

Proposed changes to
Specific Directions 14,
15 and 16 (CAMR)

Stakeholder submissions
to our consultation
CP24/1

May 2024

Contents

Chase Paymentech/JPMorgan Bank	3
Checkout Ltd	5
Elavon Financial Services DAC	9
PayPal UK Ltd	12
Teya Solutions Ltd	14
UK Finance	15

Names of individuals and information that may indirectly identify individuals have been redacted.

Chase Paymentech/ JPMorgan Bank

Chase Paymentech and JPMorgan Bank Response

PSR question	Firm response
<p>1. <i>Do you have any comments on the amending direction in Annex 1, including the proposed updates to the lists of directed PSPs?</i></p>	<p>The Firm has no additional comments.</p>
<p>2. <i>Do you agree with the new proposed mechanism for ensuring continuity of obligations in the event of a transfer of a relevant business, and consequent to this, updating the list of PSPs subject to Specific Directions 14, 15 and 16?</i></p> <p><i>Do you have any comments on how we propose it should work? Do you have any comments on the meaning or application of the term 'transfer', and the clarity of the trigger event which would result in the requirement for notification to be made to the PSR?</i></p>	<p>The proposed mechanisms are both reasonable and sound. The Firm would suggest that the PSR review the list and changing market conditions to independently assess if any new participants should be added. For ease and consistency of process, the PSR could develop a notification template for participants to leverage to notify of any transfers. Lastly, the glossary terms could be updated to include definition of the term 'transfer' in the context of the specific directions.</p>
<p>3. <i>Do you have any comments on our proposal to direct Checkout Ltd?</i></p>	<p>The Firm has no additional comment.</p>

Checkout Ltd

Card - acquiring market remedies: PSR consults on proposed revisions to Specific Directions 14

- 16

Checkout Ltd (**Checkout**) is pleased to provide its views on the questions contained in the consultation paper published in January 2024 on the proposed Specific Directions 14 – 16, relating to the supply of card-acquiring services under the Financial Services (Banking Reform) Act 2013.

We welcome the opportunity to participate in this consultation process and remain in conversation with you about any further proposed revisions to the Specific Directions.

1. Do you have any comments on the amending direction in Annex 1, including the proposed updates to the lists of directed PSPs?

Checkout does not have any comments on the updates to the list of previously directed PSPs beyond disagreeing with the PSR's determination that Checkout should, at this time, be included in the list of directed PSPs. We have included our specific comments in our response to Question 3 below.

2. Do you agree with the new proposed mechanism for ensuring continuity of obligations in the event of a transfer of a relevant business, and consequent to this, updating the list of PSPs subject to Specific Directions 14, 15 and 16? Do you have any comments on how we propose it should work? Do you have any comments on the meaning or application of the term 'transfer', and the clarity of the trigger event which would result in the requirement for notification to be made to the PSR?

We have carefully considered the proposed transfer mechanism and believe that, as currently drafted, it will have a number of unintended anti-competitive consequences that indirectly undermine the very consumer protections the mechanism seeks to guarantee. As a result, we urge you to reconsider the inclusion of the transfer mechanism in its entirety – or, at a minimum, reassess it in light of the specific concerns highlighted below.

The transfer mechanism is anti-competitive and will hurt market participants

You are already aware of the costs, effort, and delays associated with complying with the Specific Directions – as they are brought into scope, acquirers will need to undertake potentially significant marketing and product development work, including updating contracts, collating the information required to be disclosed to merchants, and building the quotation tool. These burdens will be especially acute for smaller, challenger PSPs.

With the introduction of the transfer mechanism, these costs will serve as a disincentive for non-directed acquirers to accept transfers from a directed PSP. Such a dynamic will hurt both merchants – who may find themselves effectively limited to seeking services from other, already directed PSPs – and non-directed acquirers – who will be incentivised to limit themselves to organic, rather than inorganic, growth, and may avoid competing to service smaller merchants.

There are other costs. These incentives will make it harder for directed transferors to transfer away in-scope merchants by reducing their pool of willing transferees, thereby introducing inefficiencies into ordinary course M&A activity. By making it more difficult for challenger PSPs to enter or otherwise compete in the payments market, they also discourage innovation in the space.

Such effects would run counter to the PSR's stated goals of promoting effective competition and encouraging consumer choice in the markets for payment systems and services, and should be carefully weighed before the transfer mechanism is implemented.

