

# **Review of the operations of the Payments Council**

A follow-up to the work of the Payment Systems  
Task Force

March 2009

OFT1071

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# 1 EXECUTIVE SUMMARY

1.1 The Payments Council was established by the Payment Systems Task Force in March 2007 to assume responsibility for setting 'the strategy for UK payment systems [and] ... to ensure that UK payment systems and services meet the needs of users, payment service providers and the wider economy'.<sup>1</sup> The Task Force set three key objectives for the Payments Council:

- to lead the future development of co-operative payment services in the United Kingdom
- to ensure that the payment system is open and accountable and
- to ensure the operational efficiency, effectiveness and integrity of payment services in the United Kingdom.

1.2 The OFT agreed to review the work of the Payments Council after two years of operation to:

- score its performance against its three main objectives
- look at its broader success in facilitating progress in payment systems within its remit, and
- look at its effectiveness to provide lasting change in the payments industry and to set a development plan for any areas of concern.

This is the report of that review.

## Findings

1.3 The Payments Council has had some success in meeting the objectives set for it by the Task Force. The payments industry has benefitted from a much greater strategic direction (including the National Payments

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<sup>1</sup> [www.paymentscouncil.org.uk](http://www.paymentscouncil.org.uk)

Plan), and from greater openness and accountability. Compared to what went before it, the Payments Council has proved a success.

- 1.4 The Payments Council's work on the cross-scheme integrity of payment systems has been disappointing. While payment systems themselves continue to be stable and secure, the Payments Council has not added value quickly enough, for instance by taking a dynamic lead in ensuring cross-scheme integrity. This is an area where the Payments Council needs to improve.
- 1.5 Despite being largely successful in meeting its other two objectives, several themes have emerged where the Payments Council could improve its performance:
  - The Payments Council needs to follow up its initiatives with its members – typically the banks - to ensure that end-users actually get the benefits envisaged. This includes improving take-up of the Faster Payments Scheme.
  - The Payments Council needs to be proactive in establishing where improvements are necessary, rather than just reacting to external pressures.
  - The Payments Council is still seen by many stakeholders as being too dominated by banking interests.

## **Recommendations**

- 1.6 The OFT does not believe that a future full scale OFT review of the Payments Council is necessary. However, we do believe that it is important that the Payments Council's performance in meeting its objectives is evaluated properly. We have therefore made two recommendations to improve the performance of the Payments Council through a clear evaluation process. In addition we have made five specific recommendations for immediate improvements based on our findings.

## **Cross-scheme Integrity**

- 1.7 The OFT recommends that issues of integrity are given a higher priority by the Payments Council than has been the case. In order to ensure progress against this objective, the Payments Council should commission an accountancy firm to report in two years on how well it has performed. The report (or the Executive Summary of it) should be published in the Payments Council's Annual Review, and the Payments Council should outline how it intends to address any action points identified in it. Following the review from the accountancy firm, the Payments Council should self-assess against its integrity objective as described at paragraph 1.8.

## **Assessment against the objectives of the Payments Council**

- 1.8 The OFT recommends that the Payments Council provides a self-assessment against progress every two years on:
- its Strategic Vision and Openness and Accountability objectives
  - recommendations of the Task Force where these have not been met
  - specific recommendations from this Review (see Chapter 9)
  - after the assessment by the accountancy firm, a self-assessment against integrity should also form part of this process.
- 1.9 This self-assessment should contain the results of an open consultation with stakeholders on progress against objectives. The OFT may still choose to look into specific aspects of the Payments Council's performance against objectives, if we consider there is sufficient reason.

## **Specific recommendations**

- 1.10 The OFT has made five specific recommendations for immediate improvements based on our findings. These are described in detail in Chapter 9.

## 2 INTRODUCTION AND BACKGROUND

- 2.1 The Payment Systems Task Force was set up following an announcement by the Chancellor of the Exchequer in his pre-Budget Report of November 2003 that the OFT would play 'an enhanced role' in payment systems for a period of four years.<sup>2</sup> The work of the Task Force was based on the issues raised by the 'Cruickshank Report' 2000 in the areas of governance, access, wholesale pricing, innovation and price transparency of payment systems.<sup>3</sup>
- 2.2 The Task Force was chaired by the OFT and brought together the banking industry and retail, consumer and business representatives to ensure that decisions reached would benefit all sectors of the United Kingdom's economy. The Bank of England and H M Treasury attended the Task Force as observers.
- 2.3 In October 2006, the Chairman of the OFT wrote to the Chancellor of the Exchequer recommending the creation of a new body responsible for ensuring the overall integrity and operational efficiency of the United Kingdom's non-card payments systems. The Chancellor agreed with the Chairman's recommendation.
- 2.4 The new body, which was subsequently named the Payments Council,<sup>4</sup> was established by the Task Force with a Board consisting of 11 payments industry directors and four independent directors under an independent, non-voting Chair. A procedural device was included so that the four independent directors, when voting together, hold a blocking minority.

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<sup>2</sup> [www.hm-treasury.gov.uk/prebud\\_pbr03\\_repindex.htm](http://www.hm-treasury.gov.uk/prebud_pbr03_repindex.htm)

<sup>3</sup> [www.hm-treasury.gov.uk/fin\\_bank\\_review.htm](http://www.hm-treasury.gov.uk/fin_bank_review.htm)

<sup>4</sup> [www.paymentscouncil.org.uk/](http://www.paymentscouncil.org.uk/)

2.5 The Task Force set three key objectives for the Payments Council:

- to lead the future development of co-operative payment services in the United Kingdom
- to ensure that the payment system is open and accountable, and
- to ensure the operational efficiency, effectiveness and integrity of payment services in the United Kingdom, through a focus on issues which cross schemes.

2.6 These objectives are set out in full at paragraph 3.3 of this report.

2.7 The Task Force<sup>5</sup> concluded that the OFT should complete a review of the work of the new body two years after its first Board meeting (which took place in March 2007). The review would score the performance of the new body in relation to its three main objectives against the Cruickshank concerns and with regard to its broader success in facilitating progress in all payment systems within its remit. It would also look at the effectiveness of the new body's mechanism to continue to provide lasting change in the payments industry and, if necessary, set a development plan for any areas of concern.

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<sup>5</sup> [www.of.gov.uk/shared\\_of/reports/financial\\_products/oft901.pdf](http://www.of.gov.uk/shared_of/reports/financial_products/oft901.pdf)

### 3 THE PAYMENTS COUNCIL AND MEMBER PAYMENT SCHEMES

3.1 This chapter explains the structure of the way that payments are administered in the UK. This structure was introduced following the publication of the *Final Report of the Payment Systems Task Force*.<sup>6</sup> The most important change was the introduction of a new body, now called the Payments Council.

#### The Payments Council

3.2 The Payments Council is 'the organisation that sets strategy for UK payments. It has been established to ensure that UK payment systems and services meet the needs of users, payment service providers and the wider economy'.<sup>7</sup>

3.3 The Payment Systems Task Force set the Payments Council three main objectives:

**Strategic vision:** to lead the future development of co-operative payment services in the United Kingdom in order to ensure that the payment system as a whole meets the needs of payment service providers, users and the wider economy, including through:

- facilitating competition, development and innovation within the sector, and
- the identification and sponsorship of innovative solutions, including where appropriate new clearing schemes, to meet the current and future

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<sup>6</sup> [www.oft.gov.uk/advice\\_and\\_resources/publications/reports/financial/oft901](http://www.oft.gov.uk/advice_and_resources/publications/reports/financial/oft901)

<sup>7</sup> [www.paymentscouncil.org.uk/about\\_us](http://www.paymentscouncil.org.uk/about_us)

needs of consumers, businesses and other users promptly and efficiently.

