Minutes

Minutes of the meeting of the

2EMD STAKEHOLDER LIAISON GROUP

Held on 4 April 2011, 16:00 – 17:00

At Committee Room E, FSA

Present:	Brian Garcia (BG) – HMT Gavin Haran (GH) – HMT Leon Isaacs (LI) – IAMTN Chris Reddish (CR) – PIF Robert Courtneidge (RC) – PIF Dominic Peachey (DP) – EMA Deirdre Synnott (DS) – UKGCVA (via telephone) Sophie Eales (SE) – Post Office Dominic Thorncroft (DT) – UKMTA	FSA:	Jean Cooper (JC) – Chair John Hood-Leeder (JHL) John Burns (JB) Alison Donnelly (AD) Nick Daniel (ND) Jody Whitehorn (JW)
Apologies:	Jacqui Tribe, UK Cards David Bainbridge, Financial Ombudsman Service Andy Watson, HMRC		

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1. **Introductions**

JC welcomed everyone to the meeting, which began with introductions. In noting that this may be the last meeting JC thanked everyone for their contribution to the meetings and helpful insight on the industry.

2. **Minutes from the previous meeting**

There were no comments on the draft minutes of the previous meeting held on 27 January 2011 and these will be placed on the website.

3. **The FSA approach**

JC said the intention of this meeting is to give members of the E-money Stakeholder Liaison Group the opportunity to ask, on behalf of their members, about anything on which they would like more detail.

Limited network

RC asked about the progress made on defining a limited network and also about the enforcement approach to cases where the FSA and the business took different views on whether the product was e-money within the scope of the second Electronic Money Directive (2EMD).

JB said that the FSA has received many requests for individual guidance recently. 2EMD does not set out the boundaries of a limited network with

numbers and the Commission's Q&As emphasise that, in the light of the maximum harmonisation nature of 2EMD, it is not open to Member States to set more prescriptive limits in defining a limited network. Also, as the Perimeter Guidance manual is part of the Handbook there is a formal process to make any amendments. It may be possible to consider adding case studies to the FAQs section of the website but JC noted that while this may be a shorter process it would still require consultation.

JB noted that there is an issue that has been brought to the attention of the Payments Committee, concerning whether a transaction that is not a payment service under the Payment Services Directive (PSD), because it falls within one of the negative scope provisions, can be a payment transaction for the purposes of the definition of e-money in the second Electronic Money Directive (2EMD). The FSA and the Treasury are seeking to get a common approach to this situation across Europe.

RC asked whether the cases on which clarification is currently being sought could be shared with the Stakeholder Liaison Group now but JB responded that they are too specific and could be easily identified. JB assured the meeting that it is in the FSA's interest to provide as much general clarification as possible to reduce the number of requests received.

FSA to consider the scope for providing general case studies to help businesses understand the outworking of the limited network exemption. **FSA**

CR asked about the differences in the exemptions between the Electronic Money Regulations 2011 (the EMRs) and the Payment Services Regulations 2009 (the PSRs). JB clarified that for e-money, money received by a distributor is deemed to have been received by the e-money issuer concerned and that therefore the provisions regarding segregation and safeguarding would apply immediately but commented that he was aware of some apparent inconsistencies and would look into them further.

JB agreed to consider the effect of the differences between the PSRs and the EMRs. **JB**

BG noted that other member states do not appear to have yet considered this issue so his approach is to work with them and the Commission to avoid conflicts in approach developing.

Redemption fees

RC raised a concern that he considered there could be a potential conflict between regulation 41(1)(c) of the EMRs (which allows for a redemption fee to be charged more than one year after the termination of the contract) and regulation 43(3) of the PSRs (which does not allow a termination fee to be charged more than 12 months after the framework contract has been concluded, for contracts for an indefinite period, or

those for a fixed period of longer than 12 months).

JB clarified that the PSRs is referring to 12 months after the contract has been made, so for instance, for a current account, if the customer closed the account after 6 months there may be a termination fee but if it was closed after 13 months there could not be a fee for the termination.

JB said that there had been queries over what costs could and couldn't be included in the redemption fee. It is unlikely that the cost for developing the computer system could be included as this cost is not specifically linked to costs incurred in redeeming dormant e-money. JB said the FSA could not provide a definitive list of costs that can be included and that it is for an e-money issuer to justify the level of any redemption fee by reference to valid costs it actually incurs. RC asked whether, if the account was moved into a new computer system once it became dormant, the costs for that computer system could be included. JB responded that the FSA would be interested in the arguments in favour of that suggestion.

SE asked about the possibility of including a service charge and JB said that a service charge could in principle be made through the lifetime of the contract if it was clear in the contract.

JW noted that the FSA would look carefully at any charges that appeared to be structured in such a way as to undermine the legislative purpose of the EMRs or avoid the provisions on the redemption fees.

