

# Senior Managers Regime Management Responsibilities

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## **1. Introduction**

### **1.1 Applying the Senior Managers Regime**

The new regime applies to the Financial Conduct Authority (FCA) 'relevant authorised persons' (dual-regulated firms other than insurers) and aims to raise standards of governance, increase individual accountability and help restore confidence in the banking sector.

The Payment Systems Regulator Limited (PSR), as a wholly owned subsidiary of the FCA, is adopting and applying the same core principles of the regime as the FCA. Our application of the regime to the PSR reflects the different constitution and functions of the organisation as a public authority and regulator. This will inevitably be different in some respects to its application to a FCA regulated firm.

### **1.2 Points to note**

We are applying the core principles of Management Responsibilities Maps and senior managers' Statements of Responsibility in the same way as the FCA. As a regulatory authority, this has required us to make some variations, mainly for, but not limited to (i) a number of Senior Management Functions (SMFs) and Prescribed Responsibilities that apply to FCA regulated firms do not apply to the PSR and (ii) a few cases where the wording of responsibilities has been amended to ensure relevance.

### **1.3 Shared services**

The PSR is an independent subsidiary of the FCA, set up by statute. The FCA must take such steps as are necessary to ensure that we are, at all times, capable of exercising our statutory functions. A number of services are provided to us by the FCA. These services include the PSR being housed in the same building as the FCA, and the provision of IT, human resources, internal audit and finance. The provision of these services is actively monitored by the Managing Directors of the PSR (and the PSR board). The FCA provides these services to the PSR and a Senior Manager in the PSR is responsible for the use of these services by the PSR.

### **1.4 Delegation**

The PSR's governance and management framework allows for delegation of authority. It is however the allocated Senior Manager who retains ultimate and overall responsibility for the SMF, Prescribed Responsibility or Overall Responsibility assigned to them.

## **2. Allocation of responsibilities**

### **2.1 Introduction**

The regime defines a set of SMFs which each include inherent responsibilities. The Prudential Regulation Authority and FCA also define a set of Prescribed Responsibilities and allows for a set of Overall Responsibilities which must be allocated as appropriate to a Senior Manager performing a SMF.

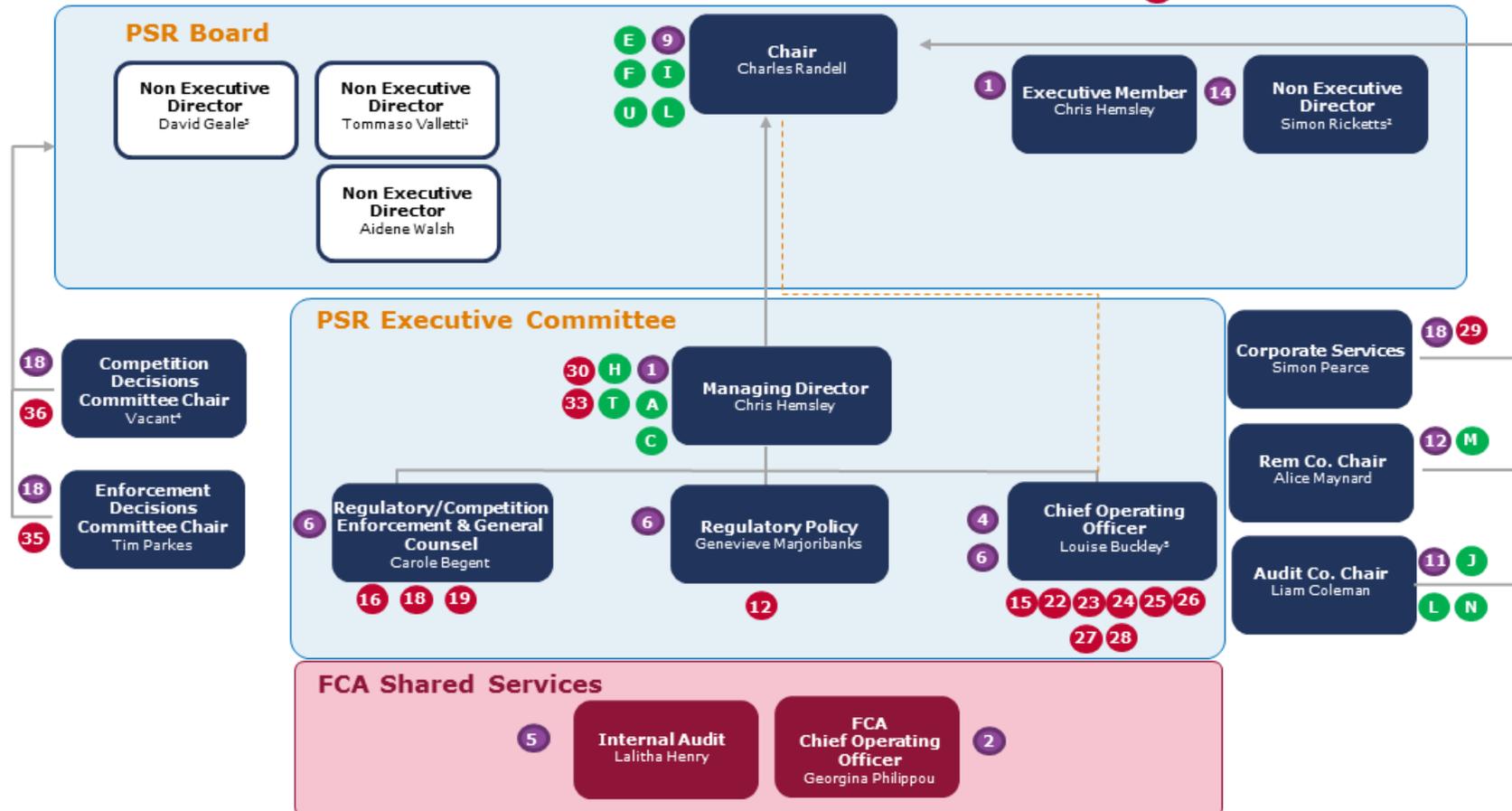
A diagram of the PSR with the allocated SMFs, Prescribed Responsibilities and Overall Responsibilities is shown on the next page. Confirmation of the referenced SMF or responsibility is included in the subsequent sections.

This reflects the complete management structure of the PSR and includes all senior persons reporting to the Chair or Managing Directo

# Diagram of PSR allocation

Showing SMFs, Prescribed Responsibilities and Overall Responsibilities  
 The Payment Systems Regulator (PSR) is a wholly owned subsidiary of the Financial Conduct Authority (FCA)

- Senior Management Function
- Prescribed Responsibility
- Overall Responsibility



**NOTE**

1. Tommaso Valletti sits on the FCA Board as a Non-Executive Director and is a member of the Nominations Committee
2. Simon Ricketts acts as the Senior Independent Director for the PSR and is a member of the Audit Committee
3. David Geale, Director of Retail Banking & Payments at the Financial Conduct Authority joined Board in June 2020.
4. The Chair of the Competition Decision Committee is appointed by the FCA Chair on each occasion that the Committee is formed
5. Louise Buckley has a dotted line to the Chair to support compliance with SMF4 (Chief Risk Function)

## 2.3 Senior Management Functions

Senior Management Function		Allocation – PSR role	Allocation – name
SMF1	Chief Executive Function	Managing Director	Chris Hemsley
SMF2	Chief Finance Function <sup>1</sup>	Shared service: allocated to FCA <sup>1</sup>	
SMF4	Chief Risk Function	Chief Operating Officer	Louise Buckley
SMF5	Head of Internal Audit <sup>1</sup>	Shared service: allocated to FCA <sup>1</sup>	
SMF6	Head of Key Business Area <sup>2</sup>	General Counsel & Head of Regulatory/Competition Enforcement	Carole Begent
		Chief Operating Officer	Louise Buckley
		Head of Regulatory Policy	Genevieve Marjoribanks
SMF7	Group Entity Senior Manager	Not applicable <sup>3</sup>	Not applicable
SMF8	Credit Union SMF	Not applicable <sup>3</sup>	Not applicable
SMF9	Chairman	Chair	Charles Randell
SMF10	Chair of Risk Committee	Not applicable <sup>4</sup>	Not applicable
SMF11	Chair of Audit Committee	Chair of Audit Committee (AuditCo)	Liam Coleman
SMF12	Chair of Remuneration Committee	Chair of Remuneration Committee (RemCo)	Alice Maynard
SMF13	Chair of Nominations Committee	Not applicable <sup>4</sup>	Not applicable
SMF14	Senior Independent Director	Senior Independent Director	Simon Ricketts
SMF16	Compliance Oversight	Not applicable <sup>5</sup>	Not applicable
SMF17	Money Laundering Reporting	Not applicable <sup>3</sup>	Not applicable
SMF18	Other Overall Responsibility function <sup>1</sup>	Director of Corporate Services	Simon Pearce
		Chair of the Enforcement Decisions Committee	Tim Parkes
		Chair of the Competition Decisions Committee	Appointed by the Chair when a CDC is formed <sup>6</sup>

### Notes

- 1 The FCA provides a number of services to its subsidiary the Payment Systems Regulator.
- 2 SMF6 has been applied to reflect the nature of the business areas to the PSR whilst recognising they do not meet the quantitative criteria that applies to FCA and Prudential Regulation Authority (PRA) regulated firms.
- 3 No roles in the PSR reflect this Senior Management Function
- 4 The PSR does not have a distinct Risk Committee. SMF10 has therefore not been allocated. The PSR does not have a Nominations Committee. SMF13 has therefore not been allocated.
- 5 SMF16 relates to the individual responsible for reporting to a FCA regulated firm's Board about the firm's compliance with the regulations and rules that apply to firms as set out in the FCA and PRA Handbooks. This is not applicable to the PSR.
- 6 The Chair of the Competition Decisions Committee is appointed by the FCA Chair on each occasion that the committee is formed.

