



Written Evidence – Committee Stage (House of Commons)

Financial Services & Markets Bill

1. Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer, and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions, we're not influenced by third parties, and we buy all the products that we test. For more information, please contact publicaffairs@which.co.uk
2. Which? welcomes the Financial Services and Markets Bill as a once-in-a generation opportunity to strengthen and improve the UK's financial services regulatory regime. We agree with the Government's aims to promote financial inclusion, consumer protection and innovation. We believe these aims go hand-in-hand, helping to establish a level playing field where businesses can compete to deliver good outcomes for consumers.
3. The Bill lays the foundations for two major improvements to consumer protections where Which? has led campaigns: access to cash and reimbursement for victims of bank transfer scams. There is widespread support for these changes across industry and consumer groups. Whilst these reforms are a huge step in the right direction, we need to make sure they are legislated on as effectively as possible through ensuring free and convenient access to cash facilities, and widening the scope of fraud victims that will receive redress from Authorised Push Payment (APP) scams.
4. Important consumer protections must not be undermined by any loosening of existing regulation in favour of the long-term growth and competitiveness objectives for regulators or from the revocation of EU regulations. It is essential that the Financial Conduct Authority (FCA) and other regulators protect and advance consumer interests, and that key consumer protections are maintained.

Summary of Key Issues

5. Access to cash - The Government proposals set out in the Bill go a long way to ensuring that those who rely on cash will continue to be able to access it. However, the Bill should be amended to confirm that the statutory framework will protect consumers' free access to cash. The Government should also set out the key policy details relating to how the Bill will establish baseline geographic distances between cash points. We also think that the Bill should be amended to enhance community



engagement and transparency, and to require the FCA to collect and publish data about levels of cash acceptance for the purchase of goods and services.

6. Authorised Push Payment Scams - We would like clarity that the Payment Systems Regulator (PSR) is to consider whether other payment methods that it regulates, now or in the future, should introduce mandatory reimbursement for scam victims. Given that the PSR only regulates major payment systems designated by HM Treasury, to avoid gaps in protections the PSR should also be required to work with other regulators to introduce reimbursement requirements, including for payments made between accounts held with the same bank or payment provider (which are regulated by the FCA) and for the CHAPs payment system used for high-value transactions (which is managed by the Bank of England). HM Treasury should also carry out a broader review of consumer protections for different payment methods.
7. Future Regulatory Framework - We are concerned the secondary objective to promote medium to long term growth and international competitiveness could negatively impact on the regulators' ability to protect and advance consumer interests. The Bill should make explicit that regulators may take into account these considerations, but only where such action is compatible with existing strategic and operational objectives. We also propose an amendment to ensure that revocation of EU-derived legislation should not be implemented until the regulators have introduced equivalent consumer protections into their rules.

Proposed Amendments to the Bill

Access to Cash

8. We fully welcome the commitment of the government to legislate to give consumers greater access to cash. Clause 47 and Schedule 8 of the Bill seek to protect consumers' access to cash by ensuring the continued provision of cash withdrawal and deposit facilities and appointing the FCA as the lead regulator for cash to oversee the legislative framework. The measures set out in the Bill go a long way to ensuring that those who rely on cash will continue to be able to access it. However, HM Treasury should clarify a number of areas within this Bill to strengthen the access to cash provisions:
 - The Bill should be amended to confirm that the statutory framework will protect consumers' free access to cash.
 - During the Committee stage of the House of Commons, the Government should set out the details of a draft policy statement which will outline the proposed baseline geographical distances between cash facilities.
 - The legislation should require the FCA to collect and publish data about cash acceptance to identify emerging issues in specific sectors and/or geographies;



and enable communities to request a review of their ability to access cash.

9. Free access to cash is extremely important for many people. Despite significant changes in how many of us pay for goods and services over recent years, [10%](#) of UK adults (5.4 million people) continue to rely on cash to a very great or great extent in their day-to-day lives, and [one in 5 people](#) (10 million people) say they would struggle to cope in a cashless society. Certain groups are particularly dependent on cash such as those on lower incomes, older people, and people with physical or mental health difficulties. 15 million people say they use cash to help them with budgeting.

