

# Objectives Guidance

March 2015

**Our objectives underpin everything we do, driving the activities we undertake and how we prioritise our work. We will use our regulatory powers to advance our statutory objectives, function and duties.**

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## 1. Purpose

- 1.1 Our responsibilities are primarily set out in the Financial Services (Banking Reform) Act 2013 (FSBRA). We are an economic regulator, and share competition powers with the competition authorities.<sup>1</sup> We are required to give guidance on how we intend to advance our objectives in discharging our functions for different categories of payment system or participants<sup>2</sup> in payment systems.<sup>3</sup> Our primary focus is on making payment systems work well for service-users.
- 1.2 We will keep this guidance under review and update it as appropriate.

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<sup>1</sup> See Section 8 below concerning our competition law powers and Section 9 concerning how we will work with other authorities.

<sup>2</sup> Participants in regulated payment systems are Operators of payment systems, Infrastructure Providers and Payment Service Providers (PSPs), see section 42(3)(5) FSBRA.

<sup>3</sup> Section 96 FSBRA.

## 2. Overview

- 2.1 Everything we do when discharging our general functions must, so far as reasonably possible, advance one or more of our objectives. These are<sup>4</sup>:
- the competition objective
  - the innovation objective, and
  - the service-user objective.
- 2.2 In addition, when carrying out our functions we must have regard to the importance of maintaining the stability of, and confidence in, the UK financial system. We must have regard to the importance of payment systems in relation to the performance of the Bank of England's (the Bank) functions. We must also have regard to certain regulatory principles in FSBRA;<sup>5</sup> which we have set out in section 10 of this document.
- 2.3 You will find three main sections in this document, each of which deals with one of our statutory objectives.
- 2.4 There is no hierarchy in our objectives – each is as important as the others. For the most part they are mutually supportive. For example, competition will tend to drive innovation in infrastructure, and service-users should benefit from greater innovation in payment systems. If tension arises between our objectives, we will take the course of action that aligns with our strategic priorities and that is in the best interests of service-users.
- 2.5 We will be open about the role our objectives play in our decisions. We will communicate the actions we are taking by engaging with stakeholders, through our website, and through publications such as reports, studies, decisions and our Annual Report.

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<sup>4</sup> See sections 50–52 FSBRA, and see also Appendix 1.

<sup>5</sup> See section 53 FSBRA, and see also Appendix 2.

### 3. How we define service-users

3.1 Service-users are those who use, or are likely to use, services provided by payment systems.<sup>6</sup> This is a wide definition, which includes, but is not limited to:

- Payment service providers (PSPs<sup>7</sup>) including direct and indirect participants in payment systems such as banks, building societies, credit unions, ATM operators, authorised and small e-money institutions,<sup>8</sup> and authorised and small payment institutions.<sup>9</sup>
- Customers of direct and indirect participants of payment systems, including government departments, large corporations, small and medium-sized enterprises (SMEs), mid-market enterprises (MMEs), retailers, utilities, charities and individual consumers.

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<sup>6</sup> See section 52 FSBRA.

<sup>7</sup> PSP, according to section 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.

<sup>8</sup> A person that has been granted authorisation under a national legislation implementing title II of the Electronic Money Directive (2009/11/EC) including, for the avoidance of doubt, a person who has been granted a waiver from full authorisation and been registered in accordance with Article 9 Electronic Money Directive (a 'small EMI').

<sup>9</sup> A person that has been granted authorisation under a national legislation implementing the Payment Services Directive (2007/64/EC) (PSD) or been granted a waiver from full authorisation and been registered in accordance with Article 26 PSD (a 'small PI').

## 4. Our competition objective

- 4.1 This objective is to promote effective competition in the markets for payment systems and for services provided by payment systems in the interests of service-users. Our work will focus on promoting and protecting the process of competition in the interests of service-users, rather than promoting or protecting specific competitors.
- 4.2 The legislation stipulates that promoting effective competition includes promoting effective competition between different:
- operators of payment systems (Operators)<sup>10</sup>
  - PSPs
  - infrastructure providers (Infrastructure Providers)<sup>11</sup>
- 4.3 We will promote effective competition where it is in the interests of service-users.
- 4.4 As set out in FSBRA, we may have regard to the following when assessing how effective competition is:
- existing and potential service-users – their needs, how easy it is for them to use the services provided by payment systems and how easy it is for them to switch suppliers
  - existing and potential PSPs – their needs, how easy it is for them to provide services using payment systems and to switch providers
  - existing and potential Infrastructure Providers – their needs and how easy it is to provide infrastructure for operating payment systems
  - Operators – their needs and how easy it is for them to change the infrastructure used to operate their payment systems
  - new entrants – how easy it is for them to enter the market
  - how far competition is contributing to the development of efficient and effective infrastructure for operating payment systems
  - how far competition is encouraging innovation, and
  - the level and structure of fees, charges or other costs associated with participation in payment systems<sup>12</sup>.
- 4.5 While competition generally brings better outcomes for service-users, collaboration between participants in payment systems may sometimes be appropriate and ultimately in the interests of service-users. For example, collaboration within payment systems can enable smaller PSPs to have access to payment systems and, therefore, increase competition between PSPs at the retail level.

