

A new regulatory framework for payment systems in the UK



Foreword

I am delighted to be publishing this Policy Statement today for UK payment systems. This Policy Statement is a first – the first time such a comprehensive set of measures has been developed to help improve competition and innovation and to help address the needs of people and businesses who use payment systems and services. The first time there will be an independent regulator to oversee those measures, and the first step on a journey that we and our stakeholders need to go on to arrive at the world class payment systems that UK consumers and businesses deserve.

Payment systems underpin virtually every financial transaction we make – whether that’s major institutions transferring large sums of money to each other or consumers receiving their salary or pension into their account. Last year UK payment systems dealt with more than 21 billion transactions worth around £75 trillion. What these systems are and how they work is not well known outside the industry, but we all use them in many aspects of our lives.

Our goal is to promote competition and innovation and to ensure payment systems are operated and developed in the interests of service-users. The measures in our Policy Statement are aimed at taking initial actions towards this goal and have been developed after extensive consultation with the payment systems industry, businesses that use payment systems and services, and consumers. This has helped us arrive at robust and sound measures that are targeted, proportionate, and designed to help the sector continue to produce innovative new products and services.

The measures we have set out recognise that payment systems must be resilient, competitive, dynamic and respond to the needs of the people and businesses using them. This is where we have focussed our initial policies. Systems need to be transparent to engender the trust of their customers and users. They need to be accessible to a wide range of businesses and others who in turn can deliver competitive services to customers.

Our policies take the first step towards delivering this and we know there is much more to be done. That is why we are also setting out our future work plan including market reviews, a new programme of work on card systems and our Payments Strategy Forum.

I am immensely proud of how the PSR team has worked together, with industry and representatives of different user-groups, to reach this milestone. I am keen to see this cooperation continue so that collectively, we can deliver better results for everyone who uses payment systems.

Hannah Nixon

Managing Director

Payment Systems Regulator

In this Policy Statement we report on the main issues arising from Consultation Paper PSR CP14/1, *A new regulatory framework for payment systems in the UK*, and publish the directions we are issuing.

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Executive summary

1. We have worked with industry and stakeholders to identify the key areas where, with early implementation of regulatory policies, we can take action to address our core objectives of promoting innovation and competition in payment systems in the UK and furthering the interests of people and businesses who use those systems.
2. This Statement sets out a package of measures that provide a sound basis for our future work. It represents a fresh start for the sector and an opportunity for us and our stakeholders to work together to make UK payments systems the best they can be.
3. This Policy Statement ("this Statement") follows our Consultation published in November 2014 ("the Consultation") and sets out our policy decisions. These decisions are aimed at ensuring that:
 - Where good outcomes for users of payment systems can be delivered by the industry working together, there is an improved **strategy setting process** that will deliver effective strategies for joint working and drive efficient delivery of that work. We will take control of the design and setup of the strategy-setting process, monitor the outputs of this process, and ensure that it delivers outcomes that are in line with our objectives. This should speed up the pace of innovation in payment systems which in turn will enable Payment Service Providers (PSPs) to deliver new and responsive services to their customers.
 - The voice of the people and businesses who use payment systems and services can be heard and can influence decision making in a way that ensures payment systems deliver good outcomes for them. We aim to achieve this through improving **governance and control of payment systems**. In particular strengthening the obligation on Payment System Operators to bring their users into their decision-making process.
 - The businesses who need **access to payment systems** to provide competitive, innovative and dynamic services to their customers can get the access they need without unnecessary barriers or burdens.
4. Should these measures prove insufficient to advance our objectives, we will consider further action, using our wide-ranging powers.
5. For these policy decisions to work and for our future work to be effective we need a good, open and constructive relationship with the industry. We will be clear about how we will approach regulation and we expect the industry in turn to be open and professional in its dealing with us. This includes keeping us informed of important developments that impact on our objectives.
6. As a new regulator, we will continue to develop our regulatory approach. We expect, however, our approach to have the following characteristics:
 - We aim to develop and protect competitive markets, where preferable, and contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected. We will prioritise actions that will have a widespread positive impact across the market and will take the approach of incentivising good outcomes rather than controlling them.
 - We will regulate only where we have clear evidence that we need to do so, and where we expect the benefits of our regulation will outweigh any costs or unintended consequences.

And we will be proportionate in how we regulate - choosing to use broad standards or precise rules depending on the context.

- We will take independent decisions for which we are ultimately accountable to Parliament. Those decisions will be deliberate, transparent and predictable.
- We will keep our regulation under review, monitoring the extent to which it is delivering the results we expect and remains fit for purpose on an ongoing basis. And we will make adjustments to our approach if necessary.

7. This Statement also marks the start of an ambitious programme of work for us as we become fully operational on 1 April 2015. Included in our work programme are two market reviews into the ownership and competitiveness of infrastructure provision and into the supply of Indirect Access, as well as a programme of work on card systems which we describe in this Statement.
8. We have also consulted on the regulatory tools, such as our Penalties Guidance, on which we will rely in carrying out our statutory functions and in promoting our statutory purposes. Our regulatory tools are published alongside this Statement.

Our policy decisions following consultation

Payments industry strategy and areas for collaboration

9. We will establish a new process for industry strategy-setting through a Payments Strategy Forum (the "Forum"), as proposed in the Consultation. The Forum will include a wide range of industry and service-user stakeholders and will develop and agree strategic priorities for the long-term development of payment systems where the industry needs to work together.
10. We will control the set-up of the new Forum and will hold the industry to account for the Forum's success. If the strategy-setting process is ineffective or industry delivery of agreed priorities is too slow then we will consider intervening.
11. This new process will be an opportunity for industry and service-users jointly to develop their own strong vision for the future of payments, to drive innovation and enable new and improved services for users. The Forum will operate only where the industry needs to work together and is not intended to replace commercial innovation.

Ownership, governance and control of payment systems – giving service-users a voice

12. Payment systems must work in the interests of those who use them. Governance processes need to give a meaningful opportunity for service-users to influence decision-making which affects them and their needs.
13. We have decided to make a general direction requiring Interbank Operators (except Northern Ireland Cheque Clearing (NICC)) to ensure appropriate representation of service-users' interests in the decision-making processes of their governing bodies. We will require Interbank Operators to comply with our direction from 30 September 2015 and provide an annual compliance report, with the first due by 31 October 2015.
14. We are not, at this stage, requiring Card Operators to comply with the service-user direction. Instead we will consider further the extent to which the interests of service-users are appropriately represented in Card Operators' decision-making and the appropriateness of regulatory intervention during our work on card systems.

Ownership, governance and control of payment systems – conflicts of interest

15. We will make a general direction requiring Interbank Operators (except NICC) to ensure that any individual acting as a director of an Operator must not simultaneously act as a director of a Central Infrastructure Provider to that payment system.

16. This direction addresses potential conflicts of interest which could stand in the way of new competing and innovative Infrastructure Providers having a fair opportunity to bid for and win contracts.
17. We will require Interbank Operators to comply with our direction from 30 April 2015.

Ownership, governance and control of payment systems – transparency

18. We will make a general direction requiring Interbank Operators (except NICC) to publish minutes of their governing body, including votes, from 30 April 2015.
19. We expect this increased transparency about decision-making will enable service-users to assess whether Interbank Operators are appropriately considering their interests when taking decisions. It will also make Interbank Operators' directors more accountable for their decisions. This should help service-users understand the reasons why decisions which affect them have been taken. This should increase confidence in the governance and decision making processes of the Interbank Operators.
20. We are not requiring Card Operators to comply with our transparency direction at this time. Instead we will consider further the issue of transparency of decision-making, and the appropriateness of regulatory intervention, during our work on card systems.

Ownership, governance and control of payment systems – reserved matters

21. We need to ensure that Interbank Operators have the ability to work with us and to comply with our regulatory processes. This means they should not be subject to unnecessary restrictions which could obstruct them, and us, in our work to promote our objectives.
22. The "reserved matters" (such as approval of annual plans and infrastructure contracts provisions) in the agreements between the Payments Council and Interbank Operators have been terminated, as we anticipated in the Consultation. We do not need to intervene further in this area.

Direct Access to payment systems - Access Rule

23. We have decided to implement an Access Rule as part of our general direction on Direct Access.
24. The Access Rule will apply to those pan-GB Operators who are not already subject to access obligations, i.e. Bacs, C&C, CHAPS and FPS. It will require these Operators to have "objective, risk-based and publicly-disclosed Access Requirements, which permit fair and open access".
25. We will require these Operators to comply with our Access Rule from 30 June 2015.
26. The Access Rule will help ensure that Access Requirements do not unnecessarily or disproportionately restrict direct participation in payment systems and do not act as a barrier to entry and expansion for new and emerging PSPs.

Direct Access to payment systems – Reporting Rule

27. We have decided to apply a Reporting Rule as part of our general direction on Direct Access.
28. Our Reporting Rule will require Operators to:
 - keep under review their Access Requirements and provide us with an annual compliance report, the first report being due by 31 July 2015
 - publish their Access Requirements from 30 June 2015.
29. The Reporting Rule will support the application of the access obligations (either our Access Rule or Regulation 97 of the Payment Services Regulation 2009 (PSRs 2009)) on Operators by requiring the publication of information to allow sufficient transparency for PSPs to evaluate effectively the most

suitable route for them to access payment systems. The required compliance report covers the access obligation to which each Operator is subject. It will ensure that Operators keep Access Requirements under review so that they do not act as a barrier to entry and expansion for new and emerging PSPs.

Indirect Access to payment systems – information direction

30. We will require the four primary Sponsor Banks (Barclays, HSBC, Lloyds and RBS) to publish clear and up-to-date access-related information. The publication of this information should allow Indirect PSPs to assess and compare the different offers by these Sponsor Banks. We expect this to increase competitive pressures on these Sponsor Banks and the ability of Indirect PSPs to negotiate with them.
31. In response to requests made by respondents to the Consultation, we have clarified the nature of the information that we are requiring these Sponsor Banks to publish under this direction. We have also changed the publication date from 1 April 2015 to 30 June 2015. This allows these Sponsor Banks sufficient time (after publication of this Statement) to implement our direction.

Indirect Access to payment systems – Information Hub

32. We welcome industry efforts to develop an Information Hub. An effective Information Hub may improve the ability of Indirect PSPs to obtain information about access to payment systems. It is our expectation that the ability of PSPs to compare information at a central point should allow them to better compare Direct and Indirect Access offerings.
33. We do not intend to take a formal role in the development of the Information Hub, which we consider is best left to industry to develop.

Indirect Access to payment systems – Sponsor Bank Code of Conduct

34. We will work with industry to develop a Code of Conduct (the “Code”) to be approved by us. The purpose of the Code is to address concerns about the supply of Indirect Access provided by Sponsor Banks, such as the risk that Sponsor Banks discontinue the supply of Indirect Access, concerns around the sharing of commercially sensitive information with Sponsor Banks who are also downstream competitors, and some aspects of the contractual arrangements that govern the supply of Indirect Access.
35. We expect that in developing the Code, Sponsor Banks will engage effectively with Indirect PSPs. We also expect Sponsor Banks to commit publicly to meeting the requirements of the Code.
36. We expect the Code to be ready to be approved by us and in place by 30 June 2015 and Sponsor Banks to be complying with the Code from 30 September 2015.

Indirect Access to payment systems – Technical Access

37. We support the development of Technical Access solutions. The industry is best placed to design and develop Technical Access solutions that meet the needs of PSPs and end-users. We anticipate that Technical Access solutions will be developed as commercial propositions funded by those that use the service.
38. Industry is already making progress and we will continue to engage with participants, with a keen interest in these developments. We see no reason for us to take a more prescriptive approach to the development of Technical Access solutions at this time. We note that the development of Technical Access solutions may require Operators to be responsive to requests for amendments to their rules, where appropriate and in the interests of service-users.

Interchange fees

39. We have considered responses to the Consultation about interchange fees and, more generally, about card payment systems. We will begin a programme of work to examine issues about how

the proposed EU Interchange Fee Regulation (IFR) may apply and the wider issues raised about card systems, including transparency, governance, access and fees.

40. In particular, in light of our decisions not to impose directions about representation of service-users' interests and publication of minutes on Card Operators at this time, this programme of work will look further at the case for regulatory intervention around the effectiveness of service-user engagement by Card Operators, and the evidence on transparency of decision-making.
41. Considering these issues in the round will ensure that our decisions in our anticipated capacity as the competent authority for monitoring and enforcing the IFR are well informed and do not have unintended consequences. In line with our objectives, in undertaking this programme of work we will consider the extent to which current arrangements promote competition, innovation and the interests of service-users. We will work closely with the Financial Conduct Authority (FCA) and other authorities such as the Competition and Markets Authority (CMA) and European Commission to minimise duplication of work, effort or burden on the industry.

Regulatory tools

42. We have made changes to our regulatory tools from the Consultation in some areas. We do not, in particular, intend to adopt the Principles as we proposed them. Instead, we are making a general direction covering how participants are to deal with us, and what they must disclose to us. We have also explained our regulatory approach in more detail, and changed and explained some areas in our Powers and Procedures Guidance. We have clarified our Administrative Priority Framework which we will use to prioritise our work.
43. The revised versions of our regulatory tools, together with our directions, can be found in the Annexes to this Statement.

Market Reviews and work programme

44. Alongside this Statement we are launching two market reviews into the ownership and competitiveness of infrastructure provision, and the supply of Indirect Access.

Review into the ownership and competitiveness of infrastructure provision

45. Payment systems infrastructure is crucial to payment systems, the performance of the banking sector and the success of the wider UK economy.
46. A number of concerns about ownership and control of payment systems infrastructure emerged from our Call for Inputs and our subsequent gathering of evidence for the Consultation. These prompted our decision to launch this review.
47. A similar set of PSPs together own or control both Interbank Operators and certain Infrastructure Providers, such as VocaLink. While to date, these arrangements have resulted in the development of relatively robust and resilient payment systems and may provide incentives to keep infrastructure costs down, they may also:
- limit competitive pressure which, in turn, may hamper innovation
 - allow some PSPs to influence infrastructure development in a way that is in their own interests rather than those of all service-users.
48. The review will gather further detailed evidence in order to determine whether current ownership arrangements and relationships lead to a state of competition that delivers good outcomes for service-users or whether changes may be warranted.
49. Our review into the ownership and competitiveness of infrastructure provision will examine infrastructure related to clearing functions. The review will cover Bacs, FPS and LINK.

50. Alongside this Statement we have published our draft Terms of Reference for the review. It provides further details about the issues we anticipate looking into.

Review into the supply of Indirect Access

51. Access to payment systems is a driver of competition and innovation in the payments sector and in banking services more widely. For many PSPs, Direct Access to payment systems is not a viable option. These PSPs depend entirely on Indirect Access to provide payment services to people and businesses.
52. A number of concerns emerged from our Call for Inputs and our subsequent gathering of evidence for the Consultation. These prompted our decision to launch this review.
53. The review will consider the economic issues around Indirect Access to payment systems, the limited choice PSPs may have in securing Indirect Access and whether current arrangements deliver a good outcome for service-users, such as the fees, service levels and choice offered. The scope of this review will cover the interbank systems – Bacs, C&C, CHAPS, FPS, and LINK.
54. We will look at these questions by carrying out an economic assessment from a competition perspective, exploring potential barriers to entry into the provision of Indirect Access services and consider the outcomes experienced by service-users (including Indirect PSPs).
55. Alongside this Statement we have published our draft Terms of Reference for the review. It provides further details about the issues we anticipate looking into.

Our policy work programme

56. As well as these two market reviews, we have mapped out a work programme that prioritises key policy issues we consider need to be addressed in the coming year. These include our work on card payment systems, and our work to establish and contribute to the new Forum.
57. Our work with the Forum will also include looking at current developments and innovations in the sector such as Account Number Portability (ANP), the Current Account Switch Service (CASS) and the impact of the industry's world class payments project, as well as the impact of retail bank ring-fencing. Other important projects which are described in our policy work programme published alongside this Statement include:
- implementing our directions and policies on access, including monitoring their effectiveness
 - implementing our directions and policies on governance, including monitoring their effectiveness
 - examining in more detail the concerns raised with us about ATM interchange fees, to identify whether we should consider any regulatory action
 - monitoring the implementation of the industry cheque imaging project to ensure that the outcomes are aligned with our objectives.
58. We recognise that this is an ambitious programme of work and we will be engaging with our stakeholders on the impact it will have on them and how best we can work together to deliver it.
59. We also recognise that our stakeholders may bring new issues, complaints or disputes to us during the year and we will need to consider these carefully in order to make best use of our limited resource. We will consider each issue on its merits, using our Administrative Priority Framework and taking into account whether the issue is already being considered, or could be best considered, as part of our policy work programme. We will work with other relevant authorities as necessary, most notably the FCA, the Bank of England and the CMA.

Thank you

60. In response to the Consultation, we received 88 responses from a wide range of stakeholders. We were pleased that most supported our proposed approach and specific proposals, and are grateful for constructive challenges and comments that have helped us refine and finalise our policies and decisions.

Introduction

61. Payment systems are critical because they underpin virtually every financial transaction we make. Yet concerns about payment systems have been such that Government set up the new Payment Systems Regulator (PSR) to address them. The PSR was incorporated in April 2014 and will become fully operational on 1 April 2015.
62. We have been given a clear remit to promote competition and innovation in payment systems and to ensure that the interests of people and businesses that use payment systems are promoted. That means we focus on the core systems that underpin payment services to customers, although these systems are part of the much larger payments sector.

Payment systems

63. Payment systems are made up of a number of important elements, all of which are of interest to us and are described briefly in this section.
64. Except where we specifically define terms in this document, we use the same definitions in this Statement that we used in the Consultation. Those are set out in the glossary published as part of the Consultation.
65. **Payment System Operators** are the organisations that make and own the rules governing how money is transferred. Interbank Operators are ‘asset light’ but own the key intellectual property that is the ‘rule book’ for that system. The Treasury has designated eight payment systems to be regulated by the PSR – six interbank systems and two card payment systems.
66. **Interbank payment systems** were developed to enable people and businesses to make payments across any PSP in the UK. Each payment system supports a different kind of payment service. The six interbank payment systems as designated by the Treasury are as follows.
- **Bacs** – the interbank system that processes payments through two principal electronic payment systems: Direct Debit, which is used for example by individuals to pay bills, and Bacs Direct Credit, used among others by businesses and government to pay salaries and pensions.
 - **C&C** (Cheque & Credit) - the interbank payment system in England, Scotland and Wales that processes cheques and other paper instruments.
 - **CHAPS** - the UK’s real-time, high-value sterling interbank payment system, where payments are settled over the Bank of England’s Real Time Gross Settlement (RTGS) system. CHAPS processes both wholesale (e.g. short term lending between banks) and retail payments (e.g. house purchases).
 - **Faster Payments Scheme** (FPS) - the interbank payment system that provides near real-time payments as well as Standing Orders. Almost all internet and telephone banking payments in the UK are now processed via FPS. It is also used by PSPs to process other services such as mobile payments.
 - **LINK** - the interbank payment system that enables end-users to take cash out of their bank accounts using the LINK network of ATMs in the UK.
 - **Northern Ireland Cheque Clearing** (NICC) - the interbank payment system in Northern Ireland that processes cheques and other paper instruments.

67. **Card payment systems** enable individuals and organisations to make payments by card. They provide a network which joins up cardholders who use the cards as a way to make payments; issuers which make payment cards available to cardholders, merchants which are the retailers or service providers that accept card payments from cardholders and acquirers that process card payments on behalf of merchants. The card systems designated by the Treasury are:
- **MasterCard** operated by MasterCard Inc
 - **Visa Europe** (Visa) operated jointly by Visa Europe and Visa UK.
68. Payment systems are made up of Operators and Infrastructure Providers as well as PSPs that participate in the system. Direct PSPs connect to the central infrastructure of the system and may play a role in the governance of the system and its key decisions, for example changes to the rules, decisions about who can access the system and on what terms and conditions. This way of accessing the system is called **Direct Access**. In general Direct PSPs are the larger banks while smaller banks and non-banks primarily use Indirect Access.
69. Indirect PSPs do not have a relationship with the Operator and need a Direct PSP 'sponsor' which provides services to them. This is known as **Indirect Access**. There are a large number of participants who access and use payment systems but only the small number of Direct PSPs have influence over the strategy and decision making of the system.
70. **Settlement** is a mechanism for participants in payment systems either adding up the transactions that have been carried out between them over a period of time and paying the residual amount to the appropriate party, or settling each transaction individually. Settlement is either real time gross settlement (RTGS) as used by CHAPS, or deferred net settlement - used by most others - where payment information is aggregated and net obligations are calculated at the end of each clearing cycle. Some systems require their direct members to hold settlement accounts at the Bank of England. This can be an important consideration when PSPs are trying to decide how best to access payment systems.
71. The IT and communications infrastructure (hardware, software and services) that is used by payment systems to transfer messages about money comprises **Central Infrastructure** that connects to the infrastructure within PSPs. Some Operators procure their own Central Infrastructure with three of them currently using VocaLink as their Central Infrastructure Provider.
72. **PSPs** (Payment Service Providers) are the entities that use payment systems to offer services to customers (people, businesses or organisations). There are a number of different types of PSP with different status of Direct or Indirect Access to payment systems. Banks that offer payment services are one type of PSP – some of the larger banks are Direct PSPs while smaller banks tend to be Indirect PSPs. Non-bank PSPs are usually Indirect PSPs and include Payment Institutions (PIs) and Electronic Money Institutions (EMIs) for example. Many non-bank PSPs use card systems as well as or instead of interbank systems.
73. From 1 April 2015, we will regulate each of the systems set out above.

The UK payments landscape

74. The UK payment systems industry has developed over time through commercial agreements between participants in the market. Of other industries subject to sector regulation, this is most similar to communications markets, such as mobile communications and the internet, which have also developed through commercial agreements between market participants. This contrasts with the traditional regulated utility sectors which are characterised by monopoly providers, often originally established by the State.
75. The result in the payment systems industry is a **complex set of institutions** with a high degree of **cross ownership**, specifically for interbank systems. For example control of the interbank systems largely sits with Direct PSPs and most of the UK's largest banks are Direct PSPs of most of the systems. Many of these same banks jointly own a key Central Infrastructure Provider, VocaLink.

76. The sector also has a need for bespoke **governance arrangements** particularly around those areas where the participants need to work together to deliver new infrastructure or new systems, for example the introduction of Faster Payments in 2008. These characteristics have led to recurring concerns over the years and a number of attempts to reform the sector. For example, the industry set up the Payments Council in 2007 to take a strategic approach to the development of payment systems.
77. Over the past 15 years there has been considerable scrutiny of UK payment systems, from the Cruikshank review in 2000 to the OFT Payments Task Force, the Cave review of the Payment Council in 2012 and more recently the Treasury consultation in 2013 and the decision to set up the PSR.

