



Payment Systems Regulator
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DECISION NOTICE

To: **Cheque and Credit Clearing Company Limited** ("C&CCC"), the operator of the payment system known as Cheque and Credit.

8 August 2017

1. PROPOSED ACTION

- 1.1. For the reasons given in this notice, the PSR proposes to publish details of a compliance failure by C&CCC.
- 1.2. C&CCC agreed to settle at an early stage of the PSR's investigation and enforcement process.

2. SUMMARY OF REASONS

- 2.1. C&CCC has failed to comply with the PSR's General Direction 6.1¹ in respect of the minutes for Board meetings on 19 April 2016, 11 May 2016, 25 May 2016 and 18 August 2016 because the minutes were not published as soon as reasonably practicable after each relevant meeting.

¹ Given under section 54 of the Act.

- 2.2. Further, C&CCC has also failed to comply with the requirements of GD6.3(b) in respect of the minutes for the Board meeting on 18 August 2016. This is because C&CCC did not provide the PSR with a link to the 18 August minutes on C&CCC's website in accordance with the requirement in GD6.3(b).
- 2.3. These failures to comply with the requirements of GD6 are compliance failures under section 71 of the Act.
- 2.4. The PSR therefore proposes to publish details of a compliance failure pursuant to section 72(1) of the Act.
- 2.5. The PSR considers the publication sanction is appropriate instead of imposing a financial penalty for the reasons provided in paragraph 6 of this notice, including C&CCC's willingness to admit the compliance failure, its engagement with the PSR when the PSR started its investigation, the lack of any previous findings of compliance failures against C&CCC, the particular circumstances which underlie the content of the minutes of the April and May meetings, and the fact that C&CCC did not derive any economic benefit from the compliance failures. No detrimental impact on payment system users, competition, or innovation, has been identified.

3. DEFINITIONS

- 3.1. The definitions below are used in this Warning Notice:

"The Act" means the Financial Services (Banking Reform) Act 2013.

"C&CCC" means Cheque and Credit Clearing Company Limited incorporated and registered in England and Wales with company number 01962903 and the registered office address of 2 Thomas More Square, London E1W 1YN. C&CCC is the operator of the payment system known as Cheque and Credit designated by HM Treasury under section 43 of the Act, as a regulated payment system for the purposes of Part 5 of the Act.

"GD6" means the PSR's General Direction 6 (Governance) adopted by the PSR Board on 18 March 2016 and which came into effect on 30 April 2015.

"Penalties Guidance" means the statement of principles prepared by the PSR under section 73(3) of the Act and published in March 2015 that it is

required to apply in determining whether to impose a penalty, and the amount of a penalty.

“Relevant Minutes” means the minutes of C&CCC Board meetings, as defined in clause 4.6 of this warning notice.

“The PSR” means The Payment Systems Regulator Limited incorporated and registered in England and Wales with company number 08970864 and a registered office address of 25 The North Colonnade, Canary Wharf, London E14 5HS. It is the company incorporated on 1 April 2014 and limited by shares that was established by the Financial Conduct Authority (FCA) under section 40 of the Act.

4. FACTS AND MATTERS

- 4.1. As part of the PSR’s regular monitoring of compliance with GD6, it became apparent that C&CCC had stopped publishing its Board minutes following the publication of the minutes of a meeting on 18 February 2016. The PSR made enquiries about this and on 6 June 2016 C&CCC’s Chair, Jane Bevis, informed the PSR that the Board had made a decision not to publish its minutes due to ongoing highly sensitive commercial discussions. Jane Bevis informed the PSR of this on 9 June 2016.
- 4.2. C&CCC has told the PSR that it made this decision following legal advice, because its Board felt constrained regarding the publication of commercially sensitive aspects of relevant minutes.
- 4.3. The minutes of meetings on 19 April, 11 May, 25 May, 5 July, 12 July and 14 July 2016 were published on 19 August 2016. As permitted by GD6.4, C&CCC redacted certain parts of its minutes which related to the Image Clearing System for cheques programme, and which it considered were commercially sensitive.
- 4.4. The PSR then became aware of a further delay in relation to the publication of minutes of the 18 August 2016 meeting. Minutes for the Board meeting on 18 August were provided to the PSR on 16 November and were published on C&CCC’s website sometime after midday on 18 November, following enquiries by the PSR. No link to the 18 August minutes on C&CCC’s website was provided to the PSR.

