The Payments Strategy Forum – Being responsive to user needs Draft strategy for consultation

Respondents basic details

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Publication of Responses

In responding to this consultation, you are sharing your response with the members of the Payments Strategy Forum (Forum), evaluators appointed by the Forum and the Payment Systems Regulator Limited, ('the PSR' - which provides secretariat services to the Forum). The PSR accepts no liability or responsibility for the actions of the Forum members or evaluators in respect of the information supplied.

Unless you tell us otherwise the Forum will assume that you are happy for your response to be published and/or referred to in our Final Strategy Document. If you do not want parts of it to be published or referred to in this way you need to separate out those parts and mark them clearly ''Not for publication'.

Please check/tick this box if you do not want all or parts of your response to be published:

Declaration

"I confirm that our response supplied with this cover sheet is a formal consultation response that the Forum can publish, unless it is clearly marked 'Not for publication'.

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Response template

This response template is intended to help stakeholders in responding to the questions set out in our Draft strategy for consultation and in its Supporting Papers.

If you do not want parts of or all of your response to be published you need to state clearly ('Not for Publication') over specific information included in your response, please be sure to clearly mark this by yellow highlighting it. We will assume that all other information is suitable for publication.

Responses should be emailed to us at Forum@psr.org.uk in Word and PDF formats by no later than **14 September 2016**. Any questions about our consultation can also be sent to Forum@psr.org.uk.

Thank you in advance for your feedback.

QUESTIONS IN RELATION TO SECTION | RESPONDING TO CONSUMER AND BUSINESS NEEDS

Question 1: Do you agree we have properly captured and articulated the needs of End Users? If not, what needs are missing?

No, I do not agree. There is an elephant-size issue which has been suspiciously overlooked; namely, *why are 3-day payments still the norm in the UK in 2016?*

Bacs payments are synonymous with electronic payments in the UK. When people think of electronic payments in the UK, they think of Bacs. Pick up any supplier invoice in the UK and it will undoubtedly include instructions for how to pay by Bacs. And what is the feature which defines Bacs, and in turn defines the state of the electronic payments industry in the UK? *Bacs payments take three days to process.* Three days. In 2016. Let me be clear: three-day electronic payments were out of date a long, long time ago; they should not be the norm in 2016. For an electronic transaction to take three days to process, in 2016, is frankly absurd. A cheque, which clears on the fourth day, is barely any slower. And yet 80% of all electronic payments made in the UK are made over a 3-day period. How can the UK propose a modern, innovative, "efficient", and "responsive" payments infrastructure when 80% of all electronic payments made in the UK are made over an archaic 3-day cycle?

This 3-day norm for electronic payments in the UK is despite (and in contravention of) the EU's Payment Services Directive of 2007 which required and continues to require all payments to be credited at the latest by the end of the next business day (i.e. "D+1"). However, back in 2007, instead of requiring all payments to be made on a D+1 basis from then on (as required under the PSD), the UK authorities cobbled together Faster Payments and provided this to users as a D+1 "option." In the eyes of the UK authorities, this quick-fix solution allowed Bacs and three-day payments to continue, and to dominate, just as before. But just because one in every five payments in the UK today is made on a D+1 basis does not somehow excuse the remaining 80% of non-compliant payments. Needless to say, this falls very short of what the EU would consider a desired outcome under their D+1 rule. Why is the UK flouting the Payment Services Directive? And more to the point, why is the UK continuing to reject the EU and common sense view that rapid payments are essential for a modern and properly functioning economy?

