PSR Payment Systems Regulator

Powers and Procedures Guidance

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1 Introduction

This chapter provides an overview of our Powers and Procedures Guidance (PPG), and explains its scope.

Overview

1.1 The Payment Systems Regulator Limited (PSR) is the economic regulator for the payment systems industry in the UK. We were established under the Financial Services (Banking Reform) Act 2013 (FSBRA) as a subsidiary of, but independent from, the Financial Conduct Authority (FCA). Our remit, powers and procedures are different to those of the FCA.

1.2 This publication is the PSR's Powers and Procedures Guidance (PPG). It is general guidance made under section 96 of FSBRA, after having regard to our general duties (section 49 of FSBRA) and regulatory principles (section 53 of FSBRA).

1.3 This guidance explains:

- our role and our ways of working (Chapter 2)
- the FSBRA legal and regulatory framework under which we operate (Chapter 3)
- our powers to take regulatory action under FSBRA, how we will decide what, if any, action to take, what processes and procedures we will follow, and how a party can appeal against regulatory action (Chapter 4)
- our powers to take enforcement action under FSBRA where we consider that a compliance failure has occurred, how we will decide what, if any, enforcement action to take, what processes and procedures we will follow, and how a party can appeal against a decision to impose a penalty or publish details of any compliance failure (Chapter 5)

Scope of the PPG

1.4 This guidance sets out our role as the regulator for payment systems and the powers we have under FSBRA to:

- take regulatory action by way of making directions, and impose requirements (under sections 54, 55 and 58 of FSBRA)
- to take enforcement action for non-compliance (under sections 71 to 80 of FSBRA)

1.5 This guidance also explains the procedures that will apply when we consider using, and do use, these powers.

1.6 For the purposes of this guidance, we use the term 'regulated party' to refer to any entity that may be the subject of regulatory or enforcement action taken by us under FSBRA.

1.7 We may, from time to time, prepare separate guidance explaining our processes and procedures in relation to specific functions we perform under other provisions of FSBRA and/or other legislation. For example, we have published guidance explaining our role and functions in respect of:

- considering applications for access to payment systems using our powers under sections 56 and 57 of FSBRA,[1] and our approach to monitoring and enforcing the access provisions of the second Payment Services Directive (PSD2)[2]
- monitoring and enforcing the main requirements of the Interchange Fee Regulation 2015 (IFR)[3]
- our powers to designate and monitor alternative switching schemes under the EU Payment Accounts Directive 2014 (PAD)[4]
- our competition law powers under the Competition Act 1998 (CA98) and Enterprise Act 2002 (EA02)[5]

These documents each contain standalone guidance explaining our processes and procedures in these areas.

1.8 We have also published separate guidance on our approach to assessing the appropriate penalties to be imposed when we find a compliance failure.

1.9 The most up-to-date versions of our guidance and other publications are on our website.

1.10 This guidance represents our approach and procedures at the date of publication. It replaces the PPG published in March 2015.

1.11 We may revise our approach and procedures from time to time to reflect changes in best practice or the law and our developing experience in performing our functions under FSBRA.

1.12 We will apply this guidance flexibly. This means that we will have regard to this guidance when we perform our functions, but may adopt a different approach when we think it is appropriate having considered all the relevant circumstances.

1.13 This guidance does not attempt to describe all the provisions of FSBRA in detail. Interested parties are advised to refer to the text of that legislation for a complete description of our statutory functions and powers. In the event of any inconsistency between FSBRA and any part of this guidance, FSBRA takes precedence.

1 Our powers under section 57 of FSBRA also enable us to vary agreements relating to regulated payment systems for purposes other than to grant access to those systems.
2 Directive 2015/2366/EU.
3 Regulation (EU) 2015/751.
4 Directive 2014/92/EU.
5 Given to us by section 59 to 63 of FSBRA.

2 The role of the PSR and our ways of working

This chapter explains our role, who we regulate and how we work with others. It also explains how we gather and receive information that may lead to us using our powers and how we handle this information, which is sometimes confidential and sensitive. Finally, it sets out when we will consider using our FSBRA powers to take either regulatory or enforcement action.

The role of the PSR

2.1 The PSR is the economic regulator for the payment systems in the UK. We regulate the market for payment systems and payment services in a way that ensures that payment systems are accessible, reliable, secure and value for money for everyone that uses them.

2.2 The PSR was launched on 1 April 2015. We were established under FSBRA with three statutory objectives (the 'payment system objectives'):

- Ensuring that payment systems are operated and developed in a way that considers and promotes the interests of service-users (the businesses and consumers that use, or are likely to use, services provided by payment systems) (section 50 of FSBRA).
- Promoting effective competition in the markets for payment systems and services provided by payment systems, in the interest of service-users – in particular, between payment system operators, payment service providers and payment system infrastructure providers (section 51 of FSBRA).
- Promoting the development of and innovation in payment systems, particularly the infrastructure used to operate those systems, in the interest of service-users (section 52 of FSBRA).

2.3 We must advance one or more of these objectives when performing our general functions under FSBRA (section 49 of FSBRA).

2.4 FSBRA gives us certain powers in relation to regulated payment systems. Her Majesty's Treasury (the Treasury) has the power to designate any payment system as a 'regulated' payment system (section 43 of FSBRA). To date, the Treasury has designated eight payment systems as regulated payment systems. Our FSBRA powers apply in relation to all participants within these regulated systems (paragraphs 2.8 to 2.9 below).

2.5 Our role and remit is wider than the FSBRA jurisdiction. We are also a competition authority with powers under CA98 and EA02, concurrent with those of the Competition and Markets Authority (CMA), the FCA and several other sector regulators. As a competition authority, we are able to exercise powers in relation to infringements of competition law so far as they relate to participation in payment systems.

2.6 Since 2015, we have been allocated additional functions:

- We are responsible for monitoring and enforcing compliance with the IFR, in accordance with the Payment Card Interchange Fee Regulations 2015 (PCIFRs).[6]
- We are responsible for monitoring and enforcing compliance with some provisions of PSD2, as transposed into UK law in the Payment Services Regulations 2017 (PSRs).[7]
- We are the UK's competent authority to designate alternative switching schemes, under the EU Payment Accounts Directive 2014 (PAD), and ensure such schemes continue to meet the criteria set out under the Payment Account Regulations 2015 (PARs).[8]

2.7 We have published separate guidance in relation to our powers and functions in each of these areas.

Who we regulate

2.8 Under FSBRA, we have regulatory and enforcement powers in relation to participants in any of the following regulated payment systems:

- BACS
- Cheque and Credit
- CHAPS[9]
- Faster Payments Scheme
- LINK
- Northern Ireland Cheque Clearing
- Mastercard
- Visa Europe

6 SI 2015/1911. Note that in the event of EU withdrawal without an agreement, the IFR will be replaced by an onshored version of the IFR (The Interchange Fee (Amendment) (EU Exit) Regulations 2018). The PSR will retain its responsibility for monitoring and enforcing compliance with the onshored IFR.

7 SI 2017/752.

8 SI 2015/2038. Currently, only the Current Account Switching Service (CASS) has been designated as an alternative switching scheme by the PSR.

9 Since 2017, CHAPS has been operated by the Bank of England, and, under section 42 of FSBRA, the Bank of England is not regarded as a participant in a regulated payment system. However, CHAPS remains a designated payment system.

2.9 Section 42 of FSBRA defines the following persons as 'participants' in a payment system:

- The operator of the payment system, which, in relation to a payment system, means any person with responsibility under the system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.
- Any infrastructure provider, which, in relation to a payment system, means any person who provides or controls any part of the infrastructure used for the purposes of operating the payment system.
- Any payment service provider, which, in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system.

2.10 However, our information gathering and investigative powers under FSBRA extend to persons outside this definition (see Chapters 4, 5 and 6).

2.11 We may also take action against any firm subject to any obligations under the PCIFRs, PSRs and the PARs.

2.12 Our concurrent competition functions apply in relation to participation in any payment system active in the UK (whether or not designated by the Treasury under FSBRA).

Working with others

2.13 There are several other financial services regulators with which we are required, under FSBRA, to coordinate the exercise of our regulatory functions, namely: the Bank of England (BoE), the FCA and the Prudential Regulation Authority (PRA) (section 98 of FSBRA). We have entered into a Memorandum of Understanding ('the FSBRA MoU') with these regulators, which describes:

- the role of each regulator in relation to the exercise of relevant functions that relate to matters of common regulatory interest
- how we intend to comply with our duty to coordinate the exercise of our functions with theirs[10]

2.14 We have additional duties to exercise our competition law functions in coordination and consultation with the CMA.[11] These are set out in a separate Memorandum of Understanding ('the CMA MoU').

2.15 We are also a member of the United Kingdom Regulators Network (UKRN), the United Kingdom Competition Network (UKCN) and the European Competition Network (ECN).[12]

2.16 Links to the memorandums of understanding referred to in this section are on our website.

10 As required by section 99(2) of FSBRA. The FSBRA MoU is reviewed annually.
11 The Competition Act 1998 (Concurrency) Regulations 2014 SI 2014/536.
12 In the event of EU withdrawal without an agreement, the PSR will no longer be a member of the ECN.

Receiving, gathering and handling information

2.17 In this section, we explain how we handle complaints and other information that could lead to us taking action to address the behaviour of individual firms or wider industry. This does not include complaints about us.[13]

2.18 There are a number of ways we could receive information that might lead to us considering whether to take regulatory or enforcement action under FSBRA. We could receive it:

- from regulated parties
- from other regulators
- from firms, organisations and individuals, including consumers and whistleblowers
- through our own proactive information gathering

2.19 In the case of our own information gathering, we may have sought the information to determine whether there are any issues of concern – for example, when monitoring compliance with directions or statutory requirements. Alternatively, we may learn about an issue when we make enquiries for another purpose – for example, when consulting on policy development.

2.20 When a matter of potential regulatory concern is brought to our attention by a third party (i.e. we did not seek the information), we will consider the issues raised and which of our powers they may relate to (if any).

2.21 Sometimes we receive communications about matters that do not relate to our role and functions. We will explain this to the party that raised the matter, and tell them if we are aware that another authority may have jurisdiction.

2.22 We will not usually forward the communication to that other authority. However, if it relates generally to a matter of common regulatory interest (under section 98 of FSBRA), we may share the information with the other financial services regulators in accordance with the provisions of the FSBRA MoU.

2.23 Where the issue appears to relate to our role and functions, we will assess it based on information available to us and consider what, if anything, we could do about it.

2.24 Sometimes, the information may relate to issues that are within both our jurisdiction and that of another financial services regulator. In this case, we will discuss the matter with that organisation and agree with them which of us, if any, will take further action, in accordance with the provisions of the FSBRA MoU.

2.25 Where the information raises competition issues, we will consult with the CMA and, where appropriate, other competition authorities, in accordance with the concurrency regime and the CMA MoU.

13 Details of how to complain about us and which types of complaint are subject to review by the Independent Complaints Commissioner, if you are unsatisfied with our response to your complaint, are available on our website https://www.psr.org.uk/complaints-against-psr.

2.26 Once we have identified the legislative regime(s) (FSBRA, IFR, PSD2, PAD, CA98) that the issue falls within, we will apply processes that are appropriate for handling information involving those regimes.[14] These processes will differ depending on whether the issue relates to non-compliance or another matter.

Information about issues other than potential non-compliance

If you want to contact us but do not know the name of a relevant person or team, you can email our *Contact Us* team at PSRcontactus@psr.org.uk, or write to:

Contact Us
Payment Systems Regulator
12 Endeavour Square
London
E12 1JN

We will pass your communication to the relevant team.

2.27 If your communication relates to a specific matter or project, and you already have a specific contact, you can contact them directly. You should also send a copy of the correspondence to the Contact Us team.

2.28 When we receive information of this nature, we will acknowledge it promptly. We will usually explain to the sender whether and how we will take a matter forward, but we may not always be able to do so. Whether we do will depend on the type of issue raised and the circumstances surrounding it – for example, legal restrictions, market sensitivity or confidentiality considerations.

Information about possible non-compliance

2.29 We handle whistleblowing complaints in accordance with our whistleblowing policy. Anyone who has information on malpractice in relation to payment systems (or the services they provide) can contact us via the FCA's Intelligence Department. You can find more details on our whistleblowing page: www.psr.org.uk/psr-approach-whistleblowing

2.30 For other complaints and information relating to possible non-compliance with our directions or requirements made using our FSBRA powers, email the complaints team at PSRcomplaints@psr.org.uk or write to:

Complaints
Payment Systems Regulator
12 Endeavour Square
London
E12 1JN

If you are aware of a member of our staff or team within the PSR who is already working on the issue (or something close to it), you can contact them directly. You should also send a copy of the correspondence to the complaints team.

14 Please see our separate guidance on our powers and functions under the IFR, sections 56 and 57 of FSBRA, in respect of applications related to the grant of access, PSD2 and CA98 for full details of our processes in those areas.

2.31 If we receive a complaint or intelligence relating to non-compliance, we will acknowledge it promptly and allocate it to an appropriate member of PSR staff. We will then consider the issue involved and which, if any, of our powers it relates to.

2.32 When we receive information about potential non-compliance, we will not usually tell the sender whether, or how, we will take a matter forward. Our reasons for this will depend on the type of issue raised and the circumstances surrounding it. It would usually be because of legal restrictions, market sensitivity, confidentiality considerations, or because of our general approach to announcements in relation to our different types of work (see paragraphs 2.57 to 2.60).

General Direction 1

2.33 General Direction 1 covers all participants in the payment systems we regulate under FSBRA. It requires them to deal with us in an open and cooperative way whenever they interact with us, and to disclose relevant information to us.

