

Draft guidance

Draft guidance on our approach to handling applications under sections 56 and 57 FSBRA

(Draft guidance on sections 56/57 FSBRA)

July 2016

Summary

This guidance sets out the general approach and process that the Payment Systems Regulator (PSR) will follow when considering applications for us to grant new access to certain regulated payment systems (section 56 FSBRA) or to vary the terms of existing access to certain regulated payment systems (section 57 FSBRA).

Applications made under these provisions can be for direct access and indirect access to regulated payment systems, and in relation to agreements concerning the use of services provided by a regulated payment system.

This guidance replaces paragraphs 7 to 13 of our Powers and Procedures Guidance published in March 2015. It provides more detailed guidance on what existing or prospective payment service providers (PSPs) should do when they are in dispute with an access provider (including operators), and outlines how we will handle any applications referred to us for consideration. This guidance and the process it sets out complement any requirements set out in other legal and statutory instruments.

This guidance will be kept under review and may be amended as appropriate in light of the experience of applying the guidance, best practice considerations, or in response to legal, regulatory or market changes.

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1. Introduction

Overview

- 1.1** The Payment Systems Regulator (PSR) has developed this guidance to help parties understand our general approach and process when considering applications made to us by existing or prospective payment service providers (PSPs) under sections 56 and 57 of the Financial Services (Banking Reform) Act 2013 (FSBRA). The guidance covers applications to gain both direct access and indirect access to regulated payment systems, as well as applications to vary existing agreements concerning the use of services provided by a regulated payment system.
- 1.2** We are issuing this guidance under section 96 FSBRA. We will take this guidance into account when considering individual applications submitted under sections 56 and 57 FSBRA. It applies to participants in the eight payment systems currently designated by HM Treasury: Bacs, Cheque and Credit (C&C), CHAPS, Faster Payments Scheme (FPS), LINK, Northern Ireland Cheque Clearing (NICC), MasterCard and Visa ('the regulated payment systems'). It does not apply to enabling direct access to those regulated payment systems (LINK, MasterCard and Visa) to which the Payment Services Regulations 2009¹ apply, nor does it affect the approach we will take in enforcing our general directions related to access.
- 1.3** This guidance replaces paragraphs 7 to 13 of our Powers and Procedures Guidance (PPG) (March 2015).² It is intended to provide guidance for businesses on what they should do if they are in dispute over the provision of access to regulated payment systems or the use of services provided by regulated payment systems, and how we intend to handle applications referred to us for determination.
- 1.4** Throughout this guidance the party that is providing access is referred to as the 'access provider' (either a direct access provider (such as a payment system operator) or an indirect access provider (IAP)). The party seeking access is referred to as the 'applicant'.

Our general approach to access and to considering applications under sections 56 and 57

Our objectives

- 1.5** We have three statutory objectives. In giving general guidance, we are required to act in a way which advances, so far as is reasonably possible, these objectives.³ These are to:
- ensure 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 services provided by payment systems)

¹ See s. 108(1) FSBRA and The Payment Services Regulations 2009 (SI 2009/209), which implement the EU Payment Services Directive 2007/64/EC in the UK, as amended from time to time.

² www.psr.org.uk/powers-and-procedures-guidance. Our Powers and Procedures Guidance (PPG) (March 2015) sets out the general processes and procedures for the exercise of our regulatory functions under FSBRA.

³ S. 49(4)(b) FSBRA. In addition, in giving guidance, the PSR is required to indicate how it intends to advance its statutory payment systems objectives (s. 96(2) FSBRA).

- promote effective competition in the markets for payment systems and services in the interest of service-users – between operators, PSPs and infrastructure providers
- promote the development of and innovation in payment systems, particularly the infrastructure used to operate those systems, in the interest of service-users

1.6 In addition, when giving general guidance we are also required to have regard to:⁴

- the importance of maintaining the stability of, or confidence in, the UK financial system
- the functions of the Bank of England in its capacity as a monetary authority
- our regulatory principles under section 53 FSBRA⁵

1.7 We also have a duty of sincere cooperation under EU law⁶ in relation to the UK's obligations and this includes those under the Third EU Money Laundering Directive (MLD),⁷ even though we are not a supervisory authority under the MLD. In practice this means that we must avoid implementing measures that render the MLD ineffective, and we will therefore be mindful of the MLD's objectives and requirements when we exercise our section 56 and 57 powers in individual cases.

The context in which we will apply our powers

1.8 For banks, building societies and other PSPs to operate, they need to be able to transfer money on behalf of the customers they provide services to (their clients) – and they need access to payment systems to do that.

1.9 There are a number of different ways to get access to regulated payment systems. These include direct and indirect access and, increasingly, the use of third-party aggregator services for some payment systems. We are committed to supporting entry of PSPs by fostering an environment that enables them to choose the access option that best suits their needs. We have a wide programme of work to achieve this. Among other things this includes supporting, and considering the impact of, the industry Code of Conduct (the Code) to improve indirect access to payment systems.⁸

1.10 Access providers take account of various operational, technical, system-integrity, financial crime and commercial considerations in deciding whether, and on what terms, to supply access. How and on what terms access is supplied has direct implications for the parties involved. This may give rise to commercial disputes which may, in certain situations, have implications for the advancement of the PSR's statutory objectives (competition, innovation and service-user interests).

1.11 In line with our statutory objectives and our wider access programme of work, our overall aim when exercising these powers is to continue to promote competition and innovation in payment systems markets for the benefit of service-users, while taking account of the commercial, operational, technical and financial risk factors of all parties involved. In circumstances where the risks of supply are manageable, access to payment systems should not be used as a means of restricting entry and competition. We also do not want PSPs to be treated in a way that is unreasonable and which has the effect of limiting their ability to supply services to their customers.

⁴ S. 96(2) FSBRA.

⁵ S. 53 FSBRA.

⁶ Article 4(3) of the Treaty on European Union requires Member State authorities to take appropriate measures to ensure the fulfilment of the obligations arising out of the Treaty and acts of EU institutions (including EU directives), and to refrain from any measures that could jeopardise the attainment of the EU's objectives.

⁷ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the EU on 25 November 2005.

⁸ www.accesstopaymentssystem.co.uk/sites/default/files/documents/Code%20of%20Conduct%20for%20Indirect%20Access%20Providers%20%28Interim%29.pdf

- 1.12** However, we will not exercise these powers in a way that requires access providers to act unlawfully or take on undue operational or compliance risks, or that would expose them to unreasonable additional risks. In exercising these powers, we will also take into account the differences between direct and indirect access, the competitive and market context and the nature of the providers of direct and indirect access. We recognise that these are broad powers, which, if used inappropriately, might have a detrimental effect – particularly on the supply of indirect access services and the promotion of effective competition. This would not be in service-users’ interests as a whole.
- 1.13** We expect that we will only use our section 56/57 powers where, given our statutory objectives, we consider that it is appropriate and proportionate to take action, without introducing inappropriate risks or adversely affecting the development of the market.
- 1.14** When undertaking a detailed assessment the substantive test we will have regard to is whether a provider’s access requirements and approach to supplying access (including the terms, conditions, fees and charges on which any access is offered) to a regulated payment system are proportionate, objective and non-discriminatory, and do not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk, and business risk and to protect the financial and operational stability of that regulated payment system.
- 1.15** Where we identify a market-wide, systemic or recurring issue, we may decide to take a wider policy view and seek to address the issue by using other more general powers, such as our power to make specific or general directions.