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<sup>10</sup> Operator, according to section 42(3) FSBRA, in relation to a payment system, means any person with responsibility under the system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.

<sup>11</sup> Infrastructure Provider, according to section 42(4) FSBRA, in relation to a payment system, means any person who provides or controls any part of the infrastructure used for the purposes of operating the payment system.

<sup>12</sup> Section 50(3) FSBRA, and see also Appendix 1.

- 4.6 We will consider market features that could indicate that there are competition issues, including, for example:
- levels of market concentration
  - barriers to entry or expansion
  - common ownership of competing facilities
  - market power of buyers or suppliers
  - laws and regulations
  - information asymmetries<sup>13</sup> between competitors or between those already in the market and new entrants
  - transparency and the flow of information between participants
  - degree of vertical integration
  - service-user behaviour, and
  - ease of switching.
- 4.7 For example, we may seek to promote competition by ensuring that barriers to entry are reduced or removed, where appropriate. Facilitating new entry may drive competition and innovation. This in turn, can lead to more cost-effective, efficient and improved quality services being available to service-users.
- 4.8 We will use our regulatory powers where this will foster greater competition in the interests of service-users. Except where we are considering making general directions or requirements, we must consider first whether it is more appropriate to use our competition powers, rather than our regulatory powers.<sup>14</sup>
- 4.9 We aim to develop and protect competitive markets, where preferable, and contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected. We will aim to prioritise actions that will have a widespread positive impact across the market and that will lead to good outcomes when measured against our objectives, functions and duties.

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<sup>13</sup> Information asymmetry refers to circumstances in which one party has access to greater or better information than the other.

<sup>14</sup> Section 62 FSBA.

## 5. Our innovation objective

- 5.1 Our innovation objective is to promote the development of, and innovation in, payment systems and infrastructure to be used to operate payment systems in the interests of service-users. The purpose of this objective is to improve the quality, efficiency and economy of payment systems. This means services that are more responsive to service-users' needs and better systems that are accessible, easy to use, and cost-effective to operate and use.
- 5.2 Our role is not to innovate, but to encourage and support industry, and to help create the conditions in which innovation can flourish. We will only seek to promote innovation that is in the interests of service-users.
- 5.3 We will work with industry to ensure there are adequate opportunities and the right incentives for firms to innovate. This will involve assessing, among other things:
- barriers to innovation including laws and regulations
  - standards and interoperability
  - apportionment of risk
  - access to payment systems
  - costs of investment
  - technological requirements (e.g. the need for both the payer and the payee to have the right technology)
  - the need for scale of take-up in order for an innovation to be successful (network effects).
- 5.4 In most cases, competitive markets drive innovation. We appreciate, however, that, given the existence of network effects, participants may sometimes need to collaborate to develop innovations, for example the collaboration that was needed to develop Paym.
- 5.5 Innovations in payment systems may come from firms outside the financial services sector, such as technology and hardware providers. We want to facilitate such innovation where we can, where it brings greater competition and benefits to service-users.

## **6. Our service-user objective**

- 6.1 Improving how payment systems are operated for service-users is at the heart of everything we do and is central to our competition and innovation objectives. We understand this to mean that payment systems should be operated and developed to take account of, and promote, the interests of service-users. This means we expect existing services to be improved and new, better services to be developed.
- 6.2 We expect payment systems to offer service-users choice, to be responsive in meeting their diverse needs, and to create opportunities for PSPs to bring innovative services to market. They should be high quality, good value, efficient and cost-effective, while offering a reliable, secure and stable service.
- 6.3 We will assess how well payment systems and services provided by payment systems are working for service-users by seeking their views and expect industry participants to raise issues and concerns with us. In addition, we have set up a PSR Panel which has representation from service-users.



