

The Payment Systems Regulator Ltd

Minutes

Meeting: PSR Board
Time & date of Meeting: 30 January 2019
Venue: 12 Endeavour Square, London

Present: Carole Begent
Amelia Fletcher
Noel Gordon
Hannah Nixon
Charles Randell (Chair)
Simon Ricketts
Christopher Woolard

In attendance: Set out in Annex A

Apologies: Andrew Bailey

1 Apologies, quorum and declarations of interest

- 1.1 The meeting was noted to be quorate and proceeded to business.
- 1.2 No interests in the items to be discussed were declared.

2 Minutes of the meetings held on 22 November 2018

- 2.1 Subject to minor amendment the minutes of the Board meeting held on 22 November were **approved**.

3 Matters Arising

- 3.1 The progress in respect of matters arising from previous meetings was **noted**.

4 Report from the Audit Committee meeting held on 28 November 2018

- 4.1 The Board was briefed on the Audit Committee meeting that had taken place on 28 November 2018. The Board noted that the Committee had received a report on the Business and Technology Solutions (BTS) Effectiveness Review. Simon Ricketts informed the Board that he had been commissioned by the FCA to undertake a review of the readiness of BTS to respond to changes in the business landscape.
- 4.2 The minutes of the Audit Committee meeting on 28 November 2018 were **noted**.
- 4.3 The Board noted the report of the Internal Audit review of the identification and management of conflicts of interest. The Board recognised that work was in progress to address the recommendations but stressed the importance of developing a robust assurance framework.

5 Report from the Managing Director

- 5.1 In considering the report the Board **noted** the following:
- a) The organisation remained stretched but was prioritising work on Access to Cash and on Authorised Push Payment Scams.
 - b) Work on an antitrust case was continuing.
 - c) Work was required to ensure adequate monitoring, analysis and assessment processes are in place to structure prioritisation and planning decisions
 - d) Management information regarding the progress of enforcement cases was being enhanced and would be included in quarterly performance reports to provide assurance of progress to the Board
- 5.2 The Board discussed the proposal to consult on giving Visa a specific direction with the intention of ensuring Visa remediates the deficiencies in its crisis communication processes that had become evident during the incident on 1 June 2018.

6 EU Withdrawal – wider impact on the payment sector

- 6.1 The Board received an update on the work being carried out to assess the impact of Britain's withdrawal from the EU on the wider payments sector. The Board noted the risks that have been identified and the current status of work being taken by the sector to mitigate them. It was noted that UK Finance had applied on behalf of UK PSPs to retain membership of the Single European Payments Area scheme and the European Payments Council was currently assessing this. The Board considered the impact of this application and discussed the advice being given by the FCA to firms in the event of it not being successful.
- 6.2 The Board noted the importance of considering mechanisms for continued and reciprocal information sharing with the EU Commission and other member states following EU withdrawal. The Board also discussed the FCA's ongoing efforts to ensure that regulated firms are devoting appropriate resource into educating customers about the potential impact of EU withdrawal. The Board also noted the ongoing cross authority work to provide guidance to UK consumers and SME businesses using financial services on how EU withdrawal could affect them.

7 Access to cash; long run work and response to the Ceeney Review

- 7.1 The Board was briefed on the next steps in the organisation's long-term strategy with respect to access to cash. It was noted that this comprised: a) defining the PSR's long-run role and strategy in the area of access to and supply of cash; and b) engaging with the Access to Cash Review lead by Natalie Ceeney which is due to be published in March 2019.
- 7.2 The Board recognised that this issue raised questions of social policy but accepted that it was important for the PSR to participate in the debate. It was desirable to work closely with the FCA and the Bank of England (BoE), given their interest and remit in relation to the issue, as well as with HM Treasury, to co-ordinate the approach. This was particularly the case as the issue was inter-connected with others such as ATM and Branch closure programmes. The Board noted the role of the Post Office in this area and the consequent involvement of BEIS.
- 7.3 After discussion, the Board **agreed** that the PSR should take an active role, working with the other authorities, in the broader public debate on the principles about what long-run access to cash services should be in the UK for businesses and consumers, supporting the BoE and FCA respectively on the wholesale and digital inclusion questions.
- 7.4 The Board noted that this approach will require the PSR to identify the current and likely future social and geographic demands for cash, the extent to which those demands will not be met commercially, the limits of the PSR's existing powers to address market failure

and where further legislation might be required. The Board wished to be kept closely informed of any developments as the issue progressed.