Every payment that Bacs has processed since the Payment Services Directive in 2007 is a payment that should have been processed more than twice as efficiently. Every payment that Bacs continues to process today is a payment that should be being processed more than twice as efficiently. These are billions and billions of non-rapid and non-compliant payments. In 2015 alone, Bacs processed 6 billion payments (including direct debits which should also be D+1, but aren't). No benefits whatsoever stem from the ability to make a payment over a rigid 3-day cycle. On the other hand, enormous benefits could be gained (not least for businesses, for employers, and even for the economy) if all payments were made by the end of the next business day at the latest, by default, as they should be. Imagine how much better off the economy would be if all those billions of 3-day Bacs payments (including impromptu Bacs payments which continue to be made just because Bacs remains the "way of doing things") were instead made overnight. The economic benefit would be exponential, astronomical. And we should not need the EU to educate us or discipline us into accepting this point of view for the good of our own economy. It stands to simple, basic reason. Why are the UK authorities shutting their eyes to this reality? Why is Bacs not being held to account? Perhaps it wouldn't matter if Bacs was an insignificant player in the payments processing market, but it is the biggest processor of electronic payments in the UK by far.

The mass of problems and issues associated with 3-day Bacs payments in the UK can be distilled into three areas: D+1 direct debits; D+1 wages and salary payments; and 3-day payments in general. As follows.

D+1 Direct Debits

Under the European Union's Payment Services Directive, which came into force in 2009, Member States are duty-bound to require that payment service providers (i.e. banks) credit payments to the payee's bank account at the latest by the end of the next business day. Paying by the end of the next business day is otherwise known as "D+1". Furthermore, direct debits are *explicitly included* under the D+1 rule. The Payment Services Directive reads, "In order to improve the efficiency of payments throughout the Union, all payment orders initiated by the payer and denominated in euro or the currency of a Member State whose currency is not the euro, including credit transfers and money remittances, should be subject to a maximum 1-day execution time. For all other payments, such as payments initiated by or through a payee, **including direct debits** and card payments, in the absence of an explicit agreement between the payment service provider and the payer setting a longer execution time, **the same 1-day execution time should apply**."

As stated very clearly above, direct debit payment orders should be subject to a maximum 1-day execution time. In other words, users should be able to initiate a direct debit payment order today and it should be executed tomorrow. However, *seven years* after the PSD came into effect, it is not possible to make D+1 direct debit payments in the UK. All direct debit payment orders received in the UK are credited on the third working day after the payment instruction has been submitted (via the Bacs cycle). This means that, instead of being able to submit up-to-date direct debit payment orders the day before payment is to be collected, companies with direct debit authority (i.e. with a direct debit mandate already in place) are forced into submitting their direct debit files two days before payment is collected. Then, when unforeseen things happen the day before payment is collected, including customers joining, leaving, starting, departing, dying, changing their minds, etc., it is too late to do anything about it because the direct debit payment order has already been submitted the day before. Furthermore, the originator is unable to cancel an instruction on Day 2 (before payment is collected on Day 3), which means that customers are unnecessarily direct debited unless they are able to stop the direct debit themselves. These unnecessary direct debits would not occur if the originator was simply able to submit the payment order the day before, i.e. on a D+1 basis.

In any case, regardless of the common sense reasoning, the PSD makes it very clear that direct debits are subject to the D+1 rule. It plainly says so in the directive. Why would the EU specifically include direct debits under the D+1 rule only for the UK to simply ignore it? Why has the UK ignored the Payment Services Directive when it comes to direct debits? Why is the UK still not complying with this directive after seven years? Why is the UK continuing with three-day direct debits when the EU directive very specifically requires D+1 direct debits? This is a clear-cut violation of Union law and of UK payment service user rights.

In summary, D+1 direct debits are a clearly stated, fundamental, legal, and non-negotiable right to which payment service users in the UK are entitled under the Payment Services Directive. However, seven years after the PSD came into law, there is no D+1 option for direct debits in the UK and there never has been. This is an unlawful situation under the PSD.

D+1 Wages and Salary Payments

In 2016, many organisations employ staff working complex structures of 24-hour rotas and shift patterns. This is how modern businesses work. Employers do not always pay their staff the same amount on the same day each month. If only payroll was this simple. Furthermore, payroll processing in 2016 requires negotiating a vast array of complicated and ever-changing payroll rules and regulations. And yet, when it comes to processing payroll at the end of each pay period and when there is a limited amount of time between when the pay period ends and when the pay is due in the bank accounts of the employees – just when employers need all the time they can get to run their payroll – employers lose a day or more of their time – *every time* – just because of Bacs. Where employers should be able to submit their payment orders the day before payment needs to be made into employee bank accounts, instead they are forced into submitting their payment order the-day-before-the-day-before, simply because it takes Bacs three days to process an electronic transaction, nine years after the EU stated that there is no good reason why banks should not be able to provide next-day payment.

