

INFOMEDIA Feedback on *Developing the next PSA Code of Practice Discussion Document*

Background

1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.

The goals set out in the discussion paper are clearly appropriate and rational, however as will be detailed further below consideration should be given the DCB's place in the wider payments economy both nationally and globally; how it can become more integrated with that economy by closer alignment of regulatory and other standards which will both pull up the standard of the DCB industry and attract more investment.

2 Is there anything else we should be considering?

The market transition for existing providers: as several are on the road towards becoming a financially authorised entity we do still need to have opportunity to make changes whilst remaining commercially viable, particularly the 'L1' community; being typically the smallest partners in the DCB value chain taking the smallest share of the overall market value we are going to be asked to make the most significant changes. All value chain parties must recognise that if the market is going to improve this cannot be done without an understanding and accommodation of the economic impact.

With reference to paragraph 30 of the discussion paper, it should be acknowledged that new merchants to the DCB market struggle with the concept that they themselves as product vendors need to be regulated, which is a departure from all other payment methods which place more responsibility on providers of the actual payment method. An additional consequence of this approach is that it is too easy for (ir)responsibility to flow down the value chain because the product vendor or merchant is a regulated party. We outline below a potential change in the way the value chain is defined.

With reference to paragraph 32 the emphasis should be on consumer redress not specifically refunds – this is an example of where existing regulation is clear but bad actors in the industry simply do not follow the rules. Changes to existing rules will always cause challenges for those who are compliant without seeing any noticeable benefit, because those who would not follow the old rules will not follow new rules either; a case in point being the recent 'itechlogic' adjudication. Changes should demonstrably address issues impacting consumers and it would be helpful to understand the success criteria set against change.

Market context

3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?

In the discussion paper there is only limited examination of the market outside of the UK. We believe it is important to give significant emphasis to the international cashless/e-money ecosystem. The 'desirable' companies looking to take advantage of phone-paid services as a payment method to augment traditional card-based payments act far less parochially now than in even the recent past.

"At a global level, 50% of merchants will increase their IT spending on payments and related projects, with 21% growing budgets by 5% or more on the prior year." Ovum: 2018 Global Payments Insight Survey: Merchants

Global reach is of high importance to the implementation of PPS, in fact we are often told that single-market launches are commercially unviable for such companies; not necessarily because of a risk of loss but of insufficient gain to obtain prioritisation within packed development workstacks. The PSA should therefore consider its approach in the context of an international marketplace, with competition from e-wallet services, in its regulatory approach.

"Consumers also now expect a seamless payments experience at checkout. On Amazon, consumers don't think about checking out, since payment is an integrated and seamless part of what they came to the site to do — buy something." PYMNTS.com: Checkout Conversion Index Snapshot for Q4 2019

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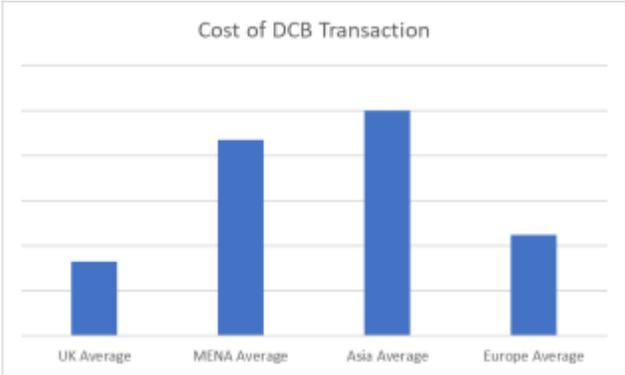
Consumer expectations and experience

5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

We would question the ongoing value on including the 2014 Jigsaw research in the Code 15 considerations given the passage of time and multiplicity of changes since that research was conducted, whilst reasonable to reference in terms of trajectory from then to now it may be a risk to base any decisions solely on that research without updating.