**Openness and accountability:** to ensure that the payment system is open and accountable and that:

- any restrictions on access to payment schemes are fair, reasonable, and non-discriminatory
- the governance of payment systems is transparent and open to public scrutiny and
- any proposals for innovation and major changes in the conduct of payment schemes are subject to rigorous and transparent evaluation, weighing up the costs and benefits to the banking industry and to society as a whole.

**Integrity:** to ensure the operational efficiency, effectiveness and integrity of payment services in the United Kingdom, through a focus on issues which cross schemes.

- 3.4 The organisational structure of the Payments Council, including the relationship with individual payment schemes, is shown at Annexe C of this report.

## **APACS**

- 3.5 APACS has been 'the UK trade association for payments and for those institutions that deliver payment services to customers. It provides a forum for its members to come together on non-competitive issues relating to the payments industry. APACS is the payments industry voice on a wide range of topics.'<sup>8</sup> Its role has changed significantly since the creation of the Payments Council.

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<sup>8</sup> <http://www.apacs.org.uk/about/index.html>

## **APACS Administration Ltd**

- 3.6 APACS (Administration) Ltd (AAL) is the service company which supplies resources to a range of customers including the Payments Council and Interest Groups. There is a Service Level Agreement between the Payments Council and AAL.

## **Relationship between the Payments Council and APACS**

- 3.7 With the introduction of the Payments Council, there was a change in the relationship between payment schemes and APACS.
- 3.8 The term APACS can be thought of as a 'brand'. With the setting up of the Payments Council certain activities that would have been carried out under this brand have now migrated to the Payments Council. The APACS brand today is used predominately for certain APACS Interest Groups such as the Card Payments Group which are separate from the Payments Council.

## **Individual payment schemes under the Payments Council's umbrella**

### **Bacs Payments Schemes Ltd**

- 3.9 Bacs is a 'not-for-profit, membership based industry body'.<sup>9</sup> It is responsible for the processing of payments through two principal electronic payment schemes; Direct Debit and Bacs Direct Credit. It is owned by 15 banks and building societies and is responsible for the schemes behind the clearing and settlement of automated payments in the UK and maintaining the integrity of payment related services.
- 3.10 VocaLink provides to Bacs and its members the central processing infrastructure for the Bacs payment system. This is provided through a non exclusive commercial agreement.

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<sup>9</sup> [www.bacs.co.uk/bacs/corporate/](http://www.bacs.co.uk/bacs/corporate/)

## **CHAPS Clearing Company Ltd**

- 3.11 The CHAPS Clearing Company manages the CHAPS and Faster Payments schemes. CHAPS is a Real Time Gross Settlement (RTGS) system, which is primarily used for large value payments.
- 3.12 The relationship between the CHAPS scheme and the Bank of England, which processes CHAPS payments, is governed by a Memorandum of Understanding. This document sets out the understanding of the respective responsibilities of the Bank and CHAPS with regard to the performance of the CHAPS System.

## **Faster Payments**

- 3.13 The CHAPS Clearing Company also manages the Faster Payments Service. The Faster Payments Service provides telephone, internet and standing order payments for consumers. Telephone and internet payments are made within hours, and standing order payments are made overnight.
- 3.14 Currently VocaLink is formally contracted to AAL for the delivery of the infrastructure to support the Faster Payments Scheme. The Scheme itself is managed by CHAPS on behalf of AAL. This arrangement is covered by a Memorandum of Understanding between AAL and CHAPS.

## **Cheque and Credit Clearing Company Ltd, and Belfast Bankers Clearing Company Ltd**

- 3.15 The Cheque and Credit Clearing Company is 'a membership-based industry body which manages the cheque clearing system in Great Britain. The system is also used to process banker's drafts, building society cheques, postal orders, warrants and government payable orders. The company also manages the systems for clearing paper bank giro credits and euro cheques'.<sup>10</sup>

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<sup>10</sup> [www.chequeandcredit.co.uk/about\\_us/](http://www.chequeandcredit.co.uk/about_us/)

- 3.16 The Cheque and Credit Clearing Company operates a distributed infrastructure model, where some of the contractual relationships are with the scheme company and some with the members.
- 3.17 The bulk of the processing of cheques and credits is undertaken either by the members themselves or, more usually, by an outsourced service provider, with whom the member contracts and which could be another member. Members retain overall responsibility for their work and their outsourcers. The Cheque and Credit Clearing Company has no direct relationship with members' outsourcers.
- 3.18 The Belfast Bankers Clearing Committee oversees the Northern Ireland banks' processes for the clearing of sterling cheques and sterling paper credits in Northern Ireland, together with the clearing of Euro cheques drawn on Northern Ireland banks. Membership of the Belfast Bankers Clearing Committee comprises the four Northern Ireland clearing banks, each of which appoints a director who, along with 3 independent directors, make the decisions on behalf of the company.

### **LINK ATM (Automated Teller Machine) Scheme**

- 3.19 LINK is 'the operator of the UK cash machine network'.<sup>11</sup> The LINK ATM scheme sets the rules for new and existing participants in the cash machine network and sets standards for signage, encryption, messaging, security and other features of the network. LINK does not itself install or operate cash machines.
- 3.20 In respect of the LINK scheme, VocaLink has a contract directly with members of the LINK scheme. This sets out services provided to members and service levels required. The same contract covers members' relations with each other, and sets out how the LINK scheme operates, with governance arrangements, a scheme executive and

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<sup>11</sup> [www.link.co.uk/mn\\_homepage.html](http://www.link.co.uk/mn_homepage.html)

scheme funding controlled by the scheme members and fully independent of VocaLink.

- 3.21 There are also two smaller payment schemes under the Payments Council's umbrella:

### **UK Domestic Cheque Guarantee Card Scheme**

- 3.22 The Cheque Card Management Committee is responsible for the management and operation of the UK Domestic Cheque Guarantee Card scheme. Membership is open to any financial institution having authorisation as a credit institution who wishes to issue cards under the scheme.

### **The Currency Clearings Committee**

- 3.23 The Currency Clearings Committee is a separate operational grouping, facilitated by the Cheque and Credit Clearing Company, but with its own separate budget and constitution.
- 3.24 The Currency Clearings Committee currently processes only cheques drawn in US Dollars payable in London but its constitution is worded so as to enable the inclusion of cheques drawn in any currency, other than sterling or euro, should the need arise. There are five settlement members and around 60 agency banks participating in currency clearing.

### **Relationship between the Payments Council and the individual schemes**

- 3.25 There is a generic contract in place between the Payments Council and the contracted schemes listed above. The generic contract sets out the duties and responsibilities of each party in line with an agreed Approved Business Model document. The Payments Council and contracted schemes are committed to working together for the benefit of the UK payments industry. The relationship is one of co-operation and the generic contract sets out their respective rights and duties.

- 3.26 Each payment scheme works to ensure the smooth day to day operation of its payment system and its integrity. Under the generic contract, the schemes make regular reports to the Payments Council Board. The Payments Council sets the strategic direction for the UK payments industry as a whole and the schemes work to ensure that the development of their scheme is consistent with the Payments Council's objectives and strategic plan.
- 3.27 The Payments Council Board has the authority to make decisions which are binding on relevant schemes and their members subject to an obligation on the Payments Council to consult with the schemes on any matters affecting them.