You might be tempted to point out that employers can use Faster Payments for paying wages and/or salaries if they so wish. However, this is not true. Employers use Faster Payments for wages and salary payments at their peril. Through an exclusive arrangement with HMRC, Bacs payments include a hidden Bacs "RTI hash code" which reconciles automatically with HMRC (and in turn with the Department of Work and Pensions). This Bacs hash code and automatic reconciliation with HMRC provides *essential* benefits – to employers and employees alike – which are not available to users of Faster Payments (i.e. D+1).

For starters, the Bacs hash code provides HMRC with automatic proof of the employer's RTI compliance. If employers do not use Bacs for their payroll payments, they are left exposed to RTI compliance investigations by HMRC. Penalties are in force for inaccurate RTI returns, and HMRC have made it clear they will investigate compliance checks to ensure employers are reporting RTI correctly. This approach makes it essential that employers and their payroll providers can demonstrate their compliance with their RTI reporting obligations and prove they are correctly operating PAYE. The only sure way to prove PAYE is being operated correctly in real time is to use Bacs to pay employees.

Second, when an employer pays its staff by Bacs, and consequently the Bacs hash code reconciles with HMRC in real time, HMRC shares this data with the Department of Work and Pensions (DWP) four times per day, which allows the DWP to check and adjust its payments to calculate correct benefits to pay employees. If, on the other hand, the employer pays its staff by Faster Payments (or any other method), there is no real time reconciliation with HMRC, and no real time sharing of data with DWP. This leaves the DWP having to write to the employer to manually confirm payments. At some point further on the DWP receives a response from the employer and eventually adjusts its benefits. All the while, the employee has received out of date, irregular and/or incorrect benefit payments, just because the employer chose to use a payment method which was not Bacs.

In summary, by using a D+1 option for wages and salary payments, employers are:
1. Putting themselves at risk of HMRC RTI penalties and compliance investigations;
2. Putting their lower-paid employees at risk of welfare hardship;
3. Ignoring the recommendations of professional bodies, including ICAEW, ACCA and ICAS; and
4. Being forced into using a payment method which is considered less than best practice by HMRC.

Clearly, this does not equate to fair and reasonable choice for an employer wishing to pay their staff the next business day. It equates to no D+1 option at all. It is nothing less than *irresponsible* for an employer to choose Faster Payments for its wages and salary payments. Where does this leave employers who wish to pay their staff the next business day as they are entitled to under the European Union's PSD? What happened to rapid payments being essential for a modern and properly functioning economy? When it came to the implementation of new technology to assist in the reconciliation between payments and government, why was three-day Bacs put forward as the only payment system worthy of this project at the expense of D+1 payments? The Bacs RTI hash code, with its essential benefits for both employers and employees, is only available to Bacs users. No equivalent "hash code" or benefits exist for Faster Payments or any other payment option. In effect, Bacs has corrupted the market and changed the playing field when it comes to the payment of wages and salaries in the UK – for the benefit of Bacs and Bacs users only. Importantly, and consequently, this means that payment services users in the UK are being forced into using the outdated 3-day Bacs system rather than a system that allows for payments to arrive the next business day. Presumably the UK authorities were complicit in this anti-competitive and non-compliant arrangement between Bacs and HMRC?

