

Financial Services (Banking Reform) Act 2013:

Memorandum of Understanding between the
Bank of England, the Financial Conduct
Authority, the Payment Systems Regulator
and the Prudential Regulation Authority

Presented to Parliament pursuant to section 99(5) of
the Financial Services (Banking Reform) Act 2013

July 2018

Memorandum of Understanding between: the Bank of England, the Financial Conduct Authority, the Payment Systems Regulator and the Prudential Regulation Authority

Purpose and scope

1. This Memorandum of Understanding (MoU) sets out the high-level framework that the Bank of England (the Bank), the Financial Conduct Authority (FCA), the Payment Systems Regulator (PSR) and the Prudential Regulation Authority (PRA) (individually, an Authority and together the Authorities) will use to cooperate with one another, in relation to payment systems in the UK.
2. It fulfils the obligations of the Authorities under section 99 of the Financial Services (Banking Reform) Act 2013 (FSBRA) to prepare and maintain a Memorandum of Understanding describing the role of each Authority in relation to the exercise of relevant functions which relate to matters of common regulatory interest, and how the Authorities intend to coordinate the exercise of their relevant functions.
3. The Authorities have different mandates in relation to payment systems in the UK. This means that the actions of each Authority may have implications for the objectives of the others. It is therefore essential that the Authorities work together in exercising their functions, to ensure each is able to advance its objectives.

Roles of the Authorities

The Bank of England

4. Under the Bank of England Act 1998, the Bank has objectives to protect and enhance the stability of the financial system of the United Kingdom and to maintain price stability and, subject to those, to support the economic policy of HM Government, including its objectives for growth and employment. As part of its financial stability objective, the Bank is responsible for the supervision of payment systems that are recognised by HM Treasury in accordance with s.184 Banking Act 2009 and any service providers to recognised payment systems that are specified by HM Treasury in accordance with s.206A Banking Act 2009.¹ The other main roles the Bank undertakes with respect to payment systems are:
 - (a) supervisor of UK central counterparties and securities settlement systems;
 - (b) resolution authority for UK banks under the Bank Recovery and Resolution Directive;
 - (c) exercising powers under the special administrative regime for operators of infrastructure companies under Part 6 of FSBRA;
 - (d) authority responsible for the designation of payment, settlement and clearing systems in the UK under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999²;

¹ See http://www.bankofengland.co.uk/financialstability/Pages/fmis/supervised_sys/rps.aspx for list of systems recognised by HM Treasury

² See http://www.bankofengland.co.uk/financialstability/Pages/fmis/supervised_sys/systems.aspx for a list of systems designated the Bank

- (e) member of, Settlement Service Provider, infrastructure provider and/or Security Trustee for, certain payment systems;
- (f) operator of the UK's Real Time Gross Settlement System;
- (g) operator of the CHAPS payments system;
- (h) provider of banking services; and
- (i) authority responsible for the Sterling Monetary Framework under which the Bank implements the decisions of the Monetary Policy Committee and provides liquidity to the banking system.

The FCA

5. In broad terms, under the Financial Services and Markets Act 2000 (as amended) (FSMA) the FCA is responsible for:
 - a) regulating standards of conduct in retail and wholesale financial markets;
 - b) supervising trading and infrastructures that support those markets;
 - c) the prudential supervision of authorised firms that are not PRA-regulated; and
 - d) the functions of the UK Listing Authority and other functions under Part 6 of FSMA.

6. The FCA regulates payment services pursuant to the Second Payment Services Directive (Directive 2015/2366/EU) (PSD2), which was implemented in the UK by the Payment Services Regulations 2017 (PSRs 2017). In addition, the FCA regulates the issuance of e-money pursuant to the second Electronic Money Directive (Directive 2009/110/EC), implemented in the UK by the Electronic Money Regulations 2011 (EMRs). Under the PSRs 2017 and EMRs, the FCA authorises or registers payment institutions, such as money remitters and non-bank credit card issuers, and e-money institutions. It also supervises payment and e-money institutions in relation to their prudential and conduct requirements. The FCA supervises payment service providers, including banks and payment institutions, in relation to the conduct of business requirements under the PSRs 2017.

7. In addition, the FCA is designated by the Payment Card Interchange Fee Regulations 2015 (PCIFRs) as co-competent authority in relation to monitoring and enforcing compliance with Articles 8(2), (5) and (6), 9, 10(1) and (5), 11 and 12 of the Interchange Fee Regulations (Regulation (EU) 2015/751).

8. The FCA has a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this, which are: securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; promoting effective competition in the interests of consumers in the markets for regulated financial services. In addition, the FCA has a competition duty, which is that the FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers. When discharging its general functions the FCA must have regard (among other things) to the importance of taking action intended to minimise the extent to which it is possible for a business carried on by an authorised person or someone who should be authorised to be used for a purpose connected with financial crime.