## 7. Our regulatory powers

7.1 We have a range of powers over participants in regulated payment systems to support our functions. We can:

- require or prohibit a specific action or set standards<sup>15</sup>
- require Operators to establish or change rules of payment systems, require them to notify us of changes, or require that they get our approval before making rule changes<sup>16</sup>
- on application, require the Operator of a regulated payment system or a PSP with Direct Access to it, to grant access to that system<sup>17</sup>
- change the fees, charges, terms and conditions, or terms of access that Operators or PSPs impose on their customers<sup>18</sup>
- require the disposal of an interest in the Operator of a regulated payment system<sup>19</sup>
- provide guidance<sup>20</sup>
- conduct market reviews
- consider applications and complaints.<sup>21</sup>

7.2 We have a range of enforcement, information gathering and investigation powers. We can:

- require information or documents to be provided to us<sup>22</sup>
- require an Operator, Infrastructure Provider or PSP, or appoint a skilled person, to provide a report on any matter relating to their participation in a regulated payment system<sup>23</sup>
- investigate a potential compliance failure or the nature, behaviour or state of the business of an Operator, Infrastructure Provider or PSP of a regulated payment system, or appoint someone else to do so<sup>24</sup>
- appoint an investigator, who can require someone who has relevant information to attend an interview, or produce information or documents.<sup>25</sup>

7.3 A compliance failure<sup>26</sup> occurs when a participant in a regulated payment system does not comply with any of the following:

- one of our directions under section 54 FSBRA
- one of our requirements regarding systems rules under section 55 FSBRA

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<sup>15</sup> Section 54 FSBRA.

<sup>16</sup> Section 55 FSBRA.

<sup>17</sup> Section 56 FSBRA.

<sup>18</sup> Section 57 FSBRA.

<sup>19</sup> Section 58 FSBRA.

<sup>20</sup> Section 96 FSBRA.

<sup>21</sup> Sections 56, 57 and 68 FSBRA.

<sup>22</sup> Section 81 FSBRA.

<sup>23</sup> Section 82 FSBRA.

<sup>24</sup> Sections 83 and 84 FSBRA.

<sup>25</sup> Section 85 FSBRA.

<sup>26</sup> Section 71 FSBRA.

- one of our requirements granting direct or indirect access to a relevant payment system under section 56 FSBRA.

7.4 We can use our enforcement processes to investigate a compliance failure, to publish a finding that there has been a compliance failure, to impose a penalty and to seek a court injunction, where appropriate.

7.5 We can also issue directions to order specific remedial action to be taken.

## **8. Our competition powers**

- 8.1 We also have the power to investigate and enforce infringements of UK and EU competition law<sup>27</sup> and we can carry out market studies.
- 8.2 Where we conclude that a market is not working well, we have the option of using our competition powers to refer this market to the Competition and Markets Authority (CMA) for more detailed investigation (a market investigation reference).

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<sup>27</sup> Chapters I and II of the UK Competition Act 1998, and Articles 101 and 102 of the Treaty on the Functioning of the European Union.

## 9. How we will interact with other authorities

9.1 We will work with other authorities to ensure that our activities are consistent with, and do not duplicate, those of others. This will involve working closely with authorities involved in UK financial regulation and the enforcement of competition law.

### Financial authorities

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9.2 We will work with the Bank, the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA) and the European Commission. The FCA and European Commission also enforce competition law (see paragraphs 9.7 and 9.8 below).

9.3 Some of the payment systems that we expect to be designated for regulation by us are also overseen by the Bank, which:

- Oversees payment systems that have been 'recognised' by the Treasury under the Banking Act 2009 to protect and enhance financial stability. The systems we expect to regulate and that have been recognised are the following interbank payment systems: Bacs, CHAPS, FPS and Visa.
- Determines whether to approve applications for a payment system to be 'designated' under the European Directive on Settlement Finality in Payment and Securities Settlement Systems (Directive 98/26/EC) (SFD). The systems we expect to regulate and that are designated under SFD are the following interbank payment systems: Bacs, C&CC, CHAPS and FPS. Designated systems benefit from certain protections from the normal operation of insolvency law.<sup>28</sup>

9.4 The FCA and the PRA are collectively responsible for the prudential supervision of financial services firms. The firms that are regulated by the FCA or the PRA from a prudential perspective are also subject to conduct regulation by the FCA. Some of the firms the FCA and PRA regulate will be participants<sup>29</sup> in regulated payment systems and will therefore also be regulated by us.

9.5 We have agreed a Memorandum of Understanding with the FCA, the Bank and the PRA, which sets out how we intend to work together.

9.6 Concerns about financial services firms that do not relate to payment systems or services provided by payment systems will usually be handled by the FCA and/or the PRA, as appropriate.

