

Policy statement and consultation

PSR Directions

Decision on the review
into our 'day one' Directions
and consultation on the
proposed Directions

March 2019

In this policy statement we report on the main issues arising from our consultation paper CP18/1, *Review of PSR Directions made in 2015* (March 2018), and set out our policy positions.

We also release our proposed Directions for consultation. We welcome your views on our proposed Directions. If you would like to provide comments, please send these to us by **5pm on 26 April 2019**.

Please send any comments and submissions to directionsreview@psr.org.uk, or write to us at:

Policy Team
Payment Systems Regulator
12 Endeavour Square
London
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We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items that you claim to be commercially confidential. We may nonetheless be required to disclose all responses that include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this policy statement from our website:
www.psr.org.uk/psr-publications/consultations/cp19-3/PSR-directions-decision-consultation

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Contents

1	Executive summary	4
2	Introduction	9
3	Policy decisions and our response to stakeholder views	11
	General Direction 1	11
	General Direction 2	15
	General Direction 3	19
	New General Direction 4 (formerly General Directions 4 and 6)	24
	General Direction 5	29
	Specific Direction 1	32
4	Next Steps	39
	Annex 1: Proposed Directions	40
	Annex 2: Compatibility statement	75
	Annex 3: Cost benefit analysis	78
	Annex 4: List of respondents to CP18/1	82
	Annex 5: Glossary	86

1 Executive summary

In this document, we set out our policy decisions on changes to the General and Specific Directions originally issued in March 2015 (our 'day one' Directions) and release a draft text of the proposed Directions for consultation.

This follows extensive engagement with stakeholders following our consultation paper CP18/1, *Review of PSR Directions made in 2015* (March 2018).

The aim of this review of our 'day one' Directions is to ensure that they remain relevant and proportionate, reflecting market realities, changes to legislation and our role, and potential future developments.

Consultation and stakeholder engagement

- 1.1** When the PSR launched in 2015, we issued six General Directions (GDs 1 to 6) and one Specific Direction (SD1) under the Financial Services (Banking Reform) Act 2013 (FSBRA) (the 'day one' Directions), the majority of which were intended to improve access to, and the governance of, payment systems in the UK. Since then, there have been various market and legislative changes. In March 2018, we consulted on a review of these Directions to ensure that they continue to be fit for purpose in a changing payments landscape.
- 1.2** Our consultation paper CP18/1, *Review of PSR Directions made in 2015* (March 2018) set out our thinking on what changes to our Directions might be appropriate. Through the consultation, we sought stakeholders' input to inform our decisions on whether to take forward changes to these Directions and, if so, how to do so. We also asked for stakeholders' experience of our Directions to date.
- 1.3** We ran the consultation for 12 weeks. During the consultation period, we met with 25 stakeholders through small roundtable discussions and various bilateral meetings. The stakeholders included payment system operators (PSOs), indirect access providers (IAPs), payment service providers (PSPs) and trade associations.
- 1.4** We also received 15 written submissions: 12 public and 3 confidential. The public submissions are available at www.psr.org.uk/responses-consultation-PSR-directions-decision

Our policy decisions

- 1.5** Overall, we have seen real benefits flow from our Directions and do not consider that we need to radically rethink our approach. However, we will make some changes to ensure that they remain relevant and proportionate, and to tailor our requirements to market realities, legislative changes and expected future developments. This also reflects the regulatory principles in FSBRA.¹

1 See section 53 of FSBRA.

1.6 Table 1 summarises the changes we will make to the Directions.

Table 1: Summary of our policy positions and key changes

Direction	Will apply to...	Summary of new Direction	Key changes to our 'day one' Directions	Relevant legislative provision
GD1 Cooperative relationships with the PSR	Regulated participants under FSBRA, regulated persons under the IFR and the PSRs 2017 ²	Requirement to: <ul style="list-style-type: none"> be open and cooperative with us and to disclose relevant information to us 	<ul style="list-style-type: none"> Improved clarity Extension by application to all participants and other regulated persons and extension by scope to all PSR's functions under FSBRA, the IFR and the PSRs 2017 Addition of a non-exhaustive list in the explanatory notes of situations in which we expect notification 	Section 54 of FSBRA Regulation 4 of the PCIFRs 2015 Regulation 125 of the PSRs 2017
GD2 Interbank access	The operators of FPS, Bacs and C&CC	Requirement to: <ul style="list-style-type: none"> have proportionate, objective and non-discriminatory (POND) access requirements disclose publicly these requirements notify us of updates and changes to their access requirements provide an annual report containing access information 	<ul style="list-style-type: none"> Access test wording aligned with PSRs 2017 Removed application to the operator of CHAPS 	Section 54 of FSBRA

² Each of these abbreviations for legislation is defined in the Glossary at Annex 5 to this paper

Direction	Will apply to...	Summary of new Direction	Key changes to our 'day one' Directions	Relevant legislative provision
GD3 Card payment system and LINK access	The operators of Visa Europe, Mastercard, JCB International, UnionPay International, Diners Club International, American Express and LINK	Requirement to: <ul style="list-style-type: none"> notify us of updates and changes to their access requirements provide an annual report containing access information 	<ul style="list-style-type: none"> Direction made under the PSRs 2017 that covers all card payment systems and interbank systems that are subject to Regulation 103 No requirement to publish access requirements Repurposed annual report to focus on access requests 	Regulation 125 of the PSRs 2017
GD4 (New Direction) Service-user interests (of interbank systems)	The operators of FPS, Bacs, C&CC and LINK	Requirement to: <ul style="list-style-type: none"> consider service users and make transparent decisions publish a forward-looking stakeholder report on engagement activities 	<ul style="list-style-type: none"> Consolidated Direction (covering content of previous GDs 4 and 6) focusing on service-users' interests to help ensure that PSO engagement and decision-making is: <ul style="list-style-type: none"> tailored with service-users across the value chain in mind based on a clear set of objectives transparent Changed focus of the reporting obligation to a public-facing report on stakeholder engagement Removed application to the operator of CHAPS 	Section 54 of FSBRA

Direction	Will apply to...	Summary of new Direction	Key changes to our 'day one' Directions	Relevant legislative provision
GD5 Conflicts of interest: infrastructure providers and bidders	The operators of FPS, Bacs, C&CC and LINK	Requirement to ensure that none of their directors are also directors of a central infrastructure provider to their system, or participating in a tendering exercise to supply that system ³	<ul style="list-style-type: none"> Clarification to prevent a PSO director also being a director of an infrastructure company bidding to supply the PSO Removed application to the operator of CHAPS 	Section 54 of FSBRA
GD6 [formerly requirement to publish minutes of governing body]	See GD4 above	Direction combined with new GD4	<ul style="list-style-type: none"> See GD4 above 	N/A
SD1 Indirect access by sponsor banks	IAPs offering sponsor bank services (agency access)	Requirement to: <ul style="list-style-type: none"> publish information on sponsor bank services and indirect access offerings provide receipt of application, indicative timetables and information on key milestones to PSPs following application 	<ul style="list-style-type: none"> Extended to apply to all IAPs offering sponsor bank services Sponsor banks to set out tailored indicative timetables and key milestones for onboarding new PSPs following application This Direction will cease to remain in force after three years unless extended 	Section 54 of FSBRA

³ We previously consulted on removing this direction but, following responses to that consultation, we have decided to keep GD5. This is discussed further in the main text.

Reporting requirements and monitoring compliance with the Directions

- 1.7** We will monitor compliance with the Directions to ensure that all obligations are being met. There are a variety of ways in which we will do this.
- 1.8** Various Directions require notification to the PSR in appropriate circumstances:
- GD1 requires notification to the PSR of anything relating to participants and regulated persons that we would reasonably expect notice of.
 - GDs 2 and 3 require notification of changes and updates to access requirements.
 - GD5 requires notification from the PSOs if they become aware that they are no longer compliant with any obligations, including providing us with information on the steps they are taking to become compliant again.
- 1.9** In addition, there are annual reporting obligations attached to some of the Directions (GDs 2, 3 and 4), where we primarily rely on information provided in those reports.
- 1.10** We also monitor compliance with our Directions in other ways: complaints may draw possible non-compliance issues to our attention, information may be brought to our attention, or we may identify issues through other work that we undertake. We may also from time to time undertake assessments of compliance and/or effectiveness of the Directions and how they are being applied. For example, we may undertake an assessment of how PSOs have considered stakeholder views in their decision-making under GD4 and ask them to provide details of this.

Next Steps

- 1.11** We are now consulting on the proposed wording of the Directions in Annex 1. This consultation will close on 26 April 2019.
- 1.12** Following this, we expect to make final decisions on the wording of the Directions following our assessment of the responses to the consultation and aim to publish our finalised Directions in mid-2019. It is our intention that when our new Directions are finalised, the 'day one' Directions will then be revoked and the new Directions given simultaneously. There will be at least a one-month notification period before the new Directions come into force.

2 Introduction

Structure of this publication

2.1 This document is structured as follows:

- **Chapter 1** is the executive summary.
- **Chapter 2** is this introduction.
- **Chapter 3** sets out our decisions on each of the Directions we consulted on in CP18/1 and our response to comments made by respondents.
- **Chapter 4** sets out the next steps in our review and the consultation questions on the proposed Directions.
- **Annex 1** provides the text of the proposed Directions.
- **Annex 2** describes how our policy decisions are compatible with our general duties and regulatory principles.
- **Annex 3** provides our cost benefit analysis of the changes proposed in our policy decisions.
- **Annex 4** lists the stakeholders who responded to our consultation.
- **Annex 5** is the glossary.

Background

2.2 In 2015, as part of establishing our initial regulatory framework, we gave six General Directions (GDs) and one Specific Direction (SD), which came into effect between April and September 2015. We gave these under our Financial Services (Banking Reform) Act 2013 (FSBRA) powers. The majority of the Directions were intended to improve access to, and the governance of, payment systems in the UK.

2.3 These 'day one' Directions focused on:

- ensuring that regulated participants dealt with us in an open and cooperative way and disclosed relevant information to us (GD1)
- improving service-user representation in the decision-making processes of PSOs, improving transparency of decision-making through publication of minutes, and avoiding conflicts of interest through any director of certain PSOs also being a director of the central infrastructure provider to the same PSO (the 'governance package' comprising GDs 4, 5 and 6)
- opening up direct access to certain regulated payment systems by ensuring that their access requirements were objective and risk-based (or otherwise in line with EU law on payment system access) and that information on access options, including indirect access services, was publicly available (the 'access package' comprising GDs 2 and 3, and SD1)

- 2.4** There have been various market and legislative changes since the introduction of our Directions, including:
- changes driven by our work and resulting from the work we set out for the Payments Strategy Forum⁴
 - the coming into force of the revised EU Payment Services Directive (PSD2) and Interchange Fee Regulation (IFR), implemented in the UK through the Payment Services Regulations 2017 (PSRs 2017) and the Payment Card Interchange Fee Regulations 2015 respectively
 - the creation of Pay.UK (formerly the New Payment System Operator (NPSO)), which is now the operator of Bacs, Faster Payments (FPS) and Cheque and Credit Clearing (C&CC)
 - the impact of our remedies following our market review into the ownership and competitiveness of infrastructure provision, such as improved procurement exercises
 - new IAPs entering the market
 - the Bank of England taking over delivery of the high-value payment system CHAPS
- 2.5** We have also gained experience in applying and monitoring our Directions.
- 2.6** We also wanted to ensure that our Directions remain proportionate in line with general regulatory principles.
- 2.7** In 2018, we launched a review of our Directions as a result of these changes and our increased knowledge of the market since the 'day one' Directions were given. In March, we published our consultation paper CP18/1, *Review of PSR Directions made in 2015*. The consultation ran for 12 weeks.
- 2.8** Through this review and consultation process, we want to ensure that our monitoring of compliance by, and enforcement in relation to, participants in payment systems and regulated persons for IFR and PSRs 2017 (today and in the future):
- advances our statutory objectives and duties – including promoting competition, innovation and the interests of service-users – by delivering the outcomes we want
 - is relevant, proportionate, targeted and reflects the principles of better regulation
 - reflects market realities and the wider legislative context
- 2.9** The next chapter sets out our policy decisions and explains how we came to those decisions. It also sets out stakeholder views gathered during the consultation period and our response to issues raised.
- 2.10** Following these policy decisions, we are now consulting on the wording of the proposed Directions (see Chapter 4 for questions and Annex 1 for the Directions).

4 The Payments Strategy Forum was created to develop a strategy for payment systems in the United Kingdom See: www.paymentsforum.uk

3 Policy decisions and our response to stakeholder views

In this chapter, we set out our decisions on matters we consulted on in our consultation paper CP18/1, *Review of PSR Directions made in 2015*, released in March 2018, and our responses to stakeholder views. This covers our 'day one' General Directions 1 to 6 and Specific Direction 1.

We are consulting on the wording of the proposed Directions (see Annex 1).

This document is intended to provide a high-level overview and context of the changes we propose to make to our Directions. It is important that stakeholders read the proposed Directions themselves.

General Direction 1

Summary of our decision

The aim of the Direction is unchanged. However, we will reword the Direction to provide further clarity. We will also give new explanatory notes to help participants and regulated persons understand which matters they should tell us about under this Direction.

The Direction will apply to firms regulated under FSBRA, the IFR and the PSRs 2017. The effect of this is that the direction will require all those parties under this legislation to have an open and cooperative relationship with us and to disclose relevant information to us.

Background

- 3.1** The purpose of GD1 is to help drive a 'no-surprises' culture.⁵ In this regard, it has strong similarities with Principle 11 of the *Principles for Businesses* in the Financial Conduct Authority (FCA) Handbook. The timely provision of complete and accurate information helps us to carry out our functions and be effective in achieving our objectives.
- 3.2** GD1 currently covers all participants in the payment systems that we regulate under FSBRA⁶: PSOs, infrastructure providers and PSPs. It requires them to deal with us in an open and cooperative way and disclose relevant information to us.

⁵ See Principle 1, page 20 of the PSR's initial policy statement: [psr.org.uk/sites/default/files/media/PDF/psr-publications-consultations-psr-ps-15.1.pdf](https://www.psr.org.uk/sites/default/files/media/PDF/psr-publications-consultations-psr-ps-15.1.pdf)

⁶ Under FSBRA, the Treasury designates systems for regulation by the PSR. See: <https://www.psr.org.uk/payment-systems/who-we-regulate>

- 3.3** The aim of reviewing this Direction is to improve its effectiveness by improving understanding and certainty for regulated participants to facilitate their compliance.
- 3.4** As part of our consultation, we asked for views on how effectively GD1 was operating. This included how easy it was for regulated participants to understand what is expected of them. We also consulted on whether GD1 should encompass those entities covered under EU legislation for which we have responsibility, as well as FSBRA.
- 3.5** We set out in the consultation paper that we might revise GD1, or add or amend guidance (now referred to as 'explanatory notes') alongside it, to improve its clarity.

