



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

To: All MPs
House of Commons
London
SW1A 0AA

5 December 2022

RE: Freedom of expression and the role of payment services providers

Dear Colleague,

I am writing to provide an update in relation to PayPal's temporary suspension of a number of accounts, including that of the Free Speech Union, and the related proposed amendment (New Clause 27) to the Financial Services & Markets Bill tabled by Sally-Ann Hart MP during Committee Stage of the Bill. Members across the House are right to be concerned about the importance of protecting free speech and the crucial role of payment providers in delivering services without censorship, and I would like to take this opportunity to set out the developments to date and how I intend to take this matter forward.

Developments since Committee stage

I have met with the Financial Conduct Authority (FCA) and PayPal to discuss the case referred to in the Public Bill Committee debate, and the wider issues it has raised. Both parties confirmed that they engaged actively regarding the suspension of the accounts, which commenced soon after the accounts were suspended. In a letter to me, the FCA has provided further detail about these events and explained that, following the swift reinstatement of the accounts, no further supervisory action was taken on this specific issue but that this instance of account suspensions may be considered in further supervisory or authorisation discussions with PayPal. This approach is consistent with the FCA's wider approach to investigation and enforcement proceedings, as set out in their public guidance.¹

PayPal have explained in their own letter to the Bill Committee that they are unable to disclose the details of this case for privacy reasons. However, they have stated in their letter that they are dedicated to providing safe and affordable financial services to people of all backgrounds with a diversity of views, and are a strong supporter of freedom of expression and open dialogue and, as such, do not seek to be an arbiter of free speech.

¹ See, for example: <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf> (updated November 2021)

Furthermore, they continue to evaluate their processes and procedures, and to reflect on lessons learned from these events. I would expect the FCA to take a continued and active interest in these procedures as part of future authorisation and supervision discussions, as the FCA has itself confirmed.

Having gathered the facts of the case and discussed them with the relevant stakeholders, the example of PayPal does not appear, at this stage, to indicate a *prima facie* deficiency in the existing legislative framework for payment services, or represent a wider pattern of activity by payment service providers. Nevertheless, I empathise strongly with colleagues' concerns on the principled issue and potential risks – of protecting customers' freedom of expression – and whether or not it is possible for service providers with significant market positions to terminate customer relationships at will and at speed.

Ensuring an effective legislative framework

As the FCA set out in their letter, the Payment Services Regulations 2017 set out a regulatory regime for this sector of financial services. The regulations aim to provide a careful calibration of users' rights and service providers' obligations, including a requirement for two months' notice to be given before contracts are terminated. This notice period applies except in exceptional and limited cases, such as on suspicion of money laundering, and without prejudice to the right of a party to treat the contract as unenforceable or void, in accordance with usual contract law principles. A service provider also has the right to stop the use of a payment instrument (e.g. a debit card or an e-banking service) in prescribed material cases, for example on the grounds of suspected fraud.

In addition, as also referenced in the FCA's letter, principle 6 in the FCA's Handbook requires firms to pay due regard to the interests of their customers and treat them fairly – and this would apply to circumstances where a service provider is terminating a customer relationship. There are also provisions relating to unfair contract terms in the Consumer Rights Act 2015. Furthermore, existing legislation in the Equality Act 2010 prohibits service providers in the UK from denying services to people on the basis of their 'beliefs', which includes philosophical as well as religious beliefs.

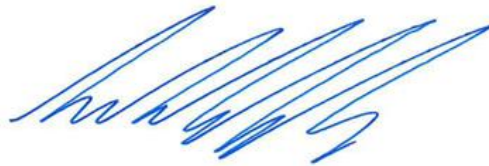
Despite the existing body of regulation in this area, I am not complacent about the issues raised and am keen to gather views across payment service providers and users, to gauge whether the existing regulatory regime is operating as it should and respects the balance of rights between users' and service providers' obligations, including in relation to protecting freedom of expression. I therefore plan to take evidence on this in the forthcoming statutory review of the Payment Services Regulations, due in January 2023, which will be a public consultation.

Should the evidence point to the need for legislative change, I can confirm to Parliament that this could be delivered quickly via the powers being taken in the Bill in relation to modifying retained EU law (in this case, payment services law). Colleagues should be assured, therefore, that if legislative change is required, it could be brought about swiftly, without requiring future primary legislative change. Furthermore, I am intent on maintaining transparent dialogue with colleagues on this important issue and, to that end, will provide an update to Parliament following the evidence-gathering work through the Payment Services Review, in the form of a Written Ministerial Statement – rather than delaying further communications on this matter until the formal closure of the Review.

I hope that this provides colleagues with assurance on this important subject and I remain open to engaging with colleagues who have concerns.

I am also depositing a copy of this letter, as well as the attached letters from PayPal and the FCA on this issue, in the Library of the House.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Andrew Griffith', is centered on the page. The signature is fluid and cursive, with a prominent flourish at the end.

ANDREW GRIFFITH MP