Key concerns

78. There has been a strong theme running through these reviews and a consistent set of concerns about payment systems, centred on:
- **governance and decision making**, including whether users of payment systems have sufficient input into decision making, a concern that there is a lack of transparency in governance, and concerns that cross ownership could impact on decision making
 - pace of **innovation in payment systems** which has been perceived to be slow, particularly in the areas where the industry needed to work together to agree new investments, e.g. to enable mobile payments, as well as concerns that the wider stakeholder community, beyond the Direct PSPs, have not had sufficient ability or opportunity to influence these types of developments
 - competitiveness and the ability of new participants to **access** payment systems in order to be able to provide new payment services to their customers.
79. As highlighted in many of the past reviews, these concerns about payment systems chiefly stem from the underlying strong economic network effects present in payment systems. This is where the value of a given payment system to service-users strongly depends on the system's ubiquity and interconnectivity with other users. Such network effects have the effect of conferring significant scale advantages on payment systems, with associated barriers to entry, likely market power and potential adverse impacts on competition.
80. It is worth noting that while these concerns remain there is much that is positive in the UK payment systems, particularly the dynamic and innovative activity in the provision of payment services to customers. This includes: the development of digital wallets by mobile operators and others (often in agreement with card networks); the growth of contactless devices and payments across the UK; new developments such as Paym; and firms such as PayPal providing merchants with the ability to incorporate payments into new in-store experiences to improve merchant-consumer interaction.
81. Nevertheless the concerns about governance and decision making, innovation, and competitiveness, have persisted and resulted in the establishment of the PSR with its remit to promote competition, innovation and the interests of service-users.

Our Consultation

82. Before the PSR was incorporated in April 2014, the FCA issued a Call for Inputs to clarify stakeholder concerns. In the light of responses to the Call for Inputs, we issued a Consultation Paper (PSR CP14/1) in November 2014 which set out our concerns in more detail and our specific policy proposals to address those concerns as well as the regulatory tools we will rely on in carrying out our functions. The Consultation closed on Monday 12 January 2015.
83. We received 88 responses from a range of organisations. We have also had views of stakeholders through a series of engagement forums, involving among others, consumer representatives, payment systems users, Operators, Government, the Bank of England, other regulatory bodies,

PSPs and other providers of ancillary services. We are publishing the non-confidential responses to the Consultation separately.

84. We undertook a detailed review and analysis of all responses. We considered all the comments and suggestions about our proposals. Most respondents supported our proposed approach and specific proposals (including Interbank Operators, established and challenger banks, as well as consumer organisations). Notable exceptions to this support included Card Operators who argue that to apply a number of our proposals to card payment systems would not be proportionate.
85. The remainder of this document sets out in more detail the comments from our stakeholders, how we have responded to those comments and our final decisions. We are grateful to everyone who took the opportunity to respond to the Consultation and the many stakeholders who gave their time and expertise to engage with us through our various events. Their input has ensured that we have been able to deliver a robust and proportionate set of decisions which forms the initial basis on which we will take forward the regulation of payment systems.

PART A

Our policy

1

Our regulatory approach

Our regulatory approach

As a new regulator, we will continue to develop our regulatory approach. We expect, however, our approach to have the following characteristics.

- We will aim to develop and protect competitive markets where preferable, and contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected. We will prioritise actions that will have a widespread positive impact across the market and will take the approach of incentivising good outcomes rather than controlling them.
- We will regulate only where we have clear evidence that we need to do so and where we expect the benefits of our regulation will outweigh any costs or unintended consequences. And we will be proportionate in how we regulate – choosing to use broad standards or precise rules depending on the context.
- We will take independent decisions for which we are ultimately accountable to Parliament. Those decisions will be deliberate, transparent and predictable.
- We will keep our regulation under review, monitoring the extent to which it is delivering the results we expect and remains fit for purpose on an ongoing basis. And we will make adjustments to our approach if necessary.

Our proposal for our regulatory approach

- 1.1 We said in the Consultation that, in delivering our regulatory framework, we would apply our powers in a proportionate and appropriate way. We said we would be deliberate, transparent and predictable and that we would focus on achieving our objectives, on our impact, and on monitoring results.
- 1.2 We explained that our aim was to develop and protect competitive markets and that we saw our role as contributing to the creation of the conditions in which innovation thrives. We defined service-users as including both PSPs and customers of PSPs, including government departments, businesses (of all sizes), charities and individual consumers.
- 1.3 We said we would be mindful of the five high-level 'better regulation' principles, which are also reflected in our own regulatory principles under section 53 of the Financial Services (Banking Reform) Act 2013 (FSBRA). These principles require regulatory activities to be carried out in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed.

Responses to the Consultation

- 1.4 Most respondents were broadly supportive of our proposed regulatory approach. A number of key points were raised, which we summarise below.

Responses on implications of being an economic regulator

- 1.5 Some respondents commented on the implications for our regulatory approach of the PSR being an economic regulator. Points made by respondents included that an economic regulator should:
- avoid stepping into the “conduct regulation” space
 - focus on underlying market conditions, or identifying actual market failures, in contrast to a “conduct regulator” which is concerned about the activities of individual firms
 - recognise that competition generally produces better outcomes for service-users than regulatory directions
 - base all regulatory interventions on robust evidence of a situation that needs to be addressed, and ensure regulation is proportionate to the expected benefits
 - avoid broad principles (as opposed to rules setting out specific requirements) which are more in keeping with a conduct regulator and risk undermining the regulatory certainty and predictability vital for investment
 - ensure it remains fully independent and impartial, both from political influence and other regulators.
- 1.6 A few respondents also noted the need to recognise the potential for unintended consequences.
- 1.7 A few respondents emphasised the importance of the PSR being transparent in how it operates.

Our position

- 1.8 The Government’s March 2013 consultation ‘Opening up UK payments’ proposed *“to bring payment systems under formal economic regulation, and establish a new competition-focused, utility-style Regulator for retail payment systems.”* In the response to the Consultation, the Treasury said *“While the new regulatory regime for payments will be established under the FCA, the Payment Systems Regulator will adopt a utility-style approach, distinctive from the FCA’s existing remit.”*
- 1.9 We are one of a number of sectoral economic regulators in the UK, but we are regulating a new sector, with no direct international equivalents. While the PSR is an economic regulator, unlike traditional utility regulators we do not oversee former state monopolies. Economic regulators’ approaches also vary between sectors, reflecting different circumstances and duties. Therefore, while drawing from relevant experience of other economic regulators, we need to develop a regulatory approach appropriate for our sector and duties.
- 1.10 The PSR and FCA have different sets of statutory objectives, functions and sectoral responsibilities. For example, importantly, the FCA authorises and supervises the firms it regulates, which drives some of the ways the FCA operates - whereas the PSR does not have an authorisation or supervisory role. Consequently the PSR’s and FCA’s regulatory approaches will have differences. However, both the PSR and FCA have competition objectives and concurrent competition powers and, like the PSR, the FCA may focus on the economic analysis of underlying market conditions as well as firms’ conduct. Both the FCA and PSR have responsibilities for the interests of those who use payment systems and services so we will also share some regulatory approaches with the FCA.
- 1.11 Both economic and other regulators make use of a mix of precise rules and broader, general standards or principles. The appropriateness of ‘rules’ vs ‘standards’ depends on context. A number of factors may be relevant in determining which is more appropriate in a given circumstance, including: the costs of developing a precise rule *ex ante* compared to the costs of enforcing a general standard *ex post*; the information available and ability to craft precise rules; the implications of the choice of approach for regulatory predictability; whether having a general

standard would have benefits in encouraging innovation or incentivising behaviours that benefit service-users; and the risk aversion of those subject to regulation.

- 1.12 As a new economic regulator, we will continue to develop our regulatory approach as we gain experience. We expect, however, that our regulatory approach will have the following characteristics.
- We aim to develop and protect competitive markets, where preferable, and contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected. We will prioritise actions that will have a widespread positive impact across the market and will take the approach of incentivising good outcomes rather than controlling them.
 - We will regulate only where we have clear evidence that we need to do so, and where we expect the benefits of our regulation will outweigh any costs or risks of unintended consequences. And we will be proportionate in how we regulate - choosing to use broad standards or precise rules depending on the context.
 - We will take independent decisions for which we are ultimately accountable to Parliament. Those decisions will be deliberate, transparent and predictable.
 - We will keep our regulation under review, monitoring the extent to which it is delivering the results we expect and remains fit for purpose on an ongoing basis. And we will make adjustments to our approach if necessary.

Responses on consumer and end-user interests

- 1.13 Two consumer organisations emphasised the need for the PSR to focus on the interests of consumers of payment services provided by PSPs. In particular, they said that the PSR needed to ensure that its regulatory approach adequately ensured consumers', including vulnerable consumers', voice was proactively represented and their interests understood and that we needed to consider how we would measure success in this area.
- 1.14 Another respondent questioned whether our approach of regulating in support of certain financial institutions, e.g. through enabling PSPs' access to payment systems, benefitted consumers.

Our position

- 1.15 Our ultimate purpose in regulating to promote competition and innovation, e.g. through enabling access, is to benefit consumers and other end-users of payment services.
- 1.16 One of the means by which we aim to promote the interests of people and businesses that use payment services, is by improving the representation of service-users' interests in the governance of the payment systems on which those services depend. Direct representation of the views of consumers and other end-users is a critical part of this. We also expect that better representation of the views of the range of PSPs, striving to compete for end-users' custom, will ultimately promote consumers' interests.
- 1.17 One key strand of our approach is our direction requiring interbank payment system Operators to ensure service-users' interests are appropriately represented in decision-making. Another is the new Payments Strategy Forum. We expect the Forum:
- to be clearly focused on identifying the outcomes that ultimately benefit consumers and other end-users, which the industry needs to work towards achieving
 - to include, amongst others, members drawn from consumer representative bodies and other end-user stakeholder groups

- to undertake research on service-users', including consumers' and end-users', needs, to inform strategic priorities for the industry.

- 1.18 We have also established the PSR Panel, which includes members drawn from consumer representatives. The purpose of the Panel is to offer us advice and early input on the extent to which our general policies and practices are consistent with our general duties, and how we are achieving our objectives.
- 1.19 We will publish Annual Reports in which we set out what we have done to meet our aims and advance our objectives, the results, and the measures of our success in advancing our objectives. The Annual Report will also highlight our key achievements for the year. Our first Annual Report for 2014/15 will be published in the coming months.

Responses on burden of regulation

- 1.20 Some respondents noted that the cumulative costs of regulation on participants should not exceed the benefits, with one warning that the costs should not be so high that they discouraged market entry or encouraged exit. One of these respondents noted that smaller participants often faced proportionately higher costs in adapting to regulatory change. Another of these respondents went on to say: *"The proposed regulatory approach appears, at this stage, to strike the right balance between driving forward effective change where it is most needed and maintaining a light touch in other areas where it is still unclear whether there are benefits to regulatory action."*
- 1.21 A few Operators argued that regulation should treat Operators in a comparable or "equal" way and should not result in competitors gaining an unfair competitive advantage.

Our position

- 1.22 As part of promoting our statutory competition objective, we have taken, and will continue to take, account of the nature of competition between payment systems and between the PSPs that use payment systems. This does not mean that we need to regulate each Operator or each PSP in exactly the same way, indeed our statutory regulatory principles require us to exercise our functions in ways which recognise differences in the nature and objectives of the participants we regulate. There are differences in the structures and characteristics of different systems, and the evidence for imposing regulation is different between payment systems and PSPs.
- 1.23 More generally, we must have regard to our statutory regulatory principle that any burden or restriction we impose should be proportionate to the benefits expected to result. We have carefully considered this principle in making each of the policy decisions set out in this statement.

Responses on working with other regulators

- 1.24 Some respondents emphasised the need for the PSR to co-ordinate with other UK and international regulators, particularly where there may be overlaps, to avoid duplication and conflicts.

Our position

- 1.25 We have a statutory duty to ensure co-ordinated exercise of our functions with the Bank of England, Prudential Regulation Authority (PRA) and FCA. We have agreed a Memorandum of Understanding (MoU) with these authorities. We also expect to put an MoU in place with the CMA in due course.
- 1.26 As we said in the Consultation, we will work with other regulators and competition authorities within and outside of the United Kingdom, including the Bank of England, PRA, FCA, CMA and

the Treasury, to ensure each is able to advance its objectives. We will work with other authorities to ensure that activities are consistent and not duplicative. This includes being mindful of the regulatory burden we place on industry, for example when requiring stakeholders to respond to information requests from multiple authorities.

- 1.27 We are mindful of our obligation to have regard to the importance of maintaining the stability of, and confidence in, the UK financial system, and to the importance of payment systems in relation to the performance of the functions of the Bank of England in its capacity as a monetary authority. We will therefore continue to work closely with the relevant authorities in the financial services sector – the Bank of England, the FCA and the PRA.
- 1.28 We will also work with other sectoral regulators and competition authorities, for example through the UK Competition Network, European Competition Network and UK Regulators' Network, to ensure that we share experience and best practice.

Responses on designations

- 1.29 A few respondents made comments about which payment systems should be designated.

Our position

- 1.30 Decisions on designation of payment systems under FSBRA are for the Treasury. On 18 March 2015 the Treasury announced, in its publication "*Designation of payment systems: response to the consultation*", its decision to designate the following eight payment systems at this stage: Bacs, CHAPS, Cheque & Credit, Faster Payments Scheme, LINK, MasterCard, Northern Ireland Cheque Clearing and Visa Europe.

PSR Principles

We do not intend to adopt the principles as we had proposed in the Consultation. Instead, we are making a general direction covering how participants are to deal with us, and what they must disclose to us:

- A participant must deal with the PSR in an open and co-operative way and must disclose to the PSR appropriately anything relating to the participant which could materially adversely impact advancement of the PSR's statutory objectives and duties.

This direction will apply to all participants in regulated payment systems from 30 April 2015. This will help underpin our expectations of participants, including:

- of a 'no surprises' culture, in which participants engage meaningfully and constructively with us
- that participant governing bodies will take ownership of an open and co-operative relationship with the PSR, bringing to our attention in appropriate ways the most important information we need.

We will not implement the other PSR Principles as proposed in the Consultation, but will monitor the extent to which our regulatory framework is realising the expected behaviours and remains fit for purpose on an ongoing basis.

Our proposal for PSR Principles

- 1.31 In the Consultation, we set out our proposal to issue a direction on some general, legally-binding behavioural standards that we expected participants in regulated payment systems to comply with (our three proposed 'PSR Principles'). Two of the proposed Principles would apply to all participants, while the third would apply only to Operators and Central Infrastructure Providers.
- 1.32 The Principles were intended to enable each participant to comply with them by taking its particular circumstances into account. We expected that many participants would already be organising and conducting themselves in ways which were compliant with our proposed Principles.
- 1.33 Our proposed Principles were as follows.
- a Principle 1: Relations with regulators - A participant must deal with its regulators in an open and cooperative way and must disclose to the PSR appropriately anything relating to the participant of which the PSR would reasonably expect notice.
 - b Principle 2: Compliance - A participant must observe proper standards of conduct and must refrain from activity which that participant should reasonably have expected to restrict or prevent another participant from complying with its regulatory obligations in relation to payment systems or services provided by payment systems.
 - c Principle 3: Financial prudence - An Operator or Infrastructure Provider must ensure it has, or has access to, adequate financial resources to ensure that it is able to carry out its functions and activities in relation to the regulated payment system it operates in the case of an Operator, or the regulated payment system or systems whose central infrastructure it provides or controls in the case of an Infrastructure Provider, including resources to:
 - o cover potential general business losses and debts as they fall due
 - o continue operations and services as a going concern if those losses or debts materialise, and
 - o comply with its regulatory obligations in relation to payment systems and services.
- 1.34 We also sought stakeholder feedback on whether we should consider adopting some or all of a list of additional PSR Principles, which were closely aligned to some of the FCA Principles.
- 1.35 The Consultation set out the intended benefits of our proposals and the related anticipated costs for industry.

Responses to the Consultation

- 1.36 Most respondents were generally supportive of the proposed PSR Principles. Some expressed their support mainly in terms of agreement with the behaviours the Principles were intended to promote. Some others were clearer in indicating support for binding regulation of these behaviours. A few expressed their support in terms of a preference for Principles over more prescriptive rules.
- 1.37 Three respondents objected to the Principles, two strongly. Arguments for objecting to the Principles included the following points.
- The introduction of general behavioural Principles was inconsistent with economic regulation and more in line with "conduct regulation".
 - There was insufficient evidence of harm that the Principles may address. The Principles were precautionary and inconsistent with the PSR's duty to act proportionately.

- The Principles were too broad and vague, and lacked sufficient legal certainty to be enforced. They would lead to unpredictable decision-making by the PSR, giving rise to significant compliance costs for both the industry and the PSR.
- The Principles duplicated existing regulation, including the PSR's proposed directions and similar prudential and FCA Principles, and were therefore unnecessary. This argument was also echoed by a few other respondents.

- 1.38 One of these respondents argued that the PSR did not have the power under statute to direct compliance with general principles.
- 1.39 Some respondents said they needed more information about the PSR's expectations, and others about how we would ensure compliance with one or more of the Principles. A few respondents highlighted the risk of duplication between the Principles and other regulatory regimes, calling for consistency and clear demarcation.
- 1.40 While most respondents commented generally on the proposed Principles, a few respondents also made specific observations about individual Principles, as set out below.

Principle 1 - relations with regulators

- 1.41 One of the respondents that objected to the Principles argued that Principle 1 risked leading to 'over notification' by Operators, wasting the resources of both Operators and the PSR. They said that the PSR ought to develop more specific disclosure rules. Another respondent said that Principle 1 had the potential to be unduly onerous.
- 1.42 A few respondents expressed concern that Principle 1, and the PSR's expectation of a 'no surprises culture', should not result in participants having to disclose commercially sensitive information to the PSR, including for example information about new products ahead of launch.
- 1.43 One respondent said there could be confusion about what needed to be disclosed to the FCA as a "conduct regulator" as opposed to what needed to be disclosed to the PSR as an economic regulator. Another respondent raised concerns about the application of Principle 1 to relations with other regulators, which may not themselves impose the same requirements, and proposed that the reference to "its regulators" be replaced with "the Payment Systems Regulator".
- 1.44 A few respondents requested guidance on the information that they should disclose.

Principle 2 - compliance

- 1.45 One of the respondents that objected to the Principles said that the PSR needed to identify the concerns Principle 2 was designed to address, otherwise that Principle would be 'unnecessary and disproportionate'. They said the PSR should use targeted measures to address any identified concerns.
- 1.46 Another expressed concern that Principle 2 would be overly burdensome if it made Sponsor Banks responsible for ensuring compliance by those PSPs to whom they were providing Indirect Access.

Principle 3 - financial prudence

- 1.47 One respondent noted that Principle 3 appeared to be akin to a minimum capital requirement. A few respondents highlighted duplication between Principle 3 and obligations under CPSS-IOSCO. One respondent queried how compliance with Principle 3 would be measured.
- 1.48 Another respondent argued that, depending on the financial resources required under Principle 3, *"there is the potential that the number of suppliers/operators will reduce due to the onerous financial restrictions imposed"*.

Additional Principles

- 1.49 While the majority of respondents on this issue expressed support for additional Principles, many respondents either rejected additional Principles as unnecessary and duplicative of existing obligations, or expressed doubts that the PSR needed to implement additional Principles given the FCA's existing Principles.

Our position

- 1.50 We welcome the widespread support for the behaviours that the three proposed PSR Principles aim to promote.
- 1.51 We are clear that we have the power under statute to issue a general direction requiring compliance with general behavioural standards of this kind.
- 1.52 We note some respondents' clear support for binding regulation in relation to these behaviours. At the same time, we agree with those respondents who emphasised that such regulation needs to be proportionate to our needs and to be effective, needs to take into account potential unintended consequences. We have therefore considered carefully each of the three Principles in light of the responses received.

Principle 1- relations with regulators

- 1.53 Principle 1 was intended to reinforce the expectation we set out in the Consultation of a 'no surprises' culture, in which industry participants engaged meaningfully with us.
- 1.54 For the PSR to be effective and proportionate, it needs the governing bodies of participants to take ownership of building an open and co-operative relationship with us, informing us in a timely way of issues that may significantly affect the advancement of our objectives, and that may require us to take action.
- 1.55 The PSR needs the information it receives, including in response to information requests, to be truthful, accurate, complete and not misleading.
- 1.56 Regulation in this area would give us additional options of taking enforcement action, for example if untruthful or misleading information was provided to us. Appropriate regulation could therefore contribute to underpinning and supporting the industry behaviours we wish to see.
- 1.57 At the same time, we recognise a risk that regulation in this area could inadvertently encourage a tick-box 'compliance culture' rather than board-level ownership of the relationship with the regulator. This might include over-notification, non-targeted duplication of disclosure to us of information disclosed to the FCA or Bank for other purposes and which is not relevant to us, and more generally, unnecessary burdens.
- 1.58 We therefore propose to implement a general direction (Direction 1) on relations with the PSR, based on the proposed Principle 1, but with some revisions and refocusing of the wording as follows:

*"A participant must deal with **the PSR** in an open and co-operative way and must disclose to the PSR appropriately anything relating to the participant **which could materially adversely impact advancement of the PSR's statutory objectives and duties.**"*

- 1.59 This clarifies that it is relations *with the PSR* that are the subject of this direction, making it clear that we are not overseeing how participants interact with other regulators. The direction also better focuses on the information needed by the PSR to identify *risks to the advancement of our statutory objectives and duties* and thus areas where regulatory action may be needed. This reduces the risk of unnecessary burdens and duplication, and focuses the scope of the direction on

PSR-specific matters. We consider this direction is appropriate and proportionate to the expected benefits.

1.60 This direction will apply to all participants in regulated payment systems from 30 April 2015. The PSR's statutory objectives and duties referenced in Direction 1 include those set out in FSBA (sections 49-52) as well as under other legislation that we are the competent authority for.

1.61 Alongside this direction we are clear that we:

- expect a 'no surprises' culture, and participants to engage meaningfully and constructively with us
- expect participant governing bodies to take ownership of an open and co-operative relationship with the PSR, bringing to our attention in appropriate ways the most important information we need
- do not expect participants to notify us of the minutiae of running their businesses - we rely on them to exercise sound judgement in determining the developments or changes that could materially adversely impact advancement of our statutory objectives, and to tell us why they are sending us particular information.

Principle 2 – compliance

1.62 Given the significant links and relationships that exist both horizontally and vertically within the payments industry, we recognise that there is the potential for the conduct of one participant to interfere in the affairs of another participant. We expect industry participants to behave appropriately, including not preventing another participant complying with its regulatory obligations, and to be responsible for their own behaviour.

1.63 However, we also recognise that, irrespective of whether a binding Principle 2 is adopted or not:

- participants must comply with our directions
- we have the powers to issue a specific direction, if it was proportionate and necessary to do so, for example to require a participant to take specific action or refrain from taking specific action.

1.64 On balance, after considering all the responses received, we have decided that it is not necessary at this time to implement Principle 2 as a legally-binding obligation, in particular given the risk that to do so may have unintended consequences. In particular, it might reduce the accountability of Operator governing bodies for ensuring compliance with their regulatory obligations, which is something we are keen to encourage.

1.65 We have therefore decided not to implement Principle 2.

Principle 3 – financial prudence

1.66 Legislation requires us to have regard to the importance of maintaining the stability of, and confidence in, the UK financial system, and we recognise the importance of Operators and Central Infrastructure Providers in this regard. After considering responses, we acknowledge that stability of the financial system, including of individual payment systems, is a more direct focus of other regulators, and we accept that Principle 3 may not be a very good fit with our remit as an economic regulator.

1.67 In addition, we note that CPSS-IOSCO Principles contain similar recommendations, to which Bacs, CHAPS and FPS must already have regard, and which C&C has told us they voluntarily take into account as well, while Card Operators are subject to rules about how they manage business and financial risks under the ECB's *'Oversight Framework for Card Payment Schemes'*. We also consider that Direct PSPs and shareholders, in any case, have incentives to ensure the continued financial

viability of Operators and Infrastructure Providers they have interests in. We also recognise the risk that Principle 3 imposes capital or liquidity requirements.