## 4 PROGRESS AGAINST RECOMMENDATIONS MADE BY PAYMENT SYSTEMS TASK FORCE

4.1 The Payment Systems Task Force made a series of recommendations to the payments industry to improve the way that payment services are delivered to end-users. These recommendations related to the 'Cruickshank issues' of governance, access, innovation and transparency.<sup>12</sup> When the Payments Council was introduced, it was handed the ongoing responsibility for monitoring the implementation of these recommendations.<sup>13</sup>

### Faster payments

4.2 The Task Force concluded that there was a need for an electronic payment service faster than the existing BACS three-working day system for telephone and internet banking payments and standing orders<sup>14</sup>. It tested out a proposition on consumers and SMEs which would allow payments made late on one day to clear by the morning of the next day, and payments made early in the day to clear later that same day. This research clearly showed that there was a strong case for introducing a faster electronic clearing system. The consumer demand for such a service (measured by consumer's willingness to pay for the service) would outweigh the costs of introducing and running the service by somewhere between £748 million and £1,340 million over 10 years.<sup>15</sup> The payments industry took this work forward and initially set a

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<sup>12</sup> It had been agreed to exclude the Cruickshank concern of wholesale pricing from the Task Force's remit, as the OFT was at the time, and still is, investigating MasterCard's wholesale pricing arrangements.

<sup>13</sup> [www.of.gov.uk/advice\\_and\\_resources/publications/reports/financial/oft901](http://www.of.gov.uk/advice_and_resources/publications/reports/financial/oft901)

<sup>14</sup> [www.of.gov.uk/advice\\_and\\_resources/publications/reports/financial/oft789a](http://www.of.gov.uk/advice_and_resources/publications/reports/financial/oft789a)

<sup>15</sup> [www.of.gov.uk/shared\\_of/reports/financial\\_products/oft789bappendices.pdf](http://www.of.gov.uk/shared_of/reports/financial_products/oft789bappendices.pdf)

target date of November 2007 for the first payments to be made. The Faster Payments Service actually became operational in May 2008.

- 4.3 The Faster Payments Service is in reality considerably quicker than the proposition tested by the Task Force. It clears payments within a matter of hours and usually within a matter of minutes, 24 hours a day, seven days a week. This means that the UK now has an electronic clearing system to rival the best in the world. We estimated the demand for such a service, compared to its cost of introduction and maintenance. We used the same methodology as was used for the earlier proposition. Despite the greater cost associated with introducing a much faster system, the benefits still outweigh the costs by a significant amount. We estimate that consumer demand for Faster Payments will outweigh the costs of introducing and running the service by somewhere between £468 million to £1.48 billion over 10 years, using these updated cost and demand figures.<sup>16</sup>
- 4.4 While Faster Payments should provide real benefits to end-users over many years, the way in which it is being delivered has come under some criticism. Bodies including the OFT expressed disappointment that Faster Payments was introduced six months later than was planned.<sup>17</sup> And the Faster Payments service has been introduced very slowly across the 13

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<sup>16</sup> Using the methodology used in the BPSL Innovation Working Group Report we have re-estimated the benefits of the Faster Payments system. As the system is better, we have assumed that consumers' willingness to pay increases. A conservative measure would be that consumers are now willing to pay 25% more than they said they would in consumer research carried out for the earlier report. As the introduction of the Faster Payments Service has been gradual, we have assumed that the service only operated at 60% capacity for the first year, and that benefit has been reduced to 40% for that period. This equates to a conservative estimate of loss of benefits to consumers of between £38m and £82m. The cost of implementing this system was six times greater than implementing the proposed slower system, and we have estimated that running costs have also increased by six times. Using this methodology with updated figures, we estimate that the surplus (consumer benefit over cost) of the Faster Payments Service over 10 years will be in the region of between £468m and £1.48bn.

<sup>17</sup> [www.of.gov.uk/news/press/2007/121-07](http://www.of.gov.uk/news/press/2007/121-07)

Faster Payments member banks. Figures for 17 March show that only 69 per cent of payments that should be made by Faster Payments are being made by Faster Payments, and it is not expected that the figure will reach 100 per cent until at least June 2009. That is more than a year from the introduction of Faster Payments, and 18 months from its planned introduction. A conservative estimate of loss of benefits from this slow roll-out to consumers is between £38m and £82m.<sup>18</sup>

- 4.5 Faster Payments moves the UK from being one of the slowest clearers of this kind of payment to being one of the fastest. The system has not suffered from any serious incidents, and has proved a reliable method of payment for consumers that are able to use it. But shortcomings have become obvious in the ability of the Payments Council both to ensure delivery of a large-scale payment project to timetable, and to ensure that its members pass on the benefits to their customers within a reasonable timescale.

### **Improvements to the cheque clearing process**

- 4.6 The Task Force concluded that while there was not a cost-benefit case for speeding up cheque clearing in the same way as it recommended for electronic clearing, there was still a need to bring the slowest clearers of cheques into line with good practice. Many consumers did not know how long it took for cheques to clear, and as a result were incurring charges from their banks. The Task Force's recommendation was that, for the three different ways in which cheques could be considered 'cleared', there be maximum timescales:

- For 'value' (when the value of a cheque counts on your balance, perhaps reducing your overdraft, or earning you interest) the

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<sup>18</sup> As the introduction of the Faster Payments Service has been gradual, we have assumed that the service only operated at 60 per cent capacity for the first year, and that benefit has been reduced for 40 per cent for that period. This equates to a conservative estimate of loss of benefits to consumers of between £38m and £82m.

maximum was set at two working days after the transaction date (known as T + 2)

- For 'withdrawal' (when the value of the cheque can be withdrawn from the bank account) the maximum was set as four working days after the transaction date (T + 4). For non-notice period savings accounts this was T + 6
- For 'fate' (when the value of the cheque was irrevocably the consumer's, and could not be taken back by the bank) the maximum was set as six working days after the transaction date (T + 6). Previously, there was no limit on when a bank could take the money out of a consumer's account if, for instance, the cheque turned out to be fraudulent.

4.7 The payments industry took this work forwards and set a deadline of November 2007 for all cheques, including those that crossed the Irish Sea to and from Northern Ireland, to meet or beat the new maximum timescales for clearing.

4.8 To accompany those improvements, the industry was tasked with informing consumers of these new maximums and to ensure that they were aware of cheque clearing times. The Task Force recommended that an education campaign be carried out to enhance consumers' understanding of cheque clearing. The industry was also tasked with producing guidance for standardising cheque clearing terminology on credit slips and bills from bodies like utility companies, so that consumers would have a clear idea of how long was needed to ensure cheque payments cleared in time.

4.9 The vast majority of cheques do now clear within the maximum timescales recommended by the Task Force, and have done so since November 2007. This is a major achievement, and consumers of previously slow clearing banks will benefit from having the worst practices brought into line with the new maxima. The introduction of 'fate' for UK cheques is in itself a major step forward, and puts the UK

in a leading position compared to other countries who operate a cheque clearing system.