Stakeholder Views

- 3.6** All but one of the stakeholders who responded to this question thought the Direction clear and easy to understand. However, one stakeholder highlighted ambiguity over the meaning of the statement 'adversely and materially impact on the PSR's statutory objectives and duties', noting that it is not clear. That same stakeholder was also unclear about the process of notifying us under GD1 and was concerned with what it perceived to be our lack of response following certain notifications that it considered it had made.
- 3.7** While stakeholders responding to the consultation reported good awareness of the obligations, there is a strong risk of selection bias here. Specifically, those that responded to this consultation would seem more likely to have awareness of our Directions and their responsibilities.
- 3.8** There was no opposition to expanding the Direction to cover all the entities and activities we are responsible for, with everyone who responded to this question supporting this proposal. However, most respondents did not provide additional reasons for their support beyond those in our proposal.

Our policy response and position

Steps to improve clarity

- 3.9** We will reword GD1 to ensure that it is as clear as possible to stakeholders. GD1 will maintain the same underlying purpose: to help drive a 'no-surprises' culture and an open and honest relationship between us and both regulated persons under IFR and PSRs 2017, and regulated participants under FSBRA (collectively referred to here as 'regulated parties').
- 3.10** Timely, complete and accurate information is critical to our ability to achieve our statutory objectives and undertake our functions effectively. An effective GD1 can support the quality of information we receive by encouraging firms to give us details of issues or risks at an early stage.
- 3.11** We will make changes to the wording of the Direction to make it clear that the Direction is about relations with the PSR, focusing the Direction on information that we would reasonably expect notice of. This more closely targets the Direction on the information we need to identify where action may be required.

- 3.12** We think the proposed rewording of GD1 is important as part of communicating clearly to regulated parties the behaviours we expect and the information we require. If regulated parties do not adhere to the behavioural standards we set, our ability to discharge our general duties, including advancing our objectives, may be jeopardised.
- 3.13** We will also add explanatory notes to the Direction that will provide examples to help illustrate what we expect to be notified about and the level of detail we expect. As such, the list of examples will be non-exhaustive. We may revise these explanatory notes from time to time.
- 3.14** GD1 applies to all information expected by, and provided to, the PSR, in whatever format. Particularly when a regulated party is choosing to inform the PSR of any matter, without prior dialogue with us on the subject or request by the PSR, we expect the party to refer to GD1. A notification may be given orally (although we may request written confirmation) or in writing and we would expect notification of more complex matters to be in writing.
- 3.15** Where there are express notification obligations applying either in statute or in other Directions, these notifications should be made under those obligations. A failure to notify the PSR under those obligations will constitute both a failure under GD1 and under the subject-specific obligation.
- 3.16** In response to a stakeholder's concern about a perceived lack of response on our part to notifications, we would not anticipate that we will, as a matter of routine, follow up with regulated parties following a notification, although we may. We do not expect to monitor compliance proactively, but would consider taking action where we suspect that a firm may have failed to notify us of a GD1-relevant issue or has provided inaccurate, misleading or incomplete information.

Expansion to reflect new legislation

- 3.17** The Direction will cover all regulated persons and regulated participants, and activities, under our FBSRA, IFR and PSRs 2017 powers.
- 3.18** The overall scope of regulation (and hence the number of regulated entities) has steadily expanded since GD1 was given. GD1 is aimed at proactive disclosures and driving honest, open, candid and cooperative behaviours in regulated parties' communications with us, so that a 'no-surprises' culture is developed. We think that this culture should exist across all regulated parties.
- 3.19** By expanding the scope of GD1 to cover the PSR's functions under IFR and PSRs 2017, four additional card payment systems will be covered: American Express, UnionPay International, Diners Club International and JCB International. The additional firms that would fall under GD1 after the expansion of scope include:
- the operators of those four card payment systems
 - the PSPs in those card payment systems that are not already members of Mastercard, Visa Europe (Visa) or any of the other designated payment systems

- 3.20** In practice, few, if any, PSPs are not already covered by our FSBRA Direction. Where there are PSPs in these four additional card payment systems, they are likely to have direct access to Mastercard, Visa or both. Now the obligation will clearly extend to the PSR's functions under IFR and PSRs 2017.
- 3.21** Expanding the scope of GD1 to cover the regulated persons under the PSRs 2017 and the IFR will also affect firms that are already within the scope of GD1. In the spirit of our current GD1, we would expect those captured by the existing requirement to notify us of matters relating to our IFR and PSRs 2017 functions as well as our FSBRA functions. Going forward, we will expect all regulated parties to tell us about all things that relate to our functions. This would include, for example, Competition Act 1998 (CA98) issues, as well as FBSRA, IFR and PSRs 2017-related issues. Expanding GD1 will clarify and formalise this expectation.
- 3.22** We will not expand GD1 to cover regulation under Payment Accounts Regulations 2015 (the PARs) as we do not have the power under this legislation to give a General Direction.

General Direction 2

Summary of our decision

Amend the access rule test to align with the substantive access test in the PSRs 2017 so that access requirements are: proportionate, objective and non-discriminatory (POND).

Retain the other existing obligations:

- public disclosure of access requirements
- notifying us of any changes to these requirements
- an annual reporting obligation

Remove reference to the CHAPS operator, which is now the Bank of England.

This Direction will apply to those UK operators who are subject to FSBRA but not to PSRs 2017 – that is, Bacs, FPS and C&CC (the GD2 PSOs).

Background

3.23 The purpose of GD2 is to encourage appropriately open access to interbank payment systems. The Direction is intended to ensure that access requirements are fair across the market and do not discriminate and unduly prevent certain PSPs from getting direct access. Compliance with GD2 also helps us to build knowledge of the direct access market and monitor competition.

3.24 GD2 currently requires the operators of Bacs, CHAPS, C&CC and FPS to:

- have objective, risk-based access requirements that permit fair and open access (the access rule)
- publicly disclose these access requirements
- notify us of updates and changes to their access requirements
- report to us annually on their compliance with GD2

3.25 In 2016, we consulted on draft guidance on our approach to handling applications for access to a regulated payment system under sections 56 and 57 of FSBRA.⁷ We noted that the wording of our proposed test for handling applications differed from the access rule in GD2, and also stated then that we would consider whether to bring GD2 into line with that test.

3.26 In CP18/1, we proposed aligning the access rule in GD2 with the substantive access test used in PSRs 2017. This would give us a consistent approach across the range of our access work.

⁷ See: www.psr.org.uk/psr-publications/consultations/PSR-CP164-handling-applications-under-s56-s57

- 3.27** This substantive test requires that access rules or conditions:
- must be POND
 - must not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks or to protect the stability of the payment system

3.28 We also proposed to keep the Direction's other requirements (notification and annual reporting), but consulted on whether we should refine our approach to reporting. We noted that we consider the more useful part of the current annual reports to be where PSOs tell us about access-related developments. We sought stakeholder views on whether we should refine the obligation, perhaps with a clearer focus on developments and changes in access to help us to identify and focus on emerging issues and common problems for PSOs and direct access seekers.

3.29 We also noted that other approaches to annual reporting could be taken, such as using our information-gathering powers under section 81 of FSBRA to require PSOs to give us information to assist us in assessing compliance at any time.

Our policy response and position

POND test

3.30 The interbank PSOs and several PSPs were in favour of aligning the GD2 test with the POND language used under PSRs 2017, to reduce complexity and uncertainty.

3.31 One stakeholder expressed some resistance to the proposal, questioning whether the PSRs 2017 wording would be appropriate for systems where the PSRs 2017 do not apply.

Notification requirement

3.32 While stakeholders were generally supportive of our proposals, they did not comment specifically on the notification requirement.

Reporting requirement

3.33 On annual reporting, one stakeholder stated that, as an economic regulator, we should not be regulating compliance, and our reporting requirements should have an increased focus on providing evidence of the good outcomes the Directions have created. Another PSP said we should require complaints under any of the Directions to be reported quarterly as it would increase our ability to act.

3.34 One PSP suggested that we should move from annual reports to quarterly as it would increase our ability to act.

3.35 Several stakeholders agreed with our proposal for annual reports to reflect developments rather than containing periodic attestations of compliance. Another noted that annual attestations were easy to complete when there were few changes. It added that PSOs are already required to inform us of substantive changes to offerings at the time they occur rather than through the annual reporting process.

3.36 One stakeholder requested that we streamline our access and service-user engagement annual reports to avoid repeating generic information. It asked that we use informal methods of requesting reports and data rather than using section 81 of FSBRA.

Publication requirement

3.37 Stakeholders were generally supportive of our GD2 proposal as a whole. They did not comment on, or raise any specific issues with, the existing publication requirement.

Our policy response and position

Application

3.38 This Direction will apply to those UK operators who are subject to FSBRA but not to PSRs 2017 – that is, Bacs, FPS and C&CC.

3.39 The Direction will no longer apply to CHAPS, as the Bank of England took over the operation of CHAPS in November 2017. The PSR's FSBRA powers do not apply in relation to the Bank of England.⁸

POND test

3.40 We will replace the first limb of the Direction, rewording it to use the language in PSRs 2017 – that is, that access rules or conditions:

- must be POND
- must not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks, or to protect the stability of the payment system

3.41 While we consider that there is no material difference between the current test and the POND test, consistent language will provide clarity to the interbank PSOs, which are subject to both GD2 and sections 56 and 57 of FSBRA.

3.42 Notwithstanding the two regimes, we think it is appropriate that there is an alignment of the tests, even for entities not covered by PSRs 2017.

Notification requirement

3.43 We will keep the requirement to notify us of any material updates or changes to access requirements to help us stay informed about the interbank access landscape.

3.44 Separately from this notification requirement, we will still also rely on stakeholders to notify us of issues that could affect competition, innovation or service-users' interests. We consider that it is likely to be difficult to assess whether rules are POND in the abstract – that is, without seeing how the rules have been applied in practice in specific cases. However, notification of significant changes, as soon as possible, will help us better understand the state of the market. We may seek further information or consider action on a case-by-case basis.

⁸ Section 42(8) of FSBRA.

Reporting requirement

- 3.45** We will continue the formal reporting obligation, including requiring the interbank PSOs to report to us annually on compliance with the Direction and maintaining the requirement that they update us on changes to their access requirements. Receiving this information may alert us to any instances where Pay.UK, which is now the operator of FPS, Bacs and C&CC, may be non-compliant.
- 3.46** One PSP suggested that we should move from annual reports to quarterly. However, we continue to consider it proportionate to collect reports annually. In particular, this is because, in addition to the annual reporting requirement, there is also an obligation to notify us of changes to access requirements at all times, and requirements under GD1, each of which also supports notification of issues to us. PSPs can contact us directly if they have access concerns. We still consider it beneficial to receive annual reports, as well as updates on any changes to rules during the year, because the annual reports contain much more information, such as the number of access requests each PSO has received and how it has responded.
- 3.47** One stakeholder thought it important that we focus any reporting obligations on promoting outcomes rather than compliance for its own sake, as reporting provides general information that helps us to determine whether the markets are functioning well. We will keep the annual reporting obligation, but we will work with PSOs to ensure that the questions we ask continue to make the reports efficient and not unduly onerous for the PSOs to prepare and are useful for the PSR's purposes in light of current circumstances. This approach will ensure that the reporting form will be appropriately and proportionately streamlined.
- 3.48** We consider it more appropriate to gain this information via a Direction, rather than via the issue of notices pursuant to section 81 of FSBRA. A Direction setting out an ongoing, regular reporting requirement provides more certainty and clarity for regulated parties, and is a more efficient way for the PSR to gather information by comparison to producing a new section 81 FSBRA notice every year.

Publication requirement

- 3.49** We will retain the publication requirement. Given the change in governance at Pay.UK (that is, the reduced influence of larger banks in decision-making), we considered removing the obligation to publish access requirements. However, while interbank PSOs have made great strides in improving access recently, the PSOs' access models are still evolving, which GD2 supports.
- 3.50** In particular, the New Payments Architecture (NPA), which will consolidate and replace the current tripartite system of Bacs, FPS and C&CC, is currently being developed, and we think it would be prudent to have obligations in place during this process to create a strong underpinning and focus on access arrangements. We note stakeholders did not oppose keeping this requirement.

General Direction 3

Summary of our decision

Give a new direction under PSRs 2017, covering all the operators of the card payment systems covered by Regulation 103 of the PSRs 2017 (Mastercard, Visa, American Express, Diners Club International, JCB International and UnionPay International) and the operator of LINK.

The new GD3 will include these obligations:

- to notify us of updates and changes to access requirements
- to produce an annual report containing access information

It will not contain an obligation to disclose access requirements publicly.

Background

3.51 The purpose of GD3 is to assist in promoting open access to card payment systems and LINK. When we introduced GD3, we intended that it would:

- help to ensure that participants' access issues were addressed by operators
- improve our understanding of the functioning of card payment systems' access requirements, including any barriers to access
- keep us informed of potential or emerging barriers to access before there is any significant impact on service-users

3.52 GD3 is currently an obligation on the operators of LINK, Mastercard and Visa to:

- report to us on compliance with Regulation 97 of the Payment Services Regulations 2009 (PSRs 2009) (in force when GD3 was given)
- notify us of updates and changes to their access requirements
- publicly disclose their access requirements

3.53 Since we issued GD3, the PSRs 2009 have been revoked and replaced by the PSRs 2017. The PSRs 2017 give us new powers, and cover a broader class of card payment systems than are covered by GD3 as given in 2015.

3.54 Regulation 103 of the PSRs 2017 requires card payment systems and LINK to have POND access requirements and not to prevent, restrict or inhibit access more than is necessary to prevent specific risks. It does not include an explicit requirement to disclose access requirements publicly, or to notify any regulatory authority when access requirements change.

3.55 We have a duty to monitor compliance with Regulation 103 of the PSRs 2017.

3.56 In CP18/1 we:

- proposed to update GD3 to put PSRs 2017 monitoring and compliance arrangements in place, using our PSRs 2017 powers rather than our FSBRA powers
- proposed to retain the substantive requirements currently set out in GD3
- consulted on whether GD3 should be expanded to cover all the card payment systems that Regulation 103 of the PSRs 2017 covers: this would include American Express, JCB International, UnionPay International and Diners Club International

Stakeholder views

Expansion

3.57 Most stakeholders supported our proposal to expand GD3 to cover all the payment systems that the PSRs 2017 cover (that is, additional card payment systems). Those stakeholders argued that expansion would create a level playing field between parties. They said it would promote competition, innovation and the interests of service-users, and bring all the card payment systems into alignment.

