

NOTICE OF DECISION TO ACCEPT BINDING COMMITMENTS OFFERED BY PAYPOINT PLC IN RELATION TO ACTIVITIES IN THE MARKET FOR THE PROVISION OF OVER-THE-COUNTER TOP-UP SERVICES TO PREPAYMENT ENERGY CUSTOMERS

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Overview

On 11 August 2021, the Gas and Electricity Markets Authority (“**the Authority**”)¹ published its notice of intention to accept commitments offered by PayPoint plc and three of its wholly-owned subsidiaries (PayPoint Collections Limited, PayPoint Network Limited and PayPoint Retail Solutions Limited) (together “**PayPoint**”), following an investigation into whether there has been an infringement by PayPoint of Chapter II of the Competition Act 1998 (“**CA98**”).

Our investigation examined whether PayPoint, a UK-based group of companies providing payment and transaction processing services and products, has abused a dominant position in the market for over-the-counter (“**OTC**”) prepayment services to prepayment energy customers.

¹ The Office of Gas and Electricity Markets (“Ofgem”) is a non-ministerial government department and Great Britain’s independent National Regulatory Authority for the energy sector. It is governed by the Gas and Electricity Markets Authority (“GEMA” or “the Authority”). In this publication the terms “Ofgem”, “the Authority” and “we” are used interchangeably.

This document explains the Authority’s decision (following its consultation) to accept the commitments as set out in Annex 1. Formal acceptance of the commitments by the Authority will result in the investigation being discontinued without any decision being made as to whether the CA98 has been infringed.

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1. Introduction

- 1.1 The Authority has, among other powers, the power to investigate potential infringements of the prohibition contained in Chapter II of the CA98 in relation to commercial activities in the gas and electricity sectors. These powers are held concurrently with the Competition and Markets Authority (the “**CMA**”). The other sector regulators who hold concurrent powers in this particular case are the Financial Conduct Authority (the “**FCA**”) and the Payment Systems Regulator (the “**PSR**”).
- 1.2 The abuse of a dominant position is prohibited by Chapter II of the CA98.²
- 1.3 PayPoint provides OTC payment services to energy suppliers in GB who have customers who pay for their gas and electricity through a prepayment meter. We refer to these services as the “**Relevant Market**” (see Section 2 below for further details of these services).
- 1.4 In May 2017, Ofgem decided that there were reasonable grounds for suspecting that there had been a breach of Chapter II of the CA98 by PayPoint.
- 1.5 In particular, Ofgem considered that there were reasonable grounds for suspecting that PayPoint had abused or was abusing a dominant position by using exclusivity in its contracts in a way that was likely to restrict or distort competition in the Relevant Market.
- 1.6 In August 2017, the Authority opened an investigation into PayPoint’s conduct and whether it amounted to a possible infringement of Chapter II of the CA98.
- 1.7 PayPoint subsequently offered commitments to the Authority to address the Authority’s competition concerns.
- 1.8 Pursuant to section 31A and Schedule 6A of the CA98, the Authority published its [Notice of Intention to accept commitments](#) (“**the Notice**”) on 11 August 2021,

² Section 18 of the CA98 (Chapter II CA98) prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market, if it may affect trade within the United Kingdom

seeking views on its intention to accept the offered commitments. The consultation closed on 15 September 2021.

- 1.9 Having taken account of representations made during the consultation, the Authority is satisfied that the commitments offered address its competition concerns and, under section 31A of the CA98, has decided to accept the commitments offered by PayPoint, as set out in Annex 1.
- 1.10 As a result of the formal acceptance of the commitments, the Authority is discontinuing its investigation with no decision being made as to whether Chapter II of the CA98 has been infringed by the undertaking under investigation. The proposed commitments shall be binding and enforceable under section 31E of the CA98.
- 1.11 The Authority's decision to accept binding commitments is not a decision on the legality or otherwise of PayPoint's conduct.
- 1.12 Acceptance of the commitments does not prevent the Authority from reopening its investigation, making a decision, or giving a direction in circumstances where the Authority has reasonable grounds for:
- believing that there has been a material change of circumstances since the commitments were accepted;
 - suspecting that PayPoint has failed to adhere to one or more of the terms of the commitments; or
 - suspecting that information that led the Authority to accept the commitments was incomplete, false or misleading.³
- 1.13 Furthermore, acceptance of the commitments does not prevent the Authority from taking further enforcement action in relation to different alleged breaches of competition law in the same or related markets which may come to its attention.

³ Section 31B(4) of the CA98

1.14 This document:

- Describes the sector concerned
- Outlines our investigation
- Sets out our competition concerns
- Summarises the commitments that have been proposed
- Sets out our assessment of the extent to which they address our competition concerns, including our assessment of representations made in response to the Notice
- Sets out the Authority's final decision to accept the commitments, thereby making them binding on PayPoint.

2. Background

PayPoint

- 2.1 PayPoint is a UK-based group of companies providing specialist consumer payment and transaction processing services and products. For offering the services to which this investigation related, PayPoint operated via three wholly-owned subsidiaries: PayPoint Collections Limited (“PayPoint Collections”), PayPoint Network Limited (“PayPoint Network”) and PayPoint Retail Solutions Limited (“PayPoint Retail”). We explain the role and operation of each subsidiary in the sections that follow, below. For the purposes of this publication PayPoint plc and its subsidiaries are collectively referred to as “PayPoint” and the commitments offer is binding on all four entities.
- 2.2 PayPoint provides OTC payment services to energy suppliers in Great Britain who have customers who pay for their gas and electricity through a prepayment meter.
- 2.3 The provision of these services facilitates OTC payments to energy suppliers, whereby customers who pay for their energy in advance (“**prepayment**” customers) can add credit to their gas and electricity accounts in person in a local shop. Generally, these payments are made in cash, without the consumer necessarily needing either a bank account or debit/credit card.⁴
- 2.4 PayPoint also provides non-OTC payments services to energy suppliers. Non-OTC payment services enable prepayment customers to make remote payments, e.g. via a website or an application on a mobile phone.
- 2.5 In acting as an OTC payment services provider, PayPoint is active in a two-sided market, where it brings together two distinct groups of customers. The first group of customers is its network of retailers – convenience stores, local supermarkets or other retail locations where payments can be made in person, using PayPoint’s technology.⁵ The second group are its ‘clients’ – the companies looking to collect OTC payments