10. Which? has tracked statistics on closures and found that:

- The UK has lost over half of its branch network - 5,013 branches - since 2015. Banks and building societies have closed branches at a rate of around 54 each month, with this trend looking set to continue.
- 500 branches have closed so far in 2022, with a further 156 set to close by the end of the year.
- There has also been a notable decline in the provision of free-to-use ATMs in recent years: in July 2022, there were 12,599 fewer free-to-use ATMs in the UK than there were in August 2018, a decrease of nearly 24%.
- This deterioration of the UK's cash infrastructure has significantly impacted the ability of individuals to access cash, with [over half \(57%\)](#) of consumers experiencing one or more issues with accessing cash or a bank branch in the last year.

Free Cash Withdrawals and Deposits

11. It is essential that this legislation places an onus on operators and banks to retain free access to cash, or the entire objective of this part of the Bill will be undermined. There is currently no explicit reference to "*free cash withdrawals and deposits*" in the Bill.

12. Though [94%](#) of withdrawals are currently free of charge, [23%](#) of ATMs charge people to access cash. The [trend to digital payments is clear](#) and will threaten the future sustainability of the current cash infrastructure. We are concerned that pressure to impose fees on people to withdraw or deposit their own cash will increase. Such changes would disproportionately affect those who are least able to afford them: [research](#) shows that people on low incomes are among those who are most likely to depend on cash, with people earning less than £10,000 per year fourteen times more likely to be dependent on cash than those earning over £30,000 per year.



13. Consumers who live in the most [deprived neighbourhoods](#) find it harder to access cash without incurring charges and, to compound this, those on [lower incomes](#) often withdraw lower than average sums from ATMs and so can be disproportionately affected by flat fees (often in the region of £1-£2). At a time when many consumers are struggling with cost of living challenges, it is important that the Government tightens this legislation to avoid imposing additional costs on hard-pressed consumers.
14. The Bill should be amended to make clear that its proposed framework guarantees consumers minimum levels of cash provision - both withdrawals and deposits - without fees being charged.

Amendments	Which? Explanatory Note
<p>In clause 47, page 68, line 9, after “of” insert;</p> <p>“free of charge”</p> <p><i>and</i></p> <p>Schedule 8, page 150, clause 131N, line 24, at end insert;</p> <p><i>(3A) A “cash access service” is—</i></p> <p><i>(a) a service which enables cash to be placed on a relevant current account free of charge (a “cash deposit service”), or</i></p> <p><i>(b) a service which enables cash to be withdrawn from a relevant current account free of charge (a “cash withdrawal service”).</i></p>	<p>An amendment which will ensure the statutory framework established through this legislation protects free cash withdrawal and deposit facilities.</p>

Policy Statement - Geographical Distances

15. The Bill sets out an important overarching framework which aims to protect access to cash. But many critical elements - particularly the baseline geographic distances which will apply to withdrawal and deposit facilities, and the factors which the FCA will take into account when assessing a local area’s access to cash - will be set out in a policy statement to be published by HM Treasury.



16. Whilst we recognise that this approach offers flexibility, it means it is currently not possible for MPs or stakeholders to give a definitive view on whether proposals will deliver an adequate level of free access to cash services. To address this significant gap, the Government should set out during the Committee stage of the House of Commons the details of the draft policy statement which will set out the proposed baseline geographical distances between cash facilities.
17. We do not have proposed specific amendments relating to this point, but would welcome any further information throughout the Committee stage on the specifics of the policy statement.