1.68 As a result, we have decided not to implement Principle 3.

Additional Principles

1.69 We note the mixed views on the case for additional principles. Having considered the responses, we do not consider we have sufficient evidence at present of a need to implement any of the additional principles.

1.70 We will monitor the extent to which our regulatory framework is realising our expected behaviours and remains fit for purpose on an ongoing basis.

2 Payments industry strategy and areas for collaboration

We will establish a new process for industry strategy-setting through a Payments Strategy Forum, as proposed in the Consultation. The Forum will include a wide range of industry and service-user stakeholders and will develop and agree strategic priorities for the long-term development of payment systems where the industry needs to work together.

We will control the setup of the new Forum, and will hold the industry to account for the Forum's success. If the strategy-setting process is ineffective, or industry delivery of agreed priorities is too slow, then we will consider intervening.

This new process will be an opportunity for industry and service-users jointly to develop their own strong vision for the future of payments, to drive innovation and enable new and improved services for users. The Forum will operate only where the industry needs to work together and is not intended to replace commercial innovation.

Our proposal on industry strategy development and setting

- 2.1 In the Consultation, we highlighted the need for effective industry-wide strategy development, setting, co-ordination and planning. We set out our view that while industry has collaborated effectively in some respects, it has had difficulty in agreeing strategy and driving forward change. Particular concerns included the capacity of the industry to plan ahead, the level of stakeholder involvement or influence in strategy-setting, and the effectiveness of processes for strategy development. We said these factors may have slowed the pace of innovation in UK payment systems, and this may have impeded the development of new payment services for consumers and other end-users. To address this we proposed a new approach to industry strategy development in areas where industry working together was necessary or desirable.
- 2.2 We set out proposals to drive the process for the development of industry strategy. Our preferred option was to work with industry to design and launch a new Payments Strategy Forum. The Forum would discuss, develop, determine and agree strategic priorities for the long-term development of payment systems in the UK. The Forum would also allow a wide range of industry stakeholders and service-users to participate in the development of industry strategy, facilitating the development of new or improved services provided by payment systems.
- 2.3 To ensure that the Forum had the right drive and focus we said that we would initially provide the secretariat and set some guiding principles for its operation. We would also appoint the independent chair. To assist us in the design of the Forum, we proposed to convene a Working Group consisting of industry stakeholders and service-users.
- 2.4 We identified two alternative approaches to setting payments industry strategy, but favoured the option which involved the PSR establishing the Forum as being the most proportionate and appropriate approach, as well as the one most consistent with our objectives and regulatory principles.

- 2.5 In the Consultation we also noted a number of infrastructure-related themes that had emerged from previous industry reviews and consultations, and asked what other infrastructure-related themes should be considered by the Forum.

Responses to the Consultation

- 2.6 Most respondents supported our proposal for a new approach to industry strategy development and our preferred option of a new Payments Strategy Forum.
- 2.7 One respondent did not support our proposal, arguing that the Forum was not necessary and proportionate in relation to card systems, saying that there was insufficient evidence of failure to collaborate, and of service-users being unable to influence Card Operators' strategy, to justify a new approach. This respondent also suggested that we should have considered other options which may have been more proportionate, for example establishing ad-hoc issue-specific working groups or using our statutory Panel to strengthen participation of a wider range of stakeholders.
- 2.8 The same respondent also suggested that any binding decisions made by the Forum could cut across our innovation and competition objectives, and would amount to the PSR improperly delegating its functions to the Forum.
- 2.9 A few respondents suggested that we should take a more prescriptive approach, expressing a preference for the PSR to set high-level priorities, or strategy, for the industry. They argued that this was needed because of the large number of stakeholders and the potential for decisions to be dominated by large banks. One of these respondents made a distinction between the PSR setting the high-level priorities for the industry, but not setting strategy for the industry.
- 2.10 Many respondents mentioned the challenges of securing effective engagement and agreement across a broad group of stakeholders, with some highlighting the need not to give undue weight in discussions to incumbents. Some respondents, while supporting the option for a Payments Strategy Forum, suggested that we should take a stronger role in steering the Forum.
- 2.11 Some respondents requested further clarity about the details of how the Forum would operate. Many raised issues that they thought should be taken into account in the design of the Forum. Many also made specific suggestions for the Forum's design. Common themes which have implications for the design of the Forum included:
- ensuring the Forum is effectively constituted and operated, with broad, balanced and appropriate representation, while keeping the Forum workable and establishing processes for enabling agreement to be reached
 - the benefits of building on existing collaborative arrangements and past successes, ensuring the Forum complements current industry activity, for example around projects already in progress
 - the need to be mindful of the resource implications and other costs of involvement for participants, particularly smaller institutions
 - the PSR should have a role in evidence gathering to inform the work of the Forum.

Our position

- 2.12 There was broad support for our proposal to establish a new Payments Strategy Forum. Having considered the responses received, we continue to support our assessment that establishing the Forum, as we proposed in the Consultation, is the most appropriate and proportionate way to help ensure more effective and inclusive industry-wide strategy setting. We have therefore decided to proceed with establishing the Forum as proposed in the Consultation.

- 2.13 The purpose of the Forum is to discuss and agree strategic priorities for the development of payment systems. We have not proposed that the Forum's decisions should be binding and we are not delegating any of our duties to the Forum.
- 2.14 We note that one respondent argued the Forum was not necessary and proportionate in relation to card systems, suggesting the alternatives of ad-hoc issue-specific working groups or using our statutory Panel to strengthen stakeholder participation.
- 2.15 Given the significant and growing share of payments that are made using cards, we consider that any payments strategy would benefit from input by card system participants. While there will be no obligation to participate in the Forum, we believe it also represents an opportunity for card system participants to engage in a coherent way with a broad range of stakeholders on issues that will affect them.
- 2.16 We acknowledge the suggestion for ad-hoc issue-specific working groups and we note this approach has been taken by other regulators, for example Ofcom, to discuss discrete issues such as 'switching', non-geographic numbers or wholesale line-rental. Under our proposal, we envisage that similar working groups might be commissioned or established to work on particular issues. However, we also consider that there are important benefits to having an over-arching Forum which meets on an ongoing basis, considers payment systems in the round, and remains in existence for longer than individual projects. The Forum can develop a coherent and holistic view of strategy, particularly in the interdependent and rapidly evolving payments environment, maintain momentum to drive forward payments strategy, and can review and assess the success of individual projects over time.
- 2.17 The role of the PSR Panel is defined in legislation, and is different from, and could not replace, the Forum. It has a more formal, wider role advising the PSR on the full range of policies and practices that the PSR uses to discharge its statutory duties.
- 2.18 We note some respondents' suggestions that the PSR should play a more prescriptive role, either by setting strategy or by steering the Forum.
- 2.19 We do not consider the PSR is well placed to set strategy or priorities for the industry. Industry has the knowledge, experience and resource to develop new solutions and new ways of working, to meet users' needs. We therefore consider that the industry and service-users should retain ownership of and accountability for developing industry strategy and priorities.
- 2.20 The PSR's role is to establish the process for strategy development and setting, through the Forum. The PSR will control the set-up of the Forum, and will hold the industry strongly to account for the Forum's success. We will actively support the independent chair, to ensure that the interests of all service-users are given sufficient prominence and that timely progress is made.
- 2.21 We expect the Forum to produce an initial set of agreed strategic priorities for the industry within a year of its first meeting. We plan to undertake a joint review, with the Forum's independent chair, of the operation of the Forum after a year.
- 2.22 We do not intend that the Forum duplicates arrangements aimed at delivery or implementation. Ownership and accountability for delivery will remain the responsibility of Operators, other participants and collaborative industry bodies - who have the relevant experience, expertise and resources. But progress will be monitored by the Forum and we expect the Forum to publish reports on progress from time to time.
- 2.23 If the strategy development and setting process is ineffective, or if industry delivery of agreed priorities that further our objectives is too slow, then we may take action. If necessary and proportionate, this could include making general or specific directions on industry participants.

Design of the Forum

- 2.24 Many respondents gave feedback and suggestions on the design of the Forum and how it could work.

- 2.25 In the Consultation we set out guiding principles and proposed to develop the detailed design in collaboration with a Working Group of industry stakeholders and service-users. We note respondents' feedback and suggestions and we are using these to inform the Working Group's considerations.
- 2.26 We have selected the members of the Working Group, drawn from a broad range of stakeholder groups following an open invitation. The first meeting of the Working Group was held on 23 February with further meetings planned for March and April. The discussions to date in the Working Group have been without prejudice to the policy decisions set out in this statement.

Areas for collaboration

- 2.27 The following are the areas that were most often highlighted by respondents as requiring a level of industry co-ordination and needing inclusion in the process for developing and setting industry priorities:
- CASS and ANP
 - richer data
 - Payment Services Directive revisions (PSD2) and third party payment services
 - consolidation or interoperability of payment systems
 - data security
 - identity assurance.
- 2.28 Other areas were also mentioned, including the work on world class payments. We note that there is existing activity, by the FCA or by the industry, to consider and develop a number of these areas. It is important that progress in these areas continues appropriately. We, and the Forum once it is established, will need to consider the role of the Forum in relation to these and other areas of activity.

3

Ownership, governance and control of payment systems

Representation of the interests of service-users

Payment systems must work in the interests of those who use them. Governance processes need to give a meaningful opportunity for service-users to influence decision-making which affects them and their needs.

We have decided to make a general direction requiring Interbank Operators (except NICC) to ensure appropriate representation of service-users' interests in the decision-making processes of their governing bodies. We will require Interbank Operators to comply with our direction from 30 September 2015 and provide an annual compliance report, with the first due by 31 October 2015.

We are not, at this stage, requiring Card Operators to comply with the service-user direction. Instead we will consider further the extent to which the interests of service-users are appropriately represented in Card Operators' decision-making and the appropriateness of regulatory intervention during our work on card systems.

Our proposal on the representation of the interests of service-users

- 3.1 In the Consultation, we set out a proposal to require appropriate representation of the interests of service-users in the decision-making processes of regulated payment systems. We made this proposal because concerns had been raised with us by service-users that their views were not appropriately represented or taken into account in the decision-making processes of Interbank or Card Operators.
- 3.2 We proposed to make a general direction requiring both Interbank and Card Operators (except NICC) to put measures in place for the appropriate representation of service-users' interests at board¹ level in their decision-making processes. We proposed that this direction would come into effect from 30 September 2015. We did not consider it appropriate or proportionate at this time to impose a requirement relating to representation of service-users on NICC.
- 3.3 In addition, we proposed to require Operators to submit annual compliance reports, with the first due by 31 October 2015. This would include a self-assessment of how the interests of service-users were represented in the decision-making of Operators' governing bodies, details of engagement with service-users, consideration of views expressed by service-users about the representation of their interests and anticipated engagement with service-users for the year ahead.

¹ Our direction refers to 'governing body' rather than board; this approach is intended to be neutral in terms of the specific corporate form of the Operator and to focus on the body which governs the operation of an individual payment system. It captures the boards of Interbank Operators and the equivalent decision-making body for the unincorporated LINK Scheme i.e. the Network Members Council.

Responses to the Consultation - representation of the interests of service-users

- 3.4 As there were significant differences of views on whether our direction should apply to Card Operators, we have set out the comments relevant to Interbank Operators and to Card Operators separately below.

Application to Interbank Operators

- 3.5 The majority of respondents supported our proposals to improve service-user engagement and ensure appropriate representation of service-users' interests in Operators' decision-making. The majority of respondents, including all but one of the Interbank Operators and most of the major banks, supported the proposed direction being applied to Interbank Operators.
- 3.6 Some respondents suggested that our direction should go further, for example requiring Operators to understand service-user needs in more detail, defining the timescale and criteria for assessing compliance, or requiring the results of any compliance review to be made public. Several submissions commented on the difficulty of engaging with diverse service-user groups and the costs of doing this effectively. One organisation said there was a need to ensure that representative bodies do in fact speak on behalf of service-users.
- 3.7 A few respondents suggested that we had underestimated the difficulties and costs of our proposals, but these concerns were not shared by the Interbank Operators to whom the proposed direction would actually apply.

Application to Card Operators

- 3.8 Some card payment system participants, including Card Operators, strongly disagreed with our proposal to apply the representation of service-users' interests direction to Card Operators. Card Operators argued that the direction was unnecessary because they already take service-user needs into account. One explained that it saw understanding the needs of service-users as "absolutely fundamental" to its business. They also gave examples of mechanisms they already have in place to take account of service-users' views, such as mechanisms to secure continual feedback from end-users including dialogue with individual retailers, retailer groups and consumer groups.
- 3.9 Many other stakeholders, including retailers' trade bodies, merchants and other participants in card payment systems, did not agree that service-user needs and interests are appropriately represented in the decision-making of card payment systems. We also heard from trade bodies representing retailers and acquirers that there was a lack of engagement between themselves, their members and Card Operators. Some stakeholders argued that the Card Operators' existing service-user representation mechanisms and/or links between service-user engagement and Card Operators' boards could be strengthened. However, one issuer did not believe smaller participants were under represented in the decision-making of Card Operators.
- 3.10 Some respondents agreed with the spirit of our proposal (to promote the interests of service-users) but wanted to avoid any risks of unintended consequences, citing in particular the international nature of card payment systems. Two of the organisations who had raised concerns about service-user representation in card payment systems in response to the Call for Inputs did not support the specific proposal that we made in the Consultation.

Our position – representation of the interests of service-users

Application to Interbank Operators

- 3.11 We have decided to proceed with our proposal to make a general direction requiring Interbank Operators to put measures in place for the appropriate representation of service-users' interests in the decision-making processes of their governing bodies (typically their boards), as proposed in the

Consultation. It is clear from the responses to the Consultation that service-users do not consider their interests are being represented appropriately in the decision-making of Interbank Operators.

- 3.12 We understand that Interbank Operators are already actively reviewing their arrangements, which we welcome. We consider that it is for the Interbank Operators, at this stage and as part of those reviews, to determine the best way to implement our direction in light of their own specific circumstances, so it would not be appropriate for us to go further at this stage, as some respondents suggested we should, in specifying exactly how Interbank Operators should comply with our direction.
- 3.13 One clarification respondents requested was whether the service-user direction should apply only to service-users based in the UK or more widely. Our main focus is on people and businesses who use payment systems and the services they provide in the UK. This may include service-users outside the UK if they use the services of regulated payment systems, but most service-users will be in the UK. We expect Operators to take a reasonable approach to determining which service-users are relevant to them for the purposes of the service-user direction given their specific circumstances.

Application to Card Operators

- 3.14 In making their representations, Card Operators appeared to have interpreted our proposals as a requirement to appoint service-user representatives to their boards. There were also concerns about unintended consequences in having service-user representatives on the board of Card Operators. This was not our proposal, which was to ensure *'appropriate representation of the interests of service-users in the operator's governing body's decision-making processes'*. Service-user representation on the board is only one way in which this might be achieved.
- 3.15 Both regulated Card Operators appeared to agree with our view that there is a need for: *"formal arrangements through which service-users are provided with a meaningful opportunity to be consulted at an early stage (i.e. before major decisions are made), to influence the board and the Operator's strategy and to give feedback on the quality of the services and scope for improvement"*. One of the arguments that both regulated Card Operators made is that they already have appropriate arrangements in place to do this.
- 3.16 Concerns about representation of service-users in the decisions of Card Operators were less widespread than for interbank systems. But some participants in card payment systems expressed strong opinions about the need for greater representation of service-user interests in card payment systems, particularly among merchants and merchant acquirers.
- 3.17 As we explain in Chapter 6, we have concluded that it is best to examine interchange fees together with a number of other aspects of card payment systems including the effectiveness of service-user representation in the decision-making of Card Operators. Equally, in the light of matters raised by respondents and the (often opposing) strong views expressed, we consider that in this case, we need to consider the position further. For these reasons we do not intend to apply our direction on the representation of service-users' interests to Card Operators at this time.

Conflicts of interest

We will make a general direction requiring Interbank Operators (except NICC) to ensure that any individual acting as a director of an Operator must not simultaneously act as a director of a Central Infrastructure Provider to that payment system.

This direction addresses potential conflicts of interest which could stand in the way of new competing and innovative Infrastructure Providers having a fair opportunity to bid for and win contracts.

We will require Interbank Operators to comply with our direction from 30 April 2015.

Our proposal on conflicts of interest

- 3.18 In the Consultation, we set out our view that directors appointed to Interbank Operators' boards may face conflicts of interest. We said that it was possible that these directors may have the ability to make decisions to benefit a few participants, rather than in the broader interests of service-users or in the interest of the Interbank Operator itself. This raises concerns, given the extent of vertical relationships in payment systems and the appointment by Direct PSPs of directors to the boards of a number of different Interbank Operators and Central Infrastructure Providers.
- 3.19 If a director was to be simultaneously appointed to the board of an Interbank Operator and of a Central Infrastructure Provider to that payment system, our view is that conflicts of interest may arise. For example, that director could have access to information that may compromise the integrity of the Operator's tendering processes which the Central Infrastructure Provider might participate in. To address these concerns, we set out our proposal to ensure such conflicts of interest are managed better or more transparently.
- 3.20 Concerns were also raised with us about other perceived or potential conflicts of interest for directors of Interbank Operators where: directors appointed by PSPs may put the interests of their PSP employer above those of the Operator; directors have reporting lines to third parties; or directors are appointed to the boards of multiple Operators. We did not propose addressing these areas in the Consultation.
- 3.21 We proposed a direction that Interbank Operators (except NICC) must take all reasonable steps to ensure that individuals may not simultaneously be a director of an Interbank Operator and of a Central Infrastructure Provider to that payment system. Interbank Operators would be required to comply with this direction from 1 April 2015. We did not consider it appropriate or proportionate at this time to impose a requirement relating to conflicts of interest on NICC.
- 3.22 We also indicated that we expect Interbank Operators to review their conflicts of interest policies and mechanisms more generally with a view to making improvements.

Responses to the Consultation – conflicts of interest

- 3.23 On the proposed conflicts of interest direction, two-thirds of respondents supported our approach. These included all but one of the Interbank Operators, VocaLink and all of the major banks. While the majority of respondents supported our proposals, there were a number of areas where specific respondents would have liked us to go further seeking to address other areas of perceived or potential conflict of interest. Some respondents raised concerns about the practicality or effectiveness of our proposals - for example, two respondents had concerns that there might not be enough knowledgeable industry executives to ensure that payments industry expertise was available on the boards of both Interbank Operators and Central Infrastructure Providers.
- 3.24 One respondent argued that Central Infrastructure Providers should not be permitted to offer commercially driven access solutions to the Operators to whom they provided central infrastructure.

Our position – conflicts of interest

- 3.25 No stakeholders raised concerns that altered the assessment that we set out in the Consultation or that lead us to change our proposal. We do not think our proposed policy materially increases the risk of a shortage of payment expertise on boards (such that boards could lack sufficient payments knowledge to operate effectively). We intend to proceed with our direction that Interbank Operators (except NICC) must take all reasonable steps to ensure that individuals may not simultaneously be a director of an Interbank Operator and a Central Infrastructure Provider to that payment system. Our guidance explains how we expect directors of Interbank Operators to act when there is a potential conflict of interest because of upcoming tendering.

- 3.26 We considered whether we should issue further directions at this time to address other potential conflicts identified by respondents but, given the evidence presented to us in the Call for Inputs and in responses to the Consultation, we do not consider it proportionate or appropriate for us to intervene at this stage. We also note that we have asked Interbank Operators to review their conflict of interest policies.
- 3.27 Our direction will apply to Interbank Operators from 30 April 2015, to give Interbank Operators sufficient time to comply before the direction takes effect.

Transparency

We will make a general direction requiring Interbank Operators (except NICC) to publish minutes of their governing body, including votes, from 30 April 2015.

We expect this increased transparency about decision-making will enable service-users to assess whether Interbank Operators are appropriately considering their interests when taking decisions. It will also make Operators' directors more accountable for their decisions. This should help service-users understand the reasons why decisions which affect them have been taken. This should increase confidence in the governance and decision making processes of the Interbank Operators.

We are not requiring Card Operators to comply with our transparency direction at this time. Instead we will consider the issue of transparency of decision-making, and the appropriateness of regulatory intervention, during our work on card systems.

Our proposal on transparency and publication of the minutes of Operators' governing bodies

- 3.28 In the Consultation, we proposed greater transparency in decision-making in the governing bodies of Operators (typically at their boards). Stakeholders had raised concerns about a lack of transparency around decision-making by Operators' boards. A lack of transparency makes it more difficult for stakeholders who do not directly participate in the decision-making to understand the rationale for boards' decisions. To address these concerns we set out a proposal to make Operators' decision-making more transparent.
- 3.29 We proposed to make a direction requiring all Operators (except NICC) to publish the minutes of their governing bodies from 1 April 2015. The minutes would be published as soon as possible after each meeting in a clear, comprehensive and easily accessible form. We indicated that we would expect the minutes to include an accurate summary of discussions, votes of the directors, reasons behind the decisions made and, if applicable, a statement of how independent directors (on Interbank Operators' boards) have exercised their discretion in relation to public interest matters.
- 3.30 Operators would also need to develop a stated and reasoned policy for redactions to minutes, limiting any redactions to what is necessary, reasonable and justifiable (for example, because of commercial confidentiality or system resilience/stability). We considered our proposal to be proportionate given its costs of compliance and the anticipated benefits. We did not consider it appropriate or proportionate at this time to impose a requirement relating to transparency on NICC.

Responses to the Consultation - transparency

- 3.31 As there were significant differences of views on application of our direction to Interbank Operators and to Card Operators, we set out comments relevant to Interbank and Card Operators separately below.

Application to Interbank Operators

- 3.32 Two-thirds of respondents and all of the Interbank Operators supported our proposal.
- 3.33 Only one respondent objected to our proposal, on the basis that the Interbank Operators are “*not publically accountable bodies and minutes should not be published – removing competitiveness and the ability for boards to make commercially sensitive decisions would be wrong and illegal*”.
- 3.34 Some respondents expressed concern that the recording of the votes cast might lead to unintended consequences.
- 3.35 Some respondents emphasised the importance of our scrutiny of these minutes.
- 3.36 Finally, a few respondents suggested some matters that should not be recorded – e.g. discussions on cyber-risks and commercial discussions/decisions.

Application to Card Operators

- 3.37 Card Operators raised objections to the publication of board minutes including:
- many of the matters discussed in Card Operators’ board meetings are commercially confidential in nature, meaning that after redactions are made, the minutes would not achieve our transparency aim
 - discussion at their boards is unlikely to include the information we want to be disclosed – for example because, in a context of matters that may vary on a country by country basis, international board discussions are not UK specific.
- 3.38 Some card payment system participants agreed with our intentions but did not agree that the publication of board minutes was the best way of increasing transparency over Card Operators’ decision-making, suggesting alternative approaches such as publishing a synopsis of key decisions with a statement as to how service-user interests were considered.

Our position – transparency

Application to Interbank Operators

- 3.39 Interbank Operators agreed with our proposals and there were no issues raised by respondents which give us reason to revise our analysis or the proposal set out in the Consultation.
- 3.40 We consider that minutes should be published as soon as possible after the meeting of the relevant governing body, to be effective in achieving our aim of transparency over decision-making. We would typically expect that this would involve publication of redacted minutes within eight weeks of the relevant meeting.
- 3.41 While some concerns were raised by respondents about possible adverse effects that our direction might have on the behaviours of boards, individual directors and/or Direct PSPs, we have decided to proceed with our proposal. This is because having considered the broad level of support for our proposals including from Interbank Operators, being those persons to whom the direction will apply, we have taken the view that the risk of materially negative outcomes on behaviours (such as candid debate being stifled) is unlikely to arise or can be managed through a sensible redaction policy and a sensible minute-taking approach. For example, we do not expect minutes to be verbatim transcripts of meetings but, rather, to contain summaries of proposals, discussions and votes (identifying votes in favour, dissenting, abstentions and recusals). As set out in the Consultation, we expect that our proposal will change the dynamics of Operators’ boards and how control is exercised, by making Operators’ governing bodies and directors more accountable for their decisions, in particular with respect to service-users.