⁴ The Financial Conduct Authority estimates that, in February 2020, 2.3% of the UK adult population (accounting for 1.2 million people) had no access to a current account or an alternative e-money account. See here: <https://www.fca.org.uk/publication/research/financial-lives-survey2020.pdf>

⁵ Each retailer in the PayPoint network either hosts a physical PayPoint terminal, or hosts PayPoint software on its own electronic point of sale system, in order to allow OTC payments to be processed in store.

from their own customers through the PayPoint network. For prepayment energy OTC payment services, these companies are energy suppliers.⁶

- 2.6 PayPoint offered OTC payment services to energy suppliers under two separate types of contractual arrangements – a “**collections agreement**” and a “**network agreement**”.
- 2.7 The collections agreement specified the service that PayPoint would provide in relation to the collection and transfer of payments to energy suppliers. This agreement was between PayPoint Collections and the energy supplier. The network agreement described the service PayPoint would provide in terms of the coverage and performance standards of its network infrastructure. This agreement was between PayPoint Network and the energy supplier.
- 2.8 PayPoint Retail also entered into contracts with retailers. These contracts set out PayPoint’s obligations, particularly in relation to training and support, the installation and maintenance of terminals, and paying commissions.

⁶ PayPoint also provides OTC payment services to clients outside of the energy sector, including water companies, the BBC, and transport operators.

3. The Investigation

- 3.1 In January 2017, we received a complaint from a recent entrant into the energy payment services sector. The market participant complained that PayPoint was using exclusivity terms in its contracts with certain energy suppliers; that this was restricting its ability to compete against PayPoint, despite having lower prices and high service quality; and that the use of exclusivity by PayPoint infringed competition law.
- 3.2 In May 2017, Ofgem decided that there were reasonable grounds for suspecting that there had been a breach of Chapter II of the CA98 and, following discussions with the CMA and the other relevant concurrent regulators, it was agreed that the case would be allocated to Ofgem in accordance with the concurrency arrangements.⁷ Subsequently, Ofgem opened an investigation into PayPoint’s conduct in August 2017.
- 3.3 In particular, Ofgem considered that there were reasonable grounds for suspecting that PayPoint had abused or was abusing a dominant position by using exclusivity clauses in its contracts in a way that was likely to restrict or distort competition in the Relevant Market.
- 3.4 After completing the investigation phase, the Authority issued a Statement of Objections (“**SO**”) to PayPoint on 29 September 2020. Ofgem provisionally found that PayPoint had abused its dominant position in the Relevant Market for at least the period from 2 April 2009 to 19 October 2018. We refer to this period as the “**Relevant Period**”.
- 3.5 After the Authority issued the SO but before written representations were submitted, PayPoint offered commitments to the Authority on three different occasions.
- 3.6 We did not accept the first two sets of commitments – which were offered on 5 November 2020 and 8 December 2020 – on the basis that they did not address the

⁷ Regulation 4 of the Competition Act 1998 (Concurrency) Regulations 2014 (SI 2014/536). See also paragraph 1.1 above.

competition concerns identified in the SO. PayPoint offered a third, updated set of commitments on 22 February 2021.

- 3.7 After initial consideration of this third set of commitments and further discussions with PayPoint, a final revised set of commitments was offered by PayPoint on 7 May 2021. The Authority, following its initial assessment as to whether these commitments address the identified competition concerns, was minded to accept them.
- 3.8 Pursuant to paragraph 2 of Schedule 6A of the CA98, on 11 August 2021 the Authority issued the Notice setting out its provisional intention to accept the commitments offered and invited interested parties to make written representations on them.
- 3.9 The consultation process closed on 15 September 2021. The Authority received five written representations commenting on the Notice. The consultation responses, and the Authority's consideration of them, are summarised in section 6 below.
- 3.10 The Authority has given full consideration to all the relevant material in its possession, including the representations received following the publication of its Notice, and considers for the reasons set out in this document that the commitments (in the terms set out in Annex 1) address its competition concerns in this case. Accordingly, the Authority will accept these commitments and therefore discontinue this investigation, with no decision made on whether the relevant prohibitions in the CA98 have been infringed.

4. The Authority's competition concerns

4.1 The Authority's provisional view, based on the evidence reviewed as at the date of the commitments offered, is that PayPoint's contracts contained variously:

- i. Exclusive purchasing obligations in PayPoint's contracts with energy suppliers, which placed explicit restrictions on energy suppliers' ability to contract with alternative OTC payment services providers for the duration of the contract;⁸
- ii. Exclusivity rebates, according to which a supplier was charged a higher transaction fee under its contract if it used alternative OTC payment services providers in addition to PayPoint;
- iii. Restrictions on terminating contracts;
- iv. Restrictions on energy suppliers promoting rival OTC payment services providers with greater prominence than PayPoint; and
- v. Further contractual terms in PayPoint's agreements with retailers, which reinforced the effect of the exclusivity in excluding its rivals from competing for energy suppliers' business on equal terms ("non-compete clauses").

4.2 The Authority's provisional view is that this combination of contractual terms in PayPoint's individual agreements with both energy suppliers and retailers amounted to an abuse by PayPoint of its dominant position in the Relevant Market. It is important to note, though, that the findings set out in the SO are merely provisional and no conclusion should be drawn as to whether or not there has been an infringement of competition law.

4.3 Also, the Authority's provisional view is that these contractual terms were likely to have foreclosed PayPoint's actual or potential competitors from a significant part of

⁸ The initial term of the agreements containing exclusive purchasing obligations was over four years on average – with a large proportion of the agreements having either an initial term or an ultimate duration (following extensions) of five years or more.

the market ([50-60 %] of prepayment energy legacy OTC transactions and [90-100%] of prepayment energy smart OTC transactions across the period 2010-2018). The Authority's provisional view is that the conduct also reinforced the indirect network effects that characterise OTC payment services, creating a material barrier to entry and expansion.