Structure of this guidance

- 1.16** This guidance explains how applications should be made under sections 56 and 57, and the approach that we will generally take when considering them. We will consider applications on a case-by-case basis. We may occasionally deviate from this guidance if we consider that this would better advance our statutory objectives. We will give our reasons when we do this.
- 1.17** We will keep this guidance under review, and may amend it as appropriate in light of the experience of applying it, best practice considerations or in response to legal, regulatory or market changes.
- 1.18** The remaining chapters of the guidance are as follows:
- Chapter 2** sets out the scope of the guidance.
- Chapter 3** sets out our approach on confidentiality and publication.
- Chapter 4** discusses what we expect to see happen, and our role, in the pre-application phase.
- Chapter 5** sets out our approach to the initial enquiry phase, including what we expect of different parties, and how we will decide whether to take an application forward.
- Chapter 6** describes how we will assess applications in detail, including the factors we will take into account, the assessment framework we will apply and what we may require of the parties to the dispute.
- Chapter 7** details our process for issuing draft decisions, the possible outcomes, and how we will consult with parties prior to issuing final decisions.
- Annex 1** sets out the PSR’s statutory powers under FSBRA in relation to access applications and applications about the use of services provided by regulated payment systems.

Annex 2 sets out the information we require from parties when making an application.

Annex 3 includes our glossary for this guidance.

Associated documents

- 1.19** This guidance should be read alongside other documents we have published. To understand the process and procedures we use when considering applications, these documents are relevant:
- **Objectives Guidance (March 2015)**⁹: This document sets out our view on how we will advance our objectives in discharging our functions for different categories of payment system or participants in payment systems.
 - **Enforcement of the Competition Act 1998: A guide to the PSR's Powers and Procedures (August 2015)**¹⁰: This guide explains how we will exercise our concurrent functions in respect of the prohibitions in Chapter I and Chapter II of the Competition Act 1998 (CA98) and/or Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU) in relation to participation in payment systems within the UK, in particular the enforcement processes we will follow, and how these relate to our other powers and duties.
- 1.20** Our **Powers and Procedures Guidance (PPG) (March 2015)** describes the wider context in which our section 56 and 57 powers are situated, and sets out the general processes and procedures for the exercise of our regulatory functions under FSBRA. Paragraphs 7 to 13, which currently cover applications in relation to access disputes, are replaced by this guidance.
- 1.21** To understand the context in which these guidelines will apply, the following documents are relevant:
- **Policy statement: A new regulatory framework for payment systems in the UK (March 2015)**¹¹: This document explains how we would regulate the payment systems industry and contains information on our regulatory approach, the guiding principles we would follow and a clear set of policies, directions and guidance that clarifies what our regulation means for the industry.
 - **Interim report on the supply of indirect access to payment systems (March 2016)**¹²: This report sets out the interim findings and proposed next steps for our market review into the supply of indirect access to payment systems.
 - **Final report on the supply of indirect access to payment systems (July 2016)**¹³: This report sets out our final findings of our market review into the supply of indirect access to payment systems.
- 1.22** This guidance should also be read alongside the Code of Conduct for Indirect Access Providers (August 2015).¹⁴ The Code sets out best practice standards for key elements of the commercial arrangements between IAPs and indirect PSPs (IPSPs). It has been developed by Payments UK on behalf of the industry, and in association with the industry's primary IAPs – Barclays, HSBC, Lloyds Banking Group and RBS – and in discussion with us.

⁹ www.psr.org.uk/objectives-guidance

¹⁰ www.psr.org.uk/sites/default/files/media/PDF/PSR_PS15_2.1_Compensation_Act_CA98_Guidance.pdf

¹¹ www.psr.org.uk/psr-publications/policy-statements/policy-statement-151

¹² www.psr.org.uk/psr-publications/market-reviews/MR1512-interim-report-supply-of-indirect-access-payment-systems

¹³ <https://www.psr.org.uk/psr-publications/market-reviews/MR1513-final-report-supply-of-indirect-access-payment-systems>

¹⁴ www.accesstopaymentssystem.co.uk/sites/default/files/documents/Code%20of%20Conduct%20for%20Indirect%20Access%20Providers%20%28Interim%29.pdf

2. The scope of this guidance

What does this guidance cover?

- 2.1** Sections 56 and 57 FSBRA provide a mechanism whereby a party ('the applicant') that has a commercial dispute with another party (or parties) can ask us to determine the outcome. This does not mean that we are providing a dispute-resolution service or mediating disputes; it means we are exercising our statutory powers under sections 56 and 57 to potentially enable a person to become a direct or indirect PSP in relation to a regulated payment system (including modifying the terms and conditions of such access), or to vary the fees or charges for the use of services provided by regulated payment systems.
- 2.2** Applications under these provisions for access are limited to certain payment systems:
- For direct access, applications can be made in relation to Bacs, CHAPS, FPS, C&C and NICC.
 - For indirect access, all FSBRA regulated payment systems are within scope. Under current legislation this includes Bacs, CHAPS, FPS, LINK, C&C, NICC, MasterCard and Visa.
- 2.3** We refer to these systems as 'regulated payment systems' throughout this guidance.
- 2.4** There are provisions in the Payment Services Directive¹⁵ (PSD1) concerning access to payment systems. This is implemented into UK law by the Payment Services Regulations 2009.¹⁶ The payment systems affected by these provisions are those which are not designated under the Settlement and Finality Regulations.¹⁷ Our section 56 and 57 powers to enable access only apply to regulated payment systems. However, under section 108(1) FSBRA, we cannot use those powers to enable direct access to those regulated payment systems (LINK, MasterCard and Visa) to which the Payment Services Regulations 2009 also apply. Where applications or submissions are made in relation to direct access to LINK, MasterCard or Visa, we will accordingly consider them under our powers in the Payment Services Regulations 2009. We will not consider any cases that may arise under PSD1 in the remainder of this guidance.
- 2.5** We will not consider applications involving access to bank accounts if:
- the bank account is not used to send and receive payments using a regulated payment system
 - the applicant is not using the regulated payment system for the purposes of transferring funds on behalf of its customers
- 2.6** In particular, we will not consider applications for access to bank accounts intended to be used solely to enable a PSP to operate its business (for example, to make salary payments or to pay suppliers).

¹⁵ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC of 13 November 2007, published in the Official Journal of the EU on 5 December 2007.

¹⁶ The Payment Services Regulations 2009 (SI 2009/209), which implement PSD1 in the UK, as amended from time to time, at Part 8.

¹⁷ The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979), which implement the European Settlement Finality Directive (Directive 98/26/EC) (SFD) in the UK, as amended from time to time.

Interaction with our competition law powers

- 2.7** We are required to give primacy to investigation and enforcement under the Competition Act 1998 (CA98) in certain situations. This means that, before exercising our section 56 and 57 powers, we have a duty to consider whether it would be more appropriate to proceed under CA98. If we consider that it would, we must do so rather than exercise our FSBRA powers.
- 2.8** We will decide if CA98 is more appropriate on a case-by-case basis. We will look at the potential harm to competition, whether there are reasonable grounds for suspecting an infringement of competition law, the resource and timing implications of the alternative actions available to us, and the potential outcomes (including their suitability for addressing the issues identified) and deterrent effect of those actions. Other factors may also be relevant.¹⁸
- 2.9** If we consider that CA98 should not be given primacy at the start of our investigation, we will continue to assess whether any issues that emerge during the assessment of a section 56 and 57 FSBRA application should be investigated under CA98 or another competition tool.

