

Interchange Fee Regulation
(IFR) Guidance: EU withdrawal
consequential changes

Stakeholder submissions
to consultation CP21/5

September 2021

Contents

British Retail Consortium	3
HSBC	6
Paul Hastings (Europe) LLP	8
UK Finance	12
Visa	15

Names of individuals and information that may indirectly identify individuals have been redacted.

British Retail Consortium



BRC response to PSR consultation: CP21/5 - IFR Guidance: EU withdrawal consequential changes

May 2021

- 0.1 The British Retail Consortium (BRC) is the trade association for the retail industry – the UK’s largest employer – with a membership accounting for half of all UK retail by turnover. Our diverse industry spans large multiples, independents, high street, and out of town retailers, from online to bricks-and-mortar, selling goods across all sectors to increasingly discerning consumers.
- 0.2 All BRC members have an interest in the UK payment system as one of the chief end-users. In fact, along with consumers, retailers are the most significant other end-user group, processing more than 50 million transactions per day and around £394 billion per year for products & services sold in store, online, and over the phone. A high priority for the BRC is therefore to seek an innovative, transparent, and competitive payments market for all retail end-users and their customers.
- 0.3 The BRC understand that as a result of the UK withdrawal from the EU there are a number of consequential changes required to the PSR’s IFR Guidance, however the retail industry believes that the PSR should in fact be prioritising changes to mitigate against the adverse material impacts of EU withdrawal on end-users of the payment system.
- 0.4 Card fee increases announced since 1st January this year will levy at least a further £60 million in card costs on already beleaguered British retailers through a combination of both scheme fee and interchange fee increases made possible by Britain’s departure from the EU (CMSPI estimates, 2021).
- 0.5 Furthermore, the interchange fee increases announced by the card schemes this year follow a Supreme Court ruling last year that confirms Visa & Mastercard interchange fees are unlawful, creating a considerable anomaly that the PSR continue to allow such fees.
- 0.6 As a priority, ahead of CP21/5, the BRC believe that the PSR should be using its existing powers to abolish card interchange fees in the UK to bring regulation into line with the decisions of UK courts, in particular the 2020 Supreme Court judgment that Mastercard and Visa interchange fees are unlawful.
- 0.7 As a further priority, ahead of CP21/5, the BRC believe the PSR should be consulting on using its existing powers to bring scheme fees within scope of the UK IFR, to ensure the efficacy of the IFR.
- 0.8 Following successive scheme fee increases since the IFR at a cumulative cost of £2.3 billion to UK merchants (CMSPI estimates, 2021), average Merchant Service Charges are now higher in 2021 than pre-IFR in 2014, as a proportion of card turnover. The level of scheme fees must now be subject to “utility-style” economic regulation, with the range and complexity of scheme fees regulated also.
- 0.9 The BRC raised concerns to the PSR in 2017, with evidence, of surging card scheme fees – findings now confirmed, three years’ later, in the PSR’s Interim Report on the card-acquiring. The PSR subsequently promised to take “a look at the cards market” in its Annual Plan published in March 2018, with the Terms of Reference for the current Market Review published in January 2019 which, as the BRC said at the time, falls short of the scope required to deal with the problem. Indeed, the PSR’s Market Review marks the continuation of 30 years of UK and EU regulatory and competition law investigation into payment cards, first raised in BRC complaints to the EU in 1992.



0.10 The BRC are aware that the PSR will soon reveal its long-term PSR Strategy, and the thousands of British retailers that we represent are depending on this strategy to include meaningful measures to tackle already excessive and continually soaring card payment fees.

For further information

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HSBC

From: [REDACTED]
To: [IFRcompliance](#)
Cc: [REDACTED]
Subject: HSBC: CP21/5 - Interchange Fee Regulation (IFR) Guidance: EU withdrawal consequential changes
Date: 14 May 2021 08:01:40

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Good morning

On behalf of both **HSBC UK Bank plc** and **HSBC Bank plc** we have reviewed the proposed amendments to the Interchange Fee Regulation Guidance as detailed in the PSR consultation paper dated April 2021.