## 2.4 Prescribed Responsibilities

Ref	Description of Prescribed Responsibility <sup>1</sup>	Allocation – PSR role	Allocation – name
A	Responsibility for the PSR's performance of its obligations under the senior management regime	Managing Director	Chris Hemsley
B	Responsibility for the firm's performance of its obligations under the employee certification regime	Not applicable <sup>2</sup>	Not applicable
C	Responsibility for compliance with the requirements of the regulatory system about the management responsibilities map	Managing Director	Chris Hemsley
D	Overall responsibility for the firm's policies and procedures for countering the risk that the PSR might be used to further financial crime	Not applicable <sup>3</sup>	Not applicable
E	Responsibility for the allocation of all prescribed responsibilities	Chair <sup>4</sup>	Charles Randell
F	Responsibility for: (a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the PSR's governing body.	Chair	Charles Randell
G	Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing designated senior management functions on behalf of the PSR other than members of the governing body.	<b>Shared service:</b> allocated to FCA <sup>5</sup>	
H	Responsibility for overseeing the adoption of the PSR's culture in the day-to-day management of the PSR.	Managing Director	Chris Hemsley
I	Responsibility for leading the development of the PSR's culture by the governing body as a whole.	Chair	Charles Randell
J	Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function	Chair of Audit Committee	Liam Coleman
K	Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function	Not applicable <sup>6</sup>	Not applicable
L	Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the risk function	Chair Chair of Audit Committee	Charles Randell Liam Coleman
M	Responsibility for overseeing the development of, and implementation of, the PSR's remuneration policies and practices	Chair of Remuneration Committee	Baroness Sarah Hogg
N	Responsibility for the independence, autonomy and effectiveness of the PSR's policies and procedures on whistleblowing, including the procedures for protection of staff who raise concerns from detrimental treatment	Chair of Audit Committee	Liam Coleman
O	Management of the allocation and maintenance of capital, funding and liquidity	<b>Shared service:</b> allocated to FCA <sup>5</sup>	

Ref	Description of Prescribed Responsibility <sup>1</sup>	Allocation – PSR role	Allocation – name
P	The firm's treasury management functions	Not applicable <sup>7</sup>	Not applicable
Q	The production and integrity of the PSR's financial information	<b>Shared service:</b> allocated to FCA <sup>5</sup>	
R	Responsibility for developing and maintaining the firm's recovery plan and resolution packs, and for overseeing the internal processes regarding their governance.	Not applicable <sup>8</sup>	Not applicable
S	Responsibility for developing and maintaining the firm's internal stress-tests and ensuring the accuracy and timeliness of information provided to the Prudential Regulation Authority(PRA) and other regulatory bodies for the purpose of stress-testing	Not applicable <sup>9</sup>	Not applicable
T	Responsibility for the development and maintenance of the PSR's business model by the governing body	Managing Director	Chris Hemsley
U	Responsibility for the fitness and propriety of the PSR's non-executive directors	Chair <sup>10</sup>	Charles Randell
V	If the firm carries out proprietary trading, responsibility for the firm's proprietary trading activities;	Not applicable <sup>11</sup>	Not applicable
W	If the firm does not have an individual performing the Chief Risk function, overseeing and demonstrating that the risk management policies and procedures which the firm has adopted in accordance with SYSC 7.1.2 R to SYSC 7.1.5 R satisfy the requirements of those rules and are consistently effective in accordance with SYSC 4.1.1R	Not applicable <sup>12</sup>	Not applicable
X	If the firm outsources its internal audit function taking reasonable steps to ensure that every person involved in the performance of the service is independent from the persons who perform external audit, including  (a) supervision and management of the work of outsources internal auditors  (b) management of potential conflicts of interest between the provision of external audit and internal audit services	Not applicable <sup>13</sup>	Not applicable
Y	If the firm is a ring-fenced body, responsibility for ensuring that those aspects of the firm's affairs for which a person is responsible for managing are in compliance with the ring-fencing requirements	Not applicable <sup>14</sup>	Not applicable
Z	Overall responsibility for the firm's compliance with Client Assets Sourcebook (CASS)	Not applicable <sup>15</sup>	Not applicable

## Notes

- 1 For clarity, the wording of some Prescribed Responsibilities has been amended to reflect that the PSR is not a regulated firm e.g. replacing references to firm with *PSR*.
- 2 The PSR is not implementing the Certification Regime.
- 3 No roles in the PSR reflect this Prescribed Responsibilities D.
- 4 As some of the Prescribed responsibilities have been applied to members of the Board, Prescribed Responsibility E has been allocated to the Chair.
- 5 The FCA provides a number of services to its subsidiary the PSR.
- 6 As the PSR is not a firm it does not have a comparable compliance function.
- 7 The PSR does not have a treasury function.
- 8 As the PSR is not a firm it does not have a resolution and recovery plan however it does have extensive business continuity plans in place.
- 9 As the PSR is not a firm it does not undertake stress testing in order to provide information to the Prudential Regulation Authority (PRA) and other regulatory bodies.

- 10 Whilst the PRA Handbook does not apply to these roles within the PSR, the PSR's governance framework gives responsibility to the Chair for the competence and conduct of Non-Executive Directors.
- 11 The PSR does not conduct proprietary trading.
- 12 The FCA provides a number of services to its subsidiary the PSR.
- 13 The PSR does not outsource its Internal Audit function.
- 14 The PSR is not a ring-fenced body.
- 15 The PSR does not have responsibilities relating to CASS.

## 2.5 Overall Responsibilities

Ref	Overall Responsibility <sup>1</sup>	Allocation – PSR role	Allocation – name
1	Responsibility for supervision of firms participating in the conduct of business in capital markets	Not applicable	Not applicable
2	Responsibility for supervision of the wholesale banking sector	Not applicable	Not applicable
3	Responsibility for supervision of the investment management sector	Not applicable	Not applicable
4	Responsibility for supervision of the pensions & retirement income sector	Not applicable	Not applicable
5	Responsibility for supervision of the retail investments sector	Not applicable	Not applicable
6	Responsibility for specialist supervision - Prudential, financial crime, events and client assets	Not applicable	Not applicable
7	Responsibility for specialist supervision – conduct	Not applicable	Not applicable
8	Responsibility for supervision of the general insurance & protection sector	Not applicable	Not applicable
9	Responsibility for supervision of the retail lending sector	Not applicable	Not applicable
10	Responsibility for supervision of the retail banking sector	Not applicable	Not applicable
11	Responsibility for authorisations of all firms, transactions and individuals	Not applicable	Not applicable
12	Responsibility for regulatory policy	Head of Regulatory Policy	Genevieve Marjoribanks
13	Responsibility for regulatory policy - markets policy only	Not applicable	Not applicable
14	Responsibility for regulatory policy - financial crime and CASS	Not applicable	Not applicable
15	Responsibility for the PSR's communications both internally and externally	Chief Operating Officer	Louise Buckley
16	Responsibility for competition policy and enforcement	General Counsel & Head of Regulatory and Competition Enforcement	Carole Begent
17	Responsibility for oversight and surveillance of market trading, and the UK Listing Authority (UKLA)	Not applicable	Not applicable
18	Responsibility for the enforcement of regulatory powers under Financial Services (Banking Reform) Act 2013 and other legislation	General Counsel & Head of Regulatory and Competition Enforcement	Carole Begent
19	Responsibility for ensuring that the directions and guidance set by the PSR are made in accordance with the requirements of the Financial Services (Banking Reform) Act 2013 and other relevant legal obligations	General Counsel & Head of Regulatory and Competition Enforcement	Carole Begent
20	Responsibility for market intelligence, data and analysis - excluding trading platforms	Not applicable	Not applicable