Cash Acceptance

18. Safeguarding consumers' ability to withdraw cash is only useful if there remains somewhere to spend it, yet currently no organisation has responsibility for collecting regular data on cash acceptance.¹ As a consequence, we have little robust insight into the trends in the number or type of businesses that have stopped accepting cash.
19. While the situation may not yet be critical for most people in most situations, a number of retailers and service providers (e.g. car parking firms) [no longer accept cash](#), which can cause considerable problems for those who are unable or unwilling to use other payment methods. We agree that individual businesses will generally be best-placed to determine what payment methods meet the needs of their customers. However, we do not want to sleep-walk into a situation where those who rely on cash may start to struggle to make purchases or are excluded from certain services.
20. We believe the FCA should play a proactive role in monitoring levels of cash acceptance throughout the economy, which would mean the regulator would have the data to identify and address emerging problems in relation to cash acceptance. The Bill should therefore be amended to require the FCA to collect and publish data on a regular basis about levels of cash acceptance to identify any emerging issues in specific sectors and geographies.

¹ The Payment Systems Regulator published one-off research in July 2019 into [how people and businesses access cash](#), and in July 2021 the FCA issued one-off research on [the UK's cash infrastructure and consumer research](#) which included some consideration of trends on cash acceptance.



Amendment	Which? Explanatory Note
<p>In clause 47, page 68, at end insert;</p> <p><i>(47A) Cash acceptance data</i></p> <p><i>(1) The FCA must take such steps as it considers appropriate to monitor, collect and publish data in relation to levels of cash acceptance amongst retailers and service providers within the United Kingdom on a regular basis.</i></p> <p><i>(2) The FCA can [,by written notice (an "information notice"),] require a person within subsection (1) to provide it with information that the FCA reasonably requires for the purposes of exercising its duty within subsection (1).</i></p>	<p>An amendment to require the Financial Conduct Authority to collect and publish relevant data relating to levels of cash acceptance amongst retailers and service providers across the UK.</p>

Community Review

21. Currently, under the voluntary arrangements put in place by the Access to Cash Action Group to preserve access to cash, individuals or community groups can [request a review](#) of their access to cash where they consider this to be inadequate. Where unmet needs are identified, LINK can recommend the installation of a new cash access point.
22. A similar ability for individuals or communities to request a review of local cash provision - irrespective of whether baseline geographic distances set in HM Treasury's Policy Statement are met - should be enshrined in the Bill to give consumers confidence that their concerns in their local area will be considered by the regulator. We also propose amending this legislation to compel the FCA to publish both the 'criteria' which will apply when determining whether a cash access point is required in a community and the assessment of a local community's access to cash that is carried out.



Amendment	Which? Explanatory Note
Schedule 8, clause 131U, page 154, line 12 at end insert;	An amendment(s) to require the Financial Conduct Authority to publish criteria which sets out a local areas requirement for cash access points and create arrangements to allow persons or groups to request a review of their areas cash access point provisions.
<i>(3) The FCA must publish the criteria it will apply when making a determination for the purposes of subsection (2).</i>	
Schedule 8, clause 131U, page 154, line 32, at end insert;	
<p><i>(8) The FCA must prepare and publish its assessment of cash access services in urban and rural areas which include (but are not limited to) the matters referred to in subsections (2) to (7) when carrying out its functions for the purposes of subsection (1).</i></p> <p><i>(9) In carrying out its functions for the purposes of subsection (1) the FCA must require designated persons to put in place arrangements which allow (including but not limited to) members of the public, elected officials, community groups, local authorities and councils to request a review of their local community's access to cash needs.</i></p>	

Guaranteeing No Gaps in Cash Provision

23. The FCA will be required to have regard to HM Treasury's policy statement in its role as lead regulator for cash, but it will - rightly - be granted flexibility and wide-ranging powers to regulate the provision of cash facilities. Importantly, these powers will enable the FCA to require designated banks and building societies, or coordination bodies, to take action to ensure reasonable provision of cash access services at both a national and local level.
24. We are pleased that the FCA will be able to look beyond geographic baselines and take local factors into account when making decisions about the type of service, its



availability and location. However, to ensure gaps in provision do not emerge, it is important that the Government confirms that Clause 131W of the Bill, which gives the FCA powers to give directions to designated persons, enables the FCA to temporarily stop the closure of a cash access point, be it a bank branch or ATM or other cash access service, where there is no suitable alternative in place and in operation. Without this protection, we are concerned that closures will continue at pace while replacements may take a long time to be established.

