

## **Response to Call for Evidence on Access to Cash (November 2020)**

This response is provided by a working group of the Centre for Commercial Law at the University of Aberdeen. The working group consists of Dr Burcu Yüksel Ripley, Dr Alisdair MacPherson and Mrs Donna McKenzie Skene.

### **General Comments**

We, in principle, welcome this call for evidence and appreciate the opportunity provided to stakeholders to express views on the development of the future of cash access and on the UK Government's approach to legislation. However, we worry about the timing of this initiative as well as the depth and breadth of it.

We note that in the area of payments the trend has been gradually shifting worldwide towards non-cash payments in parallel to technological progress. The demand for the use of paper-based payments methods, particularly cash, is decreasing. This pattern is consistent with the evolution of payments. The COVID-19 situation is speeding up this process and it is very likely that there will be behavioural changes regarding use of cash in the post-COVID-19 era. We therefore take the view that, while protecting access to cash where necessary is essential, more data on demand for use of cash post-COVID-19 would be needed for developing appropriate policies on access to cash and for assessing whether there is a real need for legislation in this area. We also take the view that a more comprehensive review of the area would be useful, including risk assessment in relation to use of cash (in particular assessment of security, fraud, tax evasion and money laundering risks); interactions between use of cash, legal tender and legal currency; transaction costs for electronic transactions; access to cash in English, Scottish or Northern Irish banknotes; access to cash in foreign currencies and capabilities of ATMs in facilitating access to cash across the UK. As part of the review, it would be also useful to explore practices in other countries to see what lessons can be learned to improve the practice in the UK.

### **Question 1**

**How can the government ensure the UK maintains an appropriate network of cash withdrawal facilities over time through legislation?**

It is inevitable that cash withdrawal facilities, particularly ATMs and bank branches, will continue to decrease in parallel to the fall in demand in using cash. Given the trend towards non-cash payments, we think that imposing restrictive measures through legislation with a view to maintaining these facilities at the same level would not be an appropriate solution to protect access to cash. We take the view that, instead, cashback facilities could be expanded by offering commercially attractive incentives to merchants for the provision of these facilities. In addition, capabilities of ATMs could be enhanced to better correspond to the current need and demand for cash withdrawal, eg via increasing daily limits on cash withdrawals, facilitating access to cash in foreign currencies more widely, advancing technology to access cash without the need for using physical bank cards.

### **Question 2**

**What is the potential for cashback to play a greater role in the provision of cash withdrawal facilities, and how can legislation facilitate further adoption of cashback?**

We think that, among cash withdrawal facilities, cashback has a good potential to play a greater role in protecting access to cash and, to this end, cashback facilities could be expanded by offering commercially attractive incentives to merchants for the provision of these facilities. Regarding cashback with a purchase, there seems to be appropriate protection to customers under the current framework. Regarding cashback without a purchase, although the Government's view is that there are barriers to the widespread provision of it deriving from EU law, which can be removed via legislation after the end of the transition period, we think that this requires some further consideration from practical and legal perspectives. In accessing cash via cashback, customers can make an only nominal purchase as low as 1p and therefore what seem to be barriers in this context may not in practice constitute any significant difficulties to customers. In addition, from a legal point of view, it is a sensible approach under the current framework that, for the provision of cashback without a purchase, merchants are either to be registered/authorised to provide the regulated service or to act as an agent of a payment service provider. Otherwise, it would result in the role of payment service providers in such transactions being taken on by the merchants who are not a party to the contracts with customers withdrawing money from their bank account.

### **Question 3**

**How can the government ensure the UK maintains an appropriate network of cash deposit-taking facilities over time through legislation?**

The view we take on cash deposit-taking facilities is similar to the one in our response to question 1 on cash withdrawal facilities. We think that cash deposit-taking facilities will inevitably decrease in parallel to the fall in cash in circulation. Given the trend towards non-cash payments, we think that imposing restrictive measures through legislation with a view to maintaining these facilities at the same level may not be an appropriate solution to protect access to cash. We also think that use and capabilities of ATMs could be enhanced for depositing cash. The potential of these facilities appears to be underestimated in the call for evidence paper due to security concerns. Although we agree that there are security concerns over this, these concerns are inherent in using cash in general and not peculiar to the use of ATMs as cash-deposit taking facilities. ATM security cabins or other physical security features could help alleviate these concerns around security.

### **Question 4**

**What are the key factors and considerations for maintaining cash acceptance in the UK?**

We agree with the Government's view that it would not be appropriate to mandate cash acceptance since parties have the right to refuse cash acceptance in the provision of goods and services. Although legal tender technically only relates to the settlement of outstanding debts, we think that it would be useful to give further consideration to the interactions between cash acceptance, legal tender and legal currency.

We think that some of the key factors for moving away from accepting cash are issues around security in storing the cash once accepted (which is linked with the non or reduced availability of cash-depositing facilities), not being able to detect counterfeit money in cash acceptance, and costs associated with these issues. Maintaining cash acceptance in the UK would also depend on addressing these issues.

**Question 5**

**Should the government give a single regulator overall statutory responsibility for maintaining a well-functioning retail cash distribution network? If so, with which regulator should this responsibility sit?**

We agree with the Government's view that there would be benefit in giving a single authority the overall responsibility for maintaining a well-functioning retail cash distribution network and that the FCA seems well placed to take on this responsibility. This responsibility should include ensuring effective coordination with HM Treasury, the Bank of England and the Payments System Regulator as needed.