The PRA

9. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms ("PRA-authorized firms"). Under FSMA, the PRA's general objective is to promote the safety and soundness of PRA-authorized firms. That objective is advanced primarily by seeking to ensure that the business of PRA-authorized firms is carried on in a way which avoids any adverse effect on the stability of the UK financial system and seeking to minimise the adverse effect that the failure of a PRA-authorized firm could be expected to have on the stability of the UK financial system. The PRA also has a secondary competition objective which requires it, when discharging its general functions so far as is reasonably possible to act in a way which facilitates effective competition in the markets for services provided by PRA-authorized firms in carrying on regulated activities.

The PSR

10. The PSR is the independent regulator for UK payment systems. The PSR is responsible for the regulation of payment systems designated by HM Treasury in accordance with sections 43-45 FSBRA³ and the participants in those designated systems. It is also responsible, more generally, for any payment system active in the UK under its concurrent competition powers.
11. The PSR is the competent authority in the UK for the Interchange Fee Regulation as set out in the PCIFRs. The PSR is also the competent authority with respect to regulation 61 (information on ATM withdrawals), 103 (access to payment systems) and 104 (indirect access to designated systems) of the PSRs 2017. The PSR (along with the FCA) is a competent authority for regulation 105 (access to payment account services). The PSR and FCA are signatories to a separate protocol which sets out the specific framework for co-operation in exercising powers to enforce regulation 105.
12. The PSR is the competent authority for designating any alternative switching schemes under the Payment Account Regulations 2015 which implements the Payment Accounts Directive (Directive 2014/92/EU). The PSR is responsible for ensuring that any designated scheme continues to meet the requirements for designation, and for taking any enforcement action in this regard.
13. Under FSBRA, when discharging its general functions⁴ relating to payment systems, the PSR must, so far as is reasonably possible, act in a way which advances one or more of its three payment systems objectives:
 - (a) to promote effective competition in the market for payment systems and the markets for services provided by payment systems in the interests of those who use, or are likely to use, services provided by payment systems;
 - (b) to promote the development of, and innovation in, payment systems in the interests of those who use, or are likely to use, services provided by payment systems, including in particular the infrastructure used to operate them, with a view to improving the quality, efficiency and economy of payment systems; and

³ See <https://www.psr.org.uk/payment-systems/who-we-regulate> for list of systems designated by HM Treasury.

⁴ As defined in s.49(4) FSBRA

(c) to ensure that payment systems are operated and developed in a way that takes account of, and promotes the interests of those who use, or are likely to use, services provided by payment systems.

14. In discharging its general functions relating to payment systems, the PSR must also have regard to the importance of maintaining the stability of, and confidence in, the UK financial system; the importance of payment systems in relation to the performance of functions by the Bank in its capacity as a monetary authority and a number of regulatory principles set out in s.53 FSBRA.

Information Exchange

15. The timely and focused exchange of relevant information is essential to delivering effective coordination and cooperation. The Authorities will aim to cooperate by actively sharing information where appropriate for the performance of their functions. They have a duty to protect confidential information received from third parties. However, legislation enables the Authorities to share confidential information in certain circumstances through “information gateways”.
16. The Authorities will also, where appropriate, obtain information and advice from one another in areas where another Authority might be expected to have relevant information or expertise that the other(s) lack(s). Unless legally constrained from doing so, information available to one Authority that is relevant to the functions of the other Authority will be shared where requested and as appropriate.
17. The Authorities’ ability to share confidential information with each other may in some instances be constrained by the terms of agreements with third parties, such as overseas supervisors, or by the law. The Authorities will seek to ensure that these instances are minimised by seeking the relevant consents.

Confidentiality

18. Each Authority will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from other Authorities. Additional protections apply to information specifically designated by the Bank as requiring further protection. The provisions relating to specially protected information are set out in Annex 1.
19. Without prejudice to the obligations that an Authority may have to use or disclose information in relation to legal proceedings or otherwise, each Authority will endeavour to consult other potentially interested Authorities, where practicable, before:
- Passing the information to a third party; or
 - Using the information in legal, enforcement or court proceedings.
20. The Authorities will liaise on responding to requests made under the Freedom of Information Act 2000 and the Data Protection Act 2018, where appropriate, and will consult before releasing information received from another Authority.