- 4.4 The Authority's provisional view is that PayPoint placed significant restrictions on energy suppliers' ability to terminate their contracts early, such that they were prevented from doing so in order to use another provider.
- 4.5 The Authority's provisional findings are, therefore, that PayPoint's conduct in relation to the above-mentioned contractual terms was capable of restricting, and likely to harm, competition and consumer choice in the prepayment energy OTC payment services market during the Relevant Period, to the detriment of prepayment energy customers and, as such, constitutes an infringement of competition law.
- 4.6 PayPoint also provided non-OTC payment services during the Relevant Period. Where PayPoint entered into agreements for the provision of these services to energy suppliers during the Relevant Period, in all cases its contracts included exclusive purchasing obligations and, in most cases, these were accompanied by non-compete clauses.
- 4.7 During its investigation the Authority provisionally found that PayPoint was able to introduce exclusivity in its non-OTC contracts when negotiating with challenger energy suppliers⁹ regarding their non-OTC payment services. The Authority has provisionally found that one reason that PayPoint was able to require exclusivity in its non-OTC contracts was likely to have been its suspected dominant position in the OTC payment services market, which was likely to have given it a stronger position than its actual

⁹ Challenger suppliers are considered to be energy suppliers entering subsequent to market liberalisation, different to the incumbent "large legacy" suppliers (namely British Gas, EDF Energy, E.ON UK, npower, Scottish Power and SSE).

or potential rivals when negotiating with suppliers regarding their non-OTC payment services.

- 4.8 The Authority's provisional view is that the exclusivity clauses used by PayPoint in its non-OTC payment services contracts were likely to have affected competition and had the potential to appreciably reduce choice and dampen innovation in the nascent market for the provision of those services. The Authority has therefore provisionally concluded that PayPoint's use of these provisions fell outside of the scope of competition on the merits, and were likely to amount to a further abuse of its dominant position in a related market during the Relevant Period.

5 The Commitments

5.1 For the purposes of addressing the Authority's competition concerns (as described in Chapter 4 above), PayPoint has, without prejudice to its position that there has been no infringement of the CA98, offered binding commitments to the Authority. The full details of the commitments offered and the relevant definitions used within them were contained in Annex 1 of the Notice.

5.2 The commitments set out the following obligations:

(a) Commitment 1 – OTC energy prepayment:

- (i) All current contracts: PayPoint will, within 30 days of notification of Ofgem's decision to accept the Commitments, write to all of its energy supplier clients which are party to contracts for the provision of OTC energy prepayment services which include exclusive purchase obligations or exclusivity rebates, to seek their written agreement to amend those contracts and to remove such terms for the remainder of the contract term, and to confirm that pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. Pricing for "non-exclusive" provision of services will be maintained at the current "exclusive" contract price for the remaining duration of the contract.
- (ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem's decision to accept the Commitments, PayPoint shall not include or agree to any exclusive purchase obligation or exclusivity rebate terms in its contracts with energy suppliers for the provision of OTC energy prepayment services.

(b) Commitment 2 – non-OTC energy prepayment:

- (i) All current contracts: PayPoint will, within 30 days of notification of Ofgem's decision to accept the Commitments, write to all of its energy supplier clients which are party to contracts for the provision of non-OTC energy prepayment services and which include an exclusive purchase obligation or exclusivity rebate to:

- (A) Seek their written agreement to amend such contracts and to remove such terms for the remainder of the contract term, and to confirm that, pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. Pricing for “non-exclusive” provision of services will be maintained at the current “exclusive” contract price for the remaining duration of the contract.
 - (B) Seek their written agreement to amend the contract to include an early right of termination for non-OTC energy prepayment services where such services are provided under the same contract as OTC energy prepayment services.
 - (C) Seek their written agreement to amend such contracts to clarify that energy suppliers are not prevented from developing and/or deploying their own non-OTC energy prepayment services during the contract term (with no adjustment to be made to the current contract price).
- (ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem’s decision to accept the Commitments, PayPoint will not:
- (A) include or agree to any exclusive purchase obligation or exclusivity rebate terms in its contracts with energy suppliers for the provision of non-OTC energy prepayment services.
 - (B) combine the provision of OTC and non-OTC energy prepayment services in any one contract with an energy supplier.
 - (C) include contract terms that prevent energy suppliers from developing and/or deploying their own non-OTC prepayment services during the contract term.

(c) Commitment 3 – Retailer Agreements:

- (i) All current contracts: PayPoint will, within 30 days of notification of Ofgem’s decision to accept the Commitments, seek written agreement

from all Multiple Retailers with which it contracts for the provision of OTC payments for prepayment energy customers to amend those contracts and remove those terms that prohibit the retailer from hosting the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers, and to confirm that, pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. PayPoint will also write to all Independent Retailers notifying them that it will remove such terms from the General Retailer Agreement.¹⁰ PayPoint will not amend commission rates payable under the affected contracts.

- (ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem’s decision to accept the Commitments, PayPoint will not include or agree to terms in new, renewed or amended contracts with retailers (including both Multiple Retailers and Independent Retailers) that prohibit retailers hosting the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers.

(d) Commitment 4 – Donation:

PayPoint will, within 30 days of notification of Ofgem’s decision to accept the Commitments, make a donation of £12.5 million to Ofgem’s Energy Industry Voluntary Redress Scheme¹¹ (“**the Scheme**”) (currently administered on Ofgem’s behalf by the Energy Saving Trust (“**EST**”)) to support vulnerable energy consumers.

- 5.3 The final version of the commitments is set out in Annex 1. They are substantively the same as those included in the Notice. The text at Appendix 1 Part B shows a non-confidential version of the relevant text to take account of confidentiality representations and the Authority’s consideration of those representations.¹²

¹⁰ This agreement means PayPoint’s Booklet of Terms for General Retailer Agreements. This is amended as and when needed.

¹¹ Details of this Scheme can be found at energyredress.org.uk

¹² Subject to the disclosure restrictions under Part 9 of the Enterprise Act 2002.

