Written evidence submitted by the Association of UK Payment Institutions (AUKPI)

Re: Call for evidence – the economic impact of COVID-19

Background

The Association of UK Payment Institutions (AUKPI) represents Payment Institutions regulated by the Financial Conduct Authority (FCA).

The Association's principal role is to provide a forum where member firms can come together to discuss and collectively respond to issues of common concern. We also offer services to members, including online AML training.

We aim to represent the interests of our industry to law makers, regulators, banks and other financial institutions and consumers at both UK and European level.

Our member firms may offer any of the services allowed under the Payment Services Regulations 2009, this includes online foreign exchange and related payments business, money remittance and associated services, merchant acquiring, payment accounts, card processing, execution of payment transactions – direct debits, payment cards, credit transfers, standing orders, payment initiation services, etc. We also offer membership to others with an interest in the payments sector such as technology and professional services firms.

Previous submission

We made a previous submission requesting that our members be designated as essential services for the purposes of which firms were allowed to re-open, and we were delighted when this dispensation was granted.

We warmly welcome the opportunity to provide input on some of the questions addressed by the Call for Evidence.

- What gaps are there for businesses within the schemes?

Member businesses should be eligible for business rates support. We have lobbied the Ministry of Housing to take "bureaux de change" off their list of exemptions with a letter dated 5th May. Our members do offer travel money services and some could be classified as “bureaux de change”, as per paragraph 16(i) of the Expanded Retail Discount 2020/21: Coronavirus Response – Local Authority Guidance issued by the Ministry on 2nd April 2020.

However, firstly many offer this service in tandem with other businesses e.g. the financial business is housed within a shop or café, or, in the case, of a travel money business, within a travel agency.

Secondly, their travel money business is hardly “financial services” in the traditional sense. Most of the competing travel money providers - such as Post Offices, Travel Agents and supermarkets – are eligible for Business Rates support, and they together have over 50% of the travel money market. It is hardly fair that our members – a minority supplier in the samw trade – are ineligible.

- Is the financial sector supporting businesses enough? Are businesses getting the right advice on which grants/loans to access?

Access to bank accounts for our members is as bad as ever in the sense that banks (i.e. credit institutions as defined in the 2017 Payment Services Regulations) are not discharging their responsibilities under Article 105 to offer banking services to our members on a basis that is proportionate, objective and non-discriminatory. This means, in the first instance, offering payment accounts and safeguarding accounts, and, through those accounts, access to UK and international payment systems.

According to the work we have done, there is currently only one credit institution that will accept an account from an Authorised Payment Institution, with several limitations in the service scope, and as long as the Payment Institution does not handle cash. There is no credit institution willing to accept a Small Payment Institution.

There is a major disconnect between the intentions of Article 105 and the reality, and the gap between the two needs to be bridged as an urgent priority. If the market cannot be made to function properly through existing legal and private mechanisms, the authorities need to consider some kind of “safe harbour” mechanism, similar to one pioneered by the US Treasury. In such a system, a firm could be certified that its business did not contravene applicable laws and regulations, even if that business was conducted with countries that have been placed on lists, such as the recently issued EU list, of countries where there is a raised risk of financial crime.

Cash is a particular problem, but not quite in the sense understood by an initiative called "Access to Cash", which focuses on access for consumers to draw cash out of free-to-use ATMs. There is too little focus on the methods of depositing cash and for organisations like our members. Our members' customers are at the low end of the income band and often in unreliable employment. This means that they are more likely to be paid in cash. The range of services available for our members to deposit that cash into their bank accounts is narrow, slow and expensive, and this has its knock-on effect on the service possible for the customer.

- What are the financial regulators and the financial sector doing to reduce the risk of people being taken advantage of by fraud at this time, in particular with regard to vulnerable groups?

The FCA and Payment Systems Regulator need to ensure that Article 105 of the 2017 Payment Services Regulations - access to bank accounts for non-bank PSPs - is complied with. That assists our members in catering for the needs of vulnerable customers. The current access our members have is not commensurate with their having been designated as an “essential service”.

The FCA is currently running a consultation about altering their guidance in the areas of safeguarding and prudential risk management. While some of the proposed clarification proposed in it is worthwhile, the overall effect is to place added burdens on the sector and hinder its recovery.

We are particularly concerned about the FCA’s proposals around the “safeguarding” of customer funds which could result in a requirement that the Payment Institution have its own funds in a relationship of 1-to-1 with customer funds, and that the Payment Institution must make the payment with its own funds, and only reimburse itself on the customer funds when it is certain that its own funds have reached the beneficiary.

This may not be the FCA’s intention, and we are certain it is not the intention of the 2017 Payment Services Regulations. Nevertheless this may come about and if it does, it represents a severe threat to our members’ operations, and to their ability to continue to serve their customers.

By way of explanation, customer funds are known as “relevant funds” and must be segregated from a Payment Institution’s own funds at all times, by the maintenance of separate bank accounts for “relevant funds” and for the Payment Institution’s own funds. Safeguarding is only required when “relevant funds” are still within the control of the Payment Institution at the end of the business day following the one upon which the “relevant funds” came within the Payment Institution’s control.