If the PSR chooses to retain the transfer mechanism, its scope should be further clarified

To the degree that the PSR chooses to retain the mechanism at all, we believe that the proposal should be clarified to reduce uncertainty and mitigate the potential negative effects indicated above.

First, 'transfers' should be explicitly limited to transferor-initiated transfers (which we would typically expect to be portfolio transfers in the context of, e.g., corporate restructurings or M&A activity), and should not include transfers initiated voluntarily by a merchant. If merchant-initiated transfers were admissible, smaller, non-directed acquirers would be disincentivised from taking on business even where a merchant is simply shopping around – a perverse outcome for a consumer protection measure. Such a limitation would also result in less 'leakage' whereby, gradually, most if not all acquirers would inadvertently come into scope for the Specific Directions simply as a result of ordinary commercial activity.

Second, as currently drafted, a small acquirer with a portfolio comprised entirely of non-relevant businesses will nevertheless be brought into scope for the Specific Directions if they choose to onboard even one in-scope merchant. Without any further thresholds or controls on the admissibility of transferring merchants, this would result in a completely disproportionate burden to the transferee.

Third, we note that the PSR plans to retain for itself a broad discretion to decide to disapply the default position, and does not otherwise explain how that discretion may be exercised. This lack of transparency, and the fact that the default position is to become a directed PSP, means that transferees will need to assume, when contemplating transfers, that they will face the burden of compliance, a position that is both impractical (making it more difficult to estimate the time and final cost associated with completing a transfer) and that exacerbates the anti-competitive dynamics we refer to above. We would encourage the PSR to consider switching the default position and/or introducing something like a pre-clearance mechanism, to allow for greater transactional certainty.

3. Do you have any comments on our proposal to direct Checkout Ltd?

We believe that the consultation paper fails to clearly explain the basis on which the PSR has proposed to direct Checkout. As a result, and until the grounds for becoming a directed PSP are more plainly laid out, Checkout is limited in its ability to properly respond to your conclusion that it should be in-scope for the Specific Directions (and provide substantive evidence to that effect). Without an ability to respond effectively, Checkout's inclusion in the list of directed PSPs is unreasonable at this time.

The need for greater transparency and certainty around the test(s) for becoming a directed PSP

We note that, in the relevant policy statement published in October 2022, you stated that the original fourteen directed providers were identified on the basis of 'data on volume of transactions, value of transactions, and number of merchants supplied.' The same reasoning is referred to again in the consultation paper.

The basis for Checkout's inclusion, however, appears to be based on another metric – CKO's share of the card processing market. In paragraph 3.20, you write that you have obtained 'market evidence' that Checkout 'has a market share at least as large as the smallest directed acquirer.' To the degree that a determination is made to direct Checkout, it should be on the same basis that the other PSPs were directed.

Accordingly, we ask that you please confirm the specific tests that you decided to adopt in order to determine whether or not a PSP should be directed (i.e., was the decision premised on the volume and value of transactions, particularly for merchants with an annual turnover of up to £50 million? The number of merchant customers serviced falling beneath the £50 million threshold? Or was it entirely based on a PSP's market share?), as well as the threshold used specifically for the next smallest directed PSP.

The potential incompleteness of data considered

We note that the precise nature of the 'market evidence' cited in the consultation paper is uncertain and may be incomplete. You state that the market evidence is derived from reported Mastercard and Visa transactions, information that, by the PSR's own admission, is insufficiently sensitive to distinguish between card transactions processed directly for a client and those mediated through a payment facilitator. We do not understand the basis for your assertion that it is 'unlikely' that Checkout would have been outside the examined set if the acquirer data had excluded transactions involving payment facilitators.

It is also unclear whether the information provided by Visa and Mastercard was limited to processing done on behalf of in-scope merchants or, if it was not, whether (and how) the data separated out merchants that may have more than acquirer (if it did so at all). Without these clarifications, we believe there is a real risk that Checkout's focus on large, sophisticated 'enterprise' clients may have led to an overrepresentation of its market share, especially with regards to in-scope merchants (those with an annual card turnover up to £50 million).

We would also like to take this opportunity to clarify the processing data we submitted to you in our letter dated 17 November 2023. In that letter, we reported the number of merchants for whom we processed payments that we believed had an annual card turnover of up to £50 million. In consultation with our operational teams, however, we have since realised that those numbers reflected all merchants for whom we, as an individual acquirer, processed up to £50 million (and not, as we thought, the merchants' total annual card turnover). To the degree that that information was used by the PSR to decide to direct Checkout, it should be discounted on the basis that it almost certainly overreported the number of in-scope merchants with whom Checkout transacts.