- 5.4 While substantively the same as those included in the Notice, these final commitments include minor amendments compared to the version set out in the Notice. These amendments relate to the name of the organisation to which the donation will be made by PayPoint, clarification of the definition of OTC energy prepayment services and clarification of wording relating to whether the commitments should be varied or removed.
- 5.5 These changes, which are underlined and in red in Annex 1, are as follows:
- a) all previous mentions of the Energy Saving Trust have now been changed to Ofgem’s Energy Industry Voluntary Redress Scheme. This scheme is currently administered by the Energy Saving Trust on Ofgem’s behalf.
 - b) A clarification of the definition of **OTC energy prepayment services** at paragraph 6(q) to reflect that it includes OTC payments for both legacy prepayment meters and smart meters.
 - c) A clarification of the wording at paragraph 8 which relates to whether the Commitments should be varied or removed.
- 5.6 We have also accepted some minor changes made by PayPoint to the list of affected contracts made between PayPoint and each of its relevant Energy Suppliers and Retailers at Appendix 1 Part A.

6 The Assessment of the proposed commitments

The CMA's guidance as it applies to the Authority

- 6.1 The decision on whether to accept commitments is at the discretion of the Authority. In considering whether and how to exercise that discretion, the Authority has regard to the relevant guidance published by the CMA ("**the Guidance**"). The Guidance sets out the circumstances in which it may be appropriate to accept commitments, as required by section 31D of the CA98.¹³
- 6.2 Relevant aspects of the Guidance are summarised briefly below. For the purposes of this decision, references to the CMA in the Guidance are replaced by references to the Authority in the interests of clarity.
- 6.3 The Guidance explains that the Authority is likely to consider it appropriate to accept binding commitments where (a) the competition concerns are readily identifiable, (b) the competition concerns are addressed by the commitments offered, and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time. Further, it explains that it will not be appropriate to accept binding commitments where compliance with them and their effectiveness would be difficult to discern or where not to complete the investigation would undermine deterrence. The assessment on whether to accept commitments is made on a case-by-case basis, taking into account all the circumstances of a case.

Responses to the notice of the Authority's intention to accept commitments

- 6.4 As required by paragraph 2(1)(a) of Schedule 6A of the CA98, we invited interested parties to make representations on the proposed commitments.
- 6.5 The consultation was completed on 15 September 2021. We received five written representations in response to the proposed commitments.

¹³ Paragraphs 10.17 to 10.20 of Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8

- 6.6 The consultation responses included comments on both the proposed commitments and on general issues relevant to the investigation or the Relevant Market.¹⁴ Responses relevant to the consultation are summarised below.

Offering separate contracts for the provision of OTC services for legacy prepayment meters and smart meters

- 6.7 One respondent proposed that PayPoint also be required to offer separate contracts for the provision of OTC services for legacy prepayment meters and smart meters.
- 6.8 The respondent is concerned that if PayPoint were to offer 'bundled pricing' – where an energy supplier is charged for a minimum number of prepayment top ups over a stated period of time - it would not be cost effective for energy suppliers to enter into a separate arrangement for topping up smart meters OTC as the energy supplier would want the transaction fees for topping up smart meters OTC to count towards the minimum billing for topping up prepayment meters OTC.
- 6.9 However, the investigation did not relate to bundling contracts for OTC meters (legacy and smart OTC top-ups), nor did we provisionally find during our investigation that there was an abuse from bundling OTC legacy and OTC smart meter services. While we have carefully considered this response, given the bundling of services is outside the scope of this investigation and the identified concerns, we do not propose to amend the commitments offer.

Allocation of the donation

- 6.10 Some respondents stated that the money donated by PayPoint to the Scheme should go to prepayment clients only, as the users of PayPoint's services.

¹⁴ As the commitments were the subject of the consultation, more general comments relating to the investigation or the Relevant Market were not considered further, though, where appropriate, they have been passed on to the relevant parts of the Authority. Similarly, one respondent referred us to a dispute between it and PayPoint, which does not directly relate to the commitments and was not considered further. Another respondent referred to the acceptability of the amount of the donation to the EST, however we address this issue at paragraph 6.27 below.

6.11 The Scheme is administered by EST, not the Authority. As the core priority of the Scheme is to help people who are most at risk from cold homes and high energy bills, the Authority is satisfied with this commitment as it stands.

Duration of commitments

6.12 One respondent raised a concern that the duration of the commitments (five years) may not be long enough to foster competition. However, the Authority considers that a 5-year duration is a proportionate time period for the commitments to be implemented, address the identified competition concerns and ultimately to correct the potential distortion created by PayPoint's conduct. This time period also closely relates to the final rollout of smart meters which will introduce significant changes in the prepayment energy market and will lead to a decrease of OTC payments.

6.13 The Authority also considers that this duration will allow an opportunity for competitors in this market to enter, establish themselves or expand their market share in GB and to make any investments that may be required to ensure that they can continue to compete in the market after the expiry of the commitments.

6.14 In this context, it is important to note that the Authority will be monitoring the Relevant Market. The Authority has the power to revise the commitments periodically and to decide to vary them, if appropriate, or commence a new investigation in case of material changes in the market.

The Authority's assessment of the proposed commitments

6.15 The Authority has carefully considered the responses received to its consultation on its proposal to accept PayPoint's commitments and is satisfied that accepting commitments is the most appropriate approach in this particular case.

6.16 The Authority considers that its competition concerns are readily identifiable, will be fully addressed by the commitments offered, and the proposed commitments can be implemented effectively and within a reasonable period of time. Additionally, the Authority does not consider that compliance with or the effectiveness of the commitments would be difficult to discern or that accepting the proposed commitments would undermine deterrence. Further details of the Authority's reasoning are provided below.

The competition concerns are readily identifiable

6.17 First, the competition concerns are readily identifiable. During its investigation, and as set out in its SO, the Authority identified specific competition concerns in relation to PayPoint’s conduct. These concerns, set out in Section 4 above, relate to exclusive purchasing obligations, exclusivity rebates, restrictions on terminating contracts, restrictions on energy suppliers promoting rival OTC payment services providers, and non-compete clauses

The proposed commitments address the competition concerns identified

6.18 Second, the Authority has reached the decision that the commitments offered would, once implemented, fully address the competition concerns identified in this case.