Cooperation in respect of regulated entities

21. Some entities will be subject to regulation by several of the Authorities. For example, the PSR has powers over many payment service providers⁵ that are regulated by the FCA and, in some cases, the PRA. Some payment systems (encompassing operators and infrastructure providers) may be subject to regulation by both the Bank and the PSR. Some regulated entities also have relationships with one or more of the Bank's operational functions. In such circumstances, the Authorities will coordinate the exercise of their activities as set out below.
22. In order to facilitate this cooperation, the relevant Authorities will establish regular meetings or make other arrangements with a view to:
 - (a) identifying which issues, risks and actions might have a material effect on the ability of the other Authorities to advance their objectives; and
 - (b) sharing information to ensure each Authority's supervisory and/or policy and/or operational⁶ decisions about an entity take into account all relevant information.
23. Each Authority will designate working level representatives. Meetings will be held at least quarterly to enable these representatives to meet and work together on issues of mutual interest. Further ad hoc meetings between the Authorities will be arranged on specific topics, as required.
24. In the event of an actual or anticipated default of a recognised or designated payment system, or of a significant participant⁷ in such a system; or a material operational disruption of a designated or recognised payment system or a specified service provider to a recognised payment system, the Authorities are committed to working closely together, and to communicating effectively and promptly in order to ensure that regulatory actions are coordinated.

Coordinated exercise of functions and policy

25. Each Authority will pursue rule-making, giving of directions, and development and implementation of policies and strategies in advancing its separate objectives. The Authorities will:
 - (a) consult each other on matters of common regulatory interest at an early stage wherever practicable; and
 - (b) give due weight to each other's views:
 - (i) in connection with any proposed exercise of a relevant function in a way that may have a material effect on the advancement by another Authority of any of its objectives; and
 - (ii) in relation to policy deliberations that may have a material effect on another Authority's objectives.

⁵ A payment service provider according to s.42(5) FSBRA, in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system.

⁶ For example, the Bank may seek input from other Authorities when assessing whether to give access to an RTGS account to a regulated entity.

⁷ Participants in regulated payment systems are Operators of payment systems, Infrastructure Providers and payment Service Providers as defined in s.42(3)-(5) FSBRA.

26. Each Authority will also seek to avoid introducing, inadvertently, requirements which are inconsistent or conflict with those introduced by, or are under serious consideration by, another Authority.
27. Where conflict of requirements, policies or strategies is a serious prospect and would have a material effect on the achievement of any of the Authorities' objectives, the issue will be escalated to the senior management of the relevant Authorities.
28. Sometimes one or more of the Authorities will need to coordinate about entities that are not subject to regulation by all or any of those Authorities. For example, the PSR may regulate payment systems with which the Bank has a non-regulatory relationship.

Cooperation regarding representation of the UK at international meetings

29. The Authorities will, where practicable, coordinate their senior level engagement with EU and international committees and organisations (e.g. the European Central Bank's Payment and Settlement Systems Committee) where the matters arising concern payment systems or services provided by payment systems.
30. The Authorities will establish arrangements for exchanging agendas for, and information regarding, areas of common interest in relation to EU and international committees and organisations of which one is a member in a timely manner. The Authorities will consider the opinions of the other Authorities when determining their own position. Where possible, the Authorities will consult with each other to agree positions that reflect the views of the others, while consistent with their own objectives, in good time before such engagement takes place.
31. Each Authority will designate working level representatives. Meetings will be held at least quarterly to enable these representatives to meet and work together on issues of mutual interest for international meetings. Further ad hoc meetings between the Authorities will be arranged on specific topics, as required.

Rights of the Authorities to veto certain PSR regulatory actions

32. Save in the case where urgent action under paragraph 38 is required, the Bank, the PRA and the FCA will engage with the PSR prior to exercising any of the veto rights described below.
33. The PSR is not required to comply with any direction made by the Bank, PRA or FCA pursuant to a veto power if it considers doing so would be incompatible with any EU obligation or any other international obligation of the UK.
34. The rights of the Authorities to veto certain PSR regulatory actions do not apply to the PSR exercising its powers as a competent authority under the PARs, PCIFRs, PSRs 2017 or its concurrent competition functions.

Bank veto power

35. Under s.100 FSBRA, the Bank may direct the PSR not to exercise a power under part 5 of FSBRA in relation to a participant in a regulated payment system, or not to exercise such a power in a specified manner, if the Bank considers that the exercise of this power in the manner proposed may:
- threaten the stability of the UK financial system;
 - have serious consequences for business or other interests in the UK; or
 - have an adverse effect on the Bank's ability to act in its capacity as a monetary authority.

In addition, the Bank must consider that the giving of such a direction is necessary in order to avoid one or more of these possible consequences.

FCA veto power

36. Under s.101 FSBRA, the FCA may direct the PSR not to exercise a power under part 5 of FSBRA in relation to a participant in a regulated payment system, or not to exercise such a power in a specified manner, if the FCA considers that the exercise of this power in the manner proposed may have an adverse effect on the ability of the FCA to act in a way that, so far as is reasonably possible, is compatible with its strategic objectives and advances one or more of its operational objectives under FSMA. In addition, the FCA must consider that the giving of such a direction is necessary in order to avoid this possible consequence.