The types of applications that can be made to us

Applications relating to access

- 2.10** FSBRA enables us to consider applications for direct and indirect access to both enable new access (section 56) and to vary the terms of existing access agreements (section 57).
- 2.11** As we discussed in Chapter 1, we recognise that these are broad powers, which, if used inappropriately, might have a detrimental effect on the promotion of effective competition. We expect that we will use these powers typically only when other access options have been exhausted, and where it is appropriate and proportionate to do so.
- 2.12** We set out below two illustrative examples of the types of access situations where we might exercise these powers.
- 2.13** First, all IAPs, acting independently, adopt similar commercial strategies that could limit competition by restricting access that an individual PSP (such as a fintech, innovative PSP or other ‘challenger’ PSP) has to regulated payment systems, even though it:
- presents financial crime, business and operational risks that would normally fall within the IAPs’ risk appetite
 - is profitable to serve (across the whole relationship)
 - offers the potential for a long-term commercial relationship
- 2.14** This situation should not prevail if the market for indirect access is working effectively: at least one of the existing IAPs ought to act on the commercial incentive to change its strategy and reap the profit associated with providing access to that PSP.
- 2.15** Another illustrative example is where an IAP has decided to terminate a PSP’s access without giving it enough time to secure alternative arrangements, even though the IAP is not legally obliged to terminate the arrangement immediately in this instance. The risks associated with not having continuity of supply could affect competition and the interests of consumers using the PSP’s services. The loss of access could create wider prudential or financial stability concerns. We would not

¹⁸ See www.psr.org.uk/psr-publications/policy-statements/policy-statement-152-final-guidance-CA98-market-reviews

expect this to be the case if the IAP follows the voluntary IAP Code of Conduct; the Code includes a commitment to put in place an appropriate transitional plan for parties whose indirect access is being terminated.

- 2.16** We emphasise that these examples are illustrative only, and are not exhaustive. Any actual applications we receive may take a different form.

Applications relating to the use of services provided by regulated payment systems

- 2.17** As well as access to payment systems, we can also receive applications about disputes between participants, or between participants and service-users, over fees, charges, terms or conditions of agreements relating to the use of services provided by regulated payment systems.
- 2.18** Applicants should follow the same process as set out in this guidance for access-related applications made under sections 56 or 57. Although the nature of the issues in dispute will differ in non-access applications, our approach to them will generally involve similar factors and evidence as for access disputes.

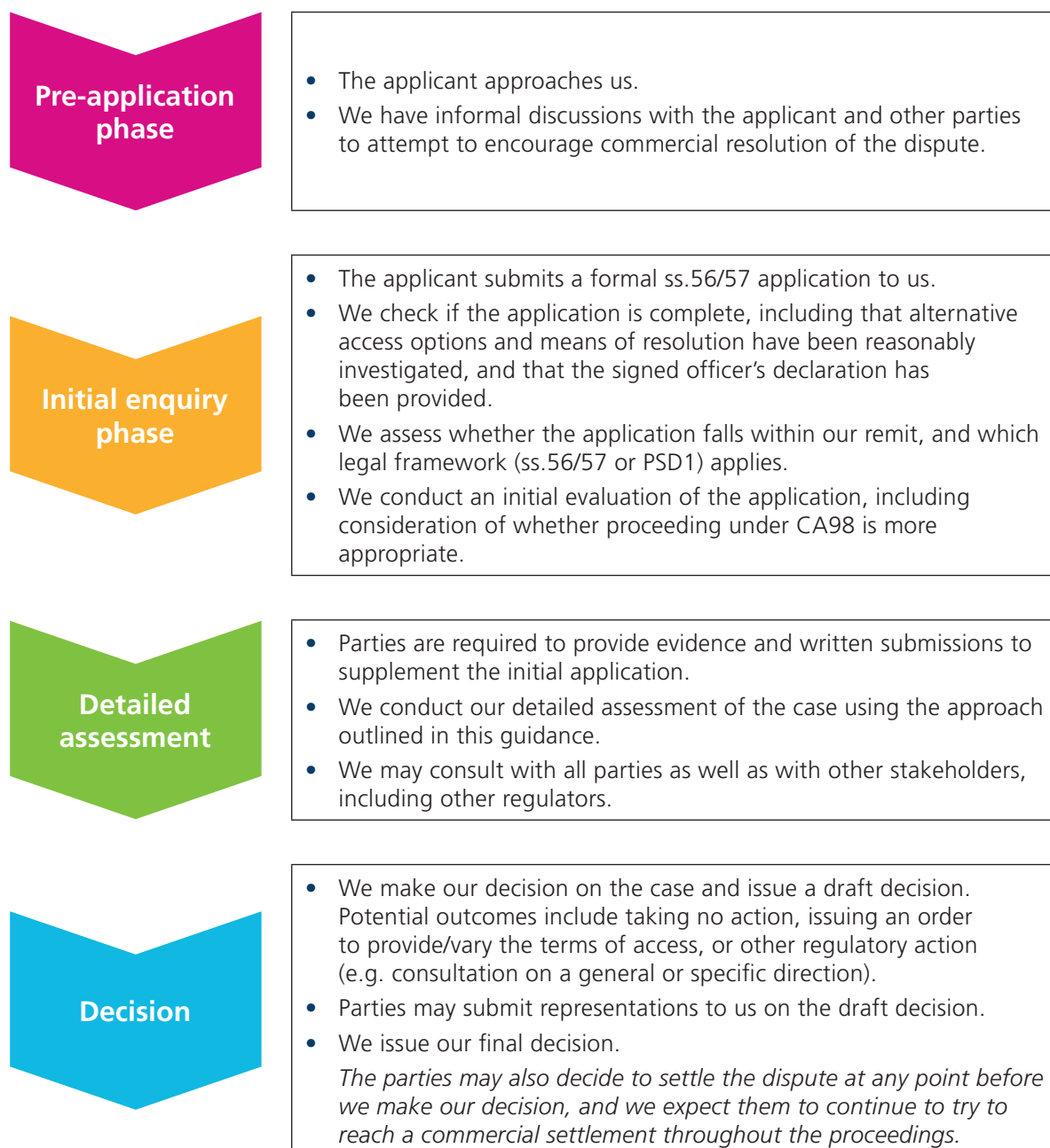
Submission of evidence and cooperation of parties

- 2.19** We expect the parties involved in an application to cooperate with us in submitting relevant and comprehensive evidence and information when we request it, at all stages of our assessment. The nature of the information and the timeframe for submitting it will vary according to the stage of assessment, the complexity of the matters in dispute and the availability of information.

Procedure for considering applications

2.20 Figure 1 sets out the overview of the procedure that we will generally follow when asked to consider an application. The same process will generally be followed for all applications under sections 56 and 57.

Figure 1



3. Confidentiality, working with other regulators and publication

Confidentiality

- 3.1** Confidential information is protected under section 91 FSBRA. Where applicants and access providers consider that information or documents they are submitting to the PSR contain non-public commercially sensitive confidential information, they should identify the specific information concerned and explain why they consider the specific items of information are confidential.
- 3.2** Applicants and access providers should also provide a non-confidential version of their application, any response to the application, and any representation or submissions in relation to the application, so that these can be shared with the other party (or parties) named in the application.
- 3.3** We expect any applicant and access provider to provide a waiver and consent to confidential information being shared by the PSR with other regulatory authorities, and by other regulatory authorities with us, for the purposes of our section 56 and 57 powers (this is to the extent that information gateways do not already permit such sharing of confidential information). Where consent is withheld, this may delay or impact on our assessment of any application. We may refuse an application if we cannot access relevant information.
- 3.4** Parties should note that where we consider it appropriate and subject to certain conditions, we have the power to disclose confidential information without consent under section 92 FSBRA. Where we propose to disclose confidential information without consent, we may liaise with the party whose confidential information it is and give them an opportunity to make representations about that disclosure.