Authorised Push Payment Scams

25. The Government's proposal to require the Payment Systems Regulator (PSR) to make reimbursement for Authorised Push Payment (APP) scam victims mandatory (Clause 62) will have a huge impact in reducing the financial and related emotional impact of this form of fraud on victims. We fully welcome the longstanding commitment of the Government to bring this forward through this legislation, as we have campaigned to government and industry on this issue for a number of years.

26. Since Which? issued a super-complaint to the PSR in 2016, losses from APP fraud have risen year on year. In 2021, [losses due to APP scams](#) were £583 million, with around 196,000 cases. Despite a commitment to a voluntary reimbursement code by some major banks, victims still shoulder almost half of these losses. Just nine banking groups out of more than 400 payment service providers have signed up to the voluntary code. The PSR has concluded that reimbursement levels have been significantly lower than it expected when it proposed the voluntary reimbursement code. Since 2019/20, the Financial Ombudsman Service has [upheld around three quarters of complaints](#) by victims against banks for authorised fraud, compared to an uphold rate for all types of complaints of around a third.

27. Whilst welcoming these important reforms, we believe the provisions can be strengthened even further by clarifications and amendments that seek to:
 - Clarify what action the PSR will take for other payment methods to ensure more potential victims of APP fraud will be able to be reimbursed under these reforms.
 - Force joint action by regulators, so that the PSR works urgently with other regulators to ensure mandatory reimbursement is introduced for payments made between accounts held with the same provider and for CHAPs payments - which cannot be introduced without action by the FCA and the Bank of England.
 - Require the Government to conduct a full review into wider fraud



protections and payment systems.

Clarify Action the PSR Will Take for Other Payment Methods

28. We welcome the proposed deadlines for the PSR to consult on draft rules for Faster Payments within two months of the Bill receiving Royal Assent, and to introduce these rules within six months. However, the Bill does not require the PSR to consider strengthening fraud protections for any of the seven other payment schemes that the PSR regulates. While Faster Payments is the urgent priority, given that it makes up the vast majority of APP scams that we have data for currently, this could evolve relatively quickly as fraudsters change their approach.

29. The Government should clarify what its expectations are for the PSR to consider mandatory reimbursement for other payment methods that it regulates. We are not advocating for specific changes to the Bill at this stage, but we think that if we are to avoid gaps in protections, which could be exploited by fraudsters, then the Government and regulators need to expressly clarify what needs to be done beyond Faster Payments. This Bill presents a unique opportunity to tackle fraud reimbursement, and therefore it is important it fully covers a range of current and future payment methods.

Force Joint Action by Regulators

30. Two areas where we want urgent action is on the CHAPS payment system, which is used for high-value transactions such as deposits for home purchases, and 'on-us' transactions between two accounts held with the same payment provider. The PSR should work with the Bank of England, who is responsible for the CHAPS system, and the FCA, which regulates firms that provide 'on-us' transactions, to align reimbursement requirements across these payment systems. Though the PSR has said that it is working closely with both organisations on this, there is a risk that progress may stall without the Bill requiring greater urgency. Hence, the Bill should require the PSR to act jointly with other regulators, namely the Bank of England and the FCA.

Amendment	Which? Explanatory Note
Clause 62, page 77, line 6, at end insert; <i>'(6A) The Payment Systems Regulator and other regulators must take such steps as they consider appropriate in accordance</i>	An amendment that will require the Payment Systems Regulator to work with other relevant regulators to address fraud through different payment systems.



<p><i>with the exercise of their functions to co-operate in order to assist with the drafting and imposition of the relevant requirement or requirements.'</i></p>	
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Require the Government to Conduct a Full Review

31. The PSR regulates eight payment schemes, which have been designated by HM Treasury. Only one of these was added in the past seven years despite significant innovation in payments.² The government said in its 2020 Payments Landscape Review that it intended to bring newer systemically important firms in payment chains into regulation, however this has not yet happened. HM Treasury should review the consumer protections which apply to different payment methods, and consider whether the list of designated payment systems should be extended.

