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Governance Review & Assessment of Performance
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Payments Council consultation: Governance review and assessment of performance

This is the Financial Services Consumer Panel's response to the Payments Council consultation on their governance and performance.

Overview

The Payments Council was established in 2007 in response to concerns expressed in the Cruickshank report. Although the Council has achieved much since 2007, the recent debacle over the proposed withdrawal of cheques has damaged its credibility. This has also highlighted the difficulties of allowing an industry dominated body, without clear public or regulatory accountability, to take major decisions which have a significant impact on users of financial services.

The Panel believe the governance of the Payments Council should be fundamentally reviewed. In particular, we support the Treasury Committee's suggestion that the new Financial Conduct Authority should have regulatory oversight of the Council. We also believe there should be greater consumer representation within the Council's decision making process. We suggest this should be achieved by ensuring there is greater consumer representation on the Council's Board through an increase in the number of independent directors. When appointing these independent directors, priority should be given to individuals that represent the interests of consumers.

While the Panel recognises the benefit of the Consumer User Forum, we suggest there is scope for establishing greater independence of the forum. We believe this can be achieved by appointing an independent chair and providing the forum with the freedom to set its own agenda.

Finally, we believe there is scope to improve the way the Council communicates with consumers. The Council must learn from the anxiety created by the withdrawal of cheques and widespread misunderstanding of the Council's intentions.

Detailed questions

We do not feel best placed to answer all questions included in the consultation. We have therefore only answered the questions where we have specific comments.

Q1. How effective has the Payments Council been in providing strategic direction for the payments industry, for example in encouraging and developing innovation, and identifying gaps in payment services that could be addressed by developing new services or products?

The Panel recognises the role the Payments Council has played in projects which have directly benefited consumers, such as the work to increase the speed at which payments are processed. Unfortunately, much of this valuable work has been overshadowed by the debacle surrounding the withdrawal of cheques which we feel has damaged the reputation of the Payments Council.

While we support the Payments Council's decision to reverse plans to withdraw cheques, we believe significant action is needed to re-establish cheques as a credible payment method. This is especially important for the large number of consumers who rely on making key payments by cheque.

Q2: Has the Payments Council been effective in using its influence to drive change in the industry?

Although the Payments Council has driven forward some significant changes in the industry, the Panel is concerned that not all initiatives have been designed – or communicated - with consumers in mind, as the issues surrounding the withdrawal of cheques highlights. In the future, we would like to see consumers' interests at the heart of all changes proposed and introduced by the Council and, where appropriate, made central to the Council's communication of its plans and activities.

Q3: Does the Payments Council provide effective leadership through its governance structure? Do you consider the structure to provide sufficient authority and independence to enable the Payments Council to carry out its role effectively?

To ensure that the cheque debacle is never repeated, we believe the Payments Council should implement changes to their governance processes which truly establish the independence of the Council. The Panel support an increase in the number of independent directors and greater consumer representation on the Council's Board. We also support the Treasury Committee's recommendation that two independent directors should have the power to veto a Board decision (rather than all four independent directors as currently required).

We do not feel best placed to answer question 4.

Q5: Does the Payments Council have an appropriate relationship with HM Treasury, the OFT, the FSA and the Bank of England and is it held accountable?

The Panel believes the issue surrounding the withdrawal of cheques has highlighted the inadequacies in the current accountability mechanisms of the Payments Council. The Payments Council only reversed their decision to withdraw cheques after explicit criticism by the Treasury Committee and a significant amount of negative media publicity. This severely damaged the credibility of the Council and, more fundamentally, created confusion and uncertainty surrounding the future of cheques.

We suggest the accountability mechanism of the Payments Council should be fundamentally reviewed. We strongly believe there is a regulatory gap covering the payments system which should be filled by giving the new FCA oversight of the Council. This would provide a suitable framework within which it may be appropriate for the Council to continue operating.

Q6: Do the independent directors have a strong enough voice on Board; for example, should consideration be given to increasing their power to set the agenda or veto Board decisions (currently this requires all four voting together)?