2.34 Regulated parties should tell us when 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. They should give us accurate information, and provide supporting evidence where applicable.

2.35 In line with General Direction 1, we expect regulated parties to notify us, in an appropriate way, of anything relating to them which we would reasonably expect notice of. This would typically include telling us about any potential or actual compliance failures they are aware of.

2.36 If a regulated party is not sure if an issue is one which we would reasonably expect notice of, it should consider providing the information. Whether particular information is something we would reasonably expect notice of is for us to assess, when considering compliance with General Direction 1.

Information gathering

2.37 We gather information in a number of other ways, all of which can broadly be categorised as either informal or formal (see paragraphs 2.40 and 2.41 below) information gathering.

2.38 We may seek information from regulated parties or other individuals or firms for:

- exploratory purposes (for example, gathering information about industry practices and payment system developments to inform our policy development work)
- review purposes (for example, in the context of a market review or study)[15]
- monitoring purposes (in respect of compliance with our directions or requirements, and any other legal obligations we have responsibility for), or
- enforcement purposes (when carrying out an investigation into potential non-compliance)

15 We have powers under section 64 of FSBRA to review the market, and under the EA02 to conduct market studies. More information on these functions is contained within our Markets Guidance on our website.

2.39 The scope and objectives of any ongoing work programme may involve more than one of the above purposes and, depending on the information received and/or gathered as part of it, may also change over time.

2.40 Informal information gathering would not involve the use of our FSBRA information gathering or investigative powers. It may, for example, involve:

- desktop research into a particular issue
- contacting the original source of information for further detail and/or clarification of the matter raised, and/or
- asking individual regulated parties or sectors of industry to voluntarily answer questions about how they operate

Where we use these methods, regulated parties are under an obligation to cooperate with our requests, to provide accurate and timely information, and to do so in an open and honest manner under General Direction 1.

2.41 Formal information gathering would, in contrast, involve the use of our FSBRA powers under sections 81 to 90. Our formal information powers can apply to anyone, not just regulated parties. For further information about these powers, and our powers to enforce compliance with them, see paragraphs 3.23 to 3.35.

2.42 We will decide which powers, or combination of powers, are the most appropriate to use depending on the circumstances. Where it is appropriate to do so, we may make use of voluntary information requests rather than our formal powers to require information, even when we are able to use those powers. When deciding whether to take informal or formal steps to gather information, we will consider:

- the need to preserve and protect relevant information
- the need to receive the information in a timely manner
- whether we are making multiple requests of the same person
- whether we are making similar requests of multiple persons and require consistency
- the purpose of gathering the information and the use it is intended for

2.43 Whether we may need to gather the information in a particular format, in order to be able to rely upon it in the course of our work.

Consultation

2.44 In the course of our work, we carry out a number of different consultation processes. These include:

- consultation on our policy development
- consultation before issuing guidance
- calls for views/evidence in relation to a potential issue in the market
- consultation when considering whether to use our direction and requirement powers (see paragraphs 4.49 to 4.53, 4.60 to 4.65 and 4.72 to 4.75)

2.45 When we consult, we will use a combination of our website, press releases and direct communications with stakeholders to draw attention to the consultation. In all cases, the consultation paper will set out detailed information on how to respond and the deadline for doing so.

2.46 The form and timescale of a consultation will depend on the nature of the issue, as well as its complexity and strategic importance. Particular considerations apply when we are consulting on the use of our direction and requirement powers (paragraphs 4.55, 4.67 and 4.77).

2.47 Following consultation, we will usually make the responses we have received publicly available. Whether we do, and the approach we take, will depend on a variety of factors, including:

- the type of issue under consideration
- the nature of the individual responses
- whether the responses contain sensitive information
- whether it would be reasonably practicable to publish redacted or otherwise non-sensitive versions of the responses

The way we handle sensitive information is often a relevant consideration when we are seeking information about a particular issue, as well as views and opinions – for example, when the consultation relates to the use of our direction and requirement powers.

Information handling and confidentiality

2.48 We have a duty to protect confidential information relating to the business or other affairs of any person (section 91 of FSBRA), and will only disclose information in our possession when we consider it appropriate and are able to do so lawfully.[16]

2.49 There are also general statutory considerations that govern or restrict the way in which we deal with certain types of information. For example, any personal data must be collected and processed in accordance with the Data Protection Act 2018, the General Data Protection Regulation,[17] and our Data Privacy Notice.[18]

2.50 Even when information is confidential and protected under FSBRA, there may be occasions when it is appropriate for us to disclose it. One such case is where it will advance or help us to perform our public functions.[19] For example, we may need to share the information with other regulators in the interests of cooperation and coordination. We may also need to share it to a wider pool of stakeholders and seek their views on it to better understand a matter of regulatory concern and assess what, if any, action we need to take.

16 Section 91 of FSBRA defines confidential information and imposes restrictions on its disclosure to protect confidentiality so far as possible, while ensuring that we are able to exercise our functions. The FSBRA (Disclosure of Confidential Information) Regulations 2014 2014/882 ('the Disclosure Regulations') provide a number of gateways, through which we may share confidential information.

17 SI 2016/679.

18 https://www.psr.org.uk/sites/default/files/media/PDF/PSR%20data%20privacy%20notice%20April%202019.pdf

19 Regulation 3 of the Disclosure Regulations.

2.51 If our decisions may affect other parties, we may need to consider whether we should disclose confidential information in the interests of fairness. Relevant parties need to have sufficient information to understand our decisions, the basis for them, and the supporting evidence.

2.52 When considering if it would be lawful and appropriate to disclose confidential information, we will have regard to the sensitivity of the information and how best to fulfil our obligations to act fairly.

2.53 If a person considers that the information it is providing to us is so sensitive that we should not disclose it, it should make this clear to us when it provides the information.

2.54 Where we have asked for information, we will typically invite any party that has given us information to explain if any of it should be treated as sensitive, and why. We may also ask for a version of the material that we can share with another relevant party, if the need arises.

2.55 In other circumstances, including when we receive unsolicited information, it is helpful to us if parties explain (in writing) if we should treat any information as sensitive, and why. This includes information we receive orally (by telephone or face-to-face).

2.56 We will not regard a standard confidentiality statement in an email message as a request for non-disclosure, and we do not accept blanket claims of confidentiality. Persons providing information to us should identify the specific items within it that they consider to be sensitive, and explain why.

2.57 When a person explains the sensitivity of the information, we will assess it and determine whether we should disclose it. If we do not receive such an explanation, we will not regard the information as sensitive.

2.58 When considering whether disclosure is lawful and appropriate, we will also consider the extent of information to be disclosed and the manner of disclosure. For example, we may consider the use of ranges, summaries of information, redactions or confidentiality rings.

2.59 We may also be required to disclose certain types of information that include sensitive material, in order to meet legal obligations – for example, if we are asked to disclose a confidential consultation response under the Freedom of Information Act 2000.

Deciding when to take action

2.60 When we receive information about a matter of potential regulatory concern, there are several possible next steps that we could take, and different potential outcomes, including:

- taking no further action
- asking the person raising the issue for more information
- making further enquiries of stakeholders to better understand the issue
- recording the issue raised for the purposes of a future review of issues raised with us

- formulating a project for inclusion in either our current or future programmes of policy work, and considering whether to take regulatory action
- considering whether it raises non-compliance issues and, if so, whether to open an enforcement case

2.61 When we assess what action to take (if any) we will have regard to our organisational strategy and priorities, and the factors set out in our Administrative Priority Framework (APF).

2.62 The APF allows us to use our resources in the most efficient and effective way to further our statutory objectives, functions and duties. The APF sets out the factors we may take into account when making decisions about what action to take, under four main themes:

- impact
- resources
- risk
- strategic importance

2.63 We will also have regard to our regulatory principles (section 53 of FSBRA – see Annex A) when deciding what action to take. This includes taking account of the need to act efficiently and proportionately when taking action.

2.64 To assist with our assessment, we would encourage the person raising an issue with us to explain it as fully as possible, in writing, and provide supporting evidence where available.

2.65 We may use a combination of our powers and functions under FSBRA (sometimes alongside the powers and functions we have under other legislation). For example, we may address a widespread issue by publishing guidance for industry in combination with making one or more directions or requirements, and taking enforcement action against individual parties.

2.66 We do not use our formal powers every time a matter of regulatory concern is brought to our attention. In addition to using our formal powers, we can use other methods to try to secure good regulatory outcomes that will advance our statutory objectives. For example, we may engage with industry to help participants in payment systems and other stakeholders to find solutions to issues arising in the market, or to encourage further innovation in the provision of payment services. We might also write privately to the regulated party regarding the subject matter of the complaint to express our views, and to ask it to change its behaviour.

2.67 If we first decide to take informal (rather than formal) action regarding a particular issue, this does not preclude us from using our formal powers later.

2.68 When we do decide to take action, we keep under review which action will achieve the most effective outcome throughout our consideration of the matter. This means that we may begin looking into a matter by commencing an enforcement investigation but later decide that another action is appropriate, in addition to or instead of enforcement action (for example, issuing guidance to regulated parties).

Transparency of decision-making

2.69 In some circumstances, we may want to publicise the fact that we are using, or considering using, our powers and functions, including those we have under FSBRA. This is distinct from when we consult on the proposed use of our regulatory powers (see paragraphs 4.46 to 4.78), and when enforcement action results in a sanction of publication being imposed (see paragraph 5.5).

2.70 For example, we may want to publicise the fact that we are taking, or considering whether to take, action:

- where we receive information that an incident has occurred that has had a significant impact on the provision of payment systems and/or services;
- where we become aware of a matter that has the potential to significantly affect service-users of payment systems, including consumers; or
- where we open an enforcement investigation into a matter of significant strategic importance to us and/or to industry (subject to our usual approach not to publish information about the opening of an enforcement case, see paragraph 5.6).

2.71 Where we do publish information about action taken by us, we will generally not include information that we consider to be commercially sensitive in any published updates or final determinations.

2.72 When considering whether to publicise details of any action considered or taken by us, we will consider the relevant circumstances and decide what is appropriate. We may consult with relevant parties prior to publication. Relevant factors include:

- whether publication would advance any of our statutory objectives
- whether publication would have any adverse impact on UK financial stability
- whether publication would have any adverse impact in relation to the performance of functions by the Bank of England in its capacity as a monetary authority
- the potential impact on the conduct of the case and the PSR's functions
- whether publication would have an adverse impact on the party subject to the action being considered or taken which would be disproportionate to the benefits, considered in general terms, of publication
- whether any third party (a party other than one who is the subject of regulatory or enforcement action by us) would be identified through and may be prejudiced by publication
- any other issues related to fairness
- the regulatory principle that the PSR should exercise its functions as transparently as possible

3 The FSBRA framework

This chapter summarises the FSBRA legal and regulatory framework under which we operate and our statutory powers. It is structured as follows:

- General functions and regulatory principles
- Concurrent competition powers and the primacy obligation
- Direction and requirement powers
- Power to take enforcement action
- Information gathering and investigatory powers

Power of the Bank of England, the FCA and the PRA to direct the PSR

Our FSBRA functions and regulatory principles

3.1 Under FSBRA, we have several general functions along with a number of additional, particular ones. The performance of all of these functions enables us to properly regulate the payment systems industry.

3.2 Our general functions are (section 49(4) of FSBRA):

- to give general directions under section 54 of FSBRA (see paragraphs 4.56 to 4.64 below) – a function that can only be performed by the PSR Board
- to give general guidance under section 96 of FSBRA – a function that can be performed by the PSR Board, or a committee or sub-committee of the Board
- to determine the general policy and principles by reference to which we perform our particular functions – a function that can be performed by the PSR Board, a committee or sub-committee of the Board, or a PSR officer or member of staff[20]

3.3 When performing any of our general functions, we must, as far as is reasonably possible, act in a way which advances one or more of the payment system objectives: the competition objective, the innovation objective and the service-user objective (section 49(1) of FSBRA).

3.4 In addition, when performing our general functions, we must have regard to the following matters (section 49(3) of FSBRA):

- The importance of maintaining the stability of, and confidence in, the UK financial system and the importance of payment systems, in relation to the performance of the Bank of England's functions (section 49(3) of FSBRA).
- The eight regulatory principles in section 53 of FSBRA (Annex A). When using our FSBRA powers, we will do so in a way that uses our resources most efficiently and economically, takes account of the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, and is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed.

20 Schedule 4 paragraph 5 of FSBRA.

3.5 When performing any other functions (i.e. not our general functions) under FSBRA, we will also have regard to our statutory objectives, the importance of financial stability, and of payment systems and the regulatory principles (although FSBRA does not require this), and aim to act in a manner that does not run contrary to any of those objectives and principles.

Concurrent competition powers and the primacy duty

3.6 Before exercising some of our FSBRA powers, we have a statutory duty (section 61 of FSBRA) to consider if it would be more appropriate for the PSR to exercise its powers under CA98, in relation to infringements of competition law relating to participation in payment systems. This is known as 'the primacy duty'. If we consider that it would be more appropriate to proceed under CA98, we must do so rather than exercise another power.

3.7 Our relevant FSBRA powers are (listed in section 62):

- to give a specific direction (section 54) or impose a specific requirement (section 55)
- to require granting of access (section 56) or vary agreements (section 57)
- to require the disposal of interest in an operator of a regulated payment system (section 58)

3.8 The primacy duty does not arise in all circumstances, as it takes account of the proper focus of CA98 action, which is designed to address either:

- agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition (the Chapter I prohibition),[21] or
- conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market (the Chapter II prohibition)[22]

3.9 There will be cases where there is no indication that CA98 could potentially apply. For example, if the behaviour does not appear likely to affect competition. Proceeding under CA98 will only be appropriate if the issue is within the scope of the prohibition provisions.

