HM Treasury

Setting the strategy for UK payments

A Response by Credit Action

Background

Credit Action is a national financial capability charity (registered Charity in England & Wales No. 1106941) established in 1994.

Credit Action empowers people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives. It develops and delivers products and services which provide education, information and advice on money matters, in an appropriate way for young people and adults. Through its work Credit Action reaches over 500,000 UK citizens every year.

Introduction

As an organisation which works extensively with both young people and adults to help them manage money effectively, Credit Action takes a keen interest in all issues which affect consumers' ability to engage with their finances. As the controversy over the abolition of cheques starkly illustrated, decisions made by the UK Payments Council can have an enormous impact in this regard, and the structure of the UK payments regime is therefore an issue which has considerable significance for consumers. We therefore welcome the opportunity to contribute to the Treasury's consultation on *Setting the strategy for UK payments*.

Question 1

Do you agree that the creation of a Payments Strategy Board: should be the lead option for reform; provides the appropriate balance between Government intervention, impact and cost; and effectively tackles the issues the Government has set out?

Of the three options for reform of the payments regime put forward in the consultation, we believe that the creation of the Payments Strategy Board (Option 2) provides the most suitable way forward, and therefore agree that this should be the lead option for reform. We support the view that recent events have demonstrated a need to move beyond the existing model of self-regulation, and believe that the proposals for a Payments Strategy Board offer advantages which the other options put forward in the consultation do not.

Initially, we would argue that Option 1, which focuses on enhancing the current regime but maintains its self-regulatory approach, is unlikely to deliver change on the scale necessary to address many of the problems which are present in the current system, particularly from the perspective of consumer engagement. We are supportive of a number of the reforms proposed in Option 1, notably the development of the current "user forums" into User Councils (paragraphs 5.8 – 5.10) and the possibility of introducing a stronger consumer voice on the Payments Council's board (paragraph 5.7), and believe that they should be implemented even if Option 2 is ultimately selected but the Payments Council retained to represent the industry (as suggested in paragraphs 5.37 and 5.38). However, we feel that it would be something of a missed opportunity if the prospect of broader and more far-reaching reform embodied in Options 2 and 3, which could potentially deliver additional benefits to consumers, was dismissed. Moreover, we note that the consultation raises questions over how the Payments Council will continue to be funded on a sustainable long-term basis if the current self-regulatory model were to continue, but its board composition adjusted (paragraph 5.11). We are unsure if there is an easy solution to this problem if Option 1 were to be chosen, and recognise that under any self-regulatory model, drawing funding from industry members themselves has the potential to create a conflict of interest.

Consequently, we feel that Options 2 and 3 are the only ones proposed in the consultation that are genuinely viable. In this context, Option 2 is our preferred choice. In addition to the fact this is more feasible from a cost and resource perspective, as outlined in the consultation, in our view a key factor is that the proposed Payments Strategy Board (PSB) would appear to be integrated to a much greater degree with the new Financial Conduct Authority (FCA) than would be the case with an entirely new payments regulator on the "Paycom" model. As financial regulation in the UK is about to undergo hugely significant changes, we feel that it is crucial that the new payments regime should be aligned with this as far as possible. We therefore see the PSB as a particularly appealing option, given that the FCA will be deeply involved in setting up, overseeing and making appointments to the PSB. By contrast, the creation of a brand new regulator has the potential to add an additional level of complexity to the UK's regulatory structure, for both firms and consumers, at a time when its fundamental architecture is already being drastically reformed. Furthermore, the proposal to fund the PSB through an FCA levy would appear to offer a straightforward solution to the problem of providing sustainable, long-term funding for payments regulation in a way that avoids conflict of interest.

Overall therefore, we agree that Option 2, should be the selected as the lead option for reform, and is likely to provide the best balance between Government intervention, impact and cost. If it operates effectively, we feel the PSB does have the potential to tackle many of the issues set out by the Government in the consultation. Implementation will obviously be crucial to this, and we will therefore move on to answering Question 3, which addresses these issues directly.