- 4.10 However, not all banks clear payments within these timescales, which reduces the effectiveness of having universal maxima. Alliance and Leicester do not meet the maximum timescale of T + 2 for value for cheques presented at branches. Alliance and Leicester has told the OFT that work is now being carried out to address this. This is a real disappointment, as more than two years have now elapsed since the publication of the Task Force's report into cheques. And some cheque clearers who previously beat the T + 2, 4, 6 timescales have slowed down their clearing, while still within the maxima.
- 4.11 To accompany these changes, a campaign was carried out to inform consumers of the maximum clearing times, and of the meaning of the terms used in cheque clearing. Additionally, guidance was produced called *Best Practice for Billers* which was designed to ensure that billers gave helpful and consistent advice to consumers who wished to pay their bills by cheque.
- 4.12 While significant effort was made to explain to consumers the meaning of the terms used in cheque clearing, and to inform them of maximum clearing times, 'knowledge of the propositions available for cheques deposited at their own bank is still just as poor as it was a year ago'.<sup>19</sup> This may partly be down to the low level of understanding of cheque clearing times by banking staff. The Banking Code Standards Board assessed the extent to which customer-facing staff are able to provide clear and accurate information about cheque clearing times. They found the result 'extremely disappointing' overall.<sup>20</sup>

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<sup>19</sup> Letter from the Payments Council to OFT

<sup>20</sup> [www.bankingcode.org.uk/wpdocs/Clearing%20Times%20Review%20Final%20August%202008.doc](http://www.bankingcode.org.uk/wpdocs/Clearing%20Times%20Review%20Final%20August%202008.doc)

**Table one: assessment of clear and accurate information on cheque clearing times**

|  | Number correct | % correct |
|--|----------------|-----------|
| Provide information on subscriber's clearance time for <b>interest</b> .   | 196            | 71%       |
| Provide information on subscriber's clearance time for <b>withdrawal</b> . | 210            | 76%       |
| Provide information on subscriber's clearance time for <b>fate</b> .       | 159            | 58%       |

Banking Code Standards Board: themed review of the provision of information on cheque clearing times.

- 4.13 The OFT carried out a small survey of billers' payment instructions to determine whether the industry guidance had been adhered to. In all but one of the ten bills examined, the best practice was being largely followed.
- 4.14 In summary, significant changes have been made to the cheque clearing process, which should bring real benefits to consumers in the UK, whose cheques previously took an unnecessarily long time to clear. These improvements have been brought to the attention of consumers through an education campaign, and through enhanced billing information from companies. The introduction of 'certainty of fate' is a particularly significant step forward.
- 4.15 More work needs to be done to ensure consumers - and particularly banking staff - understand cheque clearing arrangements, so that full advantage is taken of the good work in speeding up the slow clearers. And the Payments Council must take a stronger line with its members who do not deliver cheque clearing within the agreed maximum timescales.

## **Improvements to the access and governance arrangements of LINK and Bacs**

- 4.16 The Task Force examined the access and governance conditions of both LINK and Bacs. Recommendations were made for improvements to both.
- 4.17 The most significant change recommended for Bacs was that it maintains an Affiliates Interest Group, which non-scheme members could join. Members of the Affiliates Interest Group and Bacs have reported to the OFT that this scheme has been a great success, and that a genuine two-way communication occurs between Affiliates and the Bacs Board. Affiliates were able to identify specific ways in which the Affiliates were able to contribute to Bacs policy or actions. This is a significant improvement on the pre-Task Force situation where there was concern that Bacs did not pay sufficient attention to the interests of non-banking stakeholders.
- 4.18 The Task Force also recommended that Bacs should provide a mechanism by which it can periodically check whether there is demand for a form of direct membership of Bacs that would be more suitable for non-banks, called clearing membership. Bacs has not demonstrated any particular mechanism by which it would check for interest, which is disappointing. The OFT spoke to a number of bodies which could potentially become clearing members, and one of those bodies stated that it would have liked Bacs to have raised clearing membership as an option.
- 4.19 LINK introduced a number of changes to its access and governance arrangements in advance of the Task Force's recommendations. The most significant of these was the introduction of a Standing Committee on Consumer Issues. Stakeholders have commented that this Standing Committee has proved very valuable in addressing some of the more intractable problems around the LINK scheme, such as signage on charging ATMs.
- 4.20 Changes were also recommended to the LINK company, which processes LINK payments on behalf of scheme members. In the event,

these recommendations were overtaken by the LINK company's merger with Voca to form VocaLink. The Task Force also recommended an increased degree of separation between the LINK scheme and company, which has since been introduced.

- 4.21 In summary, both Bacs and LINK have introduced user groups to their governance arrangements which have made specific contributions, and are highly regarded by stakeholders. While Bacs could have done better in checking demand for clearing membership, we think it unlikely that this has had a severely detrimental effect on access to the scheme.

## **Conclusion**

- 4.22 It appears that the Payments Council has been largely successful in implementing, and facilitating the implementation of, the Task Force's recommendations. This has resulted in significant improvements for consumers and businesses in having payment services that meet their needs, and in ensuring that payment schemes are receptive to wider stakeholders.
- 4.23 The Payments Council could improve its performance in managing the delivery of these recommendations. This would include pushing its members to speed up implementation of the Faster Payments Service, where the delay has led to a loss of benefit of between £38m and £82m, and of implementing T + 2, 4, 6 cheque clearing. The Payments Council should pay more attention to the actual delivery of changes and innovations to customers of payments and, where delivery has not been good enough, use its influence to drive improvements.

## 5 PROGRESS AGAINST FIRST PAYMENTS COUNCIL OBJECTIVE: STRATEGIC VISION

- 5.1 The *Final Report of the Payment Systems Task Force* identified 'promoting strategic vision across the payments industry'<sup>21</sup> as one of the Payments Council's key objectives.

### National Payments Plan

- 5.2 The centrepiece of the Payments Council's work on strategic vision is the National Payments Plan (NPP). The foundation of the plan was a consultation process which began in November 2007.
- 5.3 The consultation paper invited questions on all aspects of the Payments Council's work. It was published on the Payments Council's web-site and was announced by a press release. It was also sent to 161 stakeholders identified by the Payments Council<sup>22</sup> including a broad range of organisations, many outside the traditional payments sphere. There were 82 responses to the consultation, a response rate of 51 per cent.<sup>23</sup> This was described in the NPP as 'a gratifyingly good result'.<sup>24</sup>
- 5.4 The plan was published in May 2008, seven months after the start of the consultation. The NPP itself was praised by stakeholders as a high quality piece of work. It is comprehensive and demonstrates the Payments Council's capacity to be innovative when carrying out the

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<sup>21</sup> [www.ofst.gov.uk/advice\\_and\\_resources/publications/reports/financial/ofst901](http://www.ofst.gov.uk/advice_and_resources/publications/reports/financial/ofst901) Para 1.2

<sup>22</sup>

[http://www.paymentscouncil.org.uk/national\\_payments\\_plan/national\\_payments\\_plan\\_consultation/who\\_received\\_consultation\\_document](http://www.paymentscouncil.org.uk/national_payments_plan/national_payments_plan_consultation/who_received_consultation_document)

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[http://www.paymentscouncil.org.uk/national\\_payments\\_plan/national\\_payments\\_plan\\_consultation/national\\_payments\\_plan\\_consultation\\_respo](http://www.paymentscouncil.org.uk/national_payments_plan/national_payments_plan_consultation/national_payments_plan_consultation_respo)

<sup>24</sup> Page 2, *National Payments Plan*, May 2008.

objectives set for it by the Payment Systems Task Force. That such a large piece of work was also produced to a high standard in a timely fashion is another indication of the Payments Council's ability to meet its objectives.

- 5.5 One of the significant benefits of the NPP is that it gives a public framework for the Payments Council's work. It contains clear actions and proposes dates by which those actions should be achieved. This has facilitated our task of assessing the Payments Council's progress against the objectives.