3.10 If the issue relates to the general conditions of one or more markets, we might decide it is more appropriate to use our power to issue a general direction or to impose a general requirement (see paragraphs 3.14 to 3.19). The use of these general regulatory powers under FSBRA does not trigger the primacy obligation.

3.11 If the issue relates to a failure to comply with one of our directions or requirements, or obligations imposed by the IFR, the PSRs or the PARs, we will consider taking enforcement action. Again, in these circumstances, the primacy duty will not apply.

3.12 We will decide if it is more appropriate to take action under CA98 on a case-by-case basis, taking into account the factors in our APF. We will look at the potential harm to competition, whether there are reasonable grounds for suspecting an infringement of

21 Section 2(1) CA98.
22 Section 18(1) CA98.

competition law, the resource and timing implications of the alternative actions available to us, and the different potential outcomes and deterrent effect of those actions.

3.13 Where it appears that it may be appropriate to take action under CA98, we have a duty, under the concurrency regime, to liaise with the other concurrent competition authorities to decide which of us the matters should be allocated to. The Competition Act (Concurrency) Regulations 2014[23] set out the process for determining which authority is best placed to act in any particular case, and the CMA's guidance on the concurrency regime explains how it works in practice.[24]

Taking regulatory action using our direction and requirement powers

3.14 FSBRA gives us powers to:

- give directions to participants in regulated payment systems (section 54) to impose requirements on the operator of a regulated payment system concerning the rules of the system (section 55)
- require the disposal of an interest in the operator of a regulated payment system, or in an infrastructure provider in relation to such a system (section 58)

3.15 For the purposes of this guidance, we broadly term the powers described above as 'direction and requirement powers'. We explain how we use them in Chapter 4.

3.16 Directions and requirements can be 'specific' or 'general'. Specific directions and requirements are addressed only to certain participants in regulated payment systems or participants of a specified description (for example, a named operator of a payment system). General directions are addressed to whole classes of participants (for example, all merchant acquirers). Failures to comply with our directions and requirements are enforced by way of our enforcement powers.

3.17 We also have the power to require, with the consent of the Treasury, a person who has an interest in the operator of a regulated payment system or in an infrastructure provider in relation to such a system, to dispose of all or part of that interest (section 58(3) of FSBRA). We may only exercise this power if we consider that, if the power is not exercised, there is likely to be a restriction or distortion of competition in the market for payment systems, or a market for services provided by payment systems. We can enforce a disposal requirement by bringing civil proceedings for an injunction or (in Scotland) interdict.

3.18 In addition to the above powers, we also have powers under sections 56 and 57 of FSBRA to grant access to, and vary agreements regarding, payment systems. We will consider whether to exercise these powers if we receive an application to the PSR for the remedy sought.

23 SI 2014/536.
24 CMA, Regulated Industries: Guidance on concurrent application of competition law to regulated industries, published March 2014.

Taking enforcement action

3.19 Compliance failures, as defined under section 71 of FSBRA, may arise from the failure of a participant in a regulated payment system to comply with:

- a general or specific direction
- a general or specific requirement
- an order requiring the grant of access to a payment system[25]

3.20 In connection with enforcement action, FSBRA also gives us the power to:

- require a participant in a regulated payment system to pay a penalty in respect of a compliance failure (section 73)
- publish details of any compliance failures and penalties that we have imposed (section 72)

3.21 We may also seek a court injunction (or interdiction, in Scotland) to:

a. restrain conduct where there is a reasonable likelihood that there will be a compliance failure, or there has been a compliance failure, and there is a reasonable likelihood that it will continue or be repeated (section 75(1))
b. remedy a compliance failure or restrain asset-dealing (sections 75(2) and 75(3))

3.22 We explain how we use our powers to take enforcement action in Chapter 5.

Information gathering and investigatory powers

3.23 We have powers to gather information and conduct formal investigations under FSBRA. Each of our information gathering and investigatory powers can be used when we require information or documents in connection with any of our FSBRA functions, including when we are:

- considering whether to take regulatory action using our direction and requirement powers
- considering whether to take enforcement action (whether or not we have formally opened an enforcement 'case')

Information requirements

3.24 Under section 81 of FSBRA, we have the power to require any person (who may or may not be a regulated party) to provide information and documents which we require in connection with our statutory functions. A written notice issued under section 81 may require information or documents to be provided:

- in a specified form or manner
- at a specified time
- in respect of a specified period

25 How we take enforcement action in relation to the last of these is set out in our access guidance, see our website.

3.25 The effect of the notice is also to require the person to whom it is addressed to preserve the requested information until it is provided to us.

3.26 Such a notice may also require a participant in a regulated payment system to notify us if events of a specified kind occur.

Skilled person reports

3.27 We have the power, under section 82 of FSBRA, to require a regulated party to provide a report by a skilled person. We ourselves can also appoint a skilled person to provide a report. When a regulated party receives notice that we intend to either require a report from a skilled person or appoint such a person to provide a report, both the regulated party and any person who is providing (or who has at any time provided) services to it, in relation to the matter being reported upon, will be under a duty to give the appointed skilled person all such assistance as the skilled person may reasonably require.

Appointment of investigators

3.28 We have the power under FSBRA to appoint persons (the 'investigators') to conduct an investigation on our behalf (section 83 of FSBRA):

- into the conduct or state of the business of any participant in a regulated payment system where it is desirable to do so, in order to advance any of the payment systems objectives
- where there are circumstances suggesting that there may have been a compliance failure

3.29 In either context, appointed investigators can (section 85 of FSBRA) require persons to:

- attend and answer questions in interview, or otherwise provide information
- produce at a specified time and place any specified documents or documents of a specified description

This applies where the investigators reasonably consider the answer, information or documents to be relevant to the purposes of the investigation.

3.30 The investigators may exercise the above powers in relation to:

- the regulated party who is the subject of the investigation
- any person connected with the regulated party under investigation
- in an investigation into whether there has been a compliance failure, any person who in the investigator's opinion is or may be able to give information which is or may be relevant to the investigation

Search under warrant

3.31 We have the power to apply to a justice of the peace for a warrant to enter premises under section 88 of FSBRA. The circumstances under which we may apply for a search warrant are as follows:

- When an information requirement (under either section 81 or 85 of FSBRA) has been imposed upon a party requiring the provision of information or documents, and that party has failed (wholly or in part) to comply with the requirement, and some or all of the information or documents required are on the premises specified.
- When there are reasonable grounds for believing that, if an information requirement requiring the provision of information or documents were to be issued to a party, the requirement would not be complied with or the information or documents would be removed, tampered with or destroyed, and the premises specified in the warrant are premises of a participant in a regulated payment system.

3.32 A warrant obtained under FSBRA authorises a police constable or a person in the company, and under the supervision, of a police constable, to:

- enter and search the premises specified in the warrant
- take possession, or copies, of any information or documents appearing to be of a kind for which the warrant was issued ('the relevant kind')
- require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind, or to state where it may be found
- take any other steps which may appear to be necessary to preserve or prevent interference with such information or documents[26]

Non-compliance with our information gathering and investigative powers

3.33 Where a regulated party fails to comply with our information gathering and/or investigative powers, they will also fail to comply with General Direction 1. The purpose of General Direction 1 is to help drive a 'no surprises' culture and to foster cooperation between us and the regulated community. The timely provision of complete and accurate information, whether following a request or voluntarily, helps us to carry out our functions and achieve our objectives.

3.34 If any person, without reasonable excuse, fails to comply with a requirement imposed upon them as a result of our exercising any of our powers under sections 81 to 88 of FSBRA, then (as well as there being grounds for the PSR to apply to the court for a search warrant) they can, under section 90(2) of FSBRA, be dealt with by the courts as if they were in contempt of court. The penalty can be a fine, imprisonment or both.

26 Including the use of such force as may be reasonably necessary.

3.35 A person who obstructs the execution of a warrant or, either knowingly or recklessly, provides false or misleading information in response to an information requirement imposed by us (section 90(6) and (8) of FSBRA) may be guilty of a criminal offence. In addition, where a person who knows that we are conducting an investigation either:

- falsifies, conceals, destroys or otherwise disposes of a document which the person knows or suspects would be relevant to such an investigation, or
- causes or permits the falsification, concealment, destruction or disposal of such a document

that person commits a criminal offence, unless they can show that they had no intention of concealing facts disclosed by the documents from the investigator (section 90(4) and (5) of FSBRA).

Power of the Bank of England, FCA and PRA to direct the PSR

3.36 Under section 100 of FSBRA, where we are proposing to exercise any of our FSBRA powers in relation to a participant in a regulated payment system, the BoE may direct us not to exercise the power in question or not to exercise it in the specified manner, where the direction is necessary to avoid one of the possible consequences set out in section 100(3) of FSBRA. The possible consequences are that the exercise of the power in the manner proposed would:

- threaten the stability of the UK financial system;
- have serious consequences for business or other interests in the United Kingdom; or
- have an adverse effect on the Bank's ability to act in its capacity as a monetary authority

3.37 Under section 101 of FSBRA, the FCA may also direct us not to exercise any of our FSBRA powers in relation to a participant in a regulated payment system, or not to exercise it in a specified manner, if the FCA is of the opinion that it may have an adverse effect on the ability of the FCA to comply with its general duties (under section 1B(1) of the Financial Services and Markets Act 2000 (FSMA)), and the FCA considers it necessary to issue a direction to prevent this.

3.38 Under section 102 of FSBRA, the PRA may direct us not to exercise any of our FSBRA powers, where we are proposing to exercise them in relation to either:

- a class of PRA-authorised persons; or
- a particular PRA-authorised person.

3.39 The PRA may do this where it considers it necessary to issue a direction to prevent one of the following possible consequences. Namely, that the exercise of the power in the manner proposed may:

- threaten the stability of the UK financial system;
- result in the failure of a PRA-authorised person in a way that would have an adverse effect on the stability of the UK financial system;
- threaten the continuity of core services provided in the United Kingdom; or
- have an adverse effect on the ability of the PRA to comply with its general objective (under section 2B (1) of (FSMA)).

4 Taking regulatory action using our FSBRA powers

As explained in Chapter 3, we have the power, under FSBRA, to give directions and impose requirements on participants in payment systems. In using these powers, we take regulatory, as opposed to enforcement, action.

This chapter explains how we:

- consider whether it is appropriate to use our direction and requirement powers
- give specific directions and impose specific rule requirements
- give general directions and impose general rule requirements

impose requirements for disposal of an interest in the operator of a regulated payment system

Considering whether it is appropriate to use our direction and requirement powers

4.1 When considering how to respond to a matter of regulatory concern, we will consider using our direction and requirement powers if we become aware of matters which may run counter to the advancement of our payment systems objectives and performance of our statutory functions. As explained in Chapter 2, we will not use our formal powers in relation to every regulatory concern that we become aware of. We will also consider other available options.

4.2 We will give directions or impose requirements if we think it is appropriate to take formal action to regularise industry behaviours, in line with our payment system objectives, based on the evidence available to us and having had regard to our APF factors and all the relevant circumstances.

4.3 When considering whether it is appropriate to take regulatory action, we will pursue reasonable lines of enquiry to obtain sufficient evidence to help us make that decision. This may involve gathering information through informal methods or by using our formal powers. It may also involve the appointment of investigators and the conducting of interviews.

4.4 To be able to properly assess the issue and what, if any, action it is appropriate to take, we may also need to engage with stakeholders other than regulated parties who are, or will be, directly affected by the issue and any proposed action.

Information requirements

4.5 We use our powers to require information or documents under sections 81 and 85 of FSBRA to help us decide whether it would be appropriate to give a direction or impose either a rule or disposal requirement. We also use our powers to gather information for the purposes of our industry and compliance monitoring functions, including in the context of our market reviews.

4.6 When we wish to use our formal powers to require the provision of information and documents, we will use a formal written notice known as an Information Requirement Notice (IRN). In all cases, the IRN will set out the form or manner in which information or documents should be provided and will specify the deadline for responses. If information is required to be provided by way of attending before an investigator to answer questions (a requirement to attend an interview), the IRN will specify this.

4.7 When we decide to issue an IRN other than in the context of an interview, we will always consider sending an intended recipient a draft IRN, including a proposed deadline for the provision of information, and ask for their comments. We may be able to adjust the request to reduce the burden on the intended recipient while still achieving our purpose (although there may be less scope for this if we are seeking consistent information from multiple persons). If the recipient of a draft IRN thinks they may have difficulty in providing the requested information by any proposed deadline, this should be raised with us before the time frame for providing comments expires. We will take account of any reasonable comments made by the recipient before finalising the IRN.

4.8 There may be circumstances where we do not give advance notice of an intended information requirement. One is where we believe that the information to be required is readily available and it is likely that the intended recipient of the request can provide it relatively easily. Another is if we think such advance notice may prejudice our enquiries. We may also choose not to give advance notice where we need to act quickly.

4.9 The time frame for comments on a draft IRN will be determined by what is reasonable in the circumstances but may be short, depending upon the urgency of the circumstances we are working under. After considering any reasonable comments, we will confirm or amend the IRN.

4.10 Where we require a person to attend an interview, we will generally give that person (the interviewee) advance notice that we intend to issue an IRN requiring them to attend. Before finalising the IRN we will try, as far as is reasonable and in keeping with any internal timetable, to agree with the interviewee an interview date that is suitable for both them and the investigator(s) conducting the interview.