As we have outlined in our response to question 3, we believe changes should be introduced to ensure independent directors have a sufficiently strong voice. In particular, we believe there should be greater consumer representation on the Board and two independent directors, rather than all four, should have the power to veto a Board decision.

Q7: Should the independent directors be more allied to particular stakeholder groups, acting as their voice on the Board?

No. We strongly believe the principles of good governance require independent directors to be truly independent and have the freedom to exercise their own personal judgement. However, to increase the credibility of the independent directors on the Board, it is essential that more thought is given to ensuring that they are able to provide a strong, clear and credible consumer perspective to the Board.

Q8: Does the Payments Council conduct its business with a broad enough base of stakeholders, for example consumers, corporates, smaller businesses, charities and the voluntary sector?

The Panel believe the Council involves a good range of consumer organisations in its work. However, as we have outlined in our response to questions 3, 6 and 7, we believe there should be greater consumer representation in the Council's decision making process by ensuring strong, clear and credible consumer representation on the Council's Board.

Q9: Do the User Forums provide an effective mechanism to provide stakeholder input into debates at Payments Council Board? How can they be enhanced, for example to enable them to raise new issues proactively?

The Consumer User Forum provides an opportunity for consumer groups to comment on the work of the Payments Council. However, it does not control its own agenda, only commenting on presentations from the Council's executives. While our experience suggests that the User Forum is competently chaired by an independent director, we think it might be more appropriate for the Forum to appoint its own chair from amongst its membership. This independently nominated chair could work with the independent director to ensure an appropriate agenda for each meeting.

We do not feel best placed to answer questions 10 to 14.

Q15: Is the Payments Council effective at communicating with the industry and the wider stakeholder community on its policy decisions and business case? How could this be improved?

We do not believe the Payments Council is effective at communicating with stakeholders, particularly consumers, as demonstrated by the recent cheque debacle. The decision to withdraw cheques caused anxiety for many consumers, especially more vulnerable consumers who rely on making key payments by cheque. Although this anxiety was partly caused by the Council's decision, poor communication also meant that many consumers did not understand that the withdrawal of cheques was conditional on the development of a viable alternative. We believe it is essential that the Payments Council identify the lessons learnt from this communication failure to ensure the level of anxiety and misunderstanding is never repeated.

Q16: Does the Payments Council have the right level of transparency in the way it operates and the way it takes decisions?

While the Panel appreciates that payment system providers will want to consider some issues in private, we believe there is significant scope to increase the transparency of the Payments Council. In particular, we believe it would be appropriate to set out clearly the pros and cons around an issue, inviting stakeholder input, before taking a decision, including 'in principle' decisions.

We do not feel best placed to answer question 17 to 22.

Q23: How would you describe your level of awareness of the work of the Payments Council?

The Panel has a reasonable awareness of the work undertaken by the Payments Council. However, it is unfortunate that our awareness has increased for the wrong reasons, focusing on the cheque debacle rather than the positive work the Council has done.

Q24: Do you feel that the Payments Council makes a sufficient effort to consult consumers and consumer groups?

Although the Payments Council does provide consumer groups with an opportunity to comment on the proposals or initiatives developed, we are not convinced that this process amounts to meaningful consultation or that the views of consumer groups are given sufficient weight. As we have outlined in our response to previous questions, we believe there should be greater consumer representation on the Council's Board and greater independence for the Consumer User Forum to set their own agendas.

Q25: In what ways do you believe the Payments Council could better communicate and engage with consumers and consumer groups?

We believe the Council could more effectively engage with consumers by proactively seeking an opportunity to engage with consumer groups at an earlier stage in the decision-making process, when proposals are being developed. This would enable the Council to hear first hand the views of consumers. External organisations similar to the Payments Council regularly attend the Consumer Panel's meeting to present and discuss their key initiatives. The Panel would welcome the Payments Council's attendance at one of our future meetings to discuss issues of particular relevance to consumers.

We do not feel best placed to answer questions 26 to 39.

Yours sincerely,

Adam Phillips
Chairman