21	Responsibility for managing the FCA Contact Centre	Not applicable	Not applicable
22	Responsibility for managing the process of investigating complaints about the PSR	Chief Operating Officer	Louise Buckley
23	Responsibility for information technology, including cybersecurity	<b>Shared service:</b> provided by FCA <sup>2</sup>	Louise Buckley <sup>3</sup>
24	Responsibility for business continuity planning	<b>Shared service:</b> provided by FCA <sup>2</sup>	Louise Buckley <sup>3</sup>
25	Responsibility for human resources	<b>Shared service:</b> provided by FCA <sup>2</sup>	Louise Buckley <sup>3</sup>
26	Responsibility for the PSR's engagement with international regulatory stakeholders	Chief Operating Officer	Louise Buckley
27	Responsibility for Corporate Social Responsibility, including equality & diversity	Chief Operating Officer	Louise Buckley
28	Responsibility for estate management, including facilities	<b>Shared service:</b> provided by FCA <sup>2</sup>	Louise Buckley <sup>3</sup>
29	Responsibility for secretariat function for the PSR Board and Board Committees	Director Corporate Governance	Simon Pearce
30	Responsibility for secretariat function for the Executive Committee	Managing Director	Chris Hemsley
31	Responsibility for coordination with the Prudential Regulation Authority	Not applicable	Not applicable
32	Responsibility for supporting the membership of the Financial Policy Committee	Not applicable	Not applicable
33	Responsibility for the PSR Corporate Strategy	Managing Director	Chris Hemsley
34	Responsibility for enforcement strategy, policy and international engagement	Not applicable	Not applicable
35	Responsibility for the effective functioning of the Enforcement Decisions Committee	Enforcement Decisions Committee Chair	Tim Parkes
36	Responsibility for the effective functioning of the Competition Decisions Committee	Competition Decisions Committee Chair	Appointed by the Chair when a CDC is formed
37	Responsibility for the supervision of exchanges and trading venues	Not applicable	Not applicable

## Notes

- 1 For ease of cross-referencing, the PSR has used the same numbering as the FCA for Overall Responsibilities, however in some places the wording of the responsibilities differs according to the nature of the PSR's business activity.
- 2 The FCA provides a number of services to its subsidiary the PSR.
- 3 The FCA provides these services to the PSR. A PSR Senior Manager is responsible for the use of these services by the PSR.

### 3. Details of individuals

#### 3.1 Individuals identified in the map

Reasonable details for individuals identified in the PSR's Responsibility Map are set out below.

Role	Name	Reports to	Employment status	Other Directorships
Chair	Charles Randell	Not applicable	Fixed Term Appointment <sup>1</sup>	FCA Board
Managing Director	Chris Hemsley	Chair	FCA employee <sup>1</sup>	None
General Counsel & Head of Regulatory and Competition Enforcement	Carole Begent	Managing Director	FCA employee <sup>2</sup>	None
Chief Operating Officer	Louise Buckley	Managing Director	FCA employee	None
Head of Regulatory Policy	Genevieve Marjoribanks	Managing Director	FCA employee	None
Corporate Governance	Simon Pearce	Not applicable	FCA employee	None
Audit Committee Chair	Liam Coleman	No applicable	Fixed Term Appointment <sup>2</sup>	FCA Board
Remuneration Committee Chair	Alice Maynard	Not applicable	Fixed Term Appointment <sup>2</sup>	FCA Board
Non-Executive Director & Senior Independent Director	Simon Ricketts	Not applicable	Fixed Term Appointment <sup>2</sup>	FCA Board
Non-Executive Director	David Geale	FCA Chief Executive Officer	FCA employee	None
Non-Executive Director	Tommaso Valletti	Not applicable	Fixed Term Appointment <sup>2</sup>	FCA Board
Non-Executive Director	Aidene Walsh	Not applicable	Fixed Term Appointment <sup>2</sup>	None
Enforcement Decisions Committee Chair	Tim Parkes	PSR Board	FCA employee	None

#### Notes

- 1 The Chair and Managing Director of the PSR are appointed by the FCA with the approval of the Treasury.
- 2 Appointments to the PSR Board and its committees are made by the FCA Board. Appointments to the FCA Board are made by HM Government.
- 3 The individual reports to the Chief Executive Officer, FCA but is independently accountable to the Board of the PSR and is not subject to direction by the Chief Executive Officer in discharging such accountability.

## 4. Governance and Management Arrangements

### 4.1 PSR Corporate Governance

The PSR is committed to meeting high standards of corporate governance.

### 4.2 Board and Board Committees

The following table lists the Board and Board Committees along with where they are relevant to the Prescribed Responsibilities.

Board Committee	Relevant Prescribed Responsibility
Board	I, L,T

Committees of the Board	Relevant Prescribed Responsibility
Audit Committee	J, L, N
Competition Decisions Committee	None
Enforcement Decisions Committee	None
Remuneration Committee	M

### 4.3 PSR Committee Structures

A list of the PSR Board and Executive Committees with a short statement of purpose is set out below. A diagram of the committee structure is shown on the following pages.

Board	Purpose
Board	The Board is the governing body of the PSR. It sets the PSR's strategic direction and ensures the long long-term success of the PSR. It ensures that the necessary financial and human resources are in place for the PSR to meet its statutory objectives. It provides leadership of the organisation within a framework of prudent and effective controls which enables risk to be assessed and managed. It also reviews management performance.

Committees of the Board	Purpose
Audit Committee	The Audit Committee is responsible for reviewing and providing assurance to the Board on matters including the effectiveness of the PSR's internal controls, the internal risk management framework and mitigation strategies, the integrity of the financial statements in the annual accounts and the statements that relate to financial controls and internal risk, and for oversight of the external audit process.
Competition Decisions Committee	The Competition Decisions Committee exercises decision-making powers in Competition Act 1998 (CA98) investigations on behalf of the PSR including decisions on whether there has been a competition law infringement and decisions on whether to impose a financial penalty in respect of an infringement.
Enforcement Decisions Committee	The Enforcement Decisions Committee (EDC acts as decision-maker in any particular case arising whether the PSR proposes to impose a sanction under the Financial Service (Banking Reform)Act 2013 (FSBRA). The EDC decides whether to impose a financial penalty and/or publish details of compliance failure.
Remuneration Committee	The Remuneration Committee ensures there is a formal and transparent procedure for developing policy on executive remuneration and for agreeing the remuneration packages of individual directors.

Executive Committees	Purpose
Executive Committee	The Executive Committee is responsible for maintaining oversight on policy initiatives and policy projects within the PSR, escalating policy decisions to the Board where appropriate.
Senior Leadership Team Committee	The Senior Leadership Team is responsible for maintaining oversight of all operational, financial and resourcing issues, HR policies, initiatives and projects within the PSR. It will escalate operational, financial and resourcing decisions to the PSR Board where appropriate.

## Corporate & Executive

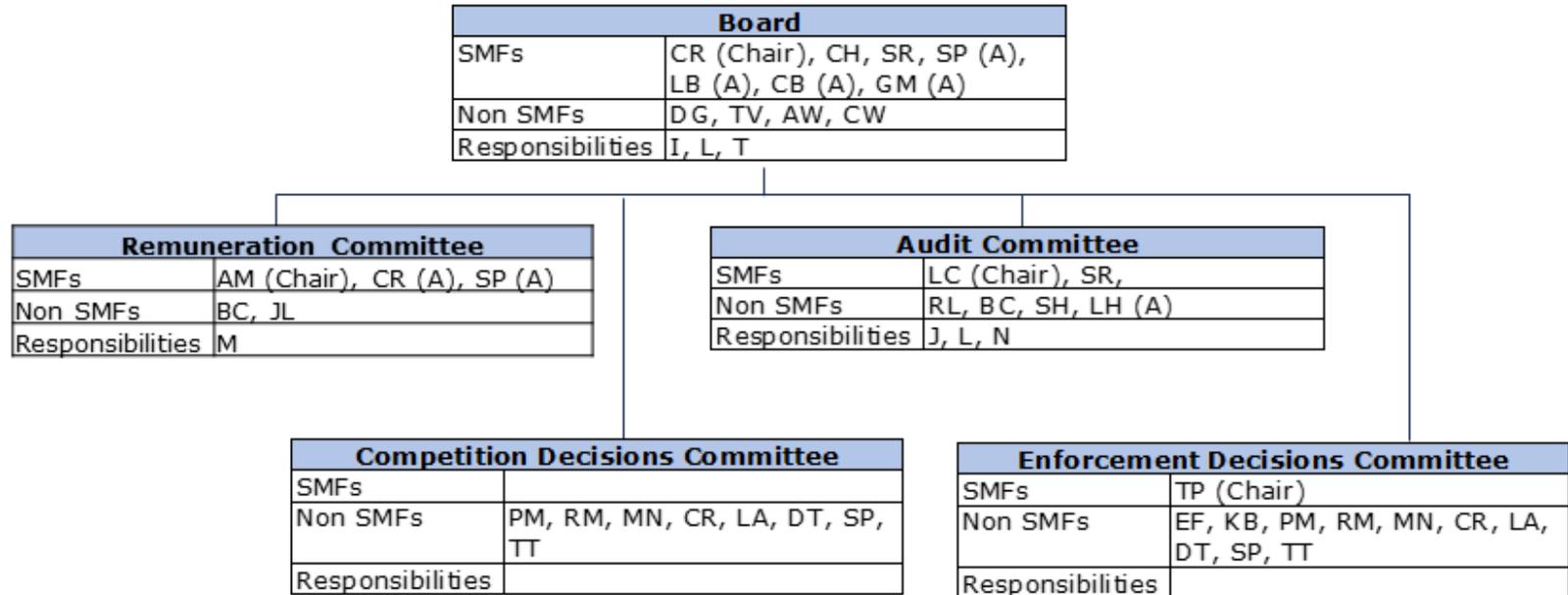
### Initial Full Name

AM	Alice Maynard
AS	Alasdair Smith
AW	Aidene Walsh
BC	Bernadette Conroy
CB	Carole Begent
CH	Chris Hemsley
CR	Charles Randell
CW	Chris Woolard
DG	David Geale
DP	Diane Pinto
GM	Genevieve Marjoribanks
JL	Jeanette Lichner
KF	Kate Fitzgerald
LB	Louise Buckley
LC	Liam Coleman
LH	Lalitha Henry
MC	Matthew Cherry
RF	Richard Feesey
RL	Richard Lloyd
SH	Sheree Howard
SP	Simon Pearce
SR	Simon Ricketts
TV	Tomasso Valletti

