

## **Payment Systems Regulator Panel Annual Report 2018-19**

### **Chairman's Foreword**

This has been the Panel's fourth full year since its inauguration in early 2015, and also my fourth full year as Chair. It has been a period of quite exceptionally rapid change for the payments sector – both in terms of internal governance and operations following the Payments Strategy Forum's work in 2017, and in terms of the external environment. As well as the obvious uncertainties faced by payments providers and users as a result of the Brexit vote, we are also seeing continuing major developments in technology and in the economics of the industry. At the same time, 'Business as Usual' continues to provide plenty of key challenges, from maintaining the integrity of existing infrastructure to ensuring that mechanisms to combat fraud are up to date and fully effective.

These factors taken together mean that the need for well-informed, thoughtful and independent input into the process of payments regulation has never been greater. The Panel's role is to act as 'critical friend' to the PSR with equal emphasis on both halves of the phrase – 'critical' because it is our role to stand ready to criticise the regulator for its actions or inactions; and 'friend' because to do our job effectively it is important to understand the context in which the PSR operates and for the relationship between us to be based on trust and confidence.

As ever, the Panel's effectiveness depends heavily on the experience and expertise our members bring to the table, and we are fortunate to be able to draw on a very wide range of backgrounds, both from payments providers and from user interests. More details of the Panel's current membership are on page seven of this report. Although most members also have a 'day job' it is understood that they are appointed in a personal capacity and are expected to give considered independent advice rather than a set corporate view. We were pleased to welcome Matthew Hunt as COO of Pay.UK and Mark O'Keefe as an independent expert in payments issues in July 2018, and Jo Oxley in February 2019 as Head of the Government Banking Service, replacing Brendan Peilow. We continue to monitor membership of the Panel to ensure that it is representative of the payments landscape as a whole, covering the concerns of all who participate in the industry or are impacted by it. But the general quality of contributions from our existing members is high, and I am very grateful to all my colleagues for helping to maximise the Panel's ability to add value to the PSR's work.

You can read more about the specific topics the Panel has covered on pages four to six of this report. Major concerns during the year have included the development of an effective policy response to Authorised Push Payment (APP) scams following the Which? Super-complaint under the Enterprise Act; the rapid decline of cash transactions and the implications this trend has for the economics of cash supply and use, in the light of the report commissioned by LINK from Natalie Ceeney; and the competitiveness of the cards market, where some members have long expressed deep concerns about the value for money and choices available to merchants, especially small businesses.

At the same time as dealing with specific issues of this kind, the Panel has articulated three overarching concerns in its advice to the PSR Board. One is that any PSR initiatives need to take full account of the resources – of existing infrastructure, expertise and knowledge as well as money – that are available to the industry. These are critical for the effective running of 'business as usual' as well as taking on new projects. A second is the need for effective communication in all directions – from the PSR to stakeholders, from stakeholders to the PSR and between the PSR and other public bodies. Brexit developments have been a key case in point here, as the ongoing negotiations are having (and will continue to have) a major impact on virtually all of the PSR's stakeholders, and are increasing the risks they face. This is a major contextual factor that risks affecting the PSR's ability to fulfil its remit, even though the core issues themselves are not within the PSR's direct control. Third, it has become increasingly clear – not least from topics such as APP scams and Access to Cash – that the PSR is not alone in the regulatory landscape, and it needs to continue to develop clear lines of responsibility and communication with other bodies – including the Information Commissioner's Office and Competition and Markets Authority as well as the Financial Conduct Authority and the Bank of England.

None of the Panel's work would be possible without the support we have received from PSR staff and from the independent Secretariat. On the staff side, we have been particularly grateful for the work of Matthew Cherry, Interim Director of Policy, and his colleagues; we welcome Matthew's permanent successor Chris Hemsley, and look forward to working with him. Chris and his colleague Louise Buckley have been appointed as joint interim Managing Directors of the regulator following Hannah Nixon's departure – we offer Hannah our good wishes and thanks for all she has done for the Panel over the years we have been in existence. On the secretariat side, we have continued to enjoy excellent support from Allyson Milano, Heather Kempton and colleagues – our thanks to them too.