- 4.5. In summary, the following minutes (“Relevant Minutes”) were considered by the Board and approved as follows:
- The 19 April minutes were approved by the Board at the 25 May meeting. Redactions were approved on 18 August.
 - The 11 May minutes were issued in hard copy form only to directors for comment by 1 June. These were therefore approved by written procedure by 1 June. Redactions were approved on 18 August.
 - The 25 May minutes were approved at the 14 July meeting. Redactions were approved on 18 August.
 - The 18 August minutes were approved on 14 September. Redactions were approved on 3 November.
- 4.6. During the relevant period, Board meetings were held by C&CCC on 19 April, 11 May, 25 May, 5 July, 12 July, 14 July, 18 August, 14 September and 3 November 2016. There was no Board meeting in October 2016.
- 4.7. Table 1 below sets out the dates of C&CCC’s Board meetings relating to the relevant minutes and details when the relevant minutes were considered for approval and/or publication.
- 4.8. Table 1 also highlights the timing of publication in relation to the requirements of GD6.1 and GD6.3.
- 4.9. GD6.1 requires minutes to be published as soon as reasonably practicable. Additionally, the guidance on GD6 provides that minutes should be published as soon as possible after a meeting and that the PSR typically expects that this involves publication within eight weeks after the relevant meeting.
- 4.10. GD6.3 prescribes how publication of minutes must be effected. In addition to putting a copy of the minutes in a prominent, easily accessible position on any relevant website operated or controlled by the operator (GD6.3(a)), GD6.3(b) requires a link to the relevant website on which the minutes are published to be sent to the PSR, and GD 6.3 (c) requires that a copy of the minutes are sent to the PSR.

Table 1: C&CCC Board meeting minutes relevant to this Warning Notice

			Date of Board meeting (all dates in 2016)			
			19 April	11 May	25 May	18 August
General direction requirement	6.1	<p>Publish minutes as soon as reasonably practicable in accordance with GD6.2 - 6.6.</p> <p><i>Guidance: publish minutes as soon as possible and typically expect it within 8 weeks</i></p>	<p>Published on 19 August</p> <p>(over 17 weeks after meeting)</p> <p>Minutes approved on 25 May (within 6 weeks)</p> <p>Redactions were approved on 18 August (over 17 weeks after meeting)</p>	<p>Published on 19 August</p> <p>(over 14 weeks after meeting)</p> <p>Minutes issued to directors on 25 May and approved by written procedure by 1 June (within 3 weeks)</p> <p>Redactions were approved on 18 August (over 14 weeks after meeting)</p>	<p>Published on 19 August</p> <p>(over 12 weeks after meeting)</p> <p>Minutes approved on 14 July (within 8 weeks)</p> <p>Redactions were approved on 18 August (over 12 weeks after meeting)</p>	<p>Published between 18-21 November (<i>see below</i>)</p> <p>(13 weeks after meeting)</p> <p>Minutes approved on 14 September (within 4 weeks)</p> <p>Redactions approved on 3 November (11 weeks after the meeting)</p>
	6.3 a	<p>Prominent, easily accessible position on operator's website</p>	<p>Yes - Published on governance page 19 August</p>	<p>Yes - Published on governance page 19 August</p>	<p>Yes - Published on governance page 19 August</p>	<p>Yes - Published on governance page sometime between</p>

						12pm on 18 November and 12pm on 21 November
	6.3 b	Link provided to the PSR	Provided 19 August	Provided 19 August	Provided 19 August	No link provided
	6.3 c	Copy provided to the PSR	Provided 19 August	Provided 19 August	Provided 19 August	Provided 16 November

5. COMPLIANCE FAILURES

- 5.1. The following section considers whether the minutes for meetings on 19 April, 11 May, and 25 May were published as soon as reasonably practicable in compliance with GD6.1. As summarised in Table 1, these minutes do not raise issues in relation to compliance with GD6.3. The publication of the 18 August minutes and compliance with GD6.1 is then similarly considered in the section that follows. In relation to the 18 August minutes compliance with GD6.3(b) is also assessed.
- 5.2. GD6.4 permits publication of minutes in redacted form, including where this is necessary to protect commercial confidentiality. C&CCC says redactions were made to the relevant minutes to protect the commercial confidentiality of C&CCC. The PSR has not at this time found compliance failures in relation to the content of the redactions in the Relevant Minutes.