8 Update on the Contingent Reimbursement Model Code and Confirmation of Payee Consultation

8.1 The Board noted that the APP Scams Steering Group's consultation on the draft Contingent Reimbursement Model (CRM) Code had closed on 15 November. The consultation responses had been broadly supportive but raised concerns about different elements of the Code. The Board noted that the main outstanding issue remained how to cover the costs of reimbursement where all parties have met their level of care (the "no blame funding" scenario).

8.2 It was reported that UK Finance had written to the PSR to express some concerns in relation to the Code that they wished to discuss with regulators and government, and had requested a round-table meeting. The Board was informed that the PSR has arranged for the meeting to take place on 7 February and representatives from these organisations, a number of PSPs and the Chair of the APP scams Steering Group would attend. The Board noted that the PSR Executive continued to believe that a voluntary code would be the most effective, and efficient, approach.

The Board discussed the Confirmation of Payee (CoP) consultation that closed on 4 January 2019. While there was broad support for CoP, they discussed the concerns raised by industry about the proposed timeframe of the direction, (particularly the deadline of 1 April 2019 for when PSPs should be capable of receiving and responding to CoP requests), the work required to consider fully the issues raised in the responses, and the risks associated with proceeding to that timeframe.

8.3 The Board **agreed** that the team should continue analysing responses to the first stage of the consultation, and report back to the March Board with a proposal for the next steps, in particular whether to pursue the second stage of the consultation on a CoP direction and, if so, the draft text of the direction and timeframe. The Board **agreed** that it is no longer appropriate to pursue a direction with the 1 April deadline and that this should be communicated as soon as possible to the industry and other stakeholders.

13 2019/20 Annual Plan and Budget

13.1 The Board received an update on the preparation of the Annual Plan and Budget for 2019/20. It was noted that this followed a request from the Board at its previous meeting to illustrate the difference between a "flat real" budget based on the 2018/19 outturn and the original 2019/20 proposal.

13.2 The Board discussed the assumptions underlying the plan, and the implications for the work of the PSR if the proposed increase in headcount was not sanctioned. The Board recognised the importance of the workstreams that formed the basis of the budget proposal.

13.3 After discussion, the Board **agreed** that a "flat real" budget of £15.6 million based on the 2018/19 outturn should be presented for 2019-20. The 2019/20 budget reflects the staff costs of our full operating model throughout the year and is a real budget, allowing a 1.8% Consumer Price Index (CPI) increase.

13.4 The Board recognised, and was content, however that additional resources may be required to achieve the organisation's work plan and that should be funded from the reserving of the 2018-19 underspend. Any additional resource should be funded from the reserving of the 2018-19 underspend to ensure the amount levied for 2019-20 would be limited to the amount levied for 2018-19 plus inflation.

14 Revision of the Powers and Procedures Guidance

- 14.1 The Board was informed that it was proposed to consult on a revised version of the PSR's Powers and Procedures Guidance (PPG). It was noted that the existing guidance was published in 2015, prior to the PSR's operational launch, and sought to provide practical information as to how we would exercise our regulatory and enforcement powers under FSBRA. It was acknowledged that the PPG would need to be kept under review and updated as the PSR's processes and procedures, and its understanding of its powers, developed.
- 14.2 The Board noted that following a comprehensive review of the existing PPG it was felt that revision is now required to: reflect more accurately the PSR's current processes and procedures; clarify the policy and legal/regulatory framework that underlies them; and make those processes and procedures more effective in the future.
- 14.3 After discussion, the Board **agreed**:
- a) to consult on the proposed revisions to the existing PPG as described in the paper presented to the Board;
 - b) that the published guidance on the IFR and the new proposed access guidance, both of which mirror relevant parts of the PPG, and any other guidance that also reflects the PPG (e.g. the Penalties Guidance) are updated to reflect these revisions and the policy underlying them; and
 - c) that a draft revised PPG, together with the proposal that other PSR published guidance is updated in line with it, should be published for public consultation.