3.58 One card scheme operator suggested that we should expand GD3 to cover both four-party and three-party card payment systems, including where card payment systems operate with agents or co-branding partners.

3.59 One stakeholder opposed expansion for various reasons, including that in its new form the proposal would be disproportionate and burdensome.

Reporting requirement

3.60 One stakeholder noted that we need to ensure that any ongoing annual reports provide benefit to us without imposing unnecessary overheads on the card scheme operators. Another thought that reporting should have a more 'change-based' approach, and not require information where things remained the same from year to year, as this information is likely to be of less value.

3.61 One card scheme operator suggested that compliance reporting is generally a burdensome and costly exercise, and did not support expanding the reporting requirement.

Notification requirement

3.62 Stakeholders did not comment specifically on the notification requirement. However, as noted above, there were comments about the general expansion of the Direction.

Publication of access requirement

3.63 One stakeholder felt that expanding the Direction to require all card payment systems to publish their access requirements is disproportionate given the relatively small presence of some card payment systems in the UK.

Our policy response and position

Application

- 3.64** Our new Direction will apply to operators of card payment systems and interbank systems covered by PSRs 2017.
- 3.65** This will replace the current GD3 given under FSBRA.

Expansion

- 3.66** In order to meet our monitoring obligations under Regulation 103 of the PSRs 2017, we will introduce a reporting requirement through a Direction made under our PSRs 2017 powers, covering all card payment systems and LINK (which is subject to Regulation 103 as an interbank system).

Reporting requirement

- 3.67** We will use the new GD3 to support delivery of our responsibility to monitor compliance with Regulation 103, with a new reporting requirement under the PSRs 2017 that will allow us to monitor compliance. The report will include:
- the card scheme operator/interbank system operator's own assessment of its compliance with the requirements of Regulation 103
 - confirmation of the operator's latest access requirements
 - details of all expressions of interest – and their outcome – from PSPs seeking access to the system
- 3.68** Gathering this information will help us in our monitoring of the POND requirements. We do not consider this to be overly burdensome on participants, compared to the benefits of being better able to monitor access requirements against the POND requirements. This approach is consistent with our published policy statement on our approach to monitoring and enforcing the PSRs 2017.⁹
- 3.69** As we made clear in that statement, it is our duty to monitor and enforce in relation to all participants covered by Regulation 103 of the PSRs 2017, including both four-party card payment systems and three-party card payment systems operating with licensees, and interbank systems. Those currently covered by that regulation are LINK, Visa, Mastercard, American Express, Diners Club International, JCB International and UnionPay International.
- ### Notification requirement
- 3.70** The new GD3 will contain a requirement to notify us of any material updates and changes to access requirements, and will cover all card payment systems subject to Regulation 103 of the PSRs 2017, and LINK.

⁹ *The PSR's approach to monitoring and enforcing the revised Payment Services Directive (PSD2)* (September 2017), see: psr.org.uk/sites/default/files/media/PDF/PSR-PSD2-Approach-and-PPG-September-2017-.pdf

- 3.71** Payment system access is a key component of our work. A requirement to notify us of changes to access requirements helps us to stay informed about the access landscape and monitor compliance. Knowing about changes in advance allows us to seek clarity on their impact, as necessary.
- 3.72** Separately from this notification requirement, we will still also rely on stakeholders to notify us of issues that could affect competition, innovation or service-users' interests. We consider that it is likely to be difficult to assess whether rules are POND in the abstract – that is, without seeing how the rules have been applied in practice in specific cases. However, notification of significant changes given as soon as possible will help us better understand the state of the market. We may seek further information or consider action on a case-by-case basis.

Publication of access requirements

- 3.73** The new Direction will not contain a requirement to publish access requirements. This is a requirement under the current FSBRA Direction. However, the new focus of GD3 is to meet our compliance monitoring obligations under Regulation 103 of the PSRs 2017. Regulation 103 does not contain a requirement for the publication of access requirements.
- 3.74** Currently, Visa and Mastercard publish their access rules on their websites. They also give indicative timelines and other information for prospective customers. Card payment systems not currently captured under GD3 do not publish their access requirements. However, they have clear web pages outlining how to go about requesting further information, including their access requirements.
- 3.75** The structure of the card market is different from that of the interbank market. Both Visa and Mastercard are publicly listed and compete for market share along with other card payment systems. It is generally in the commercial interests of the card scheme operators to attract new members, which means they should have an incentive to make their access requirements understood and easily available.
- 3.76** It is also relatively easy for prospective applicants to get information about access to the LINK system. LINK has recently updated its systems supporting access enquiries, including a new publicly available document library.
- 3.77** We will continue to monitor the transparency and availability of access requirements, including considering any complaints.
- 3.78** The principles of better regulation say we should keep regulatory burdens to businesses to a minimum. Regulation 106 of PSRs 2017 also states that we must have regard to the principle that a burden or restriction that is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, that are expected to result from the imposition of that burden or restriction.
- 3.79** The other requirements under GD3 directly assist us in meeting our monitoring compliance obligations under PSRs 2017 and we think there would be minimal additional benefit from this requirement.

- 3.80** In addition, we note that we can consider a complaint regarding non-POND or restrictive access to LINK or the card payment systems under Regulation 103 of the PSRs 2017 irrespective of GD3. This is unlike the position with GD2, as there is no provision in FSBRA that is equivalent to Regulation 103 of the PSRs 2017.

General Direction 4 (formerly General Directions 4 and 6)

Summary of our decision

Introduce a new consolidated Direction, reflecting service-users' interests, to help ensure that:

- PSO engagement is tailored with service-users across the value chain in mind
- decision-making is based on a clear set of objectives
- decision-making is transparent

Keep a reporting obligation but change the focus of it to require PSOs to produce a public-facing report on stakeholder engagement activities.

Remove reference to the CHAPS operator, which is now the Bank of England.

This Direction will apply to the operators of interbank systems – that is, FPS, Bacs, C&CC and LINK (the GD4 PSOs).

Background

- 3.81** Both GD4 and GD6 were put in place to help ensure that interbank PSOs work in the interests of those who use interbank payment systems.
- 3.82** GD4 works to ensure that service-users' interests are appropriately represented in their governing bodies' decision-making processes. These processes should give service-users a meaningful opportunity to influence decisions that affect them and their needs.
- 3.83** GD4 currently requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to ensure that service-users' interests are appropriately represented in their governing bodies' decision-making processes. It also requires the PSOs to report to us annually on their compliance with the Direction.
- 3.84** GD6 requires the same PSOs to publish the minutes of their governing bodies, and sets out what those published minutes must contain.
- 3.85** GD6 aims to increase transparency about decision-making so that service-users are better able to understand the reasons for decisions that affect them.
- 3.86** We have had concerns about the effectiveness of these requirements. We consider that while the requirements have driven a change of process in PSOs, that change may not necessarily be driving consistent outcomes in the way that PSOs engage with service-users across all PSOs.

- 3.87** Given that both Directions deal with aspects of how PSOs take service-users' interests into account, our consultation proposed combining GD4 and GD6 into a single revised Direction. This new Direction would set out the outcomes we expect PSOs to deliver in service-user engagement and move away from the means/input focus of the current Directions. We want to ensure that the Directions are delivering and incentivising good outcomes for service-users.
- 3.88** We consulted on whether Principle 2, Key Consideration 7 of the CPSS-IOSCO Principles for Financial Market Infrastructures (FMI) was an appropriate starting point for a new Direction.¹⁰
- 3.89** We consulted on how well GD6 promotes the aim of increasing the transparency of PSOs in the interests of their service-users.
- 3.90** We also consulted on whether to revise our approach to compliance reporting under GD4.

Stakeholder views

A consolidated Direction

- 3.91** Most stakeholders – including PSOs, a card scheme operator, IAPs, PSPs and a service user – supported combining the Directions and focusing on outcomes. Those stakeholders also broadly agreed on the approach of using Principle 2, Key Consideration 7 as a basis.
- 3.92** However, stakeholders also had a few reservations about our proposed approach. One service-user group was keen that the current individual Direction requirements remained as part of the new consolidated Direction. Another stakeholder noted that the Bank of England already supervises some operators against the responsibilities set out in the CPMI-IOSCO Principles, and it would be concerned about the same set of Principles potentially being interpreted differently by different regulatory bodies.
- 3.93** Several stakeholders expressed their desire for limiting the prescriptive nature of the new General Direction. This was to prevent it from becoming overly bureaucratic or leading to decisions being made by groups other than a PSO's board, or outside normal governance. Conversely, some stakeholders asked for some prescription to ensure consistency of expectation and output.

¹⁰ Principle 2, Key Consideration 7 reads: 'The board should ensure that the FMI's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.' See *Principles for financial market infrastructures*, page 26: bis.org/cpmi/publ/d101a.pdf

3.94 Through our workshops during the consultation period, stakeholders identified the following outcomes for PSO engagement and decision-making:

- **Tailored engagement with service-users across the value chain:** Stakeholders want genuine and targeted engagement by PSOs. They think that PSOs need to be better at identifying who will be affected by a specific issue. This could be an end user, business, PSP or other party. Having done that, the PSO should undertake appropriate consultation with those stakeholders as part of a policy development process. This will help provide appropriate evidence and understanding of perspectives to support decision-making. Such evidence would have to be considered by the PSO's board alongside other relevant evidence, such as technical views and an economic assessment. On more significant issues, there is support for PSOs running formal consultations.
- **Decision-making based on a clear set of objectives:** The PSO should take and justify decisions based on a clear set of objectives, such as the strategic objectives that have been developed for the Pay.UK board to use in its decision-making.
- **Transparent decision-making:** While publishing minutes helps to maintain discipline on a PSO's board, it needs to be part of a wider approach that provides for more digestible communication of decisions. Where an issue impacts a particular group, the PSO should communicate it clearly to that group.

Reporting requirements

3.95 On annual reporting, there was broad agreement among stakeholders on the need to keep complete and accurate records of interactions with service-users. At a roundtable with the interbank operators, one operator noted that GD4 has helped it improve its internal processes for recording engagement. The same operator also suggested that rather than periodic compliance reports we should issue individual questions about major decisions or events that impact service-users when necessary, with responses published online.

Other issues – application to card payment systems

3.96 Although not one of the questions for consultation, a service-user group set out that the Direction should be extended to cover card payment systems. It considers that measures designed to improve payment systems should apply equally to card scheme operators as they do to interbank operators, as cards are the dominant payment method in retail payments. It also raised concerns over recent increases and the complexity of scheme fees (the fees that card scheme operators charge to acquirers).

3.97 A card scheme operator noted in its response that it considers that it would be inappropriate to extend these obligations to international card payment systems, which are fundamentally different to domestic interbank systems in both their structure and decision-making processes. It noted that GD4 and GD6 were put in place to address concerns that interbank PSOs' governance arrangements were not working in the interests of service-users. It considers that these are concerns that have never been shared in the cards market.

Our policy response and position

Application

- 3.98** This Direction will apply to the operators of interbank systems – that is, FPS, Bacs, C&CC and LINK.
- 3.99** The Direction will no longer apply to CHAPS, as the Bank of England took over the operation of CHAPS in November 2017. The PSR’s FSBRA powers do not apply in relation to the Bank of England.¹¹

A consolidated Direction

- 3.100** We will introduce a single service-user-related Direction, focusing on outcomes not processes.
- 3.101** An outcomes-focused approach over a prescriptive approach would provide flexibility to allow PSOs to tailor engagement and communication strategies to suit the relevant stakeholders – for example, formal consultation may be most suited to one issue while smaller workshops could be more suited to another. A PSO might alter how it communicates an issue depending on the demographic of those most affected.
- 3.102** Following stakeholder feedback, the Direction will include an obligation on PSOs to engage actively with, and consider the views of, service-users. Specifically, that:
- engagement with service-users is tailored across the value chain
 - decision-making is based on a clear set of objectives
 - decision-making is transparent
- 3.103** To aid in transparency, we will still require publication of board minutes. However, to assist in ensuring transparent decisions, minutes will no longer be sufficient to meet the transparent decision-making objective. We will require parties to provide further information to meet the obligation and ensure that issues relevant to service-users are well communicated to them in a timely manner. For example, a letter to affected entities to explain why a decision has been taken might be appropriate for a particular group of stakeholders, but alternative options might also be suitable.

Reporting requirements

- 3.104** There is currently a requirement for the PSOs captured by GD4 to provide us with an annual compliance report explaining how they have complied with GD4. Previously, this has tended to lead to PSOs listing the engagement they have undertaken with stakeholders through their user councils and explaining the processes they have followed to capture user views. We do not consider these reports to have been effective. Indeed, they may have contributed to embedding a focus on inputs and process rather than outcomes in the PSOs.
- 3.105** As such, we considered whether the annual reporting requirement should be removed or refined.

¹¹ Section 42(8) of FSBRA.

- 3.106** We consider that there is value in a reporting requirement but with a change of focus. We consider that the PSOs should be required to publish an annual stakeholder engagement report. This will be a public-facing document explaining the key stakeholder engagement from the last 12 months. It will highlight issues that the PSO expects to engage with users on in the year ahead, and will explain how they intend to achieve this. Publishing this report would be in support of the PSO meeting its requirement to engage effectively with service-users, rather than for the explicit purpose of compliance monitoring.
- 3.107** We will set minimum requirements for this report in discussion with the operators following the introduction of the Direction. We would also expect the PSOs to consult with their users on what information is required and the best way to present it publicly.
- 3.108** We recognise the importance of monitoring the effectiveness of the Direction. We may consider requiring Pay.UK to report against a key performance indicator (KPI) metric reflecting its stakeholder engagement.
- 3.109** In addition to the repurposed stakeholder reports we will receive, we may from time to time conduct ad hoc monitoring of a PSO's compliance. This will require PSOs to provide details of how they have considered stakeholder views and communicated back to service-users on strategies and decisions relevant to them. We may also use evidence from service-users themselves. This could include through information gained at regular stakeholder meetings, events that we or others organise, or through complaints made to us.

