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Dear Ms Thomas

CP 08/14: Implementation of the Payment Services Directive

This is the Financial Services Consumer Panel's response to CP08/14: Implementation of the Payment Services Directive (PSD). The Panel is supportive of the general tenor of the FSA approach although we do have significant reservations about certain issues, which we outline in our responses to the specific questions below.

Q1: Do you agree that the FSA should amend the compulsory jurisdiction of the FOS to cover payment services as defined in the PSD?

We agree that this is sensible. However, we are also interested to learn what approach other countries are adopting, in particular with regards to out of court settlement procedures. The EU Commission needs to take a tough line against member States which cut corners or unnecessarily delay implementing an appropriate scheme.

Q2. Do you agree with the proposals for the FSA to change the definition of an eligible complainant in the compulsory jurisdiction to include 'micro-enterprises' instead of small businesses and for the FOS to make parallel changes to the CCJ and the VJ?

We do not agree with these proposals. The change in definition to 'micro-enterprises' instead of 'small businesses' effectively reduces the numbers who are eligible to complain to FOS. This definition also categorises the type of firms eligible in terms of their turnover in Euros. The Euro is not a legal currency in the UK so this will raise endless questions about the exchange rates on different dates throughout the course of a complaint. A more realistic solution would be to have an equivalent figure in sterling which could be based on the exchange rate at a fixed point in time.

Q3. Do you agree that small charities and trusts should be able to make payment services complaints to the FOS in the same way as consumers and micro-enterprises?

We agree that small charities and trusts should also be able to make payment services complaints to the FOS.

Q4. Do you agree that the scope of the FOS should extend to complaints against payment service providers about one-leg transactions and transactions made in non-EU currencies?

We feel that there are significant problems, in particular with extending the territorial scope of the compulsory jurisdiction to cover complaints about one-leg transactions and transactions in non-EEA currencies made against all payment service providers. There are endless potential difficulties, for example, in investigating a complaint made by a non-UK citizen who was visiting the UK and used a transfer service to send non-UK currency to a non-EEA destination.

Q5. Do you agree with the proposals for applying the DISP 1 rules to payment service providers?

We agree with these proposals.

Q6. Do you have any comments on the changes to the consumer awareness requirements in DISP 1 that will apply to payment services?

We agree with the intention to align payment service consumer protection and redress messages with those given for other regulated financial transactions. To do otherwise would heighten the risk of confusion and uncertainty for consumers. It is inevitable that there will be some pushback from industry on this point so the FSA needs to take a robust line when finalising its proposals.

We do, however, have reservations about the proposed approach to reporting complaints data. If the FSA goes ahead with its two-tier approach in this regard this has significant potential for confusion and indeed detriment. It is asking too much of consumers to understand why two firms which have exactly the same number of complaints would not have exactly the same responsibility to report those complaints. It would be far more likely that a consumer would, incorrectly, conclude that the firm which did not have to report complaint levels was complaint-free and therefore the better run of the two.

Q7. Do you agree that the FOS should amend the voluntary jurisdiction to cover payment services as defined in the Payment Services Directive?

We agree with this amendment.

Q8. Do you have any comments about our proposals for enforcing the Payment Services Regulations 2008?

We agree with these proposals and have no specific comments.

Q9. Do you have any comments on the proposed consequential changes and on our proposed policy for use of the FSA logo by payment institutions?

In principle we agree with the proposal to allow authorised payment institutions, but not EEA or registered payment institutions, to use the FSA logo in connection with statements about their regulatory status. However, we do have some concerns about the potential for mis-use of the logo given the cross-border nature of this business sector. Payment services firms need to be policed effectively in this regard in order to avoid firms adding the logo to their sites when they do not have the right to use it, thereby misleading consumers as to their regulatory status.

I hope that you find these comments helpful and look forward to seeing the final changes to the FSA Handbook in due course.

Yours sincerely

A handwritten signature in black ink that reads "David L. Lipsey". The signature is written in a cursive style with a long horizontal flourish at the end.

David Lipsey
Chairman