4.11 When deciding upon the period for responding to an IRN, we will consider the availability, nature, complexity and volume of the information sought, together with the circumstances within which we are imposing the requirement and any representations we receive on any draft IRN. The time allowed to respond may be short, depending on what is reasonable in the circumstances.

4.12 We will generally:

- allow a recipient four weeks to respond to an IRN requiring information to be provided (otherwise than in the context of an interview)
- issue an IRN confirming the requirement to attend an interview four weeks in advance of the interview date

However, the time allowed to respond or before the interview takes place may be short, depending on the circumstances.

4.13 As delays in providing information and/or documents can have a significant impact on the efficient progress of our work, recipients should comply with IRNs in a timely manner and in accordance with deadlines or interview dates.

4.14 We will only grant applications to extend a deadline if we are satisfied that there are good reasons for doing so. We are aware that a recipient of an IRN could be responding to several requirement notices (from us or other authorities) concurrently. Generally, this will not of itself be an acceptable reason for delay.

4.15 We ask that recipients consider the IRN when it is received. When a recipient thinks there is a risk that they may not be able to comply with a deadline to respond, it should tell us at the earliest possible opportunity. It should do this even if it is not yet in a position to apply for a deadline extension – for example, due to an insufficient understanding of the likelihood of the risk materialising and its potential impact to make the case for an extension. The recipient should fully explain the circumstances and what they are doing to mitigate the risk. Once it has enough information to support an application for an extension, it should apply without further delay.

4.16 If a recipient is aware of a risk of delay but does not raise the issue with us at the earliest opportunity, and then applies for an extension close to the deadline, we could consider this an indication that the recipient is not properly complying with the information requirement. In these circumstances the information will still be required, and we will also consider what, if any, other action we should take. Where the requirement applies to a regulated party, this could include enforcement action in relation to non-compliance with its obligations under General Direction 1.

4.17 Recipients are not obliged to share with us those parts of required documents over which they wish to assert legal privilege – including reports of any internal investigations. It is for recipients to decide whether to provide privileged material to us. If they redact or omit material from any documents they provide us, or seek to withhold entire documents from us on the grounds of legal privilege, they should also provide us with a description of that material and an explanation of why it is privileged. Otherwise, regulated parties should volunteer the results of their own investigations in line with General Direction 1 (see paragraph 2.38). We expect recipients to review material before sending it to us, in order to identify, and redact, any material that they wish to claim privilege over.

Skilled person reports

4.18 We can use our powers under section 82 of FSBRA to require a regulated party to provide a report by a skilled person, or to appoint a skilled person ourselves to provide a report. We will do this if we need to understand better any matter relating to participation in a regulated payment system and where particular skills or specialist knowledge about the subject matter under consideration are required.

4.19 We may use a skilled person to report on an issue that may lead to us considering whether we should take action or to assess how others are implementing measures aimed at addressing the matter of regulatory concern involved.

4.20 If we require a regulated party to provide us with a skilled person's report, or where we appoint a skilled person ourselves, we will issue a notice in writing under section 82 of FSBRA (a 'Skilled Persons Report Requirement Notice'). This notice will specify the following (as determined by us):

- The procedure by which the skilled person is to be nominated or approved by us.
- The terms of the appointment of the skilled person.
- The procedures to be followed and the obligations of the regulated party in the production of the skilled person's report.
- Practical matters, such as arrangements for interaction between the skilled person and the PSR.
- The subject matter of the report and the form the report should take.
- The deadline for submission of the report.

4.21 We will also explain to the recipient of the notice and to the skilled person the nature of the matters that led us to decide that a skilled person's report was appropriate.

4.22 Before we issue a notice requiring a skilled person's report, we will usually send a draft copy to the intended recipient and ask for comments. For example, on the scope and contents of the report, the work that the skilled person will be required to undertake (and/or the assistance they will require) and the deadline by which the report must be provided. We will take account of any reasonable comments made by the intended recipient before finalising the notice.

4.23 When we require a regulated party to provide a report by a skilled person, we will need to be satisfied that the skilled person who the regulated party proposes is suitable, considering their skills, experience and availability, their relationship with the regulated party, and any other actual or potential conflicts of interest. The regulated party will pay for the services of any skilled person they appoint.

4.24 Once we notify a regulated party that we require a skilled person's report on a particular matter, the regulated person and any person who is providing/has provided services in relation to the matter being reported upon will be under a duty to give the skilled person any assistance they may reasonably require.

4.25 When we appoint a skilled person to produce a report, we will generally direct the regulated party that is the subject of the report to pay any expenses we incur (including the cost of the report).

Appointing investigators

4.26 We may use our power to appoint investigators if we are considering whether to take regulatory action. An appointed investigator can be any member of PSR staff or an external person (section 84(5) of FSBRA).

4.27 When we appoint investigators, we will also issue a Memorandum of Appointment (MOA). We have a duty, under section 84(2) of FSBRA, to notify the subject of our enquiries that we have appointed investigators, except where this would be likely to result in our work being frustrated or where a suspected compliance failure is involved. We will usually do this by informal contact in the first instance, followed by written notice of the appointment of investigators being given to the regulated party in question.

4.28 Where we give notice of the appointment of investigators, the notice will specify the provision(s) under which the investigators are appointed and the reasons for their appointment.

4.29 In some cases, we may appoint investigators in connection with taking regulatory action and subsequently decide to extend their remit to cover a suspected compliance failure and potential enforcement action. For example, if information about a potential compliance failure only comes to light after we have appointed investigators in respect of a different type of regulatory concern. When we do this, we will generally issue a new MOA, unless to do so would be likely to frustrate our work.

4.30 In other cases, where circumstances suggesting a potential compliance failure arise early in the process, we may appoint investigators for both purposes at the outset, using the same MOA.

4.31 If we do not give notice of the appointment of investigators at the time we appoint them, we will generally issue the notice when we use our statutory powers to require information from the regulated party in question.

4.32 In some cases, we may, if necessary, appoint additional investigators to assist with our enquiries. If this happens, we will usually give the party under investigation written notice of the additional appointments (unless we have not previously informed them of the investigation because to do so might be prejudicial).

4.33 Where we have appointed investigators, they will generally use the powers under section 85 of FSBRA to require the provision of information or documents, rather than seeking information or documents on a voluntary basis or under section 81 of FSBRA.

4.34 The appointed investigators will make it clear to the person concerned when they are being required to provide information or documents and when information or documents are being sought on a voluntary basis.

4.35 Where investigators impose a requirement to attend an interview, they will consider, on a case-by-case basis, what, if any, material will be disclosed to the interviewee in advance. Generally, where material is to be disclosed to an interviewee, this will be done two weeks before the interview. However, if the material is not voluminous and we think it likely that the interviewee will only need a short time to consider it before

the interview, we may provide disclosure less than two weeks in advance. If we think that disclosing the material in advance may prejudice our work, we may decide to provide disclosure on the day of, or during, the interview.

4.36 When we conduct an interview, we will allow the interviewee to be accompanied by a legal advisor, if they wish. The investigators conducting the interview will explain to the interviewee how their answers could be used in proceedings against them. If the interview is recorded, we will give the interviewee a copy of the interview recording and may also give them a copy of the transcript.

Search under warrant

4.37 We may use our search and seizure powers under section 88 of FSBRA when we consider the legal test for doing so to be met (that is where there has been a failure to comply with an IRN issued by us or where there are reasonable grounds for believing that a regulated party would not comply with one if issued), and where we conclude that it would be appropriate and proportionate to do so. Search warrants under FSBRA are granted by a justice of the peace sitting in private.

4.38 During a search under warrant, we will usually take copies of documents (rather than seize originals) where it is reasonably practicable to do so and not disproportionately time-consuming. When it is necessary to seize original documents, we will return them to the subject of the search warrant as soon as it is reasonably practicable to do so.

4.39 We will likewise take copies of electronic material where it is reasonably practicable to do so and not disproportionately time-consuming. Where it is necessary to seize hard drives, laptops or other data-storage devices, we will return these to the subject of the search warrant as soon as reasonably practicable.

Non-compliance with our information gathering and investigative powers

4.40 If a regulated party fails to comply with any of our information gathering and investigative powers, we may either take enforcement action for failing to comply with General Direction 1 or take informal action in relation to that compliance failure.

4.41 We can also use our powers under section 90 of FSBRA to:

- bring contempt of court proceedings against the regulated party who fails to comply with one of our information requirements;
- bring criminal proceedings against a person who falsifies, conceals, destroys or otherwise disposes of a document that they know or suspect is relevant to an ongoing PSR investigation; or
- bring criminal proceedings against a person obstructing the execution of a search warrant.

4.42 We will decide which course of action is the most appropriate to take on a case-by-case basis.

Taking interim or urgent action

4.43 We may use our FSBRA powers to take urgent action, including the use of interim measures, where appropriate, either to: prevent the risk of a negative impact occurring as a result of the behaviour of regulated parties, or address a negative impact that has already occurred. For example, we may consider giving a specific direction (see paragraphs 4.46 to 4.56) with short or no notice to prevent or address that behaviour.

4.44 As set out in the next section, before we give a direction or impose a rule requirement, we will normally give the parties notice of the proposed direction or rule requirement, with our reasons for proposing it, setting out the next steps and the deadline for representations. However, in urgent cases, we may give directions or specific rule requirements without giving notice if we believe that a delay may result in a detriment to others, or otherwise have adverse effects on the provision of payment services. Alternatively, where the issues require urgent consideration and resolution, we may shorten the period set for submitting representations, so that we can reach a conclusion as soon as possible.

Closing a matter under consideration

4.45 If we decide to discontinue our consideration of a matter that could lead to using our direction and requirement powers, and we have previously informed regulated parties that we were considering whether to take action, we will usually confirm this to the relevant parties unless there is a good reason not to do so. We may decide to close a matter under consideration without taking any action for a variety of reasons – for example, if we think there is insufficient evidence to support taking action, or we conclude that the matter is no longer an administrative priority considering our APF criteria.

Deciding whether to give a specific direction or impose a specific rule requirement

4.46 It may be appropriate for us to give a specific direction to or to impose a specific rule requirement on one or more regulated parties in relation to a matter that comes to our attention.

4.47 Specific directions and rule requirements are addressed only to certain participants in regulated payment systems (for example, a named operator of a payment system).

4.48 Before giving a specific direction or imposing a specific rule requirement on a regulated party, we will usually give the party notice and send them a draft of the proposed specific direction or requirement, accompanied by an explanation of why we believe it is appropriate to take this course of action. The draft will specify the proposed implementation date for the specific direction or requirement.

4.49 In addition, we will consider whether the proposed specific direction or specific rule requirement is likely to have implications or relevance beyond the intended subject(s) of the direction or requirement. If so, we will usually consult on the draft specific direction or rule requirement more widely to seek the views of affected parties.

4.50 In deciding whether, and how, to carry out such a consultation, we will take into account any issues in relation to the confidentiality of the information underlying our consideration of the direction or requirement. We may also seek the views of the recipient(s) of the proposed direction and take these into account.

4.51 Where we give notice of/consult upon a proposed specific direction or requirement, we will generally allow three weeks for subject(s) of the direction or requirement and any other person to make representations to us. The precise duration of the consultation will depend on the complexity of the proposed action and the circumstances surrounding it. For example, how much meaningful engagement we have already had with stakeholders on the particular issues. When we need to act quickly, we may allow for a shorter period of consultation.

4.52 Representations should be made in writing. We may also ask to meet the intended subjects of the direction or requirement, or other persons, if we consider it would assist our understanding of the issues involved and inform our decision about the appropriateness of taking regulatory action. We will also consider requests for meetings with us on this basis. Where we choose to hold a meeting, we will try to arrange a date convenient for both the relevant party and us, as far as is practicable.

4.53 We will take any responses we receive to the consultation into account when deciding whether to give a specific direction or impose a specific rule requirement. Where, following consultation, we propose to make material changes to the proposed direction or requirement, we will consider whether the changes require us to re-consult.

4.54 When a decision is taken to give a specific direction or to impose a specific rule requirement, we will give a final notice of that decision directly to the subjects of the direction or requirement. That notice will set out the reasons for the action and state the commencement date of the direction or requirement.

4.55 It is our usual practice to publish the specific direction or rule requirement on our website. Where we have carried out a wider consultation, we will usually also publish:

- a statement explaining, in general terms, the responses we received and how we have taken the responses and other relevant factors into account when determining whether to make the direction
- the individual responses to the consultation (depending on the sensitivity of the issues involved and the sensitivity or confidentiality of the information provided)

4.56 In deciding whether to publish a specific direction or rule requirement, we may first seek the views of the subject of that direction or requirement. Subjects of our directions and requirements should make representations to us in writing if they think that we should not publish all or part of the direction/requirement. They should also include their reasons for this. We will take such representations into account when balancing our obligations to act fairly with our duty to act transparently when performing our functions, keeping in mind the public interest in promoting wider awareness of our decisions.

Appeals

4.57 Any persons affected by our decisions to give specific directions or impose specific rule requirements can appeal to the Competition Appeal Tribunal (CAT) (section 76 of FSBRA).

4.58 In determining an appeal, the CAT must apply the same principles as would be applied by a court on an application for Judicial Review. It must either dismiss the appeal or quash the whole, or part, of the decision to which the appeal relates. If the CAT quashes the whole, or part, of a decision, it may also refer the matter back to us with a direction to reconsider the matter and make a new decision in accordance with its ruling. The CAT may not direct us to take any action which we would not otherwise have had the power to take when making our original decision (section 77 of FSBRA).