Application to card payment systems

- 3.110** We do not consider that prevalence of card payments is a sufficient reason to extend GD4 to card scheme operators. We note the concerns raised about scheme fees. As part of our market review into the supply of card-acquiring services, we will be collecting information on these fees including on how they have changed.¹²

¹² www.psr.org.uk/psr-publications/market-reviews/mr181.2-final-terms-reference-cards

General Direction 5

Summary of our decision

The purpose of the Direction remains unchanged. The new Direction will require that PSOs must take all reasonable steps to ensure that none of their directors are also directors of a central infrastructure provider to their system.

Clarify that the Direction covers those participating in a tendering exercise to supply that system (this requirement is currently in the guidance, but not the Direction itself).

Remove reference to the CHAPS operator, which is now the Bank of England.

This Direction will apply to the operators of interbank systems – that is, FPS, Bacs, C&CC and LINK (the GD5 PSOs).

Background

- 3.111** GD5 is designed to prevent conflicts of interest between operators and central infrastructure providers due to cross-directorships.
- 3.112** It requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to take all reasonable steps to ensure that none of their directors are also directors of a central infrastructure provider to their system. The guidance to the Direction also specifies application to those bidding to become a central infrastructure provider.
- 3.113** When GD5 was introduced, we noted concerns that actual or potential conflicts of interest can have an adverse effect on competition and, in turn, on innovation and the interests of service users. The industry structure for interbank payment systems in the UK was characterised by vertical relationships. The same participants had interests at different levels in the supply chain – for example, at PSO, infrastructure and PSP level.
- 3.114** During our consultation, we proposed removing GD5 altogether in light of various developments, including:
- the new ownership of Vocalink, which addresses the specific conflict issue around its ownership
 - that fact that, since July 2017, operators have been required to run competitive procurements for future central infrastructure contracts
 - the Bank of England's Code of Practice relating to the governance of recognised PSOs (Code of Practice)¹³ which came into effect in June 2018, and which requires that participants have policies to identify, address and manage conflicts of interest

¹³ The Bank of England's policy statement, Code of Practice and supervisory statement relating to governance of recognised payment system operators (June 2017), see: <http://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/code-of-practice-relating-to-governance-of-recognised-payment-system-operators>

Stakeholder views

- 3.115** Several IAPs, PSPs and one PSO supported our proposal to remove GD5.
- 3.116** One PSO supported keeping GD5, because it provided clarity on which candidates could be appointed to the PSOs' governing bodies, and it serves to address a potential conflict of interest. Another PSO also supported keeping GD5 as it has driven good governance and behaviour. Keeping the Direction appeared to have a low regulatory burden as PSOs stated that they were currently adhering to the policy.

Our policy response and position

Application

- 3.117** This Direction will apply to the operators of interbank systems – that is, FPS, Bacs, C&CC and LINK.
- 3.118** The Direction will no longer apply to CHAPS, as the Bank of England took over the operation of CHAPS in November 2017. The PSR's FSBRA powers do not apply in relation to the Bank of England.¹⁴

Retaining the Direction

- 3.119** On reflection, we will give a new GD5 with the purpose unchanged. In addition, we will update it to make it clear that this obligation applies in relation to any party that is bidding to be a central infrastructure supplier to LINK or Pay.UK (currently this requirement is only in the guidance relating to the Direction rather than the Direction itself).
- 3.120** We considered various arguments in favour of removing the Direction:
- The Bank of England's Code of Practice, international guidance and UK best practice says that a PSO board will have to manage a conflict of interest. Therefore, if a conflict arose, in the absence of GD5 there would be a requirement for the conflict to be appropriately managed.
 - Both Pay.UK and LINK have more independent boards. Two thirds of the Pay.UK board and more than two thirds of LINK's board are independent. This should reduce the ability of any individual industry board member to exert influence. This is a significant change from when GD5 was originally given.
 - In addition, fiduciary duties set out in the Companies Act 2006 mean that directors have to act in the best interests of the company. They must also declare the nature and extent of any interests, direct or indirect, in any proposed transactions and arrangements with the company.
- 3.121** However, on balance, we now consider the Direction should be kept.

¹⁴ Section 42(8) of FSBRA.

- 3.122** In the consultation document, we placed some reliance on the Bank of England's Code of Practice providing a requirement to manage conflicts. On reflection, we think it is important to recognise that there may be circumstances where a conflict is not addressed effectively by a PSO but the Bank of England may choose not to act (for example, as it does not impact on its objectives), but where we may want to act. It also provides clarity on this specific aspect for PSOs.
- 3.123** LINK is currently running a reprocurement exercise. Pay.UK are also currently tendering for a provider for the NPA, which could create a wider potential for conflicts given that we expect a range of parties to bid for the opportunity. We think it is important to maintain the obligation to support the effectiveness of these processes.
- 3.124** We do not believe the obligation will limit the effectiveness of PSO boards. We have seen no evidence thus far from either LINK or Pay.UK indicating that their ability to build an effective board while avoiding conflicts of interest has been hampered.
- 3.125** In addition, the obligation poses a low compliance cost on regulated participants.
- 3.126** We will monitor by requiring notification from the operators if they become aware that they are no longer compliant with the obligation. The notification includes providing us with information on the steps they are taking to become compliant again. We may take action on a case-by-case basis.

Specific Direction 1

Summary of our decision

Give a new Direction that will capture all IAPs offering sponsor bank services. This will require that these IAPs publish the following for all their indirect access offerings:

- their corporate name, major office address, and contact details of an appropriate person for their sponsor bank services
- a description of their indirect access services, including the payment systems they offer sponsored access to
- details of any eligibility criteria that they may require indirect PSPs to satisfy to get indirect access

Following receipt of an indirect access application, IAPs must provide the access seeker with confirmation of receipt of their application, an indicative timeline for consideration of the application and a decision regarding access, and details of key milestones. This should be updated throughout the process if timelines change.

The Direction automatically expires in three years' time, unless we have made a decision to extend the Direction.

Background

- 3.127** SD1 was designed to facilitate indirect access by helping PSPs seeking indirect access to make an informed decision about their options.
- 3.128** SD1 requires four named IAPs (Barclays, HSBC, Lloyds and RBS) to publish clear and up-to-date information on their sponsor bank services that allow access to Bacs, CHAPS, C&CC, FPS and LINK. Each named IAP is required to publish at least:
- its corporate name, its major office address, and contact details of an appropriate person for its sponsor bank services
 - a description of its services, including the payment systems it offers sponsored access to
 - details of any eligibility criteria that it may require indirect PSPs to satisfy to get sponsor bank services
- 3.129** Through our consultation, we wanted to see whether there was support to expand the application of the Direction such that a General Direction would be more appropriate. This was to ensure the capture of new players who have entered the indirect access market (for example, Starling Bank and ClearBank) and any other future IAPs offering sponsor bank services.

3.130 We wanted to see whether there are issues affecting indirect access seekers that should also be covered by the Direction, such as the time that IAPs take to give their decisions to PSPs seeking indirect access and the clarity of IAPs' communication with PSPs on the status and progress of their applications. We also wanted to know whether further steps need to be taken to improve awareness of IAP services. We noted that a revised SD1 might include additional requirements on IAPs providing sponsor bank services to:

- notify indirect access seekers about such things as the status and progress of their application, and when the IAP will make its decision
- publish more information on elements such as indicative timescales for handling indirect access requests, and who the relevant decision-makers are within the organisation

3.131 We had previously observed, through indirect access cases, areas where some improvements could be made in IAPs' processes. We saw examples where IAPs did not recognise or consider a request for services as a formal application (and did not explain this), deferred processing an application, or gave the access seeker no answer.

Stakeholder views

Scope of application

3.132 Written submissions unanimously supported expanding the Direction to cover all IAPs providing sponsor bank services. We also spoke to a new entrant IAP, which would be covered if we expanded the Direction, and it also supported extending to all IAPs providing sponsor bank services. There was a mixed response to whether the expansion should be done via an expanded Specific Direction or by a General Direction. One IAP supported expanding the Specific Direction and two IAPs supported moving to a General Direction.

Publication of process and timetables

3.133 Two IAPs did not think the Direction should be expanded to cover requirements on timing and increased communication. They considered that they already provide details on timescales to prospective clients, and argued that there is no evidence of market failure.

3.134 One IAP supported widening the scope of SD1 to provide indirect access seekers with information on the status and progress of their access request and the expected time for a decision to be reached. Another IAP also supported keeping access seekers fully informed, including indicative timescales, but cautioned against too prescriptive an approach.

3.135 The IAPs currently covered by SD1 were unanimously opposed to the pre-publication of indicative timescales and details of relevant decision-makers. They said that access seekers come in different states of readiness and timelines are difficult to determine until an application is received and details of the access seeker are known. However, they were more comfortable with the suggestion of providing tailored timetables informed by the application seeker's state of readiness, once an application is received.

3.136 Two PSPs and a PSP industry representative supported the proposal to expand the coverage to include progress updates on the status of applications and indicative timelines. One stakeholder added that while it had not experienced any issues obtaining information, it recognises the benefits of the additional information in increasing transparency and open communication between an IAP and a prospective user.

Awareness

3.137 Three of the four IAPs currently covered disagreed that we should do anything to increase awareness of the Direction. They argued that all necessary information is easily available and sufficient. The other IAP considered that there is adequate information already available, but noted the potential to review the frequency and type of communication required by the Direction. Two PSPs also saw no reason to extend the requirements in the Direction on this point, with no concerns in finding appropriate information.

3.138 One PSP industry representative considered the information on access requirements currently provided by the four IAPs covered by SD1 to be inadequate, as it does not include what needs to be done to obtain access to banking services.

3.139 Two IAPs also noted the opportunity for Pay.UK to help point PSPs towards information about both direct and indirect access.

Other issues

3.140 One stakeholder noted its general concerns over the lack of availability of UK bank accounts and, by extension, lack of access to payment schemes. It considered that we should be doing more to scrutinise the IAPs' justifications for not providing accounts.

Our policy response and position

Obligation to provide information

3.141 We will retain the obligation for IAPs providing sponsor bank services to provide information. There have been new entrants into this market since we gave the Direction. We recognise that increased competition might indicate a diminishing need for this Direction as IAPs should naturally be incentivised to provide useful information for prospective PSPs seeking indirect access. However, we think that the provision is still needed for the following reasons:

- We still hear concerns from PSPs – particularly smaller PSPs – about the ability to contact and get responses from IAPs. This supports retention of the Direction.
- While large PSPs tend to have a wider choice of access options, many small PSPs still have a limited choice of IAP. This constrains smaller PSPs' ability to get access, or to find an alternative provider if they lose their indirect access, as referenced in our indirect access market review final report.¹⁵ We therefore do not want to remove a requirement at this time that makes it easier for PSPs to find information about alternative providers.

¹⁵ See: psr.org.uk/psr-publications/market-reviews/WMR1513-final-report-supply-of-indirect-access-payment-systems

- In our indirect access market review, one of the concerns identified was barriers to switching. We said that we expected initiatives related to information, including SD1, to improve switching by raising awareness of different access options. Such measures should also reduce the search costs that PSPs incur when evaluating their indirect access options.

3.142 The Direction is not an onerous requirement for IAPs to comply with, and the requirements largely mirror the outcomes that would be expected in a competitive market. Given the benefits outlined above, we believe it is appropriate to retain this Direction for the time being.

3.143 We have decided that the Direction should expire in three years unless extended or re-given. In coming to this decision, we considered the following factors:

- Recent increased competition, a greater awareness in the industry of different access options, and improved communication between access seekers and IAPs, which we anticipate would embed as a result of the changes we are proposing to make to the Direction, may make the Direction unnecessary in the future.
- Direct access is becoming easier, cheaper and quicker, as outlined in our *Access and governance report on payment systems: update on progress* (March 2018). This is taking pressure off the agency access market, giving people the choice of agency access or direct access. We are also seeing new IAPs come into the market who are taking advantage of this greater ability to gain direct access.
- We will continue to monitor concerns in the industry, particularly among smaller PSPs who face a more limited choice of IAP, and this will inform our approach to the Direction in three years' time.

3.144 We will monitor compliance with this obligation primarily through our assessment of complaints from indirect access seekers.

3.145 As we are required to do under section 62 of FSBRA, 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. We have concluded that CA98 is not the appropriate legal instrument in this case and that a Specific Direction enables us to take action that is focused on, and proportionate to, the issues we have identified.

Scope of application

3.146 We will keep the Direction as a Specific Direction but will expand the scope to cover all IAPs providing sponsor bank services.¹⁶ The Direction will then cover 'sponsor banks' as a class and will not name any particular entities.

3.147 Retaining the Direction as a Specific Direction will indicate more clearly that it is a targeted Direction that only applies to certain entities. That is, it only applies to IAPs providing sponsor bank services.

3.148 The obligation currently applies to four named banks (Barclays, HSBC, Lloyds and RBS). In 2015, these were the only providers of sponsor bank services.

¹⁶ A subcategory of IAPs who provide agency indirect access.

- 3.149** We consider that all sponsor banks should be incentivised equally to provide the information outlined above. Directly naming sponsor banks in a Direction may provide those banks with a competitive advantage in that PSPs may have a preference for firms that they know provide indirect access (being named in the Direction would confirm this) and that are required to provide information. The PSPs also know that they would have recourse to us if these sponsor banks did not meet the requirements of our Direction. Applying the Direction to all sponsor banks rather than naming specific entities will ensure that all entrant IAPs offering sponsor bank services and any restructured sponsor banks are automatically covered.
- 3.150** We consider that expanding the Direction to cover all sponsor banks currently means that Barclays, ClearBank, HSBC, Lloyds, RBS and Starling Bank would be required to meet SD1. For the avoidance of doubt, the Direction covers all IAPs offering sponsor bank services, regardless of whether they are named here. We would expect to be notified (under GD1) if any new entrants start offering sponsor bank services.
- 3.151** The system requirements on an IAP before it can offer sponsor bank services mean that sponsor banks will need to be relatively sophisticated entities and be set up to meet various other regulatory requirements, so this obligation is not likely to add a material burden. We do not therefore consider that new entrants should be excluded from the Direction. In addition, the obligations in the Direction are good business practice. As such, the incremental costs of complying with the Direction compared to what we would expect firms to be doing in an effectively competitive market are small or nil. This can be compared with the significant benefits to competition of ensuring that this information is available in a market with emerging competition in its early stages. Without needing to make a judgement on the level of competition in the indirect access market(s), we therefore consider that the balance of costs and benefits justifies retention of the Direction at the current time.
- 3.152** Currently, both agency and non-agency access services provided by sponsor banks are covered. We will not change the definition of the services covered by the Direction so that it remains applicable to the full indirect access offering of sponsor banks. For those sponsor banks, it makes sense that they are required to provide information about all their indirect access services (that is, also their non-agency indirect access services) so that PSPs can compare their options. A PSP looking for indirect access services may not know at the outset what type of product would work best for its needs (for example, agency or non-agency access). Therefore, it should be able to view information on the full range of options that a sponsor bank offers, not just a subset.