Publication of the 19 April, 11 May, 25 May 2016 minutes

- 5.3. The following factors support the conclusion that it was reasonably practicable to publish the 19 April, 11 May, 25 May minutes much earlier, and within the eight weeks or less envisaged in the guidance to GD6:
- 5.4. C&CCC's redaction policy states at clause 4.1 that minutes will be published within five working days after the following Board meeting. The policy states that this is to ensure that the Board can sign off both

unredacted and redacted versions of the minutes of the previous meeting. By including this timeframe in its redaction policy C&CCC must consider it is a sufficient period to organise publication in accordance with GD6.3, including website publication.

- 5.5. There were a number of Board meetings where the 19 April, 11 May, and 25 May minutes, and redactions, could have been approved for publication on C&CCC's website. This includes the May meetings themselves and several meetings in July (see paragraph 4.6).
- 5.6. The redaction policy contemplates approval of both redacted and unredacted versions of minutes at the next meeting. Having regard to the dates of the board meetings the minutes of which are the subject of this section and the dates of the next following board meeting, the PSR considers that the redactions could and should have been approved much earlier, and within eight weeks of the relevant meeting. C&CCC had a chance to approve the redacted minutes at the earlier Board meetings and in accordance with clause 4.1 of its redaction policy. C&CCC also had an option to approve the minutes earlier by written resolutions, as it did for the 11 May minutes.
- 5.7. Instead, as noted in C&CCC's 14 July Board minutes, the Board made an informed decision not to publish any minutes at all and to inform the PSR of this decision. It therefore also did not ensure that redactions to minutes were approved for publication in a timely manner.
- 5.8. C&CCC has set out the particular circumstances which led the late publication of minutes, highlighting the exceptional nature of these. While the PSR acknowledges the situation, it does not consider that these circumstances meant it was not reasonably practicable for C&CCC to publish these minutes much earlier than it did and in line with its redaction policy.
- 5.9. Therefore, the PSR considers that C&CCC did not publish the minutes on its website in accordance with GD 6.1 as soon as was reasonably practicable for C&CCC.

Publication of the 18 August 2016 minutes

- 5.10. C&CCC's redacted minutes of the 18 August Board meeting were not published until the second half of November. The time between the relevant meeting and publication was 13 weeks.
- 5.11. C&CCC considered and approved the minutes of the 18 August meeting at a Board meeting on 14 September. At that meeting, C&CCC took the decision that the proposed redactions were to be reviewed by the CEO following legal advice and reissued for approval at the next Board meeting. This was recorded as the October board meeting, however, it was noted at the 14 September meeting that the date of the next Board meeting was set for 3 November 2016. The redactions of the minutes of the 18 August meeting were then approved at the 3 November meeting and published sometime between midday on 18 November and midday on 21 November. For the purposes of this case, as it is not material at what point during this time the minutes were published, the PSR is treating these minutes as having been published on 18 November.
- 5.12. The PSR considers this constitutes a failure to publish the minutes as soon as reasonably practicable. The following factors support the conclusion that it was reasonably practicable to publish the 18 August minutes much earlier, and within the eight weeks or less envisaged in the guidance to GD6:
- 5.13. As set out at paragraph 5.4 above, C&CCC's redaction policy states at clause 4.1 that minutes will be published within five working days after the following Board meeting. As set out at paragraph 5.6 above, the redaction policy contemplates approval of both redacted and unredacted versions of minutes at the next meeting.
- 5.14. The PSR considers that the redactions to the 18 August minutes could and should have been approved much earlier, and within eight weeks of the relevant meeting. C&CCC had a chance to approve the redacted minutes at the 14 September Board meeting in accordance with clause 4.1 of its redaction policy. C&CCC also had an option to approve the redactions earlier by written resolutions, as it did for 11 May minutes.

