

Virendra Sharma MP  
House of Commons  
London  
SW1A 0AA

30 November 2022

Our Ref: 221121A

Dear Mr Sharma

**RE: PayPal (Europe) Sarl et Cie SCA (PayPal)**

I am writing to you following the Committee stage of the Financial Services and Markets Bill, in relation to a matter raised during the evidence sessions on 19 October 2022 to the Managing Director of the Payment Systems Regulator, who referred the matter to the FCA in November.

Sally-Ann Hart MP raised concerns about PayPal, a company we regulate under the Payment Services Regulations 2017 (PSRs 2017) under the Temporary Permissions Regime. The concerns focus on PayPal's decision to withdraw services from a number of accounts (i.e. to terminate them) including an account held by the Free Speech Union and whether this presents a threat to freedom of speech. It was asked whether the FCA can prevent firms from denying services to consumers in a manner which, it was feared, amounts to private sanction and censorship. I will briefly lay-out the legal and regulatory context, before describing, to the extent possible, what we did in regard to this specific matter.

Firms are generally able to decide to whom they wish to provide services, provided they comply with all relevant laws and regulations. Similarly, subject to specific provisions in legislation and regulation, providers are free to set their own terms and conditions.

In accordance with FCA regulation, firms must ensure they treat their customers fairly, including if they make decisions to stop providing a service. This includes Principle 6 of the FCA's Principles of Business; a firm must pay due regard to the interest of its customers and treat them fairly. This includes ensuring the processes and decision-making are fair. The new consumer duty<sup>1</sup> once implemented next year will further strengthen these expectations.

There are also specific provisions in the PSRs 2017 – regulations for which the FCA is the responsible regulator – which require firms to provide at least two months' notice before terminating their contract with a customer, except in very limited circumstances. These limited circumstances include, for example, where there is a risk of money laundering, where firms may terminate services without such notice. Regulation 71.2 also states that a payment service provider has the right to stop the use of a payment instrument (e.g. a debit card or an e-banking

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<sup>1</sup> The consumer duty is a set of rules and guidance that will set higher expectations for the standard of care firms give consumers.

service), on limited but reasonable grounds, notably on the grounds of security or suspected unauthorised or fraudulent use.

A firm choosing to end contracts in a manner which is not consistent with such requirements would be a matter of supervisory concern to the FCA. We would consider using supervisory (or other) tools in the event of potential breaches of rules and regulations.

In addition, the current financial system has mechanisms through which customers of financial services can seek redress if they believe they have been treated unfairly. All regulated payments services providers authorised or registered by the FCA are required to have robust complaint handling procedures in place and every customer has a right to complain. Where this does not resolve matters to a customer's satisfaction, they can take their complaint to the Financial Ombudsman Service (FOS), which will consider it free of charge from the customers perspective. It is the FOS, not the FCA, that adjudicates individual complaints.

In that context, we became aware of this specific issue on the 21 September 2022 and on the same day contacted PayPal, as their supervisor, requesting an urgent explanation. Over the next three working days we continued to engage with the firm on this matter. A meeting took place, called by the FCA, with PayPal on 27 September. PayPal reversed its decision the same day. The FCA has continued meetings with PayPal on a range of issues including the firm's imminent application for authorisation ahead of the Temporary Permissions Regime coming to an end on 31 December 2023. The FCA will consider all relevant information, including this matter, during that authorisation process. There are robust standards PayPal must meet to be authorised in the UK, including consideration of the adequacy of PayPal's systems and controls, policies, and procedures. The FCA is keen to achieve effective oversight of PayPal in the UK following the departure and closure of the temporary regime and has the necessary tools through authorisation to achieve this.

In our view, the existing regulatory provisions, referred to above, aim to strike a balance between protecting consumers from arbitrary decisions or unfair processes and a provider's commercial right to terminate contracts in accordance with regulation and their terms and conditions. We believe that the FCA has the appropriate powers in order to be able to enforce against this regime and investigate any potential breaches.

It is, of course, paramount that FCA regulated firms comply with all their legal and regulatory obligations.

Yours sincerely,

**Sheldon Mills**

**Executive Director of Consumers and Competition**