Publication of process and timetables

- 3.153** We will keep the current obligations under the Direction and expand the information requirements.
- 3.154** In our consultation, we asked whether the scope of SD1 should be widened to include additional requirements on sponsor banks, such as notification of status of applications or publication of indicative timescales. This was in response to concerns around lack of transparency by sponsor banks over time frames for getting access, and key milestones or hurdles that need to be overcome by access seekers.

- 3.155** There is currently no obligation on sponsor banks to provide information on timelines or give access seekers up-to-date information on the status of their application. The voluntary code of conduct for sponsor banks only applies from the contractual stage, when an access seeker is accepted for access. We considered the difficulties for those seeking access in understanding the application process and the IAP's decision-making throughout the process. These difficulties do not appear to be solved through the competitive tensions in the marketplace.
- 3.156** We have seen this in various access requests that have been drawn to our attention, where sponsor banks have failed to keep an access seeker who has applied for indirect access updated – in some cases even failing to inform the access seeker when they have made a decision in relation to its application. Requiring an updated timeline to be provided should assist in ensuring that the process moves forward and the access seeker knows what to expect in that regard.
- 3.157** This should also assist in relation to smaller PSPs that have noted that the process of getting indirect access is lengthy, and they are not always aware of where they stand in the process. This includes being unsure of when they would be given an answer and receiving multiple requests for information throughout the process.
- 3.158** We were also told during our consultation that some PSPs apply to multiple sponsor banks because they are uncertain about processes and timelines, potentially adding unnecessary cost to all parties. In response, sponsor banks noted various concerns about requiring publication of a standard timeline for application, including:
- such prescription might erode a competitive advantage
 - timelines might be misleading as they are different for each entity
 - access seekers come to them in different states of readiness
- 3.159** We will expand the Direction to require sponsor banks to provide an access seeker (for indirect access) with:
- confirmation of receipt of its application
 - an indicative timeline and details of key milestones
 - details of key stages in the process
- 3.160** Sponsor banks should update this information throughout the application process, especially when there are changes to timelines for whatever reason. They should also tell the access seeker if they need to do anything (for example, provide certain information or implement certain procedures) for the timetable to be achieved.
- 3.161** The confirmation, timeline and details to be provided to the access seeker should be given as soon as possible after a sponsor bank receives an application. If an access seeker submits an application in good faith, which the access seeker considers to be complete but which the sponsor bank considers does not fully meet its requirements, we would expect the sponsor bank to work with the access seeker to help it complete the form as well as providing the required information under the Direction, such as key details and a draft timeline.

- 3.162** A sponsor bank cannot ignore its obligations under SD1 because an access seeker has not correctly completed its application, or has been unable to answer some questions fully.
- 3.163** If further information comes to light as part of the application process, the sponsor bank should update the timeline and key stages and let the access seeker know.
- 3.164** Key stages in an application will vary across sponsor banks, but may include the sponsor bank undertaking an initial assessment of whether the access seeker is within its risk tolerance. If an access seeker appears likely to be within that tolerance, the process often moves to requiring an external due-diligence report. The access seeker may also be asked to provide various documentation on processes and policies, and to complete surveys. The application and all the relevant documentation are then often considered by a combination of risk committees and committees looking at business relationships for different types of PSPs. The sponsor bank then decides whether to offer the PSP indirect access services or not.
- 3.165** We are consulting on these details to ensure that the proposed wording in the Direction is as effective as possible. We are seeking stakeholder views on what information should be provided to an access seeker. We are also seeking stakeholder views on what constitutes receipt of an application (that is, at what point the obligation to provide confirmation, timelines and key details of the process is triggered).

Awareness

- 3.166** We consulted on whether further steps need to be taken to improve awareness of IAP services. All but one respondent to our consultation noted no difficulties in finding information about indirect access services. Given the stakeholder feedback from both PSPs and IAPs, we will not make any changes to the Direction on this point.
- 3.167** Following on from the views of two IAPs that Pay.UK could point PSPs to relevant information on indirect access, we have spoken to Pay.UK about providing this information (as well as the information on the direct access offerings it currently provides) to PSPs who come to it seeking access. Pay.UK will consider the information that is available, and how it is accessed, as part of its website development plans in 2019. It will engage with stakeholders as part of this process.

Other issues

- 3.168** The issue of PSPs' ability to access bank accounts generally is out of scope of this review, which is focused on the information provided before and during the application process.

4 Next Steps

This section outlines the next steps in our review.

We are currently consulting on the wording of the proposed Directions to ensure they are as clear and workable as possible

Consultation process

- 4.1** We will make changes to the Directions based on our policy decisions discussed above. This document, as well as setting out these decisions, is consulting on the text of the proposed Directions (as set out in Annex 1).
- 4.2** This consultation does not cover the policy decisions we have made, but we invite views on whether the text of the proposed Directions, and the associated explanatory notes, appropriately and effectively implement and reflect these decisions.
- 4.3** We are asking for comments on this consultation paper by 5pm on 26 April 2019.
- 4.4** You can send your comments and responses to our consultation questions by emailing us at directionsreview@psr.org.uk. If you email us, we would be grateful if you could provide your response in a Word document (rather than, or as well as, providing your response as a PDF).
- 4.5** We will make all non-confidential responses to this consultation available for public inspection.

Consultation questions

Question 1: Do you have any comments on the proposed wording of any of the Directions?

Question 2: Do you have any comments on the explanatory notes in any of the Directions?

Question 3: For GD1, do you have any further examples that you consider should be included on the list?

Question 4: For SD1, do you have any comments on the information that should be provided to an access seeker, and when and how it should be provided? Do you have any comments on what constitutes an application for access?

Question 5: Transitional provisions: Is a one month notice period from publication of the post-consultation final draft to the giving of the final Directions a sufficient period to allow relevant parties to achieve compliance?

Annex 1

Proposed Directions

This annex provides our proposed Directions.

We are currently consulting on the wording of these Directions to ensure it is as clear and workable as possible. When finally given, each Direction will be a stand-alone document published on our website, with formatting subject to change.

See Chapter 4 for a list of key questions.

DRAFT General Direction 1: Cooperative relationships with the Payment Systems Regulator

General Direction 1: Cooperative relationships with the PSR (2019)

1 Recitals

Whereas:

- 1.1 The Payment Systems Regulator Limited (PSR) gave General Direction 1 under the Financial Services (Banking Reform) Act 2013 (FSBRA) to come into force on 30 April 2015.
- 1.2 The PSR reviewed General Direction 1 and, following consultation, has decided that the obligations would apply to regulated persons under the PCIFRs 2015 and PSRs 2017 as well as to *participants* under FSBRA. The PSR also decided that the language of the General Direction given in 2015 would be altered to broaden the scope of the direction and to enhance the clarity of the wording.
- 1.3 Following a consultation on the proposed text of a revised General Direction 1, the PSR has decided to give a new General Direction 1 and to revoke the General Direction given in 2015 on the same date upon which the revised General Direction 1 comes into effect.

2 Powers exercised and purpose

- 2.1 The PSR gives this general direction in accordance with:
 - sections 54 (1) and (3) of the Financial Services Banking Reform Act 2013 (FSBRA)
 - regulations 125 (1) and (4) the Payment Services Regulations 2017 (PSRs 2017)
 - regulations 4(1) and 4(5) of the Payment Card Interchange Fee Regulations 2015 (PCIFRs)
- 2.2 References to FSBRA in this direction are to be taken as references to Part 5.
- 2.3 References to the PSRs 2017 in this direction are to be taken as references to Part 8 and regulation 61.
- 2.4 The PSR has had regard in particular to the following provisions of legislation as appropriate:
 - FSBRA, sections 49 to 53 (General duties of the Regulator)
 - FSBRA, section 54 (Regulatory and competition functions – Directions)
 - PSRs 2017, regulation 124(2) (Functions of the Payment Systems Regulator), 106(3) (General policy and principles)
 - PCIFRs 2015, regulation 3(4) (Designation as a competent authority and functions)

Direction

NOW the PSR gives the following general direction:

3 Cooperative relationships with the PSR

3.1 *Participants and regulated persons* must deal with the PSR in an open and cooperative way. They must notify us, in an appropriate way, of anything relating to them which we would reasonably expect notice of.

3.2 *Participants and regulated persons* shall notify us about such matters as soon as possible, using a medium that most effectively communicates the information.

4 Interpretation

4.1 The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament except where words and expressions are expressly defined.

4.2 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.

4.3 In this general 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.

4.4 In this general direction:

- references to *participants* are references to participants in regulated payment systems as defined in FSBRA
- references to *regulated persons* are references to regulated persons as defined in the PSRs 2017 and the PCIFRs
- References to 'we', 'us' and 'our' mean the *Payment Systems Regulator* (PSR)

Definitions and abbreviations

indirect access	access to a regulated payment system through a contractual arrangement to enable provision of services (to allow the transfer of funds using that regulated payment system) to persons who are not participants in the system
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indirect access provider (IAP)	a PSP that provides indirect access
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non-card payment system	a regulated payment system other than a card payment system
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non-PSRs 2017 payment system	a regulated payment system other than a PSRs 2017 payment system
participant	as defined in section 42(2) of FSBRA
payment service provider	as defined in section 42(5) of FSBRA
payment system	as defined in section 41 of FSBRA
Payment Systems Regulator	the body corporate established under Part 5 of FSBRA
PSRs 2017	Payment Services Regulations 2017 (SI 2017/752), as amended from time to time
regulated person	a regulated person refers both to regulation 123 the PSRs 2017 and to regulation 2 of the PCIFRs

5 Application and revocation

This General Direction applies to *participants* under FSBRA and *regulated* persons under the PCIFRs 2015 and the PSRs 2017. General Direction 1, given in 2015, is revoked on the day this General Direction comes into force.

6 Commencement

This general direction comes into force on [DATE] 2019.

7 Citation

This general direction may be cited as General Direction 1: Co-operative relationships with the PSR (2019).

Made on [DATE]

**By order of the Board of the Payment
Systems Regulator**

Explanatory notes

General Direction 1 is relevant to our statutory objectives and functions.

Where there are express notification obligations applying either in statute or in other directions, these notifications should be made under those obligations. A failure to notify the PSR under those obligations will constitute both a failure under General Direction 1 and the subject specific obligation.

Examples

Examples of compliance with General Direction 1 include, but are not limited to, notifying us about:

Breaches of obligations

Any potential breach or breach of any directions given by the PSR or of any provision of FSBRA, Part 8 or Regulation 61 of the PSRs 2017, the PCIFRs 2015 or facts giving rise to potential issues under the Competition Act 1998 (CA98).

Any investigations of any kind by other regulators which relate to matters relevant to the PSR's statutory objectives and functions.

Any matter relevant to a question or enquiry by the PSR whether made in writing or orally: pursuant to powers under FSBRA, PCIFRs 2015, PSRs 2017 or CA98; in the course of compliance monitoring; in the course of an open investigation; in relation to the preparation of a skilled person's report; or in any discussion that is relevant to the PSR's statutory objectives and functions.

System failures and interruptions

Any failure in a payment system that prevents service-users from making a payment using that system. The *payment system operator* is responsible for notifying us about this.

Any failure in an indirect access provider's system which prevents *payment service providers* from making payments. The indirect access provider is responsible for notifying us about this.

Withholding and withdrawing access

A *payment system operator*, indirect access provider or credit institution's intention to stop granting access to, or withdraw existing access from, a particular class or type of payment service provider, or to stop joining processes that are not yet complete, either temporarily or permanently, and the reasons for the decision. The responsibility for notifying us about this lies with the *payment system operator*, indirect access provider or credit institution who forms that intention.

This may include, for example, where the intention is to withdraw a particular product or service, or where a change in risk policy or appetite would result in the exit of a number of *payment service providers*.

Changes to services, requirements or rules

A payment system operator, indirect access provider or credit institution's intention to offer a new or materially different payment product or service.

A payment system operator, indirect access provider or credit institution's intention to significantly change its access criteria or onboarding requirements.

A payment system operator changes its rules and that impacts on the PSR's competition, innovation or service-user objectives.

A payment system operator changes its pricing structure and the fees that it applies to participants.

Participants and regulated persons should notify us they are providing information under General Direction 1 (for example, if they bring a matter to our attention which they believe we are not actively considering). While this direction is necessarily broad, we do not expect participants and regulated persons to notify us about the minutiae of running their businesses.

Participants and regulated persons should volunteer accurate information and, where applicable, evidence in support to help us achieve our statutory objectives and functions.

The more complex the subject matter of the notification, the more likely it is that they should notify us in writing. A notification under General Direction 1 may be given orally or in writing, although we may request written confirmation of a matter. It is the responsibility of the *participant or regulated person* to communicate matters to us promptly, properly and clearly.

Status of explanatory notes and directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) or to indicate possible means of compliance. In addition to providing clarification about what is required under a direction, explanatory notes set out illustrative examples of behaviours when complying with a direction.

DRAFT General Direction 2: Access direction given to operators of FSBRA regulated payment systems, excluding those covered under the PSRs 2017

General Direction 2: Access (FSBRA) (2019)

1 Recitals

Whereas:

- 1.4** The Payment Systems Regulator Limited (PSR) gave General Direction 2 under the Financial Services (Banking Reform) Act 2013 (FSBRA) to come into force on 30 June 2015.
- 1.5** The PSR reviewed General Direction 2 and, following consultation, has decided that the access test in General Direction 2 should be replaced by a test aligned to the substantive access test in the PSRs 2017 and that that reference to CHAPs should be removed.
- 1.6** Following a consultation on the proposed text of a revised General Direction 2, the PSR has decided to give a new General Direction 2 and to revoke the General Direction given in 2015 on the same date upon which the revised General Direction 2 comes into effect.

2 Powers exercised and purpose

- 2.1** The Payment Systems Regulator gives this general direction in accordance with sections 54(1) and (3) of the Financial Services Banking Reform Act 2013 (FSBRA).
- 2.2** The Payment Systems Regulator has had regard in particular to sections 49 to 53 of FSBRA (General duties of the Regulator).