15 Access to payment systems; Consultation on combined guidance

- 15.1 The Board was informed of the proposal to consult on a new combined guidance document on how the PSR handles matters concerning access to payment systems and accounts. It was noted that the PSR has powers to consider matters concerning 'access' in two ways:
- a) applications for access or for variation of access agreements submitted by existing or prospective PSPs under sections 56 and 57 of the Financial Services (Banking Reform) Act (FSBRA). This is an administrative process; and
 - b) complaints about compliance with Part 8 (access to payment systems and bank accounts) of the Payment Services Regulations 2017 (PSRs 2017). This is a compliance and enforcement process.
- 15.2 It was also noted that the indirect access provisions of FSBRA and the PSRs 2017 each apply to different payment systems. The Board was informed that the PSRs 2017 set out the substantive test the PSR must apply for compliance and enforcement purposes and that the PSR has sought to adopt the same test for access applications under FSBRA, given that no statutory test is prescribed for that. Consequently, although there are two statutory regimes, the Board noted that the substantive test for both is the same.
- 15.3 The Board noted that the PSR currently has two public guidance documents which outline how it considers and investigates access matters under the two regimes. It was therefore proposed to publish new combined guidance, as it would consolidate the two existing guidance documents and ensure the approach to handling access matters is streamlined as far as possible.
- 15.4 After discussion, the Board **agreed**:
- a) that the PSR should consult on: (i) combined access guidance to streamline the PSR's current processes and procedures in relation to access matters; (ii) expanding the role of the EDC; and (iii) the creation of a 'formal complainant' status.
 - b) that the consultation paper should be published; and

- c) that the consultation paper and accompanying draft guidance should be approved by the Executive Committee.

16 Interchange Fee Regulation - EU Withdrawal

- 16.1 The Board noted that in the scenario where the UK leaves the EU without a withdrawal agreement and an implementation period (a “no deal” scenario), the Interchange Fee Regulation (‘IFR’) will continue to apply in the UK after 29 March 2019 (‘exit day’) after being converted into UK law by the European Union (Withdrawal) Act 2018 and subject to the amendments made by HM Treasury to ensure that the IFR continues to operate effectively. It was further noted that HM Treasury has delegated powers to the PSR to onshore the EU Regulatory Technical Standards Regulation (‘RTS Regulation’) adopted under Article 7(1) of the IFR.
- 16.2 It was noted that a consultation paper (CP18/3) had been published on 19 November 2018 setting out the proposed amendments to the RTS Regulation, and none of the respondents had objected to the proposals. The Bank of England and HM Treasury had been kept informed of the consultation. The Board was informed that the Bank of England has not raised any comments and HM Treasury has informed the PSR that it would likely approve the EU Exit Instrument. HM Treasury is expected to provide its formal approval of the EU Exit Instrument in the coming weeks.
- 16.3 The Board **agreed** to:
- a) Publish the Policy Statement; and
 - b) Adopt the EU Exit instrument onshoring the RTS Regulation (subject to HM Treasury’s final approval).

17 Update on Pay.UK

- 17.1 The Board received an update on Pay.UK’s progress in establishing itself and in developing and procuring the new payments architecture (NPA). It discussed various aspects of the structure including funding and competition. The Board felt it would be helpful to meet with the Board of Pay.UK before the Request for Proposal (RFP) stage of the setting up the NPA is finalised.

18 Decisions of the Board

- 18.1 The Board **approved** the appointment of Jo Oxley to the PSR Panel for a term of three years, from 1 February 2019 to 31 January 2022.
- 18.2 The Board **approved** the re-appointment of Philip Marsden as a member of the Enforcement Decisions Committee, and the Competition Decisions Committee, for a second three-year term with effect from 25 February 2019.

19 Items for noting

- 19.1 The following papers were **noted**:

20 Any other business

With no further items of business to discuss the meeting **closed**.

Charles Randell
Chair

Annex A: Attendees

Attending all, or substantially all, of the meeting:

Louise Buckley	Chief Operating Officer
Chris Hemsley	Head of Department, Regulatory Strategy & Policy
Alana Christopher	Deputy Company Secretary (FCA)
Simon Pearce	Company Secretary
Kim Turner	Private Secretary to the Managing Director

Attending for the following items:

6

John Mowat Manager, Policy

7

Matthew Cherry Chief Economist
Janet Duggan Manager, Legal

8

Nick Davey Technical Specialist, Policy

13

David Godfrey Finance Director, FCA
Jane Gosling Manager, Operations

15

Janet Duggan Manager, Legal

16

John Mowat Manager, Policy

Other relevant Associates also attended the meeting.