6.19 Under the terms of the commitments, PayPoint will be obliged to remove exclusivity provisions and exclusivity rebate provisions from current contracts and any future contracts entered into during the next five years. The Authority considers that the 5 year duration of the commitments is appropriate to allow for its competition concerns to be addressed and to reflect a proportionate time limit for application of the commitments in the market-specific circumstances of the case and to take into account market changes that will occur during this period. Further and as explained above, this duration will allow an opportunity for competitors in this market to establish themselves and expand market share in GB and to make any investments that may be required to ensure that they can continue to compete in the market after the expiry of the commitments.

6.20 Prices in current contracts will be maintained at the exclusive contract price and an early right of termination for non-OTC energy prepayment services will be provided. Separate contracts will be provided for the provision of OTC and non-OTC energy prepayment services. This will weaken the incentive for energy suppliers to use PayPoint for both OTC and non-OTC payment services as these will no longer be offered as a package in a single contract. Energy suppliers and retailers will also be free to choose and contract with alternative service providers and to host the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers.

The proposed commitments are capable of being implemented effectively and within a reasonable period of time

- 6.21 Third, the Authority has reached the view that the proposed commitments are capable of being implemented effectively and within a reasonable period of time.
- 6.22 Included within the commitments is a comprehensive set of milestones against which PayPoint will be held accountable. These milestones propose that the majority of actions regarding the implementation of the commitments will occur within 30 days of the Authority notifying PayPoint of its acceptance of the commitments and that the commitments will be fully implemented at the latest within ten months of that date.
- 6.23 PayPoint has also agreed to report to the Authority on a regular basis regarding the implementation of the commitments, appoint a Commitments Compliance Officer who will monitor compliance with the commitments as long as they remain in force, and will report to the Authority within 3 working days any delays or changes in implementation milestones and provide sufficient information for the Authority to assess any such changes.
- 6.24 In light of this the Authority is satisfied that it will be able to appropriately monitor PayPoint's compliance with its binding commitments.

Acceptance of the proposed commitments would not undermine deterrence

- 6.25 Fourth, the Authority considers that the acceptance of commitments in this case would not undermine deterrence in the Relevant Market. The proposed commitments address in an effective way the Authority's competition concerns, in particular by removing any distortive effects of the exclusivity provisions quickly. The Authority therefore considers that accepting these commitments, in addition to being a timely and efficient use of the Authority's resources, will send a strong signal that the Authority is willing to and will indeed pursue potential breaches of competition law in this market and across the energy sector.
- 6.26 The Authority notes that the initial commitments were offered shortly after the Statement of Objections was issued but before written representations were

submitted, and therefore it is, on this occasion, appropriate to have considered the offer.¹⁵

Other factors

- 6.27 Separate to the above assessment, as well as addressing the Authority's competition concerns in a timely and effective manner, the Authority also notes that the commitments state that PayPoint will make a donation of £12.5 million to Ofgem's Energy Industry Voluntary Redress Scheme. The Authority notes that this offer will be beneficial to vulnerable energy customers and will also reinforce the deterrence signal this investigation sends: the Authority considers that the payment of a substantial monetary amount will produce a material effect on top of the rest of the commitments and, therefore, it ensures additional deterrence both on PayPoint and on any other payment services provider considering engaging in comparable behaviour.
- 6.28 Finally, the proposed commitments do not preclude the Authority from taking further enforcement action in relation to other suspected breaches of competition law, or in related markets, where these raise competition concerns.

¹⁵ Paragraph 10.21 of the Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8 states 'A business under investigation can offer commitments at any time during the investigation, until a decision on infringement is made. However, the Authority is unlikely to consider it appropriate to accept commitments at a very late stage in an investigation, such as after the Authority has considered representations on the Statement of Objections. The Authority has a broad discretion in determining which cases are suitable for commitments.'

7 The Authority's decision

- 7.1 In light of the above, the Authority considers that the commitments offered by PayPoint fully address its competition concerns and that it is appropriate to accept those commitments.
- 7.2 The Authority therefore accepts the commitments as set out in Annex 1 of this document. The commitments will be binding and enforceable under section 31E of the CA98. Accordingly, the Authority is discontinuing its investigation.

Signed:

Charles Hargreaves

Deputy Director, Enforcement

For and on behalf of the Gas and Electricity Markets Authority

Date: 23 November 2021

Annex 1 – Commitments offered by PayPoint

Commitments given by PayPoint PLC, PayPoint Collections Limited, PayPoint Network Limited and PayPoint Retail Solutions Limited pursuant to section 31A of the Competition Act 1998

Introduction

- 1 On 29 September 2020, Ofgem issued a Statement of Objections under the Act to PayPoint Plc, a company that provides OTC payment services to Energy Suppliers concerning prepayment energy customers, alleging that PayPoint Plc and certain of its subsidiaries had breached competition law during the period from 2 April 2009 to 19 October 2018.
- 2 PayPoint Plc and its wholly-owned subsidiaries, PayPoint Collections Limited (**PPCL**), PayPoint Network Limited (**PPNL**) and PayPoint Retail Solutions Limited (**PRSL**), collectively referred to herein as “**PayPoint**”, agree to make the following Commitments, on condition that they are accepted by GEMA or Ofgem in a Commitments Decision.
- 3 The Commitments are offered by PayPoint under Section 31A of the Act in order to bring Ofgem’s investigation to a close by addressing Ofgem’s competition concerns.
- 4 The giving of the Commitments by PayPoint does not constitute an admission of any wrongdoing by PayPoint. In particular, PayPoint has not been the subject of any Ofgem infringement decision and nothing in these Commitments may be construed as implying that PayPoint agrees with any concerns identified by Ofgem in its investigation relating to PayPoint’s conduct and the provision of OTC services to prepayment Energy Suppliers in Great Britain.
- 5 These Commitments are without prejudice to PayPoint’s position should Ofgem or any other party commence or conduct proceedings or other legal action against PayPoint.