# The PSR committee structure

## Corporate Governance and Executive Committees

### Corporate Committees



## Enforcement & Competition Decisions Committee

### Initial Full Name

CR	Caroline Ramsay
DT	David Thomas
EF	Elizabeth France
KB	Kevin Brown
LA	Lesley Ainsworth
MN	Malcolm Nicholson
PM	Philip Marsden
RM	Robin Mason
SP	Simon Polito
TP	Tim Parkes
TT	Tim Tutton

### Executive Committees

Executive Committee	
SMFs	CH (Chair), LB, CB, GM
Non SMFs	RF (A), AS (A), KF (A), MC (A)
Responsibilities	

Senior Leadership Committee	
SMFs	CH (Chair) LB, CB, GM, DP (A)
Non SMFs	
Responsibilities	

(A) Indicates attendee

Updated: (KT) October 2020

#### **4.5 Matters reserved for the Board**

See Appendix 2.

#### **4.6 PSR Subsidiary companies**

The PSR has no subsidiary organisations.

## **APPENDIX 1: Maintenance of the Responsibilities Map**

The PSR's application of the regime will be maintained on an on-going basis.

The Responsibilities Map will be presented for information at the Senior Leadership Team meeting twice a year and to the Board once a year, or on request. It will be published on the PSR external website.

## APPENDIX 2: Terms of Reference for the Board and its Committees

### 2.1 Schedule of Matters Reserved to the Board

#### **Background**

The Board is committed to high standards of corporate governance. The Board adopted this formal schedule of matters reserved to it for its decision on 2 April 2014 and subsequently reviewed and approved it on 25 February 2016.

Items marked \* should not be delegated to a Board Committee for decision (because of the Companies Act, other statutory requirements, or UK Corporate Governance Code requirements). However, a specific committee (shown in brackets) may be given responsibility for that item although the final decision should be taken by the Board as a whole.

#### **Legislative functions**

1. Discharge the PSR's legislative functions for:
  - a) giving general directions to participants in regulated payment systems (s. 54 FS(BR)A)
  - b) imposing generally-imposed requirements in respect of system rules (s. 55 FS(BR)A)

As part of the functions set out above, the Board will also determine the general policy and principles by reference to which the PSR performs a particular function.

#### **Strategy and management**

2. Approve, amongst other things, the PSR's:
  - a) overall strategy
  - b) annual plan
  - c) annual budget
3. Review performance against the PSR's strategy, objectives, annual plan and budget and ensure any necessary corrective action is taken.
4. Monitor arrangements for management development.
5. Determine the broad policy in relation to all aspects of remuneration in conjunction with the Remuneration Committee (Remuneration Committee).\*
6. Oversee the discharge of the PSR's operations by the executive management ensuring
  - a) competent and prudent management
  - b) sound planning
  - c) adequate accounting and other records
  - d) compliance with statutory obligations

### **Corporate structure**

7. Approve major changes to the PSR's corporate structure (e.g. the creation of a new business unit).

### **Financial reporting and controls**

8. Approve the Annual Report and Accounts including the:
  - a) Directors' Report
  - b) Corporate Governance statement
  - c) Remuneration Report
  - d) Financial Review
  - e) Report on the extent to which the PSR has met its aims and priorities and advanced its objectives in accordance with FSBRA
9. Approve any significant changes in accounting policies or practices.  
(*Audit Committee*). \*
10. Undertake a regular review of the significant financial reporting issues and judgments made in connection with the preparation of the financial statements (*Audit Committee*). \*

### **Internal controls and risk management**

11. Ensure maintenance of a sound system of internal controls and internal risk management including:
  - a) receiving reports on and reviewing the effectiveness of the internal risk and controls processes adopted by the Board to support its strategy and objectives (*Audit Committee*) \*
  - b) undertaking an annual assessment of these processes (*Audit Committee*) \*
  - c) approving an appropriate statement on internal controls and risk management (*Audit Committee*) \*
12. Ensure the maintenance of an effective risk management system which both identifies and, where feasible, seeks to mitigate risks to the statutory objectives.
13. Undertake an annual assessment of the effectiveness of internal control and risk management processes (including financial, operational and compliance controls and risk management systems) (*Audit Committee*).\*
14. Regularly review the potential implications of legal action being taken against the PSR (*Audit Committee*). \*

### **Financial authorities**

15. Approve all transactions (within the Budget approved by the Board) that are in the ordinary course of business, and the value of which (including VAT) exceeds £1m. This applies to:
  - a) capital and revenue items
  - b) the total of closely-related transactions
  - c) business as usual and project-related transactions
16. Approve transactions (or related programmes of transactions) not in the ordinary course of business, or not within the Budget, and the value of which (including VAT) is in excess of £1m.
17. Approve all projects or programmes where the projected total project delivery cost over the life of the project or programme is greater than £10m (including VAT).
18. Approve project budget overruns of more than 5% on Board-approved projects paragraphs. 16 and 17).
19. Approve the delegation of financial authorities (within the finance policy).

### **Board membership and other appointments**

20. Subject to the statutory requirements for the composition of the PSR's Board (FSBRA, Schedule 4, paragraph 2), make representation to the FCA on the balance and composition of the Board to ensure there is adequate succession planning within it.
21. Plan for succession of Board members and senior staff.
22. Appoint and remove the Company Secretary.
23. Subject to the requirements of FSBRA, review the performance of the external auditors and determine their remuneration (*Audit Committee*). \*
24. Approve the creation of any senior roles including any Senior Directors and Staff Directors, which terms refer to any senior managers with the title of Director but who are not members of the Board.
25. Appoint Senior Directors and Staff Directors.
26. Appoint the Chair (subject to Her Majesty's Treasury approval) and members of the payment systems regulator's panel(s).
27. Appoint the Chair and members of the Enforcement Decisions Committee.
28. Appoint the members of the Competition Decisions Committee.

### **Delegation of authority**

29. Approve the terms of reference of all Board Committees.
30. Approve the basis of permissible delegation of the Board's authority to any Committee or individual and review it periodically.
31. Receive reports from Board Committees on their activities.

### **Policies**

32. Approve, and agree any revisions to the following policies:

- a) Finance Policy (including the schedule of delegated authorities) \* (*Audit Committee*)
- b) Procurement Policy
- c) the Code of Conduct for the Enforcement Decisions Committee and Competition Decisions Committee and agree to adopt any FCA policies which the Board may deem appropriate from time to time. Approval of all policies must include appropriate equality and diversity considerations.

### **Corporate governance matters**

33. On an annual basis undertake a formal and rigorous review of its own performance, its committees and individual Executive and Non- Executive Directors (or report on why this has not occurred in any particular year).

### **Other**

34. Approve the prosecution, defence and settlement of litigation (involving more than £2m or otherwise material to the interests of the PSR).

35. Discuss any novel or contentious matters (which in the opinion of the Board or executive management it would be appropriate for the Board to consider).

36. Agree, and review on an annual basis, the operation of the Memorandum of Understanding between the PSR and the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England.

37. Agree, and review on an annual basis, all Memorandums of Understanding which are required by statute between the PSR and any third parties.

## **2.2. Board Committee Terms of Reference**

### **2.2.1. Audit Committee Terms of Reference**

#### ***Purpose***

1. The Audit Committee (AuditCo) is responsible for reviewing and providing assurance to the Board on matters including:
  - a) the effectiveness of the PSR's internal controls
  - b) the internal risk management framework and mitigation strategies
  - c) the integrity of the financial statements in the annual accounts and the statements that relate to financial controls and internal risk, and
  - d) the oversight of the external audit process.

#### ***Duties***

2. The duties of AuditCo are as follows:

#### ***Financial reporting***

3. To monitor the integrity of the PSR's financial statements, reviewing significant financial reporting issues and judgments made.
4. To review and challenge where necessary:
  - a) the consistency of, and any changes to, accounting policies on a year on year basis
  - b) the methods used to account for significant or unusual transactions where different approaches are possible
  - c) whether the PSR has followed appropriate accounting standards and made appropriate estimates and judgments, taking into account the views of the external auditor
  - d) the clarity of disclosure in the PSR's financial reports and the context in which statements are made
  - e) all material information presented with the financial statements, such as the operating and financial review and the corporate governance statement (as far as it relates to the audit or risk management)

#### ***PSR Chairman's expenses***

5. To review the expenses incurred by the PSR Chair, by an annual summary, showing separately travel, entertainment and any other significant items of expense.

