

Draft Specific Direction 8 requiring the adoption of appropriate policies and measures and reporting obligations regarding protected ATMs ([LINK](#))

September 2018

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Note: The places in this document where confidential material has been redacted are marked with a [X].

# 1 Recitals

## Whereas:

- 1.1** LINK is a network of Card Issuers and ATM providers that allows cardholders to use their cards to withdraw cash at any ATM connected to the LINK Network where the ATM provider is not the same institution as the cardholder's issuing bank
- 1.2** At the time of LINK's commitment ATMs connected to the LINK Network were operated by ATM providers. ATM providers may be card-issuing PSPs or IADs.
- 1.3** In its *Final Decision and Impact Assessment* of 31 January 2018, the LINK Board stated, among other things, that:
1. Consumer demand for cash, whilst declining, is likely to remain an essential need for decades to come<sup>1</sup>
  2. The LINK Board is determined to defend the free ATM network and the consumers who rely on it<sup>2</sup>
  3. LINK's objective is to maintain free access to cash for many years to come through an extensive footprint of ATMs with the same geographic coverage as now<sup>3</sup>
  4. LINK will introduce an increase in some interchange payments through a strengthened financial inclusion programme to ensure that free ATMs are maintained across the country, including in areas where consumer demand is insufficient to justify a free ATM under normal interchange rates<sup>4</sup>
  5. In addition to this, there will be no reduction in the interchange for all current free ATMs that are 1 km or more from the next free ATM. This will ensure that no ATM that comes into this 1 km category will close as a result of the reduction in interchange fees<sup>5</sup>
  6. The 1 km distance used will be interpreted flexibly to reflect actual travel conditions on the ground, rather than a rigid 'as the crow flies' approach<sup>6</sup>
  7. The LINK Board's Impact Analysis<sup>7</sup> concluded that there will be modest reductions in free ATMs as a result of the proposed changes to interchange<sup>8</sup>

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1 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 2, last paragraph, last sentence.

2 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 2, second paragraph, first sentence.

3 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 1, third paragraph.

4 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 2, third paragraph, second bullet, first sentence.

5 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 2, third paragraph, second bullet, last sentence.

6 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 2, third paragraph, second bullet, third sentence.

7 LINK's full Impact Assessment is appended to its *Final Decision and Impact Assessment* (31 January 2018).

8 LINK *Final Decision and Impact Assessment* (31 January 2018), Page 5, sixth paragraph.

**1.4** In LINK's press release of 31 January 2018 accompanying its Final Decision and Impact Assessment (titled *The LINK Board announces changes to operation of its ATM Network*), LINK stated, among other things, that:

1. A strengthened financial inclusion programme will ensure that all communities retain free access to cash. This will be without financial constraint and LINK will do whatever it takes to retain free access to cash for all communities.
2. The impact of the phased reduction in interchange is expected to be a modest decline in the number of ATMs in areas where they are heavily concentrated but with no diminution in the overall geographic coverage.

**1.5** During discussions in early February 2018, the operator of LINK committed to the Payment Systems Regulator (PSR) that it would monitor the impact of its decision of 31 January 2018 to introduce a phased reduction in the LINK scheme's interchange fees. This commitment included highlighting to the PSR and the public any areas where protected ATM availability is lost and ensuring that the operator of LINK responds appropriately so that all communities retain free access to cash.

**1.6** In order to ensure that the operator of LINK can maintain the broad geographic coverage of the FTU ATM network in the UK and meet service user needs, and that the operator of LINK has the resources to do so, the PSR considers it is necessary for it to have clarity:

1. on the scope of LINK's commitment
2. on the terms of the operator of LINK's procedures, processes, policies and measures
3. that certain minimum requirements will be complied with by the operator of LINK, and
4. that LINK will secure such expertise, resources, equipment and/or software that may be required from time to time to enable it to fulfil its commitment

**1.7** The PSR requires regular detailed updates from the operator of LINK to enable the PSR to assess whether LINK's strategies are meeting, and continue to meet, consumer needs.

**1.8** The PSR is also engaging with the government and other interested stakeholders to help develop options for the future provision of access to cash and the role of regulation in achieving sustainable solutions.