Furthermore, employers in the UK have not been made aware of the risks of using Faster Payments for wages and salary payments. Most employers don't know that by using a D+1 option for their wages and salary payments they are putting their company at risk and their employees at risk. Does the average employer know that by using Faster Payments for its payroll payments they are risking RTI compliance investigations and putting their employees at risk of welfare hardship? No. *These users might have assumed that it is safe to use a D+1 option for wages and salary payments seven years after the PSD came into law.*

Why have the D+1 options for payroll been abandoned in the UK in favour of a system which was deemed out of date nearly a decade ago? Why are users left *disadvantaged* by using the D+1 option for the payment of wages and salaries? Why have three-day payments been allowed to become the best practice option for wages and salary payments, nine years after D+1 was deemed essential for a modern and properly functioning economy? There is a reason why 90% of the UK workforce is paid by Bacs, and it is not because employers want to be paying over a rigid three-day cycle. *It is because the D+1 option isn't really an option at all.* This situation is illegal under the European Union's Payment Services Directive. Employers (as Payment Service Users) are being denied the fundamental right to be able to pay their staff by the end of the next business day.

3-Day Payments in General

Back in 2007, Member States were given two years to make the necessary changes to require that payment service providers credit payments to the payee's bank account at the latest by the end of the next business day. However, two years later, instead of all payments being made on a D+1 basis, the UK authorities had cobbled together a new payment system called Faster Payments and offered this to users as a D+1 "option". Unsurprisingly, Faster Payments was, and remains, a substandard and inferior option compared to Bacs. To this day, Faster Payments cannot process direct debits. Employers and employees are at risk if Faster Payments is used for wages or salary payments. Not all sort codes accept Faster Payments (why else is there a "Sort Code Checker" on the Faster Payments home page?). There is uncertainty over Faster Payment limits. The timeframe surrounding payment delivery times for Faster Payments is unclear. The banks themselves, for example Barclays, offer the following warning: *"Note that payments are not guaranteed to be processed through the Faster Payments scheme (FPS). Payments can only be sent through FPS if they fall within the scheme limit and the receiving sort code is able to receive Faster Payments."* There are warnings about Faster Payments not being underwritten in the same way as Bacs. Banks often cite security as a reason for limiting Faster Payments amounts. The list of impracticalities and confusing jargon surrounding Faster Payments goes on and on. Is it any wonder so few D+1 payments are processed in the UK compared to three-day Bacs payments?

In 2007, the EU declared rapid payments essential for a modern and properly functioning economy, adding that there is no reason why payments should not be made by the end of the next business day at the latest – because, in 2007, banks were already providing such payments profitably. Why then, nine years later, does Bacs still take three days to process payments? In 2016, three-day payments should now be redundant. Instead, in the UK, they are the only option for direct debits, the only RTI-enabled option for the payment of wages and salaries, and the entrenched option for all other payments. The number of D+1 payments made in the UK in 2015 were a tiny fraction of the number of three-day payments. Instead of three-day payments decreasing in number after the PSD, the same number of three-day transactions were made in 2015 as were made in 2007, before the PSD. Instead of D+1 now being the established default payment option, as it should be, three-day payments remain the first choice form of payment, just as they were nine years ago. Three-day payments are entrenched, embedded and omnipresent in all aspects of day-to-day government and business practices and processes in the UK. You only need to look at the annual processing statistics for proof: 80% of electronic payments made in the UK – i.e. four in every five payments – are three-day payments.

What excuse is there for Bacs taking three days to process electronic payments in 2016? Why is the UK putting up with 80% of its electronic payments taking the same amount of time to process in 2016 as it took back in the 1980s when magnetic tapes were delivered by courier? Why are businesses hamstrung by 3-day payments when personal payments take only two hours to process? How is the UK getting away with 80% of its electronic payments not complying with the EU's 2007 D+1 rule? Is this not a serious infringement of the Payment Services Directive? (A directive is "a legal measure that is binding on each Member State *about the result to be achieved*"). What was the point of the PSD's D+1 rule if, nearly a decade later, 3-day payments simply carry on being the norm? Putting aside the billions of non-rapid payments that Bacs already processes, how and why is 3-day Bacs allowed to blatantly advertise for an even greater share of the payments market? (Refer the advertising on the Bacs website encouraging businesses to use Bacs for their supplier payments, pensions, employee expenses, insurance settlements, dividends and refunds, etc.). Why have three-day payments been deliberately and unlawfully protected in the UK for the past seven years? Why are fundamental rights under the PSD being denied to UK payment service users? Why have the UK authorities not taken D+1 seriously? Where is the education, accountability, and leadership when it comes to a 100% (not 20%) implementation of D+1 in the UK? Why, when the UK sits down to a forum on the strategy and future of payments in the UK – which is supposedly centred around being responsive to user needs – are none of the above issues and questions even raised? The Draft Strategy talks about complying with PSD 2. How about complying with PSD 1 first?