Interpretation

- 6 For the purposes of these Commitments the following definitions apply:

- (a) **Act** means the Competition Act 1998
- (b) **Commitments** means the commitments given by PayPoint hereunder, pursuant to section 31A of the Act
- (c) **Commitments Compliance Officer** means a senior PayPoint employee appointed pursuant to paragraph 17 and with the prior approval of Ofgem whose function is to monitor compliance with the Commitments
- (d) **Commitments Decision** means a formal decision by Ofgem under section 31A of the Act to accept these Commitments such that section 31B of the Act applies with respect to Ofgem’s investigation relating to PayPoint’s conduct in relation to the provision of OTC payment services to prepayment Energy Suppliers
- (e) **Day 30** means the day that is thirty (30) days from the Implementation Date
- (f) **Energy Payment Equipment Prohibition** means contractual terms in PayPoint’s contracts with Retailers that prohibit the hosting of equipment of other payment service providers for the processing of OTC energy payments for prepayment energy customers
- (g) **Energy Supplier** means a person licensed by Ofgem to sell gas and/or electricity to domestic and/or non-domestic customers
- (h) **Exclusive Purchase Obligation** means a contractual provision that directly restricts customers from using alternative providers
- (i) **Exclusivity Rebate** means a contractual provision according to which a conditional discount is applied to the amount paid by a customer should the customer not use services from alternative providers
- (j) **GEMA** means the Gas and Electricity Markets Authority
- (k) **General Retailer Agreement** means PayPoint’s Booklet of Terms for General Retailer Agreements, as amended from time to time

- (l) **Implementation Date** means the date PayPoint is notified of Ofgem’s decision to accept the Commitments
- (m) **Independent Retailers** means independent convenience stores that contract with PayPoint solely on the terms set out in the General Retailer Agreement
- (n) **Multiple Retailers** means chains of convenience retailers (such as Co-op and McColl’s) and major supermarkets that contract with PayPoint on the basis of negotiated contractual terms
- (o) **Ofgem** means the Office of Gas and Electricity Markets, which supports GEMA in its day-to-day work, and is the independent regulator for the energy markets in Great Britain
- (p) **OTC** means over-the-counter
- (q) **OTC energy prepayment services** means services that facilitate OTC payments to Energy Suppliers, whereby customers that pay for their energy in advance (prepayment customers) can add credit to their gas and/or electricity accounts in cash, in person in a local convenience store. [This includes OTC payments for both legacy prepayment meters and smart meters.](#)
- (r) **non-OTC energy prepayment services** means the processing of non-cash top ups made by energy prepayment customers with smart meters via electronic communication channels such as web, mobile app, phone or SMS. PayPoint offers these services as part of its ‘MultiPay’ product
- (s) **Relevant PayPoint Company** means the company that is the counterparty to the relevant contract with an Energy Supplier or Retailer and provides the relevant OTC energy prepayment services and/or non-OTC energy prepayment services, as the case may be, as well as any other subsidiary of PayPoint which may be party to the relevant contracts
- (t) **Retailers** refers collectively to all retailers with whom PayPoint contracts, including both Multiple Retailers and Independent Retailers

- (u) **Working Day** means any day other than a Saturday, Sunday or any other day that is a public holiday in England

Commencement and Duration

- 7 Having been signed by PayPoint, these Commitments shall take effect from the Implementation Date and will cease to apply on the conclusion of a period of five (5) years commencing on the Implementation Date.
- 8 Without prejudice to the generality of section 31A(4)(b) of the Act, PayPoint may request that Ofgem reviews (with any such review being at Ofgem’s discretion) the Commitments and if doing so, Ofgem considers whether there are changes of circumstances relevant to these Commitments such that they should be released or varied, to remove aspects of the Commitments that the Authority no longer considers necessary or appropriate.
- 9 PayPoint shall not in any way circumvent, by actions or omissions, any of the Commitments, including, but not limited to, by selling, assigning or otherwise transferring any part of its business relating to the provision of OTC services to prepayment Energy Suppliers in Great Britain to any other entity within its corporate group. PayPoint Plc shall ensure that its subsidiaries that are not party to these Commitments comply with the terms of these Commitments.

The Commitments

Commitment 1: OTC Energy Prepayment

- 10 **Current contracts.** PayPoint undertakes as follows:
- (a) The Relevant PayPoint Company shall, on or before Day 30, write to all Energy Suppliers that are party to contracts in force at the Implementation Date for the provision of OTC energy prepayment services which include an Exclusive Purchase Obligation or Exclusivity Rebate to seek that Energy Supplier’s written agreement to amend such contract to remove such terms for the remainder of the contract term, and to confirm that – pending the agreement of the Energy Supplier to the proposed amendment by return – the Relevant PayPoint Company will not enforce the relevant contractual provision(s) (the

First OTC Letter). A summary of the affected contracts is included in Part A of Appendix 1.

- (b) To the extent that any of the Energy Suppliers described in (a) above have not confirmed their agreement to the amendments described therein by the third calendar month following Day 30, the Relevant PayPoint Company shall write to those parties to remind them of the request set out in the First OTC Letter for agreement to the proposed amendments by return (the **Second OTC Letter**).
 - (c) For the avoidance of doubt, the undertaking at (a) above shall also apply to those contracts which permit the use of one additional network operator, namely the Post Office.
 - (d) PayPoint shall not seek to amend the pricing terms of the affected contracts as recompense for the removal of the terms described at (a) above. Where two prices are stated in the contract and the Energy Supplier is currently paying the “exclusive price”, PayPoint will confirm to the relevant Energy Supplier that the “exclusive” price will continue to apply under non-exclusivity for the remainder of the contract term, and that any “non-exclusive” price will not apply.
 - (e) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract. In addition, PayPoint shall not be required by this Commitment to write to Energy Suppliers that have entered administration processes or whose customers have been otherwise transferred or novated to another Energy Supplier as at the Implementation Date, as summarised in Part B of Appendix 1.
- 11 **Future contracts.** PayPoint shall not include or agree to any Exclusive Purchase Obligation or Exclusivity Rebate terms in its contracts with Energy Suppliers for the provision of OTC energy prepayment services for a period of five (5) years from the Implementation Date. For the avoidance of doubt, contracts with Energy Suppliers for provision of OTC Energy Prepayment that are in negotiation at the Implementation Date will not include an Exclusive Purchase Obligation or Exclusivity Rebate.

