

Impact case study (REF3)

Institution: Brunel University London		
Unit of Assessment: 18 Law		
Title of case study: Influencing law, policy and practice in creating a ban on payment surcharges		
Period when the underpinning research was undertaken: 2013 - 2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Christine Riefa	Role(s) (e.g. job title): Reader - Law	Period(s) employed by submitting HEI: 10/2004 - present
Period when the claimed impact occurred: 2015 to 2020		
Is this case study continued from a case study submitted in 2014? N		

1. Summary of the impact (indicative maximum 100 words)

Payment surcharges are fees added to the processing of card payments. They have been used abusively by some traders. The research on payment surcharges conducted by Dr Riefa had direct influence on legislation, policy and practice. In the European Union (EU), it paved the way for legislative reforms which curtailed the use of abusive surcharges and benefited millions of consumers. The reforms have led to an annual saving for consumers across the EU of approximately EUR731,000,000, equivalent to GBP661,555,00 (11-2020), since they came into force in January 2018. Between 2018 and 2020, this led to a total saving for consumers in the EU of approximately EUR2,193,000,000, equivalent to GBP1,954,774,410 (11-2020). In the same time period, it led to a total saving for consumers in the UK of approximately GBP498,000,000. In the UK, the research also prompted *Which?*, the consumer association, to re-run studies into consumer detriment. Legislation banning surcharges on all payment methods was later implemented in the UK.

2. Underpinning research (indicative maximum 500 words)

Dr Riefa has undertaken extensive research on consumer law and combatting abusive practices in a number of sectors, notably electronic commerce (Ref. 3; Ref. 4). She acted as an external consultant on consumer law enforcement for a range of institutions, notably the European Commission, European Parliament The European Consumer Organisation (BEUC) and the United Nations. She has focused on payment services to conduct research into the control of surcharges in the EU and UK travel industry (Ref. 1; Ref. 2; Ref. 4).

Surcharging is the practice of adding a fee to the price of goods or services based on the method of payment used by consumers (effectively compelling consumers to pay for the right to pay). In 2007 and 2009 respectively, a Directive (2007/64/EC) on payment services in the internal market and a Regulation on fees and charges for cross-border payments (Regulation 924/2009) were introduced at EU level. The aim was to allow the use of surcharges and discounts to stimulate competition between payment methods and move away from cash (which is costlier than card payments). The legislation, however, did not work as well as anticipated causing financial detriment to millions of consumers in the EU.

In 2012, the European Commission commissioned a study from London Economics and the Institut für Finanzdienstleistungen (*iff*) in association with PaySys to assess the impact of the 2007 Directive (PSD1). Dr Riefa (then, Senior Lecturer) was the main legal contributor to that

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study (Ref. 1), and her work shaped the evaluation and recommendations made on the issue of surcharging which led to reform.

Dr Riefa's work and evidence paved the way for legislative action. Dr Riefa's research contributed to the design of the empirical work necessary to combat abusive surcharges. She influenced the design of all the stakeholder surveys (including for consumer associations) to collect qualitative data on the issue of surcharging; the identification of target industry sectors (where surcharging was most prevalent, chiefly travel); and compared the way the legal framework for surcharging applied in different member states to enable the collection of robust data. Dr Riefa collated and analysed the responses of stakeholders as well as conducting desk research.

The study demonstrated that the annual cost of surcharging to consumers was EUR731,000,000, equivalent to GBP661,555,00 (11-2020) (Ref. 1). It exposed the existence of a tangible "surcharging problem" (Ref 1) demonstrating that instead of seeing discounts on card payments, there was an increase in the number of retailers using surcharges to their advantage and without real relation to the cost of processing payments. In the UK alone, there was a 6% increase in the first year, going up to approximately 14% of retailers in the UK and Ireland choosing to add an unavoidable fee for consumers wanting to pay by card (Ref. 1). The study showed that the most pronounced detriment resided in the travel industry, even in countries where surcharging was already banned (Ref 1).

The report highlighted that the control of surcharging was linked to what happens further up the payment services' supply chain because merchants were often not able or willing to negotiate better Merchant Interchange Fees (MIF) with banks and passed the cost on to consumers (Ref. 1). The report concluded that imposing some restrictions on the level of interchange fees could be a viable solution to restrict the level of fees passed on to consumers. This solution was adopted by the European Commission with a cap on MIFs introduced in Regulation 2015/751 (MIF Regulation) in 2015. This was published alongside a new Payment Services Directive (PSD2) which banned surcharges on card payments within the scope of the MIF Regulation (which represents approximately 95% of the consumer card market).