## **Innovation**

- 5.6 The Payments Council has identified innovation as a key element of its work and devotes a subchapter of the NPP<sup>25</sup> to that topic.
- 5.7 In the course of our work on this review we met with stakeholders both large and small engaged in payments innovation. We found satisfaction with the Payments Council's efforts amongst the larger stakeholders who praised the Payments Council's ability to bring the necessary parties together when appropriate without impinging on competitive innovations.
- 5.8 Smaller stakeholders expressed a measure of dissatisfaction with the access and support they received when proposing new innovations. Historically innovations have disproportionately arisen from small companies. In the past 50 years key technological innovations such as the microchip (Intel), the personal computer (Apple Inc.), PC software (Microsoft) and the search engine (Google) have all come from what were, at the time, small companies. Therefore it is important that small as well as large companies are equally comfortable with the Payments Council's work on innovation.

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<sup>25</sup> Part 4.2, *National Payments Plan*, May 2008.

- 5.9 The Payments Council has put in place an online portal<sup>26</sup> for submitting innovations for consideration. This is a welcome example of openness on the part of the Payments Council.
- 5.10 A total of four innovations have been submitted via this portal and one of those is being taken forward. This is a relatively high rate of success for an open submissions procedure of new business innovations. Private sector venture capitalists ultimately reject the overwhelming majority of the business plans they receive, although they are often sent several proposals a day so the aggregate number of plans they take forward is higher in spite of this.
- 5.11 Given that the Payments Council has said it will 'continue to develop as an authoritative voice on payment systems innovation'<sup>27</sup> it may wish to look at ways to increase the number of innovations coming through its doors. Increasing the flow of ideas into the Payments Council could also help with its ongoing strategic role of monitoring and considering innovations in the UK and around the world. Undertaking such work could also help identify consumer needs for future payment systems.

### **Specific innovations: contactless cards and mobile payments**

- 5.12 The Payments Council has identified specific areas of innovation such as contactless cards and mobile payments (payments between mobile 'phones) for ongoing work.
- 5.13 The NPP stated that the Payments Council will undertake reviews of the contactless and prepaid card markets and produce reports with recommendations by September 2009.<sup>28</sup> The Payments Council is due to undertake the research in Summer 2009 as this market is evolving

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<sup>26</sup> [www.paymentscouncil.org.uk/resources/how\\_propose\\_innovation\\_0](http://www.paymentscouncil.org.uk/resources/how_propose_innovation_0)

<sup>27</sup> Part 4.2.4, *National Payments Plan*, May 2008.

<sup>28</sup> Part 4.2.1, *National Payments Plan*, May 2008.

rapidly and the report needs to be based on the most up to date information.

- 5.14 The Payments Council had already initiated preparatory work on mobile payments before the NPP. The NPP considered whether to take forward work on a collaborative mobile payments service and said that 'the Payments Council Board will consider in June 2008 whether to proceed in developing this service.'<sup>29</sup>
- 5.15 The Payments Council's next step on mobile payments was taken the following month, July 2008, when its Mobile Payments Group issued a request for information<sup>30</sup> with a deadline of 5 September 2008. It received 23 formal responses. The next stage of the project is to establish a Business Requirements Committee which will develop the User Requirements. The Payments Council has also undertaken international benchmarking on mobile payments. Whether to move to the next stage of the project will be decided at the September 2009 Board meeting.
- 5.16 The development of mobile payments is seen as important in part as a way of replicating the type of person to person transactions which have traditionally been made by cheque. There is a debate over the future of cheques and what innovations are required to fill the gap if their use continues to decline.

### **Future of cheques**

- 5.17 The NPP said:<sup>31</sup>

'We support the principle of setting a target date for closing the Cheque Clearing [scheme] and did not receive

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<sup>29</sup> Page 42, part 4.2.2, *National Payments Plan*, May 2008.

<sup>30</sup> [www.paymentscouncil.org.uk/resources/request\\_information](http://www.paymentscouncil.org.uk/resources/request_information)

<sup>31</sup> Page 23, part 4.1.1, *National Payments Plan*, May 2008.

any indication that 2018 was an unrealistic aspiration, provided acceptable alternatives are shown to be available. However, we recognise that further work is required on gaps and alternatives before a firm date can be set.'

- 5.18 The basic concern among cheques' advocates is that cheques will be phased out without an adequate alternative in place. Some acknowledged that if a genuinely compelling alternative arose cheque users would switch without being required to do so.
- 5.19 A distinction was drawn between personal use of cheques and business use. While some large businesses have stopped accepting cheques<sup>32</sup> it was put to us that many small businesses still rely on cheques and that 1.54 billion cheques were written in 2007 for a total value of £1.56 trillion.<sup>33</sup> This being the case it is important to identify the needs of different types of cheque users and ensure that due consideration has been given to them.
- 5.20 The NPP proposes three phases of work on cheques in the years 2008-2010. Phase 1 is initial research, Phase 2 is preparing a roadmap and Phase 3 is putting the roadmap into practice. Phase 1 (initial research) was completed on time. The Payments Council produced a comprehensive research document in December 2008 which forms the foundation of the latter stages of work. These following phases propose working with stakeholders to produce and implement a roadmap over the next two years.

## Conclusion

- 5.21 Overall the Payments Council has performed well against its strategic vision objective. The NPP drew praise from many stakeholders we spoke to as comprehensive. The advantage of having a public document such

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<sup>32</sup> [www.tesco.com/homepages/default/ChequeAcceptance.asp](http://www.tesco.com/homepages/default/ChequeAcceptance.asp)

<sup>33</sup> Tables 26.1-26.2, APACS – 2008 UK Payments Statistics.

as the NPP in place is that the Payments Council has clearly stated its objectives and timetables. This makes the NPP a useful document when assessing progress in future years as it contains clear commitments on what will be done in the future.

- 5.22 The Payments Council has made good progress on advancing the specific innovations it has identified as important, particularly on mobile payments. More generally the Payments Council has done well to establish a portal for payment innovators to submit proposals to it but a total of four proposals submitted is a disappointing number.
- 5.23 There were suggestions from a number of stakeholders that the Payments Council is more comfortable dealing with large organisations. It should bear in mind that small companies can be good sources of innovation and need to be understood and accommodated in any work on innovation. Similarly, the Payments Council's cheques work needs to be conducted with a broad base of stakeholders including those groups such as small businesses which still make considerable use of cheques.
- 5.24 Overall the Payments Council has made good progress against its strategic vision objective given the complexities involved and the many competing interests it has to balance.

## 6 PROGRESS AGAINST SECOND PAYMENTS COUNCIL OBJECTIVE: OPENNESS AND ACCOUNTABILITY

6.1 One of the Payments Council's objectives relates to the openness and accountability of the payment systems within its remit. The final report of the Payment Systems Task Force described this objective:<sup>34</sup>

**'Openness and accountability:** to ensure that the payments system is open and accountable and that:

- any restrictions on access to payment schemes are fair, reasonable, and non-discriminatory
- the governance of payment systems is transparent and open to public scrutiny and
- any proposals for innovation and major changes in the conduct of payment schemes are subject to rigorous and transparent evaluation, weighing up the costs and benefits to the banking industry and to society as a whole.'

6.2 Payment systems must involve a degree of co-operation over issues like messaging standards and terminology. But there has been much criticism in the past that some payment schemes have used this ability to set rules to make those rules too restrictive. This has had the effect of excluding bodies from the payment system that could otherwise have played a major role. Governance arrangements have reflected this, concentrating power in the hands of the big banks, to the exclusion of other stakeholders in the system.