Commitment 2: Non-OTC Energy Prepayment

12 **Current contracts.** PayPoint undertakes as follows:

- (a) The Relevant PayPoint Company shall, on or before Day 30, write to each Energy Supplier that is party to a contract in force at the Implementation Date for the provision of non-OTC energy prepayment services which includes an Exclusive Purchase Obligation or Exclusivity Rebate to:
 - (i) seek that Energy Supplier's written agreement to amend such contract to remove any Exclusive Purchase Obligation or Exclusivity Rebate for the remainder of the contract term;
 - (ii) where the relevant Energy Supplier contracts for the provision of both OTC and non-OTC energy prepayment services in one and the same contract, seek that Energy Supplier's written agreement to amend the contract to include an early right of termination in relation to the non-OTC energy prepayment services provided under the relevant contract; and/or
 - (iii) where currently restricted in the relevant contract, seek that Energy Supplier's written agreement to amend such contract to clarify that Energy Suppliers are not prevented from developing and/or deploying their own non-OTC energy prepayment services during the contract term, (the **First Non-OTC Letter**).

A summary of the affected contracts is included in Part A of Appendix 1. The Relevant PayPoint Company will at the time of writing to the relevant Energy Suppliers confirm that – pending the agreement of the Energy Supplier to the proposed amendment by return – the Relevant PayPoint Company will not enforce the relevant contractual provision(s).

- (b) To the extent that any Energy Suppliers described in (a) above have not confirmed their agreement to the amendments described therein by the third calendar month following Day 30, the Relevant PayPoint Company shall write to those parties to remind them of the request set out in the First Non-OTC Letter for agreement to the proposed amendments by return (the **Second Non-OTC Letter**).

- (c) PayPoint shall not seek to amend the pricing terms of the affected contracts as recompense for the amendments described at (a) above. Where two prices are stated in the contract and the Energy Supplier is currently paying the “exclusive price”, PayPoint will confirm to the relevant Energy Supplier that the “exclusive” price will continue to apply under non-exclusivity for the remainder of the contract term, and that any “non-exclusive” price will not apply.
- (d) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract. In addition, PayPoint shall not be required by this Commitment to write to Energy Suppliers that have entered administration processes or whose customers have been otherwise transferred or novated to another Energy Supplier as at the Implementation Date, as summarised in Part B of Appendix 1.

13 **Future contracts.** For a period of five (5) years from the Implementation Date, PayPoint undertakes that it shall not:

- (a) include or agree to any Exclusive Purchase Obligation or Exclusivity Rebate terms in its contracts with Energy Suppliers for the provision of non-OTC energy prepayment services; or
- (b) combine the provision of OTC and non-OTC energy prepayment services in any one single contract with any Energy Supplier; or
- (c) include or agree to any term that prevents an Energy Supplier from developing and/or deploying their own non-OTC prepayment services during the contract term.

For the avoidance of doubt, contracts with Energy Suppliers for provision of non-OTC Energy Prepayment that are in negotiation at the Implementation Date will not include an Exclusive Purchase Obligation or Exclusivity Rebate.

Commitment 3: Retailer Agreements

14 PayPoint undertakes as follows:

- (a) The Relevant PayPoint Company shall, on or before Day 30 – as applicable under the terms of the relevant contract – write to all Multiple Retailers to:
- (i) unilaterally remove the Energy Payment Equipment Prohibition. Such amendment shall take effect on the day that is 58 days from the Implementation Date;¹⁶ or
 - (ii) seek that Multiple Retailer’s written agreement to the amendment to remove the Energy Payment Equipment Prohibition; or
 - (iii) submit a change request to seek that Multiple Retailer’s consent to remove the Energy Payment Equipment Prohibition,

(the **First Multiple Retailer Letter**).

The Relevant PayPoint Company shall also confirm in the First Multiple Retailer Letter that – pending the agreement of the Retailer to the proposed amendment by return – PayPoint will not enforce the relevant contractual provision(s). A summary of the affected contracts is included in Part A of Appendix 1.

- (b) To the extent that any Multiple Retailers described in (a) above have not confirmed their agreement to the amendments described therein by the third calendar month following Day 30, the Relevant PayPoint Company shall write again to those parties to remind them of the request set out in the First Retailer Letter for agreement to the proposed amendments by return (the **Second Multiple Retailer Letter**).
- (c) The Relevant PayPoint Company shall, on or before Day 30, notify all Independent Retailers that it will unilaterally remove the term(s) in the General Retailer Agreement that prohibit(s) the hosting of equipment of other payment service providers for the processing of OTC payments for prepayment energy

¹⁶ On the basis that Clause F.2 of the General Retailer Agreement requires that any variations are made on 28 days’ prior written notice to Retailers.

customers. Such amendment shall take effect on the day that is 58 days from the Implementation Date.¹⁷

- (d) PayPoint shall not amend commission rates payable under the affected contracts as recompense for the removal of the terms described at (a) and (b) above.
- (e) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract.

- 15 **Period of commitment.** PayPoint shall not include or agree to any terms that prohibit the hosting of equipment of other payment service providers for the processing of OTC payments for prepayment energy customers in its contracts with Retailers for a period of five (5) years from the Implementation Date. For the avoidance of doubt, this shall include contracts with Retailers that are in negotiation at the Implementation Date.

Commitment 4: Supporting Vulnerable Energy Consumers

- 16 PayPoint shall, on or before Day 30, make a donation of £12.5 million to [Ofgem's Energy Industry Voluntary Redress Scheme](#) to support vulnerable energy consumers.

Monitoring, reporting and compliance

- 17 PayPoint shall appoint a Commitments Compliance Officer whose function will be to:
- (a) monitor compliance with the Commitments for as long as they remain in force;
and

¹⁷ On the basis that Clause F.2 of the General Retailer Agreement requires that any variations are made on 28 days' prior written notice to Retailers.