- 3.42 We understand that Interbank Operators are developing redaction policies which will address the handling of commercial and other sensitive information. We do not have any objection to their developing a common redaction policy, if they wish to do so, provided they do so in a way that takes account of all their obligations.
- 3.43 In light of the above, we have decided that we will proceed with our direction as intended to apply to Interbank Operators, with the primary purpose of enabling service-users to satisfy themselves that Interbank Operators are appropriately considering their interests when taking decisions. We have decided to require compliance from 30 April 2015, to give Interbank Operators sufficient time to comply before the direction takes effect.

Application to Card Operators

- 3.44 As we explained above, Card Operators strongly objected to a requirement to publish board minutes, saying this would be unnecessary, disproportionate and counterproductive, including because there are already relevant arrangements in place and such a requirement could constrain frank and open discussions at board level. A few card system participants objected to our applying this direction to Card Operators on the basis that they are commercial organisations operating in a competitive environment.
- 3.45 We do not share all of the concerns raised about applying our direction to Card Operators., Nevertheless, there are points we consider that we need to assess further. For example, whether the publication of the board minutes of Card Operators would be an effective means of providing transparency over decision-making, which is our intended purpose.
- 3.46 As we explain in Chapter 6 on Interchange Fees, we have concluded that it is best to examine interchange fees together with a number of other aspects of card systems including the transparency of Card Operators decision-making processes. Given the valid points raised about whether our direction, as currently drafted, will be effective in providing transparency over decision-making for Cards Operators, we have concluded that we need to consider the matter further. For these reasons, we do not intend to apply our transparency direction to Card Operators at this time. In our programme of work on card systems, we will take account of the responses received on this topic and will assess the extent to which these, or alternative transparency mechanisms may be better suited to meet our objectives.

Reserved matters

We need to ensure that Interbank Operators have the ability to work with us and to comply with our regulatory processes. This means they should not be subject to unnecessary restrictions which could obstruct them, and us, in our work to promote our objectives.

The “reserved matters” (such as approval of annual plans and infrastructure contracts provisions) in the agreements between the Payments Council and Interbank Operators have been terminated, as we anticipated in the Consultation. We do not need to intervene further in this area.

Our proposal on reserved matters

- 3.47 In the Consultation, we set out our view that the control exercised by the Payments Council over some aspects of the Interbank Operators should be terminated. This control took the form of rights of approval over “reserved matters” such as annual plans and infrastructure contracts. Interbank Operators had questioned the continuing relevance of the Payments Council’s control over reserved matters, particularly given the addition of independent directors to the boards of Interbank Operators and the establishment of the PSR as a new industry regulator.

- 3.48 We understood that the Payments Council and the relevant Interbank Operators were already discussing modifying or terminating these provisions in the contracts between them. We set out our expectation in the Consultation that those changes should take effect by 1 April 2015. We did not consider it necessary to propose that we should exercise our powers, given that steps were already being taken by the Payments Council and Interbank Operators to address our concerns.

Responses to the Consultation – reserved matters

- 3.49 No respondent disagreed with us that the Payments Council’s rights of approval over reserved matters should be terminated. The majority of respondents, and all Interbank Operators (except the Operator of C&C), agreed with our approach of not issuing a direction, given that steps were already being taken. The Operator of C&C requested that we should nevertheless issue a direction to prohibit boards of Operators from granting reserved powers or delegating authority to other non-regulated bodies.

Our position – reserved matters

- 3.50 In December 2014, the Payments Council and Operators of Bacs, CHAPS and FPS terminated the relevant provisions of their respective agreements covering reserved matters.
- 3.51 Given this, we do not intend to take any further action at this time on this matter. We would be concerned if situations were to develop which might affect the independence of Interbank Operators, including if an Interbank Operator were to be asked to cede authority over significant parts of its affairs to a third party, or if new agreements containing provisions similar to the now-terminated “reserved matters” were to be proposed. We also expect that participants would inform us should such developments be contemplated.
- 3.52 We also do not believe that a direction as suggested by the Operator of C&C is necessary or proportionate at this time.

4

Direct Access to payment systems

Access Rule

We have decided to implement an Access Rule as part of our general direction on Direct Access.

The Access Rule will apply to those pan-GB Operators who are not already subject to access obligations, i.e. Bacs, C&C, CHAPS and FPS. It will require these Operators to have “objective, risk-based and publicly-disclosed Access Requirements, which permit fair and open access”.

We will require these Operators to comply with our Access Rule from 30 June 2015.

The Access Rule will help ensure that Access Requirements do not unnecessarily or disproportionately restrict direct participation in payment systems and do not act as a barrier to entry and expansion for new and emerging PSPs.

Our proposal for an Access Rule

- 4.1 Access to payment systems is essential to enable effective competition and innovation in the market for services provided by payment systems. Promoting access is a priority area for us. In response to the Call for Inputs, many stakeholders had expressed concerns about difficulties with gaining Direct Access, and with the need to meet the different Access Requirements of each individual payment system. Stakeholders had also raised concerns about the availability of information about Direct Access to participants in both interbank and card payment systems.
- 4.2 In the Consultation, we said that there appeared to be unmet demand for Direct Access to payment systems, with requirements for gaining access acting as a barrier to entry. This has implications for the provision of payment services through payment systems.
- 4.3 For these reasons, we proposed to make a general direction on Direct Access (the “Access Package”). Our proposed Access Package included the introduction of an Access Rule, as well as compliance and reporting obligations (the “Reporting Rule”).
- 4.4 We proposed to apply an Access Rule on those pan-GB Operators who were not already subject to access obligations under the Payment Services Regulations 2009 (PSRs 2009), i.e. Bacs, C&C, CHAPS and FPS. This would require these Operators to have “objective, risk-based and publicly-disclosed Access Requirements, which permit fair and open access”. We proposed requiring these Operators to be compliant with our proposed Access Rule by 30 June 2015. LINK, MasterCard and Visa are already subject to an obligation to provide objective, proportionate and non-discriminatory access under Regulation 97 of the PSRs 2009.
- 4.5 We identified three options for the wording of the Access Rule. Our view was that the wording we proposed in the Consultation (based on CPSS-IOSCO Principle 18) was the most proportionate and most likely to meet our objectives.

Responses to the Consultation – Access Rule

- 4.6 Most respondents supported our proposal for an Access Rule.
- 4.7 No respondents objected to the proposal or to the proposed wording of the Access Rule. One respondent preferred one of the alternative wordings for the Access Rule (Option 2 in the Consultation, based on the wording of Regulation 97 of the PSRs 2009), because it better aligned the requirement across all Operators.
- 4.8 Responses from relevant Interbank Operators on the costs of applying the Access Rule varied. C&C considered that there could be considerable costs associated with implementing the Access Rule in the first year, reducing significantly in future years. Bacs, on the other hand, said that since it already complied with CPSS-IOSCO Principle 18, it did not anticipate material costs being incurred in meeting the Access Package. FPS noted that it was devoting considerably more resources to its strategy for enhancing access than our estimated costs of the Access Rule, but said that the Access Package would not generate substantially greater costs than FPS was already choosing to incur and that it supported the Access Package.
- 4.9 A few respondents also noted that, without addressing barriers such as Bank of England settlement account requirements and prudential regulation, the Access Rule would be likely to have limited impact, and so the costs could be disproportionate.
- 4.10 A few respondents noted that security and stability of payment systems should not be inadvertently compromised in seeking better Direct Access solutions. The Bank of England said it supported our proposed Access Rule while noting that an appropriate balance needs to be struck between the need for the payment systems to protect themselves from risks that could impact financial stability and the need to permit wider access.

Our position – Access Rule

- 4.11 Having considered the responses, we have not revised our assessment, as set out in the Consultation, that the Access Rule will help ensure that the Access Requirements are objective, open, risk-based and publicly disclosed and permit fair and open access, and that Access Requirements do not unnecessarily or disproportionately restrict PSPs from directly participating in payment systems. We therefore have decided to apply an Access Rule as we had proposed to Bacs, C&C, CHAPS and FPS.
- 4.12 We note the range of points made by Interbank Operators about the likely costs of implementing the Access Rule. The extent to which the Access Rule will result in additional costs and benefits will depend on the extent to which Operators have already put in place arrangements that address our concerns, as well as the specific characteristics of each payment system. We also note that all the affected Interbank Operators support the Access Rule and that most of them already have regard to CPSS-IOSCO Principle 18 which contains similar language. The responses received do not change our view of the balance of costs and benefits.
- 4.13 One respondent preferred wording based on Regulation 97 of the PSRs 2009 for the Access Rule. We do not consider there to be any material substantive difference between the criteria imposed under our, CPSS-IOSCO-based, proposal and Regulation 97. However, we expect that applying a Rule with which the Interbank Operators are already familiar, will have benefits in terms of lower burdens and greater effectiveness.
- 4.14 A few respondents questioned the potential impact of the Access Rule, given wider, e.g. prudential, regulatory barriers to access. The Access Rule will require Operators to ensure their Access Requirements are proportionate to the actual risk (from a participant's access) to Operators' compliance with wider regulation. For example, the Access Rule could encourage Operators to allow Direct Technical Access options for participants ineligible for a Bank of England settlement account. We will work with the sector on implementing improved Direct Access, including on Operators' rules on access to settlement accounts.

- 4.15 A few respondents raised concerns about security and stability of payment systems. Supporting the Access Rule, the Bank of England said it wished to work closely with us on changes to improve access to payment systems. The Bank of England has also published its response to the Consultation which provides some guidance as to how Operators can make such changes to improve access without adversely impacting the security and stability of payment systems. We will work with the Bank of England to ensure that Operators' compliance with the Access Rule is consistent with stability of the UK financial system.

Reporting Rule

We have decided to apply a Reporting Rule as part of our general direction on Direct Access.

Our Reporting Rule will require Operators to:

- keep under review their Access Requirements and provide us with an annual compliance report, the first report being due by 31 July 2015
- publish their Access Requirements from 30 June 2015.

The Reporting Rule will support the application of the access obligations (either our Access Rule or Regulation 97 of the PSRs 2009) on Operators by requiring the publication of information to allow sufficient transparency for PSPs to evaluate effectively the most suitable route for them to access payment systems. The required compliance report covers the access obligation to which each Operator is subject. It will ensure that Operators keep Access Requirements under review so that they do not act as a barrier to entry and expansion for new and emerging PSPs.

Our proposal for a Reporting Rule

- 4.16 In the Consultation we proposed to require that all pan-GB Operators of payment systems who are subject to an access obligation (either our proposed Access Rule or Regulation 97 of the PSRs 2009), i.e. Bacs, C&C, CHAPS, FPS, LINK, MasterCard and Visa, are subject to related compliance and reporting obligations.
- 4.17 Our proposal was to require Operators to:
- a keep under review their Access Requirements and provide us with an annual compliance report, the first report being due by 31 July 2015
 - b publish their Access Requirements from 30 June 2015.

Responses to the Consultation – Reporting Rule

- 4.18 Most respondents who responded on this issue supported our proposal for a Reporting Rule.
- 4.19 Two respondents argued that it was unnecessary and disproportionate to require an annual compliance report on Card Operators because there was insufficient evidence of relevant concerns about access to card systems. At the same time most respondents, many of whom are involved in card systems, supported the Reporting Rule.
- 4.20 One of these respondents, a Card Operator, also considered that an obligation to publish Access Requirements was unnecessary because these requirements were already publicly available. Another respondent, while agreeing with the proposed Reporting Rule, suggested that there was already clarity around access to card systems.

- 4.21 A few respondents requested that the specifics of the reporting requirements, for example the timetable and format, be aligned with those used by the Bank of England for CPSS-IOSCO self-assessment and disclosure. A few respondents requested more detail on both the definitions of matters to be included in the compliance report (e.g. what constituted an “expression of interest” in direct membership) and on how the report should demonstrate fulfilment of Access Requirements.
- 4.22 One respondent suggested disclosure of Access Requirements would be most helpful in a standardised format.

Our position – Reporting Rule

- 4.23 No respondents objected to the Reporting Rule for Interbank Operators. We have not revised our assessment, as set out in the Consultation. We consider the Reporting Rule will help to ensure that Operators keep Access Requirements under review so that they do not act as a barrier to entry and expansion for new and emerging PSPs, and ensure sufficient transparency for PSPs to effectively evaluate the most suitable route for them to access payment systems. We have therefore decided to apply the Reporting Rule as proposed to Interbank Operators.
- 4.24 We consider there is sufficient evidence of concerns about access to card systems to support applying the Reporting Rule to Card Operators. Some respondents have raised concerns about access to card systems, including a lack of transparency of Access Requirements relating to technical specifications, standard contractual terms and fee levels, and the impact of fee structures on fair access. In addition, other participants have highlighted to us the complexity of card system pricing and billing arrangements.
- 4.25 We anticipate a number of benefits from Card Operators’ compliance with the Reporting Rule. These include:
- helping to ensure that participants’ access issues are addressed by Operators
 - improving our understanding of the functioning of card systems’ Access Requirements, including any barriers to access
 - keeping us informed of potential or emerging barriers to access, before they may seriously impact upon service-users.
- 4.26 We consider these benefits are made more significant by the large number and varied range of current and potential participants in card payment systems.
- 4.27 We consider the additional burden of the Reporting Rule on Card Operators is likely to be modest. Card Operators are already subject to an access obligation under Regulation 97 of the PSRs 2009 (as is LINK), so our proposal is only to apply reporting requirements. We expect Operators to take a reasonable view as to the level of detail required in order to demonstrate compliance with the Access Rule. We would also expect that much of the information in a compliance report should already be available to Card Operators through, for example, annual surveys of users or complaints procedures.
- 4.28 In summary, we consider that the evidence of service-users’ concerns about access, and the modest expected burden from reporting requirements, mean it is reasonable and proportionate to apply the Reporting Rule as proposed to Card Operators and not just to Interbank Operators.

Clarifications to our proposal

- 4.29 Some respondents made suggestions about the timescales for compliance reporting or about the information we should require under the Reporting Rule. We want to ensure the timely delivery of the first compliance reports, so we will require Operators to publish their Access Requirements on their websites by 30 June 2015 and to produce their first compliance reports by 31 July 2015,

covering the areas proposed in the Consultation. Beyond that, we are open to discussing future publication timescales and any additional format requirements that participants may wish to propose for subsequent reports.

- 4.30 We set out in the Consultation requirements for the content of compliance reports. Based on feedback we have received, we believe that it would assist Operators if we clarified one of these requirements. We said that we would require Operators to report on the *“details ... of any anticipated future developments that the Operator considers may require or justify updates or changes to its Access Requirements”*. We are asking all Operators to report on such expected changes only where they believe that these could noticeably affect (positively or negatively) Direct Access, Indirect Access or Direct Technical Access (i.e. not routine changes to technical requirements, such as non-significant software updates).
- 4.31 One respondent suggested a standardised format for disclosure of Access Requirements. Given the differences between payment systems, we do not consider that a standardised format would be practical or appropriate at this time.

5

Indirect Access to payment systems

Information Direction

We will require the four primary Sponsor Banks (Barclays, HSBC, Lloyds and RBS) to publish clear and up-to-date access-related information. The publication of this information should enable Indirect PSPs to assess and compare the different offers by these Sponsor Banks. We expect this to increase competitive pressures on these Sponsor Banks and the ability of Indirect PSPs to negotiate with them.

In response to requests made by respondents to the Consultation we have clarified the nature of the information that we require these Sponsor Banks to publish under this direction. We have also changed the publication date from 1 April 2015 to 30 June 2015. This allows these Sponsor Banks sufficient time after publication of this Statement to implement our direction.

Our proposal for an Information Direction

- 5.1 In the Consultation we explained that Indirect PSPs had raised concerns about a lack of information about Indirect Access arrangements.
- 5.2 We proposed measures designed to improve the transparency of information about Indirect Access and to make it easier for Indirect PSPs to review and assess that information. We proposed to make a general direction to require Sponsor Banks to publish certain access-related information (the "Information Direction") by 1 April 2015.
- 5.3 We indicated in the Consultation that the Direct PSPs that currently offer the vast majority of the sponsoring services to Indirect PSPs are Barclays, HSBC, Lloyds and RBS, and that while The Co-operative Bank also provides sponsoring services, it is currently in the process of ceasing these activities. Our proposed Information Direction would require these Sponsor Banks to publish descriptions of Indirect Access propositions (including key characteristics of the access services provided), any eligibility criteria Sponsor Banks may use to decide whether or not to offer Indirect Access to potential Indirect PSPs and an appropriate contact for interested parties.
- 5.4 We expected that these proposals would help address concerns about Indirect PSPs' lack of access to information about Indirect Access and improve their bargaining power in negotiations with Sponsor Banks.

Responses to the Consultation – Information Direction

- 5.5 Most respondents supported our proposal to require Sponsor Banks to publish access-related information. Nevertheless a few suggested that we should consider changing our proposal to give Sponsor Banks a longer timeframe in which to comply with the direction. Some requested consistency in both terminology and approach across Sponsor Banks or further clarity about the type of information and the level of detail to be published.
- 5.6 Some respondents were uncertain about whom our Information Direction would apply to.

- 5.7 Respondents suggested specific areas of information that Sponsor Banks should be required to publish. Some asked that Sponsor Banks publish information about risk and compliance and the specific terms on which Sponsor Banks were prepared to provide Indirect Access. A few Sponsor Banks raised concerns about disclosing information they viewed as commercially sensitive. This included detailed information on eligibility criteria, security recruitments and the prices of sponsoring services.
- 5.8 While respondents generally recognised that our proposal would increase transparency of Indirect Access offerings, some felt this might not improve the overall availability of Indirect Access to PSPs. This was because, for example, Sponsor Banks might apply criteria “subjectively” or some non-bank PSPs may find it difficult to get access to a bank account.
- 5.9 One respondent considered it disproportionate for the PSR to mandate disclosure by Sponsor Banks of information through an Information Direction and, in its view, to require the development of an Information Hub at the same time.
- 5.10 Some respondents expressed concern that the Information Direction might reduce Sponsor Banks’ willingness to supply Indirect Access, but no Sponsor Bank told us that the Information Direction would have an impact on their willingness or ability to continue to provide Indirect Access to PSPs.

Our position – Information Direction

- 5.11 Our engagement with stakeholders has indicated that there are four primary providers of Indirect Access: Barclays, HSBC, Lloyds and RBS. We understand that there are also a number of other Direct PSPs, and some Indirect PSPs, that provide Indirect Access. Currently, we believe that these relationships account for a relatively small segment of the market for Indirect Access. We have also not had significant stakeholder feedback about Indirect PSPs’ relationships with providers of Indirect Access outside of the main four Sponsor Banks.
- 5.12 We have decided to make a specific direction requiring the four primary Sponsor Banks which provide Indirect Access services (Barclays, HSBC, Lloyds and RBS) to publish access-related information, in the form we proposed in the Consultation, by 30 June 2015.
- 5.13 In making a specific direction as opposed to a general direction we have had regard to our regulatory principles under section 53 FSBRA. We consider that limiting our direction to the four main Sponsor Banks who provide Indirect Access directly responds to the issues that we have identified which are common to the provision of Indirect Access by those providers. We also understand that these organisations are currently the only providers of Indirect Access services that include provision of a unique sort code. Some Indirect PSPs need a unique sort code in order to provide their intended payment services to end-users.
- 5.14 We understand that The Co-Operative Bank also currently provides a small number of Indirect PSPs with unique sort codes but that it has stated that it is exiting the market for the provision of Sponsor Bank services. We do not believe that the imposition of the Information Direction on The Co-Operative Bank would be proportionate to the benefits that might be expected to result and given the small number of Indirect PSPs potentially concerned.
- 5.15 Making a specific direction on Barclays, HSBC, Lloyds and RBS in their role as Sponsor Banks is also consistent with our transparency regulatory principle under section 53(h) FSBRA, as it makes it clearer who this direction is addressed to at this time. We will consider the provision of Indirect Access by Sponsor Banks both within and outside the scope of this specific direction as part of our market review into the supply of Indirect Access. Subject to its findings, the market review could result in us deciding to adjust the coverage of the Information Direction.
- 5.16 We have considered whether it would be more appropriate for us to proceed under the Competition Act 1998 (CA98) rather than using our power to make a specific direction as we are required to do under section 62 FSBRA. We have concluded that CA98 is not the appropriate legal instrument in this case and that a specific direction enables us to take action which is focused on

and proportionate to the issues we have identified. Specifically, our conclusion is based on the following considerations.

- We have not received concerns, nor identified evidence, in relation to provision of information about Indirect Access services that suggests there is an infringement of competition law.
- We have identified an obstacle to PSPs obtaining Indirect Access through the lack of information on the services that might be available to them. By making a specific direction about the types of information that should be made available by the four main Sponsor Banks which provide Indirect Access, our measure is specifically targeted to the underlying impediment we have identified.
- Action under section 54 FSBRA enables us to set an ex ante requirement to address the issues that we have identified in a timely way. In contrast, proceeding under CA98 would involve the ex post investigation of specific individual instances of anticompetitive conduct or behaviour should they occur at a future date. This would not be an appropriate solution to the issues we have already identified which relate to the need for better and more transparent information on Indirect Access, as opposed to the termination of possible individual unlawful practices in the future.

- 5.17 For the avoidance of doubt, the specific direction relates to the provision of all Indirect Access services to all Indirect PSPs (i.e. to Indirect PSPs whether a unique sort code is provided or not) by Barclays, HSBC, Lloyds and RBS.
- 5.18 Our future process for adopting a specific direction (as set out in our Powers and Procedures Guidance) includes giving the addressees of the proposed specific direction a 14 day period in which to make representations. We did not follow that process here as we initially consulted on a draft general direction, and it is in light of the responses received that we have focused the direction more specifically. However, the four main Sponsor Banks who are the addressees of our specific direction have been on notice that the proposed general direction was focused on them – see paragraph 4.23 of the Consultation. Given the Consultation, the four main Sponsor Banks, as well as anyone affected by the proposed measure, has had a two month period within which to make representations and submit comments, which is significantly longer than the 14 day period we might typically provide. As a result, we consider that the process followed to adopt this specific direction is procedurally fair and exceeds the procedural requirements for specific directions that we have now set ourselves in our Powers and Procedures Guidance.
- 5.19 We do not need to decide, as one respondent suggested, whether there is justification for both our Information Direction and our position on the Information Hub. Our Information Direction is the focus of our regulatory approach for Indirect Access at present. We support the development of an Information Hub but this is as an industry initiative and it is not mandated by us.
- 5.20 We have no evidence that our Information Direction is likely to discourage relevant Sponsor Banks from providing Indirect Access services. The anticipated costs of our proposal are likely to be minimal, requiring Sponsor Banks to publish information that is readily available to them.
- 5.21 We see potential benefit in allowing relevant Sponsor Banks more time than we proposed in the Consultation to comply with our direction. This would allow time for Sponsor Banks to identify all the information they need to publish, and would enable the development of a consistent approach (including using common terminology) between our direction and the Code of Conduct, which is likely to make the information published under this direction more useful to Indirect PSPs.
- 5.22 For these reasons we have decided to change the date from which we require Sponsor Banks to comply with the Information Direction to 30 June 2015.
- 5.23 In response to a range of matters raised by respondents, we set out further clarifications below about:
- the definition of Indirect Access and the relevant Sponsor Bank services that are covered by the specific direction (these two definitions interact with each other)
 - further details of the information we require the relevant Sponsor Banks to publish.