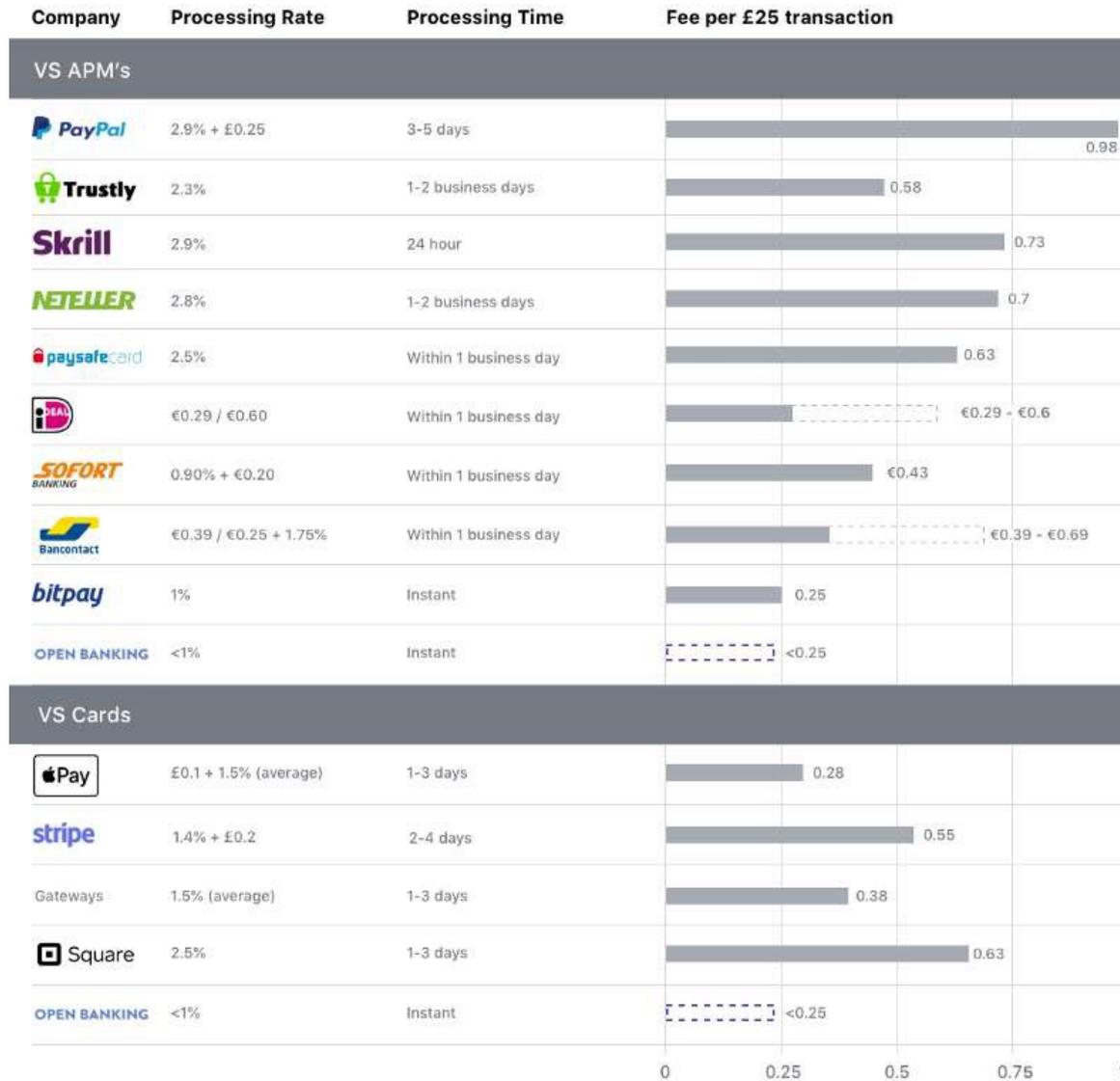
With reference to paragraph 133 referencing consumer stating 'cheaper or free alternatives' to DCB as a reason to not use it. We cannot overstate how much of an impact this has on the market. DCB specifically suffers from being a very expensive payment mechanism – this in turn drives only those merchant business models that can obtain return on investment with high price/low operating cost services – typically then being low quality.