Deciding whether to give a general direction or impose a general rule requirement

4.59 Before giving a general direction or imposing a general rule requirement, we are required to consult the Bank of England, the FCA and the PRA as to the need for, and potential impact of, the proposed regulatory action (section 104(2) of FSBRA).

4.60 We will also generally engage in public consultation by publishing a draft of the proposed general direction or rule requirement on our website, along with an explanation of its purpose, our reasons for proposing it (taking into account the matters we must have regard to when performing our functions under FSBRA),[27] and a time frame for interested parties to respond. We will also take such other steps as we see fit to draw attention to the proposal (section 104(2) of FSBRA).

4.61 We are not required to publish a draft direction or rule requirement for consultation if we consider that the delay involved would be prejudicial to the interests of service-users (section 104(1) of FSBRA).

4.62 We will also, usually, publish a cost benefit analysis of the impact of the proposed general direction or rule requirement, including an estimate of the costs and benefits, where we consider that the proposal would lead to a significant increase in costs (section 104(3) and (11) of FSBRA). However, where it appears to us that the costs or benefits cannot reasonably be estimated, or where it is not reasonably practicable to produce an estimate, we will not include an estimate within our analysis but will give our opinion and an explanation of it instead (section 104(8) of FSBRA).

4.63 We will usually allow a minimum of three weeks for intended subject(s) of the direction or requirement and any other person to make representations to us. The precise duration of the consultation will depend on the complexity of the proposed action and the circumstances surrounding it. For example, how much meaningful engagement we have already had with stakeholders on the particular issues. When we need to act quickly, we may allow for a shorter period of consultation.

27 Paragraphs 3.3 to 3.5 above.

4.64 Representations should be made in writing. We may also ask to meet an intended subject of a direction or requirement, or other persons, if we consider that to do so would assist our understanding of the issues involved and inform our decision about the appropriateness of taking regulatory action. We will also consider requests for meetings with us on this basis. Where we choose to hold a meeting, we will seek, as far as is practicable, to arrange a date which is convenient for both the relevant party and us.

4.65 We will take any consultation responses received into account when deciding whether to impose the general direction or rule requirement (section 104(4) of FSBRA). Where, following consultation, we propose to make material changes to the proposed direction or requirement, we will consider whether the changes require us to re-consult.

4.66 When a decision is taken to give a general direction or to impose a general rule requirement, we will give a final notice of that decision directly to the subjects of the direction or requirement. That notice will set out the reasons for the action and state the commencement date of the direction or requirement.

4.67 We will also publish the general direction or rule requirement on our website. This will usually be together with a statement explaining, in general terms, the responses we received and our response to them together with details of any significant differences between the draft and final general direction and an updated cost benefit analysis (if applicable) (section 104(5) and (6) of FSBRA). We will usually also publish or make available the individual responses to the consultation, but whether we do so will depend on the sensitivity of the issues involved and the sensitivity or confidentiality of the information provided.

Appeals

4.68 Like all administrative decisions, our decisions to give general directions or to impose general rule requirements may be judicially reviewed by the courts.

Deciding whether to require the disposal of an interest

4.69 Under section 58(3) of FSBRA, we may only exercise our power to require the disposal of an interest with the consent of the Treasury.

4.70 If we consider that it is appropriate to use this power, before using it we will first inform the affected operator, the person holding an interest and any other affected parties, and seek their views.

4.71 We will send both the affected operator and the person holding the interest a draft of the proposed requirement, together with an explanation of why we believe it is appropriate to take the course of action proposed.

4.72 We may also publish a draft of the disposal requirement on our website and invite responses from interested parties other than the intended subjects of the requirement. In deciding whether, and how, to carry out such a consultation, we will take into account any issues in relation to the confidentiality of the information underlying our consideration of the requirement. We may first seek the views of the intended subjects of the requirement and take these into account.

4.73 We will usually allow a minimum of four weeks for intended subjects of the requirement and any other person to make representations to us. The precise duration of the consultation will depend on the complexity of the proposed action and the circumstances surrounding it, including, for example, how much meaningful engagement we have already had with stakeholders on the particular issues.

4.74 Representations should be made in writing. We may also ask to meet the intended subjects of the requirement, or other persons, if we consider that to do so would assist our understanding of the issues involved and inform our decision about the appropriateness of taking regulatory action. We will also consider requests for meetings with us on this basis. Where we choose to hold a meeting, we will try, as far as is practicable, to arrange a date which is convenient for both the relevant party and us.

4.75 We will take account of all representations we receive when deciding whether to require the disposal of an interest. Where, following consultation, we propose to make material changes to the proposed requirement, we will consider whether the changes require us to re-consult.

4.76 When a decision is taken to require the disposal of an interest, we will give a final notice of that decision directly to the subjects of the requirement. That notice will set out the reasons for the action taken.

4.77 It is also our usual practice to publish the requirement on our website. Where we have carried out a wider consultation, we will usually also publish a statement explaining, in general terms, the responses we received and how we have taken the responses and other, relevant factors into account when determining whether to make the direction. We will usually also publish or make available the individual responses to the consultation, but whether we do so will depend on the sensitivity of the issues involved and the sensitivity or confidentiality of the information provided.

4.78 In deciding whether to publish a disposal requirement, we may first seek the views of the subjects of the requirement. Subjects of our requirements should make representations to us in writing if they think that we should not publish all or part of the requirement. They should also include their reasons for this. We will take such representations into account when balancing our obligations to act fairly with our duty to act transparently when performing our functions, keeping in mind the public interest in promoting wider awareness of our decisions.

Appeals

4.79 Any person affected by our decisions to require the disposal of an interest can appeal to the CMA, with its permission (section 76 of FSBRA).[28]

4.80 The CMA must grant permission for the bringing of an appeal before it. It can only refuse permission to appeal if the appeal is made for reasons that are trivial or vexatious, or the appeal has no reasonable prospect of success.

28 Also, Schedule 5 of FSBRA.

4.81 In determining an appeal, the CMA (section 79 of FSBRA):

- must have regard, to the same extent as is required of us, to the matters to which we must have regard in performing our functions under FSBRA;
- may also have regard to any matter that we were not able to have regard to at the time of the decision; and
- must not have regard to any matter that we would not have been entitled to have regard to.

4.82 The CMA must either dismiss the appeal or quash the whole, or part, of the decision to which the appeal relates. The CMA may only quash the whole, or part, of the decision to which the appeal relates where it is satisfied that the decision is wrong on one or more of the following grounds:

- The PSR failed properly to have regard to any matter to which it must have regard in performing its functions under FSBRA.
- The PSR failed to give the appropriate weight to any matter to which it must have regard in performing its functions under FSBRA.
- The decision was based, wholly or partly, on an error of fact.
- The decision was wrong in law.

5 Taking enforcement action using our FSBRA powers

Under the Financial Services (Banking Reform) Act 2013 (FSBRA), we have the power to take enforcement action in relation to the failure to comply with:

- a direction (general or specific) given under section 54
- a rule requirement (general or specific) imposed under section 55
- a requirement to grant access to a payment system under section 56

This chapter explains how we:

- investigate whether it is appropriate to take enforcement action
- engage with regulated parties subject to potential enforcement action
- make decisions to take enforcement action

Investigating whether it is appropriate to take enforcement action

5.1 We take non-compliance with our directions or requirements, or any legal obligations we monitor and enforce, seriously. We look across the payment systems sector and, where appropriate, take targeted, timely and effective enforcement action to advance our statutory objectives and achieve positive outcomes, including by changing behaviour.

5.2 Information that results in our considering whether to take enforcement action (that is, the opening of an investigation into whether there has been non-compliance and, if we conclude that there has, determining whether any financial penalty should be imposed and/or whether our finding of non-compliance should be made public) can come from various sources. For example:

- information brought to our attention through a third-party complaint, report or other communication;
- information brought to our attention on a regulated party's own initiative; or
- a report prepared by a skilled person, or information actively gathered by us in another way

5.3 When we have information about a possible compliance failure, we will consider the appropriate course of action to take, if any. For example, we may seek additional information before deciding whether to: open an enforcement case; take no further action; take informal action; or take other, regulatory action. When deciding what action

to take, we will have regard to a number of different factors, depending on the nature and facts of the specific case. These include the primacy duty and the factors set out in our APF.

5.4 When considering what sanction, if any, is appropriate to impose and when calculating any financial penalty, we will follow our Penalties Guidance. This contains a statement of the principles which we will apply in determining whether to impose a penalty and the amount of any penalty.[29] In applying our Penalties Guidance, we will apply the version in force at the time of the compliance failure (section 73(4) of FSBRA).

5.5 It is important that firms comply with the law and their regulatory obligations. If we find that there has been a compliance failure, our general approach will be to publish our finding (instead of, or in addition to, imposing any financial penalty). One of the purposes of taking enforcement action and imposing appropriate sanctions is to have a deterrent effect and communicate to regulated parties that non-compliance will be identified and addressed. Another is to increase public awareness of the regulatory obligations upon those we regulate.

5.6 We will not usually publish the fact that we have opened an enforcement case in respect of a particular matter at the time a case is opened. However, we may consider doing so where, for example, the matter relates to a matter of significant strategic importance to us and/or to industry.

Opening an enforcement case

5.7 The decision to open an enforcement case and investigate a compliance failure is made by two 'case openers'.[30] These may be either the Managing Director of the PSR, the Head of Policy, the Head of Regulatory and Competition Enforcement or a member of staff of at least manager level.

5.8 The case openers will have regard to several different factors, depending on the nature and facts of the specific case. For example, the primacy duty, and the factors set out in the APF.

5.9 The opening of an enforcement case indicates that an investigation has begun, because there are circumstances that indicate that there have been one or more instances of non-compliance, not that we have concluded that there has in fact been non-compliance. During the lifecycle of the case, we will keep the need for investigation, and whether the matter being considered continues to amount to an administrative priority (with reference to our APF criteria), under review and may, at any time, choose to close the case.

5.10 When we decide to open an enforcement case, we will usually inform the party under investigation of the fact and subject matter of the investigation as soon as it is practicable to do so, unless we consider that informing them at that stage would frustrate the investigation. We will usually also appoint investigators to investigate the matter formally, under section 83 of FSBRA. The procedure for appointing investigators is the same in the context of both considering whether to take regulatory action and enforcement cases (see paragraphs 4.26 to 4.36 above).

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29 The PSR is required to publish such a statement by section 73(3) of FSBRA.
30 Case openers are appointed by our Managing Director.

5.11 Once we have decided to open a case, an enforcement case team will be allocated to it. The team will consider how the case should be progressed and which of our formal powers we should use. Members of this team will be drawn from our staff based on their relevant skills and the needs of the case.

5.12 The case team will be comprised of staff who have not been directly involved in monitoring any conduct relating to a suspected compliance failure by the regulated party under investigation. However, staff who have previously been involved in our other monitoring, and policy work that relates to the subject matter of an open enforcement case (for example, the IFR), may support and provide technical advice to the enforcement case team.

5.13 Appointed investigators will be members of the enforcement case team and will usually include the member of staff leading that team.

5.14 Each case team will have an allocated case owner, a senior member of staff, who will have oversight of the running of the case, keep the need for continued investigation under review and supervise day-to-day decisions about case progression and the use of our investigatory powers. Each case will also have a case sponsor, who will usually have been one of the case openers and will take milestone decisions (see Annex C for a flow chart setting out the milestones in the life of an enforcement case) about the progress, or otherwise, of the case, up until the point that it is referred to Settlement Decision Makers (SDMs) (see paragraphs 5.32 to 5.54) and/or our Enforcement Decisions Committee (EDC) (see paragraphs 5.65 to 5.78). This will usually be our Head of Regulatory and Competition Enforcement.

5.15 Whenever we inform a party that a case has been opened, we will also let them know who the case lead, case owner and case sponsor are.

5.16 When contemplating opening an enforcement case, we will also look at whether it is appropriate to apply urgently for any interim measures either to prevent or remedy a potential or actual compliance failure.

5.17 One option available to us is to apply to the court for an injunction, under section 75 of FSBRA, to either prevent a compliance failure from occurring or recurring, or to remedy an existing compliance failure (see paragraphs 5.124 to 5.128). Alternatively, we may consider using our powers to make a direction or impose a requirement to address the issues giving rise to the compliance failure, pending the opening of an enforcement investigation or during its course.

Information requirements

5.18 Once we open an enforcement case, we will generally use our powers under FSBRA to gather information rather than seeking information on a voluntary basis.

5.19 Once investigators are appointed, they will normally use the additional information gathering powers available to them under section 85 of FSBRA to issue IRNs.

5.20 The powers used, and procedures we follow for issuing IRNs in the context of an enforcement case under FSBRA, are the same as when we are ascertaining the appropriateness of taking regulatory action by way of exercising our direction or requirement powers (see paragraphs 4.6 to 4.15 above).

5.21 When issuing IRNs in the context of enforcement proceedings, however, we will usually allow only a short time for providing comments on a draft sent in advance to the party under investigation (if a draft is sent) and for responding to the final IRN. This is to ensure that we can act as quickly as possible to assess how to respond and/or address any potential compliance failure. The exact time allowed will depend on the nature, complexity and volume of the information sought, together with the circumstances within which we are imposing the requirement.

Scoping the investigation

5.22 In an enforcement case, we will usually hold scoping discussions with the regulated party under investigation within one month of the case opening, unless we have delayed informing the party about the investigation on the grounds that the investigation may be frustrated by us doing so. The purpose of these discussions is to:

- introduce the enforcement case team and the respective role of enforcement, as opposed to other functions of the PSR that regulated parties may already be familiar with, such as compliance monitoring;
- outline the nature of the PSR's concerns;
- explain the investigation process and answer any questions the regulated party may have in this regard;
- outline the next steps and key milestones; and
- ascertain the most effective and efficient way in which we can request information and documentation from the regulated party.