Our review has not identified any further relevant amendments to the Guidance and we do not have any comments regarding the proposed amendments.

As part of our review process we have liaised with UK Finance and are fully supportive of their submission and the proposed amendments.

Best Regards

[REDACTED]

[REDACTED]

Phone
Mobile
Email

[REDACTED]

[REDACTED]

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Paul Hastings (Europe) LLP

[REDACTED]

18 May 2021

IFR Compliance Monitoring Team
Payment Systems Regulator
12 Endeavour Square
London
E20 1JN

Dear Sirs

Re: Consultation Paper 21/5 – Interchange Fee Regulation (“IFR”) Guidance: EU withdrawal consequential changes – April 2021

- 1.1 We act for various participants in the payments ecosystem including merchants, authorised payment institutions, e-money institutions and card schemes.
- 1.2 In response to Question 2¹ of CP 21/5, we are writing to raise potential competition and customer detriment concerns that have arisen from the on-shoring of Regulation (EU) 2015/751 (“EU IFR”) into domestic legislation.
- 1.3 Due to the UK’s Temporary Permissions Regime (“TPR”), EU “located” payment service providers (“PSPs”), which provide acquiring services on a cross-border basis into the UK fall outside the scope of both the EU IFR and the UK IFR. This allows EU located PSPs to provide services into the UK without needing to comply with the fee caps in these Regulations and potentially charge higher fees to merchants. This anomaly, under which EU based PSPs effectively fall between stools when utilising the TPR will cause an uneven playing field in the UK market, which has the potential to raise competition issues as well as merchant and customer detriment.
- 1.4 We welcome the PSRs view of these issues. Moreover and in order to avoid potential detriment to UK located merchants and cardholders, we request that the PSR clarify that EU payment institutions operating in the UK under the temporary permissions regime on a cross border basis be treated as “located” in the UK for the purposes of the UK IFR.
- 1.5 We set out our position in further detail below.
- 2. SCOPE OF THE UK IFR**
- 2.1 The scope of Regulation (EU) 2015/751 (“EU IFR”) is set out in Article 1(1) as follows: “*This Regulation lays down uniform technical and business requirements for card-based payment transactions carried out within the Union, where both the payer’s payment service provider and the payee’s payment service provider are located therein*”.
- 2.2 Regulation 4 of the Interchange Fee (Amendment) (EU Exit) Regulations 2019 amends the scope of the EU IFR and substitutes the “United Kingdom” for “within the Union” and “in the United Kingdom” for “therein.”

¹ Question 2: Do you have any comments on our proposed amendments to the Guidance? If so, please set these out.

IFR Compliance Monitoring Team
18 May 2021
Page 2

- 2.3 The UK IFR applies where both the payer's payment service provider and the payee's payment service provider are "*located*" in the United Kingdom. The PSR proposes to reflect this in its guidance by stating as per paragraph 1.8(a) of the CP 21/5 that the UK IFR caps interchange fees on UK transactions where the point of sale, acquirer and card issuer are "*based in*" the UK.
- 2.4 However, reference to the term "*location*" in the UK IFR, which the PSR refers to as "*based in*" in CP 21/5, creates an uneven playing field when applied to the way in which different payment service providers are currently operating in the UK market post-Brexit. As explained below, this is due to the temporary permissions regime.