Interesting to note however that UK is the cheapest territory in terms of carrier fees:



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However that said, compared to all other payment methods DCB remains the most expensive compared to card and other APMs¹ by an order of magnitude:



The cost of transaction does tend to attract only high volume lower quality services because it is typically only those services with low upkeep rates that can afford to enter the marketplace. To be frank, these economics are the biggest challenge we find the DCB marketplace faces because DCB cannot compete with other payment mechanisms particularly as one of the key USPs; the frictionless transaction, has been eroded over the last four years.

6 Do you have any other evidence in this area that we need to consider?

We have included below and attached a number of key source documents including consumer behaviour analysis.

Likely future trends

¹ Table from <https://medium.com/@thiscitizenis/how-alternative-payment-methods-are-transforming-the-payments-industry-27ce132fd00f>

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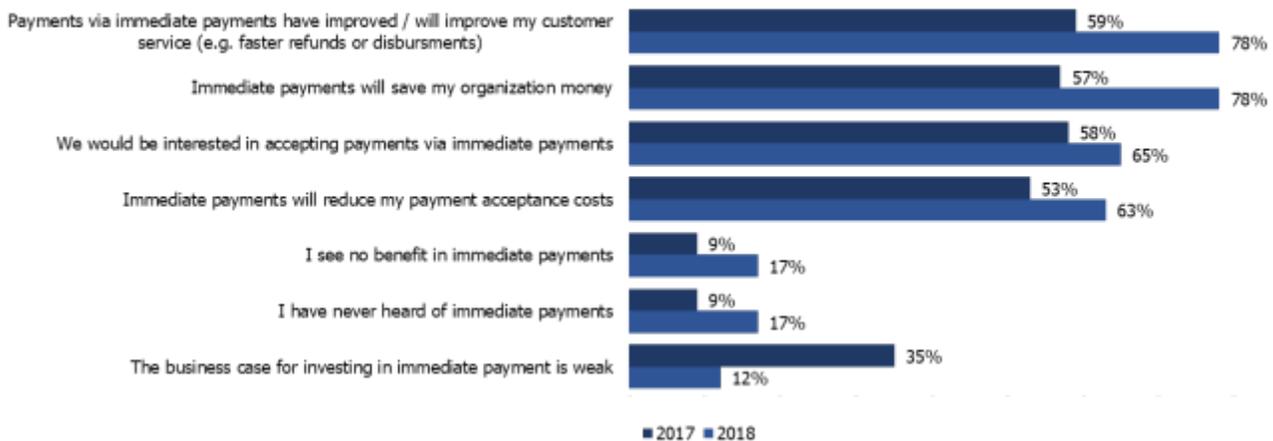
7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.

We are preparing a wide-ranging market analysis of the payments industry which shall be shared with the PSA however is not yet ready for public consumption. We will share this within the next 6 weeks, however the thrust of the analysis is that carrier billing must take its place as a payment method that can challenge the global card-based monopoly on digital payments that drive exclusion from the digital economy of the underbanked populations of the world. To achieve this parity must be achieved in terms of supervision and economics; both enlarged on elsewhere in our response.

8 Are there are market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?

The development of an immediate payments infrastructure may have a significant dampening effect on the DCB industry. Alongside the high transaction cost referred to above; there is also significant processing time on merchant out-payment; 30-60 days. Whilst this has historically been an accepted way of doing business for VAS-only suppliers, non-VAS and e-commerce players have less tolerance when other payment methods are moving rapidly towards immediate payments, or at worst 7 days) whilst merchants are hyper-aware of the benefits of immediate payments (particularly in the visual media sector where content licencing costs are high) as shown in the outcome of a survey reported in *Forester Forecast View: COVID-19 Retail Scenario Planner, April 2020 (Global)*:

"Immediate payments" refers to infrastructure that enables real-time clearing of payments. On a scale of one (strongly disagree) to four (strongly agree), please state your agreement with the following statements – Proportion that agree (%)



Enhancing the supervisory nature of regulation should enable the delays and time limits currently imposed in regulation to be relaxed without the need for commercially challenging advance payment / underwriting agreements within the value chain.