5.23 The scoping discussion will also give the party under investigation an opportunity to indicate whether, or to what extent, they accept that there have been any compliance failures.

5.24 There is a limit as to how specific we can be about the scope of the investigation in its early stages. The exact scope of an investigation will usually only become clear once we have gathered sufficient evidence to enable us to assess fully the number, nature, extent, duration and gravity of the compliance failures under consideration. At the early stages of an investigation, we will also be unable to share with the party under investigation any information that we think may prejudice the conduct of that investigation.

5.25 When we invite a regulated party to a scoping meeting, we will provide them with an indicative outline timetable for the running of the investigation. The timetable will depend upon the scope and complexity of the investigation, and may change during the course of it, depending on the circumstances of the case – including, for example, the availability and nature of any evidence sought. If significant changes to the timetable occur, we may send the regulated party a revised timetable.

5.26 If, at any time, the nature of our concerns changes significantly from those notified to the person under investigation, and we are satisfied that it is appropriate to expand or narrow the investigation in response to that change, we may change the scope accordingly (section 84(7) of FSBRA).

Ongoing contact during investigations

5.27 We aim to maintain an ongoing dialogue between members of the enforcement case team and the regulated party under investigation, which will include updates from the case team, at appropriate intervals, as to the progress of the case. These updates will usually be by way of correspondence or telephone contact, unless we consider that a face-to-face meeting would be more appropriate.

5.28 We may also ask for a meeting with the regulated party if we think it will assist our understanding of the issues involved and inform our decision about the appropriateness of taking enforcement action. We will likewise consider requests for meetings with us on this basis.

5.29 We will usually invite a party under investigation to attend at least one update meeting before we reach the stage of producing an investigation report containing our preliminary findings (see paragraphs 5.52 to 5.61). This will generally be once we have reviewed all of the information gathered during our investigation and have sufficient understanding of the nature, extent, duration and gravity of the suspected compliance failure(s) to enable us to make a reasonable assessment of the appropriate outcome. During this meeting, we will explain in more detail the nature and scope of the investigation, and update the party as to the stage that the investigation has reached, the next steps and the likely timing of these.

5.30 Where we choose to hold a meeting with a party under investigation, we will seek, as far as is practicable, to arrange a date which is convenient for both the party and us and which remains in keeping with the requirements of our administrative timetable.

5.31 As our investigation evolves, we will also consider whether we need to inform the regulated party that the scope of our investigation has changed. We will generally do this when the changes are material, and where we have appointed investigators, we will inform the party under investigation of a change in the scope of the investigation where it is likely to be significantly prejudiced if they are not made aware of the change (section 84(9) of FSBRA). However, the timing of our informing the party will depend upon whether we believe that providing the party with such information would be likely to result in the investigation being frustrated.

Settlement

5.32 Settlement is the process whereby we reach an agreement with a regulated party on the issues in an enforcement case, specifically that there has been one or more compliance failures and the appropriate sanction, if any.

5.33 Settlement has many potential advantages, including saving PSR and industry resources, and aiding in the prompt communication of compliance messages to industry and/or the markets for payment systems and payment services. As such, we recognise that settlement may be appropriate in certain circumstances, and that the advantages of settlement should be reflected by way of a discount against any financial penalty that is imposed. Further details of our approach towards settlement discounts are set out in our Penalties Guidance.

5.34 Parties should approach settlement discussions with us in an open and cooperative manner, in line with the obligations imposed by General Direction 1. A party's cooperation is one factor that we will consider when calculating the appropriate financial penalty to impose for a compliance failure.

5.35 We are receptive to any regulated party informing us of its interest in entering into settlement discussions from an early stage of an investigation. Alternatively, if we consider that a case is suitable for settlement, we may invite the party to engage in settlement discussions with us. We are unlikely to make such a proposal or commence such discussions until we have a sufficient understanding of the nature, extent, duration and gravity of the suspected compliance failure(s) to enable us to make a reasonable assessment of the appropriate outcome. In particular, we would wish to ascertain whether non-compliance is ongoing. Usually this will be once we have held the update meeting described in paragraph 5.29 above.

5.36 The decision to engage in settlement discussions and to settle is at our discretion. The decision will be taken jointly by two SDMs, appointed by our Managing Director, who may be: senior PSR staff, special advisors to our executive committee or members of the EDC, who have had no prior involvement in the enforcement case and, in the case of EDC members, who will not be involved in any aspect of the case considered at a later stage by an EDC panel.

5.37 The SDMs will consider a number of factors when making decisions, including:

- the likely savings to our time and resources
- the prospect of reaching settlement within a reasonable time
- the number of parties in a case
- (in a multi-party investigation) whether all, or only some, of the parties show interest in engaging in settlement discussions

5.38 If we consider that it is appropriate to enter into settlement discussions, we will issue the party under investigation with an early settlement notice, informing them that the window for early settlement, during which the maximum reduction in a financial penalty will be available if settlement is reached (30%), has commenced. The early settlement notice will specify a time frame during which the window will remain open and the date upon which it will close. An early settlement window will usually be for a period of no less than four weeks from the date of issuing the notice. The precise duration will depend on the complexity of the proposed action and the surrounding circumstances.

5.39 Once the early settlement window closes, the maximum discount will no longer be available. Between the closure of the window and the issuing of a Warning Notice by the EDC (see paragraphs 5.82 to 5.90 below) a lesser discount may be available. The exact amount of the available discount will depend on the stage that the case has reached in terms of our preparation for EDC proceedings and the level of cooperation received from the party.

5.40 Where appropriate, matters may be settled at a later stage of the enforcement process, including where the EDC has already issued a Warning Notice (up until the point where it issues a Decision Notice) see paragraphs 5.111 to 5.117. In those cases, the procedures outlined above will continue to apply, although the reduction in penalty for settlement will not be available.

5.41 Settlement discussions will be conducted by the enforcement case team. The settlement decision will be taken jointly by the two SDMs.

5.42 The settlement discussions will involve consideration of the available facts to support a decision to take enforcement action. They will culminate in the production of either a draft Warning Notice (where the EDC has not yet issued one) or Decision Notice (where the EDC has already issued a Warning Notice). The notice will set out the terms we propose to settle the case on – i.e. details of the relevant compliance failure(s) and the sanction that we propose to impose.

5.43 There are two types of possible settlement agreement: a full agreement and a partial agreement. Under a full agreement, a regulated party may accept that there has been a compliance failure and agree to the imposition of a financial penalty and/or publication of the details of a compliance failure, instead of contesting the enforcement action. Alternatively, they may wish to enter into a partial agreement under which they partly contest the proposed action. Examples of matters which may be contested include, but are not limited to:

- factual matters
- whether specified facts amount to one or more compliance failures
- the nature of the proposed sanction, including the amount of any proposed financial penalty

5.44 If a matter is settled, the regulated party will enter into a settlement agreement with us, which constitutes a binding contract. Under this agreement, the regulated party will agree to waive their rights to make representations to us about, appeal or otherwise contest our decision to take action in the way set out in the agreement.

5.45 The settlement agreement will refer to the draft of the proposed Warning and/or Decision Notice. Depending on the stage in the enforcement process at which agreement is reached, it may also include an agreement by the party to:

- waive and not exercise any rights to disclosure of the relevant evidence that we rely upon in support of the matters set out in the draft notice, along with any evidence which we consider may undermine those recommendations
- not object to the giving of a Decision Notice before the expiry of the 21-day period after the giving of a Warning Notice specified under section 74 of FSBRA

5.46 The enforcement case team will provide any draft notice and settlement agreement arising from settlement discussions to the SDMs. The SDMs may accept the proposed settlement by approving the agreement and the notice as drafted. Alternatively, the SDMs may reject the proposed settlement and may, at their discretion, direct the enforcement case team to continue the investigation and/or resume settlement discussions with a view to a different outcome.

5.47 In the case of full settlement, once the settlement agreement has been signed by all parties to it, a Decision Notice will be issued by the SDMs. Where no Warning Notice has been issued prior to settlement being reached, one will be issued in parallel with the Decision Notice.

5.48 All settlement communications are without prejudice. Consequently, if settlement discussions break down and a matter is dealt with by way of a contested process (see paragraphs 5.79 to 5.117) through the EDC, then the EDC will not consider any admissions or concessions made by any of the parties during settlement discussions.

5.49 Following the commencement of settlement discussions, we will consider whether it is appropriate to enter into any proposed, partial agreement or whether the matter is unsuitable for settlement. This will be considered on a case-by-case basis. When considering whether to enter into a partial settlement agreement, we will consider various factors, including:

- the extent to which the party under investigation has been open and cooperative with us
- the extent to which the matters accepted by the party will save our time and resources

5.50 The maximum available settlement discount for a partial agreement is 30%, where:

- that agreement is reached during the early settlement window
- all of the relevant facts are accepted, and it is accepted that they amount to a compliance failure – i.e. the only remaining issue to be decided is whether a sanction should be imposed and, if so, what it should be

5.51 Where a partial agreement is reached on the same basis outside of the early settlement window, or where a partial agreement is reached on a different basis within the early settlement window (i.e. some of the issues that remain concern contested questions of fact or of non-compliance), then a lesser discount may be available. The exact amount of the available discount will depend on the stage that the case has reached in terms of our preparation for EDC proceedings and the level of cooperation from the parties. The amount to be applied will be determined by the EDC, once it has made a decision on the remaining contested part of the matter.

5.52 In the case of a partial agreement, the regulated party will usually be required, as part of that agreement, to consent to the EDC being informed of both the fact and the scope of the agreement reached but not of any matters discussed during the negotiations that were not ultimately accepted as part of the agreement. This is so that the panel:

- can clearly identify the contested issues that remain for it to decide
- can, where at least one of the remaining issues to be decided is sanction, make a full assessment of the party's:
  - failure to comply
  - cooperation with us throughout the enforcement process

The EDC will not, however, consider any admissions or concessions made by any party during settlement discussions, unless they are recorded in the partial agreement.

5.53 The partial settlement agreement will also stipulate that the regulated party cannot, as part of later EDC proceedings, introduce evidence that seeks to re-open or undermine the agreed matters.

5.54 In the case of a partial agreement, a Warning Notice setting out the agreed and remaining contested matters will be issued by the SDMs. The EDC will issue the Decision Notice after receiving representations from the regulated party on the contested matters.

Preliminary findings

5.55 An enforcement investigation will result in the preparation of a report setting out the preliminary findings of the enforcement case team. Where investigators have been appointed, this report will be prepared by them (section 84(6) of FSBRA).

5.56 Once an investigation report has been prepared, this will be considered by the case sponsor who will assess whether, based on the information within that report and the underlying evidence gathered by the enforcement case team, either:

- there is sufficient evidence to support a preliminary finding that there has been a compliance failure; or
- there is insufficient evidence to support such a finding, at this time, and the case should be closed

5.57 If the investigation leads to a preliminary finding that there has been a compliance failure by the regulated party, we will consider the appropriate action to take on a case-by-case basis, considering our APF criteria. We may decide to take either informal or regulatory action (using our direction and requirement powers) to rectify the failure and/or its underlying cause. Alternatively, or in addition, we may refer the matter to the EDC with a recommendation that it makes a decision in accordance with the case team's preliminary finding that a compliance failure has occurred. In addition, we may recommend that enforcement action be taken by way of imposing one or both of the available sanctions – a financial penalty and/or publication of the details of a compliance failure and/or that penalty.

5.58 If we propose to submit a recommendation to the EDC, we will normally send our preliminary findings to the regulated party first. These will be based on the investigation report prepared by the case team, which we will usually disclose in full at this stage (subject to confidentiality considerations under section 91 of FSBRA).[31]

5.59 We will inform the party of: our preliminary conclusion on whether there has been a compliance failure; whether we intend to recommend that the EDC determine that there has been a compliance failure; whether we intend to recommend that one or more of our powers of sanction should be used in the event of the EDC finding that there has been such a failure; and the facts which we consider relevant to these issues.

5.60 We will invite the regulated party's comments on our preliminary findings, and will allow a reasonable period of time for a response, to be made in writing. This period will depend on the circumstances of the case, but we will usually allow three weeks.

31 See paragraph 2.48.

5.61 Communicating our preliminary findings to a party under investigation before the matter is referred to the EDC serves a useful purpose in focusing the parties on the contentious issues in the case. However, there may be circumstances in which we decide that it is not appropriate to communicate our preliminary findings. These include when the regulated party agrees to not receive our preliminary findings in advance of our referral, in the interests of expediting the consideration of the matter by the EDC.

5.62 We will consider any responses received within the period stated, but we are not obliged to consider any responses received after this time, when deciding whether the matter should be referred to the EDC. If a party under investigation requires more time to make representations on our preliminary findings, it should provide us with that request before the expiry of the response period, supported by reasons.

5.63 We may also ask for a meeting with the regulated party if we think it will assist our understanding of the issues involved and inform our decision about the appropriateness of taking enforcement action. We will likewise consider requests for meetings with us on this basis.

5.64 If we send our preliminary findings to the regulated party subject to investigation and then decide not to take any action in relation to any compliance failure, we will let the party under investigation know this as soon as it is reasonable to do so.

Enforcement Decisions Committee

5.65 The EDC is a committee of the PSR Board established for the purpose of making decisions, on our behalf (when settlement is not appropriate or where a settlement has otherwise not been reached), as to whether a compliance failure has occurred and, if so, what sanction, if any, should be imposed. It is not a tribunal or judicial body. The EDC's findings constitute an administrative decision on behalf of the PSR.