For all other payment types, the PSD2 maintained the pre-existing rule of forbidding surcharges above the direct costs of processing the payment (with an option for Member States to choose whether to limit or ban those surcharges). Dr Riefa's research thus turned to unpicking the reasons why, at least in the UK, the mechanism offered by the pre-existing law (contained in Art 19 of the Consumer Rights Directive, implemented via the Consumer Rights (Payment Surcharges) Regulations 2012) was inoperable in practice and could not offer efficient relief for consumers (Ref. 2). Dr Riefa also reflected on whether an all-encompassing ban on surcharging could be effective at the EU level (Ref. 2).

Dr Riefa empirically tested the efficacy of the EU and UK rules to control surcharging in the travel industry. Dr Riefa collected data that could be directly compared with historical data (provided by *Which?* that had measured the level of surcharges when first reports of surcharging abuses emerged) via 2 waves of collections in July 2015 and April 2016. The final results of the empirical research work were published in the *European Law Review* (Ref. 2). However, the preliminary results of the empirical studies were communicated (prior to publication) to *Which?*, in writing and during a meeting where Dr Riefa presented her results. The Association had been at the forefront of the fight against unfair surcharges, but its activities paused while waiting for the implementation of the EU reforms at UK level. In light of this

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research, *Which?* decided to re-run a fresh study (wider in scope) which confirmed the results uncovered by Dr Riefa.

3. References to the research (indicative maximum of six references)

Ref 1. Riefa, C., Tiffe, A., Reifner, U., Klinger H., Muller, C., Sinn, M., et al. 2013. 'Study on the Impact of Directive 2007/64/EC on payment services in the internal market and on the application of Regulation (EC) No. 924/2009 on cross-border payments in the Community.' https://ec.europa.eu/info/sites/info/files/study-impact-psd-24072013_en.pdf

Ref 2. Riefa, C. 2018. 'EU payment surcharges rules lacking teeth: evidence from empirical studies into the control of surcharges in the EU and UK travel industry,' *European Law Review*, 43, 343 - 365.

Ref 3. Siciliani, P., Riefa, C. and Gamper, H. 2019. *Consumer Theories of Harm - an economic approach to consumer law enforcement and policy making*. Hart Publishing.

Ref 4. C. Riefa. 2016. *Consumer Protection and Online Auction Platforms – towards a safer legal framework*. Routledge. [10.4324/9781315573700](https://doi.org/10.4324/9781315573700)

4. Details of the impact (indicative maximum 750 words)

Dr Riefa's research was highly influential in introducing the Payment Services (PS2) – Directive EU 2015/2366, published by the EU on 23 December 2015 (E1), which changed the law on payment surcharges, and laid the legal foundations for a single, EU-wide, payments market. The new legal requirements started to apply on 13 January 2018 and have since saved millions of consumers across the EU EUR731,000,000, equivalent to GBP661,555,00 (11-2020), per annum in surcharges. Between 2018 and 2020, this led to a total saving of EUR2,193,000,000, equivalent to GBP1,954,774,410 (11-2020), in the EU and GBP498,000,000 in the UK.

Evidence of improvements in legal practice

The Study (Ref. 1) underpinned the legislative reforms' work undertaken by the European Commission. The European Commission acknowledged the importance of the work (Ref. 1) in shaping their reforms in a number of places. For example, the new PSD2 states, "the review of the Union legal framework on payment services and... the analysis of the impact of Directive 2007/64/EC have shown that developments have given rise to significant challenges from a regulatory perspective" (E1).

The legislative history of the PSD2 includes the European Commission's Staff Working Impact Assessment Document (E2). The Document accompanied the proposal for the new Directive and lists Dr Riefa's co-authored Study (Ref. 1) as a fundamental point of reference when reviewing the existing legal situation and shaping the necessary changes, which were introduced in 2015. Besides, the Study (Ref. 1) was also mentioned as a main reference point by the European Parliament Briefing (E3) released prior to the vote which saw the Parliament adopt the MIF Regulation by a majority.

iff, the institute from which (alongside London Economics) the European Commission had commissioned the Study (Ref 1), corroborates how Dr Riefa's "research on consumer law and payment services supported [their] economic team to define effective solutions that provided consumers with substantial savings improving thus their economic welfare" from 2018 onwards (E4). The economic team at *iff* "used Dr Riefa's work to design a representative sample of both EU member states and industry sectors that were affected the most by surcharging. Her

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contribution was instrumental in ensuring the strongest survey results possible” which, in turn, “had a direct impact on...some of the most financially vulnerable people and improved economic welfare across the EU” when the new law came into force in January 2018 (E4).