CR asked whether the account contract still has to be live in order for fees to be charged but it was pointed out that Regulation 46 makes clear that for these purposes, references to the termination of the contract mean the point at which the e-money can no longer be used for making payment transactions. JB also mentioned that it was possible for the framework contract to be part of a larger contract, with a longer termination date.

JC noted that it is useful to consider how any redemption fees would be justified as reasonable if a customer complained.

SE asked whether the redemption fee should only be charged at the point of redemption and JB replied that, having discussed this with the Commission, it was agreed that, since the effect for the customer was the same, the redemption fee could be applied over the period more than one year after the termination of the contract, otherwise the value would have to be safeguarded for the six years.

Safeguarding

AD explained that the responses to the question on safeguarding in the industry survey in September/October 2010 indicated some misunderstanding of safeguarding.

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	JB said that safeguarding could be by either one of two methods – segregation in a separate account with a credit institution (not in the same group as the electronic money institution (EMI)) or authorised custodian - or by an insurance policy or guarantee. The safeguarded funds have to be clearly labelled to make it clear that they are for the benefit of the customers in the event of insolvency. The trade associations should recommend their members to read Chapter 10 of the E-money Approach Document on safeguarding.	
	JB said that the concept of the float in the first Electronic Money Directive looks similar but is in fact very different as the float was to back up the issuer, not as ringfenced funds for the benefit of the customers. From discussions with EMIs it appears that most plan to use the segregation method but at least one insurance company is working to develop an insurance policy.	
	CR confirmed that there is interest in the insurance method and suggested it would be useful to get EMIs, the FSA and interested businesses together to explain and discuss the details.	
	CR to consider organising a meeting to discuss the potential for developing insurance policies as a safeguarding method.	**CR**
	E-money fees tariff base	
	AD explained that in the October 2010 consultation on e-money fees the FSA asked for views on whether average outstanding e-money for the six months ending 31 December was the appropriate tariff base for the periodic fees for authorised EMIs and credit institutions that issue e-money. One consultee said that dormant accounts and seasonality could distort the measure so the FSA is considering whether collecting the yearly average would be better and requests other suggestions.	
	CR said that some businesses will have a high volume of transactions so that there is a lot of money going in and out of the business but the average outstanding e-money would be low. CR recommended that a tariff base could comprise a proportion for the average outstanding e-money over the year and a proportion for turnover. This information is collected by the EMIs as it is required by the Mastercard and Visa schemes.	
	JC said that was useful as the FSA wanted to keep to the minimum necessary the information to be collected and JB said that the volume of transactions can be a good predictor of the degree of supervision necessary.	
	CR agreed to work with LI to produce some statistics to help the FSA consider a tariff base based on both average outstanding e-	**CR &**

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	money and turnover.	**LI**
4.	**AOB**	

LI asked whether the same passporting problems would be encountered by authorised EMIs as have been by authorised payment institutions (PIs). He explained that the competent authorities in other countries have not been clear in their communications as to why there are delays in processing notifications. It may be preferable for a rejection to be issued as then the authorised EMI could go through the processes to address the reason for the rejection.

DT said that the process has bred cynicism amongst his members that some other countries are working against competition. There is also lack of clarity over who regulates what.

JB responded that the Guidelines on Electronic Money Directive Passport Notifications prepared by the 2EMD Passporting Liaison Group have been put forward for agreement but that member states have been given up to the end of the month to consider these. They are, however, only guidelines. The Directive review in 2012 may present an opportunity for some other member states to re-open passporting issues.

BG said that the Treasury's line in Europe is that there is no case for re-opening this issue and that the host should only be concerned about the potential for money laundering, advertising and some conduct of business issues. BG appealed for case studies from the trade associations.

	Trade associations to provide case studies of passporting problems to the Treasury.	**Trade Associations**

LI asked whether the situation would be different under 2EMD. JB said that, because only notification need be given for distributors, it should be easier.

DT asked about the progress on applications. JHL reported that the application forms had been published on 24 March, there had been a number of enquiries but as yet no applications have been received.

DT asked whether applications will be received from PIs. JB replied that there may be.

ND reported that the grandfathering process is progressing but that some ELMIs had not responded to the questionnaire and urged the trade associations to make clear to their members that they only have until the end of July to get their information to the FSA.

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	Trade associations to make clear to their members that they only have until the end of July to get their information to the FSA.	**Trade associations**

JC reported that a draft new edition of the Payment Services Approach Document will be sent to the payment services and e-money stakeholder liaison groups and put on the website for consultation shortly. It will include some consequential changes, because of the EMRs, as well as clarifications. It will be in track changes but the preface will also make clear the key changes.

DT asked how many PI applications are being processed. JHL responded that some firms taking advantage of the transitional provisions have not yet applied and that they are being written to. A number of firms may not be able to be get authorisation before the deadline has passed, in some cases because of incomplete applications.

JB reported that the Money Advice Service will be publishing anew edition of the *Sending money safely* booklet shortly.

The meeting closed.