5.66 The EDC is an internal decision-making committee, which is separate from the enforcement case team. Its members are appointed by the PSR Board based on their relevant experience. The EDC deals with matters referred to it by PSR staff. These matters are decided in decision-making meetings held in private (which may take the form of a meeting with the party under investigation if it wishes to attend and make oral representations about the matter) and conducted by three-person decision-making panels.

5.67 The EDC has a Chair and Deputy Chair, and has a pool of members from which it draws three-person panels. A list of current members of the EDC is on our website. Either the Chair or Deputy Chair acts as the 'Panel Chair' for every EDC decision-making panel. The Panel Chair chooses the other members of each panel.

5.68 If an EDC member has been appointed as a SDM in a particular matter, they are excluded from being a member of any EDC panel appointed to decide that matter following a subsequent referral by the enforcement case team.

5.69 The EDC has its own support staff who undertake corporate secretarial duties (the Secretariat). The Secretariat will inform the regulated party subject to potential enforcement action that a panel has been appointed and provide them with the names of the panelists. The Secretariat will also communicate with the regulated party regarding the administrative arrangements for holding any decision-making meeting, the final decision for which lies with the Panel Chair.

5.70 In dealing with matters referred to it, the EDC is responsible for deciding the following.

- Whether there has been a compliance failure.
- Whether to impose a sanction for a compliance failure, and, if so:
  - whether to impose a financial penalty for the compliance failure or to publish details of the compliance failure or both; and
  - where a decision is made to impose a financial penalty, the amount of the financial penalty to be imposed.

5.71 Where a regulated party disputes the entirety of our proposed enforcement action, the EDC will be responsible for making decisions in relation to each of these matters.

5.72 The process followed by the EDC involves it making two determinations:

- whether to give a Warning Notice to the party concerned, in respect of any suspected compliance failure and proposed sanction
- after consideration of any representations from the party in response to the Warning Notice, whether to issue a Decision Notice setting out its finding that there has been a compliance failure and the sanction imposed (if any)

5.73 In the event of a partial settlement agreement, in which a regulated party chooses to contest one or more, but not all, of the issues relevant to the proposed enforcement action, the EDC is responsible for deciding only issues which fall outside the partial settlement agreement. In that scenario, as explained above, we will usually tell the EDC that discussions have taken place (but not the content of these discussions) and that an agreement has been reached to settle other aspects of the case.

5.74 The EDC will not examine or depart from the matters agreed between the parties to a partial agreement, and the party subject to enforcement action will not be permitted to adduce any evidence that seeks to undermine or attempts to re-open the settled matters.

5.75 Each member of the panel will have a vote in relation to the matters before it, including the Panel Chair. Panels will make decisions by way of a simple majority, but a decision will not indicate whether it was taken unanimously. In the event of a tie,[32] the Panel Chair shall have a casting vote. The panel will conduct itself in such a manner and may adopt such procedures as the Panel Chair considers suitable and appropriate to enable the EDC to make decisions fairly and expeditiously.

32 For example, where one panel member abstains or is incapacitated during the course of the hearing.

5.76 Any decision of the EDC will take into account all the relevant information available to it. This includes the views of the enforcement case team in relation to the evidence before the EDC as to the facts underlying the potential compliance failure; the case team's legal, economic and any other analysis of the issues under consideration; and the case team's recommendation on the appropriate penalty.

5.77 If the EDC panel thinks it appropriate, it may seek its own legal, technical, economic and/or other relevant expert advice from PSR staff unconnected to the enforcement case team. In exceptional cases where the necessary additional expertise cannot be provided by PSR staff unconnected to the enforcement case team, the Panel Chair may, with our agreement, seek expert advice from external sources.

5.78 It will not usually be appropriate to share with the regulated party that is the subject of EDC proceedings the correspondence and/or communications exchanged between the EDC members and members of our staff and/or external persons acting as advisors to it. In particular, legal advice provided to the EDC will be subject to legal privilege. However, wherever legal or other, technical analysis carried out by our staff forms part of the case against the recipient, then as much of the substance of that analysis as is necessary for the recipient to understand the case against it will be included within the submissions made by the enforcement case team to the EDC and any Warning or Decision Notice issued during the EDC process.

Making a recommendation to the EDC

5.79 As part of the recommendation to the EDC, we will submit a draft Warning Notice, along with our investigation report containing the enforcement case team's findings and any representations made by the regulated party in response to our preliminary findings. We will also provide the EDC with copies of the relevant evidence that we rely upon in support of our recommendations, along with any evidence which we consider may undermine those recommendations, unless there is a good reason not to do so. A good reason might include, for example, where a party has admitted that there has been a compliance failure and does not wish to make representations on our recommendation as to the finding of a compliance failure and the sanction to be imposed (but where the case is unsuitable for settlement). In these circumstances, the EDC should have sufficient evidence before it to decide whether there has been a compliance failure, without needing to review the supporting evidence.

5.80 Where the case team recommends that the EDC should decide to publish details of a compliance failure, and any proposed financial penalty, the draft Warning Notice will set out the wording that the case team proposes should be published.

5.81 When we submit a recommendation to the EDC that there should be a finding of a compliance failure and, where appropriate, that a sanction should be imposed, we will inform the regulated party promptly after we submit our recommendation.

Issuing a Warning Notice

5.82 The first step of the EDC decision-making process is for an EDC panel to consider issuing a Warning Notice against the regulated party (section 74 of FSBRA). The purpose of issuing a Warning Notice is to allow the regulated party to make representations on the enforcement action being proposed, before the EDC decides whether there has been a compliance failure and, if so, whether it is appropriate to impose any sanction in respect of that failure.

5.83 Under section 74(1)(a) of FSBRA, we (through the EDC) are required to issue a Warning Notice whenever we propose to impose a sanction on a regulated party. FSBRA does not require us to issue a Warning Notice where we propose to make a finding that there has been a compliance failure but do not propose to impose a sanction in relation to it. Nonetheless, we will refer the matter to the EDC and recommend that it issues a Warning Notice in both sets of circumstances, allowing a party under investigation an opportunity to make representations before any decision that there has been a compliance failure is made.

5.84 In deciding to issue a Warning Notice, the EDC will:

- settle the wording of the Warning Notice; and
- make any necessary decisions related to the conduct of the decision-making process following the issuing of the Warning Notice – for example, determining the exact period for the recipient of the notice to make representations on it.

5.85 Prior to issuing the Warning Notice, the EDC may seek further information and/or clarification of the matters to which it relates from the enforcement case team. Communications between the EDC and the enforcement case team exchanged prior to the issuing of the Warning Notice are not disclosable to the regulated party to whom the draft Warning Notice is addressed.

5.86 Any Warning Notice issued will set out the factors the EDC has taken into account when making its decision, and will include sufficient information to enable the party to understand the PSR’s case against it.

5.87 If the EDC decides to issue a Warning Notice, we will make arrangements for the notice to be provided to the regulated party promptly and will communicate any other related decisions of the EDC to the party at the same time. Along with the Warning Notice the party will, subject to considerations of confidentiality under section 91 of FSBRA, legal privilege and public interest, also be provided with copies of the relevant evidence submitted by the enforcement case team to the EDC and considered by the EDC when making its decision.

5.88 If the EDC decides not to issue a Warning Notice, on the grounds that the evidence does not support the recommendation as to enforcement action, then we will communicate this, in writing, to the party. In these circumstances, we will consider whether the enforcement case should then be closed or whether the investigation should continue, taking into account the factors set out in our APF.

5.89 There is no statutory requirement under FSBRA to publish details of Warning Notices issued by the EDC and no statutory prohibition against doing so. We will consider whether to publish details of Warning Notices on a case-by-case basis,

taking into account all of the relevant circumstances, and we may invite comments from the subject of the notice on both the fact of publication and the extent of the details to be published before deciding whether to do so.

5.90 Relevant circumstances would include whether any third party is identified within the notice who may be prejudiced by publication. In such circumstances, we will usually also send a copy, or the relevant part, of the notice to the third party for comments and consider all reasonable comments from them before making a final decision as to publication.

Making representations to the EDC

5.91 From the point at which the Warning Notice has been issued by the EDC the enforcement case team will not engage with the panel during the decision-making process, including at any meeting held with the party, unless specifically asked to do so by the EDC.

5.92 Once the EDC has issued a Warning Notice it has discretion, subject to confidentiality considerations under section 91 of FSBRA, legal privilege and public interest, as to whether to share with the recipient(s) any communications it has with the enforcement case team about the progress of the case, in the interests of fairness.

5.93 Once a Warning Notice has been issued, the regulated party to which it is addressed will have at least three weeks (section 74 of FSBRA) to make representations to the EDC in writing. The Warning Notice will state the time within which representations are to be made and who those representations should be addressed to. The Warning Notice may also indicate the expected format and scope of any representations.

5.94 The content of any written representations is a matter for the recipient of the Warning Notice. However, the representations should be confined to the material necessary for the EDC's determination of whether the factual and legal basis for the proposed action is correct and whether the proposed sanction is appropriate. The representations should clearly identify the reasons for contesting the proposed enforcement action, including the factual and legal grounds on which the recipient is relying, and should be as concise as possible. We would expect a regulated party's written submissions to be comprehensive, such that it should not be necessary for that party to seek to introduce new material at the oral representations meeting without good reason for doing so.

5.95 The enforcement case team will be given an opportunity to respond to the written representations, and the time frame for providing this response will be determined by the Panel Chair.

5.96 In some circumstances, the Panel Chair may agree to an extension of the time within which the recipient(s) of a Warning Notice can make representations. The recipient(s) of a Warning Notice must apply to the EDC (via the Secretariat) in writing for such an extension, before the expiry of the time granted for making representations, stating why the extension is necessary and, in particular, why it is not possible to respond adequately in the period already provided.

5.97 The Panel Chair will decide whether to grant an application for an extension of time. In considering the application, the Panel Chair may seek the enforcement case team's views and will balance the interests of fairness to the applicant with those of procedural efficiency.

5.98 If the recipient of a Warning Notice does not make representations within the time frame stipulated, and does not seek an extension of time within which to do so, the EDC will proceed on the basis that the matters in the Warning Notice are not disputed and will proceed to consider whether to issue a Decision Notice. In such circumstances, the decision may be taken by the Panel Chair alone, without the need to convene or consult all members of the EDC panel, if the Panel Chair determines this to be appropriate in the circumstances.

5.99 If the recipient(s) of a Warning Notice requests to be able to make oral representations in addition to their written representations, they should inform the Secretariat of this within two weeks of receiving the Warning Notice.

5.100 If the regulated party does not wish to make oral representations, then the EDC panel will proceed to consider whether to issue a Decision Notice based on the Warning Notice issued, any written representations provided by the party and any response provided by the enforcement case team. The panel may invite the enforcement case team to attend its decision-making meeting and may ask questions of, or for an oral response to the party's representations from, the case team at that meeting. In those circumstances we will usually provide a record of that meeting to the regulated party, and offer it the opportunity to comment on any additional matters (not included in the material submitted to the EDC in advance of the meeting) that may have been raised by the EDC during its course.

5.101 If the party wishes to make oral representations, then a date will then be set for a meeting with the party, at which the relevant EDC panel will hear the oral representations. The party may wish to be legally represented at the meeting (although this is not a requirement of the EDC).

5.102 The Panel Chair will specify the running order and timings of the meeting, and will be responsible for ensuring that proceedings run to time. The Panel Chair may also intervene if oral representations do not meaningfully advance the panel's understanding of the written representations. Any panel member may pose questions to the party during the meeting, for example, in order to clarify the representations being made. The panel may also ask questions of and/or for an oral response to the party's representations from the case team during the meeting.

5.103 During an oral representation meeting held with the party, the panel may invite the party to provide evidence or representations in addition to those they have chosen to present. The panel may also invite other persons to attend and/or otherwise provide information to the EDC if the panel believes they would be able to provide information that it reasonably considers to be relevant to the matters to be decided. Persons invited to provide information to the EDC in this way may decline to do so. However, in line with General Direction 1, regulated parties will be under a duty to cooperate with enforcement proceedings and to be open and honest when dealing with the EDC.

5.104 The EDC may also choose to ask the enforcement case team to issue an IRN under section 81 of FSBRA where it considers that this would be the appropriate course of action to enable the EDC to perform its decision-making function.

5.105 In considering whether to issue a Decision Notice, either following consideration of a regulated party's written representations alone, or following a meeting where oral representations have also been provided by the party, the panel may also ask the recipient and/or the enforcement case team to provide additional information and/or representations in writing after the meeting and stipulate the time frame for this. Where further information and representations are requested from and provided by one party, the panel will usually share these with the other party in the interests of fairness, subject to confidentiality considerations under section 91 of FSBRA, legal privilege and public interest.

Disclosure of underlying evidence

5.106 When the EDC issues a Warning Notice, the regulated party will, subject to considerations of confidentiality under section 91 of FSBRA, legal privilege and public interest, be provided with the evidence submitted by the enforcement case team to the EDC and considered by the EDC when making its decision.

5.107 In addition, in each case, we will consider whether fairness requires us to disclose any other relevant evidence provided to or obtained by the enforcement case team for the purposes of our investigation and the taking of enforcement action to the recipient(s), including any evidence that we consider may undermine our recommendations to the EDC.

5.108 When considering what to disclose and the manner of disclosure, we will give due consideration to what is required to achieve fairness for the party, whilst also taking into account considerations of confidentiality, legal privilege and public interest.

5.109 We will keep the need to disclose further evidence under review throughout the EDC process, and will make further disclosure as and when we consider it necessary. For example, following any representations made by the party.