Direction

NOW the PSR gives the following general direction:

3 Access

- 3.1** An operator of a regulated payment system which is not a PSR's 2017 payment system must have publicly disclosed access requirements which:
- are proportionate, objective and non-discriminatory
 - do not prevent, restrict or inhibit access or participation more than is necessary to safeguard against specific risks (such as settlement risks, operational risk or business risk), or to protect the financial and operational stability of the payment system
- 3.2** For the purposes of General Direction 2, publicly disclosing the access requirements means, at the least, providing a copy of them in a prominent, easily accessible position on any relevant website that the *operator* operates or controls.
- 3.3** The operator must inform the PSR, as soon as possible, of any material updates and changes to the *operator's access requirements*.
- 3.4** *Operators* must give us a report on their own compliance with the obligations in General Direction 2 each year, covering the 12-month period to 30 September. They must do this by 31 October the same year.
- 3.5** This report must include at least:
- a. the *operator's* assessment of its compliance with the obligations in General Direction 2 throughout the relevant 12-month period
 - b. details of:
 1. all occasions in the relevant 12-month period where access has been withdrawn or modified for an existing service-user
 2. all occasions in the relevant 12-month period when another party expressed interest in potentially securing direct access or direct technical access to the system
 3. the operator's initial response to the expression of interest, and the outcome at the conclusion of the process
 - c. details of all occasions in the relevant 12-month period when the operator has engaged with, and considered, the views of *payment service providers* and other interested parties on the operation and effectiveness of its *access requirements*
 - d. details of any anticipated review of its *access requirements*, or any engagement with *service-users* and other interested parties, that the *operator* plans to take over the following 12-month period

- e. details of any planned future developments that require or justify material updates or changes to the operator's *access requirements*
- f. such information as the PSR, may from time to time, require to be included in the report, the PSR having given reasonable notice of at least 8 weeks prior to the due date for submission of the report

4 Interpretation

- 4.1** The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 4.2** 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.
- 4.3** In this general 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.
- 4.4** In this general direction, references to 'we', 'us' and 'our' mean the *Payment Systems Regulator* (PSR).

Definitions and abbreviations

access requirements	the rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a regulated payment system
direct access	access to a regulated payment system to enable a payment service provider to provide services for the purposes of enabling the transfer of funds using the regulated payment system, as a result of arrangements made between that payment service provider and the operator (and other participants, as applicable)
direct technical access	a direct connection by a payment service provider or another third party with the central infrastructure used by a regulated payment system
indirect access	access to a regulated payment system through a contractual arrangement to enable provision of services (to allow the transfer of funds using that regulated payment system) to persons who are not participants in the system

indirect access provider (IAP)	a PSP that provides indirect access
operator	as defined in section 42(3) of FSBRA
payment service provider	as defined in section 42(5) of FSBRA
Payment Systems Regulator	the body corporate established under Part 5 of FSBRA
PSRs 2017	Payment Services Regulations 2017 (SI 2017/752), as amended from time to time
PSRs 2017 payment system	a regulated payment system to which Part 10 of the PSRs 2017 applies
regulated payment system	a payment system designated by the Treasury under section 43 of FSBRA
service-users	those who use or are likely to use services provided by regulated payment systems

5 Application and revocation

This General Direction applies to the operators of FSBRA *regulated payment systems* excluding those regulated under PSRs 2017. General Direction 2, given in 2015, is revoked on the day this General Direction comes into force.

6 Commencement

This general direction comes into force on [DATE] 2019.

7 Citation

This general direction may be cited as General Direction 2: Access (FSBRA) (2019).

Made on [DATE]

By order of the Board of the Payment Systems Regulator

Explanatory notes

Examples of updates and changes as referred to in paragraph 3.5e include, but are not limited to, updates and changes to the following:

- a. terms and conditions relating to fees or charges for *direct access*, or technical requirements for participation in the *regulated payment system*, where the change could (positively or negatively) affect *direct access* or *direct technical access* for *payment system providers*
- b. eligibility requirements for payment service providers to obtain or continue to have *direct access*
- c. any rules, criteria, terms or conditions, policies or procedures governing access to, or participation in, a *regulated payment system*, that may (positively or negatively) affect *indirect* access to the system

Operators do not need to notify us about routine changes to technical requirements, such as non-significant software updates.

Status of explanatory notes and directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) or to indicate possible means of compliance. In addition to providing clarification about what is required under a direction, explanatory notes set out illustrative examples of behaviours when complying with a direction.

DRAFT General Direction 3: Access direction given to PSRs 2017 regulated card payment and interbank payment systems

General Direction 3: Access (PSRs 2017) (2019)

1 Recitals

Whereas:

- 1.1 The Payment Systems Regulator Limited (PSR) gave General Direction 3 under the Financial Services (Banking Reform) Act 2013 (FSBRA) to come into force on 30 June 2015.
- 1.2 The PSR reviewed General Direction 3 and, following consultation, has decided that in addition to operators of interbank payment systems it should apply to all operators of the card payment systems subject to Regulation 103 of the PSRs 2017, and that it should include updated notification and reporting requirements.
- 1.3 Following a consultation on the proposed text of a revised General Direction 3, the PSR has decided to give a new General Direction 3 and to revoke the General Direction given in 2015 on the same date upon which the revised General Direction 3 comes into effect.

2 Powers exercised and purpose

- 2.1 The Payment Systems Regulator gives this general direction in accordance with Regulation 125(1) and (4) of the PSRs 2017.
- 2.2 The Payment Systems Regulator has had regard, in particular, to:
 - Regulation 124(2) of the PSRs 2017 (Functions of the Payment Systems Regulator) and
 - Regulation 106(3) of the PSRs 2017 (General policy and principles)

Direction

NOW the PSR gives the following general direction:

3 Access (PSRs 2017 payment systems)

- 3.1** An operator of a *regulated payment system* which is a PSRs 2017 payment system must, as soon as possible, notify us about any material updates and changes to its *access requirements*.
- 3.2** Operators must give us a report on their own compliance with the access obligation contained in Regulation 103 of the PSRs 2017 each year, covering the 12-month period to 30 September. They must do this by 31 October of the same year.
- 3.3** This report must include at least:
- a. confirmation of the *operator's access requirements*.
 - b. an assessment of its compliance with the obligation contained in Regulation 103 of the PSRs 2017
 - c. details of:
 1. all occasions in the relevant 12-month period where access has been withdrawn or modified for an existing service-user
 2. all occasions in the relevant 12-month period when another party had expressed interest in potentially securing direct access or direct technical access
 3. the operator's initial response to the expression of interest, and the outcome at the conclusion of the process
 - d. details of all occasions in the relevant 12-month period in which the operator has engaged with, and considered, the views of *payment service providers* and other interested parties on the operation and *effectiveness* of its *access requirements*
 - e. details of any anticipated review of its *access requirements*, or any engagement with *service-users* and other interested parties, that the *operator* plans to take over the following 12-month period
 - f. details of any anticipated future developments that the operator considers may require or justify material updates or changes to its *access requirements*
 - g. such information as the PSR, may from time to time, require to be included in the report, the PSR having given reasonable notice of at least 8 weeks prior to the due date for submission of the report

4 Interpretation

- 4.1** The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 4.2** 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.
- 4.3** In this general 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.
- 4.4** In this general direction, references to ‘we’, ‘us’ and ‘our’ mean the *Payment Systems Regulator* (PSR).

Definitions and abbreviations

access requirements	the rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a regulated payment system
direct access	access to a regulated payment system to enable a payment service provider to provide services for the purposes of enabling the transfer of funds using the regulated payment system, as a result of arrangements made between that payment service provider (and the operator (and other participants, as applicable)
indirect access	access to a regulated payment system through a contractual arrangement to enable provision of services (to allow the transfer of funds using that regulated payment system) to persons who are not participants in the system
operator	as defined in section 42(3) of FSBRA
payment service provider	as defined in section 42(5) of FSBRA
Payment Systems Regulator	the body corporate established under Part 5 of FSBRA
PSRs 2017	Payment Services Regulations 2017 (SI 2017/752), as amended from time to time
regulated payment system	a payment system designated by the Treasury under section 43 of FSBRA
service-users	those who use or are likely to use services provided by regulated payment systems

5 Application and revocation

This General Direction applies to all the operators of card payment systems and interbank payment systems subject to Regulation 103 PSRs 2017. General Direction 3, given in 2015, is revoked on the day this General Direction comes into force.

6 Commencement

This general direction comes into force on [DATE] 2019.

7 Citation

This general direction may be cited as General Direction 3: Access (PSRs 2017) (2019).

Made on [DATE]

**By order of the Board of the Payment
Systems Regulator**

Explanatory notes

We do not expect *operators* to provide any technical information which could compromise the security or integrity of a *regulated payment system*, or to publicly disclose such information in the access requirements for the system.

Examples of changes as referred to in paragraph 3.1 may include, but are not limited to, changes to the following:

- a. terms and conditions relating to fees or charges for direct access, or technical requirements for participation in the *regulated payment system*, where the change could (positively or negatively) affect *direct access* or *direct technical access* for *payment system providers*
- b. eligibility requirements for payment service providers to obtain or continue to have *direct access*
- c. any rules, criteria, terms or conditions, policies or procedures affecting access to, or participation in, a *regulated payment system*, including those that may (positively or negatively) affect *indirect access* to the system

Operators do not need to notify us about routine changes to technical requirements, such as non-significant software updates.

In addition to acting in response to any issues arising in the reporting under General Direction 3 and in response to any complaints received, we may monitor *operators'* compliance with General Direction 3 on an ad hoc basis.

Status of explanatory notes and directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) or to indicate possible means of compliance. In addition to providing clarification about what is required under a direction, explanatory notes set out illustrative examples of behaviours when complying with a direction.

DRAFT General Direction 4: Governance direction given to FSBRA regulated interbank payment systems

General Direction 4: Governance (FSBRA) (2019)

1 Recitals

Whereas:

- 1.1 The Payment Systems Regulator (PSR) gave General Direction 4 and General Direction 6 under the Financial Services (Banking Reform) Act 2013 to come into force on 30 September 2015 and 30 April 2015 respectively.
- 1.2 The PSR reviewed General Direction 4 and General Direction 6 and, following consultation, has decided that they should be consolidated into one General Direction to reflect *service-user* interests, the fact that payment system operators must take account of those interests, that *payment system operators* must produce a public report on stakeholder engagement, and that reference to CHAPs should be removed.
- 1.3 Following a consultation on the proposed text of a revised General Direction 4, the PSR has decided to give a new General Direction 4 and to revoke General Direction 4 and General Direction 6 given in 2015 on the same date upon which the revised General Direction 4 comes into effect.

2 Powers exercised and purpose

- 2.1 The Payment Systems Regulator gives this general direction in accordance with Sections 54(1) and (3) of the *Financial Services Banking Reform Act 2013* (FSBRA).
- 2.2 The Payment Systems Regulator has had regard in particular to sections 49 to 53 of FSBRA (General duties of the Regulator).

Direction

NOW the PSR gives the following general direction:

3 Governance (FSBRA payment systems)

- 3.1** The *operator* of a FSBRA regulated interbank payment system must actively ensure that it takes the views of each relevant *service-user* into account in setting its strategy and in making decisions, including those related to the *payment system's* design and rules.
- 3.2** This means that the *operator* must make decisions based on a clear set of objectives. The operator must take appropriate steps to ensure that it has collected and fully understood service-user views, has assessed them in light of all of the relevant facts, has weighed them against any other competing views or interests, including economic and technical analysis, before arriving at conclusions in respect of those views.
- 3.3** The *operator* must communicate its strategy and decisions to service-users. In doing so, it must ensure it effectively conveys how it has considered *service-users'* views appropriately in making its decision. This communication should be made in writing as soon as possible after the decision is made.
- 3.4** The *operator's* communications with *service-users* should include, but not be limited to, the publication of relevant board minutes. However, board minutes alone will not amount to compliance with paragraph 3.3 and therefore operators should consider what additional steps they need to take to ensure that issues relevant to service-users are communicated to them in an effective and timely manner.
- 3.5** An operator must publish a report on its engagement with stakeholders once a year (on the 12-month anniversary of this direction entering into force) In the report it must:
- explain the *service-user* engagement over the preceding twelve months
 - detail the issues that it expects to discuss with its service-users over the next twelve months together with the methods by which it intends to engage with *service-users*
 - include such information as the PSR, may from time to time, require to be included in the report
- An *operator* may choose to publish reports on its engagement with stakeholder more frequently than this direction requires if it so wishes.
- 3.6** The *operator* must give us an outline of the contents of its annual stakeholder engagement report at least three months before publishing it, and address our views on it.

- 3.7** If there is information that the PSR requires to be included in the annual report it will provide the *operator* with at least eight weeks' notice prior to the due date for submission of the report so that the operator can incorporate this information before publication.

4 Interpretation

- 4.1** The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 4.2** 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.
- 4.3** In this general 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.
- 4.4** In this general direction, references to 'we', 'us' and 'our' mean the *Payment Systems Regulator* (PSR).

Definitions and abbreviations

card payment system	a regulated payment system that enables a holder of a payment card to effect a payment
operator	as defined in section 42(3) of FSBRA
Payment Systems Regulator	the body corporate established under Part 5 of FSBRA
PSRs 2017	Payment Services Regulations 2017 (SI 2017/752), as amended from time to time
regulated payment system	a payment system designated by the Treasury under section 43 of FSBRA
service-users	those who use or are likely to use services provided by regulated payment systems

5 Application and revocation

This General Direction applies to the operators of FSBRA interbank systems. General Directions 4 and 6, given in 2015, are revoked on the day this General Direction 4 comes into force.

6 Commencement

This general direction comes into force on [DATE] 2019.

7 Citation

This general direction may be cited as General Direction 4: Governance (FSBRA) (2019).

Made on [DATE]

**By order of the Board of the Payment
Systems Regulator**

Explanatory Notes

We recognise that an operator may have service-users outside the UK. For the purposes of this direction we accept that *operators* can reasonably assume that relevant service-users are those who engage with the services and activities of that *regulated payment system* in the UK.

Operators' communication with *service-users* should be proportionate to the issues involved. Methods of communicating with service-users could include newsletters and bulletins issued to all *service-users* through a website or extranet, individual or group letters to impacted service-users, consultations, minutes of working groups or other non-governing bodies, or other more public-facing documents.

Where the *operator* wishes to withhold information from *service-users* due to justifiable reasons of legal professional privilege or commercial sensitivity, it may redact documents but should ensure that it retains copies of unredacted documents on file.

In addition to acting in response to any complaints received from *service-users*, we may monitor an operator's compliance with General Direction 4 on an ad hoc basis.

Status of explanatory notes and directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) or to indicate possible means of compliance. In addition to providing clarification about what is required under a direction, explanatory notes set out illustrative examples of behaviours when complying with a direction.