23.6 “Safeguarding requirements” in the 2017 Payment Services Regulations states that the safeguarding applies “Where the authorised payment institution continues to hold the relevant funds at the end of the business day following the day on which they were received it must…”, and then it lists the accepted methods of safeguarding.

It is clear, from Article 40 to Article 101, that Payment Institutions as Payment Service Providers (PSPs) are subject to the same terms as any other PSP when acting as the payer’s PSP: their contract with the payer is discharged when they have put the funds at the disposal of the payee’s PSP, or the nominated agent of the payee’s PSP.

This is not the same as the contract being discharged when the beneficiary has the money: the steps between the payer’s PSP putting the funds at the disposal of the payee’s PSP and the beneficiary having the money are outside the control of the payer’s PSP, and this fact is acknowledged in the 2017 Payment Services Regulations.

Further guidance, layered on top of existing guidance is not helpful at the best of times, and we believe that in this area the FCA needs to go back to the source legislation, state its intentions, and issue guidance that matches its intentions.

- Should the Government intervene more actively in terms of state aid, bail-outs and its industrial strategy?

Non-bank PSPs should be allowed safeguarding accounts at the Bank of England, instead of having to hold them outside the UK. We sent a letter to the governor of the Bank of England on 24th April on this issue. We highlighted the extent to which safeguarding was being done with credit institutions elsewhere in the EU, in the Eurozone, albeit that the rules were recently relaxed to allow safeguarding with credit institutions elsewhere. We noted the weak state of the finances of the Eurozone banking system, and that the controls on banks were being weakened – not strengthened – in response to the coronavirus crisis.

We drew attention to the fact that, while there are other safeguarding options allowed within the 2017 Payment Services Regulations beyond holding an account with a credit institution, two have proven to be operationally unworkable: they are investing customer funds in high-quality liquid assets and using an insurance policy.

This led us to the final option: an account with the Bank of England. Even before COVID-19 it was unacceptable that customer funds should have been at risk in banks in Cyprus, Malta and the Baltics, for the reasons we have laid out to the FCA and Payment Systems Regulator, and which were enclosed with our letter.

We asked the governor to use his good offices to arrange that the Bank of England open safeguarding accounts for all of the PSPs who are duly registered or authorised at the FCA, or, if that should not work operationally due to capacity or whatever, that the Bank of England should appoint an agent bank to do this for them under suitable indemnity.

The plans for an economic crime levy announced at Budget 2020 should be cancelled. The levy is planned to generate up to £100m / year to help pay for the "ambitious economic crime reforms" the government announced in its 2019 Economic Crime Plan. This will be additional to, not replacing, existing public funding. The levy is planned to apply to firms who are regulated for anti-money laundering purposes. The Treasury is due to publish a consultation on the levy shortly, albeit slightly delayed by Covid-19.

This will place yet another burden on our sector and hinder its recovery.

Instead, priority should be given to the focusing of the powers and resources already available to the National Crime Agency, the police, HMRC et al on the so-called Money Services Business that are actually actors handling money who have no registration or authorisation to do so. In February these authorities publicised an action in which they inferred that all or most of the 34,000 organisations in the registered/authorised sector were party to criminal activity. These aspersions fell indiscriminately upon the registered/authorised sector, but will not have touched the "underground" sector.

The substantive actions taken by authorities (leafleting around Queensway and Bayswater) then mismatched the supposed scale of the problem as communicated to the press. Now the onus should be on the NCA-police-HMRC apparatus to come good on the serious allegations it has made and to generate a stream of prosecutions, so as to achieve what the NCA-police-HMRC apparatus has had the powers to do for some time: eliminate the many bad actors that it claims exist.

- What will be the economic impacts of the coronavirus outbreak and the social distancing measures in terms of sectors and regions and how temporary/permanent will they be?

Our members' customers are at the low end of the income band and often in unreliable employment. It may be that they do not all return to employment or achieve the income levels they had before the outbreak. That would precipitate a major reduction in the flows of migrant remittances to countries that most need them, and bring about a humanitarian disaster to many of the world's poorest regions, at the exact same time as COVID-19 cases rise in the developing world.

- What will be the impact on inequalities within society and how should the Government address inequalities that may have been exacerbated by the crisis?

On 22nd May the UK and Switzerland called for greater global collaboration to make sure diaspora communities around the world can continue to send financial support to their families in developing countries. Both the UK and Switzerland are also urging countries to support greater access to digital remittance services and to declare remittances an essential financial service. They are also encouraging remittance service providers to reduce costs and fees for people making payments.

The UK is right to do so and address this aspect of inequality which has indeed been exacerbated by the crisis.

But this will come to nothing unless the measures to improve banking access for our members in the UK are implemented.

Should that not happen, and should extra burdens be placed on the sector (such as the Financial Crime Levy, and restrictive guidance issued by the FCA around safeguarding and prudential risk management), there is a likelihood of remittance firms deciding to cease operations. That would give rise to a number of detriments, including a concerning humanitarian situation in many parts of the world and growing security risks associated with an increase in underground, criminal financial flows, including routes which help fund terror groups such as Al-Shabaab.

June 2020