Amendment	Which? Explanatory Note
<p>Clause 62, page 77, line 42 at the end insert;</p> <p><i>(11A) The Treasury must conduct a review of the legal framework regarding the liability of payment service providers for fraudulent transactions and prepare and publish a report of the review by 1 January 2024.</i></p> <p><i>(11B) The review conducted under section 11A must include consideration of what further legislative or regulatory measures, including the possible designation of additional regulated payment systems, may be necessary to ensure the effective protection of consumers from fraudulent transactions, including payment orders made through international payments systems</i></p> <p><i>(11C) In conducting the review under section 11A, The Treasury must consult regulators and such other persons likely to</i></p>	<p>An amendment which would require the Government to conduct a review of fraud protections and the potential payment systems that should be regulated in the future.</p>

² The [designated payment systems](#) (and when they became designated) are: Faster Payments (2015), Bacs (2015), CHAPS (2015), Cheque & Credit (2015), LINK (2015), Mastercard (2015), Visa (2015) and the Sterling Finality System (2022)



<i>be affected by the review, including consumers and financial services organisations, or the representatives of such persons, as they consider appropriate.</i>	
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Future Regulatory Framework

32. The introduction of important consumer protections to provide greater access to cash and APP scams are welcomed as a clear recognition that regulators perform an important role in protecting and upholding consumer standards. The introduction of these measures, and the wider role financial regulators perform may be undermined if their fundamental responsibilities are altered. The introduction of a new secondary objective for the FCA and PRA to promote medium to long term growth and international competitiveness (Clause 24) and the wider framework (Clause 1) to shift existing EU law into regulators hands could lead to unintended consequences and negatively impact on the regulators’ ability to protect and advance consumer interests.
33. To address these concerns, we recommend the relevant clauses remain in place but are amended so that:
- The Bill should make explicit that regulators *may* take into account considerations relating to long term growth and international competitiveness, but any such action must be compatible with their existing strategic and operational objectives.
 - The Bill should make clear that the revocation of legislation should not be implemented unless and until equivalent consumer protections have been introduced by regulators.
 - Government should make changes to the Financial Services and Markets Act 2000 to create a fairer framework which retains the concept of consumer responsibility but makes it contingent on a firm meeting its own regulatory obligations.

Secondary Objective

34. We are concerned that, as currently drafted, the proposal to give the FCA and PRA a secondary objective to promote medium to long term growth and international competitiveness could negatively impact on their ability to protect and advance consumer interests, which must remain an absolute priority for the regulators in question.



35. We are supportive of a competitive UK financial services sector that will support jobs, investment and growth. We are also opposed to regulation that is over-burdensome and not effective in delivering good outcomes for businesses and consumers. The ambition of the UK government to increase national growth is a welcome one, yet we believe that effective consumer protections can support, rather than hinder, this objective. They can help to stimulate competition, rewarding good firms that invest, innovate and strive to offer consumers better services and products. They also serve to foster public confidence in new businesses and markets and help to engender a consumer base ready and willing to try new firms, products and services. We discuss the positive impact of consumer protections in more detail in our recent [Consumer protections and economic growth report](#).
36. The introduction of this new Secondary Objective may complicate the FCA's existing role balancing its strategic objective to ensure that relevant markets function well with its three operational objectives. We are concerned that adding yet another objective - even if it is of a secondary nature - will further complicate its decision-making processes. Additionally, we are at risk of repeating mistakes from the recent past. Recent experience provides a stark warning about the negative consequences which can arise when regulators are tasked with promoting competitiveness. Prior to the financial crisis, the Financial Services Authority was required to consider the UK's competitiveness. It has been [reported by HM Treasury](#) that one of the reasons suggested for the regulatory failure which led to the crisis was an excessive concern for competitiveness leading to the acceptance of a 'light-touch' approach to regulation and supervision.
37. We recommend that the legislation is amended to protect against these risks. We suggest the Bill should make explicit that regulators may take into account considerations relating to competitiveness and growth, but that any such action must be compatible with its existing strategic and operational objectives.