Stephen Locke. Panel Chair

Chairman, Payment Systems Regulator Panel

## **Introduction**

The PSR Panel is established by statute as an independent body to the PSR. Its role is to contribute towards the effective development of the PSR's strategy and policy, in particular by offering advice to the PSR Board by providing early input to PSR staff on the regulator's work, and by identifying issues it thinks the PSR should be investigating.

The Panel has a diverse membership drawn from across a wide range of payment user and payment provider interests. It brings in different constituencies of service users, including those representing individual consumers, large and small corporate customers, and the Government (as a user of payment services); and on the provider side, it includes senior experts from payment systems operators, banks, credit card services and technology providers.

The Panel has four main meetings a year, which are complemented by a number of more ad hoc workshops. The main meetings tend to focus on issues with a strategic cross-sectoral impact, and each meeting is followed by a report from the Chair providing advice and feedback directly to the PSR Board. The Panel's workshops tend to focus on a specific issue or project, and are more informal - providing an opportunity for Panel members to work closely with PSR staff in exploring evidence and ideas in more detail than a formal Panel meeting would allow.

The Panel's overall aim is to add value to the PSR's work by bringing a perspective that draws in-depth on the experiences and concerns of all categories of users and providers across the payments landscape. It also provides a forum for the regulator to test out ideas and propositions that are still on the drawing board. Key themes that the Panel has highlighted in the last year include the need for the PSR to factor into its strategy the extent and pace of change in the regulatory landscape and its implications for resourcing and availability of expertise both among payment providers and the wider community; to maintain the resilience of, and confidence in, payment systems at a time of rapid change; the need for the PSR to strengthen its understanding of the wider impact of Brexit uncertainties faced by payments industry participants, and the resulting limits to 'bandwidth' for coping with other developments; the need for the PSR to ensure that consistent and clear messages are given across the entire user spectrum as innovations take hold; the continued need to future-proof investment in payment systems so that it can be adapted to evolving user requirements and changes in technology; and the need to ensure that rapid change does not leave some user groups – particularly disadvantaged consumers and small businesses – struggling in its wake.

## **Engagement with the PSR Board and Executive**

The Panel attaches great importance to maintaining an open line of communication with the PSR Board, Chief Executive, Executive Committee and staff and Executive Committee – not just through exchanges of papers and formal written reports but also through face to face contact. For this reason, it has continued to welcome Board members and senior PSR staff to join Panel meetings as guests to observe Panel exchanges directly and engage in detailed discussions where appropriate.

One important focus during the year was the Panel's participation in the PSR Board's strategic review of risks and priorities likely to influence the payments agenda for the next few years. Starting with an informal discussion at a workshop meeting, the Panel submitted its views on the key issues that it believed should be brought to the Board's attention. The Panel's perspective was based on the payments sector as a whole, drawing on the wide-ranging backgrounds of the stakeholders that sit on the Panel. There were risks highlighted that arose both from factors within the PSR's remit and those external to it, but likely to have a bearing on the regulator's work. This initiative, in addition to other discussions with the Managing Director and PSR staff, allowed the Panel to provide high level input into the direction of the PSR's work programme and strategy.

On a working level, the Panel has made a priority of encouraging PSR staff to make full use of the Panel, both by seeking collective Panel input at an early stage in policy development, and by tapping into the expertise and experience available from individual members. In November 2018, Panel members held an interactive engagement session open to all PSR staff, to discuss key topics and issues, and to explore how the Panel might best add value to the PSR's policy thinking.

