

CP17/1 Annex 3

Direct Debit Facilities Management: Switching providers

Annex 3: Letter from GoCardless

August 2017

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Copy via email to: Paul Smith & Ian Ellis

30 March 2017

Dear Paul

REQUEST FOR ACTION: DIRECT DEBIT SERVICE-USERS BEING PREVENTED FROM SWITCHING PROVIDER, RESULTING IN INCREASED COST, REDUCED COMPETITION AND STIFLED INNOVATION

1. We write further to our letter to you of 12 February 2016 (the "**February Letter**"), in which we set our request for an investigation by the Payment Systems Regulator (the "**PSR**") into the operation of the Direct Debit scheme in the UK.

Background on the Issue

2. As set out in the February Letter, our concern was that the Bacs Payment Schemes Limited ("**Bacs**") Direct Debit scheme was being administered and documented in such a way that incumbent Direct Debit providers were able to abuse a loophole to restrict the ability of their service-users to switch Direct Debit providers. As a result, those providers were preventing free-market competition based on innovation and instead, damaging those service-users (the "**Issue**").

Recent developments and actions by Bacs

3. Since the Request letter, we have met with Bacs and the PSR a number of times, in order to present our view on, and to work towards resolution of the the Issue. In addition, Bacs has undertaken a number of actions aimed at understanding and solving the Issue, including meeting with Facilities Management ("**FM**") providers, and sending out a survey aimed at understanding how the Direct Debit bulk change process is used (a copy of the survey as recorded by GoCardless is included at Appendix 1).
4. Bacs' summary of their findings, and proposed next steps are set out in their email of 20 February 2017 and related attachment (the "**Output**"), copies of which are included at Appendix 2.
5. We believe there have been a number of beneficial outcomes of Bacs' steps. In particular, Bacs' greater engagement with FM providers, and an acknowledgement that Direct Debit documentation and processes could generally be improved to represent the variety of ways in which the Direct Debit infrastructure is being used (of which, FM is just one). Improved guidance and public-facing documentation for FM is likely to improve service-user awareness and understanding of FM generally.
6. However, despite these positive steps, we do not feel that Bacs' actions have addressed the Issue. The Output includes two very general comments as to the content of some future guidance documentation on the FM provider switching process, and appears to suggest that Bacs believe the Issue can be dealt with by further, non-binding guidance (the "**Reminders**"):

"A reminder that FM Providers should not unreasonably prevent a Client from switching FM Provider, indeed that the ceding FM Provider should assist with a switch

A reminder of the regulatory interest and competition concerns"

7. Further, in the Output, Bacs specifically state why they will not be introducing a rule change to address the Issue (the “**No Rule Rationale**”):

“[Bacs] recommend that specific rules to underpin the switching of FM Clients are not introduced, primarily for the following reasons:

([A]) The Bulk Change process only supports AUDDIS switches

([B]) The Bulk Change process supports a number of different change types and which one will be used is likely to vary depending individual circumstances and therefore it would not be appropriate to dictate which approach should be used

([C]) Using the Bulk Change process may generate risk for the acquiring FM Provider that they are not willing or able to take on

([D]) There may be underlying contracts between the Client and the FM Provider that fall outside of the scope of the Direct Debit Scheme”

8. The remainder of the Output appears to reflect a wider, but less specific review of FM, while not taking any concrete action to address the Issue.

GoCardless’ view on the Output, and further evidence of the Issue

9. Since the February Letter, Bacs has engaged directly with FM providers, and has made it clear that this was done following conversations with the PSR. Therefore, the Issue has received substantial attention amongst FM providers, including those whom we mentioned in the February Letter.

10. However, GoCardless continues to experience the Issue. That is, outgoing FM providers refusing to sign a bulk change deed, with the result that service-users wishing to switch provider are forced to remain with the incumbent. This is typically independent of any contractual terms binding the service-user to that incumbent. The latest date GoCardless has been made aware of such a refusal is 27 March 2017, with multiple other instances since Bacs’ engagement on this issue began.

11. Therefore, we think it highly unlikely that the Reminders will have an impact - the FM providers are already aware of Bacs’, and indeed the PSR’s, focus on this topic and yet continue to take advantage of the loophole.