- 5.15. By deferring the approval of the redactions until the next Board meeting rather than making alternative arrangements for approval of the redactions, the C&CCC Board effectively made a decision not to publish the minutes as soon as reasonably practicable. This was a failure of process and not in line with its own policy.
- 5.16. Further, the minutes were not published within five working days of the meeting at which the redactions were approved, but rather 11 or 12 working days after approval of the redactions at the 3 November Board meeting. C&CCC provided a copy of the minutes to the PSR on 16 November, nine working days after the redactions were approved for publication.
- 5.17. As mentioned above at paragraph 5.7, clause 4.1 of C&CCC's redaction policy provides that minutes will be published within five working days after the following Board meeting. By including this timeframe in its redaction policy C&CCC must consider it is a sufficient period to organise publication in accordance with GD6.3, including website publication.
- 5.18. The PSR considers it was reasonably practicable for C&CCC to publish the 18 August minutes much sooner after the Board meeting on 3 November during which the redactions were approved for publication.
- 5.19. Therefore, the PSR considers that that C&CCC did not publish the minutes on its website in accordance with GD 6.1 as soon as was reasonably practicable for C&CCC.
- 5.20. Further, C&CCC has also failed to comply with the requirements of GD6.3(b) in respect of the minutes for the Board meeting on 18 August. This is because C&CCC has not provided the PSR with a link to the 18 August minutes on C&CCC's website in accordance with the requirement in GD6.3(b).

Conclusion

- 5.21. The PSR considers the failures to comply with the requirements of GD6 outlined in paragraphs above are compliance failures under section 71 of the Act.

6. SANCTION

- 6.1. The sanction is publishing details of the compliance failures instead of imposing a financial penalty. This was determined following consideration of all the circumstances of this case, including in light of the factors listed in paragraph 2.4 of the PSR's Penalties Guidance.
- 6.2. The PSR has considered the behaviour of C&CCC during the investigation of these compliance failures. We consider that this raises a number of aggravating factors. These are:
 - (1) The decision not to publish the details of minutes was deliberate (as noted in C&CCC's 14 July Board minutes).
 - (2) C&CCC did not end the compliance failures and publish the relevant minutes of its own accord, but only on the insistence of the PSR.
 - (3) C&CCC did not pro-actively bring any of the breaches to the PSR's attention before the PSR started to investigate the issue.
 - (4) C&CCC was at times slow to correspond with the PSR once the PSR had started investigating the apparent compliance failures.
- 6.3. However, the PSR has also taken into account C&CCC's willingness to admit the compliance failure, its engagement with the PSR when the PSR started its investigation, the lack of any previous findings of compliance failures against C&CCC, the particular circumstances which underlie the content of the minutes of the April and May meetings, and the fact that C&CCC did not derive any economic benefit from the compliance failures. No detrimental impact on payment system users or competition or innovation has been identified. The PSR also recognises that the Commercial Discussions only concluded in August 2016 and that C&CCC has been progressing a substantial industry change programme during the time of this investigation. Nonetheless, the PSR notes that the compliance failures in relation to the 18 August minutes took place despite the engagement between the PSR and C&CCC on its compliance failures in relation to the 19 April, 11 May, 25 May minutes.
- 6.4. The PSR considers that a financial penalty proportionate to the misconduct identified in this notice would be merited. However, in the circumstances

of this case, the PSR has decided not to impose a financial penalty. The PSR has given serious consideration to the impact of a substantial financial penalty. This includes, in particular, the context of the industry change projects that C&CCC is currently progressing – namely the ICS programme and the consolidation of the three interbank payment system operators which is proposed by the Payment Strategy Forum.

- 6.5. The PSR considers it important that appropriate capital resources are provided to these projects and ensuring effective governance in the future. As such, a financial penalty that impacted on delivery of the projects would not be of benefit to service users. Instead we expect to see C&CCC focus resource on delivery of these key projects and also ensure that lessons learned from this case can be used to ensure effective governance and management of the future operator of the Cheque & Credit payment system, or any payment system which replaces it. In the exceptional circumstances of C&CCC, a public censure is therefore considered appropriate and proportionate.

7. PROCEDURAL MATTERS

Decision maker

- 7.1. The decision which gave rise to the obligation to give this Decision Notice was made by the PSR's Settlement Decision Makers.
- 7.2. This Decision Notice is given under section 74 of the Act.