### Payments Council

6.3 Although the Payments Council's objective on openness and accountability applies to schemes under its remit, we have also

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<sup>34</sup> Paragraph D.4 *Final report of the Payment Systems Task Force*, February 2007

considered the openness of the Payments Council itself to new members, and the accountability of its own governance arrangements.

6.4 The Payments Council is governed by a Board of directors. There are 16 directors, who are elected or appointed as follows:

- Five directors are independent, and are appointed on the basis of their wide experience in relevant fields. One of these directors is the non-voting Chairman.
- Five are appointed by banks with over a five per cent share of payment volumes in schemes under the Payments Council's remit.
- Three directors are elected by a constituency of members with payment volumes between one and five per cent of total payments in schemes under the Payments Council's remit
- Three directors are elected by a constituency of members with payment volumes which are less than one per cent of payment volumes in schemes under the Payments Council's remit.

6.5 The Payments Council also has two observers:

- The Chief Executive of the Payments Council and
- The Chief Cashier of the Bank of England.

### **Access arrangements**

6.6 To become a member of the Payments Council, it is necessary to be a payment service provider in the UK and have qualifying payment transactions. Some stakeholders raised the possibility of a wider full membership of the Payments Council for bodies other than payment service providers. They considered that although payments have traditionally been associated with banks and other financial institutions, this is no longer necessarily the case. Technology companies, payment processors (who don't provide payment services directly to end users, but provide the technology or infrastructure which facilitates those

payments) and telecommunications companies could all play equally important roles, but are precluded from becoming full members of the Payments Council unless they provide payment services.

- 6.7 An alternative to full membership exists, which is open to any organisation. It is called associate membership, and provides access to a variety of payments-related information and research bodies. Unlike full members, associate members cannot elect members to the Payments Council Board. There are currently ten associate members of the Payments Council.
- 6.8 While it can be argued that the Payments Council is a membership body for payment service providers, it does not follow that this should always be the case. As the Payments Council is contemplating the introduction of a mobile 'phone payment system, it seems odd that no mobile 'phone providers are full members of the Payments Council, since they may hold important opinions and knowledge.
- 6.9 Membership of the Payments Council for a wider group of institutions with an interest in payment issues would bring a number of benefits. These include:
- A wider background of expertise, including specialist knowledge from other industries.
  - A less bank-dominated membership profile (currently the membership of the Payments Council is dominated by banks and other financial institutions).
- 6.10 The Payments Council would therefore benefit from membership which includes different types of organisation, especially including those, like mobile 'phone providers that may soon be processing payments (even if they are not providing payment services). This would require amendment of the Payments Council Rules and a consequent change to the constitution.

## Governance arrangements

- 6.11 The OFT consulted a wide variety of stakeholders from both inside and outside the Payments Council on the suitability of the Payments Council's governance arrangements. Nearly all stakeholders considered that the Payments Council had governance arrangements which were more effective in providing leadership to the payments industry than the previous arrangements under APACS. Many stakeholders commented that the balance between independent directors on the Payments Council Board and non-independent directors was about right, and that independent directors had added significant value in bringing their own, often different, expertise to the running of the Payments Council.
- 6.12 The OFT also noted that the directors provided by the industry were considered by stakeholders to be appropriately senior, allowing the Payments Council to take decisions that would be binding on its members. The Bank of England, in particular, welcomed the senior level of directors, and considered that continued senior level participation was important.
- 6.13 Stakeholders consulted by the OFT from within and outside the Payments Council reported that they considered the Payments Council Board effective, if perhaps somewhat slow, in getting things done. The Payments Council Board oversaw the implementation of the Faster Payments Service while researching new payment products such as mobile 'phone payments. This must be contrasted with the leadership provided by its predecessor body, APACS, where the lack of new payment systems and significant improvements to old ones were widely criticised. The concern about speed must be kept in context – the Payments Council must take with it a significant proportion of the payments industry and other stakeholders in delivering improvements, and this will take much careful negotiation and time.
- 6.14 The Payments Council also has three user groups to consult. These user groups are:
- Large Corporate user forum

- SME user forum
- Consumer user forum.

6.15 The OFT attended meetings of all three user fora, and spoke to bodies which could potentially be interested in joining the user fora. Feedback on the effectiveness of the user fora was generally quite good, with members feeling that their input to the Payments Council through the independent director chairing the user forum was valued and taken seriously. Having each forum chaired by an independent Payments Council Board director was seen as a strength, allowing direct access to the main decision making body.

6.16 The meetings attended by the OFT, with the exception of the Large Corporate user forum, were quite sparsely attended. While we do not read too much into levels of attendance at any one forum meeting, it would be disappointing if the Payments Council – having provided a mechanism for feedback from consumer and SME groups – did not receive the benefit of their input. The Payments Council, and in particular the independent directors, may wish to keep a close eye on the attendance levels and consequent effectiveness of the user fora.

## **Individual payment schemes**

### **Access arrangements**

6.17 No concerns over access to membership or participation have been brought to OFT's attention in connection with either the Cheque Clearing or the CHAPS schemes. As stated above, the Task Force looked at the access arrangements of both Bacs and LINK, and made recommendations. No concerns over access to the BACS scheme have been raised with the OFT although Bacs did not put mechanisms into place for making regular checks against demand for clearing membership (discussed at paragraph 4.18 of this report).

- 6.18 The Task Force made one particular recommendation regarding the LINK scheme in its report.<sup>35</sup> It stated that 'Members of the LINK card scheme and Post Office Ltd should continue negotiations to establish if a commercial arrangement can be found that is acceptable to all parties that would allow free cash withdrawals at Post Office counters for all consumers holding a current account with a major financial institution within a reasonable timeframe'.<sup>36</sup> While negotiations have continued, a solution has not emerged. The OFT does not take any position on where blame, if any, should lie, but does note that it is disappointing that this issue has not been resolved.
- 6.19 From November 2009 Part 8 of the Payment Services Regulations, which is concerned with prohibiting restrictive access rules to payment systems in the UK for payment institutions, will apply to LINK.
- 6.20 As well as open access to scheme membership and participation, the Task Force recommended changes to the ability of processors to access the processing markets for LINK and Bacs. LINK was tasked with increasing the degree of separation between the LINK card scheme and the LINK company<sup>37</sup> (now VocaLink). This has been completed satisfactorily. It is not the LINK scheme which holds a processing contract with VocaLink: rather, it is the individual members of LINK, who are free to choose another suitable processor should they wish to.
- 6.21 The Bacs scheme was split from Voca (now VocaLink) before the Task Force carried out its examination of Bacs' access and governance arrangements. However, we were disappointed to note that VocaLink did not have to win a competitive tendering process to renew its contract with Bacs when its original contract came to an end. Instead, a new contract between the two parties was negotiated.

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<sup>35</sup> LINK Access and Governance report.

<sup>36</sup> LINK Access and Governance report para 6.30

<sup>37</sup> LINK Access and Governance report para 5.12

- 6.22 We believe that the benefits of having open competition for a contract are significant. Even if no other suitable bids are made to run the contract, the knowledge that there is the potential for competition should provide an incentive for the incumbent provider to offer as competitive a tender as possible. In fact, OFT knows of at least one other processor that would have at least considered responding to a tender if one had been issued.