### Competition authorities

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9.7 On competition matters, we will work with the CMA, the European Commission and other competition authorities (particularly the FCA) to promote competition in the market for payment systems and the markets for services provided by payment systems. We will also participate in forums such as the UK Competition Network, the UK Regulators Network, the EU Competition Network and the International Competition Network.

9.8 We intend to enter into a Memorandum of Understanding with the CMA, which will set out how we intend to work together. We will also issue guidance on how we intend to use our concurrent competition law powers.

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<sup>28</sup> For more information on the Bank's supervisory work, please refer to its website [http://www.bankofengland.co.uk/financialstability/Pages/fmis/supervisory\\_app/supervisoryapproach.aspx](http://www.bankofengland.co.uk/financialstability/Pages/fmis/supervisory_app/supervisoryapproach.aspx).

<sup>29</sup> Financial services firms that use regulated payment systems to carry out payment services will come within the definition of participants since they will be PSPs.

## 10. Our regulatory principles

- 10.1 When discharging our general functions<sup>30</sup>, we are required to have regard to the regulatory principles<sup>31</sup> set out below. The general functions include the function of determining the general policy and principles by reference to which we perform our particular functions. Under each regulatory principle we set out how we may take that principle into account when exercising our functions. We will provide a discussion of our regulatory principles whenever we conduct a formal consultation.

### Efficiency and economy

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*The need to use the resources of the PSR in the most efficient and economic way.*

- 10.2 As we state in our Administrative Priority Framework, we will take resource implications into consideration when making decisions such as whether to open an investigation and how we respond to applications about disputes, including applications we receive under section 56 and 57 FSBRA, and more generally in deciding how we allocate our resources to policy initiatives and work.
- 10.3 Where appropriate we will engage with other regulators to try to ensure that we coordinate our activities and do not impose unnecessary burdens on participants.

### Proportionality

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*The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.*

- 10.4 In making judgements in this area, we will take into account the costs to participants and service-users. One of the techniques we may use to ensure proportionality is a cost-benefit analysis of our proposed regulatory requirements. Where we do not carry out a cost-benefit analysis, we will still seek to take into account, in general terms, the likely impact of our proposed course of action on participants and service-users and whether it is proportionate to the objective of that course of action.
- 10.5 In some instances we may engage with the participants and service-users likely to be affected by our proposals in order to assess their likely impact, either informally or as part of a formal consultation.

### Sustainable growth

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*The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term.*

- 10.6 When carrying out our general functions, we will consider the impact of our action on economic growth. Our vision is to ensure that the UK's payment systems are innovative and responsive to the interests of service-users which should support sustainable growth in the UK economy.

### Responsibility of service-users

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*The general principle that those who use services provided by payment systems should take responsibility for their decisions.*

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<sup>30</sup> The general functions are set out in section 49(4) FSBRA. They are: the function of giving of general directions (section 54 FSBRA), the function of giving general guidance (section 96 FSBRA) and the function of determining the general policy and principles by reference to which it performs particular functions.

<sup>31</sup> Section 53 FSBRA.

- 10.7 As set out above, service-users are a priority for us, in particular due to our service-user objective. However we will not protect service-users where this is inappropriate, for example where they have made poor commercial decisions.

### **Responsibility of senior management**

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*The responsibilities of the senior management of persons subject to our requirements, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements.*

- 10.8 We expect senior management to ensure compliance at all levels of their organisation. We do not expect senior management to adopt a 'tick box' approach to compliance or to delegate their compliance responsibility. We will seek to take these considerations into account when exercising our general functions and, where appropriate, we may require that certain decisions are made by the management body of a participant.

### **Recognising the differences in the businesses carried on by different participants**

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*The desirability where appropriate of the PSR exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to our requirements.*

- 10.9 We appreciate that the definition of participants in payment systems encompasses a broad category of businesses (including payment system operators, large credit institutions, small payment service providers and infrastructure providers).
- 10.10 We will seek to recognise differences where they exist and will tailor our measures appropriately. For example, we will take into account the size and financial position of a participant when setting a financial penalty for a compliance failure. Further details can be found in our Penalties Guidance.
- 10.11 Where a general direction applies to all participants or a specified category of participant, we recognise that there may be different ways in which a participant may comply with that requirement in order to achieve the required outcome, taking into account the nature and extent of its business activities.

### **Openness and disclosure**

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*The desirability in appropriate cases of the PSR publishing information relating to persons on whom we impose requirements, or requiring such persons to publish information, as a means of contributing to the advancement of our objectives.*

- 10.12 Where appropriate, we will use disclosure of information to contribute to the advancement of our objectives. For example, we may publish information about disputes, complaints and enforcement decisions to help other participants understand our expectations and in the case of enforcement decisions, to deter other participants from committing similar compliance failures or infringements.