Assessment framework

9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree

AND

10 Are there are factors we have not taken account which we should?

In broad agreement with the assessment framework however there is one key area which may have been overlooked in assessing Effectiveness, which is the question of whether the options being assessed would have prevented or

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significantly reduced the impact of historic cases of market abuse or breach of Code since the current Code was introduced at least, if not further back.

This should not necessarily be premised on any individual rule or process being considered but taken as a holistic review of the overall effectiveness of Code 15, or particular areas of it, and should be assessed against previous incidents. It may even be useful to undertake case studies to demonstrate how Code 15 would deliver an improved outcome in any of those cases of market abuse, even if not fully prevented, for example by suspending a service from continuing billing during a period of non-compliance.

Initial thinking

11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.

We advocate the move towards a more supervisory style of regulation, however outcomes should not be abandoned in favour of a more prescriptive approach. The challenge with the outcomes led approach that we have perceived over the last few years has been the encroachment of special conditions to the point that the larger proportion of the market is covered by special conditions.

The supervisory approach would promote innovation within the market whilst simultaneously simplifying the rules that are currently challenging to apply to increasingly complex value chains, more detail of our thoughts in this area below. It would align phone-paid services more closely with the payments industry and consequentially drive up quality given the more stringent requirements. There will however be a necessary increase in the work the PSA may be required to do in terms of supervision, audits and similar activities. A key risk to avoid is the length of time to enter the market, with even the simplest form of financial authorisation estimated to take 34 weeks on average in the UK. The FCA should not be a model for the PSA in that regard; financial authorisation elsewhere in the EU meets the same standards but in a considerably reduced timeframe for example in Lithuania average authorisation time is 6-8 weeks.

Potential Code 15 options

12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?

Pre-operational stage should be given as much, if not more weight that operational. As briefly touched upon in paragraph 224, modelling the PSA approach on the FCA's authorisation approach would deliver a strong control system and effective message. It has already been mooted that there may be an inspection regime for L1s. However the scope of such an authorisation process will need to be tightly focussed so as to not create a barrier to market entry. Currently little distinction is drawn between L1 and L2 providers, whereas under the financial services model those involved in the authorisation and processing of transactions are the key parties; individual vendors are typically out of scope.

Consideration should be given to clear definitions of the different value chain parties, instead of solely considering their closeness or otherwise to a MNO's technical connection, looking instead at responsibility for requesting, initiating and authenticating a transaction (then processing with an MNO, handling funds). A typical DCB merchant would initiate a transaction by passing a customer into a checkout flow. This may be run by the merchant as well, therefore the merchant would also be the payment initiator however now more commonly it is the L1. A third party would then operate the authentication mechanism such as an SMS code loop. We appreciate there are flow differences for PSMS and premium voice transactions to be considered. However the PSA should consider ensuring that the party or parties in any given service value chain responsible for:

1. initiating a transaction
2. authenticating consumer consent
3. processing the transaction
4. handling settlement funds

have been authorised as such by the PSA along the lines set out in paragraph 224. Clear lines of responsibility would ensure that authorised parties would need to take responsibility for their merchant's activity much like a financially authorised credit provider.

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Were the PSA to focus their efforts on these core areas then this would remove the potentially burdensome requirement for a merchant who simply provides their service to the customer but is not involved in the payments process not to register with the PSA – much as an e-commerce site using Stripe does not need to register with the FCA; all the regulated activities fall within the scope of Stripe. Similarly, if an e-commerce merchant does wish to take control of any of the above four elements then quite rightly they would need to register as a payment processor.

This is not necessarily as drastic a change as it may first appear; the MNOs themselves have taken this approach albeit in a more piecemeal fashion. If the PSA were to take over this responsibility it could remove a significant barrier to market growth with a single authorisation process for the entire UK. If company then wished to work with an MNO there would be no requirement to undertake a the same exercise 4+ times, with slightly differing requirements, formats etc and if, as is reasonable, individual MNOs wished to conduct their own diligence then the same documentation would be available to all. However, it would be vastly preferable if the PSA could agree with MNOs a set of standards that would be checked and verified as part of registration/renewal.