### **Governance arrangements**

- 6.23 The Task Force examined the governance arrangements of both LINK and Bacs, and changes were made to both.
- 6.24 While the Task Force did not examine the governance arrangements of other schemes, the OFT would have expected to see lessons learned from the Task Force process applied to other schemes in the Payments Council's remit where appropriate. This review did not uncover any demand for greater user input into the Cheques scheme, but some stakeholders in the CHAPS scheme did suggest there may be merit in a user group similar to the Affiliates Interest Group for Bacs.
- 6.25 The OFT's main concern is that there do not seem to be any plans for specific user representation for the Faster Payments scheme. Currently, the Faster Payments Service is managed through the CHAPS scheme (which also does not have any specific user or stakeholder representation, such as Board membership or a user group), and OFT has been told that there are no current plans for any such representation when Faster Payments has its own management scheme later this year.
- 6.26 We consider that this is a major shortcoming. Payment schemes managed by banks and other payment institutions cannot accurately represent the interests of other stakeholders in a payment system. In the case of Faster Payments, stakeholders are likely to come from a number of different categories, perhaps including payment processors, businesses who will want to directly input into the system, and consumers, who will make the bulk of the payments. OFT considers that a scheme such as Faster Payments, which consumers and businesses

have little choice but to use should benefit from formal consumer and other stakeholder input.

## **Conclusion**

- 6.27 It is indisputable that the Payments Council is a more open and accountable organisation than was its predecessor, APACS. The Payments Council has benefitted from having a much wider input of ideas and information as a result of this and this has been translated into a better understanding of the needs of stakeholders in the payments industry.
- 6.28 The Payments Council should consider changing its rules to allow bodies other than payment service providers to join the Payments Council as full members.
- 6.29 While the OFT is pleased to see that the Task Force's recommendations have largely been implemented for the two individual schemes that were looked at, we are disappointed to note that the lessons learned here do not appear to have been passed on to other schemes which might benefit from greater non-banking stakeholder input. In particular, we believe that Faster Payments would benefit from having a specific user/stakeholder advisory group which could advise it on the demands of consumers and business.

## 7 PROGRESS AGAINST THIRD PAYMENTS COUNCIL OBJECTIVE: INTEGRITY

7.1 The third Payments Council objective relates to the integrity of the UK's payment systems. The final report of the Task Force said:<sup>38</sup>

'The [Payments Council] will be responsible for ensuring the overall integrity of the United Kingdom's payment services.'

7.2 The Payments Council has interpreted its integrity role as:<sup>39</sup>

'to ensure the operational efficiency, effectiveness and integrity of payment services in the UK.'

7.3 Payment systems attract little attention when they are running smoothly. Customers of these systems receive the amounts they expect on time. Any problem with a payment system which affects end users can become apparent very quickly as even a small percentage of payments being disrupted can have a large impact for the individuals concerned.

### **BACS Scheme incident**

7.4 Most people in the UK receive their salaries via the Bacs payment system and in March 2007 there was a problem with processing salary payments.<sup>40</sup> This incident affected up to 400,000 people (1.6 per cent of the daily total) and the affected payments were delayed by a few days.

7.5 When major payment scheme incidents take place their effects need not be limited to a single scheme. Problems with one scheme can mean that

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<sup>38</sup> Paragraph 4.3, *Final report of the Payment Systems Task Force*, February 2007

<sup>39</sup> [www.paymentscouncil.org.uk/about\\_us](http://www.paymentscouncil.org.uk/about_us)

<sup>40</sup> [www.apacs.org.uk/media\\_centre/press/Salarypaymentproblems.html](http://www.apacs.org.uk/media_centre/press/Salarypaymentproblems.html)

attempts are made to re-route payments via alternative schemes, increasing the pressure on them.

- 7.6 This makes the Payments Council's coordinating role in the event of such a cross-scheme incident critically important.

## Handling future scheme incidents

- 7.7 Following the Bacs scheme incident in March 2007 the procedures for handling a scheme incident were revised in September 2007. The latest procedures are contained in the Incident Management Manual version 3 (November 2008), the IMM.

- 7.8 The first section of the IMM defines the approach where the failure is confined to a single scheme. In these circumstances the scheme itself is 'wholly responsible for handling all operational aspects of any such incident.'<sup>41</sup>

- 7.9 Where the consequences of a failure extend beyond a single scheme or where there is likely to be a significant effect on customers, the IMM requires the Payments Council's Chief Executive to brief the other schemes in the first instance. Once the schemes have been briefed the responsibility for any further liaison lies with the schemes themselves, rather than the Payments Council.<sup>42</sup>

- 7.10 If a public statement is required then the Bank of England will be asked to participate in a conference call convened by the Payments Council's Chief Executive.

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<sup>41</sup> Paragraph 1.1, *AAL Incident Management Manual v.3*, November 2008.

<sup>42</sup> Paragraph 1.2.2, *AAL Incident Management Manual v.3*, November 2008.

## Survey of contingency arrangements

- 7.11 The National Payments Plan (NPP) proposed a survey of contingency arrangements:<sup>43</sup>

'[The Payments Council] will carry out a survey in 2008 of the contingency arrangements for each of the main payment systems in close liaison with the Bank of England.'

- 7.12 The Payments Council set up a cross-Scheme Co-ordination Committee (SCC) which came into being in mid-2008. The SCC has met three times to date.
- 7.13 We asked the Payments Council about the status of this survey and it is behind schedule. It expects the first, fact finding stage will report in 'Q1 2009' which we interpret as not later than 31 March 2009.
- 7.14 In addition, the Bank of England wrote to the Payments Council in February 2008 highlighting cross-scheme integrity issues that merited further investigation and testing. This letter was signed by two senior officials to underline the importance the Bank attaches to this issue. The Payments Council folded consideration of these issues into their survey of contingency arrangements. The Bank reported to us that one year after their letter was sent, no substantive analysis had taken place of the issues it had raised.
- 7.15 This survey represents the bulk of the Payments Council's commitment in their National Payments Plan on one of the three main objectives set out by the Task Force. That being the case it is disappointing that it was not completed on schedule, further delaying any follow up work on integrity which may subsequently arise.

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<sup>43</sup> Section 4.3.3, *National Payments Plan*, May 2008

## Banking Act 2009

- 7.16 The Payments Council anticipates that the relationship between itself and the Bank of England will inevitably evolve with the passage of the Banking Act 2009 which received Royal Assent on 12 February 2009.
- 7.17 Part 5 of the Act addresses payment systems. In essence it creates a regime in which HM Treasury recognises certain payment systems to be subject to statutory oversight by the Bank of England.<sup>44</sup>
- 7.18 The creation of this new supervision regime does not disturb the Payments Council's responsibility for integrity but it does give the Bank of England new statutory powers over the recognised payment systems. In normal circumstances, it is expected that these new powers should need to be used only after the Bank has already requested changes from the payment systems informally – as per the approach to oversight hitherto adopted by the Bank. The current timetable is that the recognition provisions will come into effect in April 2009 with the rest of Part 5 coming into force in June 2009.

## Conclusions

- 7.19 The Payments Council has conceded that it needs to sharpen its focus on cross-scheme integrity matters. The various payment schemes together form a critical part of the UK's financial infrastructure. The historical good performance of individual schemes in which major incidents are rare should not prevent the continuous and pro-active assessment of plans to improve cross-scheme coordination and manage the worst case scenarios.
- 7.20 Integrity of payments is especially important in a general climate of economic uncertainty which could magnify the effects of any future incidents.

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<sup>44</sup> Section 185, *Banking Act 2009*.