The Specific Directions under consideration are designed to protect small and medium-sized merchants for whom current practices in the card-acquiring market work insufficiently well. In order to do so meaningfully, we urge the PSR to use data that effectively targets that segment of the market; otherwise, the PSR's directions are likely capturing activity directed at large, sophisticated merchants willing and able to contract with multiple acquirers – the very market players who do not need the protections that the PSR is contemplating.

Elavon Financial Services DAC

ELAVON RESPONSE TO THE PSR CONSULTATION ON REVISIONS TO SPECIFIC DIRECTIONS 14, 15 AND 16

From: Elavon Financial Services DAC

To: Card Acquiring Market Review Compliance Monitoring, Payment Systems Regulator (PSR), 12 Endeavour Square, London E20 1JN

Date: 08/02/2024

Re: *Elavon response to the Payment Systems Regulator's proposal to revise its Specific Directions 14, 15 and 16*

Introduction

As an acquirer, Elavon's merchants are at the heart of our business, and we are committed to ensuring we have positive relationships with our customers throughout all stages of the customer lifecycle.

We were grateful for the PSR's open and continued engagement throughout the course of its market review into the supply of card-acquiring services and welcome the opportunity to comment on these latest proposed revisions to its specific directions.

Elavon supports what the PSR sought to achieve in remedying the features of concern it identified in its market review and in improving outcomes for merchants. Over the past fifteen months, we have invested considerable time and organisational resources to ensure compliance with what we believe to be both the letter and spirit of the specific directions and to communicate their requirements to our ISO partners.

Our work in this regard has necessitated cross-functional engagement across teams, resulting in our merchants being provided with additional transparency around their card-acquiring services and with additional prompting to think about searching, switching, or re-negotiating their contracts. This was achieved by:

- Redesigning our merchant billing statements to incorporate bespoke summary boxes and individual trigger messages;
- Redesigning our merchant portal to ensure that the appropriate individual trigger messages are displayed;
- Designing an interactive online quotation tool and making it publicly available on our website;
- Amending our merchant POS terminal rental contracts terms to ensure that the initial contract term is no longer than 18 months and that it then transitions to rolling renewal terms of no greater than thirty-one calendar days;
- Engaging with and providing continuous support to our ISO partners for requirements relating to provision of an online quotation tool and POS terminal rental contracts.

For the purposes of this response, we have limited our comments to question 3 of the consultation questions, as set out below ("Do you have any comments on our proposal to direct Checkout Ltd?").

For avoidance of doubt, we do not have any comments in relation to questions 1 and 2.

Do you have any comments on our proposal to direct Checkout Ltd?

As an overarching comment, we believe in the principle of ‘same activity, same risk, same regulation’.

In our response to the PSR’s consultation on its provisional decisions, we noted our disappointment that the PSR had chosen to limit the application of its specific directions to fourteen card-acquiring service providers. We are therefore glad that the PSR has chosen to keep the list of directed companies under review and has, on the basis of market evidence, decided to apply the specific directions to Checkout Ltd.

However, it continues to be our view, as expressed in our response to the PSR’s consultation on its provisional decisions, that application of the specific directions to any limited number of providers effectively creates a two-tiered payments market with negative effects for both providers and merchants. We believe this approach creates an un-level playing field for market participants and ensures that there are merchants who will not enjoy the protections the PSR wishes to introduce to the market.

We continue to be concerned that the partial market-application of the specific directions grants commercial advantages to providers not within their current scope. We suggested in our previous response that excluded providers would be free to attract new ISO partners by offering them the continued ability to provide POS terminal supply contracts with longer initial term durations. Since the specific directions came into force, we have received anecdotal evidence that non-directed acquirers have advertised the potential provision of long POS terminal rental contracts to ISO partners as a reason to partner with them.

We also expressed concern in our previous consultation response that providers not currently within the scope of the specific directions would freely choose to apply them, as the PSR suggested. Instead, we believed these excluded providers would have a commercial opportunity to differentiate themselves from providers subject to the specific directions. To date, we are not aware of providers choosing to apply the requirements of the specific directions on a voluntary basis.

We would therefore request that the PSR consider extending the mandate of the specific directions to all acquirers through whatever means it chooses appropriate, potentially by directing Mastercard and Visa to require all acquirers who are members of their schemes to adopt the specific directions.

