

Bank of England and HM Treasury Consultation on the digital pound: a new form of money for households and businesses?

Response by the Centre for Commercial Law at the University of Aberdeen

(June 2023)

This response is provided by a working group of the Centre for Commercial Law at the University of Aberdeen (Scotland, UK). The working group consists of Dr Burcu Yüksel Ripley, Dr Alisdair MacPherson, Professor Donna McKenzie Skene and Mr Gabriel Uchechi Emeasoba.

The Centre for Commercial Law (CCL) brings together researchers across the broad groups of corporate and commercial law, international trade law, intellectual property and technology law, and dispute resolution. The law relating to digital assets is one of the research areas of the CCL. Working groups and members of the CCL have responded to various calls for evidence and consultations in relation to digital assets (see <https://www.abdn.ac.uk/law/research/centre-for-commercial-law/public-policy-stakeholder-engagement-1109.php>) and published widely in the area to help raise awareness of the issues and contribute to the development of solutions.

We welcome this consultation and appreciate the opportunity to provide our comments. In general terms, we are in favour of the idea that the digital pound, if introduced, will simply be a further alternative means of payment rather than being a replacement for cash. We acknowledge that this is the current policy and support that approach. We agree that it is an appropriate time to explore various issues regarding the digital pound now. In addition, we support the principle that a digital pound should, as far as possible, be constructed as a digital equivalent to cash with comparable effects except where issues such as the technology involved make this inappropriate, and that decisions as to design should, where possible, enhance financial inclusion (but this may also depend on complementary action in other areas such as enhancing internet access and financial education opportunities etc).

Consultation questions

1. Do you have comments on how trends in payments may evolve and the opportunities and risks that they may entail?

As we noted in our response to the UK Government Call for Evidence on Access to Cash in November 2020 (available at <https://www.abdn.ac.uk/law/documents/CCL%20response%20to%20call%20for%20evidence%20on%20access%20to%20cash%2023.11.2020%20-%20Final.pdf>), the trend has been gradually shifting worldwide in the area of payments towards non-cash payments in parallel to technological progress. The demand for the use of paper-based payment methods, particularly cash, is decreasing and this pattern is consistent with the evolution of payments. We consider that the COVID-19 pandemic and its consequences have accelerated this process and led to behavioural changes regarding use of cash in the post-COVID-19 era. Cryptoassets, underpinned by distributed ledger technology, have grown globally in significance in recent years and become increasingly important for individuals and businesses. Central Bank Digital Currencies (CBDCs) are being explored in various jurisdictions. Although it is not possible to precisely predict future trends in payment, we think that trends will be in the direction of digital or electronic payment mechanisms and means. Investment in this area could potentially make the UK one of the global leaders for digital banking.

The above-noted trends offer various opportunities including reduced time and cost in payment transactions (particularly in international payments), better alignment with other financial digital products, and disintermediation to an extent. They are however not free from risks including cybersecurity, further dependence on technology, issues around infrastructure and interoperability, and the potential impact on the banking industry (eg losing deposits). We consider that it is crucial to build trust in the community regarding digital means of payment and the use of digital pounds.

In relation to the digital pound, some attention may need to be given to its relationship with the concept of legal tender (i.e. whether or not the digital pound should have such status and if so to what extent). We note that legal tender has a narrow technical meaning, and the classification of what constitutes legal tender varies across the three jurisdictions of the UK (see Currency and Banknotes Act 1954, s 1(2); Coinage Act 1971, s 2). In England and Wales, Royal Mint coins and Bank of England banknotes constitute legal tender; whereas in Scotland and Northern Ireland only Royal Mint coins have such status (depending on the types of coins and the amount of payment) but not banknotes (as there are no longer any banknotes issued below the specified amount of £5).

2. Do you have comments on our proposition for the roles and responsibilities of private sector digital wallets as set out in the platform model? Do you agree that private sector digital wallet providers should not hold end users' funds directly on their balance sheets?

We agree with the proposition for the roles and responsibilities of private sector digital wallets as set out in the platform model. We also agree that private sector digital wallet providers should not hold end users' funds directly on their balance sheets, otherwise there would be potentially legal problems in relation to ownership of these funds in the absence of further legislation, which is currently an issue regarding cryptoassets held by wallet providers.