The proposals for the PSD2 drew on the Study (Ref 1) to introduce several changes. The Study findings were used to highlight diverse and inconsistent charging practices, notably in Recital 63 of the PSD2 (E1). The solutions to the surcharging problem suggested in the Study informed the decision-making process of the European Commission ultimately leading to the introduction of a maximum level of interchange fees across the EU (MIF Regulation) in December 2015. The explanatory memorandum for the MIF Regulation makes a direct link with the PSD2 (p.4) as the measures were adopted as part of a package (p.14).

iff confirms that “the European Commission used the results in the study to mitigate the issue of surcharging [which] subsequently led to major reforms and change in the law on payment services saving European consumers an estimated €731,000,000 per annum in surcharges” (E4). In the UK alone, consumers have saved approximately GBP166,000,000 per annum since the ban on debit or credit card surcharges started to apply in January 2018 (E5). The Economic Secretary to the Treasury said, “it’s completely unfair for someone to be hit by a hidden fee just before they are about to make a purchase, so by scrapping these rip-off charges we are helping to give power back to the consumer.” This direct impact on vulnerable people is part of building “a fairer society,” says the Economic Secretary to the Treasury, and “this added transparency ensures buyers can make informed choices about how they spend their hard-earned money” (E5).

The benefits of following the new legislation since 2018, make clear again that the policy change, driven by Dr Riefa’s co-authored Study (Ref 1), was necessary in order to create a single, EU-wide payments market which promotes fairness and transparency among credit and debit card payments. The benefits directly support the fact that the solution which had previously been introduced by the Consumer Rights Directive to limit surcharges to costs had not been satisfactory (p. 60, para 6.3.1.1. Option 28) and that intervention had indeed been necessary.

Evidence of Impact on the practice of *Which?* and UK Legislation

The empirical work carried out by Dr Riefa showed systemic problems remained in the control of surcharges in the UK. The results were communicated to *Which?* This consumer association had been the precursor in calling for a regulation of surcharges (having launched a super-complaint back in 2011). In the wake of the adoption of the EU legislation, the association had stopped work on the issue. Dr Riefa’s work confirmed that the legislative changes had little to no effect in practice. Dr Riefa provided convincing evidence to *Which?* by communicating her results and explaining her findings during a meeting, that led the organisation to run a fresh study (with a wider scope). Those results were published by *Which?* in their magazine (E6). The study confirmed Dr Riefa’s finding and provided renewed impetus for *Which?* to battle for a better legal solution. *Which?* responded to the HM Treasury Consultation on the PSD2 in the lead up to Government banning surcharges for all payment methods (E7). According to *Which?*, the new ban saves consumers between 2 and 3% on card purchases (E8).

5. Sources to corroborate the impact (indicative maximum of 10 references)

E1 Directive (EU) 2015/2366 of the European Parliament and of the Council, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L2366>

E2 Commission Staff Working Document Impact Assessment, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52013SC0288>

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- E3** European Parliament's Briefing, March 2015
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/549015/EPRS_BRI\(2015\)549015_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/549015/EPRS_BRI(2015)549015_EN.pdf)
- E4** Corroborating letter from *iff*, 22 July 2020
- E5** Card surcharge ban means no more nasty surprises for shoppers, UK Gov, 13 January 2018, <https://www.gov.uk/government/news/card-surcharge-ban-means-no-more-nasty-surprises-for-shoppers>
- E6** Rip-off card surcharges to end: everything you need to know, *Which?*, 12 January 2018, <https://www.which.co.uk/news/2018/01/rip-off-card-surcharges-to-end/>
- E7** Implementation of the revised EU Payment Services Directive II: response to the consultation, HM Treasury, July 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629988/Implementation_of_the_revised_EU_Payment_Services_Directive_II_response.pdf
- E8** No more surcharges: UK bans credit and debit card fees, *Which?*, 19 July 2017, <https://www.which.co.uk/news/2017/07/no-more-surcharges-uk-bans-credit-and-debit-card-fees/>