Conclusion



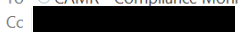
We welcome that the PSR has kept the scope of its specific directions under review and believe it is appropriate that Checkout Ltd is brought into scope of the specific directions. However, we believe a universal application of specific directions would be a more appropriate outcome of the PSR’s review.





We believe that universal application of the specific directions would ensure both that the enhanced protections the PSR intends for merchants would be enjoyed by all merchants, and that a level playing field among providers would be guaranteed. We believe this approach would be a fairer and surer way for the PSR to promote effective market competition and to address the features of concern it identified in its market review.

PayPal UK Ltd


PayPal Response to CAMR consultation 2024

Card-acquiring market remedies: PSR consults on proposed revisions to Specific Directions 14-16


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Hi team,

Hope you are well.

I wanted to confirm that PayPal has reviewed the consultation and would like to thank you for reflecting the change in the regulated entity of PayPal in the UK and proposing to include PayPal UK in the Direction.

We look forward to the next steps on this.

Best,



[Global Regulatory Relations](#)



Teya Solutions Ltd

Teya have provided a response to our consultation but have requested to keep their response confidential.

UK Finance

PSR Card Acquiring Market Review

Response to Consultation to amend PSR Specific Directions 14, 15 and 16

Date: 09 February 2024

Address: 12 Endeavour Square, London E20 1JN

Sent to: camr-compliance@psr.org.uk

UK Finance is the collective voice for the banking and finance industry.

Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

1. Broad Support for the Proposals

In responding to the consultation we represent our merchant acquirer members who broadly support the proposed amendments to the PSR's Specific Directions 14, 15 and 16.

2. Universal Application

Our members that fall within the 14 directed PSPs welcome the addition of a fifteenth directed PSP and as has been called out. However, the position of our members has always been, and remains, that the dissection of the market by being separated into 'directed' and 'non-directed' PSPs has proven a strategic mistake.

And has unnecessarily bifurcated it, which has led to a series of '*unintended consequences*'. Which potentially undermines the premise of the Specific Directions, and the remedies themselves and still further undermines the PSR's approach as is explicitly referenced at paragraph 3.14:

'...specific directions to these providers was the most proportionate and targeted approach to our remedies and that it would address the harms we identified in an effective and timely manner'

It strikes our members as an "oddity" that an economic regulator has created a '*two-tier market*' which operates to incentivise ISOs not to apply the remedies to the detriment of the merchants, and which the PSR's policy is supposed to protect.

UK Finance would respectfully refer to anecdotal evidence suggesting several of the directed PSPs with active ISO relationships who report significant loss of ISO business. Caused as a direct result of this type of regulatory intervention - and would openly question if the actual outcomes placed on end-user small merchants (the cohort that the AMR remedies have been purposefully designed for) - will materially improve because of the targeted approach that has been taken.

Especially that the ISOs, who have purposefully switched to partner with non-directed PSPs, are not subject to these '*flow-down*' remedies.

UK Finance would argue that the remedies should apply on a “*same activity, same regulation basis*” to ensure protection for all small merchants, but also establish a *level-playing-field* for all acquirers and ISOs.

As an interim measure further thought is probably needed around the role of Payment Facilitators and in the context of s.56 FSBRA. Particularly, how this could be applied to indirect participants (e.g. the PFs ISOs) who operate under the directed PSP.

More generally, our members continue to support the CAMR remedies, but would respectfully urge the PSR to turn these specific directions into general directions (and preferably to have these applied to all participants, both direct and indirect); so as to achieve the outcomes and fairness that the PSR had hoped by instigating a ‘market review’ in the first instance.

3. Enhanced guidance

As a generic principle our members welcome the PSR’s use of additional and supporting guidance as a way of better communicating its intentions for the industry to implement at a practical level.

The proposed wording at Section 6 in the amended Directions (and as has been further laid out at paragraph 5 in the Amended Annex Draft) is a useful illustration in helping manage expectations.

The additional guidance as regarding Specific Direction 14 (relating to provision of information) and prominence of the pricing tool, together with the guidance as issued in December 2022; relating to which types of POS terminals were covered by the directions, proved very helpful.

More generally, our members would also welcome some further enhanced guidance on the following areas:

(a) ISOs not complying with acquirer’s directions

It has been reported that some ISOs are either not agreeing to flow-down the remedies or are not complying with agreed terms to flow-down. Ordinarily, if the counterparty is the only relevant other party one would naturally expect the acquirer to terminate the ISO relationship.