Summary

If rapid payments are essential for a modern and properly functioning economy, then the reverse is also true: non-rapid payments are a constraint upon a modern and properly functioning economy. Ergo, Bacs payments are a constraint upon a modern and properly functioning economy. Four in every five payments made in the UK today are Bacs payments, which is to say four in every five payments made in the UK today are made in a way that constrains the UK economy. And Bacs payments have been a constraint upon the UK economy *for a decade*. Is this not plain to see? When is the UK going to wake up to Bacs? When will we see an end to the outdated, ruinous, insidious, and unlawful stranglehold of three-day payments in the UK? Enough is enough. It's about time Bacs got with the times and stopped slowing the wheels of commerce in the UK. Or are three-day payments still going to be the norm in 2020? This realistic scenario is more than absurd; it is scandalous.

Sooner or later the EU will demand to know why 3-day payments remain the norm in the UK and why fundamental rights under the PSD are being denied to UK payment services users. For the sake of payment service users in the UK (and the UK economy), I hope the EU intervenes soon. But in the meantime, and at the very least, payment service users in the UK – especially businesses – deserve a proper explanation.

Question 2a: Do stakeholders agree with the financial capability principles?

Question 2b: How should these principles be implemented?

Question 2c:	How their implementation should be overseen and how should the industry be held to account?

Question 3a:	What benefits would you expect to accrue from these solutions (not necessarily just financial)?

Question 3b:	Do you agree with the risks we outline? How should we address these risks? Are there further risks we should consider?

Question 3c:	Is there a business case for investing in solutions to address these needs and if not, how such an investment can be justified?

Question 3d:	Are there any alternative solutions to meet the identified needs?

Question 3e:	Is there anything else that the Forum should address that has not been considered?

Question 4a:	Is there a business case for investing in transitional solutions while the new payments architecture is being delivered and if not, can such an investment be justified?

Question 4b:	Are there any viable technical solutions to deliver some of the consumer benefits early without compromising the longer term solutions recommended by the Forum?

QUESTIONS IN RELATION TO SECTION 6 | IMPROVING TRUST IN PAYMENTS

Question 5a:	Do you agree with our proposal regarding customer awareness and education? If not, please provide evidence to support your response.
Question 5b:	Do you agree the delivery of these activities should be through an industry trade body? If so, which one would be most appropriate to take the lead role?
Question 6:	Do you agree with the establishment of guidelines for identity verification, authentication and risk assessment? If not, please provide evidence to support your response.
Question 7a:	Do you agree with our solution to develop a central data repository for shared data and a data analytics capability? If not, please provide evidence to support your response?
Question 7b:	Do you agree with the potential risks we outline? How should we address these risks? Are there further risks we should consider?
Question 7c:	If any legislative change is required to deliver this solution, would such change be proportionate to the expected benefits?
Question 8a:	Do you agree with our solution for financial crime intelligence sharing? If not, please provide evidence to support your response?
Question 8b:	In what way does this solution improve financial inclusion? More generally, how should the intelligence sharing be used for the "public good"?

Question 8c:	Do you agree with the potential risks we outline? How should we address these risks? Are there further risks we should consider?

Question 8d:	Do the benefits of financial crime intelligence sharing outweigh the new potential risks created?

Question 8e:	Can this operate without changes to legislation? If not, what changes to legislation would be required to make this happen? If any legislative change is required, would such change be proportionate to the expected benefits?