PRA veto power

37. Under s.102 FSBRA, the PRA may direct the PSR not to exercise a power under part 5 of FSBRA, or not to exercise such a power in a specified manner, if the PSR is proposing to exercise this power in relation to a class of PRA-authorized person, or a particular PRA-authorized person and the PRA is of the opinion that the exercise of this power in the manner proposed may:
- threaten the stability of the UK financial system;
 - result in the failure of a PRA-authorized firm in a way that would have an adverse effect on the stability of the UK financial system;
 - threaten the continuity of core services provided in the UK; or
 - have an adverse effect on the ability of the PRA to comply with its duty to act in a way that advances its general objective of promoting the safety and soundness of PRA-authorized persons.

In addition, the PRA must consider the giving of such a direction is necessary in order to avoid one or more of these possible consequences.

Urgent action

38. It is important that the Authorities have the ability to act quickly where necessary to advance their respective objectives. In that context, in exceptional market conditions or other relevant circumstances, the precise arrangements set out in this MoU may not be compatible with one or more of the parties advancing its objectives with the urgency required. In such urgent situations, and provided they are legally able to do so, one or more Authorities may depart from the arrangements set out in this MoU. For example, action may need to be taken without consultation. In this case the Authority will provide the others with notice of the situation and the urgent action that was taken as soon as practical. In the

event of emergency situations, the Authorities will work together using existing arrangements, as appropriate.

Reporting into possible regulatory failures

39. Under sections 73, 74 and 76A of the Financial Services Act 2012 (as amended), the FCA, PRA and PSR, respectively, have a duty to carry out an investigation into events that may constitute a regulatory failure and to produce a report to HM Treasury on the results of such an investigation. If one or more Authority is/are undertaking such an investigation, it/they will share information that may be relevant to another Authority's investigation and coordinate the investigations and reports, where appropriate and as permissible by law. In the event that one, or more, Authority/Authorities is/are conducting an investigation, any information obtained in the course of these investigations should be shared with any of the other Authorities covered by this MoU where doing so would assist those Authorities in achieving their objectives, to the extent permitted by law.

Publication and review

40. The Authorities will give HM Treasury a copy of this MoU and any revised versions of it. HM Treasury will lay the MoU and any subsequent versions of it before Parliament. The Authorities will ensure that the MoU is suitably accessible to the public.
41. Each Authority will appoint a senior executive responsible for the coordination set out in this MoU. Where an appointed executive so requests, and at a minimum annually, the appointed executives will meet to review the effectiveness and efficiency of coordination and cooperation.
42. The Boards of the FCA and the PSR, the PRA's Deputy Governor for Prudential Regulation, and the Bank's Deputy Governor for Financial Stability, will review each year how the MoU is working. The Authorities will publish a summary of the key points from those reviews.
43. Feedback from regulated entities on how coordination is working from their point of view will be an input into those reviews. Judgement on whether there has been a lack of coordination or unnecessary duplication by the Authorities in pursuit of their objectives will be made by each Authority.

Approved by the Authorities:

Bank of England
Sir Jon Cunliffe
Deputy Governor, Financial Stability

6 July 2018

Financial Conduct Authority
Board

28 June 2018

Payment Systems Regulator
Board

27 June 2018

Prudential Regulation Authority
Sam Woods
Deputy Governor, Prudential Regulation
& Chief Executive of the Prudential Regulation Authority

4 July 2018

ANNEX 1

Specially protected information

1. The FCA and the PSR will not disclose information designated by the Bank as being specially protected information except where entitled to do so under s.94 FSBRA.
2. Specially protected information is information that:
 - (a) has been received from the Bank or that has been received from the PSR or FCA but originally received from the Bank; and
 - (b) was noted in writing by the Bank to the Authority to whom the information was disclosed, prior to or at the time of disclosure, as being held by it for the purpose of any of the following functions:
 - i. monetary policy;
 - ii. financial operations intended to support financial institutions for the purposes of maintaining stability;
 - iii. the provision of private banking and related services.
3. The FCA and the PSR may disclose specially protected information:
 - (a) to each other provided that the disclosing Authority informs the other that the information is specially protected under s.94 FSBRA before making the disclosure;
 - (b) where the Bank has consented to disclosure;
 - (c) where the information has been made public in line with s.94(7)(c) FSBRA; or
 - (d) where the FCA or the PSR is required to do so under EU law.
4. The FCA and the PSR will take all reasonable steps to ensure that specially protected information is not disclosed contrary to s.94 FSBRA.