Definitions of Indirect Access and Sponsor Bank services

- 5.24 In the Consultation we based our definition of Indirect Access on the definitions in FSBRA:
- “...a PSP has Indirect Access to a payment system if it has a contractual arrangement with a Direct PSP to enable it to provide services (for the purposes of enabling the transfer of funds using that payment system) to persons who are not participants in the system.”*
- 5.25 This definition distinguishes Indirect PSPs from corporate customers on the basis of their business activity.
- 5.26 We defined Sponsor Bank services as *“services provided to a PSP or potential PSP who is not a participant in a particular regulated payment system to enable them to become and continue to be an Indirect PSP using that regulated payment system”*.
- 5.27 We have considered responses to the Consultation and had discussions with stakeholders about these definitions.

Services covered by the definitions

- 5.28 Some stakeholders have suggested that we define Indirect PSPs as those customers to which Sponsor Banks provide a unique sort code. These are the customers that Sponsor Banks generally recognise as being “agency banks”. However, this approach is not appropriate as a large number of Indirect PSPs transfer funds on behalf of end customers without access to a unique sort-code (often EMIs and PIs).
- 5.29 We consider that any PSP that provides Indirect Access to Indirect PSPs acts as a Sponsor Bank for that Indirect PSP. This is the case whether the Sponsor Bank does or does not provide the Indirect PSP with a unique sort code (i.e. whether or not the Indirect PSP is listed as the “owning bank” for a sort code in the Industry Sort Code Directory, with the Sponsor Bank listed as the “settlement bank” for that sort code).
- 5.30 We understand that Sponsor Banks collect information about the business activity of their customers when on-boarding new customers. We view this information as likely to be useful for Sponsor Banks in determining whether they provide services to an Indirect PSP that are enabling that PSP to transfer funds on behalf of their end customers.
- 5.31 We consider it remains appropriate to use the definition of Indirect Access that we proposed in the Consultation as set out in above.
- 5.32 We clarify a number of issues in interpreting the definitions below.
- 5.33 Sponsor Banks make and receive payments using regulated payment systems as part of international correspondent banking relationships. Stakeholders have not raised concerns about these relationships. We do not view it as necessary or appropriate to include such relationships within the definition of the Sponsor Bank services covered by this specific direction.
- 5.34 We therefore clarify that Indirect Access does **not** include international correspondent banking relationships. Our definitions of Indirect Access includes services provided by Sponsor Banks to PSPs (bank or non-bank), for the purposes of enabling those PSPs to transfer funds on behalf of ‘persons’ (both individual and business customers). We regard the definition of Indirect PSPs is a broad one which includes credit institutions, credit unions, PSPs that are not credit institutions, PIs and EMIs, regardless of whether they have a unique sort code or not. The PSRs 2009 identify types of PSPs which may provide a helpful starting point for identifying Indirect PSPs based on their regulatory status, but is not an exhaustive list of all Indirect PSPs we will consider for our purposes.
- 5.35 In response to some questions raised by respondents, we clarify that ‘Persons’ in the definition of Indirect Access refers to both individuals and businesses.

- 5.36 Our definition of Indirect Access (and consequently Sponsor Bank services) excludes services provided to PSPs which are only for the purpose of transferring funds on their own behalf. It does not include corporate customers of UK banks transferring funds for their own purposes. Examples of these services excluded from the definition are as follows.
- Services to firms such as utilities or retailers, which are used purely for corporate transactions such as receiving payments from customers and paying staff and suppliers.
 - Services to PSPs that have a corporate relationship with a bank solely for transactions such as paying staff and suppliers (i.e. services on their own behalf), and not for the purpose of transferring funds of behalf of other end customers. For example, a PSP may have a relationship with one bank for corporate services and a separate relationship with another Sponsor Bank for Indirect Access services.
- 5.37 Any services provided to PSPs by a Sponsor Bank for multiple purposes, **which include** services for the purpose of enabling the transfer of funds using a payment system to persons who are not participants in the system are **within** the scope of the definition. For example, if a hairdresser uses a corporate bank account for the purpose of running that business, *and also* for the purpose of enabling the transfer of funds to end customers by providing money transfer services, those services provided by a Sponsor Bank will be included in our definitions of Sponsor Bank services and Indirect Access.

Payment systems in scope of definition

- 5.38 All PSPs who participate in the LINK payment system are Direct PSPs. But some PSPs, who do not have access to a Bank of England settlement account, do still require a sponsor arrangement for settlement. Some respondents highlighted these arrangements as relevant to considering Indirect Access issues.
- 5.39 We have therefore decided to include access to LINK in the scope of Indirect Access for the purpose of our directions and Indirect Access market review (as well as Bacs, CHAPS, FPS and C&C).

Further details of the information we require the relevant Sponsor Banks to publish

- 5.40 Sponsor Banks, and some other stakeholders, said that further clarity was needed around the detail of what needs to be published under our Information Direction.
- 5.41 Our direction is intended to require the four main Sponsor Banks to make necessary information available to those PSPs seeking Indirect Access so they can make an informed decision about their options. The level of detail published needs to be sufficient to allow a PSP to assess whether a service provided by the Sponsor Bank is of interest to it. Our Information Direction is intended to ensure that Barclays HSBC, Lloyds and RBS, in their roles as Sponsor Banks, provide all relevant details about the services they currently offer.
- 5.42 We are requiring Sponsor Banks to publish three broad categories of information about Indirect Access propositions:
- contact details
 - description of Sponsor Bank services
 - high level descriptions of Sponsor Bank eligibility criteria.
- 5.43 We set out further details below as to the minimum specific information that we expect to see published under each category of our direction.
- 5.44 The following sets out our **minimum** expectations for compliance with our direction. We encourage the relevant Sponsor Banks to give further information if doing so will assist Indirect

PSPs in assessing the merits of their Sponsor Bank service. We expect the information published by the relevant Sponsor Banks to cover the services provided to *all* types of Indirect PSPs.

Contact details

- 5.45 This information is needed so that interested parties can contact relevant Sponsor Banks to obtain further information on Sponsor Bank services or contact Sponsor Banks to begin discussions about seeking Sponsor Bank services.
- 5.46 We expect this information to include at least:
- a named contact (whether an individual or team) who will be able to respond knowledgeably to enquiries about Sponsor Bank services
 - an email address
 - a telephone number
 - a postal address.

Description of Sponsor Bank services

- 5.47 This information is needed so that interested parties can evaluate services and compare offerings between Sponsor Banks more easily.
- 5.48 We expect this information to include at least the following details.
- A description of the provision of a bank account to be used to settle payments sent and received on behalf of the Indirect PSP's customers.
 - A list and description of the payment systems to which the Sponsor Bank offers Indirect Access and the services of each system that Indirect PSPs can access (e.g. for Bacs Direct Debit, Direct Credit and Standing Orders). For each payment system, a description list of the connectivity options available to Indirect PSPs for sending and receiving payment instructions should also be provided. For electronic payment systems, this should include:
 - a list of the channels through which communication with the Sponsor Bank is possible (e.g. internet banking, host-to-host, SwiftNet) for both submission of outgoing payment instructions and reporting of inbound payment instructions
 - any and all types of Direct Technical Access that are supported (e.g. Direct Agency Access for FPS)
 - any and all types of Direct Technical Access for corporate customers of the Indirect PSP that are supported (e.g. corporate Direct Access to FPS).
 - A description of the services offered for the provision of sort codes to Indirect PSPs, including:
 - a statement as to whether the Sponsor Bank offers Indirect PSPs unique sort codes
 - a statement as to whether the Sponsor Bank is able to offer Indirect PSPs the ability to transfer in any existing unique sort codes they have from pre-existing Sponsor Bank arrangements, and for which payment systems this transfer is possible
 - if the provision of unique sort codes is offered, a description of the additional services the Sponsor Bank is able to provide Indirect PSPs with a unique sort code that are not available to those Indirect PSPs without a unique sort code (e.g. the ability to access FPS on a 'Direct Agency' basis, issue customers with cheque books).

- A description of any other services the Sponsor Bank views as being part of its wider Sponsor Bank service offering (e.g. access to branch network, payment message transformation services).
- A high level description of the types of transaction fees and other charges an Indirect PSP can expect to pay for services provided, and the key elements of those fees and charges - for example, "Fees for sending and receiving payments are charged on a per transaction basis. These fees are subject to negotiation and may reflect transactions volumes".

5.49 Note that we are not requiring each relevant Sponsor Bank to disclose specific price points or price ranges that it charges customers or other information that it reasonably considers to be commercially sensitive.

Sponsor Bank eligibility criteria

5.50 This information is needed so that interested parties can understand how a Sponsor Bank will evaluate their application for Indirect Access services and whether Sponsor Banks require Indirect PSPs to meet specific criteria to qualify for a particular service that the Sponsor Banks provides.

5.51 We expect this information to include at least the following high level descriptions of:

- types of factors the relevant Sponsor Bank takes into consideration in deciding whether to accept an Indirect PSP as a customer (e.g. assessment of creditworthiness, strategic risk, expected volume)
- criteria an Indirect PSP must satisfy to qualify for a unique sort code (e.g. regulatory status, compliance with payment system rules)
- criteria an Indirect PSP must satisfy to obtain certain Sponsor Bank services (e.g. for host-to-host connections, systems testing and security standards that must be met).

5.52 We will not require the relevant Sponsor Banks to disclose information they reasonably consider to be commercially sensitive. As set out above, we are requiring the disclosure of high level descriptions of eligibility criteria only, and not details of specific criteria.

5.53 We understand and acknowledge that Indirect Access services are bespoke and that PSPs will need to engage in negotiation with the relevant Sponsor Banks to obtain further details of the terms/services that a Sponsor Bank is prepared to offer them.

5.54 One PSP suggested we require Sponsor Banks to publish information about Operators' Direct Access Requirements. We agree that increased transparency around Operators' Access Requirements would assist PSPs and, as part of our Direct Access proposals, we are requiring Operators to publish this information.

5.55 Some stakeholders asked that we require Sponsor Banks to publish information about continuity of service and contract obligations. We agree that it is important for PSPs to have access to this information and contract termination clauses and notice periods will form part of the PSR-approved Sponsor Bank Code of Conduct.

Information Hub

We welcome industry efforts to develop an Information Hub. An effective Information Hub may improve the ability of Indirect PSPs to obtain information about access to payment systems. It is our expectation that the ability of PSPs to compare information at a central point should allow them to better compare Direct and Indirect Access offerings.

We do not intend to take a formal role in the development of the Information Hub, which we consider is best left to industry to develop.

Our view on an Information Hub

- 5.56 In the Consultation we noted that the industry was developing a website to improve the disclosure and transparency of information for PSPs wishing to access payment systems (we call this the “Information Hub”). We expressed our support for the initiative. An effective Information Hub could allow PSPs greater visibility of information about payment systems and Sponsor Banks. It may also enable PSPs to make comparisons across Direct and Indirect Access and across different Sponsor Banks’ offerings.
- 5.57 We said we anticipated that an Information Hub would be used by the industry to publish the information that Sponsor Banks would be required to disclose under our Information Direction; Operators’ Access Requirements; the proposed PSR-approved Sponsor Bank Code of Conduct; and any other information that would enable PSPs to assess the most appropriate route for them to access payment systems.

Responses to the Consultation – Information Hub

- 5.58 Most stakeholders who responded on this issue supported the development of an Information Hub by the industry.
- 5.59 A significant number of respondents emphasised that they viewed industry, rather than us, as best placed to lead and deliver the initiative but some Indirect PSPs expressed concern that if an Information Hub is developed without our involvement, it may not be effective. They considered the Information Hub might not provide enough information to be useful or it might take too long to develop. Some stakeholders requested that we review the operation of the Information Hub and consider regulatory action if it did not deliver the benefits we anticipated in the Consultation.
- 5.60 Some respondents noted that there was a need to ensure that information on the Information Hub is correct and up to date. One commented that this information should be the responsibility of Sponsor Banks and Operators and that it should be held on their own websites. Some suggested that duplication across individual websites and the Information Hub could increase the effort and the costs for both Sponsor Banks and Operators.

Our position – Information Hub

- 5.61 Our focus is to make access-related information available and transparent through our Direct Access Reporting Rule and our Information Direction on Indirect Access. This information should be published by Operators and by the relevant Sponsor Banks on their websites.
- 5.62 Industry is already developing an Information Hub. We support the industry’s desire to develop the Information Hub because it is intended to improve the ability of PSPs to find information on their access options. The Information Hub could usefully complement our Information Direction, by making the information required to be published under our Direction more easily accessible and comparable.

- 5.63 We see no reason for us to have direct involvement in the development of the Information Hub at this stage.
- 5.64 We noted stakeholder suggestions regarding the design and development of the Information Hub. We expect those participating in the initiative to have regard to stakeholders' suggestions.
- 5.65 It is for participants to ensure that the disclosure of information through the Information Hub or in any other context is consistent with competition law.

Sponsor Bank Code of Conduct

We will work with industry to develop a Code of Conduct to be approved by us. The purpose of the Code is to address concerns about the security of supply of Indirect Access provided by Sponsor Banks, such as the risk that Sponsor Banks discontinue the supply of Indirect Access, concerns around the sharing of commercially sensitive information with Sponsor Banks who are also downstream competitors, and some aspects of the contractual arrangements that govern the supply of Indirect Access.

We expect that in developing the Code, Sponsor Banks will engage effectively with Indirect PSPs. We also expect Sponsor Banks to commit publicly to meeting the requirements of the Code.

We expect the Code to be ready to be approved by us and in place by 30 June 2015 and Sponsor Banks to be complying with the Code from 30 September 2015.

Our proposal on a PSR-approved Sponsor Bank Code of Conduct

- 5.66 In the Consultation we set out our concerns about security of supply of Indirect Access provided by Sponsor Banks. In particular, we were concerned by the risk that Sponsor Banks might discontinue the supply of Indirect Access and about the contractual arrangements that govern the supply of Indirect Access. We also expressed our concern that the situation could be exacerbated by the limited number of alternative suppliers available. We said that we would examine these matters in more detail in our market review into the supply of Indirect Access, and proposed that we should work with Sponsor Banks to create a PSR-approved Code of Conduct governing arrangements for Indirect Access (the "Code").
- 5.67 We suggested that wherever possible the Code should address stakeholders' concerns about Indirect Access. These included concerns about security of supply, sharing commercially sensitive information with Sponsor Banks who are also downstream competitors, on-boarding arrangements and communication between Sponsor Banks and Indirect PSPs. To address Indirect PSPs' concerns about security of supply in particular we said we expected the Code to set out Sponsor Banks' commitments, including a clear, transparent, fully specified, written contractual framework for Indirect Access. The Code would increase confidence in the supply of Indirect Access services provided by Sponsor Banks and should improve outcomes for service-users.
- 5.68 We explained that we did not see the Code replacing bilateral contractual sponsorship agreements, but as a public commitment by Sponsor Banks. We said that we expected the Code to be approved by us and in place by 30 June 2015, with Sponsor Banks complying with the Code from 30 September 2015. We suggested that the Code should be published on each Sponsor Bank's website and on the Information Hub.

Responses to the Consultation – the Code

- 5.69 Most respondents supported our proposed approach. Bacs saw potential benefit in a “...*common Sponsor Bank Code of Conduct that would allow us to align our product and service offerings more precisely to the needs of indirect participants*”.
- 5.70 Some Indirect PSPs cited their experiences around Indirect Access as reasons to support our proposal. Many respondents made suggestions as to how to ensure its effectiveness.
- 5.71 Some respondents commented on the process for development of the Code, with requests for Sponsor Banks to consult PSPs in developing the Code and for the PSR to have a role in the development process.
- 5.72 Some respondents commented on the intended content of the Code, with some suggesting specific matters they wished to be included in the Code. Areas of concern that respondents considered the Code should address, included:
- timely negotiation of contracts
 - performance and management of system outages
 - minimum service levels
 - managing the impact on Indirect PSPs from risks and pressures on Sponsor Banks
 - contract termination, continuity and security of supply
 - data requirements, data usage and how payments information is managed
 - fairness with regard to costs.
- 5.73 Some suggested the Code should not be overly prescriptive. Respondents said that the Code did not need to specify detailed contract requirements or service levels, which should remain matters for commercial negotiation.
- 5.74 A few respondents suggested that the scope of the Code should be widened to include the reciprocal conduct of Indirect PSPs, or aligned with the rules and requirements of payment systems. Some noted the need to ensure the Code is aligned with reliability, integrity and financial stability requirements and considerations.
- 5.75 One respondent asked how the content of the Code would align with the PSRs 2009 and other regulatory obligations.
- 5.76 Some respondents requested further clarity around how the Code would be implemented and would operate, including how we saw our role, for example in securing common agreement and overseeing compliance.
- 5.77 Three respondents requested further clarification on which participants the Code would apply to, specifically:
- the types of participants seeking Indirect Access that would be covered
 - whether international indirect correspondent banking arrangements would be included
 - whether it would also apply retrospectively to existing arrangements.
- 5.78 NICC sought clarification on whether its member banks would be subject to the Code as it is excluded from other access-related directions.

- 5.79 Finally, some PSPs asked the PSR to clarify Sponsor Bank responsibilities around Anti-Money Laundering (AML) requirements.

Our position – Code of Conduct

- 5.80 We intend to work with Sponsor Banks to create a PSR-approved Code of Conduct covering arrangements for Indirect Access. We will have regard to matters raised by respondents in the exercise of our approval of the Code. So we also expect that Sponsor Banks will address these matters in their development of the Code. To assist Sponsor Banks, we set out below our initial consideration of some of these issues and our expectations of Sponsor Banks.

Who we expect to comply with the Code

- 5.81 Consistent with our Information Direction, we expect at least the main four Sponsor Banks to commit to complying with the Code i.e. Barclays, HSBC, Lloyds and RBS.
- 5.82 For the avoidance of doubt, we expect those Sponsor Banks in scope for compliance with the Code to comply with the Code with respect to their provision of all Indirect Access services to all Indirect PSPs (i.e. to Indirect PSPs both with and without a unique sort code), consistent with our definition of Indirect Access and Sponsor Bank services explained earlier.
- 5.83 We will consider whether the scope of the Code should be extended beyond Barclays, HSBC, Lloyds and RBS to include other Sponsor Banks as part of our market review into Indirect Access.

Development of the Code

- 5.84 In developing the Code we expect Sponsor Banks to engage with Indirect PSPs to understand their needs and to decide the matters that the Code should cover. We expect Sponsor Banks to establish a suitable process for engagement, to ensure that Indirect PSPs feel able to provide full and open input, so that Sponsor Banks consider a representative range of genuine views. We will ask for evidence of effective engagement by Sponsor Banks when considering approval of the Code.
- 5.85 We understand why some Indirect PSPs requested the PSR take a more prescriptive approach to the Code. But, given the broad support for the development of the Code being industry led, we do not intend to change our proposed approach at this stage. We believe industry is best placed to develop the Code because it has the information, resource and direct experience of the relationships between Sponsor Banks and Indirect PSPs, to ensure that the Code meets the requirements of those it impacts.
- 5.86 We will keep the position under review as Sponsor Banks develop and agree the Code.

Contents of the Code

- 5.87 In the Consultation we set out a number of areas that we expect to see included in the Code. These reflected areas which stakeholders were concerned could adversely impact on their service-users and/or their ability to compete. We expect Sponsor Banks to lead on agreeing the details within these areas and any other areas that it may be appropriate to address, following consultation with Indirect PSPs and others.
- 5.88 As set out in the Consultation, the principal aim of the Code is to help address concerns arising from the supply of Indirect Access services by Sponsor Banks. We expect the Code to focus on this aim as its first priority. We acknowledge though that there may be benefits to further developing the Code to widen its scope over time.
- 5.89 As we said in the Consultation, we expect the commitments contained in the Code to apply to existing and future relationships between Sponsor Banks and Indirect PSPs. This is because if the Code only applied to future relationships it would not address the majority of concerns raised by

Indirect PSPs about their current relationships. It is those specific concerns that may have an adverse impact on the ability of Indirect PSPs to compete or provide improved outcomes for service-users.

- 5.90 We expect Sponsor Banks to ensure that the contents of the Code align with other requirements such as the Information Direction or underlying requirements of the payment systems to which Sponsor Banks are providing access.
- 5.91 The Code of Conduct is intended to act as a 'framework' to govern the relationship between the Sponsor Banks and Indirect PSPs, and as we explained in the Consultation, we consider it to be complementary to, rather than replacing individual contractual arrangements. In particular, Sponsor Banks are free to negotiate improved services to Indirect PSPs which exceed the "minimum contractual framework" requirements to be set out in the Code.
- 5.92 We expect industry to monitor whether the Code is effective so that they identify and address issues with the operation of the Code or the matters it covers on an ongoing basis.

Implementation and operation of the Code

- 5.93 We expect Sponsor Banks to put appropriate governance arrangements in place for the implementation of the Code.
- 5.94 As set out in the Consultation, we expect Sponsor Banks to commit publicly to the Code.
- 5.95 We recognise that relevant Sponsor Banks will need to consider the most effective and efficient process for implementing the final commitments of the Code when it is agreed and approved. We recognise that how they do this will vary depending on the volume and type of relationships Sponsor Banks currently have with Indirect PSPs and the extent to which those arrangements already comply with the Code.
- 5.96 Only one Sponsor Bank respondent raised concern about their ability to implement the Code by 30 September. We consider it important that the Code is agreed and implemented as soon as reasonably possible. We expect Sponsor Banks to make every effort to achieve effective progress with implementation.
- 5.97 No Indirect PSPs raised concerns about Indirect Access to NICC. Given the significantly lower volume of transactions, future planned changes to cheque clearing and the status of some members as Indirect PSPs themselves in relation to other payment systems, we do not consider it appropriate or proportionate to expect members of NICC to be subject to the Code.

Technical Access solutions

We support the development of Technical Access solutions. The industry is best placed to design and develop Technical Access solutions that meet the needs of PSPs and end-users. We anticipate that Technical Access solutions will be developed as commercial propositions funded by those that use the service.

Industry is already making progress and we will continue to engage with participants, with a keen interest in these developments. We see no reason for us to take a more prescriptive approach to the development of Technical Access solutions at this time. We note that the development of Technical Access solutions may require Operators to be responsive to requests for amendments to their rules, where appropriate and in the interests of service-users.

Our proposal on Technical Access solutions

- 5.98 In the Consultation, we noted that Direct PSPs had identified demand for the development of Technical Access solutions to provide alternative access options. We supported the development of Technical Access solutions as they have the potential to reduce the cost and increase the quality of Technical Access. We anticipated that this would increase the competition faced by Sponsor Banks in some areas.
- 5.99 We proposed to continue to engage with industry around the development of Technical Access solutions. We would continue to evaluate their development and impact in considering whether we should take further steps to encourage their progress. We did not consider it appropriate or proportionate at this stage to stipulate detailed technical requirements or to issue guidance around the specifications for Technical Access solutions. We viewed industry as best placed to develop Technical Access solutions to meet the needs of service-users (PSPs and end-users).
- 5.100 Under our Direct Access proposals we also set out our expectations that Operators develop an accreditation processes for third-party providers of Technical Access solutions. We anticipated that this could reduce potential barriers to entry for third-party providers of Technical Access solutions at the payment system level.