3. TEMPORARY PERMISSIONS REGIME ("TPR")

- 3.1 The TPR enables certain EEA firms that were passporting into the UK when the transition period ended to continue operating temporarily in the UK within the scope of their previous passport permission for a period of time after the end of the transition period. This is subject to the payment service provider having notified the FCA that they wanted to utilise the TPR before the end of the transition period.
- 3.2 We are aware that a number of EU licensed payment service providers are presently providing services to UK based merchants in reliance on the TPR. Typically, these services are provided on a cross-border basis into the UK without the EU based PSP carrying on any activities from a UK branch or other place of business.
- 3.3 Where such EU PSPs are providing cross-border services into the UK in reliance on the TPR, they are not regarded as being "*located*" or "*based*" in the UK for the purpose of UK IFR. Therefore, when acquiring payment transactions with UK merchants involving UK card issuers they are not within the scope of the UK IFR. Conversely, these providers are also not within the scope of the EU IFR for these transactions as the card issuer is "*located*" / "*based*" in the UK. As you will be aware, the interchange fee caps under the EU IFR only apply to transactions where both legs of the transaction take place within the territory of the EU. Cross-border transactions involving a UK card issuer will fall outside the EU IFR as the payer's PSP is located in the UK and not the EU.
- 3.4 This creates the potential for customer detriment as merchants that have their transactions acquired by such providers risk being charged higher fees than merchants that use a UK located merchant acquirer for the same transactions.
- 3.5 Without the TPR, these EEA PSPs would be unable to continue servicing these UK merchants on a cross border basis. Instead, they would need to incorporate a UK company or establishment in order to obtain appropriate authorisation from the FCA. We therefore think it is unfair for these firms to be able to avoid the application of the UK IFR and EU IFR when their UK based competitors cannot simply because they are operating under the TPR in the UK.

4. OTHER MATTERS

- 4.1 In paragraph 1.8(a) of CP21/5, the PSR refers to the "*point of sale, acquirer and card issuer*" being "*based in*" the UK for the UK IFR to apply. We think that the definition of "*point of sale*" is not relevant to the scope of the IFR.
- 4.2 This is because the UK IFR (which is derived from the EU IFR) does not refer to the "*point of sale.*" Rather, as stated above, the scope of the UK IFR is limited to assessing the "*location*" of the "*payer's payment service provider*" and the "*payee's payment service provider.*"

IFR Compliance Monitoring Team
18 May 2021
Page 3

4.3 There is a definition of “point of sale” in the EU IFR;

“means the address of the physical premises of the merchant at which the payment transaction is initiated.

However:

(a) in the case of distance sales or distance contracts (i.e. e-commerce) as defined in point 7 of Article 2 of Directive 2011/83/EU, the point of sale shall be the address of the fixed place of business at which the merchant conducts its business regardless of website or server locations through which the payment transaction is initiated;

(b) in the event that the merchant does not have a fixed place of business, the point of sale shall be the address for which the merchant holds a valid business licence through which the payment transaction is initiated;

(c) in the event that the merchant does not have a fixed place of business nor a valid business licence, the point of sale shall be the address for correspondence for the payment of its taxes relating to its sales activity through which the payment transaction is initiated.”

4.4 In our view, tying the scope of the UK IFR to the location of the “point of sale” has the potential for unintended consequences and additional complexities in assessing the scope of the UK IFR which go above and beyond the wording in the regulations.

4.5 Online merchants may operate their business using various legal structures that are specific to that merchant and its own legal, tax and regulatory considerations. Therefore, requiring the “point of sale” to be “in the UK” for the UK IFR to apply raises unnecessary and unintended burden and complexities for acquirers and merchants. For example, acquirers will be required to conduct a detailed case-by-case analysis for each type of merchant transaction to assess whether or not the UK IFR applies. Moreover, we consider that requiring such an analysis to be conducted goes beyond the intention and stated scope of the text of the UK IFR.

Yours faithfully,

Paul Hastings (Europe) LLP

PAUL HASTINGS (EUROPE) LLP



UK Finance

UK Finance response to CP21/5 - Interchange Fee Regulation (IFR) Guidance: EU Withdrawal Consequential Changes

Date: 21 May 2021

Address: IFR Compliance Monitoring Team
Payment Systems Regulator
12 Endeavour Square
London
E20 1JN

Sent to: IFRcompliance@psr.org.uk

UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

UK Finance welcomes the PSR's consultation outlining proposed amendments to its Guidance on the Interchange Fee Regulation (IFR) following the UK's withdrawal from the European Union (EU) and changes to the regulatory framework since the original Guidance was published in 2016. We appreciate the largely consequential nature of the proposed amendments and industry welcomes the additional clarity updates to the Guidance will provide after the UK's exit from the EU.