5.110 The EDC may also consider disclosing other relevant evidence, provided to or obtained by the enforcement case team for the purposes of our investigation and the taking of enforcement action, during the course of exercising its decision-making functions. Where the EDC does this, it will consider whether access to the material is necessary for the recipient(s) to understand the case against it, whether it should be disclosed as a matter of fairness, and whether any claims of confidentiality, legal privilege or public interest are made in relation to the material.

The decision of the EDC

5.111 Where written, or oral and written, representations are made following the issuing of the Warning Notice, the EDC panel will take them into account when reaching its decision as to whether there has been a compliance failure and, if so, whether the proposed sanction should be imposed.

5.112 If no representations are made following the issuing of the Warning Notice, the EDC will generally regard the matters set out in the Warning Notice as undisputed.

5.113 Section 74(1)(c) of FSBRA requires us (through the EDC) to issue a notice in writing, following the issuing of any Warning Notice and allowing an opportunity for representations to be made, whether the final decision is to impose a sanction or not. Therefore, following any decision by the EDC that there has been a compliance failure, we will make arrangements for a written notice ('the Decision Notice') to be promptly provided to the regulated party to which it is addressed. The Decision Notice will state:

- the nature of the compliance failure; and
- whether a sanction will be imposed and, if so, the details of that sanction.

5.114 Where the EDC decides that we should publish details of a compliance failure (including, if the EDC so decides, the details of any financial penalty imposed), the EDC will settle the wording to be used and the Decision Notice will set out the wording that we will publish. We will also inform the subject of the notice of the date on which we intend to publish the details of the compliance failure. When we decide to publish details of a compliance failure, those details (including, if relevant, the details of any financial penalty imposed) will generally be published on our website.

5.115 Where the EDC decides to impose a financial penalty for a compliance failure, the Decision Notice will state the amount of penalty that we will impose. We will also inform the subject of the notice of the date on which payment of the penalty is due. This will usually be 14 days following the issue of the Decision Notice.

5.116 Where the EDC finds non-compliance, whether or not it also imposes a sanction, we may decide to give a direction (general or specific) for the purpose of remedying the failure or preventing a failure to comply, or continued non-compliance with those requirements.

5.117 If the EDC decides not to issue a Decision Notice, on the grounds that the evidence does not support the proposed action, then we will communicate this to the party in writing. In these circumstances, we will consider whether the enforcement case should then be closed or whether the investigation should continue, taking into account the factors set out in our APF.

Appeals

5.118 Any person affected by a decision of the EDC to impose a sanction can appeal to the CAT (section 76 of FSBRA).

5.119 In the case of an appeal of a decision to publish the details of a compliance failure, the CAT must apply the same principles as would be applied by a court on an application for Judicial Review and must either dismiss the appeal, or quash the whole, or part, of the decision to which the appeal relates (section 77 of FSBRA). If the CAT quashes the whole, or part, of a decision, it may refer the matter back to us with a direction to reconsider and make a new decision in accordance with its ruling. The CAT may not direct us to take any action which we would not otherwise have the power to take at the time of making the original decision.

5.120 If the EDC decides to publish details of a compliance failure, the details cannot be published until after the expiry of the period within which the decision can be appealed to the CAT or, if an appeal against the decision is made, pending the determination of that appeal (section 77(8) of FSBRA).

5.121 In the case of an appeal of a decision to impose a financial penalty, the appeal may be made against the imposition of the penalty, the amount of the penalty, or any date by which the penalty, or any part of it, is required to be paid to us (section 80 of FSBRA). The CAT may either uphold the penalty/date, or set aside the penalty/date, or substitute for the penalty/date a penalty of a different amount or an alternative date, decided by the CAT.

5.122 When the EDC decides to impose a financial penalty for a compliance failure, and an appeal against the decision is made to the CAT, we may not require payment of the penalty before the appeal has been determined (section 77(9) of FSBRA).

5.123 When the EDC decides to issue a Decision Notice specifying that it has found a compliance failure to have occurred but has decided not to impose a sanction, then no appeal will lie to the CAT, but the decision can be challenged by way of Judicial Review.

Injunctions

5.124 Another way in which we can enforce some of our regulatory decisions, including when the party does not rectify its non-compliance voluntarily following an EDC decision, is by applying to the court for an injunction (section 75 of FSBRA).

5.125 Our powers to seek injunctions apply in relation to the same compliance failures that give rise to our powers of sanction.

5.126 In deciding whether to apply to the court, we will consider whether the legal test that the court will apply is met, as well as the nature, impact and seriousness of the actual or potential compliance failure and whether injunctive relief is appropriate.

5.127 On our application, the court may make an order:

- restraining the conduct, if it is satisfied that there is a reasonable likelihood of a compliance failure or, if a compliance failure has taken place, that it is reasonably likely to continue or be repeated;
- requiring the participant in a regulated payment system, and anyone else who appears to have been knowingly concerned in the compliance failure, to take steps to remedy it, if it is satisfied that there has been a compliance failure and that steps could be taken to remedy it; or
- restraining the participant in a regulated payment system or the person (as the case may be) from dealing with any assets which it is satisfied the participant or person is reasonably likely to deal with, if it is satisfied that there has been a compliance failure or that the person may have been knowingly concerned in a compliance failure.[33]

5.128 We may seek only one type of order, or several, depending on the circumstances of each case.

33 The court may also make an order freezing assets under its inherent jurisdiction.

Annex A

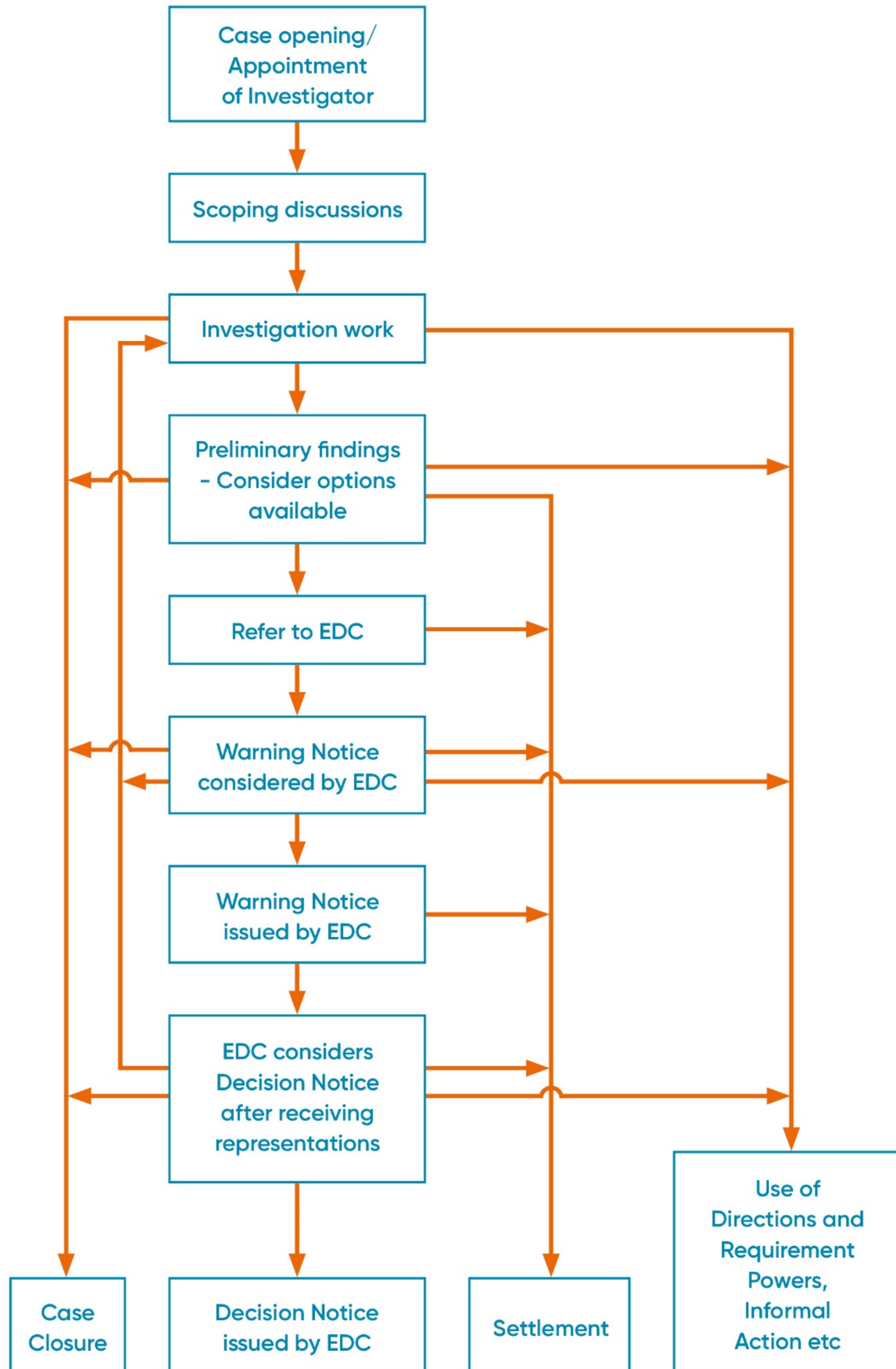
Our Regulatory Principles

Our regulatory principles, which are found in section 53 of FSBRA, are:

- The need to use the resources of the Payment Systems Regulator in the most efficient and economic way.
- The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term.
- The general principle that those who use services provided by payment systems should take responsibility for their decisions.
- The responsibilities of the senior management of persons subject to requirements imposed by or under Part 5 of FSBRA, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements.
- The desirability, where appropriate, of the Payment Systems Regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under Part 5 of FSBRA.
- The desirability, in appropriate cases, of the Payment Systems Regulator publishing information relating to persons on whom requirements are imposed by or under this Part, or requiring such persons to publish information, as a means of contributing to the advancement by the Payment Systems Regulator of its payment systems objectives.
- The principle that the Payment Systems Regulator should exercise its functions as transparently as possible.

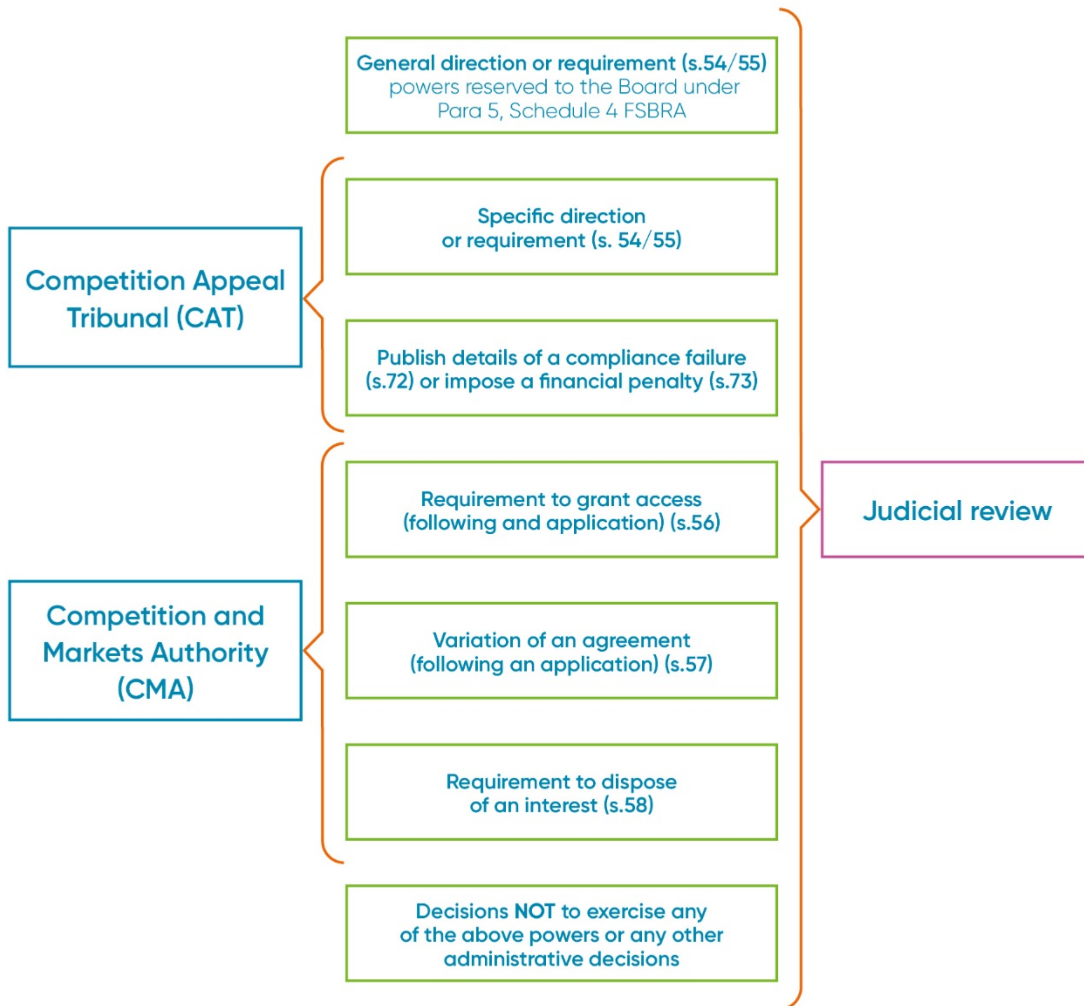
Annex B

Chart showing the lifecycle of an enforcement case



Annex C

Chart showing the routes to appeal from the PSR's decisions



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