- (b) provide monthly reports to Ofgem against the milestones set out in Appendix 2 for a period of six months following Day 30 (subject to paragraph 19 below). The Commitments Compliance Officer shall report to Ofgem within 3 working days any delays or changes in milestones and provide sufficient information for Ofgem to assess the reasonableness of such changes.

- 18 PayPoint will do everything within its control to meet the milestones included in Appendix 2. Subject to the prior approval of Ofgem, where the timetable is delayed as a result of the actions of third parties (i.e. the relevant contract counterparties), the milestones included in Appendix 2 shall be adjusted to reflect the extent of the delay.

- 19 PayPoint undertakes to:
 - (a) provide Ofgem with written reports on a monthly basis on the progress of the Commitments and milestones set out in Appendix 2;
 - (b) provide Ofgem with the report on the first Monday of every calendar month by 5pm UK time, starting from the first Monday following Day 30, for a period of six months, or the date on which all milestones have been met, whichever is the soonest;
 - (c) ensure the reports cover the various milestones set out in Appendix 2, an update on progress, and one (1) electronic copy of any contractual amendments to implement the Commitments that have been issued to or agreed with Energy Suppliers and/or Retailers in the previous month; and
 - (d) ensure the reports are in a consistent format, clearly presented and sufficiently detailed such that Ofgem is able to assess the progress of the Project against the milestones set out in Appendix 2.

- 20 The obligations at paragraph 19 shall apply for a period of six months following Day 30, or the date on which all milestones have been met, whichever is the soonest (subject to Ofgem’s approval that all such milestones have in fact been met). To the extent that all milestones have not been met by the date that is six months from Day 30, PayPoint shall continue to provide monthly reports to Ofgem in the form described in paragraph 19 for a further three month period, or until such date on which all milestones have been met, whichever is the soonest (subject to Ofgem’s approval

that all such milestones have in fact been met). To the extent that any of the Energy Suppliers or Multiple Retailers contacted by PayPoint pursuant to paragraphs 10, 12 and 14 have not confirmed their agreement to the amendments described therein by the date that is nine months from Day 30, PayPoint's reporting obligations set out in paragraph 19 shall nonetheless cease, subject to Ofgem's approval that every reasonable step to reach an agreement has been taken.

21 PayPoint:

- (a) upon receipt of a written request from Ofgem, shall within 10 days provide (via the Commitments Compliance Officer) to Ofgem any information and documents which Ofgem reasonably requires for the purposes of enabling Ofgem to monitor and review the operation of the Commitments or any provision of the Commitments. For the avoidance of doubt, such request may include copies of contracts as amended to implement the Commitments;
- (b) will provide to Ofgem a signed Compliance Statement within fifteen (15) Working Days of:
 - (i) the date on which the actions described in paragraphs 10, 12, 14 and 16 are substantially complete; and
 - (ii) each anniversary of the Implementation Date¹⁸, until the fifth anniversary, to confirm that the obligations at paragraph 11, 13 and 15 have been complied with in the relevant year. The Statement must be signed by the CEO of PayPoint Plc on behalf of PayPoint and must be in the form appended to these Commitments (Appendix 3);
- (c) will promptly notify Ofgem, as soon as practicable (and, at the latest within five (5) Working Days) by email if it becomes aware of any breach of the Commitments, and will commit to providing information concerning the nature and duration of the breach; and

¹⁸ The first Compliance Statement shall be provided to Ofgem within fifteen Working Days of the first anniversary of the Implementation Date, and so on.

- (d) may be required by Ofgem to keep, maintain and produce those records specified in writing by Ofgem that relate to the operation of any provision of the Commitments.
- 22 Ofgem may take action in accordance with its statutory powers should it become aware of any non-compliance by PayPoint with the Commitments.
- 23 Any communication from PayPoint to Ofgem relating to the Commitments shall be addressed to: Sujitra Krishnanandan or by email to Sujitra.Krishnanandan@ofgem.gov.uk and projectnile@ofgem.gov.uk or such other postal or email address as Ofgem may direct in writing.
- 24 The obligations at paragraph 21 shall apply for the period that the Commitments are in force.

Appendix 1

Part A

Summary of affected contracts between PayPoint, Energy Suppliers and Retailers

[~~X~~] Due to its commercially sensitive nature this document has been redacted.

Some minor changes have been made by PayPoint to the list of affected contracts made between PayPoint and each of its relevant Energy Suppliers and Retailers.

Appendix 1

Part B

Energy Suppliers in Administration or Subject to Transfer

See subsidiary document Appendix 1 Part B

Appendix 2

Project Plan and Milestones

See subsidiary document Appendix 2

Appendix 3

Compliance Statement

Compliance statement relating to Commitments offered by PayPoint

I, [name of PayPoint Plc CEO], confirm on behalf of PayPoint Plc and its wholly-owned subsidiaries, PayPoint Collections Limited (**PPCL**) and PayPoint Network Limited (**PPNL**), and PayPoint Retail Solutions Limited (**PRSL**), collectively referred to herein as "**PayPoint**", that:

- 1 Subject to any matters reported under paragraph (2) below, in the period from [date] to [date] (the **Relevant Period**):
 - (a) PayPoint has complied with the commitments offered by it and accepted by Ofgem on [date] (the **Commitments**);
 - (b) No breach of the Commitments has occurred; and
 - (c) No action has been taken by PayPoint that might prejudice compliance with the Commitments.
- 2 Pursuant to the Commitments, Ofgem has been informed of any breaches of the Commitments that have occurred in the Relevant Period.
- 3 Subject to any disclosures under paragraph (2), PayPoint remains in full compliance with the Commitments and will continue to provide to Ofgem any information and documents as Ofgem may reasonably require for the purpose of monitoring and/or enforcing compliance with the Commitments in accordance with the Commitments.

Signed for and on behalf of PayPoint:

.....

[Name and Title]

On [Date]

At [Place]

Annex 2 – General Feedback

1. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation.
2. We'd also like to get your answers to these questions:
 1. Do you have any comments about the overall process of this consultation?
 2. Do you have any comments about its tone and content?
 3. Was it easy to read and understand? Or could it have been better written?
 4. Were its conclusions balanced?
 5. Did it make reasoned recommendations for improvement?
 6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Our decision-making process