Question 8f:	What governance structure should be created to ensure secure and proper intelligence sharing?

Question 9:	Do you agree with the proposal to develop a Central KYC Utility? If not, please provide evidence to support your response?

Question 10:	Do you agree with our solution for enhancing the quality of sanctions data? If not, please provide evidence to support your response?

QUESTIONS IN RELATION TO SECTION 7 | SIMPLIFYING ACCESS TO PROMOTE COMPETITION

Question 11:	Do you agree with our proposal regarding access to sort codes? If not, please provide evidence to support your response.

Question 12:	Do you agree with our proposal regarding access to settlement accounts? If not, please provide evidence to support your response.

Question 13a:	Do you agree with the proposal regarding aggregator access models? If not, please provide evidence to support your response?

Question 13b:	How can the development of more commercial and competitive access solutions like aggregators be encouraged to drive down costs and complexity for PSPs?

Question 14:	Do you agree with our proposal regarding Common Payment System Operator participation models and rules? If not, please provide evidence to support your response.

Question 15a:	Do you agree this proposal regarding establishing a single entity? If not, please provide evidence to support your response.

Question 15b:	If you do not agree, how else could the benefits be achieved without consolidating PSO governance in the way described?

Question 16:	Do you agree with the proposal to move the UK to a modern payments message standard? If not, please provide evidence to support your response.

Question 17a:	Do you agree with the proposal to develop indirect access liability guidance? If not, please provide evidence to support your response?

Question 17b:	What, in your view, would prevent this guidance being produced or having the desired impact?

Question 17c:	In your view, which entity or entities should lead on this?

QUESTIONS IN RELATION TO SECTION 8 | A NEW ARCHITECTURE FOR PAYMENTS

Question 18a: Do you agree with the proposal for a co-ordinated approach to developing the various types of APIs? If not, please provide evidence to support your response?

Question 18b: What are the benefits of taking a co-ordinated approach to developing the various types of APIs? What might be the disadvantages of taking this approach?

Question 18c: How should the implementation approach be structured to optimise the outcomes?

Question 19a: Do you agree with our proposal to create a Simplified Delivery Mechanism? If not, please provide evidence to support your response?

Question 19b: Should the new consolidated entity be responsible for leading the development of the new rules/scheme or should a new body be given this responsibility?

Question 19c: Could an existing scheme adapt to provide the Simplified Delivery Mechanism or should a new one be developed?

Question 19d: Would it be better for the processing and clearing functions of the simplified framework to be built on distributed architecture or a centralised infrastructure? Could there be a transition from a centralised structure to a distributed structure over time?

Question 19e:	Do you think it is feasible to begin work to design a new payments infrastructure given existing demands on resources and funding?

Question 20a:	Do you agree that the existing arrangement of the payments system in the UK needs to change to support more competition and agility?

Question 20b:	Will the package of proposals we suggest, the Simplified Payments Platform, deliver the benefits we have outlined? What alternatives could there be?

QUESTIONS IN RELATION TO SECTION 9 | OUR STRATEGY IN SEQUENCE

Question 21a: Do you agree with this proposed sequence of solutions and approach outlined to further clarify this?

Question 21b: If not, what approach would you take to sequencing to bring forward the anticipated benefits, in particular for end users?

QUESTIONS IN RELATION TO SECTION 10 | IMPLEMENTATION APPROACH

Question 22a:	What approach should be taken to deliver the implementation of the Forum's Strategy?

Question 22b:	Who should oversee the implementation of the Forum's Strategy?

Question 22c:	What economic model(s) would ensure delivery of the Strategy recommendations?

QUESTIONS IN RELATION TO SECTION 11 | COST BENEFIT ANALYSIS APPROACH

Question 23a:	Do you agree with the proposed approach for quantifying the potential costs and benefits of the proposed solutions?

Question 23b:	Do you agree with the costs and benefits drivers outlined in this document?

Question 23c:	We would appreciate any information on the potential costs and benefits you may have to assist our analysis.