However, the acquirer also has a contractual relationship with the merchant and has to take into account the consumer duty. Terminating the ISO is therefore a difficult decision to take that could effectively deny its own customer the ability to use acquiring services, be a breach of consumer duty or place the acquirer in a position where it could be accused of seeking to gain additional business from its ISO merchants (by terminating the ISO and providing the additional services itself). Clear guidance as to the PSRs expectations would be welcomed.

We also recommend that the PSR consider what powers it may need to directly compel ISOs to comply with the general directions or be directly subject to them (and potentially be denied post termination commission, enabling the acquirer to pay commission to an alternative ISO).

Consultation Question(s):

1. Do you have any comments on the amending direction in Annex 1 including the proposed updates to the list of directed PSPs?

Our members are generally supportive of the structures as provided for in *Annex 1* presented as the amending direction by helping to create a 'mechanism' that should better promote efficiency and increase transparency (as is set out at paragraph 3.11); but this should be read in light of some of the wider contextual points around 'universality' as have been outlined elsewhere in our response.

Most of our members are supportive of the purported 'transfer' approach but recognition that the proposals, as have been set out, have understandably little practical consequence to them.

2. Do you agree with the new proposed mechanism for ensuing continuity of obligations in the event of a transfer of a relevant business and consequences to this, updating list of PSPs' subject to Standard Directions 14, 15 & 16? Do you have any proposed comments on how we propose it should work? Do you have any comments on the meaning or application of the term 'transfer', and the clarity of the trigger which would result in the requirement for notification to be made to the PSR?

An observation as made is that the supporting Annex focuses on an assumption that the legal entity is an operating concern capable of being 'transferred' to another legal person. The types of transfers this would entail are provided for at paragraph 3.9, as well as certain specific scenarios that fall outside of its scope (as are detailed at paragraph(s) 3.5 & 3.6).

A question raised is whether further thought is still needed around the concept of a forced 'transfer' and/or sale, in situations where the directed PSP (as an operating concern) is made insolvent; or where an independent third-party is appointed and/or is otherwise involved (e.g. an administrator/ liquidator). What obligations are placed in such a scenario? And for those responsible in the context of a receivership type scenario in having to provide the PSR with notification to 'trigger' the mechanism (as is set out and further outlined in *Annex 1*)?

Similarly, should firms be required to give the PSR notice of any transfer when they are already likely to be subject to having to obtain FCA approval of the transfer in any case?

UK Finance would urge the PSR to ensure that the measure / actions as are being proposed are proportionately aligned with the procedures and expectations placed by other regulators. If not, supporting guidance should be given to the industry to help clarify and avoid 'unnecessary' or duplicitous regulatory burdens being placed on individual firms.

3. Do you have any comments on our proposal to direct Checkout Limited?

Members acknowledge that the PSR has called in this instance for the list of 14 to be further expanded with the inclusion of *Checkout Limited*.

With the PSR also setting out the methodology for how they have arrived at this position (cross-referenced to at paragraph 3.20):

based on its share of card transactions acquired at UK outlets, Checkout Ltd has a market share at least as large as the smallest currently directed acquirer. We base this conclusion on:

- *the value of Mastercard and Visa card transactions for the full calendar year of 2021*
- *the value and volume of Mastercard card transactions during January to August 2022 and Visa transactions during January to September 2022*

However, there is still concern at the general 'opaqueness' in how these directions are made, whom the PSR designates, and why now. Given that both sets of remedies have yet to fully embed nor have in their totality been in operation for a full calendar year.

Certain of our members would point to 'other' acquirers in the market that many would consider as being more "relevant" yet no designation has been made.

More transparency is required from the PSR to show its workings in arriving at that calculation and also what that 'long-tail' of providers looks like and who are mostly next to 'fall-in-line'.

As otherwise there remains an implicit dissatisfaction amongst many, who would challenge the methodology as is being referenced in this instance.

The inclusion of *Checkout Limited*, in the interests of fairness, should also equate that any newly directed PSP should be given the same time that the original directed PSPs were afforded to implement the original remedies.

Finally, UK Finance, would also point by way of clarification that Checkout Limited are no longer one of its members.

If you have any questions relating to this response, please contact

and/or

in the first instance.

PUB REF: CP24/1 submissions

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12 Endeavour Square
London E20 1JN
Telephone: 0300 456 3677
Website: www.psr.org.uk

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