#### ***Financial policies***

6. To monitor and, as appropriate, make recommendations to the Board on the PSR's financial policies.

## ***Internal controls and internal risk management<sup>1</sup>***

7. To keep under review the effectiveness of the PSR's internal controls and internal risk management framework.

To seek assurance from the Executive that:

- a) adequate and effective processes and the necessary staff and operational resources have been applied within the business to enable the execution of effective risk management and mitigation strategies and systems to reduce the potential impact of external risks
- b) sufficient resources have been appropriately applied by the executive to the identification, management and mitigation of risks associated with the operational platform

To review and approve the statements to be included in the annual report concerning internal controls and internal risk management.

To keep under review the identification and prioritisation of internal risks and management's mitigation of these risks (as advised by the Director of Risk and Compliance Oversight) and seek assurance from the Executive that the major internal risks to the PSR's statutory objectives and reputation have been appropriately identified, prioritised and mitigated.

## ***Whistleblowing***

8. To review the PSR's arrangements for its employees, or employees of the FCA who are undertaking work in relation to the PSR, to raise concerns, in confidence, about possible wrongdoing. AuditCo shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action.

## ***Potential implications of legal action***

9. To monitor and, if it sees fit, make recommendations to the Board on the potential implications of legal action taken against the PSR, based on litigation reports received from the PSR's Head of Legal and the Senior Leadership team.

## ***Conflicts of interest***

10. To monitor and, if it sees fit, make recommendations to the Board on the adequacy of the operation and management of arrangements for handling potential conflicts of interest.

## ***11. Internal audit***

- a) to review the findings, recommendations and any other relevant reports of the internal auditor
- b) to review and monitor management's responsiveness to the findings and recommendations of the FCA's internal auditor
- c) to meet the FCA's Director of Internal Audit at least once a year, without management being present, to discuss any issues arising from the internal audits carried out relating to the PSR. In addition, the FCA's Director of Internal Audit shall have the right of direct access to the PSR Chair and to the chair of AuditCo.

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<sup>1</sup> Internal risk is defined as those risks arising from both the PSR's operational platform and its regulatory processes.

## ***External Audit***

12. The Comptroller and Auditor General has been appointed as auditor to the PSR (Sch 4 para 8 FSBRA). The Companies Act provisions for the appointment and removal of auditors are disapplied. AuditCo is, however, responsible for overseeing the relationship with the external auditor. Its duties include (but not limited to):
- a) recommending to the Board the auditor's fees, whether for audit or non- audit services and making sure the level of fees is appropriate for an adequate audit to be conducted
  - b) approving of the auditor's terms of engagement, including any engagement letter issued at the start of each audit, and the scope of the audit
  - c) meeting regularly with the external auditor, including once at the planning stage before the audit and once after the audit at the reporting stage. AuditCo shall meet the external auditor at least once a year, without management being present, to discuss their remit and any issues arising from the audit
  - d) reviewing the audit plan and ensuring that it is consistent with the scope of the audit engagement
  - e) reviewing the findings of the audit with the external auditor. This shall include, but not be limited to, the following:
    - a discussion of any major issues which arose during the audit
    - any accounting and audit judgments
    - levels of errors identified during the audit
13. Reviewing the effectiveness of the audit including:
- a) reviewing any representation letters requested by the external auditor before they are signed by management
  - b) reviewing the management letter and management's response to the external auditor's findings and recommendations
  - c) reviewing any other relevant reports by the external auditor

## ***Membership and Committee Proceedings***

14. Members of AuditCo shall be appointed by the Board, in consultation with the Chair of AuditCo. AuditCo shall be made up of at least three members.
15. Only members of AuditCo have the right to attend its meetings. However, any other individuals may be invited, by the Chair of AuditCo, to attend all or part of any meeting as and when appropriate.
16. The external auditor will normally be invited to attend all meetings of AuditCo.
17. In the absence of the AuditCo Chair, the remaining members present shall elect one of themselves to chair the meeting.

## ***Secretary***

18. The Company Secretary or their nominee shall act as the Secretary of AuditCo (the Secretary).

### ***Quorum***

19. The quorum necessary for the transaction of business shall be two members. A duly convened meeting of AuditCo at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by AuditCo.

### ***Frequency of meetings***

20. Meetings of AuditCo shall be called by the Secretary at the request of any of its members or the external or internal auditors if they consider it necessary.

### ***Notice of meetings***

21. Meetings of AuditCo shall be called by the Secretary at the request of any of its members or the external or internal auditors if they consider it necessary.

22. Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of AuditCo, and any other person required to attend, no later than five working days before the date of the meeting. Supporting papers shall be sent to AuditCo members and to other attendees as appropriate, at the same time.

23. Meetings to deal with AuditCo business may also be held by telephone or electronically.

### ***Minutes of meetings***

24. The Secretary shall minute the proceedings and resolutions of all meetings of AuditCo, including recording the names of those present and in attendance.

25. The Secretary shall ascertain, at the beginning of each meeting, the existence of any conflicts of interest, advise on how to manage them and minute the outcome accordingly.

26. Minutes of AuditCo meetings shall be circulated promptly to all members of AuditCo and to nominated recipients. The minutes will also be circulated to all members of the Board, unless a conflict of interest exists.

### ***Reporting responsibilities***

27. The AuditCo Chair shall report to the Board on its proceedings after each meeting.

28. AuditCo shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

29. AuditCo shall compile a report on its activities to be included in the Annual Report.

### ***Powers***

30. AuditCo is authorised to:

- a) seek any information it requires from any employee, or any employee of the FCA who is undertaking work in relation to the PSR, in order to perform its duties
- b) obtain, at the PSR's expense, outside legal or other professional advice on any matter within its terms of reference

- c) call any employee, or any employee of the FCA who is undertaking work in relation to the PSR, to be questioned at a meeting of AuditCo as and when required

***Other matters***

31. AuditCo shall:

- a) have access to sufficient resources to carry out its duties, including access to the Corporate Services Division of the FCA for assistance as required
- b) be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
- c) give due consideration to laws and the provisions of the UK Corporate Governance Code as appropriate
- d) be responsible for co-ordination of the internal and external auditors
- e) oversee any investigation of activities that are within its terms of reference
- f) at least once a year, review its own performance and terms of reference recommend any changes it considers necessary to the Board for approval
- g) have a private session to discuss AuditCo matters at every scheduled AuditCo meeting (unless agreed otherwise)

## 2.2.2. Remuneration Committee Terms of Reference

### ***Purpose***

The Remuneration Committee ensures there is a formal and transparent procedure for developing policy on executive remuneration and for agreeing the remuneration packages of individual Directors.

### ***Duties***

1. The Remuneration Committee (RemCo) is responsible for:
  - a) reviewing, and making recommendations to the Board for approval, the PSR's broad policy for all aspects of remuneration
  - b) in reviewing the policy identified in 1a), taking into account all factors it deems necessary. The objective of such policy shall be to ensure that PSR employees are provided with appropriate incentives to encourage enhanced performance and are, in a fair and responsible manner, rewarded for their contributions to the success of the PSR
  - c) reviewing, and by reference to the broad policy applying from time-to-time, determining:
    - i) the terms of any contract of employment
    - ii) the remuneration arrangements, including any annual or longer-term incentive packages and pensions rights of
      - the Executive Directors
      - any member of staff of the employment grade Director<sup>2</sup> reporting to the Managing Director
  - d) monitoring against the agreed broad policy the application across the whole PSR to ensure transparency, fairness and consistency
  - e) reviewing, in consultation with the Board, the PSR's redundancy policy
  - f) approving both the policy and any compensation packages or arrangements following the severance of the service contract applicable to any Executive Director or Director reporting to the Managing Director
  - g) approving the policy covering the involvement of Executive Board members with, and the treatment of fees arising from, any outside appointment offered to them
  - h) approving a policy for authorising claims for expenses for the Managing Director and Chair

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<sup>2</sup> For the avoidance of doubt, in these terms of reference, 'Director' includes an Acting Director.

- i) selecting, appointing and determining the terms of reference of any independent remuneration consultants appointed to advise RemCo on remuneration policy, levels of remuneration of, and terms of any contract of employment applicable to, those individuals for whom RemCo has responsibility. RemCo may commission independent legal advice, as necessary
- j) reviewing the Executive's recommendations for the annual budget for pay and incentive awards for recommendation to the Board
- k) ensuring, in discussion with the Managing Director, that appropriate succession arrangements are in place for senior roles

### ***Membership***

- 2. The membership of RemCo shall be made up of not less than four members.
- 3. Only members of RemCo have the right to attend committee meetings. However, other individuals may be invited by the Chair of the Committee, to attend all or part of any meeting as and when appropriate.
- 4. No person may be present when any matter directly affecting that person is under consideration.
- 5. RemCo is assisted by the FCA's Director, Human Resources and by the FCA's Chief Operating Officer.