## 2 Powers exercised and purpose

- 2.1** The Payment Systems Regulator makes this specific direction in accordance with section 54(2)(a) of the Act. In accordance with section 54(3)(c) of the Act this specific direction applies to the operator of LINK.
- 2.2** The Payment Systems Regulator has had regard in particular to the following provisions of the Act as appropriate:
- a. sections 49 to 53 (General duties of the Regulator)
  - b. section 62(2)(a) (Duty to consider exercise of powers under the Competition Act 1998)
- 2.3** The purpose of this specific direction is to require the operator of LINK to:
- 1. provide clarity on the Commitment
  - 2. adopt the Minimum Requirements
  - 3. provide clarity about the implementation and effectiveness of the Commitment, and
  - 4. monitor and report to the PSR in accordance with Part 10

# Direction

**NOW the PSR gives the following specific direction to the operator of LINK:**

## 3 Key definitions

**3.1 ATM Replacement Procedure(s)** means any approach or commercial arrangement that the operator of LINK applies, subject to the Filters, to keep a Lost ATM open, to reopen a Lost ATM, or incentivise or otherwise ensure the opening of a replacement FTU ATM within a 1 km area of the Lost ATM.

**3.2 Commitment** means, together, the commitment summarised in paragraphs 1.3 to 1.5, including the commitment by the operator of LINK to maintain the broad geographic spread of Protected ATMs as at 1 February 2018 by incentivising or otherwise ensuring the maintenance, reopening or replacement of Protected ATMs that become Lost ATMs.

**3.3 Filter** means:

1. the process or processes the operator of LINK applies to decide whether to remove a Lost ATM from the Commitment, and
2. any other process or processes which the operator of LINK subsequently applies from time to time, pursuant to Parts 5 or 9, which form part of its policies and measures

**3.4 Lost ATM** means:

1. any Protected ATM which has ceased to operate (other than where LINK has obtained confirmation that this is on a temporary basis), or
2. any Protected ATM which switches to charging for withdrawal of cash on a part-time or full-time basis, or
3. any Protected ATM known to the operator of LINK, having made reasonable enquiries, as being scheduled to close within the next 12 weeks

**3.5 Minimum Requirements** means the requirements set out at Part 6 below which the operator of LINK must include in its policies and measures regarding its Commitment.

**3.6 Policies and measures** means the policies and measures referred to in Part 5.

**3.7 Protected ATM** means:

1. a FTU ATM which was in existence in the UK, and connected to the LINK Network, as at 1 February 2018, which has no other FTU ATM within 1 km, or
2. any other FTU ATM which existed as at 1 February 2018 and which is subsequently identified as a Protected ATM pursuant to Parts 6 or 9

## 4 Identification of Protected ATMs

**4.1** By 31 October 2018, or such later date as the PSR may notify, the operator of LINK must:

1. identify the Protected ATMs as at 1 February 2018 and any other FTU ATM which has been subsequently identified as a Protected ATM pursuant to Parts 6 or 9
2. identify the characteristics necessary to effectively run its policies and measures in relation to the Commitment, and
3. utilise appropriate and effective systems and mechanisms to do so

## 5 Requirement to develop and adopt appropriate policies and measures

**5.1** The operator of LINK shall develop and adopt appropriate, effective and well-defined policies and measures in connection with the Commitment to address the following:

1. taking account of the Minimum Requirement at paragraph 6.1(1), how the operator of LINK will address its Commitment to deal with FTU ATMs that existed as at 1 February 2018 which have subsequently become Protected ATMs;

2. how the operator of LINK will ensure, in accordance with the Minimum Requirement at paragraph 6.1(2), that the 1 km filter for distance can be applied flexibly where appropriate to reflect actual travel conditions on the ground rather than a rigid 'as the crow flies' approach; and
3. how the operator of LINK will apply each of its Filters when deciding whether to remove a Lost ATM from its Commitment, including:
  - a. in accordance with the Minimum Requirement at paragraph 6.1(3), where there is no public impact, such as where there was no public access to the Protected ATM.
  - b. where there is alternative cash access such as a Post Office branch within 1 km of a Protected ATM. This must include the operator of LINK's assessment of the circumstances in which a Post Office branch will be deemed to be an adequate substitute for a Lost ATM
  - c. any other Filter the operator of LINK seeks to introduce prior to [19] October 2018 which could result in a Lost ATM being removed from the Commitment

**5.2** The policies and measures must each include:

1. an assessment of their appropriateness, effectiveness and comprehensiveness; and
2. an explanation of how they will be implemented in practice

**5.3** Save as otherwise notified by the PSR and/or for reasons of commercial confidentiality or sensitivity, the policies and measures must be published in full on the LINK website

## 6 Minimum requirements in relation to the Commitment

**6.1** The policies and measures the operator of LINK must develop and adopt pursuant to Part 5 must include the following minimum requirements:

1. Protected ATMs must include any FTU ATMs that were in existence as at 1 February 2018 which were not Protected ATMs at that date but which subsequently have no other FTU ATM within 1 km 'as the crow flies'.
2. Protected ATMs must include any FTU ATM that was not a Protected ATM as at 1 February 2018 that the operator of LINK becomes aware (through a member of a community or a community representative):
  - a. has ceased to operate, is closing within the next 12 weeks or has switched to charging for the withdrawal of cash on a full or part time basis; and
  - b. is within 1 km of another FTU ATM 'as the crow flies'; but



- c. there is a barrier (including a road, river, railway line or area that has restricted access to the public) that LINK considers has a non-insignificant adverse impact on a community's access to cash
3. Protected ATMs must include any FTU ATM that was not a Protected ATM as at 1 February 2018 that:
  - a. has ceased to operate, is closing within the next 12 weeks or switches to charging for the withdrawal of cash on a full or part time basis; where
  - b. the operator of LINK becomes aware, having made reasonable enquiries, that there is no other FTU ATM with public access within 1 km.

## 7 Timeline for and reporting on the development and implementation of the policies and measures

**7.1** To enable the PSR to be satisfied that the operator of LINK has in place appropriate, effective and well-defined policies and measures as required by Part 5, except where the PSR notifies the operator of LINK otherwise in writing, the operator of LINK must:

1. produce an initial draft of its proposed policies and measures pursuant to paragraph 5.1 to the PSR by [19] October 2018, together with its proposed timetable for developing and adopting the proposed policies and measures and such relevant evidence as required; and
2. produce a final draft of its proposed policies and measures pursuant to paragraph 5.1 to the PSR by [31 October] 2018 together with its final proposed timetable for developing and adopting the proposed policies and measures and such relevant evidence as required; and
3. implement the policies and measures no later than [14] November 2018; and
4. secure such expertise, resources, equipment and/or software to enable it to fulfil its Commitment by the required dates, and thereafter as may be required to fulfil its Commitment on an ongoing basis

- 7.2** The operator of LINK must update the PSR on a weekly basis, either orally or in writing as the PSR may require from time to time, on the progress it is making in relation to the obligations in this specific direction (including the progress of the development of its policies and measures and the implementation of such policies and measures), together with such other information that the PSR may request in writing from the operator of LINK in connection with this specific direction. Save as otherwise notified by the PSR, each update must cover its progress under each of the requirements set out in Part 5.
- 7.3** The PSR may specify that the weekly updates referred to in paragraph 7.2 must be provided by particular dates (by reference to particular stages in the development and adoption process), or that reporting dates may be suspended for a period of time.

## 8 The ATM Replacement Procedure

- 8.1** Except where the PSR notifies the operator of LINK in writing, the operator of LINK must develop and adopt appropriate, effective and well-defined policies and processes as part of its ATM Replacement Procedure by [31 October] 2018, including a clearly developed mitigation plan as an alternative to offering interchange premiums.
- 8.2** Except where the PSR notifies the operator of LINK in writing, the operator of LINK must, in respect of any Lost ATM other than where a Filter to remove an ATM from the category of Lost ATMs applies:
1. within [3] months of any FTU ATM being identified as a Lost ATM, obtain confirmation that an ATM provider will
    - a. keep open
    - b. reopen, or
    - c. replace the Lost ATM with a replacement FTU ATM which is within a 1 km area of the Lost ATM; and/or
  2. in any event, complete the overall ATM Replacement Procedure process, including any mitigation activities, within [six] months of any FTU ATM being identified as a Lost ATM.

## 9 Variations

- 9.1** The operator of LINK shall not vary or revoke any of its policies and measures and/or introduce new policies or measures in relation to its Commitment without giving the PSR a minimum of two weeks' notice informing the PSR of its intention, together with its explanation of its reasoning for doing so and assessment of the impact of the proposed changes.
- 9.2** The operator of LINK shall not vary or revoke any part of its ATM Replacement Procedure and/or introduce new aspects of the ATM Replacement Procedure without giving the PSR a minimum of two weeks' notice informing the PSR of its intention, together with its explanation of its reasoning for doing so and assessment of the impact of the proposed changes.