Responses to the Consultation – Technical Access solutions

- 5.101 Most stakeholders supported our proposed approach to encourage industry to develop Technical Access solutions. Respondents noted that industry was already making progress in developing solutions and that Infrastructure Providers can and already are offering some Technical Access solutions. Operators were supportive, with some already engaging with third parties around the development of Technical Access solutions.
- 5.102 Some respondents suggested we should take a more prescriptive approach either because industry may take too long to deliver the solutions or that Infrastructure Providers will wait for the PSR to complete its market review into the ownership and competitiveness of infrastructure provision before engaging with Technical Access solutions. Some stakeholders suggested that we:
- monitor and report publicly on the progress of industry
 - set a date that a review of the progress will be completed
 - set out a framework for Technical Access solutions
 - approve Technical Access solutions before they are implemented
 - establish a PSR-led task force for Technical Access.
- 5.103 LINK requested that we engage closely in the development of potential Technical Access solutions relevant to it to monitor potential competition implications.
- 5.104 Two stakeholders emphasised a need for small PSPs to be involved in development processes to ensure that solutions are developed in their interests.
- 5.105 A few respondents suggested that increased availability of alternative Technical Access solutions might: adversely impact on the cost or commercial viability of Indirect Access services provided by Sponsor Banks because they would lose the benefits of economies of scale, or increase risk to the resiliency, security and financial stability of payment systems. VocaLink also noted the need for a balance between competition and resiliency in payment systems.
- 5.106 Some stakeholders suggested specific solutions, including further development of existing solutions, new solutions that connect PSPs to multiple payment systems, or solutions that promote interoperability. Others argued that Technical Access solutions should be functionally equivalent to the access provided to Direct PSPs.

- 5.107 One stakeholder noted that solutions should enable PSPs to switch Sponsor Banks easily, and another noted that the harmonisation of messages and technical standards might reduce costs for PSPs.

Our position – Technical Access solutions

- 5.108 We continue to believe that industry is best placed to design and develop Technical Access solutions which will meet the needs of PSPs and end-users. Responses indicate that Infrastructure Providers, Operators and Sponsor Banks are all interested in pursuing Technical Access solutions and that Technical Access solutions are being developed. This progress will be supported by our Direct Access rule, which requires Operators to ensure their Access Requirements, including accreditation processes for Technical Access providers, are open, objective, and risk-based.
- 5.109 We do not believe that it is either appropriate or proportionate for us at this time to set out detailed technical requirements, provide guidance on what the solutions should look like, or require that we approve the implementation of these solutions. We acknowledge that several stakeholders identified possible solutions or specifications that they wished to see developed. We encourage industry to consider these and the needs of PSPs more broadly, such as the timeframes for delivery and any other proposals, in developing Technical Access solutions.
- 5.110 We also do not believe that there is a justification for a PSR-led task force to oversee the development of Technical Access solutions. We support any initiative by industry to facilitate and progress the development of Technical Access solutions and continue to believe that industry is best placed to lead on progress and development of solutions. We note that development of Technical Access solutions may require Operators to be responsive to requests for amendments to their rules, where appropriate and in the interests of service-users. We will continue to engage with industry and actively monitor and evaluate the ongoing development of Technical Access solutions.
- 5.111 Throughout our work we will have regard to potential impacts on the resilience of UK payment systems and financial stability, given the importance of the integrity of payment systems and our statutory duties to have regard to the stability of, or confidence in, the UK financial system.
- 5.112 At present, the demand from Indirect PSPs for improved Technical Access mainly relates to FPS. We acknowledge the concerns raised by LINK about implications for competition, and we will be mindful of these as we monitor the ongoing development of Technical Access solutions.

6

Interchange fees

We have considered responses to the Consultation about interchange fees and, more generally, about card payment systems. We will begin a programme of work to examine issues about how the proposed EU Interchange Fee Regulation (IFR) may apply and the wider issues raised about card systems, including transparency, governance, access and fees.

In particular, in light of our decisions not to impose directions about representation of service-users' interests and publication of minutes on Card Operators at this time, this programme of work will look further at the case for regulatory intervention around the effectiveness of service-user engagement by Card Operators, and the evidence on transparency of decision-making.

Considering these issues in the round will ensure that our decisions in our anticipated capacity as the competent authority for monitoring and enforcing the IFR are well informed and do not have unintended consequences. In line with our objectives, in undertaking this programme of work we will consider the extent to which current arrangements in card systems promote competition, innovation and the interests of service-users. We will work closely with the FCA and other authorities such as the CMA and European Commission to minimise duplication of work, effort or burden on the industry.

Our proposal on interchange fees

- 6.1 In the Consultation Paper we said that we would continue to track competition law and legislative developments on interchange fees. We explained that we would engage with the relevant authorities on the proposed EU Interchange Fee Regulation (IFR). We noted that, under FSBR, and our concurrent competition law powers, the PSR is not limited to the exercise of powers under the IFR, but has the powers to investigate any areas of concern within card payment systems.
- 6.2 We did not make a specific proposal on interchange fees in the Consultation, but we asked respondents if there were any other matters about interchange fees that they thought we should consider at this stage.

Responses to the Consultation

- 6.3 Some respondents supported the PSR's general approach to interchange fees, and agreed we should wait until the IFR is finalised before considering further action – mainly because of the concern that introducing new policies before the IFR is finalised might impose additional costs on industry participants or create uncertainty.
- 6.4 Other respondents, while supportive of the PSR's general approach, asked the PSR to begin work immediately to prepare for the adoption of the IFR – including starting relevant analysis and consulting with stakeholders.
- 6.5 Some respondents made comments about the proposed national discretion for setting domestic debit interchange fees, including comments and queries on the following areas.

- The method for the calculation for such fees, such as whether they would be based on a 'pence per transaction' or 'percentage of value of the transaction'.
- Whether a maximum limit of a fixed 'pence per transaction' would be applied alongside any cap. Some respondents argued that applying a percentage cap alone would increase the costs of processing debit cards transactions for a significant number of retailers.
- The level of domestic interchange fees on debit transactions. Some argued in favour of setting a "low" domestic interchange fee below the EU's proposed rates, as this would be better for consumers, and would enable retailers to make investments and be more innovative. Conversely, others argued against setting domestic caps/rates at too low a level on the basis that if rates were set too low, they might not allow for the recovery of some fraud and security costs (such as those associated with fraud prevention, IT systems maintenance and card issuing) or might have the effect of reducing the contribution made by retailers to investments in innovation and security measures.

- 6.6 A few respondents queried how three party proprietary card systems would be treated under the IFR, and in particular, whether they would be exempted from the IFR. Two respondents said these card systems should be exempted from the IFR given differences in their arrangements with merchants and that they compete with other payment systems. Another respondent argued that if they were exempted, it would create an unbalanced market and a risk of unintended consequences.
- 6.7 Concern was expressed by a few respondents about the levels of transparency surrounding the setting of fees and service charges by the Card Operators and acquirers. Some questioned how the current split between the interchange and non-interchange parts of the Merchant Service Charge (MSC) was calculated by acquirers. One respondent was concerned that consumers might not benefit from the introduction of the IFR if lower interchange fees were accompanied by increases in other parts of the MSC. Some respondents also raised more general concerns about how other charges, fees and fines are calculated by the Card Operators and passed on to merchants.
- 6.8 Some respondents suggested that we should have regard to the impacts of the IFR on different segments of the community, particularly vulnerable consumers, and asked how we would assess if savings would be seen by consumers. Other respondents asked us to focus on being mindful of the costs of changes associated with the IFR and to consider how these costs are then allocated between participants in card systems.
- 6.9 The issue of the timescales for the adoption of the IFR was also raised by some respondents, who requested early engagement with industry to avoid creating a prolonged period of uncertainty and disruption.
- 6.10 Some respondents asked us to consider the wider competitive and market implications of the IFR, asking that we consider possible impacts on incentives for innovation and investment and potential for cross-border arbitrage if other EU Member States set a lower interchange fee than the UK.
- 6.11 Finally, some respondents asked us to consider ATM interchange fees, for example seeking greater transparency around how ATM interchange fees are set.

Our position

The IFR

- 6.12 The legislative process for the approval of the IFR is ongoing. We anticipate that the IFR will be adopted in April 2015 and that it is likely it will come into force in May 2015. Some provisions will come into effect immediately – primarily those relating to business rules and these may be immediately binding on PSPs. Other provisions – notably those relating to the cap on interchange fees - will come into effect six months after the IFR comes into force – i.e. November 2015.

- 6.13 The IFR provides for national discretions, which enable EU Member States to decide to adopt a different approach in two key areas:
- Member States can decide to implement different lower caps on interchange fees for domestic card transactions than the caps in the IFR - the exact scope of these discretions, particularly on domestic debit cards, will be determined by the final text of the IFR that is adopted, and/or
 - Member States can (based on an assessment of market shares) decide to exempt three party proprietary card systems that operate with licensee issuers from the IFR for up to 3 years – after which any exemptions will expire and these card systems will become fully subject to the IFR.
- 6.14 Where we are the competent authority to exercise national discretions under the IFR, we will carry out further assessment and ensure that any decisions we take are based on solid analysis and evidence. Our work will cover the issues which have been identified by respondents, including: distributional effects of the application of the IFR and the exercise of national discretions; interaction between the IFR and the MSC and other charges; possible consequences on innovation and investment; and possible competitive and market impacts associated with the application of the IFR. We acknowledge concerns raised by respondents about a lack of transparency in how fees and charges are set by Card Operators. All of these issues will impact on whether the IFR is effective in achieving its policy objectives as well as any possible indirect consequences from its application.
- 6.15 We will take a proactive approach to our role under the IFR, and consider these and other issues as part of the programme of work on card systems we describe below.

Programme of work on card systems

- 6.16 Having considered the range of comments received about card systems, we have concluded that it is best to examine interchange fees together with a number of other aspects of card systems. Considering relevant issues in the round will mean we can ensure our decisions in our capacity as the competent authority for monitoring and enforcing the IFR are well informed and do not have unintended consequences.
- 6.17 Our programme of work on card systems will include interchange fees, as well as the concerns put to us about governance arrangements for Card Operators including: the level of transparency surrounding the structure of fees and other terms and conditions. We will also seek to understand whether there are any concerns about access to card payment systems.
- 6.18 In the light of our decisions set out in Chapter 3 not to impose directions relating to representation of service-users' interests and transparency through publication of board minutes on Card Operators at this time, we intend to examine further:
- the effectiveness of current service-user engagement mechanisms of the Card Operators, including how merchant acquirers and other service-users are represented in governance arrangements, and the relationship between merchants and Card Operators
 - evidence as to whether there is currently a lack of transparency of decision-making around regulated card payment systems.
- 6.19 The scope of this programme of work on card systems is set out below. In line with our objectives, in undertaking this programme of work we will consider the extent to which current arrangements in card systems promote competition, innovation and the interests of service-users. We will work closely with the FCA and other authorities such as the CMA and European Commission to minimise duplication of work, effort or burden on the industry (e.g. given for example the FCA's credit card market study).
- 6.20 As well as establishing a programme of work on card systems, we will examine the concerns raised by some stakeholders about ATM interchange fees to see whether there is a need for us to

undertake any further investigation. In doing so, we will engage with stakeholders to understand their concerns.

Programme of work on card systems

Overall objective

To ensure that we take robust evidence-based, informed decisions in our capacity as the competent authority for monitoring and enforcing the IFR, and to consider whether it is necessary for us to take any other action to promote competition, innovation or the interests of service-users in card systems under the IFR or any other legislation we are the competent authority for.

Specific objectives

- Develop a detailed understanding of the relevant elements of card payment systems, particularly fees and charges between participants (but not to end-users), governance and access arrangements, and other requirements under the IFR such as business rules and functional separation.
- Consider the extent to which current arrangements may promote (or restrict) competition or innovation, and how they affect the interests of service-users.
- Ensure that any regulatory decisions are taken in light of an analysis of the likely effects and an understanding of potential unintended consequences.

Key work areas

Our work will involve close engagement with interested stakeholders through both bilateral meetings and through workshops, and we will need to gather evidence and data from key stakeholders. As part of our engagement process we will set out key milestones and dates to enable stakeholders to plan their involvement in our work programme.

Our work is likely to include (but may not be limited to):

- Research and evidence gathering on existing fees between participants including the levels, structures and interaction between different fees, the governance around fee setting (e.g. levels of transparency and how decisions on fees are communicated to those affected by them); identifying concerns of stakeholders; developing appropriate proposals for decisions (including any decisions under the IFR in relation to interchange fees) and consulting stakeholders before finalising decisions.
- Developing, in consultation with stakeholders, appropriate proposals for taking forward other aspects of the IFR, including monitoring and enforcing of business rules and functional separation.
- Researching and evidence gathering on existing arrangements for service-user representation and transparency of decision making in Card Operators, clarifying relevant stakeholder concerns, and developing and consulting on appropriate proposals to address such concerns.
- Identifying and clarifying other relevant concerns (including any concerns about access to card payment systems) and considering action as and where appropriate.

PART B

Our regulatory tools

7

Our Objectives Guidance

We are required to issue guidance on how we intend to advance our objectives in discharging our functions in relation to payment systems in the UK or participants in payment systems. Our objectives inform our activities and how we prioritise our work.

We have decided to adopt our Objectives Guidance as set out in the Consultation subject to a new explanation on how we will apply our regulatory principles and to reflect other detailed points raised by respondents.

Our Objectives Guidance

- 7.1 In the Consultation we set out our proposed Objectives Guidance. This guidance explains how we will advance our objectives in carrying out our functions. Our objectives inform the activities we will undertake and how we prioritise our work. Our primary focus is to make payment systems work better for service-users.
- 7.2 Our Objectives Guidance covers:
- how we define service-users
 - our competition objective
 - our innovation objective
 - our service-user objective
 - our regulatory powers
 - our competition powers
 - how we will interact with other authorities
 - our regulatory principles (under section 53 FSBRA).

Responses to the Consultation and our Position

- 7.3 Most respondents supported our proposed approach for the Objectives Guidance. Some respondents supported our proposed overall approach but made suggestions for clarification or change to the guidance in some areas. Two respondents objected to significant parts of our proposed Objectives Guidance.

Suggestions for changes to the proposed guidance

- 7.4 A few respondents emphasised that we need to act proportionately when carrying out our functions. One suggested that the guidance be reviewed regularly. Others suggested that the definition of service-users should specify that it includes mid-market enterprises (MMEs), financial institutions (as customers) and vulnerable consumers. Another respondent suggested that we consider defining the term 'payment industry'. One respondent queried whether customer advocacy or customer satisfaction should be used as criteria in assessing the effectiveness of competition.
- 7.5 We appreciate the importance of us having regard to the principle of proportionality and we have added information in the guidance about how we will ensure that any burdens or restrictions imposed on participants are proportionate to the expected benefits.
- 7.6 We agree that MMEs are distinct from SMEs and large corporations, and should be specifically identified within the category of service-users set out in the guidance.
- 7.7 We have considered the other suggested changes to our Objectives Guidance, but have decided not to amend the guidance for the following reasons.
- 'Vulnerable consumers' are already incorporated in the 'individual consumers' category and 'financial institutions (as customers)' are already incorporated into the categories of businesses we have listed (e.g. large corporations, SMEs etc.). So we do not see that it is necessary to reference these service-users specifically.
 - We consider the payments industry to encompass all industry participants – namely PSPs who provide payment services to their customers, Infrastructure Providers and Payment System Operators - so we do not consider, at this stage, that there is a need to define the term more explicitly.
 - We have summarised in our guidance the list of factors (under section 50(3) FSBRA) to which we may have regard in assessing whether competition is effective. We will consider the relevance of any evidence and its weight on a case-by-case basis, so we do not think it appropriate to list customer advocacy or satisfaction as specific criteria.
- 7.8 Finally, we agree that our guidance should be kept under review and updated if necessary. We acknowledge this expressly in the guidance.

On the objections to aspects of our proposed guidance

- 7.9 Concerns raised about our proposed approach were that the proposed guidance:
- did not contain enough detail on the factors the PSR 'must have regard to' under section 49(3) FSBRA (such as the importance of maintaining the stability of, and confidence in, the UK financial system)
 - did not contain a sufficiently detailed discussion about how the regulatory principles under section 53 FSBRA will inform our approach to discharging our functions
 - did not present enough discussion of how the objectives would be applied
 - did not explain how conflicts between objectives would be dealt with
 - did not sufficiently explain how we will interpret our service-user objective.
- 7.10 One respondent asked whether we are correctly interpreting when we must consider using our CA98 powers under FSBRA. The same respondent also submitted that insufficient detail was provided in the guidance as to how we will interact with other authorities, and how participants should interact with authorities with overlapping powers.

- 7.11 One respondent said that we should bear in mind the principle that we should only impose obligations on participants once we have made a finding of market power.
- 7.12 We have considered these comments and objections, and have amended our discussion in the guidance about our regulatory principles to provide further detail. For each regulatory principle we set out in the guidance how we may take that principle into account when exercising our functions. That is, we describe how we intend to apply the regulatory principles relating to: efficiency and economy; proportionality; sustainable growth; responsibility of service-users; responsibilities of senior management; recognising the differences in businesses carried on by different participants; openness and disclosure; and transparency.
- 7.13 We have not amended our guidance in response to the other objections raised for the following reasons.
- There is no hierarchy among our objectives and each one is as important as the others but all our objectives relate to the interests of service-users which is why our guidance explains that our primary focus is to make payment systems work well for service-users. We appreciate that service-users is a wide category including individuals, groups and organisations often with very different interests. So we will need to decide whether a particular action is in the interests of service-users on a case by case basis.
 - The guidance accurately reflects the legal position of the interplay between our competition and regulatory powers. Further detail about the relationship between FSBRA and our CA98 powers can be found in our Powers and Procedures Guidance and in our procedural guidance relating to our competition powers (which we have consulted on separately (see our consultation *PSR CP15/1 PSR Competition Concurrency Guidance*).
 - We acknowledge the importance of clearly setting out how we will work with other authorities. Further detail will be included in the our joint Memorandum of Understanding (MoU) with the FCA, PRA and the Bank of England, and in the MoU we expect to enter into with the CMA, so we do not need to include further information on this in our Objectives Guidance.
 - We do not intend to adopt the principle suggested that we only impose obligations on participants once there has been a finding of market power, as this principle is not reflected in our statutory framework.
- 7.14 Finally, it is our intention to work closely with the Bank of England to ensure that our actions do not adversely affect the Bank of England's functions – these are factors to which we must have regard under FSBRA. The way we will work with the Bank of England is set out in our joint MoU.

8

Our Administrative Priority Framework

We have decided to adopt our Administrative Priority Framework in broadly the same terms as those proposed in the Consultation. We have made some improvements to reflect suggestions made by respondents where we agreed that additional factors needed to be reflected in the Framework.

The four main themes contained in the draft for consultation (impact, strategic importance, risk and resources) remain the same. The Framework sets out the questions we will ask ourselves in order to help make administrative priority decisions. The Framework is a guide to how we will approach these decisions, but it is not an exhaustive list of all of the factors we will take into account because we need to consider all the relevant circumstances.

The purpose of the Framework is to ensure that we apply our powers in a targeted and efficient manner. It means that we will aim to prioritise the issues that are important and that will lead to positive outcomes when measured against our objectives, functions and duties.

Our proposed Administrative Priority Framework

- 8.1 In the Consultation we set out our proposed Administrative Priority Framework (the "Framework"). We will use this Framework to help us decide what work we should do and to make sure we focus on the work that should properly be considered a high priority. We explained that we will take into account four key considerations based on impact, strategic importance, risk and resources.
- 8.2 It explained the approach we will take in deciding whether to start (or continue) an investigation or case, either on our own initiative or in response to a complaint, dispute or application.

Responses to the Consultation

- 8.3 Most respondents explicitly supported our approach. One Operator noted that the Framework would support our wider regulatory approach and one Indirect PSP noted that the approach was in line with the current regulatory environment. We received some suggestions for amending or improving the Framework. The remainder of respondents did not explicitly support or object to our approach.
- 8.4 Some respondents made suggestions to develop or change the Framework to give greater emphasis to particular factors they thought important. One respondent requested more clarity on our timescales set out in the Framework and another suggested the Framework should be updated as our experience evolves. A few respondents noted that it was the PSR's use of its powers, rather than the Framework, which would affect the payment systems industry.

Our position

- 8.5 We have decided to adopt the Framework as we proposed in the Consultation but we have made some clarifications in response to comments made to us.
- 8.6 We have decided to retain the four broad parameters that were proposed in the Consultation: impact, strategic importance, risk and resources. The Framework is illustrative, rather than exhaustive, and we will consider other factors as appropriate. There is no particular hierarchy in these factors in terms of the importance we will give to them in deciding whether to start (or continue) work.
- 8.7 We will use the Framework when deciding whether to start or continue an investigation or case on our own initiative or, for example, in response to a complaint or in considering an application under section 56 or 57 FSBRA. We also intend to use the Framework more generally, to prioritise across our work including policy projects, market studies and market reviews.
- 8.8 As the PSR becomes operational, it has a large programme of work covering many significant and important policy areas. We have announced some large, strategic projects such as the market review into the supply of Indirect Access, the market review into the ownership and competitiveness of infrastructure provision, and our programme of work on card systems. So while every matter raised with us will, of course, be considered on its own merits, we expect that some requests for the PSR to take action may be better handled by allowing existing projects to complete, rather than by starting new work in the form of progressing a complaint or application independently.
- 8.9 We have made drafting changes to address some specific points made by respondents, as follows.
- Throughout – we have clarified that our focus is on advancing our statutory objectives, functions and duties – this reflects our wider obligations and priorities under FSBRA and also under other legislation for which we are or expect to be the competent authority.
 - Introductory section – we have included a cross-reference to our Objectives Guidance to better reflect that the impact and strategic significance of taking action are directly related to the advancement of our statutory objectives.
 - Impact – we have included additional text to explicitly reflect that stability or resilience of payment systems and wider financial stability are factors to be taken into account. We have also included a reference to keeping the impact of our actions under review (given that this might inform future prioritisation assessments).

Other comments

- 8.10 One Operator said we should consider the longer term effects of our actions. We consider that this issue is addressed in paragraph 1(c) of the Framework where we refer to the short-term and long-term impacts that our action is likely to have.
- 8.11 One Operator said we should consider the international regulatory and economic context and that we should have regard to market conditions. We think these matters are already addressed by paragraph 2(b) in the Framework, where we explain that we will consider market developments, legislative developments and self-regulation as possible alternatives to us taking action.
- 8.12 We have not amended the Framework to reflect one Operator's observation that the PSR should operate with a bias against intervention. This is a wider point than matters covered by the Framework, which is about how we decide what work we should start or continue, rather than assessing whether a particular action may or may not be appropriate, or indeed assessing regulatory action in general.

- 8.13 One Direct PSP said that we should undertake engagement with industry stakeholders before undertaking workstreams to ensure that they are appropriately framed (in light of public and private resource costs). Where we consider this useful and appropriate, we will do this – for example, alongside this Statement we have also published the Terms of Reference, in draft for comment, for our market review into the supply of Indirect Access and our market review into the ownership and competitiveness of infrastructure provision.
- 8.14 We agree with the suggestion that we should update the Framework in light of experience and practice.
- 8.15 One respondent suggested that more information on our timescales could be included in the Framework. We do not consider that a description of PSR timescales sits well in the Framework document, which is principally about how we decide what work to undertake, rather than how long that work will take. In general, however, we do accept the point that clarity on timescales is important to our stakeholders, and we will consider what additional guidance we may be able to give in due course as we fully establish the PSR's operations and programme of work.