### ***Secretary***

- 6. The Company Secretary, or their nominee, shall be Secretary to RemCo.

### ***Quorum***

- 7. The quorum necessary for the transaction of business shall be two members. A duly convened meeting of RemCo at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by RemCo.

### ***Frequency of meetings***

- 8. RemCo shall normally meet not less than twice each year

### ***Notice of meetings***

9. Meetings of RemCo shall be called by the Secretary at the request of any of its members.
10. Meetings to deal with RemCo business may also be held by telephone or electronically.
11. Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of RemCo and any other person required to attend, no later than five working days before the date of the meeting. Supporting papers shall be sent to RemCo members and to other attendees as appropriate, at the same time.

### ***Minutes of meetings***

12. The Secretary shall minute the proceedings and resolutions of all meetings of RemCo, including recording the names of those present and in attendance.
13. The Secretary shall ascertain, at the beginning of each meeting, the existence of any conflicts of interest, advise on how to manage them and minute the outcome accordingly.
14. Minutes of RemCo meetings shall be circulated promptly to all members of the RemCo and to nominated recipients.

### ***Reporting responsibilities***

15. The Chair of RemCo shall report to the Board at regular intervals informing it of the matters reviewed, the decisions made, and to make recommendations on policy, as appropriate.
16. RemCo will report annually to the Board on the discharge of its responsibilities in a form fit for publication in the PSR's Annual Report and Accounts.

### ***Powers***

17. RemCo is authorised to:
  - a) seek any information it requires from any employee, or any employee of the FCA who is undertaking work in relation to the PSR, to perform its duties
  - b) obtain, at the PSR's expense, outside legal or other professional advice on any matter within its terms of reference
  - c) call any employee, or any employee of the FCA who is undertaking work in relation to the PSR, to be questioned at a meeting of RemCo as and when required

### ***Other matters***

18. RemCo shall annually review its own performance, constitution and terms of reference to ensure it is operating effectively and recommend any changes to the PSR Board for approval.

### **2.2.3. Enforcement Decisions Committee Terms of Reference**

#### ***Background and purpose***

1. The Board of the Payment Systems Regulator (PSR) has authorised a pool of persons (EDC members) to be appointed to the Enforcement Decisions Committee (EDC) to act as decision-makers in cases where the PSR considers that a compliance failure has occurred and recommends the following sanction(s):
  - a) Publication of the details of a compliance failure by a participant in a regulated payment system under section 72 FSBRA; and/or
  - b) Requiring a participant in a regulated payment system to pay a penalty in respect of a compliance failure under section 73 FSBRA.

The compliance failure may be a failure to comply with one or more PSR directions (general or specific) given under section 54 of the Financial Services (Banking Reform) Act 2013 (FSBRA); PSR requirements imposed by the PSR under section 55 FSBRA; and/or PSR requirements to grant access to a regulated payment system imposed under section 56 FSBRA. The Board of the PSR has also authorised the EDC members to act as decision-makers in respect of compliance failures relating to certain EU payments legislation for which the PSR is a competent authority. These are described at Annex A of these Terms of Reference.

2. The purpose of the EDC is to ensure the PSR's enforcement process operates fairly, so that those who investigate compliance failures in any individual case are separate from those who decide whether a compliance failure has occurred and, if so, what sanction, if any, should be imposed.
3. The EDC exercises decision-making powers on behalf of the PSR Board. The EDC is accountable to the Board in respect of its procedures and general arrangements, but this does not affect its independence in relation to its decisions.
4. The EDC decides whether to issue warning notices and decision notices imposing sanctions in individual compliance failure cases. Such sanctions include any penalties that should be imposed under section 73 FSBRA and/or the publication of details of the compliance failure and/ or of the penalty imposed (sections 72(1) and (2) FSBRA). Information on the sanctions for compliance failures relating to certain EU payments legislation for which the PSR is a competent authority is set out in Annex A of these Terms of Reference.
5. An EDC Panel will be appointed to be the decision-makers each time the PSR considers that there is a compliance failure and that the compliance failure should be sanctioned. This means that there may be more than one EDC Panel in place at any one time.
6. The EDC members and EDC Panels are separate from the PSR's executive management structure. All EDC members, including the Chair and Deputy Chair, are appointed for fixed periods by the Board. The Board may remove an EDC member only in the event of that member's misconduct or incapacity, or with the member's agreement.
7. The FCA Corporate Services Decision-Making Committees Secretariat (the Secretariat) shall provide administrative services to the EDC, EDC members and EDC Panels in accordance with the Protocol<sup>2</sup>.

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<sup>2</sup> Protocol for the Secretariat's provision of services to the Payment Systems Regulator's Enforcement Decisions Committee

### ***Duties of the EDC members***

8. Each EDC member has agreed to comply with the Code of Conduct of the EDC (“the Code of Conduct”), including its confidentiality obligations.
9. Each EDC member must make him- or herself reasonably available to attend training relevant to their role as an EDC member regardless of whether they are currently sitting on an EDC Panel.
10. EDC members can be a member of more than one EDC Panel at any one time.
11. The EDC is a committee of the Board and, in discharging their functions, EDC members must have regard to:
  - a) the PSR’s statutory general duties, including its statutory payment system objectives and regulatory principles<sup>3</sup> (where the matter before the EDC concerns a compliance failure relating to FSBRA and the PSR’s regulatory requirements made thereunder);
  - b) the PSR’s functions or duties in connection with or arising under EU payments legislation as transposed, implemented or otherwise enacted in the UK (where the matter before the EDC concerns a compliance failure relating to such EU payments legislation)<sup>4</sup>;
  - c) the PSR’s published guidance documents, including in particular (in connection with FSBRA) the Powers & Procedures Guidance (PPG), the Penalties Guidance, the Objectives Guidance, and/or any other relevant published guidance, including guidance on the PSR’s functions in relation to EU payments legislation (as appropriate);
  - d) as appropriate, the PSR’s published Policy Statements; any general or specific directions issued under section 54 FSBRA; any generally-applicable or specific requirements issued under section 55 FSBRA; any orders issued requiring the granting of new access under section 56 FSBRA; any variations of existing access agreements, fees or charges required under section 57 FSBRA; any disposal(s) of interests in payment systems operators and/or infrastructure providers required under section 58 FSBRA; the text of any EU payments legislation for which the PSR is a competent authority (see further Annex A); the text of any UK transposing or implementing measure, or statutory instrument otherwise giving effect to such EU payments legislation; and/or any regulatory requirements put in place by the PSR in the discharge of the PSR’s functions as a competent authority; and
  - e) any prior compliance failures relating to FSBRA which have been sanctioned through the imposition of a penalty under section 73 FSBRA and/or through the publication of details of the compliance failure and/or penalty imposed under section 72(1) and/or (2) FSBRA; and/or any prior compliance failures relating to EU payments legislation for which the PSR is a competent authority which have been sanctioned through the imposition of sanctions under the relevant legislation assigning those sanctioning powers to the PSR (see further Annex A of these Terms of Reference).

### ***Conflicts of interest***

12. On appointment by the Board as an EDC member, EDC members must disclose to the Secretariat and the Chair any information (including interests and/or relationships) in relation to conflicts of interest and keep the Secretariat and the Chair informed of any relevant developments (including

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<sup>3</sup> Sections 49-53 FSBRA

<sup>4</sup> See further Annex A of these Terms of Reference.

further interests they acquire) after their appointment as an EDC member.

13. Each member of the EDC shall comply with the rules and procedures laid down in the Code of Conduct in relation to conflicts of interest.
14. The Secretariat will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

#### ***Procedures***

15. The EDC will conduct itself in the manner and may adopt such procedures as the Chair considers suitable and appropriate to enable the EDC to determine fairly and expeditiously any matters which EDC Panels are considering.

#### ***Appointment of EDC Panels***

16. Each EDC Panel is composed of three EDC members. Individual EDC Panels are appointed by the Chair of the EDC (or, in his/her absence, by the Deputy Chair). Either the Chair or Deputy Chair must be a member of each EDC Panel, chairs that EDC Panel's meetings and counts towards that EDC Panel's quorum.
17. When appointing EDC members to an individual EDC Panel, the Chair will take into account the relevant expertise of those individual EDC members in relation to the specific compliance failure, their availability and any reported conflicts of interest.
18. If an EDC member has a potential conflict of interest in any matter in which she/he is asked to participate as part of an EDC Panel, she/he must disclose the conflict to the Secretariat and the Chair (including interests and/or relationships). The Chair will decide whether it is appropriate for that EDC member to act on the EDC Panel for the matter in question.
19. Where appropriate in light of the specific nature of the case, the Chair will ensure that the EDC Panel includes a lawyer.