Working with other regulators

- 3.5** We may make inquiries with other regulatory bodies at any point during the process and seek their advice as appropriate. This includes those bodies responsible for prudential, conduct and financial crime regulation of PSPs (such as the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and HMRC), and those responsible for regulating payments systems and payment services (such as the Bank of England and the FCA respectively). Under the Memoranda of Understanding we have agreed with the FCA, the Bank of England and the PRA¹⁹, we have a duty to coordinate and consult with them, and to seek their advice on areas of common regulatory interest. We will also liaise with HMRC and other regulatory bodies and agencies as we consider appropriate. However, our cooperation with these authorities does not replace the responsibility that individual parties have to engage with these regulatory bodies themselves.
- 3.6** Under the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 ('the 2014 Regulations')²⁰, the PSR has 'information gateways', which enable us to disclose confidential information with other authorities and persons under certain conditions. We can also always share information with other authorities and persons with the consent of the party whose confidential information it is.

¹⁹ www.psr.org.uk/mou-between-psr-and-other-financial-regulators

²⁰ SI 2014/882.

- 3.7** We are specifically entitled to share information with the FCA, PRA and the Bank of England, as are they with us, in relation to our functions set out in the 2014 Regulations.
- 3.8** Regulation 3(2) of the 2014 Regulations also enables us to share confidential information with any person for the purpose of enabling or assisting us to discharge our functions, including in relation to sections 56 and 57. This enables us to disclose confidential information for section 56 and 57 purposes with other authorities not specifically listed in the 2014 Regulations – for example, HMRC or the National Crime Agency.

Publication

- 3.9** Under the section 53 (g) and (h) FSBRA regulatory principles, the PSR must exercise its functions as transparently as possible, and must consider the desirability of publishing information relating to any persons on whom it imposes requirements.
- 3.10** In deciding whether to publish information relating to an application, we will balance the interests of transparency in the exercise of our functions and wider awareness of our decisions with fairness to the parties to the dispute and commercial confidentiality.
- 3.11** We may seek the views of the parties to the dispute on what we propose to publish when deciding whether and what information to publish. We will normally not include commercially confidential information in any publication although, as noted above, we do have the power to do so under section 92 under certain conditions.
- 3.12** Where a proposed requirement to grant new access or a proposed variation of an existing agreement is likely to have wider implications or relevance beyond the parties to the dispute, we may decide to share our draft decision more widely and seek the views of other stakeholders. In such cases, we will take into account the benefits of such wider consultation as well the interests of the parties concerned (particularly in respect of any confidential information) and the nature of the proposed disclosure. We may seek the views of the parties to the dispute prior to any disclosure. We will normally publish a summary of any decision we take under section 56 or 57 on our website in connection with those applications that we handle, or at a minimum a summary of the principles underpinning our decision.

4. The pre-application phase

Our expectations of parties in the pre-application phase

- 4.1** When a dispute arises, we would generally expect that the parties involved will first try to resolve it through commercial negotiations and alternative dispute resolution processes. These may include attempts at appropriate mediation. Where an applicant has not done (or attempted) this, we may decide that it is not appropriate to handle the application or to exercise any of our powers until they have shown that they have made reasonable efforts to resolve their dispute. We will generally not consider an application while the matter is the subject of court proceedings, arbitration or mediation.
- 4.2** We expect an applicant to have made reasonable efforts to explore alternative supply options before approaching us. This is particularly important for indirect access, where there are a range of indirect access providers and ways for accessing payments systems.
- 4.3** We also expect applicants to have constructively engaged with their access provider(s), and to have been responsive to suggestions made by their access provider(s) about changes the applicant could make to mitigate the issues in dispute (for example, improvements to compliance processes or controls).
- 4.4** For applications involving direct access, we expect operators of regulated payment systems to be able to satisfy us that they comply with our General Direction 2.²¹
- 4.5** For applications involving indirect access, we expect the indirect access provider to consider whether the issues in dispute are covered by:
- Our Specific Direction 1²², which requires indirect access providers to publish clear and up-to-date information about their indirect access services in respect of access to, and use of, any non-card regulated payment system.
 - Any commitments made under the Code of Conduct for Indirect Access (the Code). This includes the commitment to communicating, in a clear, unambiguous and timely manner, all important information about an applicant's use of services – including any changes which would have a one-off or permanent impact on normal operating conditions. Code subscribers also commit to support Code beneficiaries in creating appropriate transition plans for parties whose indirect access is being terminated.
- 4.6** We also expect all parties to a dispute to continue to negotiate with one another reasonably and constructively. This includes jointly exploring what options are available for resolving the dispute.

²¹ *General Direction 2 (Access) – non-PSR 2009 regulated payment system operators*, published on 25 March 2015, in force from 30 June 2015: www.psr.org.uk/how-psr-regulates/regulatory-framework-and-approach/general-directions. For Bacs, C&C, CHAPS and FPS, General Direction 2 requires operators to have direct access requirements which are 'objective, risk-based and publicly disclosed which permits fair and open access' to these regulated payment systems.

²² *Specific Direction 1 (Access: sponsor Banks)*, published on 25 March 2015, in force from 30 June 2015: www.psr.org.uk/psr-specific-direction-1

Engagement with parties prior to submission of a formal application

- 4.7** If the parties have been unable to resolve a dispute through commercial negotiation or alternative means, the affected party can tell us that it may submit an application to us under sections 56 or 57. During this pre-application phase, we will explore options with the parties and encourage them to resolve their dispute.
- 4.8** Also during this pre-application phase, we will learn about the potential applicant's business, how it uses regulated payment systems to send or receive client funds, and which regulated payment systems the potential applicant uses. We will also ask the potential applicant to explain what it has done to try and obtain alternative access to regulated payment systems, including how it has responded to suggestions or requests made by the access provider which could address the issues in dispute.
- 4.9** We will encourage the potential applicant to clearly articulate and communicate the specific outcomes it seeks when making a formal application (including, for example, which access provider they seek access services from and over what timeframes it may seek to gain or continue to have access).
- 4.10** This might also involve the potential applicant specifying what actions it intends to take while we assess its application. During this pre-application phase (and throughout), we may want to contact the access provider to clarify relevant facts and information about the dispute.

5. The initial enquiry phase

Purpose of the initial enquiry phase

5.1 During this initial enquiry phase we will:

- consider whether the application which has been formally submitted to us is complete
- clarify the facts of the case and the precise scope of the matters to be determined
- conduct an initial assessment of whether it is appropriate for the PSR to consider the application, including whether the submitted application falls within the scope of our statutory powers or whether it would be more appropriate to consider the issue under other regulatory or competition powers we have (for example, under our General Directions, PSD1, the Payment Services Regulations 2009, CA98 or TFEU)

Making an application

5.2 To properly consider applications made under sections 56 and 57, we will need them to contain detailed information about the nature of the dispute and the outcomes sought.

5.3 We have set out guidance on the format and content of applications in Annex 2. Applicants should ensure that the information provided is specific and relevant. For example, they should clearly identify and assess their access options, and stipulate which access provider and regulated payment systems the application relates to.

5.4 Submitting unnecessary or irrelevant information or evidence could delay our assessment. Documents created for the purpose of submitting the application should be provided to us in searchable electronic formats.

5.5 Applications under sections 56 or 57 should be submitted to:

Payment Systems Regulator
25 The North Colonnade
Canary Wharf
London E14 5HS

Email: PSRapplications@psr.org.uk

5.6 We will aim to acknowledge receipt of applications made by email within one working day.

5.7 We will review the application and assess whether it contains the necessary information, documentation and detail. We will ask the applicant for more detail if necessary.

5.8 The application must include a declaration in the form provided in Annex 2, signed by an officer of the applicant. We will not assess an application until this declaration is provided.