Amendment	Which? Explanatory Note
<p>Clause 24, page 37, line 6, leave out subsection (4A) and insert;</p> <p>“(4A) When discharging its general functions in the way mentioned in subsection 1 the FCA may must, so far as reasonably possible and compatible with its strategic and operational objectives, act in a way which, as a secondary objective, advances the competitiveness and growth objective (see section 1EB).”</p>	<p>An amendment that will require relevant regulators to only consider competitiveness and growth considerations if such action is compatible with the regulators existing strategic and operational objectives.</p>



Revocation of EU Regulations

38. We understand the Government’s rationale for shifting detailed regulatory requirements retained in EU law to regulators’ rules. We agree that there needs to be greater flexibility and agility built into our regulatory system to ensure that regulation remains appropriate and keeps pace with innovation.
39. However, it is important to note that there are many aspects of EU retained law on financial services matters which are of significant importance to consumers. These include protections for payments, mortgages, consumer credit, pensions and investments.
40. It is essential that in moving requirements from legislation to regulators’ rules, important consumer protections are not lost or diluted, even temporarily - there must be no gap in the application of protections when these protections are transferred. Our proposed amendment seeks to ensure that this is the case through explicitly underpinning consumer rights and protections in the process of revoking EU law.

Amendment	Which? Explanatory Note
<p>Clause 1, page 1 line 6, at end insert;</p> <p>(1) The legislation referred to in Schedule 1 is revoked.</p> <p><u>(1A) The commencement of the revocation of legislation referred to in Schedule 1 in accordance with regulations made under Section 72(3) may not take place where such revocation would be prejudicial to the interests of consumers because adequate and equivalent replacement regulators’ rules or other legal protections will not be implemented by or before the proposed commencement date.</u></p>	<p>An amendment that will prevent the revocation of existing retained EU law if it would be prejudicial to the interests of consumers.</p>

Consumer Responsibility

41. The FCA’s existing consumer protection objectives require them to assume that consumers are taking responsibility for their own decisions, regardless of whether firms have complied with their own legal obligations.



42. While it is right, in principle, that consumers should take responsibility for their decisions, they can only be expected to do so where firms have fulfilled their own regulatory obligations. Recent amendments to the FCA's guidance on its Principles for Businesses (PRIN) made in connection with the forthcoming introduction of the Consumer Duty seek to reflect the fact that consumers can only take responsibility for their actions if they have the information and support they need to be able to make informed decisions.³
43. The Government should use the opportunity presented by scrutiny of the Financial Services and Markets Bill to make changes to the Financial Services and Markets Act 2000 to create a fairer framework which retains the concept of consumer responsibility but makes it contingent on a firm meeting its own regulatory obligations.

Amendment	Which? Explanatory Note
<p>Clause 24, page 37, line 5, at the end insert;</p> <p><u>(2A) In section 1C (The consumer protection objective), in subsection (2), paragraph (d) at end insert—</u></p> <p><u>“in circumstances where those providing regulated financial services have complied fully with their duties under the FCA Consumer Duty Instrument 2022.”</u></p>	<p>An amendment to alter existing provisions in the Financial Services and Markets Act 2000 that requires consumers to take responsibility for their own decisions regardless of whether firms have complied with their own legal obligations.</p>

³ FCA 2022/31 Consumer Duty Instrument 2022 states at 2A.1.9 G “While recognising the general principle that consumers should take responsibility for their decisions, having regard to the other factors set out in s.1C of the Act, it is appropriate to require a high level of protection for retail customers for reasons including:

(1) that they typically face a weak bargaining position in their relationships with firms;
(2) that they are susceptible to cognitive and behavioural biases;
(3) that they may lack experience or expertise in relation to products offered through retail market business; and
(4) that there are frequently information asymmetries involved in retail market business”