#### ***Quorum and participation***

20. All three members of an EDC Panel must be present to form a quorum.
21. The Chair may exceptionally agree that an EDC Panel meeting can be held by teleconference, videoconference or other similar facility which provides the necessary level of privacy. Decisions in relation to the issuing of a warning notice and/or of a decision notice may also be taken in writing including email or other electronic means. The EDC Panel meets in private.
22. Decisions in relation to the issuing of a warning notice and/or of a decision notice require at least two members of an EDC Panel to be in agreement.

#### ***Functions of the EDC Panels***

23. The functions of individual EDC Panels are to decide, based on their review of the facts and arguments presented in individual cases submitted to the EDC:
  - a) whether to issue a warning notice proposing to impose a sanction(s) on the subject in respect of a compliance failure. In making this decision, the EDC panel will first need to be satisfied that a compliance failure has occurred.

- b) whether to issue a decision notice imposing a sanction/sanctions in respect of the compliance failure.
24. The EDC will decide whether to issue a warning notice based on the evidence and legal assessment submitted by the case team. In exercising its functions, the EDC will consider the draft warning notice and recommendations submitted by the case team, along with the key supporting documents.
25. In deciding whether to issue a decision notice, the EDC will also consider any written and/or oral representations made by the party/parties (including in respect of whether there has been a compliance failure), and the case team's response to those representations.
26. The abovementioned EDC functions will require the EDC Panel, at each of the warning notice and decision notice stages, to decide on the appropriate sanction(s) in respect of a given compliance failure, namely (in respect of FSBRA)<sup>5</sup>:
- a) whether to publish details of the compliance failure<sup>6</sup>;
  - b) whether to impose a penalty in respect of the compliance failure<sup>7</sup> and the appropriate amount of any penalty (or proposed penalty) in respect of that compliance failure, having regard to the PSR's Penalties Guidance in force at the time when the compliance failure occurred; and
  - c) whether to publish details of any penalty imposed<sup>8</sup>.
27. Individual EDC Panels may decide on any combination of paragraph 26(a), (b) and/or (c) sanctions in a given compliance failure case, taking into account the recommendations made by the case team.
28. EDC Panels do not have a role in individual cases before the case team submit a draft warning notice to the EDC. Once a draft warning notice has been submitted to the EDC, the appointed EDC Panel may liaise and work with the case team with a view to deciding whether it should issue a warning notice. Once a warning notice is issued by an EDC Panel, paragraph 38 applies.
29. Each EDC Panel will consider whether it is appropriate to provide the recipient of a warning notice with any underlying material where it is likely to be necessary for the recipient to understand the case against it. The case team may make representations and legal submissions to the EDC Panel where the case team considers that such material cannot be disclosed at all or must be subject to redactions for reasons of confidentiality.
30. Where an EDC Panel decides that the sanction(s) in respect of a compliance failure will include the publication of details of the compliance failure and/or of details of the penalty imposed, the EDC Panel will decide whether the entire decision notice will be published (and if so, subject to which, if any, redactions for confidentiality), or whether an abridged or alternative text setting out the relevant and non-confidential details of the compliance failure and/or penalty imposed should be published. Publication will be on the PSR's website: [www.psr.org.uk](http://www.psr.org.uk).

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<sup>5</sup> See Annex A of these Terms of Reference for details on the sanctions available to the EDC in respect of the EU payments legislation for which the PSR is a competent authority.

<sup>6</sup> Section 72(1) FSBRA

<sup>7</sup> Section 73 FSBRA

<sup>8</sup> Section 72(2) FSBRA

31. EDC Panels do not take any of the following decisions:

- a) Closing a case on grounds of administrative priority.
- b) Settling a case.

### ***Interaction between EDC proceedings and settlement discussions***

32. Settlement discussions with the PSR may be initiated at any time. The EDC Panel will be informed when settlement discussions are initiated and in progress, and EDC proceedings will be paused whilst settlement discussions continue.
33. The EDC Panel will not be engaged in any settlement discussions or informed about the content or progress of the discussions, other than being advised that they have concluded successfully or have failed to conclude. In particular, any concessions or admissions made to the case team or PSR Settlement Decision-Makers during settlement discussions will not be shared with the EDC Panel.<sup>9</sup>
34. If settlement discussions are initiated (before or after a warning notice has been issued by the EDC), the matter is taken forward by the PSR Settlement Decision-Makers (rather than by an EDC Panel). If settlement discussions are successful, the PSR Settlement Decision-Makers may decide to issue a warning notice and decision notice (including the imposition of any sanction).<sup>10</sup>
35. If settlement discussions break down, the matter will be referred to the EDC for it to decide whether to issue a warning notice and decision notice on whether a compliance failure has occurred and what sanction(s) to impose.

### ***Case team and party liaison***

36. The Chair, supported by the Secretariat, will act as the main liaison point for the case team, or he/she may designate another member of the EDC Panel in any particular case to act as the main liaison point for the case team.
37. The recipient of a warning notice may continue day-to-day contact with the case team (under the guidance of the PSR official overseeing the case) whilst the EDC Panel makes its decisions.
38. Once a warning notice has been issued by the EDC Panel, the Secretariat will ensure that relevant communications between the EDC Panel and either the case team or the recipient of the warning notice are copied or otherwise notified to the other party.

### ***Legal, technical and economic input***

39. The EDC Panel may seek its own legal, technical, economic and/or other relevant expert advice from PSR staff unconnected to the case team, if it considers that is required in order to enable the EDC Panel to reach its decisions. In such a case, the Chair and the PSR will discuss the advice which is being sought and the PSR will make appropriate PSR staff unconnected to the case team available to the EDC Panel. In exceptional cases where the necessary additional expertise cannot be provided by PSR staff unconnected with the case, the Chair may, with the agreement of the PSR, seek expert advice from external sources, including from the FCA. Such advice will be paid for by the PSR.

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<sup>9</sup> See paragraph 23.12 PSR Powers and Procedures Guidance

<sup>10</sup> Paragraphs 23.6, 23.8 and 23.10 PSR Powers and Procedures Guidance

### ***Oral representations meeting***

40. The Chair will consider a request by a recipient of a warning notice for a meeting at which to make oral representations to the EDC Panel and will consider whether, and when, such a meeting should take place. The Chair will also determine the format and timing of any such meeting. The Chair may decide that a multi-party hearing should take place and/or whether any third parties should be present. Both the recipient of the warning notice and the case team may make oral representations at any such meeting.
41. During the oral representations meeting, the EDC Panel may ask questions about the written representations made by the recipient of the warning notice, as well as questions of clarification. There is no obligation on the recipient of the warning notice to respond, and it may choose to respond to questions in writing after the hearing.
42. The Secretariat will record the oral representations meeting, and will provide a copy of the recording if requested by either the case team or the party/parties.

### ***Notice of Meetings***

43. The Secretariat will make the arrangements for each EDC and EDC Panel meeting, including confirming the availability of each EDC member.
44. Unless otherwise agreed with the Chair, confirmation of the arrangements for each EDC Panel meeting shall be forwarded to each EDC Panel member and any other relevant person as soon as practicable before the date of the meeting. The Secretariat will also provide copies of the papers to be considered at the meeting to those who need them.

### ***Minutes of Meetings***

45. The Secretariat will make and retain appropriate records of the meetings held by EDC Panels and of the decisions taken by EDC Panels.

### ***Resources***

46. The EDC shall have access to sufficient resources in order to carry out its duties including, in particular, the Secretariat.

## ANNEX A: EU payments legislation for which the PSR is a competent authority

1. The Board of the PSR has authorised EDC members appointed to the EDC to act as decision-makers in any case of compliance failures arising in relation to the following EU payments legislation for which the PSR is a competent authority and where the following sanctions are available to the PSR.

Legislative instrument(s)	Nature of the compliance failure(s) relevant to the EDC	Nature of the sanction(s) available to the PSR where the EDC acts as decision-maker
<p>The Payment Card Interchange Fee Regulations 2015 (the '<b>PCIFRs</b>'), which designate the PSR as the competent authority for Regulation (EU) 2015/751 of the European Parliament and the Council of 29 April 2015 on interchange fees for card-based payment transactions (the '<b>Interchange Fee Regulation</b>' or '<b>IFR</b>')</p>	<p>Where a regulated person (that is, any persons on whom an obligation or prohibition is imposed by any provision of the IFR):</p> <ul style="list-style-type: none"> <li>• fails to comply with an obligation or prohibition imposed by the IFR; or</li> <li>• fails to comply with a direction given by the PSR under Regulation 4 of the PCIFRs.</li> </ul>	<ul style="list-style-type: none"> <li>• The publication of details of the compliance failure (under Regulation 5 of the PCIFRs);</li> <li>• the imposition of a financial penalty for the compliance failure (under Regulation 6 of the PCIFRs); and</li> <li>• the publication of details of any financial penalty (under Regulation 5(b) of the PCIFRs).</li> </ul>
<p>Part 3 and Schedule 4 of the Payment Account Regulations 2015 (the '<b>PARs</b>'), which designate the PSR as the competent authority for the designation of payment account switching services as 'alternative arrangements', further to Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the '<b>Payment Accounts Directive</b>' or '<b>PAD</b>')</p>	<p>Where the operator of a switching service which has been designated as an alternative arrangement:</p> <ul style="list-style-type: none"> <li>• fails to comply with a PSR direction given under Schedule 4, paragraph 8 of the PARs for the purpose of ensuring that the switching service continues to meet the requirements of Regulation 15(2) of the PARs; or</li> <li>• fails to comply with a PSR notice to provide information given under Schedule 4, paragraph 7 of the PARs.</li> </ul>	<ul style="list-style-type: none"> <li>• The imposition of financial penalties under schedule 4, paragraph 9 of the PARs.</li> </ul>