Clarification of facts and issues

- 5.9** During the initial enquiry phase, we may need to clarify certain points made in the application. We may also need to make enquiries to understand the precise scope of the matters under dispute. We may hold meetings with the parties to the dispute, separately or jointly. This will also help us determine whether the application is complete.
- 5.10** As part of this phase we will usually send the non-confidential version of the application to the other party (or parties) named in it.²³

Our assessment of whether it is appropriate for us to consider the application

- 5.11** If we are satisfied that the applicant has given us enough information to consider the application, we will open an initial enquiry.
- 5.12** We will first consider whether the statutory conditions for the application have been met, and if the application falls within the relevant scope of section 56 or 57 of FSBRA. This means that, among others, we will check whether:
- the payment system in question is a regulated payment system
 - the application is a PSP, or prospective PSP, who participates in a regulated payment system, or a person who uses services provided by a regulated payment system
 - for access applications, the applicant uses, or intends to use, the regulated payment system to transfer funds on behalf of its clients (as opposed to for its own operational purposes such as paying salaries)
 - section 108(1) FSBRA and Part 8 of the Payment Services Regulations 2009 apply
- 5.13** We will consider whether it is more appropriate for the issues in dispute to be addressed through other means and mechanisms. This might include initiating regulatory enforcement proceedings under our General Directions or regulatory proceedings under our PPG to make a Specific or General Direction. These proceedings could be initiated alongside the exercise of our powers under sections 56 and 57, or as an alternative to hearing a dispute under these powers. We will also consider whether the nature of the issues in dispute is more appropriately considered via the relevant competition provisions under CA98 or TFEU (see Chapter 2).
- 5.14** We will review the expected outcomes sought by each party, and determine whether there is any provision in law which would prevent the applicant gaining access²⁴ or that would affect our ability or discretion in making any order.
- 5.15** We will also consider whether:
- there are additional access options, or more appropriate means and mechanisms for dispute resolution, available to the parties
 - any future changes (for example, legal or market-driven) may mitigate the issues in dispute

²³ Parties should note that, as set out in Chapter 3, where we consider it appropriate, and subject to certain conditions, we have the power to disclose confidential information without consent (s.92 FSBRA).

²⁴ For instance, Regulation 11 of the Money Laundering Regulations 2007 requires regulated entities to terminate business relationships where they are unable to apply customer due diligence measures.

- 5.16** Among other factors we may consider in the initial enquiry phase are the potential impact of the application in terms of advancing the PSR's statutory objectives, functions and duties.
- 5.17** We will also consider the urgency of the application and the timelines involved in handling it.
- 5.18** As we set out in Chapter 3, we may also make preliminary inquiries with other regulatory bodies to help us determine whether it is appropriate for us to consider some applications.

Notification of our decision to accept or reject the application

- 5.19** As soon as practicable after we have decided whether it is appropriate for us to handle the application, we will inform the parties named in the application that we are opening a case, or that we are rejecting the application. If we reject it we will provide summary reasons for doing so.

6. The detailed assessment phase

The purpose of the detailed assessment phase

- 6.1** In the detailed assessment phase we collect and analyse more evidence and information to enable us to reach a reasoned decision. To do this we need the parties to the dispute to provide to us any information and documents we request, and cooperate with us in a timely and constructive manner. We may also request information from other bodies such as other regulators or other parties.

The process for our detailed assessment of the application

- 6.2** The detailed assessment will be managed at the PSR by a case lead. We will write to the parties to provide the case lead's contact details once the detailed assessment has started.
- 6.3** We will also give the parties information about our decision-making process and an indicative timetable within which we expect to make our decision. The case lead will be responsible for corresponding with the parties to tell them what information we need them to provide to us during the detailed assessment stage and the deadlines to do so.
- 6.4** For straightforward cases we would aim to determine an application within two to three months, while for more complex applications the assessment may take longer (up to six months).²⁵
- 6.5** At this stage in the process, we may also consider whether urgent action is needed and would be appropriate or proportionate. We have the ability to make a Specific Direction under section 54 FSBRA, for example to maintain an existing agreement while we carry out a detailed assessment of the application. Paragraphs 3 to 6 of the PPG set out our approach to giving directions under section 54 and imposing requirements under section 55.
- 6.6** In urgent cases, we may require the granting of new access or the variation of an agreement without giving notice, or we may only give a short time period in which representations can be made (see paragraphs 4.2 and 4.3 PPG, for example).
- 6.7** We would however expect that it is only in exceptional circumstances that we would be convinced that it is necessary, appropriate and proportionate for us to take urgent action.

Submitting additional evidence and information

- 6.8** We will gather additional evidence and information to help us carry out the detailed assessment. We might require the parties named in the application, or third parties, to give us information through the exercise of our power to obtain information and documents (under section 81 FSBRA). Where a complex issue is involved we may also require a report from a participant or from a skilled person on specific issues (under section 82 FSBRA).²⁶

²⁵ The time it takes us to determine an application will depend among other things on the complexity of the issues raised and the speed with which information is provided to us by the parties.

²⁶ Paragraphs 25 to 31 of our PPG include additional information on our information gathering and investigative powers.

- 6.9** We expect that the evidence and information provided as part of the detailed assessment phase will mostly be in documents (such as explanations, information, data, commercial or financial analysis, or representations by the parties). During this phase we may convene further meetings with the parties to clarify the issues and evidence or information they have submitted to us. Any party to the dispute can request a meeting with us at any time.

The assessment framework and substantive test we will apply

- 6.10** Sections 56 and 57 FSBA do not specify an assessment framework that we should apply when considering applications made under these provisions. However, in giving this guidance and determining general policy and principles, we are required to act in a way which advances our statutory objectives²⁷ which must include giving guidance about how we intend to advance those objectives.²⁸
- 6.11** We are committed to promoting payment systems in which PSPs' access is not impeded more than is necessary to appropriately safeguard against the specific risks associated with supplying access. To determine whether access has been impeded 'more than is necessary', we will assess applications having regard to the following substantive test: *'whether a provider's access requirements and approach to supplying access (including the terms, conditions, fees and charges on which any access is offered) to a regulated payment system are proportionate, objective and non-discriminatory, and do not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk, and business risk and to protect the financial and operational stability of that regulated payment system'*.

Factors we may take into account in our assessment

- 6.12** Our approach to the detailed assessment of applications may differ depending on the specific features of an application, and the nature of the issues in dispute. For example, if an application concerns an IAP's assessment of the financial crime risks of supplying a particular applicant, we will focus on the IAP's approach to assessing these risks and whether it satisfies our substantive test, given the risk framework they have in place to comply with financial crime regulation. Matters relating to more commercial considerations (such as prices, for example) may require a more detailed analysis of the underlying evidence.
- 6.13** A non-exhaustive list of factors that we may consider when assessing applications under sections 56 and 57 includes:
- How much actual and potential competition is there in the supply of access?
 - Are there potential alternative access options available to the applicant? These could include direct access, technical access or supply from other access providers.
 - Has the access provider discussed the dispute meaningfully and constructively with the applicant? Has the access provider given the applicant a meaningful opportunity to address any concerns the access provider may have?
 - Has the applicant responded to any requests for information or changes within appropriate timescales? Has the applicant taken concrete and timely steps to address the access provider's concerns?

²⁷ Section 49(1) and (4) FSBA.

²⁸ Section 96(2) FSBA.

- Has the access provider considered the applicant's individual circumstances, including the individual settlement, operational and business risks it may present?
- What, if any, are the potential impacts on end-users and financial stability?
- Has the access provider offered the applicant similar terms and conditions to other PSPs that engage in similar transactions or have a similar profile, taking risk considerations into account (in other words, is it acting in a non-discriminatory way)? We may ask the access provider to explain any differences.
- Can the access provider objectively justify the terms and conditions offered (including a decision to not supply access)? If an access provider has not given a sound justification for its decision, we may require it to provide further reasons.
- Are the access provider's terms and conditions, or is its decision to not supply access to an applicant, proportionate? We may assess whether the terms and conditions applied by the access provider to the individual applicant go beyond what may be necessary to achieve the access provider's objectives and the risks it has to mitigate. Could the same objectives be fulfilled in a less onerous and more effective way (for example, by charging a higher price for managing risks as opposed to deciding not to supply or to terminate existing supply)? We may therefore assess proportionality by reference to the interests of the access provider and the risks it needs to manage.
- Are there any previous cases in which the same applicant, or the same access provider, has been in a dispute and which has resulted in an application under section 56 or 57 being submitted to us?