9

Our Powers and Procedures Guidance

We have decided to adopt our Powers and Procedures Guidance (PPG) with some amendments to the version proposed in the Consultation.

We have changed aspects of our procedures around some of the powers and processes described in the PPG. In other areas, our procedures have remained the same to those proposed in the Consultation but we have made some improvements to the PPG to give more clarity or additional explanation. Where relevant these amendments are each explained in detail in this Chapter.

It has not been possible to give complete guidance on all aspects of our procedures, given that we are a new regulator. We will keep the PPG under review, and will revise it where necessary, as our practice develops.

Our proposed Powers and Procedures Guidance

9.1 In the Consultation, we set out our proposed Powers & Procedures Guidance (PPG). The PPG details the processes and procedures we will generally apply in our regulatory functions. In particular, the PPG sets out:

- what our different regulatory powers are
- for each power, the procedure that we will follow and what the appeal route is
- our dispute resolution and applications procedures
- what a compliance failure is and our powers to take enforcement action
- regulatory settlement decisions and the procedure around them
- our powers to gather information and conduct investigations
- our concurrent competition powers and our other functions.

Responses to the Consultation

9.2 Most respondents supported our proposed approach. One respondent welcomed the PPG for setting out the PSR's approach clearly at the start of our work. Another respondent called the guidance 'comprehensive and clear'. One respondent noted that the guidance was consistent with that adopted by other financial service regulatory bodies. Many respondents made suggestions for amendments to our procedures, with two respondents raising procedural points across the full range of powers and processes described in the PPG. At points, these respondents objected to aspects of our proposed procedures.

- 9.3 One respondent noted that the PPG had been developed prior to the PSR's operational launch and expected that the PPG would be reviewed and augmented where necessary.
- 9.4 On the PSR's dispute resolution and application procedures, most respondents explicitly supported our approach. One respondent welcomed the broad approach that the PSR was taking to dispute resolution. It welcomed the possibility for fact gathering and dialogue before any regulatory action was contemplated or decided. Another respondent thought that the PSR's approach would be of benefit to challenger banks and building societies. The remainder of respondents did not support or object to our approach.
- 9.5 Many respondents raised specific issues about our dispute resolution and application procedures or requested further clarity. Some of these respondents objected to aspects of our proposed approach.
- 9.6 A few respondents emphasised that one of the key challenges to the PSR in handling dispute applications would be its limited resources.
- 9.7 Below, we set out in detail the procedural points raised by respondents and our responses, grouped by key themes or the power or process being addressed.

Responses and our position

Model for procedures

- 9.8 One Direct PSP asked whether the FCA's Decision Procedures and Penalties Manual (DEPP) and Enforcement Guide (EG) were appropriate models for the PPG.
- 9.9 We have adopted processes that are consistent with the FCA's DEPP and EG where FSBRA sets out powers that are similar to, or modelled on, those available to the FCA under the Financial Services and Markets Act (FSMA). We consider that broad consistency with the FCA's DEPP and EG is sensible, given the status of the PSR as a separately incorporated subsidiary of the FCA and the overlaps in the PSR's and FCA's regulated populations. We note that the DEPP and EG processes have been adapted to the payments systems industry, the FSBRA legislative regime and our role as an economic regulator. We have reflected our specific regulatory functions, objectives, duties and powers in our PPG. We have also considered the procedures and guidance of other regulators and competition authorities in developing our own.
- 9.10 One Direct PSP requested more clarity on how the PSR will interact and communicate with stakeholders. We will review our guidance as our practice develops and we will draw on best practice from other regulators.

Grounds for action

- 9.11 One Operator emphasised the need for the PSR to consider its statutory objectives before exercising any of its powers. The role of the PPG is to provide practical information on how we will exercise our powers, where we have determined that it is appropriate to do so, based on the information in our possession. This will necessarily involve consideration of whether exercising any of our powers will advance our statutory objectives, functions and duties.
- 9.12 One Operator and one Direct PSP were concerned that the PPG does not give enough detail on how the PSR will ensure that it has received and considered all relevant evidence before taking any regulatory action. We have revised the PPG to reflect that a project or programme of work by the PSR, which might lead us to consider that it is appropriate to exercise a particular regulatory function, would involve information gathering and engagement with stakeholders. We also commit to keeping our guidance under review to reflect our experience of reaching regulatory decisions.

- 9.13 One Direct PSP wanted the PPG to reflect the importance of a coordinated approach between regulators. Our Administrative Priority Framework is the appropriate place, rather than the PPG, to reflect the importance of a coordinated approach between regulators and the need to consider initiatives of other regulators. Please see the 'resources' and 'strategic importance' themes of the Framework.

Representations on proposed regulatory actions

- 9.14 Three Operators and three Direct PSPs expressed concern about whether the PSR would give sufficient notice of proposed regulatory actions and/or a sufficient opportunity to make representations to the PSR. These respondents thought that the windows for representations on proposed actions were generally too short. A few of these respondents referred to the need for greater symmetry between the timescales for parties to respond to a notice of a proposed action (such as 14 days in the case of a specific direction or specifically-imposed requirement) and the timescale for the PSR to respond to super-complaints (90 days).
- 9.15 We will normally allow 14 days for representations to be made in writing following the issuing of a notice of a proposed specific direction or specifically-imposed requirement. We adopt the same timescale for representations on notices of proposed requirements to grant access or proposed variations of agreements. We will take into account the circumstances of each case. In some situations, it may be appropriate to give more time for representations to be made. In the case of proposed disposal requirements, the window for representations is at least 28 days. We have revised the PPG to reflect these points.
- 9.16 We do not consider that the PSR's statutory 90-day timescale to respond to super-complaints is a relevant comparator with the windows for parties to make representations on our proposed regulatory actions. The super-complaint process will be likely to involve research, information requests, the analysis of evidence, the consideration of any remedies and the preparation and publication of a response. More information on this process can be found in our Super-Complaints Guidance.
- 9.17 We have revised the PPG to clarify that receipt of a notice of a proposed specific action is unlikely to be the first time that the recipient hears about it. A notice will be issued only after the PSR has had the opportunity to determine whether the proposed specific action is appropriate. Typically, this will be through a project or programme of work during which we will gather information and engage with stakeholders. We would expect to inform affected parties of our thinking on our possible course(s) of action and seek their views before proposing to exercise the relevant power(s).
- 9.18 One Operator and one Direct PSP thought that oral representations, as well as written representations, should be allowed. In the case of specific directions and specifically-imposed requirements, we will consider written representations received alongside any views expressed orally in any meeting(s) between the addressees of the notice of the proposed action and the PSR case team or staff during the window for representations. If we do not seek such a meeting ourselves, an addressee may request one. In doing so, the addressee should state why it considers that a meeting is necessary. We have adopted the same approach in the case of requirements to grant access or variations of agreements. For requirements to dispose of an interest, we would expect to provide an opportunity for oral representations to be made. In enforcement proceedings against compliance failures, where the PSR's Enforcement Decisions Committee (EDC) decides to issue a warning notice and the recipient of that notice indicates that they wish to make oral representations, a date will be fixed for a meeting at which the EDC will receive those representations. We have revised the PPG to reflect these points.

Directions and requirements

- 9.19 One Operator stated that the PSR should first engage only with the persons or class of persons affected by general directions or generally-imposed requirements. This respondent stated that the need for a second round of public consultation should be assessed on a case by case basis.

- 9.20 We are required under section 104 FSBRA to consult on proposed general directions or generally-imposed requirements. Our consultation on general directions or generally-imposed requirements will give all stakeholders the opportunity to provide information on the likely impact of the proposed action. We do not consider that we should precede our consultation with an initial (more limited) consultation only with the persons or class of persons likely to be affected.
- 9.21 Three Operators and one Direct PSP thought that we should directly notify Operators when we are considering (and consulting upon) general directions or generally-imposed requirements. We already note in the PPG that we might write directly to participants in regulated payment systems (not just Operators) or take such other steps as we see fit to draw attention to our proposal.
- 9.22 One Direct PSP asked whether the PSR would set out why any proposed specific direction is necessary in order to achieve our objectives and why the direction is more appropriate than other potential measures. The PPG already notes that a notice of a proposed specific direction or specifically-imposed requirement will set out our reasons for proposing the action.
- 9.23 One Direct PSP and one Indirect PSP noted that the PPG was silent on the timescales within which directions or other actions are required to be implemented after they come into effect. These respondents wished to see appropriate regard given to the technical and other challenges that implementation might present. We have revised the PPG to clarify that the proposed implementation timescales (such as the deadline by which a participant must comply with a direction or requirement) will be set out in the notice of the proposed regulatory action. Recipients will accordingly have the opportunity to make representations on these points. The PSR's decision on the implementation timescale will be communicated in the final notice of the regulatory action.

Dispute resolution and application procedures

- 9.24 One Operator thought that the PSR should protect the Operator's ability to resolve disputes under its own rules and procedures. The same respondent highlighted the risk that the PSR may be subject to 'gaming' by parties (including where a threat of a complaint to the PSR might be used to secure a commercial advantage over the other party). A 'de minimis' threshold was suggested as a way of avoiding trivial and immaterial applications. The respondent did not suggest what such threshold might be.
- 9.25 One respondent welcomed the principle that the PSR should only be approached after the parties have first sought to resolve their disagreements through commercial negotiation, which may include attempts at mediation. One Operator thought that the PSR should assess whether all commercial negotiations had genuinely been exhausted. Another respondent thought that the PSR should be able to mandate that parties to a dispute proceed to mediation.
- 9.26 We have revised the PPG, adding wording taken from paragraph 6.72 of Supporting Paper 6 of the Consultation, to reflect that we expect parties to disputes to have first sought to resolve their disagreements through commercial negotiations, which may include attempts at mediation. Where an applicant has not done (or attempted) this, we may decide that it is not appropriate to handle the application or to exercise any of our powers, at least until the party has demonstrated that they have reasonably pursued such alternative routes to resolve their dispute.
- 9.27 We believe that requiring applicants to follow our guidelines on the format and content of applications (see Appendix 1 of the PPG) will serve to filter out trivial and immaterial applications. The information we require applications to include will assist the PSR in separating frivolous or vexatious applications from genuine ones. We have also revised the PPG to reflect that, where we are satisfied that the applicant has provided sufficient information, we will open an initial enquiry. The purpose of the initial enquiry phase is to determine whether it is appropriate for us to handle the dispute. It is during this phase that we will usually send a non-confidential version of the application to the other party (or parties) named in the application. Following the initial enquiry phase, and consideration against our Administrative Priority Framework, we will decide whether or not it is appropriate for us to handle the dispute (if so, we will open a case) and we will inform the parties accordingly.

- 9.28 One Operator questioned whether disputes could only be raised with the PSR against regulated entities, arguing that this would defeat the objectives of the dispute resolution process. The PSR's dispute resolution mechanism can only be used by a party seeking to have the PSR consider a dispute against a participant in a regulated payment system. This is because we would not be able to exercise our regulatory powers against an entity that is not a participant in a regulated payment system. Parties may provide information to the PSR about non-designated payment systems (or the services they provide). Parties may also complain to us about suspected anti-competitive practices which relate to any payment system, not just those designated for regulation under FSBRA, as a basis for us to consider whether it is appropriate for us to exercise our competition law powers.
- 9.29 One Operator thought that the PSR should determine a timeframe within which it will resolve a dispute. Another respondent thought that the process should be as streamlined as possible, so that timely and appropriate outcomes can be reached. We understand that the timely resolution of disputes is important and we will try to reach a determination as soon as possible in the specific circumstances of any individual case. We have revised the PPG to reflect this point. We will also keep our guidance under review as and may be able to give further guidance on likely timescales as our practice develops.
- 9.30 One Direct PSP and one other respondent challenged the PSR's proposal to receive applications in connection with disputes other than those falling under sections 56 or 57 FSBRA. These respondents questioned the PSR's power to handle such other disputes, should we decide to do so.
- 9.31 We are not proposing any extension of the PSR's role. We consider that it would (irrespective of what we say in the PPG) be open for participants and service-users to complain to the PSR about the functioning of the market for payment systems (and the markets for services provided by payment systems). It is possible that such complaints could take the form of a dispute that fell outside of sections 56 or 57 FSBRA (not relating to access to a payment system or the fees, charges, terms or conditions of agreements relating to payment systems). The PSR is clearly not to be used as a substitute or alternative to the courts in determining and enforcing the private legal rights of parties to a dispute.
- 9.32 Our approach to any such dispute application is to require them to be made in the same form as those made under sections 56 or 57 FSBRA.
- 9.33 As set out in the PPG, we cannot exercise our section 56 or 57 FSBRA powers where applications are not made under those sections. However, if we considered it appropriate to take any action against a participant in a regulated payment system, because we thought that action would advance our statutory objectives, functions and duties, we could do so by using our direction and requirement powers (under sections 54 and 55 FSBRA).
- 9.34 One respondent stated that the PSR should only become involved in a dispute which relates to a regulatory breach. We disagree. We consider that this would be a significant fettering of our discretion and would be an undue limitation of the PSR's regulatory role envisaged by sections 56 and 57 FSBRA. Those sections do not limit the PSR to considering only those applications which allege that the other party to the dispute has committed a compliance failure.
- 9.35 One Direct PSP did not think that the PSR should publish information about ongoing disputes except in exceptional circumstances. The same respondent thought that the PSR should allow parties to make representations on any planned publication of the PSR's final determination of a dispute. Another Direct PSP sought greater clarity on when information about disputes would be published. We have revised the PPG to reflect that we will decide whether to publish updates or final determinations of disputes based on the circumstances of each case. In doing so, we will balance the interests of transparency and wider awareness of the PSR's work and decision-making process with fairness to the parties to the dispute. In making these decisions, we may seek the views of the parties on what we expect to publish.
- 9.36 A few respondents made additional comments on our dispute resolution and application procedures as follows.

- One Direct PSP encouraged the PSR to consider the use of confidentiality rings which would allow respondents to gain access to certain confidential information for the purpose of preparing their responses. Another Direct PSP thought that commercially sensitive information should be treated in confidence and not distributed further without the consent of the provider.
- Two respondents noted that there may be circumstances in which parties need to raise disputes with the PSR on a confidential basis.
- One Direct PSP thought that the PSR should consider the costs and burden of appointing a skilled person in cases of disputes. The same respondent said that, where skilled persons are appointed, the costs might be borne by the party raising the dispute.
- One Direct PSP wished to see more guidance on our decision-making procedures around disputes.

9.37 Our dispute resolution and applications procedures will develop over time and we will keep our guidance under review. We may be able to give further guidance on how we reach decisions in dispute cases, our information gathering approach (including the potential use of skilled persons and the costs of this) and procedural matters (including on the treatment of confidential or commercially sensitive information). We can clarify however, that we would not include commercially confidential information in the published version of a determination on an individual dispute.

9.38 Two respondents thought that we should adopt a thematic approach to dispute handling, where we look more generally at key themes. The PSR may adopt such a thematic approach. We may, for example, identify key themes or patterns which suggest that certain types of application should be included in a wider programme of work rather than being progressed independently but we will still need to make decisions on a case by case basis. See Chapter 8 of this Statement on our Administrative Priority Framework.

Power to require the disposal of an interest

9.39 One Operator stated that the exercise of the PSR's disposal of an interest power must be based on robust and compelling evidence. This respondent thought that the disposal power should be a measure of absolute last resort and its use must be indispensable to the achievement of our objectives. The PPG already makes clear that the exercise of our power to require the disposal of an interest requires the Treasury's approval. We have revised the PPG to reflect that:

- the PSR's disposal power, like any other PSR power, will only be used where it is appropriate and proportionate to do so
- at least 28 days will be allowed for representations to be made in writing
- we expect to provide an opportunity for oral representations to be made
- we will also normally publish a draft of the requirement on our website and invite representations on it from stakeholders other than the affected Operator and the person holding an interest in that Operator.

Enforcement decisions

9.40 One Operator said that before taking any enforcement action, the PSR should conclude that there has been a compliance failure on the balance of probabilities and that it is appropriate to take enforcement action. The EDC will take decisions on whether it is appropriate to publish details of a compliance failure or impose a financial penalty for a compliance failure. The EDC will consider each compliance failure on its merits (including, necessarily, satisfying itself that a compliance failure indeed exists). These points are already reflected in the PPG.

- 9.41 One Operator raised questions about the independence of the EDC from those persons who may be involved in investigating compliance failures. This respondent did not think the EDC should be comprised of any PSR staff and made some other suggestions about how the EDC should be composed. One Indirect PSP sought clarity on who will appoint members of the EDC.
- 9.42 For clarity, we have included further information in the PPG on the nature and composition of the EDC and how it will operate. The EDC is a sub-committee of the PSR Board. It is separate from those persons who will recommend to the EDC that enforcement action be taken. Committee members will be independent of the PSR and will be appointed by the PSR Board on the basis of their relevant expertise.
- 9.43 One Direct PSP thought that full details of any inculpatory and exculpatory evidence should be provided to the EDC as a matter of course. In making a recommendation to the EDC, the PSR will ensure that the necessary facts and evidence are placed before it. The recommendation will be fair and balanced and we will not ignore exculpatory evidence. We do not expect to present the entire case file to the EDC along with our recommendation. The EDC can ask the case team to provide it with any information or evidence that it wishes to see before coming to its decision. Recipients of warning notes will also have the opportunity to make representations to the EDC.
- 9.44 One Direct PSP thought that the PSR should always provide (to the extent legally permitted) access to the underlying material on which it has based the warning notice in order to allow recipients to exercise their rights of defence. The warning notice issued by the EDC will set out the details of the compliance failure and will state the factual and legal basis for the EDC's proposed action, and the reasons for proposing it. We will consider in each case whether it is appropriate to provide a recipient of a warning notice with any underlying material. In some cases, we may consider it appropriate to provide the recipient with the written submissions and documents that the EDC considered when reaching the decision to issue a warning notice. We will take into account whether access to the material is likely to be necessary for the recipient of the warning notice to understand the case against it. We have revised the PPG to reflect this point.
- 9.45 One Direct PSP thought that the 21 day period to respond to a warning notice was too short. The period of at least 21 days for recipients of a warning notice to make representations to the EDC is in line with section 74 FSBRA and the practice of the FCA's Regulatory Decisions Committee (RDC) for FCA enforcement decisions. The precise timescale for representations will be determined in each case. In some circumstances, the EDC may agree to an extension of time where the recipient requests this and explains why it is needed. These points are already reflected in the PPG.
- 9.46 One Operator wished the PPG to clarify that we may publish details of a compliance failure without at the same time imposing a financial penalty. We believe this is already made clear in the PPG and in the Penalties Guidance.

Payment of fines

- 9.47 One respondent thought that the 14 day timescale for the payment of financial penalties was too short, suggesting instead a timescale of 60 to 90 days. We have decided to retain the 14 day timescale. Parties liable to pay a fine should have had adequate notice of the potential liability given the EDC warning notice procedure and the opportunity to make representations before the EDC issues its final decision. Our Penalties Guidance provides that we will consider agreeing to defer the due date for payment of a penalty or accepting payment by instalments where, for example, the participant requires a reasonable time to raise funds to enable the totality of the penalty to be paid within a reasonable period.

Settlements

- 9.48 We will keep our procedures and guidance for settlement under review as our practice develops. We will consider whether and when it is appropriate to give indications of the range of available settlement discounts.

Information gathering and investigation powers

- 9.49 One Operator and one Direct PSP encouraged the PSR to use its power to appoint skilled persons sparingly. The PPG sets out the circumstances in which we might use skilled persons' reports. This will tend to be where particular skills or specialist knowledge are required to produce a report. When we use skilled persons' reports, we will explain why we have decided to do so. We will keep our guidance under review and may be able to give further guidance on our use of skilled persons' reports as our experience develops.
- 9.50 One Operator and one Direct PSP noted the burden that information requests might place on parties. One of these respondents urged the PSR to consider public or other sources of information before issuing information requests. Consultation with other relevant regulators was mentioned as a way to avoid potential duplication. We will be mindful of the potential burden of our information requests and will consider alternative (including public) sources of information. To the extent possible and appropriate, we will liaise with other regulators to avoid duplication of information requests.
- 9.51 One Direct PSP thought that voluntary, rather than compulsory, information requests would generally suffice and that it would be more proportionate for the PSR to use voluntary requests in the first instance. We have revised the PPG to reflect that we may, where it is appropriate to do so, make use of voluntary information requests rather than formal requests under section 81 FSBRA. Views may differ on which form of information request is preferred. Some parties may prefer to receive a voluntary information request while others may prefer to receive a formal information request. Where we have sought information through an informal information request but the recipient considers that it would be helpful for this to be formalised into a formal request, it should discuss this with the PSR case team in the first instance.
- 9.52 One Direct PSP thought that there was a risk that parties might improperly be pressured into disclosing privileged legal advice given what we say in the PPG. We do not consider that the PPG creates any undue pressure on parties to disclose to us privileged legal advice. We make it clear that it is for parties to decide whether to voluntarily provide such material to us. We believe that it is important to signal in the PPG that parties are welcome to provide us with material (such as the results of an internal investigation or a report prepared by external law firm) on their own initiative.
- 9.53 One Direct PSP did not agree that we could, in the context of non-compliance with our information or investigatory requirements, bring compliance failure proceedings for breach of our proposed direction that participants must deal with the PSR in an open and cooperative way. This respondent felt that the only sanctions for non-compliance with an information or investigatory requirement should be the contempt of court proceedings set out in FSBRA. Where a party fails to comply with an information or investigatory requirement imposed by the exercise of statutory powers, this can be dealt with by the court as if the party were in contempt of court. We consider that we should also retain the option of bringing compliance failure proceedings (for breach of our general direction that participants must deal with the PSR in an open and cooperative way). Non-compliance, for example, failing to attend a formal interview as required by an appointed investigator, is a serious form of non-cooperation. Compliance failure proceedings will only be brought where it is appropriate to do so, based on the circumstances of each case. We will consider whether contempt of court proceedings or compliance failure proceedings (and the imposition of penalties where appropriate) would best achieve our aims, including deterring any future non-compliance with our investigations, on a case-by-case basis and taking into account the circumstances of the matter.
- 9.54 One Operator thought that, where we appoint investigators to conduct an investigation, it will be more appropriate for those appointed investigators to exercise their formal information gathering and investigatory powers. This respondent, along with one Direct PSP, did not think that the PSR should, in the context of investigations conducted by appointed investigators, draw any adverse inferences from the reluctance of a party to attend a voluntary interview or to provide information voluntarily. We have revised the PPG to make it clearer that, in the context of investigations conducted by appointed investigators, we will only seek information voluntarily, or arrange voluntary interviews, in limited circumstances. As such, negative inferences could only be drawn

from the failure of a participant to provide information voluntarily in those exceptional cases where it is appropriate to depart from the standard practice of appointed investigators using the statutory powers exercisable by them.