If you have any questions relating to this response, please contact:

[REDACTED]

1. **Question 1: Have we correctly identified all relevant amendments to the Guidance required to address the legislative changes resulting from EU exit? If not, please explain why.**

UK Finance agrees with the amendments to the Guidance needed to address the legislative changes resulting from EU exit. To confirm, we support the changes listed below, as outlined by the PSR in their consultation document:

- **Updated scope of the UK IFR:** UK Finance supports proposals to replace references to the European Economic Area (EEA) with references to the United Kingdom. These changes are in line with the on-shored IFR Regulation.
- **The term 'competent authority' is not used in the UK IFR:** UK Finance supports proposals to remove the use of the term 'competent authority', recognising that both the PSR and FCA retain their roles and responsibilities in relation to the UK IFR.

- **The replacement of the Regulatory Technical Standards (RTS) Regulation:** UK Finance supports proposals to replace references to the RTS Regulation (adopted under Article 7 of the EU IFR – which introduced specific requirements relating to the independence of payment card schemes and processing entities) with the on-shored RTS Regulation.

2. Question 2: Do you have any comments on our proposed amendments to the Guidance? If so, please set these out.

UK Finance is supportive of the proposed amendments reflecting changes, unconnected to the EU, since it first published Guidance on the IFR in 2016:

- **Removing Chapter 4 in its entirety:** UK Finance is supportive of this removal. As noted, this covered the exemption offered to three-party schemes (when they behave like a four-party scheme) if their annual market share of transaction values does not exceed 3%. This exemption expired on 9 December 2018 and we support updates to the Guidance to reflect this.
- **Removing references to weighted average interchange fees:** UK Finance supports the removal to these references. As noted, the option to allow for these expired on 9 December 2020 and Guidance should be updated to reflect this.
- **Amending references to the rules on surcharging in the UK:** We support the proposals to amend references to surcharging rules to reflect changes made by PSD2 and the onshoring of relevant legislation, clarifying that surcharging is banned only where there is a UK issuer and a UK acquirer.
- **Rename the Guidance to Guidance on the PSR's approach to monitoring and enforcing compliance with the Interchange Fee Regulation:** UK Finance support this name change to reflect updates to the Guidance and the PSR's new responsibilities.

Visa



May 21, 2021

IFR Compliance Monitoring Team
Payment Systems Regulator
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Delivered via email: IFRcompliance@psr.org.uk

PSR CP21/5 -Interchange Fee Regulation (IFR) Guidance: EU withdrawal consequential changes

Dear IFR Compliance Monitoring Team,

Visa appreciates the opportunity to provide comments to the Payment System Regulator (PSR) consultation CP21/5 - Interchange Fee Regulation (IFR) Guidance: EU Withdrawal Consequential Changes.

Visa believes there is value in clarifying the list of proposed amendments to the IFR Guidance to reflect the changes to the UK's regulatory framework after Brexit, which include both changes to the EU IFR provisions and the UK's Payment Card Interchange Fee Regulations 2015 (PCIFRs).

We support the amendments to the Guidance to address the legislative changes resulting from the EU exit, as well as the amendments unconnected to the EU.

While supporting the amendments to the Guidance we note that this is not intended to foreclose any future policy considerations. Visa remains available to assist the PSR in any capacity as it works through mitigating the risks of Brexit and capitalising on the opportunities. This is important if the UK wants to stay ahead as an attractive place for internationally active payment innovation and to encourage the emergence of competition and new players in payments.

Yours sincerely,

By email

[Redacted]

[Redacted]