Types of evidence and information we may require from parties

6.14 The types of evidence and information that we may require from the parties will vary according to the specific issues raised in the application. A non-exhaustive list of the types of information that we may consider, or request from the parties named in the application (or others, as appropriate), includes:

- Copies of key correspondence between the applicant and access provider, including any documents submitted by the applicant in support of its access request.
- Information on how the applicant has used (or intends to use) its account(s) to access regulated payment systems, and what proportion of its transfers of client funds are made (or intended to be made) using which regulated payment systems and non-regulated payment systems (such as SWIFT, for example).
- Information relating to the commercial and business strategies of the parties. We may also request information about how much (if at all) the applicant's services in retail markets overlap with the access provider's own services.
- Information about the wider market and the competitive context in which the access provider supplies access. This may include the parties' understanding of:
 - the different types of access services offered in the market and the number of active suppliers of such services
 - the extent of differentiation across providers in terms of services offered
 - the technical capabilities of different access providers
 - the characteristics of other providers such as technology used

- Cost, price and revenue information relevant to the application. This will generally be forward looking, but may also involve historical information. It might include information about:
 - the expected costs of serving the applicant (including costs relating to financial crime regulatory compliance and controls)
 - the applicable tariff structure
 - the past or expected volumes and associated revenues attached to the particular applicant

This information might also include estimates of costs and revenues from the provision of services other than access (to enable us to assess revenues and costs across the whole relationship between the access provider and the applicant) and the level of economic return required from the applicant to make it commercially attractive to the access provider.

- Comparative information on the prices, costs, revenues, volumes and products offered to similar types of PSPs (for example, those with similar sizes or volumes of transactions, serving similar client bases, similar uses of regulated payment systems, similar geographies and so on). This may include any models or studies the access provider has produced that provide information about the costs of serving different types of PSPs (including for internal purposes). We may also request information about the extent to which specific contractual terms (including price) vary across similar types of PSPs, and the average economic return derived from other, similar types of PSP. This information will have to be provided in a way that enables us to benchmark the applicant relative to other PSPs supplied by the access provider.
- Information about the assessment of the operational, business and settlement risks that apply to the applicant, and the cost implications of these risks. For indirect access we may also request information about the risk-based financial crime assessment process and the level of risk (including what risk factors and variables were taken into account). This information will have to be provided in a way that makes it clear to us how such risks compare to similar types of PSPs supplied by the access provider. We may also request information about any commercial thresholds applied and how they are linked to underlying costs. We may require access providers to demonstrate their methodology for linking commercial thresholds to underlying costs. We may also request information about any 'risk premiums' attached to the commercial terms offered to PSPs, how any such risk premium is linked to underlying risks and the costs associated with managing those risks, and how that risk premium was quantified.
- Information about the internal governance process used by the access provider to assess the access request. In particular we may request information which will enable us to assess whether the PSP's application had an appropriate internal review by the access provider.
- We may also ask for other relevant documentation about how the access provider assessed the application, including but not limited to copies of any internal recommendations and assessments used to decide whether to supply or the terms on which to supply access to the applicant.
- We may also ask the access provider for information about how it handled access requests from other similar types of PSPs (those with, for example, a similar size or volume of transactions, a similar client base, similar use of payment systems, similar geographies etc.), and the outcome of those assessments.

6.15 We may also require an access provider to explain, and provide evidence about, how it considers its grounds for refusal, variation or termination of access are consistent with the substantive test set out in paragraph 6.11. It should give us evidence to support its argument.

- 6.16** In relation to section 57 applications, we may also ask the access provider to explain the specific commercial or risk factors which have changed which have led the access provider to vary the terms or terminate the access arrangement. It should give evidence to support its explanations.
- 6.17** We may also request that other regulatory bodies – such as financial crime supervisory authorities – provide to us such information as we deem appropriate in relation to the parties named in the application.

7. Decision

Draft decision and notice of a proposed requirement to grant access or a proposed variation of an agreement

- 7.1** Once we have assessed an application, we will issue a draft decision to the parties, where applicable with a notice of any proposed requirement to grant access or vary the terms of an agreement. This will set out our provisional decision and our reasons for it, as well as the next steps and the timescale for representations to be made. We may decide that it is appropriate to use our powers under section 56 and 57 FSBRA to require the access provider to grant access or vary an existing access agreement (or agreement for services provided by regulated payment systems). In urgent cases, we may require the granting of new access or the variation of an existing access agreement without giving notice.

Direct access

- 7.2** Direct PSPs participate in a given regulated payment system under a common set of terms and conditions, so we consider it unlikely that these PSPs will apply to vary the terms of direct access arrangements. The exceptions may be if an individual applicant has been given non-standard terms or treatment, or the access requirements otherwise do not meet the standards set out in General Direction 2 (in which case we may also take regulatory enforcement action against the system operator for failing to comply with General Direction 2). If an applicant has been given individual non-standard terms which are inconsistent with our substantive test, we may order the access provider (in this case, the operator) to provide direct access on standardised and compliant terms.
- 7.3** If appropriate, we may issue an order requiring an operator to enter a (new) agreement with the applicant to enable it to become a direct PSP with regard to that regulated payment system. This could include enabling the applicant to directly interface with the central payment infrastructure and thereby participate in that regulated payment system.

Indirect access

- 7.4** For section 56 and 57 indirect access applications, we may conclude that an access provider's access approach or requirements:
- are not consistent with our substantive test as set out in paragraph 6.11, or
 - have been applied to the applicant's individual case in a way that is not consistent with our substantive test

If this is the case, we may require the access provider to change its access approach or requirements, or to apply them to the applicant in a way that is consistent with our substantive test.

- 7.5** For section 56 indirect access applications, we may also consider it appropriate to issue an order requiring an IAP to enter into a new agreement to enable the applicant to become an indirect PSP with regard to a specific regulated payment system. Depending on the nature of the application, we may also specify other terms of access, or simply require the terms applied to the applicant to be consistent with our substantive test.

- 7.6** For section 57 indirect access applications we may issue an order varying particular contractual terms, conditions, fees or charges.

Opportunity to make representations on the draft decision

- 7.7** We will send the parties our draft decision and any notice of a proposed requirement to grant access or a proposed variation of an agreement. We will normally allow 14 days for representations to be made in writing. We will take into account the circumstances of each case. In some situations it may be appropriate to give parties more time for representations to be made. In urgent cases, the period in which representations can be made might be shortened (see paragraphs 6.6 to 6.7 above).
- 7.8** We may also hold meetings with one or more of the parties. If we do not propose a meeting, a party affected by the draft decision may request one. It should state why a meeting is necessary. We will consider such requests and we may agree to convene a meeting.
- 7.9** In the period after we send the parties the draft decision, we will continue to encourage them to negotiate to try to resolve their dispute before we publish our final decision.

Our final decision

- 7.10** We will take account of representations received in reaching our final decision on whether to require an access provider to grant new access or vary an existing agreement.
- 7.11** When we do decide to require either of these actions, we will send the parties named in the application a final notice of a requirement to grant new access under section 56, or a variation of an existing agreement under section 57. The notice will set out our reasons for the decision.
- 7.12** When we decide not to require the granting of new access or the variation of an existing agreement, we will give the parties a statement summarising our reasons.