- 7.21 This being the case it is important that the Payments Council follows through on its undertaking to sharpen its focus on cross-scheme integrity issues. In particular the reactive approach which has been taken in the past needs to be addressed.
- 7.22 We acknowledge that the Payments Council has no day to day control over the operations of the individual schemes. However it does have strategic responsibility for cross-scheme issues. The Payments Council sits at the centre and its job is to ensure good communication between the relevant parties.
- 7.23 This is especially true when a crisis occurs as any uncertainty over roles cannot be resolved during an emergency. A clear leader is required in such circumstances and in the case of cross-scheme incidents the leadership role falls to the Payments Council.
- 7.24 It is the responsibility of the individual scheme to identify and fix the specific technical problem but it is the Payments Council which is responsible for ensuring other schemes and the Bank of England are aware of the issue and co-ordinating the action they need to take in response.
- 7.25 Outside a specific crisis this leadership role means that the Payments Council is responsible for proactively assessing what cross-scheme measures are required and ensuring all the relevant parties are clear about their roles.
- 7.26 Integrity is one of the Payments Council's three objectives. The evidence presented to us, both by the Payments Council and others, shows that it has not been given sufficient priority. The Payments Council has recognised that it needs to sharpen its focus on integrity. In practice this means meeting deadlines and taking a more proactive approach to the cross-scheme issues which are the Payments Council's responsibility.

## 8 CONCLUSIONS

- 8.1 The Payments Council has been largely successful in meeting two of the three objectives set for it by the Task Force. The payments industry has benefitted from a much greater strategic direction (including the very highly regarded National Payments Plan), and from greater openness and accountability. Compared to what has gone before it, the Payments Council has proved a success.
- 8.2 The Payments Council's work on the cross-scheme integrity of payment systems has been disappointing. While payment systems themselves are still stable and secure, the Payments Council has not added value quickly enough, for instance by taking a dynamic lead in ensuring cross-scheme integrity. This is an area where the Payments Council needs to improve.
- 8.3 Despite being largely successful in meeting its other two objectives, several themes have emerged where the Payments Council could improve its performance:
- The Payments Council needs to follow up its initiatives with its members to ensure that end-users actually get the benefits envisaged. Good examples of this would be both the Faster Payments Service, which could have been introduced more quickly by many Payments Council members, and T + 2, 4, 6 cheque clearing, where Alliance and Leicester still does not clear cheques for value by day T + 2.
  - The Payments Council needs to be proactive in establishing where improvements are necessary, rather than just reacting to external pressures. For instance, virtually all stakeholders welcomed the Bacs Affiliates Interest Group as useful in forming a bridge between payment users and the Bacs scheme. The Payments Council should have at least considered whether something similar for Faster Payments would be appropriate. OFT has spoken to a number of stakeholders who would consider membership of such a group.

- The Payments Council is still seen by many stakeholders as being too dominated by banking interests. There is some justification in this. Wider membership of the Payments Council itself, perhaps including payment processors and other bodies with an interest in delivering payment products, should lead to a wider expertise, and solutions to payment problems being delivered in novel ways. Additionally, the Payments Council should seek ways to boost the effectiveness of the user groups.

## **9 NEXT STEPS**

9.1 The OFT does not believe that a future full scale OFT review of the Payments Council is necessary. However, we do believe that it is important that the Payments Council's performance in meeting its objectives is evaluated properly. We have therefore made two recommendations to improve the performance of the Payments Council through a clear evaluation process. In addition we have made five specific recommendations for immediate improvements based on our findings.

### **Cross-scheme Integrity**

9.2 The OFT recommends that issues of integrity are given a higher priority in the Payments Council than has been the case. The work on cross-scheme integrity, in particular, needs to be taken forward with more urgency. In order to ensure progress against this objective, the Payments Council should commission an accountancy firm to report in two years on how well it has performed. The report (or the Executive Summary of it) should be published in the Payments Council's Annual Review, and the Payments Council should outline how it intends to address any action points identified in it. Following the review from the accountancy firm, the Payments Council should self-assess against its integrity objective as described at paragraph 9.4.

### **Assessment against objectives of the Payments Council**

9.3 The OFT considers that the Payments Council has made sufficient progress against its other two objectives not to warrant another full review by the OFT in two years time. However, it has also demonstrated that a further impetus is needed to monitor areas where the Payments Council has not succeeded in getting its members to take sufficient action to meet the needs of end-users.

9.4 The OFT recommends that the Payments Council provides a self-assessment against progress every two years on:

- its Strategic Vision and Openness and Accountability objectives
- recommendations of the Task Force where these have not been met
- recommendations from this Review
- after the assessment by the accountancy firm, a self-assessment against integrity should also form part of this process.

9.5 This self-assessment should contain the results of an open consultation with stakeholders on progress against objectives. The OFT may still choose to look into specific aspects of the Payments Council's performance against objectives, if we consider there is sufficient reason.

### **Specific recommendations**

9.6 Five recommendations can be taken forward now by the Payments Council and its member schemes. The self-assessment described above should pay particular attention to the effectiveness of outcomes arising from these recommendations:

- The Payments Council should introduce a class of full membership for bodies other than payment service providers. This would allow other bodies that can demonstrate an interest in payments a seat or two on the Payments Council Board.
- The Faster Payments Scheme should introduce a specific mechanism for taking into account the views of non-member users, such as businesses or consumers. This could be based on the Bacs Affiliates Interest Group, or could take some other form.
- Bacs should introduce a mechanism to perform a periodic check for demand for Clearing membership, and commit to offering under open tender its processing business. It should show how it has gone about actively carrying out both.
- The Cheque and Credit Clearing Company should renew its efforts to educate consumers, and particularly bank staff, about the timings

surrounding cheque clearing. It should publish metrics to show that consumer and bank staff understanding has increased.

- The Payments Council should demonstrate enhanced leadership over its members by encouraging those members of the Faster Payments scheme to introduce Faster Payments fully, and in the case of Alliance and Leicester the clearing of cheques for value by day T + 2. It should ensure it has published metrics that show industry performance on these and future key issues.

## **A TERMS OF REFERENCE FOR THIS REVIEW**

### **Purpose**

1. The purpose of the two year review will be to consider the effects and outcomes of the new governance structure. The review will conclude two years after the first Board meeting (or by March 2009, whichever is sooner). The review will not look at the new body's status under competition law, as this new body, like all industry, is continually open to either complaint or investigation.

### **Objectives of review**

2. The review will score the performance of the new body in relation to its three main objectives of:
  - strategic vision
  - openness and accountability, and
  - integrity

against the Cruickshank concerns of access, governance, innovation and transparency, and with regard to its broader success in facilitating progress in all payment systems within its remit.

3. The review will also consider the effectiveness of the new body's mechanism to continue to provide lasting change in the payments industry and will set a development plan for any areas of concern. The industry is already working on some major projects culminating in November 2007, and progress on these projects will be scored into the review.

### **Milestones**

4. To prepare for the review, the OFT will meet the new body at senior level on a quarterly basis for a discussion of progress against objectives.

## **Publicity**

5. The OFT's two year review will produce a report which will be made public.

## **B LIST OF ORGANISATIONS CONSULTED**

Albany Software Limited

Association for Payment Clearing Services

Association of Independent Cash Machine Operators

BACS Affiliates Interest Group

BACS Payment Schemes Limited

Bank of England

British Bankers' Association

British Chambers of Commerce

British Cheque Cashers Association

CHAPS

Cheque & Credit Clearing Ltd

Financial Services Authority

HM Treasury

LINK

Payments Council Consumer Forum

Payments Council Independent directors, former directors and members

Payments Council Large User Forum

Payments Council SME Forum

VETT

Visa

VocaLink

## C ORGANISATIONAL STRUCTURE OF THE PAYMENTS COUNCIL

January 2009

Payments Council – Structure and Sub Groups



