such clarification, we believe it would be inappropriate to back up these unclear requirements with strict liability sanctions under the UCPD (whose regulations come into force in April 2008).

As already mentioned in our response to question 23, we are supportive of discussions between HM Treasury and BERR on the overlap of requirements between the PSD and the CCA/CCD. We are sure that they are also considering the implications of other relevant legislation at the same time.

Institutions that are required to comply with these various laws and regulations need to be sure of what is expected of them and what takes precedence where there is overlap, otherwise there is a substantial risk that they may fail to comply and potentially be open to action by more than one regulator.

We touched on the Banking White Paper in an earlier answer; the outcome of this and any changes to the oversight of payment systems must be looked at in parallel with these new obligations on PSPs under the PSD.

Additionally, the Payments Council itself has recently completed a consultation exercise to develop a National Payments Plan, which will be published later in spring. This will look at the needs of the UK payments market over the next five to ten years – for payment service users and providers – and will ensure that actions concerning innovation and improvements



in efficiency are taken forward. The Payments Council can only directly influence developments in the UK through its contractual relationship with the UK payment schemes. However, we will ensure that developments are pursued in ways compatible with EU developments and work closely with HM Treasury, the European Payments Council and Commission to achieve this.