12. Further, the No Rule Rationale appears to be addressing an issue different to that which we raised in the February Letter and subsequent communications. In summary, we have suggested that whenever the bulk change process is requested by the service-user, unless there is a valid reason to not use that service (e.g. the mandates are not AUDDIS-based), then the FM provider should sign a bulk change deed at the appropriate point in the process (or the deed should be removed as a requirement) and not use their ability to refuse to sign such a document as a means of retaining a customer that would otherwise wish to change provider.

13. In reference to Bacs’ No Rule Rationale (as numbered in paragraph 7, above):

(A) We have not suggested that the AUDDIS bulk change process should *always* be used, but refer to situations where it is possible and requested by the service-user;

(B) As for our response to (A);

(C) the Issue relates to the incumbent FM providing refusing to sign the bulk change deed (despite this deed being entirely in the incumbent provider’s favour) - the incoming provider may refuse to take on a service-user for multiple reasons; however, we do not think this is a problem and is within the control of the incoming provider; and

(D) Finally, where there are underlying commercial agreements that might include, for example, a minimum term, we are not suggesting that it would be appropriate to breach the terms of such an agreement; however, in our experience, underlying commercial agreements are not the deciding factor in an incumbent provider refusing to sign a bulk change deed.

14. We accept that there may be a short list of valid reasons why the AUDDIS bulk change process may not be used. However, we believe that it would be possible to draft either a tight rule, or a tight list of exclusions to a rule, to resolve the Issue and to avoid any abuse of a loophole, or any unintended consequences.

Request for PSR to exercise their powers under Section 55 of the Financial Services (Banking Reform) Act 2013 (“FSBRA”)

15. As set out above, we do not think that the Output, nor the further steps Bacs has detailed are likely to solve the Issue. Furthermore, we do not agree that the No Rule Rationale provides a comprehensive explanation of why a rule change would not be an appropriate solution to the Issue.
16. In our view, and as set out in the February Letter, the Issue represents a threat to competition in the direct debit market, hampers innovation, and damages the end service-user.
17. Therefore, we request that the PSR considers utilising the powers granted to it under s.55 of FSBRA (“System Rules”) to require Bacs to change the Direct Debit Scheme Rules so as to address the Issue.
18. We are happy to assist the PSR and/or Bacs in formulating the required rule change, and/or to provide any further information necessary to enable the PSR to make a decision as to whether to exercise its powers.
19. We note that the Bacs Direct Debit Scheme Rules are typically updated annually, with the next refresh due at the end of 2017. However, given that we have been in discussion with Bacs on this topic since early 2016, we would suggest that an out-of-cycle change to the Rules is made if at all possible.

Available to discuss

20. We hope the detail set out in the February Letter, together with this letter, provides the PSR with enough information to make a decision to exercise its powers under s.55 of FSBRA.
21. For the avoidance of doubt, we have no objection to the PSR sharing a copy of this letter with Bacs should the PSR think that appropriate.
22. We are available to discuss or provide further information at any point, and should be grateful if you would provide us with a timely update on the PSR’s intended next steps.

Yours,

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GoCardless Ltd

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Appendix 1 - GoCardless communications with Bacs

1. As a Facilities Management (FM) provider is your organisation aware of the methods available to facilitate a change of FM client?
 - (a) Use of the bulk change process
 - (b) New FM provider / FM client to seek new DDIs from payers
2. Do you currently support your FM clients to change provider when they advise you they wish to switch?
3. Have you ever used the bulk change process to facilitate a change of provider for an FM client?
4. Do your contracts with your FM clients include any details about supporting them to change provider?
5. Please give more details
6. Has your organisation ever experienced difficulties when an FM client of another provider has wished to transfer to your organisation?
7. How many FM clients have transferred to your organisation from another FM provider in the last 12 months, and how were those transfers achieved?
8. How many FM clients have transferred from your organisation to another FM provider in the last 12 months, and how were those transfers achieved?
9. Have you ever experienced issues using the bulk change process to effect a change either when an FM client has joined your organisation or one has transferred to another provider?
9. Please give more details

Appendix 2 - GoCardless communications with Bacs

REDACTED