## **Priority Issues for the Panel**

As the PSR's role continues to develop in the fast-moving payments landscape, the Panel has identified a number of risks and concerns throughout the year, including those which may be beyond the PSR's remit but which could have significant impact on the industry it regulates. It has continued to work with the PSR to support the continuing evolution of the regulator's strategy, and to advise on how the Panel's concerns may impact key policy developments. In particular, during the year it highlighted the risks and uncertainties for the payments industry of the UK's withdrawal from the EU, and urged the PSR to ensure that these were factored effectively into the regulator's work – even where they did not fall directly within its remit. It has also continued to encourage the PSR set out its longer-term vision for payments and what a world-class payments system of the future would look like – bearing in mind the scale and longer-term horizons of much payments industry investment.

In the shorter term, the Panel's main message to the PSR has been to highlight limits to the capacity of both industry and consumers to manage the pace and extent of change affecting the payments sector. Whilst there is a genuine desire from Government, regulators and industry to achieve continuous improvements in payments for society, there is a tension between delivering innovation in the public interest and managing business as usual against a constantly evolving business environment. The Panel has strongly encouraged the PSR to ensure that its change programme is effectively stress tested, and to recognise the potential downside for the customer experience as new initiatives are taken. It is in the interests of all stakeholders to ensure the balance is right between effecting change and maintaining a resilient payments infrastructure that continues to demand public confidence.

### **Authorised Push Payment (APP) Scams**

Discussions on how to tackle APP scams continued last year, in the light of the Which? Super-complaint, and the Panel has welcomed the progress made by the PSR in working though some complex and challenging issues. Most recently, discussion has focused on the merits of a voluntary versus a mandatory code. The Panel recognises the potential advantages of a voluntary code (especially in terms of speed and flexibility) and was encouraged that the major PSPs have signed up. But it is concerned about the impact of gaps in coverage on the credibility of the scheme as a whole, and on consumer confidence generally. Whilst recognising the limits to the PSR's powers to regulate in this area, it encouraged the PSR to use its influence to increase take-up and compliance with the voluntary Code, for example by identifying actions that would be taken if coverage was significantly incomplete.

In discussions on Confirmation of Payee, the Panel recognised the many benefits it would bring but cautioned that it could play only a limited role in mitigating APP scams, warning that it could be manipulated to convince customers that a transaction was genuine. If Confirmation of Payee was relied on too extensively and so reduced the incentive for those involves to take reasonable precautions, it might even have a perverse effect. In the longer term, education of all the parties involved is key to avoiding scams - but the Panel recognises that this is a broader issue that extends beyond the financial regulators and the sectors they cover.

The Panel has also highlighted how the handling of APP scams raises the danger of consumers getting mixed messages about when and how to share data safely. With the introduction of customer authentication rules, confirmation of payee and open banking, consumers are encouraged to share their data, in part to help prevent fraud; however, this risks confusion with some of the much more restrictive messages about preventing APP scams. The Panel encouraged the PSR to continue to work with other regulators where possible, and with industry and consumer groups, to set clear expectations for the delivery of messages of all kinds on the basis of clear and consistent language for the whole of the market.

## **Access to Cash and the Ceeney Review**

The Panel met with Natalie Ceeney to discuss her review and the implications of her recommendations for the PSR, and also engaged with the PSR on its next steps. The Panel welcomed the initiative by LINK in commissioning the report, and endorsed the concerns raised especially given the risks of disadvantaged consumers and small businesses being left behind as the use of cash declines and the economics of cash supply becomes strained. The Panel stressed the need for close collaboration between the various interested parties but did not endorse calls for a separate cash regulator, given the risk of overlap with the existing regulators.

The Panel agreed that the PSR's aim should be about ensuring that the system as a whole meets payment users' needs – both for making payments and for accepting and banking the proceeds. This is much more important than protecting any single mechanism. The Panel urged that the PSR should look beyond its formal regulatory remit, by getting all the interested parties to identify the facilities and networks required to meet the full range of possible requirements. These are likely to involve cash in the short term, but in the longer term, the issues may be very different as technology and user needs change.

The Panel has also been engaged on the risks of moving to a fully cashless system, but agrees with the analysis in the Ceeney report that this scenario is unlikely in the short to medium term.