From a legal point of view, we think that the nature of the legal relationship between digital wallet provider and customer (ie end user) and their respective rights and obligations (e.g. in comparison to a bank-customer relationship) should be clarified in order to avoid potential legal problems associated with these points. CBDCs are a new concept and would benefit from further attention on legal aspects. We note the Law Commission of England and Wales (LCEW)'s ongoing law reform project on digital assets (<https://www.lawcom.gov.uk/project/digital-assets/>). As we stated in our response to the LCEW's consultation on digital assets (see <https://www.abdn.ac.uk/law/documents/CCL%20Response%20to%20Consultation%20on%20Digital%20Assets%20-%20Final.pdf>), although we consider CBDCs under the umbrella of digital asserts, we perceive them differently from, for example, Bitcoin-like crypto-tokens. The legal nature of CBDCs would benefit from further clarification and we suggest that Bank of England and HM Treasury liaise with the LCEW on this point.

With reference to whether digital pound related services should be viable on a stand-alone basis or whether cross-subsidy or support from other business activities or group entities may be appropriate, we can see merit in allowing providers to determine the most suitable pricing models. We do, however, acknowledge that cross-subsidisation has the potential to produce negative as well as positive effects, as identified on page 57. It is, therefore, necessary to proceed with caution and to have regard to the views of a wide range of parties in relation to this matter.

We also note the possible principles for operation of PIPs and ESIPs, outlined on page 59 of the Consultation, and generally agree with them. In relation to security and resilience, we are

pleased to see that this would include plans “for orderly transfer of users to other PIPs in the event of failure”. We consider this to be especially important in encouraging trust in the system.

3. Do you agree that the Bank should not have access to users’ personal data, but instead see anonymised transaction data and aggregated system-wide data for the running of the core ledger? What views do you have on a privacy-enhancing digital pound?

Yes, we strongly agree that the Bank should not have access to users’ personal data, but should instead see anonymised transaction data and aggregated system-wide data for the running of the core ledger. This is particularly important in building end users’ trust in the system and trying to encourage them to use digital pounds. Therefore, privacy, as well as cybersecurity measures should be as strong as possible.

4. What are your views on the provision and utility of tiered access to the digital pound that is linked to user identity information?

This seems sensible to us given particularly money laundering and fraud concerns. Particular attention should, however, be paid to suspicious transactions made in a series of small payments to one single wallet and a holistic approach should be taken to avoid that risk.

5. What views do you have on the embedding of privacy-enhancing techniques to give users more control of the level of privacy that they can ascribe to their personal transactions data?

We agree with this proposal.

6. Do you have comments on our proposal that in-store, online and person-to-person payments should be highest priority payments in scope? Are any other payments in scope which need further work?

We agree with this proposal and do not have any further comments.

7. What do you consider to be the appropriate level of limits on individual’s holdings in transition? Do you agree with our proposed limits within the £10,000–£20,000 range? Do you have views on the benefits and risks of a lower limit, such as £5,000?

We think that it would be sensible to have a limit during the transition period mainly for testing the capacity, infrastructure and users’ habits and the proposed limits within the £10,000–£20,000 range seem appropriate for that purpose. If a lower limit were to be put in place, such as £5,000 in the transition period, we think that it should be for a very short period of time and an incremental approach should be taken as the way forward.

8. Considering our proposal for limits on individual holdings, what views do you have on how corporates’ use of digital pounds should be managed in transition? Should all corporates be able to hold digital pounds, or should some corporates be restricted?

Although we recognise that financial risks might be greater in this case, we think that all corporates should be able to hold digital pounds given the aim of inclusion and the limits should be higher compared to an individual’s holding. However, further explanation for distinguishing between corporates and individuals in this area could and should be provided. If some corporates are to be restricted, this should be justified properly.

9. Do you have comments on our proposal that non-UK residents should have access to the digital pound, on the same basis as UK residents?

We agree with the proposal that non-UK residents should have access to the digital pound, on the same basis as UK residents.

10. Given our primary motivations, does our proposed design for the digital pound meet its objectives?

Yes, we are generally supportive of this proposed platform model underpinned by private-public partnership. We note that the model should be ideally supported by commercial banks who would be willing to be involved through incentivisation and trusted by the public to be used by them via wallet providers.

11. Which design choices should we consider in order to support financial inclusion?

We think that public-private partnership should be an important consideration to support financial inclusion.

12. The Bank and HM Treasury will have due regard to the public sector equality duty, including considering the impact of proposals for the design of the digital pound on those who share protected characteristics, as provided by the Equality Act 2010. Please indicate if you believe any of the proposals in this Consultation Paper are likely to impact persons who share such protected characteristics and, if so, please explain which groups of persons, what the impact on such groups might be and if you have any views on how impact could be mitigated.

We don't have any particular comments on this question.