DRAFT General Direction 5: Conflict of interest in the governance of FSBRA regulated interbank payment systems

General Direction 5: Conflict of interest (FSBRA) (2019)

1 Recitals

Whereas:

- 1.1 The Payment Systems Regulator (PSR) gave General Direction 5 under the Financial Services (Banking Reform) Act 2013 to come into force on 30 April 2015.
- 1.2 The PSR reviewed General Direction 5 and, following consultation, has decided to retain the fundamental obligation for *payment systems operators* to take all reasonable steps to ensure that any person who acts as a director must not also act as a director of a central infrastructure provider to a *payment system operator*, and that reference to CHAPS should be removed.
- 1.3 Following a consultation on the proposed text of a revised General Direction 5, the PSR has decided to give a new General Direction 5 and to revoke the General Direction given in 2015 on the same date upon which the revised General Direction 5 comes into effect.

2 Powers exercised and purpose

- 2.1 The Payment Systems Regulator gives this general direction in accordance with sections 54(1) and (3) of the Financial Services *Banking Reform Act 2013* (FSBRA).
- 2.2 The Payment Systems Regulator has had regard in particular to sections 49 to 53 of FSBRA (General duties of the Regulator).

Direction

NOW the PSR gives the following general direction:

3 Governance direction on governing board composition

- 3.1** An *operator* of a FSBRA regulated interbank payment system must take all reasonable steps to ensure that any person acting as a director of that operator is not simultaneously acting as a director of the system's *central infrastructure provider*.
- 3.2** General Direction 5 applies where:
- a *central infrastructure provider* is currently supplying that *regulated payment system*, or
 - a *central infrastructure provider* is participating in a tendering exercise or otherwise is bidding to supply that *regulated payment system*
- 3.3** As soon as an operator is considering organising a tendering exercise or otherwise inviting bidding to supply *central infrastructure* to a *regulated payment system*, it must take all reasonable steps to ensure that any person acting simultaneously as a director of both the operator and a potential provider resigns from one or other of those positions.
- 3.4** Operators must notify us if they believe that they are not compliant with this obligation, and what steps they are taking to become compliant.

4 Application and revocation

This General Direction applies to the operators of FSBRA regulated interbank systems. General Direction 5, given in 2015, is revoked on the day this General Direction comes into force.

5 Commencement

This general direction comes into force on [DATE] 2019.

6 Citation

This general direction may be cited as General Direction 5: Conflict of interest (FSBRA) (2019).

Made on [DATE]

**By order of the Board of the Payment
Systems Regulator**

DRAFT Specific Direction 1: Access direction on indirect access providers offering sponsor bank services

Specific Direction 1: Access (sponsor banks) (2019)

1 Recitals

Whereas:

- 1.1 The Payment Systems Regulator (PSR) gave Specific Direction 1 under the Financial Services (Banking Reform) Act 2013 to come into force on 30 June 2015.
- 1.2 The PSR reviewed Specific Direction 1 and, following consultation, has decided that it should also apply to all *indirect access providers* offering *sponsor bank services*, that they must publish certain information relating to access offerings and applications for access, that they must provide certain information to applicants and that it should include a sunset clause of three years.
- 1.3 Following a consultation on the proposed text of a revised Specific Direction 1, the PSR has decided to give a new Specific Direction 1 and to revoke the Specific Direction given in 2015 on the same date upon which the revised Specific Direction 1 comes into effect.

2 Powers exercised and purpose

- 2.1 The Payment Systems Regulator gives this specific direction in accordance with sections 54(1) and (3) of the *Financial Services Banking Reform Act 2013* (FSBRA).
- 2.2 The Payment Systems Regulator has had regard in particular to sections 49 to 53 of FSBRA (General duties of the Regulator).

Direction

NOW the PSR gives the following specific direction:

3 Access direction on sponsor banks and sponsor bank services

- 3.1** A sponsor bank must publish clear and up-to-date information about its sponsor bank services, where it allows indirect payment service providers to access and use any FSBRA regulated interbank payment system.
- 3.2** The information must include at least the following, in a clear, comprehensive and easily accessible form:
- a. the *sponsor bank's* corporate name, its registered office address, and contact details of an appropriate named person for its sponsor bank services
 - b. a description of the sponsor bank services offered, including the *regulated payment systems* they relate to
 - c. details of any eligibility criteria that a *payment service provider* may have to meet to obtain *sponsor bank services*
- 3.3** The sponsor bank must, at the least, publish a copy of such information in a prominent, easily accessible position on any relevant website that it operates or controls.
- 3.4** A provider of *sponsor bank services* must, as soon as possible after having received an application for access, confirm receipt of the application and, after having processed that application, as soon as possible provide a written indicative timeline for the consideration of the application.
- 3.5** 'Receipt of an application' means that the provider of sponsor bank services has received written communication from an access seeker containing an express request for access to sponsor services and which addresses the requirements of the provider of sponsor bank services as far as the access seeker, acting in good faith, is able to. The provider of sponsor bank services will inform an access seeker of any issues with its written request for access and will take reasonable steps to assist an access seeker in remedying any such issues.
- 3.6** The timeline referred to in paragraph 3.4 must contain the key stages in the application process, the number of weeks each stage is expected to take and any dependencies that could affect the progress of the application. The timeline must include the information that will be required from the applicant, at which stage that information will be considered, and which decision committees or nominated persons will be involved in considering the application.
- 3.7** The timeline referred to in paragraph 3.4 must be updated throughout the application process where changes to the timeline occur. The updated version of the timeline must be provided to the access seeker as soon as possible following any changes.

4 Interpretation

- 4.1** The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 4.2** 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.
- 4.3** 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.
- 4.4** In this specific direction, references to 'we', 'us' and 'our' mean the *Payment Systems Regulator* (PSR).

Definitions and abbreviations

card payment system	a regulated payment system that enables a holder of a payment card to effect a payment
central infrastructure	a package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating the relevant regulated payment system, including the processing of funds transfers
central infrastructure provider	an infrastructure provider when providing central infrastructure
director	in relation to an unincorporated association or a body corporate, any person appointed to direct its affairs, including a person who is a member of its governing body
infrastructure provider	as defined in section 42(4) of FSBRA
operator	as defined in section 42(3) of FSBRA
Payment Systems Regulator	the body corporate established under Part 5 of FSBRA
Sponsor bank	a sub-category of IAPs who provide agency indirect access

5 Application and revocation

This specific direction applies to sponsor banks providing indirect access. Specific Direction 1, given in 2015, is revoked on the day this Specific Direction comes into force.

6 Commencement and duration

This specific direction comes into force on [DATE] 2019 and will expire on [DATE] 2022.

7 Citation

This specific direction may be cited as Specific Direction 1: Access (sponsor banks) (2019).

Made on [DATE]

**By order of the Board of the Payment
Systems Regulator**

Explanatory notes

For the purpose of this direction, the definition of sponsor bank services excludes services provided to *payment service providers* which are only for the purpose of transferring funds on their own behalf. Examples of such excluded services are:

- 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 *payment service providers* that have a corporate relationship with a bank solely for transactions such as paying staff and suppliers (that is, services on their own behalf), and not for the purpose of transferring funds of behalf of other end customers

Conversely, services provided to *payment service providers* by a *sponsor bank* for multiple purposes, which include services for the purpose of enabling the transfer of funds using a *regulated payment system* to persons who are not *participants* in the system, are within the scope of the definition of *sponsor bank services*.

This direction requires the provision of information about *sponsor bank services* in respect of access to, and use of, any FSBRA regulated interbank *payment system*. The required information includes, but is not limited to, the following:

- A description of the terms and conditions for the provision of a bank account to be used to settle payments sent and received on behalf of the *indirect payment service providers'* customers.
- A list and description of the *regulated payment systems* that the *sponsor bank* offers *indirect access* to, and the services of each regulated payment system that *indirect payment service providers* can access. This includes a description of the connectivity options available to *indirect payment service providers* for sending and receiving payment instructions.
- A description of the services offered for providing sort codes to *indirect payment service providers*. This includes services for unique sort codes and the transfer of unique sort codes between *sponsor banks*, and a list of the specific *regulated payment systems* this applies to.

- A description of any other services the sponsor bank views as being part of its wider *sponsor bank service* offering (for example, access to a branch network, or payment message transformation services).
- A high-level description of the types of transaction fees and other charges an *indirect payment service provider* can expect to pay for services provided, and the key elements of those fees and charges.

This direction does not require a *sponsor bank* to disclose information which it reasonably considers to be commercially sensitive.

This direction does not require a *sponsor bank* to disclose specific price points or price ranges that it charges customers or other information which it reasonably considers to be commercially sensitive. The eligibility criteria that the sponsor bank must provide information about include, but are not limited to, the following:

- types of factors the *sponsor bank* takes into consideration in deciding whether to accept an *indirect payment service provider* as a customer (for example, assessment of creditworthiness, strategic risk or expected volume)
- criteria an *indirect payment service provider* must satisfy to qualify for a unique sort code (for example, regulatory status or compliance with payment system rules)
- criteria an *indirect payment service provider* must satisfy to obtain certain sponsor bank services (for example, for host-to-host connections, the systems testing and security standards that must be met)

Status of explanatory notes and directions

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) or to indicate possible means of compliance. In addition to providing clarification about what is required under a direction, explanatory notes set out illustrative examples of behaviours when complying with a direction.

Transitional provisions

We propose that we give at least one month's notice between publishing a final draft of the directions (post consultation) and formally giving them to the relevant parties one month later.

We will revoke all existing General Directions and Specific Direction 1.

We will give the General and Specific Directions as outlined above simultaneously as the existing General and Specific Directions are revoked and they will come into force immediately.

Annex 2

Compatibility statement

In this annex, we set out how the decisions in this paper are compatible with our general duties and regulatory principles.

Our objectives and regulatory principles

- 2.1** The decisions in this policy statement will directly advance our statutory objectives. Section 49(1) of the Financial Services (Banking Reform) Act 2013 (FSBRA) requires us, as far as reasonably possible, to act in a way which advances one or more of our payment systems objectives which are:
- promoting effective competition in the markets for payment systems and services – between payment system operators (PSOs), payment service providers (PSPs) and infrastructure providers
 - promoting the development of and innovation in payment systems, in particular, in the infrastructure used to operate those systems
 - ensuring that payment systems are operated and developed in a way that considers and promotes the interests of all businesses and consumers that use them
- 2.2** Our Directions, including any changes we will make, broadly cover the following areas:
- improving service-user representation in PSOs
 - opening up direct access to payment systems
 - ensuring that regulated participants deal with us in an open and cooperative way and disclose relevant information to us
- 2.3** As noted above, the decisions in this paper advance our statutory objectives and one example of this is that the new GD4 will enhance service-user representation in the decision-making processes of PSOs.
- 2.4** All the Directions are pro-competition. They help, and will continue to help, to improve access to various payment systems, ensuring competitive tendering and that service-users' interests are considered.
- 2.5** The changes made to the Directions will also enable us to monitor better and to enforce the Interchange Fee Regulation (GD1) and parts of PSRs 2017 (GD1, GD3).

2.6 We consider below the most relevant regulatory principles to the decisions laid out in the paper.

1. The need to use our resources in the most efficient and economical way.

We have used our internal and external resources in a way we believe to be both effective and commensurate with the impact and magnitude of the decisions in this paper.

2. The principle that a burden or restriction should be proportionate to the benefits, in general terms, that are expected to result from imposing it.

For the reasons outlined in the cost benefit analysis (Annex 3), we consider that the burdens imposed under the decisions are proportionate to the benefits we expect to be achieved.

3. The desirability of exercising our functions in a way that recognises differences in the nature of the businesses carried on by the different persons we regulate.

In recognising the non-homogenous nature of the parties we regulate, the requirements in the Directions are tailored to the entities covered, or the regulated parties' individual business models, and intended to be appropriately flexible. For example, a compliance requirement of the new GD4 will require a stakeholder engagement report to be made and circulated but the exact structure and method of engagement is open to the regulated parties to decide. In addition, while GD2 and GD3 have similar purposes (ensuring access markets are open, competitive and efficient), the Directions are different, in recognition of the fact that the markets are different.

4. The desirability in appropriate cases of publishing information relating to persons on whom requirements are imposed, or requiring such persons to publish information, as a means of contributing to the advancement of our payment systems objectives.

Our decisions in this paper are compatible with this principle.

5. The principle that we should exercise our functions as transparently as possible.

We consider that we have clearly described the changes to our Directions and have consulted on those changes openly and transparently over a sufficient period of time. We continue to be transparent in the current consultation on the proposed wording of the Directions. We believe we have clearly spelled out the reasoning for our decisions, and supported this with evidence in the documents we have published.

Other considerations

Equality and diversity

- 2.7** We are required under the Equality Act 2010 to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we assessed the equality and diversity implications of our direction decisions. It was established that changes to the Directions will have no impact on equality as the scope of the changes impacts on firms as a whole and not on an individual level. This judgement was supported by our Equality Superuser.

Impact on financial stability

- 2.8** We have general duties under section 49(3)(a) FSBRA to have regard to the importance of maintaining the stability of, and confidence in, the UK financial system. We do not anticipate any adverse impact on the financial stability of the UK financial system or on any regulated bodies. This is further clarified in our cost benefit analysis (Annex 3). In summary, we expect the costs to regulated parties to be low. Due to the non-prescriptive, principles-based nature of some of the changes we have made, parties will be able to make amendments to their behaviours and policies to meet the Directions in a way that suits them best. We consider the changes we will make to be in the best interests of the payment systems as a whole, and the smooth functioning of these systems. Any costs are therefore justifiable.

Annex 3

Cost benefit analysis

- 3.1** Following our discussion of the intended benefits and anticipated costs in our consultation paper¹⁷, we have updated these according to the changes to the Directions outlined in this paper.
- 3.2** We continue to expect that our proposed changes to our 2015 Directions will help us to advance our statutory objectives and functions. We also expect they will benefit those who use, or are likely to use, the services provided by payment systems.
- 3.3** It is not reasonably practicable to produce a quantitative estimate of the costs or benefits of the proposed changes, given the nature of those costs and benefits.
- 3.4** While the nature of the costs makes them hard to quantify, we still consider that any costs that arise from the changes we are making to the Directions will not be significant. We additionally consider the benefits to be greater than these costs.
- 3.5** In our consultation paper, we asked stakeholders to estimate the additional costs that would be incurred as a result of the proposed Direction changes.¹⁸ Only two stakeholders responded to the question. One respondent said they did not anticipate that the proposed changes will result in significant additional costs. The other said there would be an inevitable additional cost of implementation for any additional requirements, but it would need to fully assess this impact following our consultation on the final changes. Other stakeholders did not attempt to quantify the costs at this stage, preferring to wait until any changes had been finalised, or saying they could not be quantified.
- 3.6** We will make the most substantive revisions to: GD3 (re-writing it under PSRs 2017 and expanding its ambit to all card payment systems and LINK); GD4 and GD6 (which will be consolidated into a new GD4); and SD (expanding its ambit to all sponsor banks). We do not expect our minor changes to the other Directions to change the costs significantly for regulated participants.
- 3.7** Overall, the changes will make our Directions more effective, allowing for a more competitive and innovative payments industry which considers stakeholder views. Therefore, in our view, the benefits that will be achieved will outweigh the relatively small additional costs to businesses.