Publicity

- 7.3. Section 72 of the Act provides that the PSR may publish details of a compliance failure by a participant in a regulated payment system.
- 7.4. The PSR intends to publish such information about the matter to which this Decision Notice relates as it considers appropriate.

PSR contacts

7.5. For more information concerning this matter generally, contact Sam Cope (telephone 0207 066 4232) of the PSR.

Carole Begent

Settlement Decision Maker,
for and on behalf of the PSR

Dora Guzeleva

Settlement Decision Maker,
for and on behalf of the PSR

ANNEX 1

RELEVANT STATUTORY PROVISIONS

Section 71 of the Act provides that a compliance failure includes a failure by a participant in a regulated payment system to comply with a direction given under section 54.

RELEVANT GENERAL DIRECTIONS

The PSR has given General Direction 6 (Governance) under section 54 of FSBRA. It came into effect on 30 April 2015.

The text of GD6 is set out in full in Annex 2.

ANNEX 2

General direction 6 (Governance): operators of non-card regulated payment systems

6.1 An operator of a regulated payment system which is not a card payment system or Northern Ireland Cheque Clearing must, as soon as reasonably practicable, publish minutes of its governing body, in accordance with Directions 6.2, 6.3, 6.4, 6.5 and 6.6.

Guidance:

This General Direction applies to the *Bacs*, *CHAPS*, *C&C*, *Faster Payments* and *LINK* regulated payment systems designated by HM Treasury.

6.2 The minutes published must include at least the following, in a clear, comprehensive and easily accessible form:

- a. an accurate summary of the discussions of the *governing body*, including any dissenting views
- b. a record of all decisions and all votes by *directors* (where a decision is made by consensus, all *directors* present and entitled to vote must be recorded as supporting that decision, with any absentee or recused *directors* being recorded)
- c. the reasons behind each decision, including the reasons given by *directors* for their vote, and including where the decision is to reject a proposal made to the *governing body*, and
- d. if applicable, a statement from all independent *directors* explaining how they have exercised their discretion related to *public interest matters*.

Guidance:

The minutes required under Directions 6.1 and 6.2 are not expected to be verbatim transcripts of meetings but, rather, to demonstrate clearly what proposals have been made, what discussions were held and what decisions were arrived at, including reasons for decisions and any votes (in favour, dissenting, abstentions and recusals).

6.3 Publication of the minutes must be effected by providing:

- a. a copy of the minutes in a prominent, easily accessible position on any relevant website operated or controlled by the *operator*
- b. the *Payment Systems Regulator* with a link to the relevant website in Direction 6.3(a), and
- c. a copy of the minutes to the *Payment Systems Regulator*.

Guidance:

Minutes should be published as soon as possible after the meeting of the relevant *governing body* to be effective in achieving transparency over decision-making. The *Payment Systems Regulator* would typically expect that this would involve publication of the minutes within eight weeks after the relevant meeting.

6.4 The minutes published in accordance with Direction 6.3 may be published in redacted form where this is necessary to protect commercial confidentiality, candid debate and the financial stability or integrity of the *regulated payment system*, but any and all redactions must be:

- a. limited to the extent necessary, reasonable and justifiable
- b. consistent with retaining the sense or meaning of the remaining text so that the matters referred to are capable of being understood by interested parties, and
- c. in accordance with the policy in Direction 6.6.

6.5 Redactions to minutes in accordance with Direction 6.4 may also include information relating to the *operator's* activities outside of the United Kingdom, to the extent that those activities do not impact on the relevant *regulated payment system* in the United Kingdom, but any and all redactions must be:

- a. limited to the extent necessary, reasonable and justifiable
- b. consistent with retaining the sense or meaning of the remaining text so that the matters referred to are capable of being understood by interested parties, and
- c. in accordance with the policy in Direction 6.6.

6.6 An *operator* of a *regulated payment system* which is not a *card payment system* or *Northern Ireland Cheque Clearing* must have a stated and reasoned policy regarding the redaction of minutes of its *governing body* and must provide the *Payment Systems Regulator* with a copy of that policy.

6.7 This direction comes into effect on 30 April 2015.