## 10 Monitoring and reporting requirements

- 10.1** The operator of LINK must monitor and report to the PSR on a monthly basis on the following, save as otherwise notified by the PSR:
1. Any changes to the Protected ATMs. That report should include as a minimum:
    - a. the number and location of Protected ATMs that have become Lost ATMs and any other Protected ATMs which LINK anticipates will become Lost ATMs
    - b. the number and location of ATMs that were not protected on 1 February 2018 and which have subsequently become Protected ATMs
    - c. the characteristics of the Protected ATMs that have become Lost ATMs, and any other Protected ATMs which LINK anticipates will become Lost ATMs, including:
      - i. the name of the ATM provider
      - ii. the month when the Protected ATM stopped transacting or is expected to stop transacting
      - iii. average monthly withdrawals
      - iv. the distance from the nearest FTU ATM with public access
      - v. whether the operator of LINK intends to apply or has applied a Filter and, if so, which Filter has been applied and why

2. For each Lost ATM to which the ATM Replacement Procedure is applied:
  - a. what actions have been taken by the operator of LINK in connection with the ATM Replacement Procedure;
  - b. when the operator of LINK expects a replacement FTU ATM to be available and the basis of that expectation;
  - c. the date at which a Lost ATM is replaced (where this occurs) and the location of the replacement FTU ATM, both absolute and relative to the Lost ATM; and
  - d. the current outcome of the ATM Replacement Procedure where the Lost ATM has not been replaced

**10.2** The operator of LINK shall provide the PSR, on a monthly basis, with an explanation of the following, save as otherwise notified by the PSR:

1. any strategic decisions made by the operator of LINK in relation to its Financial Inclusion Programme (outside of Parts 5 and 6), including the factors taken into account in reaching its decision and how the decision has been influenced by the operator of LINK's monitoring activity;
2. the impact of any reductions in interchange on the FTU ATM estate as a whole;
3. what has happened to the FTU ATM estate as a whole and the Protected ATMs, compared with the operator of LINK's expectations at the time it made the Commitment

**10.3** The operator of LINK must provide to the PSR any additional information and documents relating to its monitoring activities and decisions, so that the PSR can understand the operator of LINK's activities in context and verify information if necessary. This may include the operator of LINK's confidential information that cannot be published and copies of un-redacted sections of relevant Board Minutes.

**10.4** The operator of LINK must publish such information reported to the PSR pursuant to this Part 10, subject to issues of commercial confidentiality or sensitivity, as the PSR may determine from time to time.

# 11 Application

**11.1** This specific direction applies to the operator of LINK.

# 12 Commencement and duration

**12.1** This specific direction comes into force on [DATE] 2018.

**12.2** This specific direction must continue in force until 2 January 2022 unless earlier varied or revoked by the PSR.

**12.3** This specific direction must be subject to review by the PSR after 12 months and (if still in place) after 24 months.

# 13 Citation

**13.1** This specific direction may be cited as *Specific Direction: Protected ATMs 2018: LINK*.

# 14 Interpretation

- 14.1** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 14.2** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 14.3** References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 14.4** In this specific direction, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.
- 14.5** In this specific direction:

**Act** means the Financial Services (Banking Reform) Act 2013.

**ATM** means an automated teller machine or other unattended terminal capable of dispensing cash and which may be used to enable or facilitate the payment, receipt or transfer of money or the transmission of other instructions or enquiries connected with financial services which is connected to the LINK Network.

**ATM provider** means a LINK Network member who operates ATMs and through whose system a LINK transaction is introduced into the LINK Network. ATM providers may be card-issuing PSPs or may be IADs who do not issue cards.

**Board** means the Board of Link Scheme Holdings Ltd.

**Card Issuer** means each LINK Network member that issues cards that use the LINK Network to its members or customers.

**Financial Inclusion Programme** means both:

1. the original financial inclusion programme established in 2006 and updated in 2015 designed to improve access to cash for consumers in the most deprived areas of the UK, and
2. LINK's 31 January 2018 enhancement of this programme to include all FTU ATMs which are 1 km or more from another FTU ATM

**FTU ATM** means a free-to-use ATM.

**IAD** means an ATM provider that doesn't issue cards.

**Interchange Fee** means the separate fee payable by a Card Issuer to an ATM provider in respect of a LINK Transaction.

**LINK** means the regulated payment system designated by HM Treasury under section 43 of the Act in March 2015.

**LINK Network** means the shared network used for the purposes, among other things, of serving the ATMs of LINK network members and others and of permitting the customers of LINK network members to withdraw cash from their accounts mechanically and electronically by means of a cash withdrawal at an ATM operated by a LINK network member.

**LINK Transaction** means any transaction carried out at an ATM or as a transaction within the LINK Network.

**operator** has the meaning given by section 42(3) of the *Act*.

**payment system** has the meaning given by section 41 of the *Act*.

**Payment Systems Regulator** or **PSR** means the body corporate established under Part 5 of the *Act*.

**PSP** means payment service provider and has the meaning given by section 42 specifically of the *Act*.

**Regulated payment system** means a *payment system* designated by HM Treasury under section 43 of the *Act*.

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