¹⁷ CP18/1, *Review of PSR Directions made in 2015* (March 2018): <https://www.psr.org.uk/psr-publications/consultations/review-PSR-directions-March-2018>

¹⁸ CP18/1, page 47, question 15.

General Direction 1

- 3.8** We will reword GD1 to improve clarity for participants and expand the scope to include parties and activities regulated by the Interchange Fee Regulation (IFR) and the Payment Services Regulations 2017 (PSRs 2017).
- 3.9** The rewording of the Direction will promote the benefits of GD1. The provision of accurate information given as soon as possible makes us more effective in carrying out our duties and achieving our objectives, therefore helping ensure the payments market is more efficient. This will allow us to better understand the dynamic changes in the market, thus reinforcing our ability to ensure the market stays competitive and delivers the best outcomes for those that use it.
- 3.10** Greater clarity and predictability should reduce rather than increase the cost this requirement places on industry. We also estimate there will be few additional regulated entities that will be covered under GD1. Therefore, the additional cost to the industry as a whole will be small in the short term, and we anticipate that there will be no additional costs in the long term.

General Direction 2

- 3.11** We will align the substantive access requirements with that of Regulation 103 of the PSRs 2017. We will also remove application of the Direction to CHAPS, as the Bank of England now operates CHAPS.¹⁹
- 3.12** GD2 works to ensure that access requirements are fair across the market, and do not discriminate and prevent certain access seekers from entering. It also helps us to build knowledge of the direct access market, and monitor competition. There is no material difference between the existing wording and the new GD2 wording. Our change will reduce any uncertainty that the existing wording might have created and make it easier for operators to understand and meet our expectations.
- 3.13** The change will not increase the cost to the payment system operators (PSOs) that are covered by GD2.

General Direction 3

- 3.14** We will replace the existing Financial Services (Banking Reform) Act 2013 (FSBRA) Direction given under FSBRA with a Direction given under the PSRs 2017. We will expand the Direction to apply to all card payment systems and interbank systems that are subject to Regulation 103 of the PSRs 2017²⁰ and rescope the compliance reporting. The new PSRs 2017 Direction will not contain a requirement that card payment systems publicly disclose their access requirements.

¹⁹ The Bank, as operator of CHAPS, will not be regulated under any of the Directions.

²⁰ PSOs include Mastercard, Visa, American Express, Diners Club International, JCB International, UnionPay International and LINK.

3.15 GD3 helps us meet our compliance monitoring obligations under Regulation 103 of the PSRs 2017. GD3 also helps to keep card payment system and interbank system access transparent and as accessible as possible, making it easier for those entities seeking access to a card payment system. The notification requirement enables us to stay better informed about the access landscape which will help us regulate more effectively.

3.16 The expanded Direction will place minimal obligations (notification and reporting requirements) on additional card payment systems. Given our duties to monitor and enforce Regulation 103, any costs will be proportionate to our statutory responsibility.

General Directions 4 and 6

3.17 We will consolidate the two Directions into one, still focusing on ensuring service-user engagement. We are also introducing a requirement for PSOs to produce an annual public report, explaining key stakeholder engagement from the last 12 months.

3.18 These changes will help ensure that service-users' interests and perspectives are reflected in operators' decision-making, and that service-users are more aware of the basis on which decisions are made. This should have a positive impact on competition in the interbank market, and help foster innovation as operators consider new or improved services. It should also improve the quality of services used – with the benefits of these improvements being passed onto end users. We anticipate the new public annual report will lead to more effective engagement between PSOs and service-users, which in turn will lead to better processes.

3.19 We do not anticipate any significant material additional costs to the PSOs. A principles-based approach means that PSOs can determine their own processes for meeting the obligations. For example, they could use existing communication channels, such as their websites, to publish information on their decision-making. The new annual public engagement is likely to take a larger focus of resources than the previous compliance report which was required to be filled in and sent to us, but this is offset, as it will drive better decision-making.

3.20 In addition, Pay.UK is currently developing its processes, and can incorporate its obligations under GD4 as part of this process, minimising the potential cost of these changes.

General Direction 5

3.21 In CP18/1, we proposed revoking GD5. We have since changed our position and will now keep the Direction, with a small revision: to bring a requirement currently only in the explanatory notes – preventing PSO directors also being a director of an infrastructure company bidding to supply that PSO – into the Direction itself.

3.22 The benefit will be to further protect against any conflicts of interest arising in procurements. This should create fairer opportunities and thus more competition.

3.23 There are no additional costs from this change.

Specific Direction 1

- 3.24** We will expand SD1 to apply to all indirect access providers (IAPs) offering sponsor bank services. We will also require sponsor banks to set out tailored indicative timelines and provide details of key decision stages to PSPs who have applied for indirect access, at the point of application. The Direction will therefore apply to a broader range of IAPs, and will include additional obligations.
- 3.25** The changes mean the obligations will apply fairly among all sponsor banks instead of just the current four named banks. They will also promote competition in the indirect access market, and allow access seekers to make more informed decisions about access options. The requirement to provide information on timelines and key stages will improve communication between IAPs and access seekers, making the process of seeking indirect access more efficient by saving time and resources for access seekers.
- 3.26** We do not consider that the additional costs to those sponsor banks that are not currently covered by SD1 will be significant. For a firm to be able to offer sponsor bank services, they would need to be a large, mature entity. Consultation indicated that sponsor banks are already providing some of the additional information we are requiring under SD1 through good business practices.

Annex 4

List of respondents to CP18/1

Non-confidential submissions received

Association of UK Payments Institutions (AUKPI)

Barclays

British Retail Consortium (BRC)

Cheque & Credit Clearing Company (C&CCC)

Clydesdale Bank

HSBC

LINK

Lloyds Bank

Mastercard

New Payment System Operator (NPSO) (now Pay.UK)

RBS Group

Visa Europe

These submissions are available on our website at: www.psr.org.uk/responses-consultation-PSR-directions-decision

We also received three confidential submissions.

Annex 5:

Glossary

Term or abbreviation	Description
(our) objectives	The PSR's statutory objectives as set out in sections 50 to 52 of the Financial Services (Banking Reform) Act 2013 (FSBRA) – these are the competition objective, the innovation objective and the service-user objective.
access package	The access package includes the introduction of a principles-based access rule (the access rule) and compliance reporting obligations (the reporting rule).
access requirements	The rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a regulated payment system.
access seeker	A payment service provider (PSP) seeking access (direct or indirect) to a system
agency indirect access	A subset of indirect access where an indirect PSP utilises a unique sort code in making and receiving transactions.
better regulation	A set of principles of regulation set out by the UK government. See https://www.gov.uk/government/groups/better-regulation-executive .
card payment system	<p>A regulated payment system that enables a holder of a payment card to effect a payment.</p> <p>A single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions. It is separated from any infrastructure or payment system that supports its operation, and includes any specific decision-making body, organisation or entity accountable for the functioning of the scheme.</p>

card scheme operator	An operator of a card payment system.
central infrastructure	<p>A package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating the relevant regulated payment system, including the processing of funds transfers.</p> <p>A package of systems and services provided under contract to an operator for operating the relevant payment system, specifically the processing of payment transactions and funds transfers. The package must at least include the provision of hardware and software (including related ancillary support services). It may include additional services such as secure telecommunications networks, facilities, physical security or support staff. Central infrastructure may be provided to the operator by an external provider, or internally.</p>
central infrastructure provider	An infrastructure provider when providing central infrastructure.
C&CC	Cheque and Credit Clearing
compliance failure	<p>A failure by any of the following:</p> <ul style="list-style-type: none"> • a participant in a regulated payment system to comply with a direction given under section 54 FSBRA • a participant in a regulated payment system to comply with a requirement imposed under sections 55 or 56 FSBRA • a person to comply with an obligation, prohibition or restriction imposed by the Interchange Fee Regulation (IFR) • a person to comply with a direction given under Regulation 4 of The Payment Card IFRs 2015 • an operator of a designated alternative switching scheme to comply with a direction given under paragraph 8, Schedule 4 of the Payment Accounts Regulations (PARs) or with a notice to provide information made under paragraph 7, Schedule 4 PARs
CP14/1	<i>A new regulatory framework for payment systems in the UK</i> – a document published on 24 November 2014 at https://www.psr.org.uk/psr-publications/consultations/consultation-paper-141

CP18/1	<i>Review of PSR Directions made in 2015</i> – a document published on 14 March 2018 at https://www.psr.org.uk/psr-publications/consultations/review-PSR-directions-March-2018
CPSS-IOSCO Principles	Principles for Financial Market Infrastructures published by CPSS-IOSCO in April 2012. These were adopted as principles by the Bank of England under section 188 of the Banking Act 2009 for payment systems recognised by the Bank (that is, Bacs, CHAPS, Faster Payments (FPS) and Visa).
direct access	<p>(a) Access to a regulated payment system to enable a PSP to provide services to allow the transfer of funds using the regulated payment system, as a result of arrangements made between that PSP and the operator (and other participants, as applicable). See also section 42(6) FSBRA.</p> <p>(b) Access to an IFR card payment scheme to provide services to enable the transfer of funds under the rules of that IFR card payment scheme.</p>
FCA	Financial Conduct Authority
four-party card payment system	<p>A card payment system where the stakeholders are:</p> <ol style="list-style-type: none"> 1. the issuer 2. the acquirer 3. the cardholder 4. the merchant <p>Examples of four-party card payment systems are Mastercard and Visa.</p>
FPS	Faster Payments Service
FSBRA	Financial Services (Banking Reform) Act 2013
General Direction	A Direction we issued under section 54 FSBRA, Section 125 PSRs 2017, Regulation 4 PCIFRs 2015 and https://www.psr.org.uk/how-psr-regulates/regulatory-framework-and-approach/general-directions , as amended from time to time. It applies to all parties of a category specified in the Direction.

indirect access	Access to a regulated payment system through a contractual arrangement to enable provision of services (to allow the transfer of funds using that regulated payment system) to persons who are not participants in the system.
indirect access provider (IAP)	A PSP that provides indirect access.
infrastructure provider	Any person who provides or controls any part of the infrastructure used for the purposes of operating a payment system (see also section 42(4) FSBRA).
IFR	Interchange fee regulation
key performance indicator (KPI)	A measurement upon which a company can judge its performance against its objectives.
nested indirect access provider	Indirect access provided by a PSP that does not have direct access to a payment system (that is, it has indirect access from an IAP, and also provides IAP services to other PSPs). This will always be non-agency indirect access.
non-agency indirect access	Indirect access without the provision of a unique sort code. IAPs providing this service might themselves have direct access to a payment system, or might be nested.
NPA	The New Payments Architecture.
PARs	Payment Accounts Regulations 2015.
participants	In relation to a regulated payment system, any operator, PSP or infrastructure provider to a regulated payment system. See also section 42(2) FSBRA.
payment service provider (PSP)	A PSP, in relation to a payment system, means any person who provides services to consumers or businesses who are not participants in the system, to enable the transfer of funds using that payment system. This includes direct PSPs and indirect PSPs.

Payments Strategy Forum (The Forum)	We announced the Payments Strategy Forum in our policy statement published in March 2015. The Forum is leading on a process that identifies, prioritises and develops strategic, collaborative initiatives that promote innovation for the benefit of those who use payment systems. The Forum has a chair independent of industry and 22 members, including consumers, charities, government, businesses and PSPs. The Forum has also created a number of working groups to inform its work and help achieve its goals. You can read more about the Forum at www.paymentsforum.uk
payment system operator (PSO)	In relation to a payment system, any person with responsibility under a payment system for managing or operating it; any reference to the operation of a payment system includes a reference to its management.
PCIFRs	The Payment Card Interchange Fee Regulations 2015 (SI 2015/1911), as amended from time to time.
POND	Proportionate, objective, and non-discriminatory. Used to assess access requirements. Used in the PSRs 2017.
Principle 11	The Financial Conduct Authority's (FCA's) Principle 11 of its PRIN Sourcebook.
PS15/1	<i>A new regulatory framework for payment systems in the UK</i> – a document published on 25 March 2015 at https://www.psr.org.uk/psr-publications/policy-statements/policy-statement-151
PSD2 (Second EU Payment Services Directive)	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) 1093/2010, and repealing Directive 2007/64/EC, published in the Official Journal of the EU on 23 December 2015. The UK's obligations are transposed into UK legislation in PSRs 2017.
PSR Principles	Historically proposed (in CP14/1) but not adopted high-level, legally binding rules. They set out the expected behaviour of industry participants (similar to the FCA's PRIN Sourcebook).
Payment Services Regulations 2009 (also known as PSRs 2009)	The Payment Services Regulations 2009 (SI 2009/209), which implements the Payment Services Directive (Directive 2007/64/EC) in the UK, as amended from time to time.

Payment Services Regulations 2017 (also known as PSRs 2017)	The Payment Services Regulations 2017 (SI 2017/752), as amended from time to time, which implements the Second Payment Services Directive, PSD2 (EU 2015/2366).
regulated person	A person on whom an obligation, prohibition or restriction is imposed by any provision of the IFR or PSRs 2017.
reporting requirement	The requirement for PSOs to report to us on their compliance with our access or governance packages.
service-user	Those who use, or are likely to use, services provided by regulated payment systems.
Specific Direction (SD)	A Direction issued by the PSR under section 54 FSBRA, and https://www.psr.org.uk/how-psr-regulates/regulatory-framework-and-approach/general-directions , as amended from time to time. It applies only to persons specified in the Direction, or persons of a specified description.
sponsor bank	A sub-category of IAPs who provide agency indirect access.
three-party card payment system	<p>A card payment system involving the following stakeholders:</p> <ol style="list-style-type: none"> 1. the card payment system itself, which acts as issuer and acquirer 2. the cardholder 3. the merchant <p>An example of a three-party card payment system is American Express.</p>

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