Appeals

- 7.13** Section 76(7) FSBRA provides that any person who is affected by a decision to require the granting of new access or the variation of an existing agreement can appeal that decision to the Competition and Markets Authority (CMA).
- 7.14** Section 79 FSBRA sets out additional provisions relating to such appeals to the CMA:
- a. In determining the appeal the CMA must have regard, to the same extent as the PSR must, to the matters to which we must have regard in discharging our functions, including our statutory objectives.
 - b. In determining the appeal the CMA may have regard to any matter to which we were not able to have regard in relation to the decision, but the CMA must not, in the exercise of that power, have regard to any matter to which the PSR would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
 - c. The CMA must either dismiss the appeal, or quash the whole or part of the decision to which the appeal relates.

d. The CMA may quash a decision only to the extent that it is satisfied that our decision was wrong on one or more of the following grounds:

- We failed properly to have regard to any matter that we must have regard to in discharging our functions.
- We failed to give the appropriate weight to any matter that we must have regard to in discharging our functions.
- Our decision was based, wholly or partly, on an error of fact.
- Our decision was wrong in law.

7.15 Our decisions to *not* require the granting of access or the variation of an agreement, like all administrative decisions, can be the subject of judicial review by the courts.

Annex 1

Our statutory powers under FSBRA in relation to access applications and applications about the use of services provided by regulated payment systems

Section 56: Power to require granting of access to payment systems

1. This section applies where a person ('the applicant') applies for an order under this section.
2. The Payment Systems Regulator may by order require the operator of a regulated payment system to enable the applicant to become a payment service provider in relation to the system.
3. The Payment Systems Regulator may by order require any payment service agreement with the applicant to enable the applicant to become a payment service provider in relation to the system.
4. An order under this section may provide for the applicant to become a payment service provider in relation to a payment system—
 - a. for a period specified in the order;
 - b. on terms and conditions specified in the order.

Section 57: Variation of agreements relating to payment systems

1. This section applies to the following agreements—
 - a. any agreement made between the operator of a regulated payment system and a payment service provider;
 - b. any agreement made between a payment service provider with direct access to a regulated payment system and another person for the purpose of enabling that other person to become a payment service provider in relation to the system;
 - c. any agreement concerning fees or charges payable in connection with—
 - i. participation in a regulated payment system, or
 - ii. the use of services provided by a regulated payment system.

2. The Payment Systems Regulator may, on the application of a party to an agreement to which this section applies, vary the agreement by—
 - a. varying any of the fees or charges payable under the agreement, or
 - b. in the case of an agreement within subsection (1)(a) or (b), varying any other terms and conditions relating to the payment service provider's participation in the payment system.
3. In the case of an agreement within subsection (1)(b), the reference in subsection (2)(b) to the payment service provider is to the payment service provider which does not have direct access to the payment system.
4. The power under this section to vary any fee or charge includes power to specify a maximum fee or charge.
5. If the Payment Systems Regulator varies an agreement under this section, the agreement has effect subject to the variation.

Annex 2

Information we require from parties when making an application

The contents of the application

- 2.1** This annex sets out guidelines for applicants on the format and content of applications made under sections 56 or 57 and in connection with any other disputes.
- 2.2** Applicants are reminded that failing to follow these guidelines may result in the application not having enough information for us to be able to consider it properly.
- 2.3** If an application does not contain all the necessary information, we will advise the applicant what else we need before we will be able to consider the application, and allocate an initial enquiry number to the application.
- 2.4** It would be helpful if applicants could, wherever possible, provide their application and any relevant supporting documents in Word format (ideally) or in other searchable electronic formats (including searchable PDF).
- 2.5** Applications should contain the business name, address, telephone number and email address of the applicant and the contact details of an individual who can discuss the details of the application.
- 2.6** An application should contain the following information:¹

Section A: Overview of the application

- The nature of the applicant's business and its scale (local, national, international).²
- The broad facts of the application and its commercial context.
- The legal basis for the application (for example, section 56 or 57 FSBRA).
- The proposed specific outcome or outcomes sought by the applicant for the dispute.

Section B: Details of the dispute

- The relevant regulated payment system(s) (and any non-regulated payment systems used, such as SWIFT) and relevant access products or services.
- The full facts of the dispute and its commercial context, including all relevant background and evidence.

¹ Where the applicant considers that any information is not relevant, or believes that any information is not available, they should explain why this is the case.

² Details of relevant turnover or volumes/values of relevant transactions would also be helpful.

- The full details of any justification given for the behaviour or action leading to the dispute.
- The reasons why the applicant has applied to us.
- If applicable, copies of the relevant contract or terms which are the subject of the dispute.
- If the application relates to a request for access to a regulated payment system: the business plans of any relevant product or service, including forecasts, demonstrating how and when the applicant intended or intends to launch the products or services that depend on access to the relevant regulated payment system(s).
- If the application relates to fees, charges, terms or conditions of an agreement relating to a regulated payment system: a copy of the relevant version of the agreement or contract, clearly identifying the relevant clauses.
- If the application relates to fees or charges being too high: an explanation of why the applicant considers that the fees are inappropriately high and might be different from those applied to other PSPs in similar circumstances.
- If the application relates to another matter: enough information and supporting evidence to enable us to understand the context and subject matter of the application.
- If there are any regulatory conditions applying to any party to the dispute: the full details of those conditions and whether (and, if so, why) the applicant considers that a relevant obligation is not being met by the other party.

Section C: History of commercial negotiations

- The full details of any negotiations which have taken place between the applicant and the other party (or parties) to the dispute, including documentary evidence of those negotiations, and a detailed chronology of events.
- In the event that a party has refused to enter into negotiations: full details of the applicant's attempts to enter into negotiations, including evidence of those attempts.
- The details of any options or proposed solutions put forward by any party during negotiations, including what was accepted or rejected, and why.
- Copies of any relevant correspondence (including emails) between the applicant and the access provider.

Section D: Outcomes sought

- The full details of the specific outcomes sought by the applicant, with reasons and justifications.
- The legal basis for the desired outcome (for example, section 56 or 57 FSBRA).
- The applicant's assessment of how their desired outcome would be consistent with our statutory duties, objectives and regulatory principles (as set out in sections 49 to 53 FSBRA) and with our substantive test (as set out in paragraph 6.11 of this guidance).³

³ The applicant may also want to give its view on how the subject matter of the dispute and the desired outcome relate to broader regulatory issues or policies (for example, where the matter in dispute is also subject to any investigation, review, consultation or other programme of work by the PSR or another regulator).

Section E: Other supporting information and evidence

- If applicable, details about the provision of any relevant product or service which depends on access to the regulated payment system which is the subject of the application, including business plans relating to the relevant product or service (see Section B).
- Relevant documentary evidence of commercial negotiations between the applicant and other access providers, and a chronology of events where appropriate (see Section C).
- Relevant evidence on what alternative access options have been considered by the applicant, and the reasons for their rejection.
- Any other relevant supporting information or documentary evidence.

Confidentiality

- 2.7** When submitting an application, applicants should identify information which they consider to be confidential and which, if disclosed to the other party (or parties) to the dispute, or to third parties (as the case may be), would significantly harm the legitimate interests of the party to whom the information relates. Applicants should also explain why they consider the information to be confidential.
- 2.8** Applicants should provide us with a non-confidential version of their application and any supporting documents in which they redact the information they consider to be confidential.

Form of declaration by an officer of the company

- 2.9** Applications made under sections 56 or 57 FSBRA and in connection with any other disputes should be accompanied by the following declaration by an officer of the company:

'All information and evidence provided in making this application to the PSR is, to the best of my knowledge and belief, true and accurate.

Signed: []

Position in the company: []

Date: []'

Annex 3

Glossary

This glossary sets out the terms, expressions and abbreviations used in this guidance.