Question 3

a) Do you agree with the proposed remit for a new Payments Strategy Board?

We believe that the proposed remit for the PSB (as set out in paragraph 5.24) is broadly correct, and directly addresses three of the Government's four aims for the payments regime set out in paragraph 4.1.

From our perspective, one of the key outcomes of the shift to the PSB should be increased levels of consumer engagement (which in our view would help avoid the sort of difficulties caused by the proposals to abolish cheques), and we are therefore keen that this should be reflected in the PSB's remit. We recognise that this is largely covered by the second point, to "encourage the payments network to operate for the benefit of all users", but wonder whether there is perhaps merit in explicitly stating that consumers are included in the scope of this provision (for example, by re-writing the second point to read "encourage the payments network to operate for the benefit of all users, including consumers").

The other point we would make concerns the PSB's contribution to the stability, reliability and efficiency of payments systems. This is the only one of the Government's four aims for the UK's payments network which is not directly referenced in the PSB's proposed remit. While we recognise that this is primarily an issue for the Bank of England as outlined in paragraph 4.17, and that the PSB will be expected to consult the Bank when formulating its recommendations (as discussed in paragraph 5.39), we also question whether there may be some value in including a specific reference to the stability of the payments system within the PSB's remit. This could either be in the form of an additional point in paragraph 5.24, or alternatively as a "have regard" specifying that the PSB must give due consideration to the integrity of the payments system when formulating its recommendations. In our view, this may be helpful in providing clarity within the PSB's remit, and therefore within legislation, about the nature of the PSB's obligations towards the overall stability of the system.

b) Do you agree that the Payments Strategy Board should make recommendations to the payments industry, rather than requiring action? If you consider mandated action to be appropriate, please set out how such a measure could work most effectively?

We recognise the Government's concerns around giving the PSB the power to mandate action by making binding rulings, and agree with the viewpoint put forward in paragraph 5.27 that the industry itself represents the primary source of expertise on payments costing and development. Ultimately, if the relationship between the PSB and industry is managed constructively on both sides, a system based on recommendations rather than binding rulings will probably be sufficient to ensure that payments strategy is set in an effective and informed manner. Clearly, a situation in which the PSB dictated terms to the industry with little regard to the feasibility or wider impact of its demands would be an unproductive one, and something all parties should be keen to avoid.

That said, we feel it is worth at least raising the question of whether some form of "last resort" mechanism may be necessary, in case a situation arose where the PSB and payments industry were fundamentally at loggerheads on a particular issue. While it would obviously be hoped that there would never need to be utilise such a mechanism, there is always a possibility that a reform which the PSB judged to be essential to the fair and efficient operation of the payments system could effectively be blocked by the industry. In such circumstances, the capacity to issue some form of binding ruling could potentially be valuable, although safeguards would obviously need to be put in place to ensure this was not a power that could be used indiscriminately. For example, it could be made clear that such a "last resort" mechanism could only be employed if negotiation on the issue had fundamentally broken down, and the PSB could demonstrate that a failure to implement the recommendation in question posed a serious risk to end-users, perhaps complete with a relevant cost-benefit analysis. Furthermore, requiring an appropriate body (maybe the FCA or the Treasury) to sanction the use of a binding ruling may also help ensure such powers were only utilised when absolutely in the public interest.

c) Do you agree that the Payments Strategy Board should include senior industry representatives, non industry representatives and independents? What do you consider to be the right composition of the Board?

The composition of the PSB will obviously play a crucial part in determining its success, and will largely define its ability to effectively represent the payments system's various stakeholders. We note that Government's intention is for the PSB to include a mixture of senior industry representatives, non-industry representatives (including consumer representatives), and independent directors, as well as prospectively non-voting observers from the Bank of England and FCA.