Accessible Standards: Where standards are set the PSA should give consideration as to how a regulated party could meet these standards via existing equivalent authorisations or certifications. For example, an FCA-authorized PSP should be able to use this as evidence of meeting most standards, or ISO27001 certification used as evidence of satisfaction of IT security standards.

13 What are your views with regards to developing appropriate 'Pre-purchase standards'?

We believe it is important to distinguish and define 'pre-purchase' and 'purchase' (see comments below), and understand the role that promotional activity plays. By way of minor disclaimer, we refer to our field of expertise in web-based carrier billing services and appreciate that there are differences for services such as premium phone lines where charging commences immediately after promotion.

We feel promotional activity could be out of scope for the PSA where charging does not immediately follow a promotional call to action with a more robust approach to the checkout experience driven by the changed definitions of value chain partners. With increased steps in the authentication of customer's consent to be charged the importance of regulating promotional activity becomes a distraction from the core risk drivers. Not to say that misleading promotions should be disregarded completely, however granular requirements such as the location of pricing information typically fall apart when faced with the multiplicity of potential promotional and product experiences, even for something as simple as multiple pricing choices. Closer case co-operation between

We would also flag the proposed requirement of listing all parties involved in value chains as potentially challenging in any part of the consumer experience. We absolutely agree that that detail should be recorded and be made available however we do not agree that the point of sale is the correct place. We would like to understand in more detail the purpose behind this proposal and the expected level of engagement by consumers; are you frequently asked about the value chain or can this requirement be better met by clearer guidance on ensuring the customer can get to the person who can help them best, quickest? What is the origination point for these consumer's complaints, and to what extent is it caused by the insistence of certain value chain partners of having single points of contact. We would also flag that in most cases compliance with GDPR would cover this requirement for simple transparency on companies involve with data transactions.

14 What are your views with regards to developing appropriate 'Purchase standards'?

We might suggest that this area of regulation be referred to as Point Of Sale, to differentiate more clearly from the 'Pre-purchase standards'; as pre-purchase could encompass all activities up to and including a checkout experience; whereas we feel that Point Of Sale can encompass the key consumer-facing requirements such as price disclosure, terms and conditions and so forth, as well as specific facts of back-end functionality such as active fraud prevention.

We would discourage the proposal of developing 'best practice' templates. Even where framed in terms of 'A service would be considered compliant if...' it becomes too easy for this to become a de facto expectation dissuading innovation in the marketplace that would be beneficial to consumers.

We strongly support the concept of a regulatory sandbox that regulated providers an apply for temporary exemptions from certain requirements subject to a reasonable case for doing so together with details of the consumer protection processes to mitigate associated risk, the limitations that will be imposed, e.g. consumer numbers of time-bound. This process should be relatively quick, and the outcomes of sandbox trials would then feed into the more detailed full exemption process.

15 What are your views with regards to developing appropriate 'Post-purchase standards'?

We agree that this is a clear definition of the standard expected for a consumer's experience post-purchase, capturing key aspects of communication and support.

We would not support the concept of 'no quibble' refunds; this is an overly blunt instrument and with reference to paragraph 138 being awarded a refund when appropriate does not seem to be the primary issue; the two issues identified are determining the right party to whom to complaint, and then retrieving the refund once given. We do support the concept of making the default refund mechanism a refund back to bill; this will address one of the issues identified. However, this must be fully supported by MNOs providing easily accessible APIs to do so without excessive charges attached to their usage, which dissuades uptake among the merchant community. We have some reservations with bank transfers; we have seen a number of cases where customers provide the incorrect bank account details and bank transfers remain notoriously difficult to reverse leading to delay for consumers and losses for the value chain.

We do feel, with reference to the point raised in numerous places in the discussion document regarding consumer inability to reach the correct support, that MNOs must make greater efforts with clarity on bill descriptions. In our recent exploration of open banking-based payment methods transaction descriptions have significantly more opportunity to include information in statements; UK BACs being 18 characters for name and 18 characters for description, SEPA Direct Debit allows 35 characters for name and description.