## **Needs of smaller businesses**

The Panel has been concerned for some time that the complex and varied needs of smaller businesses in the payments landscape have not had the priority they deserve. It has continued to work with the PSR to identify and develop a deeper understanding of these needs, including the most significant challenges for smaller business users and the possible scope for PSR action.

Smaller businesses have three main needs from payment systems – their ability to pay, to be paid, and to account for payments. The majority of issues smaller businesses face centre on the costs of accepting cards, the risks and challenges of dealing with and depositing cash, and their ability to compete with bigger firms. Smaller businesses often lack internal expertise and resource to manage payments as a distinct activity, and as a result have limited knowledge of the best way to make or receive payments for their business, and the difference between various payment methods. It is even more difficult for many smaller businesses to keep up when the landscape is changing fast.

The Panel welcomed the PSR's response and its emphasis on actively factoring in the needs of smaller businesses as a strand throughout all of its work, rather than isolating this area as a separate project. It has encouraged the PSR to recognise the great diversity of smaller firms and to understand in detail how their needs vary.

## **Cards**

Over the last two years, the Panel has pressed hard to move this key topic up the PSR's agenda. There are differing perspectives within the Panel, but many members welcomed the PSR's cards market review and were supportive of the PSR's proposed approach in taking this forward. This is an area where many Panel members feel the PSR has the potential to make a real difference, especially for smaller businesses. The Panel emphasised the need for the PSR to look holistically at the cards market before reaching any conclusions, especially given the complexities and fast changing nature of this market.

One specific concern raised by some Panel members has been the challenges faced by businesses, especially smaller businesses, in seeking to switch acquirers. Key barriers identified include the cost of upgrading, and buying or renting card acceptance terminals. Another barrier to switching that causes concern is the way merchants are effectively tied in to point of sale terminals, which are not interoperable and which often make the costs of moving greater than the saving from getting a better deal. One idea Panel members have put forward is development of a process for merchants similar to the current account switching service.

**Appendix 1 - Members of the PSR Panel between April 2018 – March 2019**

|  |   |
|--|---|
| <b>Stephen Locke</b><br><i>(Chairman)</i>          | Independent Adviser   |
| <b>Mike Agate</b>                                  | Federation of Small Businesses  |
| <b>Ahmed Badr</b>                                  | Head of Legal, GoCardless   |
| <b>Mark Barnett</b>                                | President, Mastercard UK and Ireland  |
| <b>David Brooks</b>                                | Head of Finance Operations, Sainsburys  |
| <b>Andrea Dunlop</b>                               | Divisional CEO, Paysafe   |
| <b>David Gaselee</b>                               | Director of Transaction Product Management, Barclays Corporate Bank                           |
| <b>Flora Hamilton</b>                              | Head of Financial Services, CBI   |
| <b>Andrew Hewitt</b>                               | Director of Payment and Data Solutions, FIS   |
| <b>John Howells</b>                                | CEO, LINK Scheme  |
| <b>Cate Kemp</b>                                   | Global Transaction Director, Lloyds Bank  |
| <b>Conor Langford</b>                              | Director of Strategic Accounts, Visa  |
| <b>Jana Mackintosh</b>                             | Head of Public Policy and Regulatory Affairs, WorldPay  |
| <b>Pamela Meadows</b>                              | Financial Services Consumer Panel member  |
| <b>Paul Rodgers</b>                                | Chair and Founder, Vendorcom  |
| <b>Paul Thomalla</b>                               | Senior Vice President, Global Corporate Relationships and Business Development, ACI Worldwide |
| <b>Sian Williams</b>                               | Head of National Services, Toynbee Hall   |
| <b>Matthew Hunt</b><br><i>(joined July 2018)</i>   | Chief Operating Officer, Executive Director, PAY.UK   |
| <b>Mark O'Keefe</b><br><i>(joined July 2018)</i>   | Founding Director, Optima Consultancy   |
| <b>Jo Oxley</b><br><i>(joined Feb 2019)</i>        | Director, Government Banking Service  |
| <b>Brendan Peilow</b><br><i>(until Nov 2018)</i>   | Executive Leadership Team, Banking Competition Remedies                                       |
| <b>Craig Tillotson</b><br><i>(until June 2018)</i> | CEO, Faster Payments  |

## **Appendix 2 - Payment Systems Regulator Panel Terms of Reference**

1. The Payment Systems Regulator Panel ('the Panel') is established by the Payment Systems Regulator ('PSR') under the Financial Services (Banking Reform) Act 2013. The Panel represents the interests of participants in regulated payment systems and those who use, or are likely to use, services provided by regulated payment systems.

