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EU Payment Services Directive II Consultation  
Banking and Credit Team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

16 March 2017

Dear Sir / Madam,

## **HM Treasury consultation on the implementation of the revised EU Payment Services Directive PSD II**

This is the response of the Financial Services Consumer Panel to the consultation on the implementation of PSD II. We have only answered those questions where we have substantive comments to make.

### **Question 1: Do you agree with the government's proposed approach to implementation of the PSDII? Bearing in mind the maximum harmonising nature of the PSDII, do you think the structure of the regulatory regime will allow the UK's competent authorities to enforce the regulations in a fair and equal way towards all payment service providers?**

Under the current structure of the regulatory regime the FCA cannot apply to firms authorised under the payment services regulations (such as money transfer companies, credit card issuers and acquirers), its wider rules and powers applicable to banks and building societies.

We believe that it is essential that the FCA be given rule-making powers to ensure there is a level regulatory playing field for all payment services providers.

As payment methods, systems, and technology evolve, so should the regulatory toolkit, to ensure that consumer protections are consistent, regardless of which organisations consumers use for their payment services.

In particular, we see risks if the FCA is not able to apply rules consistently and flexibly as new, as yet unknown, risks, emerge for consumers from open banking and from regulatory uncertainty surrounding Brexit.

### **Question 3: Do you agree that the government should continue to exempt the institutions listed above from the PSDII?**

Yes

### **Question 8: Do you agree with the government's proposed approach to access to payment systems and payment account services?**

Yes – credit institutions should not be allowed to refuse requests for accounts or terminate existing accounts, without having to give their reasons.

### **Question 10: Do you agree that the government should extend the right of termination to overdrawn current accounts?**

Yes – we agree that there should be consistency with the established current account switching service across all payment service providers.

**Question 11: Do you agree that the Title III provisions should continue to apply to transactions involving micro-enterprises in the same way as those involving consumers?**

Yes. We support all measures to increase SME protection.

**Question 14: Do you agree with the government's proposal to provide access to out-of-court procedures (in the form of the FOS) only where the complainant would usually be eligible to refer a complaint to the FOS?**

Yes. However, we also believe the time is right for the FCA to consider widening the remit of the FOS to include some 'small businesses' and the Panel looks forward to engaging with that consultation when it is published.

**Question 17: Do you agree with the proposed approach to consent, authentication and communication?**

The Panel is concerned that, once consumers have allowed access to their data by a third party, they will no longer be in control of how it is used. It is unclear how consumers will revoke their consent to third party providers (TPPs). HM Treasury should consider whether people who give consent on an indefinite basis should be required to renew this consent periodically.

There should be greater regulatory co-ordination of the data consent issues that will affect every consumer. There is a risk to consumers from different regulators having responsibility for different aspects of the relationship between providers and consumers.

In future, people unwilling, or unable, to share their data may be denied access to certain products and services. The right to withhold personal data without discrimination is a matter of public policy, and needs to be tackled sooner rather than later.

**Question 18: Do you agree with the information and payment functionality that will be available to AISPs and PISPs?**

Yes

**Question 19: Do you agree with the government's interpretation of the definition of AIS and PIS?**

We are concerned that, unless the FCA is given rule-making powers equivalent to those under FSMA, it will have very little flexibility to act on poor practices such as conflicts of interest arising from commission-based business models, or other unfair commercial practices.

We are aware that PSD II may ban screen scraping. However, this continues to be a legitimate tool for products not covered by PSDII. AISPs that provide a full personal management platform including a pension view, for instance, will be using a mix of APIs for payments account data and screen scraping for the pension, mortgage, etc to provide the overview.

Payments APIs attract security and regulatory requirements via PSD II that screen-scraping does not. There is potential for a regulatory gap if aggregators that use data from PSD II regulated products are regulated in one way but aggregators that screen-scrape non-PSD II data may remain unauthorised and unregulated.

Consumers may experience different levels of protection depending on whether the products on their personal financial management platform are captured by regulation or not. This is important for access to redress, for example, which should not depend on the technology used.

The consultation notes that ASPSPs are expected to provide to a PISP the same functionality that is available to the user when accessing their payment account online directly with the ASPSP. Since credit cards accounts are payment accounts, we seek clarity on how these types of payment will be treated for the purposes of charges and transaction costs imposed by credit card companies. For instance, will they be treated as 'cash advances', 'money transfers' or normal payment for goods and services.

**Question 21: Do you agree with this description of the rights and obligations for ASPSPs, AISPs and PISPs?**

The obligation for the bank to compensate the customer, and the third party to in turn compensate the bank is a potential minefield, not least due to lack of clarity on enforcement mechanisms.

It remains unclear what happens to liability when TPPs start sharing information, potentially taking the banks out of the equation. If one TPP relies on another for information about spending patterns and the TPP has got the spending patterns wrong, for example, or if an IFA relies on aggregator data for spending patterns to help assess suitability, who will be liable if this leads to poor consumer outcomes?

Yours faithfully

Sue Lewis  
Chair, Financial Services Consumer Panel