Does the outpayment delay still fit for purpose or is it a barrier to market growth: 78% merchants say realtime payment will deliver significant market improvement ([Ovum: Global Payments Insight Survey 2018](#)) UK DCB could get left behind, already it can be an uphill sell vs credit card payments in 7 days or less, taken together with being more expensive and the erosion of the frictionless element by browser-stored card details the benefits of DCB are becoming limited – chargeback risk is typically lower than credit card (3.2% vs 12.9%) and only represents a portion of the market (post-paid), although the precise split of pre-pay/post-pay seems to be a closely guarded industry secret.

16 What are your views with regards to how we can make our investigations and enforcement procedures more effective?

AND

17 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?

We believe that the current enforcement processes may not match a more robust supervisory regime going forward.

For example, we feel that the 'Informal' investigation is something of a misnomer. WE suggest an improved system may take the form of a 'Advisory' stage.

The Advisory stage would identify an issue and an associated risk grading. A regulated party would then have a short amount of time to respond or request more time to respond. In the case of a request for more time on a Medium or High risk case, the PSA may have the power to impose a suspension notice on either new business or billing, depending on the risk detail. Risk grading would follow standard risk management procedure examining and scoring consumer impact and likelihood/frequency. It would of course be in a company's best interests to respond quickly to avoid the risk of a suspension notice. There should be a fair process for challenging a suspension notice and/or the risk grading subject to the provision of evidence and data.

In relation to the T1/T2 processes, our general comment would be that the processes take too long insofar as permitting harm to continue. The above suspension process would mitigate this however the PSA must commit to firm timescales for managing those cases to conclusion; because in the event of no-fault findings a business may have been deprived of revenue for a significant period of time. That said, the imposition of suspensory notices would certainly focus minds in the provision of data, whereas currently we have seen such processes drawn out by bad actors.

Other general Code considerations

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18 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?

We believe that the funding model appears to work well from our perspective, but in the interests of transparency it is not a matter we have given significant attention to to date. We would welcome more detail on the challenges the existing model presents to the PSA and the value chain.

19 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.

We refer to my feedback on question 12 above; the current categorisation of providers may not capture all parties involved in the parts of the value chain where risk appears; and likewise may cast the net too wide on the merchant side, requiring merchants to register where they are in fact not involved with the actual purchase or billing; and where customer support is at issue the reporting of and ultimate responsibility for this could fall to other value chain partners.

20 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.

One of the key challenges with the current framework is the slightly piecemeal way it has developed organically over time. The guidance and conditions can be challenging to navigate even as an experienced user, and there was a point in time, albeit now resolved, where the guidance and special conditions contained contradictory statements. There is in any event a certain amount of duplication.

A single wiki-structured handbook would be much easier to navigate than multiple pdf files and be easier to search for relevant information especially for new market entrants. It could include the guidance and interpretative notes alongside the relevant Code sections, making the framework substantially more accessible.

One example of this is the FCA handbook, which has suffered from bloat in recent years but when it was first launched was highly concise and easy to navigate, including useful features such as the enactment dates of the different sections and hyperlinks to definitions and related sections.

Additionally, an exercise in rationalising special conditions, if they remain in a similar format, would also be welcome to remove elements of duplication across those conditions.

21 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact.

We have attached our sources, where we are able to share, for your reference:

- PYMNTS.com: *Checkout Conversion Index Snapshot for Q4 2019*
- 451 Research: *The Impact of SCA*
- Merchant Savvy: *30 Amazing Stats Demonstrating The Unstoppable Rise of Mobile Payments Globally - Updated Q4 2019*
- Accenture: *Global Payments Pulse Survey 2019*
- Ovum: *2018 Global Payments Insight Survey: Bill Pay Services*
- Deloitte: *Financial Markets Regulatory Outlook 2020*
- Ravelin: *Global Payment Regulation & Authentication Report 2020*