### **Scope**

2. The Panel makes representations to the PSR on the extent to which its general policies and practices are consistent with its general duties, and how its payment systems objectives may best be achieved, as required under the Financial Services (Banking Reform) Act 2013. See Appendix 1 for the general duties.
3. In considering the PSR's work, the Panel will focus on the PSR's objectives of promoting effective competition, promoting development and innovation and ensuring that payment systems are operated and developed in the interest of all those who use payment systems. The Panel will also have regard to the regulatory principles as attached in Annex 2.
4. The Panel's views are independent of the PSR. It does not carry out responsibilities on behalf of the PSR, but provides input and advice on development of PSR activities.

### **The Panel's Duties**

5. The Panel will:
  1. Meet regularly (usually between four and six times a year) and be available at other times to be consulted by the PSR on specific high-level issues.
  2. Identify key issues which the Panel thinks the PSR should be considering when the PSR presents proposals to the Panel for consideration.
  3. Be proactive in bringing to the attention of the PSR, new or additional issues to be considered or research to be carried out by the PSR to assist the PSR in fulfilling its objectives.
  4. Maintain the confidentiality of information provided to the Panel when indicated by the PSR.
6. In fulfilling these duties, the Panel may:
  1. Request access to all information from the PSR which it reasonably requires to carry out its work. This will generally not include confidential information about specific regulated firms, individuals or markets.
  2. Have access to and engage regularly with the PSR Chairman, Board, Managing Director and senior executives of the PSR.

### **Membership**

7. The PSR Board appoints Panel members, with HM Treasury's approval required for the appointment or dismissal of the Chair. Members will normally be appointed for a two or three year term, and will usually serve a maximum of two three-year terms.

8. The PSR will appoint to the Panel such persons representing participants in regulated payment systems and those who use, or are likely to use, services provided by regulated payment systems.
9. Members are appointed in an individual capacity on the basis of their experience and current role, and not as representatives of specific constituencies or organisations. They are expected to understand the general viewpoint of their sector and be able to contribute constructively in Panel discussions towards the development of the PSR's strategic thinking from that perspective. There is no express requirement on Panel members to consult with colleagues or related organisations on the issues discussed by the Panel, although they are free to do so (subject to confidentiality) if they wish to. Nor is the business of the Panel a substitute for formal public consultation processes by the Payment Systems Regulator with the sector or interests concerned. It may from time to time be appropriate for Panel members to discuss the general issues on Panel agendas on an informal basis, as a means of enhancing members' input to the Panel. But Members will also be required to respect the requirements of confidentiality: to enable the Panel to function effectively and provide early input to PSR policy development and other decisions, Panel members will often not be able to share the details of discussions which take place with those outside the Panel and PSR. Any such confidentiality requirements will be clearly flagged by the Secretariat.

### **PSR and Financial Conduct Authority Duties**

10. Under the Financial Services (Banking Reform) Act 2013, the PSR must consider representations made to it by the Panel, and must from time to time publish in such a manner as it thinks fit, responses to the representations.
11. The PSR will provide the Panel with early access to appropriate information in order for the Panel to fulfil its duties and will ensure secretariat support is provided to the Panel to enable it to operate effectively.
12. The PSR Board will consider any proposals from the Panel for additional funding for specific projects (including research) which the Panel considers necessary in order for it to fulfil its duties under these terms of reference.

### **Accountability**

13. The Panel will publish an annual report on its work, which will be presented to the PSR Board.