The use of appointed investigators

- 9.55 One Operator thought that there should be a clearly articulated evidential threshold to be met before the PSR can appoint investigators. The same respondent wanted more guidance on the criteria for opening an investigation. The PSR's power to appoint investigators, and the thresholds for doing so, are set out in section 83 FSBRA. We have revised the PPG to include more information on these criteria.
- 9.56 One Operator and one Direct PSP wished to see the PSR provide as much information as possible at the outset of an investigation involving appointed investigators so that the PSR's concerns could be understood. We believe that the PPG already sets out a number of ways in which we intend to be transparent about the nature and purpose of investigations involving appointed investigators. We will generally give notice of the appointment of investigators and specify the reasons for their appointment. We will also engage with parties in initial scoping discussions.
- 9.57 One Operator thought that changes in the scope of the investigation would require further scoping discussions, while one Direct PSP thought that the change in scope should always be communicated to the parties under investigation. When the nature of our concerns change significantly from those notified to the person under investigation, we may change the scope of our investigation. We have revised the PPG to state that potential prejudice to the person under investigation is one (but not the only) reason why we might wish to give written notice of the change of scope. We already state in the PPG that there will be an ongoing dialogue with the person under investigation throughout the investigative process.
- 9.58 One Direct PSP wished to see more regular engagement between the party under investigation and senior individuals within the PSR. Senior PSR staff will be included in discussions between the PSR and the person under investigation as and where necessary and appropriate.
- 9.59 One Direct PSP thought that the PSR should send a preliminary findings letter in all cases before it submits an investigation report to the EDC. In cases where our recommendation to the EDC is based on the findings of appointed investigators, our recommendation will usually be accompanied by an investigation report. Before we submit an investigation report to the EDC, we expect to send a preliminary findings letter to the person under investigation. The letter, or any annexed preliminary investigation report, will set out the relevant facts. The person under investigation will then have the opportunity to respond to the letter. The PPG reflects that there might be circumstances in which it is not appropriate to send out such a preliminary findings letter, for example where the party consents to not receiving it or where there is a need for urgent action.
- 9.60 One Operator thought that 14 days was not long enough for the recipient to respond to a preliminary findings letter. The period of time in which recipients of a preliminary investigation report are able to respond will normally be 14 days, although we will take into account all the circumstances of the case. We consider that the 14 day period should generally be reasonable to allow the recipient to confirm that the facts set out in the report are complete and accurate and to provide further comment. There will also be a further opportunity for the recipient to make representations – this time to the EDC – in the event that the PSR submits an investigation report to the EDC (with a recommendation that enforcement action be taken) and the EDC then decides to issue a warning notice.
- 9.61 One Direct PSP thought that an independent Procedural Adjudicator could be used in investigations conducted by appointed investigators to resolve procedural disagreements. We will keep our investigatory procedures under review and give thought to whether a Procedural Adjudicator is needed to resolve any procedural disputes. We expect that procedural challenges following the issuing of a warning notice will generally be matters for the EDC (and may be matters that the Chair or Deputy Chair of the EDC can individually determine).

- 9.62 One Direct PSP urged the PSR to be very cautious about publishing the identity of a party to an investigation before any adverse finding had been reached. As stated in the PPG, we may wish to publicise information regarding the appointment and use of investigators. When considering whether to publicise the identity of the party under investigation we will consider the circumstances of each case. We will balance the interests of transparency and fairness to the party under investigation.

Interplay between FSBRA and CA98 powers

- 9.63 One Direct PSP wished to see a clear statement of the primacy of the PSR's CA98 powers and for the PPG to set out how the PSR would reflect this in its procedures. The primacy of our CA98 powers over certain FSBRA powers is already dealt with in FSBRA and in the PPG. We state that we will consider our CA98 powers before we exercise the FSBRA power to issues specific directions or requirements. So, if we intend to give a specific direction or impose a specific requirement, for example, we will consider our CA98 powers first. We also state that when we decide that it is more appropriate to use our FSBRA powers, we will set out our reasons for this. We will keep our guidance on this under review as our practice develops.
- 9.64 One Direct PSP stated that lack of evidence sufficient to take action under CA98 powers would mean that no regulatory action could be taken either. We do not agree that it would be inappropriate to take action using our FSBRA powers where there is a lack of sufficient evidence to take action under CA98 powers, as the evidential and substantive standards under CA98 and FSBRA are different. To adopt such a position could create a risk of depriving our regulatory powers under FSBRA of practical utility. We might have concerns even where the evidence does not point to the existence of an anti-competitive agreement or the abuse of a dominant position. Also, we must have regard to our innovation and service-user objectives, as well as our competition objective.

Market reviews

- 9.65 One Direct PSP wished to see more guidance on the PSR's market review processes and procedures included in the PPG. More information on PSR market reviews will be included in a separate guidance document entitled '*Market reviews, market reviews and market investigation references: A guide to the PSR's powers and procedures*'. We launched a consultation on this draft guidance in January 2015. This guidance will be finalised and published as soon as possible after our operational launch on 1 April 2015.

Consultations

- 9.66 One Direct PSP thought that PSR consultations should run for 12 weeks unless there is a good reason to the contrary. We will normally allow 4 to 12 weeks for representations about proposed general directions or generally-imposed requirements. The precise duration of the consultation will depend on the complexity of the proposed action and the other circumstances of the case including, for example, the extent to which there has already been meaningful engagement with stakeholders on the particular issues.
- 9.67 We expect to follow normal consultation best practice for all other consultations, including on draft general guidance or our general policies and principles. We will assess the circumstances of each case, but would not normally expect a consultation to run for less than 4 weeks or more than 12 weeks.
- 9.68 One Direct PSP wished to see responses published as they are received in order to inform debate and said that best practice would be to appoint a PSR 'Consultation Champion'. We consider that publishing consultation responses as they are received may help inform debate, but equally we feel that the value of the consultation may be greater where one respondent's views are not swayed or influenced by those of others. We will keep the practice of other regulators around consultations under review and will seek to adopt current best practice.

Appeals

- 9.69 Three Operators queried why it is not possible for affected parties to appeal general directions or generally-imposed requirements to the Competition Appeal Tribunal (unlike the situation with specific directions or specifically-imposed requirements). We have revised the PPG to clarify that this is not a matter for the PSR's discretion but is set out by legislation. The fact that specific directions and specifically-imposed requirements can be appealed to the Competition Appeal Tribunal (but not general directions and generally-imposed requirements) is a result of section 76 FSBRA.
- 9.70 One Operator asked whether EDC decisions will be appealable to (or reviewable by) another body (in the same way that certain tax and financial services matters can be referred to the Upper Tribunal). As set out in the PPG, EDC decisions may be appealed to the Competition Appeal Tribunal.
- 9.71 As a general matter, we have clarified that our decisions, including those of the EDC can (like all administrative decisions) be the subject of judicial review by the courts. FSBRA does not provide for any appeal to (or review by) the Upper Tribunal for EDC decisions (or any other decisions of the PSR).

Other points

- 9.72 One Direct PSP asked what was meant by the PSR taking action where participants are acting in a way which could pre-empt or run counter to our directions. One example of this might be a participant seeking, after the final notification of a direction or a requirement to it but before the deadline for implementation, to circumvent or evade the application of the direction or requirement in some material way.

Other legislation

- 9.73 The Small Business, Enterprise and Employment Bill is currently before Parliament. It is expected to receive Royal Assent before the end of March 2015. Once in force, it will extend the PSR's power under section 58 FSBRA to enable the PSR to require the disposal of an interest in an Infrastructure Provider. We intend to apply paragraphs 15-17 of the PPG to requirements to dispose of an interest in an Infrastructure Provider, and we will reissue the PPG after the Bill has received Royal Assent to reflect that.
- 9.74 We are also being designated as the competent authority under legislation other than FSBRA, for example under Part 8 of the Payment Services Regulations 2009. To the extent needed, we will reissue the PPG to reflect how we will exercise powers and follow procedures under other legislation.

10

Our Super-Complaints Guidance

We have decided to adopt our Super-Complaints Guidance as proposed in the Consultation, which set out who can bring a super-complaint, the matters that can be raised in a super-complaint and how we will handle super-complaints. We have made a few minor changes to the version we consulted on.

Super-complaints are intended to better represent service-users' interests. Our Super-Complaints Guidance is to help designated representative bodies bring issues to us where features of the market may be significantly damaging the interests of service-users.

Our proposed Super-Complaints Guidance

- 10.1 In the Consultation we set out our proposed Super-Complaints Guidance on the procedure for designated representative bodies to bring issues to us where features of the market may be significantly damaging service-users' interests.
- 10.2 Our proposed guidance set out:
- who can bring a super-complaint
 - matters that should be addressed in a super-complaint
 - how we will handle super-complaints
 - what action may result from a super-complaint
 - public disclosure of super-complaints.

Responses to the Consultation

- 10.3 Most respondents supported our approach to our Super-Complaints Guidance. There were no respondents who objected to our proposed approach.
- 10.4 Comments were about designation of super-complainants and definitions or details of the super-complaints procedure. Some said that there was a need for clarity on the criteria and process for designation of super-complainants by the Treasury. One respondent asked that where a representative body would not take up a super-complaint, a joint effort by a number of PSPs should be treated as a super-complaint. A Direct PSP said that parties responding to a super-complaint should be given adequate time to respond.

Our position

- 10.5 We have decided to adopt our Super-Complaints Guidance set out in the Consultation which sets out who can bring a super-complaint, the matters that can be raised in a super-complaint and how we will handle super-complaints. We have made some small changes explained below.
- 10.6 The approach we have proposed to super-complaints is widely accepted and followed by other UK regulators (including the CMA and the FCA), and none of the responses to the Consultation raised any reason why we should take a different approach.
- 10.7 We note in particular that there is nothing in our Super-Complaints Guidance or in our Powers and Procedures Guidance which would prevent a group of PSPs or of service-users from submitting a complaint jointly to the PSR. Such a joint complaint would then simply be handled through our normal complaint handling processes, rather than through the super-complaints process which is reserved for complaints from representative bodies.
- 10.8 We have liaised with the Treasury about the designation of representative bodies who can make a super-complaint under section 68 FSBRA, and on the designation criteria that the Treasury will apply when considering who to designate as representative bodies.
- 10.9 We expect the Treasury to designate representative bodies after our 1 April 2015 operational launch. Once representative bodies have been designated, we will reissue our Super-Complaints Guidance to reflect who the designated super-complainants are.
- 10.10 The Treasury will also publish guidance about the criteria it will apply when considering which representative bodies to designate under section 68 FSBRA, which we expect will also be after 1 April. This should address respondents' concerns about transparency and clarity about the criteria for designation and the overall process.
- 10.11 We note that the issue of designation as a super-complainant is a matter for the Treasury. Interested parties are encouraged to apply to the Treasury for further information. Interested parties may also contact us if they have questions about how best to protect the interests of service-users.
- 10.12 We will decide how to take action following a super-complaint, and the timeframe for those involved to respond, on a case-by-case basis. This is because there is a range of possible outcomes to a super-complaint (from no action, to enforcement action), so we cannot at this stage take a definitive view as to how long we should allow for responses as part of a super-complaint process. For example, our Super-Complaints Guidance states that where we propose to make general directions, we will consult stakeholders in accordance with section 104 FSBRA, and as set out in our Powers and Procedures Guidance. Our Super-Complaints Guidance reflects a range of possible outcomes and the legal procedures and controls that will apply to each outcome. Our Super-Complaints Guidance also makes clear that, as required by section 69 FSBRA, we will respond to super-complaints within 90 calendar days, stating how we propose to deal with the complaint.
- 10.13 We will continue to work with other regulators, including the CMA and FCA, on approaches to super-complaints, to share best practices, and to establish which regulator is best placed to deal with individual super-complaints. We will also agree with the FCA and CMA how we will engage with each other in such circumstances to ensure that any super-complaint is dealt with appropriately.
- 10.14 We will keep our Super-Complaints Guidance under review so that we can amend and update it as necessary.

11

Our Penalties Guidance

We have decided to proceed with our broad approach to imposing financial penalties as proposed in the Consultation, where the level of penalty would be based initially on the seriousness of the compliance failure and then increased or decreased based on aggravating or mitigating factors.

We have decided to proceed with the proposal that penalties are to be based on a percentage of the participant's annual revenues from the relevant business activity in the UK.

We have decided not to set an upper limit on penalties. Since penalties are calculated based on relevant revenues, an upper limit might mean that we cannot impose a penalty that reflects the seriousness of a compliance failure.

Our proposed Penalties Guidance

- 11.1 In the Consultation we set out our proposed Penalties Guidance. This explained how we would impose a financial penalty for a compliance failure on a participant in a regulated payment system. We set out a statement of the principles we would use to decide whether or not to impose a penalty and that we would use in deciding the amount of any such fine.
- 11.2 We proposed that in deciding whether to impose a penalty, we would consider the circumstances of each individual case and our (non-exhaustive) list of factors to take into account.
- 11.3 To set the level of a financial penalty, we proposed that the starting point would be based on both the seriousness of the compliance failure and the principles of disgorgement, discipline and deterrence. The penalty would then be increased or decreased based on aggravating and mitigating factors. We proposed this approach so that we would have the discretion to set penalties at levels that are appropriate and proportionate to the specific circumstances of each case.
- 11.4 We consulted on the question of whether we should use revenues alone as the metric to calculate the level of penalties. We also asked for respondents' views as to whether we should, in certain cases, take other metrics into account including the value of funds transferred within the relevant system.
- 11.5 We consulted on whether there should be an upper limit on penalties, for example based on 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates. We asked whether any upper limit should differ according to the category of participant.
- 11.6 We proposed to require that fines should be paid within a period (usually 14 calendar days) set out in the final decision notice. We would then consider agreeing to extend the deadline or accept payment in instalments if, for example, the participant could show that it needed further time to raise funds to pay.

Responses to the Consultation

- 11.7 Most respondents supported our proposed approach. There were differing views expressed around the detail, including the appropriate metric to use to calculate penalties and whether we should set an upper limit.

Overall approach

- 11.8 There was broad support for our proposed principles-based approach, proportionality, case-by-case assessment and alignment with the approach of other regulators (particularly the FCA). Most respondents who responded on the overall approach supported our proposal.
- 11.9 A few respondents suggested that our approach to penalties could expose participants to ‘double jeopardy’ in the form of multiple sanctions by different regulators for the same compliance breach.
- 11.10 A number of respondents sought clarification on how the penalties regime would operate in practice. Clarification was sought on the PSR’s remit to impose penalties on individuals and the liability of Indirect PSPs for the compliance failures of third parties (i.e. Direct PSPs or Operators). We were also asked to clarify the scope of aggravating or mitigating factors.
- 11.11 One Direct PSP suggested that we consider a compliance programme a mitigating factor when determining penalties.
- 11.12 One respondent suggested that we should exclude competition related matters from our proposed approach.
- 11.13 A Card Operator argued that failure to comply with the proposed PSR Principles should not incur fines. We address further comments made about the PSR’s Principles in Chapter 1 where we have set out our position on the proposed Principles and on our Direction 1, and below in paragraph 11.26.

Metric for calculating penalties

- 11.14 There were mixed views about the relevant metric for calculation of penalties. Of those who responded on this point, nearly half viewed revenues as an appropriate measure. Some suggested that a revenue based formula should exclude PSR funding costs or transaction fees paid to third parties.
- 11.15 Nearly a third of respondents commenting on penalties argued that we should use another metric but most of them did not suggest an alternative. Those who did suggested the costs of a payment system, its annual budget or transaction volumes.
- 11.16 Very few respondents supported our using “values of funds transferred” as a basis for calculation of penalties. Strong opposition was expressed by more than a quarter of respondents. Their concerns were mostly about the impact of using this metric on not-for-profit organisations arguing that it could discourage PSPs from participating directly in regulated payment systems.

Upper limit on penalties

- 11.17 About half of respondents supported an upper limit. Many of them felt this was needed for legal certainty. Their reasons included the detrimental impact on not-for-profit entities of potentially unlimited penalties and the need to align our approach with that of other regulators. More than half of those who supported an upper limit said that they supported the 10% of annual revenues limit proposed in the Consultation.
- 11.18 About a quarter of respondents who commented on penalties argued against an upper limit, including an Interbank Operator which said that a 10% cap “*may not reflect the seriousness of a particular compliance failure*”. Some respondents objected to an upper limit because for some participants, the revenues from payment systems are small compared to the size of their total

business meaning that an upper limit as a percentage of payment systems revenues would not be a deterrent.

- 11.19 A Direct PSP supported the PSR following the same approach as the FCA on this aspect, where it made the point that penalties are calculated based on all the circumstances of the case without a fixed upper limit.

Approach to enforcement and enforceability of penalties

- 11.20 There was broad support for our proposed overall approach to enforcement and enforceability of penalties.
- 11.21 Some respondents questioned whether the penalties regime would be effective because penalties can only be imposed on the entity that has committed the compliance failure in question, but that compliance failure may be due to the acts of an individual or a third party. One Interbank Operator asked whether Operators could withdraw from a payment system in order to avoid paying penalties.
- 11.22 Two respondents asked us to consider whether there was a need to take into account service-user redress when setting penalties.
- 11.23 Finally, we received detailed submissions on technical points which raised questions around timings for the payment of penalties, appeals against penalties and our procedure for opening an investigation or imposing penalties.

Our position

Our overall approach

- 11.24 We have decided to implement our policy on penalties largely as set out in the Consultation. We have changed one key point in our overall approach however by deciding not to adopt an upper limit on penalties, and we have made some points of clarification. Our final Penalties Guidance, which is published as an annex to this Statement, reflects this.
- 11.25 We will apply our Penalties Guidance to all regulatory compliance failures because we consider that our proposed approach gives us sufficient flexibility to take into account different situations according to the seriousness of that compliance failure. We may impose a penalty for any compliance failure meaning a failure to comply with a direction given by us under section 54 FSBRA; or a requirement imposed by us under section 55 or 56 FSBRA. Our Penalties Guidance does not concern penalties imposed in exercise of our concurrent competition law powers. We must have regard to the CMA's penalties guidance when we exercise our concurrent competition law powers as opposed to our regulatory powers under FSBRA.
- 11.26 Our ability to impose penalties complements our other regulatory tools as well as Direction 1, which we discuss in Chapter 1. The imposition of penalties is not an automatic consequence of failing to comply with a direction (including Direction 1) but, as with any other compliance failure, is a possible consequence of such a compliance failure depending on the circumstances. Our Penalties Guidance recognises that there may be circumstances where it is not appropriate to impose a fine at all.
- 11.27 Having considered respondents' comments, we have made some changes to clarify how our Penalties Guidance will operate, specifically as follows.
- We will have regard to a participant's compliance efforts as a relevant (mitigating or aggravating, as the case may be) factor when setting the level of penalty and have changed our Penalties Guidance to reflect this. Our aim is to encourage participants to operate

effective compliance programmes, and not merely “box tick” by having a compliance programme in place which is not implemented effectively.

- There may be circumstances where a participant’s compliance failure is beyond its reasonable control, for example because a compliance failure is due to the action or inaction of a third party. We have therefore added this to the list of aggravating or mitigating factors that we will take into account when setting the level of penalties.

Metric for calculating penalties

- 11.28 We intend to use the participant’s gross annual revenues derived by it from the business activity in the United Kingdom to which a compliance failure relates as the metric for calculating penalties.
- 11.29 We consider that the use of gross revenues is consistent with the approach of other regulators including competition regulators and the FCA, and relates to a measure of the economic significance of the entity responsible for the compliance failure. Therefore, gross revenues are an appropriate metric. We may also take “billings” into account where it is appropriate to do so and have amended our Penalties Guidance to reflect this. This approach remains subject to our overall principles-based approach to how penalties will be set.
- 11.30 While a third of respondents commenting on penalties suggested we look to “other metrics”, they did not necessarily argue against using a revenues-based approach, nor did they articulate in detail a rationale for an alternative, or why this could address any perceived deficiencies in a revenues-based approach. We have considered what other metrics we might adopt. We have concluded that we should proceed with a revenues-based approach for the following reasons.
- We received clear support for a revenues-based approach from a wide range of respondent categories and we believe this is the most appropriate and practical approach available.
 - There was no clear consensus as to what other metric could be used or how alternative approaches would apply in practice (whether alone or in combination with a revenues-based approach).
 - It is consistent with the approach of other regulators including the CMA, European Commission and the FCA.
 - We consider that there are compelling reasons for rejecting an approach based on values of funds transferred (also reflected across respondent comments), not least because:
 - we received strongly expressed opposition to this approach and very limited support among respondents
 - it does not correlate to the economic value of payment activity to the Payment System Operator or PSP, as the value of funds transferred may far exceed the profits or revenues derived by that participant from the relevant payment system activity
 - there is a risk of discriminatory treatment for payment systems with higher transaction values if these values translated into higher relative fines
 - there is a risk that this could discourage direct participation as Operators would need to recover potentially disproportionate penalties from their Direct PSPs as representing the costs of their participation.

Upper limit on penalties

- 11.31 We have decided not to adopt fixed (upper or lower) limits on penalties. This is because we consider that a principles-based approach to penalties without being constrained by an upper limit on penalties is the best way to achieve our policy goals of disgorgement, discipline and deterrence. This approach:

- is consistent with FSBRA which does not set a statutory limit on the penalties that we may impose
- allows us the flexibility to set penalties at a level we consider to be proportionate to the compliance failure in circumstances where a cap of 10% of revenues may not always reflect the seriousness of a specific compliance failure
- will contribute to the necessary deterrent effect of penalties.

11.32 While an upper limit would provide participants with an element of certainty as to the likely magnitude of penalties, we believe that a coherent and predictable framework is provided by our principles-based four step approach to penalties as set out in our Penalties Guidance. We do not accept the argument that potentially unlimited fines could expose not-for profit entities to excessive risk because we will take into account all the circumstances of the case and will adopt a proportionate approach.

11.33 Some competition authorities, including the CMA and the European Commission, employ a methodology based on a starting point of a fixed percentage of revenues. We do not think this would be useful at this stage, but may reconsider this in due course. We consider that the proposed methodology in our Penalties Guidance provides sufficient flexibility to set penalties where each case is treated on its facts within the principles-based approach.

Approach to enforcement and enforceability of penalties

11.34 We have decided to implement our Penalties Guidance subject to minor clarifications and changes set out below and in response to respondents' comments. Specifically:

- we have added to our Penalties Guidance the question of whether or not an issue is a novel issue, as a factor in deciding whether or not to impose a penalty
- we have clarified that penalties will be paid to the Treasury after deduction of our enforcement costs.

11.35 Our Powers and Procedures Guidance indicates that pursuant to section 76 FSBRA, a decision by us to publish the details of a compliance failure or to impose a financial penalty for a compliance failure may be appealed to the Competition Appeal Tribunal by any person who is affected by the decision.

11.36 We will review our penalties regime to ensure that it is, and remains, effective. We will also monitor our approach to penalties to ensure that it remains fit for purpose and reflects best practice amongst relevant regulators. In doing so we will also take into account any:

- attempt by a participant to avoid liability for a penalty for example by withdrawing from a payment system
- attempt by a Direct PSP to pass on liability for penalties to Indirect PSPs to whom it provides Sponsor Bank services
- attempt by an Operator to pass on liability for penalties to the Bank of England, as the Bank of England is not a participant in a regulated payment system under FSBRA and therefore cannot be subject to penalties for a compliance failure, whether directly or indirectly.

11.37 We will continue to monitor the need for any potential need for redress for individual service-users harmed by compliance failures. Where a participant agrees to carry out a remedial programme (which may include redress to compensate those who have suffered a loss or not realised a profit as a result of the compliance failure), or where we decide to impose a redress programme, we will take this into consideration, and in such a case, the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

- 11.38 In finalising our Penalties Guidance we have liaised with the FCA and will liaise with them going forwards on their review of their approach to setting penalties under their Decision Procedure and Penalties Manual (DEPP 6.5).

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