### **Transparency**

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*The principle that the PSR should exercise its functions as transparently as possible.*

- 10.13 We recognise the importance of being open and accessible to both participants and service-users. We will seek to be as transparent as possible in terms of how we carry out our functions. For example, we have published guidance on our policies and procedures and other regulatory tools. We will be guided by the principle that there should be a presumption towards transparency unless there are compelling regulatory, legal or other reasons to the contrary.

## APPENDIX 1 – FSBRA provisions concerning objectives

### Financial Services (Banking Reform) Act 2013

#### 49 Regulator’s general duties in relation to payment systems

- (1) In discharging its general functions relating to payment systems the Payment Systems Regulator must, so far as is reasonably possible, act in a way which advances one or more of its payment systems objectives.
- (2) The payment systems objectives of the Payment Systems Regulator are—
  - (a) the competition objective (see section 50),
  - (b) the innovation objective (see section 51), and
  - (c) the service-user objective (see section 52).
- (3) In discharging its general functions relating to payment systems the Payment Systems Regulator must have regard to—
  - (a) the importance of maintaining the stability of, and confidence in, the UK financial system,
  - (b) the importance of payment systems in relation to the performance of functions by the Bank of England in its capacity as a monetary authority, and
  - (c) the regulatory principles in section 53.
- (4) The general functions of the Payment Systems Regulator relating to payment systems are—
  - (a) its function of giving general directions under section 54 (considered as a whole),
  - (b) its functions in relation to the giving of general guidance under section 96 (considered as a whole), and
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions.

#### 50 The competition objective

- (1) The competition objective is to promote effective competition in—
  - (a) the market for payment systems, and
  - (b) 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.
- (2) The reference in subsection (1) to promoting effective competition includes, in particular, promoting effective competition—
  - (a) between different operators of payment systems,
  - (b) between different payment service providers, and

- (c) between different infrastructure providers.
- (3) The matters to which the Payment Systems Regulator may have regard in considering the effectiveness of competition in a market mentioned in subsection (1) include—
  - (a) the needs of different persons who use, or may use, services provided by payment systems;
  - (b) the ease with which persons who may wish to use those services can do so;
  - (c) the ease with which persons who obtain those services can change the person from whom they obtain them;
  - (d) the needs of different payment service providers or persons who wish to become payment service providers;
  - (e) the ease with which payment service providers, or persons who wish to become payment service providers, can provide services using payment systems;
  - (f) the ease with which payment service providers can change the payment system they use to provide their services;
  - (g) the needs of different infrastructure providers or persons who wish to become infrastructure providers;
  - (h) the ease with which infrastructure providers, or persons who wish to become infrastructure providers, can provide infrastructure for the purposes of operating payment systems;
  - (i) the needs of different operators of payment systems;
  - (j) the ease with which operators of payment systems can change the infrastructure used to operate the payment systems;
  - (k) the level and structure of fees, charges or other costs associated with participation in payment systems;
  - (l) the ease with which new entrants can enter the market;
  - (m) how far competition is contributing to the development of efficient and effective infrastructure for the purposes of operating payment systems;
  - (n) how far competition is encouraging innovation.

## 51 The innovation objective

- (1) The innovation objective is 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, with a view to improving the quality, efficiency and economy of payment systems.
- (2) The reference in subsection (1) to promoting the development of, and innovation in, payment systems includes, in particular, a reference to promoting the development of, and innovation in, infrastructure to be used for the purposes of operating payment systems.

## 52 The service-user objective

The service-user objective is 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.



## APPENDIX 2 - FSBRA provisions concerning regulatory principles

### Regulatory principles

Section 53 FSBRA sets out the following regulatory principles to which we must have regard in discharging our general functions relating to payment systems:

- (a) the need to use the resources of the Payment Systems Regulator in the most efficient and economic way;
- (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
- (d) the general principle that those who use services provided by payment systems should take responsibility for their decisions;
- (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Part, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements;
- (f) the desirability where appropriate of the Payment Systems Regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Part;
- (g) the desirability in appropriate cases of the Payment Systems Regulator publishing information relating to persons on whom requirements are imposed by or under this Part, or requiring such persons to publish information, as a means of contributing to the advancement by the Payment Systems Regulator of its payment systems objectives;
- (h) the principle that the Payment Systems Regulator should exercise its functions as transparently as possible.