## 2.2.4. Competition Decisions Committee Terms of Reference

### ***Background and purpose***

1. The Competition Act 1998 (Competition and Markets Authority's Rules) 2014 (CMA Rules) require separation between: (a) the person who oversees an investigation and decides to issue a notice setting out a proposed finding of infringement of the prohibitions contained in Chapter I or Chapter II of the Competition Act 1998 (CA98) and/or Article 101(1) or 102 of the Treaty on the Functioning of the European Union (the Statement of Objections), and (b) the person who decides whether any supplementary Statement of Objections is required, whether there has in fact been such an infringement (other than in settlement cases) or whether there are no grounds for action and whether to impose a penalty under the CMA Rules.
2. The Board of the Payment Systems Regulator (PSR) has authorised a pool of persons to be appointed to the Competition Decisions Committee (CDC) that can act as decision-makers in any particular CA98 investigation. In individual cases, a CDC Panel comprised of three CDC members will be appointed to exercise decision-making powers on behalf of the PSR in relation to:
  - a) issuing a Supplementary Statement of Objections (if necessary);
  - b) issuing an infringement decision (or decision that there are no grounds for action);
  - c) determining whether to impose a penalty for an infringement of CA98; and/or
  - d) deciding whether to give directions when it has found an infringement of CA98.
3. A CDC Panel will be appointed each time the PSR has come to the provisional view that a conduct under investigation amounts to an infringement and has issued a Statement of Objections. This means that there may be more than one CDC Panel in place at any one time.
4. The CDC and CDC Panels are separate from the PSR's executive management structure. All members of the CDC are appointed for fixed periods by the Board. The Board may remove a member of the CDC, but only in the event of that member's misconduct or incapacity or with the member's agreement.
5. The FCA Corporate Services Decision-Making Committees Secretariat (Secretariat) shall provide administrative services to the CDC, CDC members and CDC Panels in accordance with the Protocol.<sup>11</sup>

### ***Duties of the CDC members***

6. Each CDC member has agreed to comply with the Code of Conduct of the CDC.
7. Each CDC member must make him- or herself reasonably available to attend training in relation to CA98 regardless of whether they are currently sitting on a CDC Panel.
8. CDC members can be a member of more than one CDC Panel at any one time.

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<sup>11</sup> Protocol for the Decision Making Committees Secretariat's provision of services to the Payment Systems Regulator's Competition Decisions Committee Panel.

### ***Functions of the CDC Panel***

9. The CDC Panel's functions in a given case are:
  - a) to decide whether to issue any supplementary Statement of Objections;
  - b) based on its review of the facts and arguments presented, to decide whether to issue an infringement decision (other than in settlement cases) or 'no grounds for action' decision;
  - c) to give notice of and decide on the appropriate level of any penalty for an infringement, having regard to the penalty guidance in force for the time being under s38 CA98, based on a proposal put forward by the case team; and
  - d) if it has found an infringement of CA98, to decide whether to impose directions under s32 or s33 CA98.
10. In exercising its functions, the CDC Panel will consider the Statement of Objections, the key documents on the case file, the written and/or oral representations of the party/parties (including attending the oral hearing, described below, or, where a member of a CDC Panel changes after the oral hearing, reviewing the transcript of the oral hearing), and any representations received from third parties on the Statement of Objections issued by the PSR.
11. The CDC Panel does not take any of the following decisions:
  - a) Closing a case on grounds of administrative priority (including if this decision is taken following the issuing of a Statement of Objections);
  - b) Accepting commitments under s31A CA98;
  - c) Issuing interim measures under s35 CA98;
  - d) Settling a case (even if the case settles following the issuing of the Statement of Objections, including taking the infringement decision following any such settlement); and
  - e) Imposing a penalty under s40A CA98 relating to failures of parties to comply with the PSR's information-gathering powers in CA98 investigations.
12. The CDC Panel does not have a role in a case before the issuing of a Statement of Objections.
13. In addition, it is the case team and PSR who are responsible for resolving any issues raised by parties relating to access to file and redaction of confidential information, both in relation to disclosure to addressee(s) of a Statement of Objections and in relation to the publication of any final infringement decision. Such issues are subject to parties' rights to raise complaints with the PSR's Procedural Officer.

### ***Appointment of the CDC Panels***

14. The CDC Panel in a given case is appointed by ExCo from the CDC members on recommendation from the Procedural Officer once the PSR has issued a Statement of Objections setting out its provisional finding of infringement against one or more parties.
15. The Procedural Officer shall report to the Board if his recommendation referred in 15 above is rejected by ExCo.
16. ExCo will designate one of the three appointed CDC panel members to be the Chair of that CDC Panel. The Chair will not have a casting vote.
17. Each CDC Panel will typically include at least one lawyer and one economist.

### ***Conflicts of interest***

18. Each member of the CDC shall comply with the rules and procedures laid down in the Code of Conduct in relation to conflicts of interest. The Secretariat will record and document information disclosed in relation to conflicts of interest and the steps taken to manage them.

### ***Role and Procedures of the CDC***

#### ***Duties of the CDC Panel in individual cases***

19. The CDC Panel takes a decision based on all the relevant information available to it, including the views of PSR staff about the relative quality of the evidence. The CDC Panel will direct the case team in the drafting of any supplementary Statement of Objections, draft penalty statement, and/or infringement decision or 'no grounds for action' decision.
20. Before deciding whether to issue an infringement or 'no grounds for action' decision and/or to issue a draft penalty statement, the CDC Panel may ask the case team to:
  - a) provide a further explanation of the Statement of Objections or any aspect of any PSR staff recommendation (for example, in relation to penalties) or accompanying papers;
  - b) explain or provide any other additional information about the matter;
  - c) investigate any matter further; and/or
  - d) issue a supplementary Statement of Objections under its direction.
21. The CDC is accountable to the Board in respect of its general arrangements, but this does not affect its independence in relation to its decisions. In this context, the Chair of each CDC Panel will prepare an annual report on the work of that CDC Panel.

#### ***Case team and party liaison***

22. The Chair of the CDC Panel in any particular case will be the main liaison point for the PSR case team.
23. The party or parties under investigation will not engage with the CDC directly; day-to-day contact will continue to take place through the case team (under the guidance of the Case Sponsor overseeing the investigation).

### ***Legal, economic and technical input***

24. The CDC will be advised by PSR case team and its legal, economic and technical advisers, though it may choose to obtain advice from a new adviser from within the PSR or externally if it feels that this is required in order to reach its final view on the decisions it has to take. In such a case, the Chair and the Case Sponsor will discuss what advice is being sought and the Case Sponsor will make appropriate PSR staff team available to the CDC Panel. Where external advice is sought, this will be agreed with and for by the PSR.

### ***Oral hearings and report of the Procedural Officer***

25. Addressee(s) of the Statement of Objections are invited to make oral submissions to the CDC Panel, but they are not obliged to do so. Any oral hearing will be chaired by the Procedural Officer, in accordance with the CA98 Rules.
26. The CDC Panel will indicate to the case team any matters it wishes to cover at the oral hearing and discuss other relevant issues with the case team (which could include considering a multi-party hearing or if interested third parties should be present).
27. During the oral hearing, both the CDC Panel and PSR staff present may ask questions about the addressee's written representations or questions of clarification. There is no obligation on the addressee to respond, and it may respond to questions in writing after the hearing.
28. Following the oral hearing, the Procedural Officer will report to the CDC Panel, indicating any procedural issues that have been brought to the attention of the Procedural Officer during the investigation and confirming whether the parties' right to be heard has been respected, including an assessment of the fairness of the procedure followed in the oral hearing.

### ***Quorum***

29. The CDC Panel is composed of three CDC members, who are appointed to act as decision-makers in any particular case. At least two members must be present to form a quorum.
30. Decisions require at least two members of the CDC Panel to be in agreement. Dissenting opinions will not be published.

### ***Notice of Meetings***

31. The Secretariat shall make the arrangements for each meeting, including confirming the availability of each CDC member.
32. Unless otherwise agreed, confirmation of the arrangements for each meeting shall be forwarded to each CDC member and any other relevant person as soon as practicable before the date of the meeting, together with the papers to be considered at the meeting.
33. Attendance at meetings may be by telephone or similar facility. Decisions may also be taken in writing including email or other electronic means. The CDC Panel meets in private.

***Minutes of Meetings***

34. The Secretariat will make and retain appropriate records of the decisions taken by the CDC and CDC Panels.

***Resources***

35. The CDC shall have access to sufficient resources in order to carry out its duties including, in particular, the Secretariat.