In our view, the key issue with regard to the composition of the Board is that it should feature a robust voice for consumers, and include members who can provide a strong consumer perspective on payments strategy and ensure that this informs the decision-making of the PSB as a whole. We would therefore hope that the PSB would always include an appropriate number of Board members who have strong consumer credentials and successful track records of consumer advocacy. Ideally, such a consumer presence would be sufficiently strong to balance other interests represented on the PSB, such as the industry itself, to ensure a rounded debate can take place.

d) Should the Payments Strategy Board have a formal information gathering power? If yes, what information should be covered by such a power, and what should an appropriate enforcement mechanism be?

As outlined in paragraphs 5.32 – 5.34, the amount of information that the PSB is able to gather will define, to a significant extent, the level of detail it will be able to go into in its recommendations. Less detailed recommendations may only enable the PSB to provide an "initial steer" to the industry, while more detailed recommendations put the PSB in a position to drive developments in payments to a greater degree.

In our opinion, the PSB should ideally be empowered to issue more detailed recommendations – if it was unable to go beyond providing an "initial steer", we feel its supposedly central role in strategy setting may be undermined. On these grounds, we believe that granting the PSB a formal information gathering power is probably warranted, and will help it fulfil the mandate intended for it in the consultation.

If the PSB can make a reasoned case outlining why it requires a specific piece of information in order to make a sufficiently detailed recommendation, our view is that it should be able to use its formal information gathering powers to access to this. However, we recognise that there are broader issues concerning the commercial sensitivity of the information that the PSB may be able to gather in this way, particularly given that industry representatives on the Board could potentially see material relating to the performance of rival firms. Consequently, it is important that such powers are not used indiscriminately. In order to ensure this, it would seem sensible to require the PSB to justify why use of its information gathering power was needed on a case-by-case basis, prospectively through a formal process. Additional safeguards, such as requirements that Board members treat any material attained through the PSB's formal information gathering power with an appropriate level of confidentiality, would also seem suitable in this context.

We would hope that, if sufficient safeguards were put in place which commanded confidence from the industry, firms would be responsive to a request made by the PSB through its formal information gathering power. However, we realise that there will always be a possibility that a firm may refuse to surrender the material requested, and that consequently some form of enforcement mechanism needs to be in place, even if ideally this is never used. Giving the PSB the capacity to publicly rebuke a firm which failed to respond to a request made under the information gathering power is one type of sanction that could potentially be employed. Beyond this, we also wonder if it is worth exploring whether sanctions for such behaviour could somehow be built into the FCA's formal sanctioning regime – given that the FCA will play a central role in overseeing and funding the PSB, it might make sense to extend this link to enforcement if this is feasible.

e) Do you agree that the Payments Strategy Board should be funded by an FCA levy on the payments industry?

As outlined in our response to Question 1, we do feel it is appropriate for the PSB to be funded through an FCA levy. While this will mean that a financial burden is placed on the industry, we believe that the funding arrangement proposed in Option 2 is preferable to that proposed in Option 1 (which we feel could potentially create a conflict of interest, particularly within a self-regulatory model, as previously discussed). We would also expect the burden placed on industry under Option 2 to be less than that imposed under Option 3, in which an entirely new body will be created and funded using a licensing structure.

Ultimately therefore, we feel that the funding arrangements proposed under Option 2 probably strike the most suitable balance. Indeed, in our view it is appropriate to expect the payments industry to fund the regulatory body, but the use of an FCA levy to do so means its support is effectively indirect (in that contributions are paid by the industry to the FCA and in turn from the FCA to the PSB), which thereby avoids the conflict of interest problem.

f) Should the FCA have any further controls over the Payments Strategy Board?

Without seeing more detailed proposals for the PSB, we feel it is difficult to make firm judgements on whether any additional controls are required. At this stage, we would simply reiterate our belief that a close relationship between the FCA and the PSB is very much desirable, and that we believe that the FCA's proposed role in setting up, overseeing and funding the PSB will hopefully ensure the PSB is well aligned with the UK's new regulatory regime.

Contact

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