Expression or abbreviation	Definition
access requirements	Any rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a regulated payment system, applied by an access provider.
agency agreement (also referred to as a sponsor agreement)	An agreement in which an indirect PSP obtains indirect access to one or more payment systems through an Indirect Access Provider; the agreement includes the provision of one or more unique sort codes.
agency IPSP	An indirect PSP which has its own sort code provided by its Indirect Access Provider (sponsor bank).
aggregator	An organisation providing technical access to one or more payment systems' central infrastructure for multiple PSPs through a shared gateway.
AML (anti-money laundering)	The package of initiatives and regulations directed at preventing money laundering, including the Money Laundering Regulations 2007.
Bacs	The regulated payment system which processes payments through two principal electronic payment schemes: Direct Debit and Bacs Direct Credit. The payment system is operated by Bacs Payment Schemes Limited (BPSL).
the Bank	The Bank of England.
Barclays	Barclays PLC, and all companies and business owned or controlled by Barclays PLC to the extent that they participate in a regulated payment system and provide sponsor bank services, including but not limited to Barclays Bank PLC and Barclays Bank.
C&C (Cheque & Credit)	The regulated payment system in England, Scotland and Wales that processes cheques and other paper instruments. It is operated by Cheque and Credit Clearing Company Limited (C&CCCL).
CA98	Competition Act 1998.
CA98 Guidance	Enforcement of the Competition Act 1998 – A guide to the PSR's powers and procedures (CA98 Guidance) – a document published on 13 August 2015 and accessible at www.psr.org.uk/competition-act-1998-ca98-guidance .
CHAPS (Clearing House Automated Payment System)	The UK's real-time, high-value sterling regulated payment system, where payments are settled over the Bank of England's Real-Time Gross Settlement (RTGS) system. It is operated by CHAPS Co.
CMA	Competition and Markets Authority.
CMA-appealable decision	A 'CMA-appealable decision' means: <ul style="list-style-type: none"> a. a decision to impose a requirement under s. 56 FSBRA b. a decision to vary an agreement under s. 57 FSBRA, or c. a decision to impose a requirement under s. 58 FSBRA (appeals in accordance with ss.76 and 77) FSBRA)

Expression or abbreviation	Definition
Code of Conduct ('Code of Conduct for indirect access to UK payment systems', known as 'the IAP Code of Conduct')	The voluntary Code of Conduct for indirect access to UK payment systems, known as the IAP Code of Conduct, established by the industry and administered by Payments UK. It can be accessed here: www.accesstopaymentssystem.co.uk/code-of-conduct .
Customer Due Diligence (CDD)	Also referred to as Know Your Customer (KYC) requirements. Certain regulated firms are required to carry out customer due diligence measures, which involve: <ol style="list-style-type: none"> identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify their identity so that the relevant person is satisfied that they know who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement and obtaining information on the purpose and intended nature of the business relationship
direct access	Access to a regulated payment system to enable a PSP to provide services for the purposes of enabling the transfer of funds using the regulated payment system, as a result of arrangements made between that PSP and the operator (and other participants, as applicable). See also s.42(6) FSBRA.
direct payment service provider (direct PSP)	A PSP with direct access to a regulated payment system.
FCA	Financial Conduct Authority.
Financial Action Task Force (FATF)	An inter-governmental body which develops and promotes policies to combat money laundering and terrorist financing. Its website is: www.fatf-gafi.org/about/ .
2014 Regulations	Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 (SI 2014/882).
FMIRs	The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979), which implement the European Settlement Finality Directive (Directive 98/26/EC) (SFD) in the UK, as amended from time to time.
FPS (Faster Payments Scheme)	The regulated payment system that provides near real-time payments as well as standing orders. It is operated by Faster Payments Scheme Limited (FPSL).
FSBRA	Financial Services (Banking Reform) Act 2013.
FSMA	Financial Services and Markets Act 2000.
General Direction 2	General Direction 2 (Access) – non-PSR 2009 regulated payment system operators, a direction published on 25 March 2015, in force from 30 June 2015, and accessible at www.psr.org.uk/how-psr-regulates/regulatory-framework-and-approach/general-directions .
HMRC	Her Majesty's Revenue and Customs.
HSBC	HSBC Holdings PLC, and all companies and business owned or controlled by HSBC Holdings PLC to the extent that they participate in a regulated payment system and provide sponsor bank services, including but not limited to HSBC Bank PLC.
indirect access	Access to a regulated payment system through a contractual arrangement with a PSP to enable it to provide services (for the purposes of enabling the transfer of funds using that regulated payment system) to persons who are not participants in the system (i.e. its customers).

Expression or abbreviation	Definition
Indirect access provider (IAP)	A PSP that provides indirect access to a payment system to other PSPs for the purpose of enabling the transfer of funds within the United Kingdom. This is the case irrespective of whether the IAP provides the indirect PSP with a unique sort code (i.e. whether or not the indirect PSP is listed as the 'owning bank' for a sort code in the Industry Sort Code Directory, with the IAP listed as the 'settlement bank') or not.
indirect payment service provider (indirect PSP)	A PSP that has indirect access.
Information Hub	This refers to the Information Hub being developed by industry and referred to in our proposals for Indirect Access in Supporting Paper 4: Access to payment systems. It can be accessed at www.accesstopaymentsystems.co.uk .
LINK	The regulated payment system which enables end users to take cash out of their accounts (amongst other activities) using the network of ATMs in the UK. It is operated by LINK Scheme.
Lloyds	Lloyds Banking Group PLC, and all companies and business owned or controlled by Lloyds Banking Group PLC to the extent that they participate in a regulated payment system and provide sponsor bank services, including but not limited to Lloyds Bank PLC, HBOS, Bank of Scotland PLC and Halifax.
MasterCard	The regulated payment system supporting payments made by cards and operated by MasterCard Inc.
MLD (Third EU Directive on Money Laundering)	Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the EU on 25 November 2005.
Money Laundering Regulations 2007 (MLRs 2007)	The Money Laundering Regulations 2007 (SI 2007/2157), which implements the third EU Money Laundering Directive (Directive 2005/60/EC) in the UK, as amended from time to time.
money remittance	A payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee.
Money Service Businesses	Under Regulation 2 of the Money Laundering Regulations 2007, 'Money Service Business' means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers.
NICC (Northern Ireland Cheque Clearing)	The regulated payment system in Northern Ireland that processes cheques and other paper instruments. It is operated by Belfast Bankers' Clearing Company Ltd.
(our) objectives	The PSR's statutory objectives as set out in ss.50 to 52 FSBRA – these are the competition objective, the innovation objective and the service-user objective.
Objectives Guidance	Objectives Guidance, a document published on 25 March 2015 and accessible at www.psr.org.uk/objectives-guidance .
operator (payment system operator)	In relation to a payment system, any person with responsibility under a payment system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.
participant(s)	In relation to a regulated payment system, any operator, payment service provider and infrastructure provider to a regulated payment system. See also s. 42(2) FSBRA.
payment service provider (PSP)	A PSP, in relation to a payment system, means any person who provides services to consumers or businesses who are not participants in the system, for the purposes of enabling the transfer of funds using that payment system. This includes direct PSPs and indirect PSPs.

Expression or abbreviation	Definition
payment system	A system which is operated by one or more persons in the course of business for the purpose of enabling persons to make transfers of funds, and includes a system which is designed to facilitate the transfer of funds using another payment system. Only payment systems which are designated by the Treasury are 'regulated payment systems'. (See also section 41 of FSBRA).
Powers and Procedures Guidance (PPG)	Powers and Procedures Guidance (PPG), a document published on 25 March 2015 and accessible at www.psr.org.uk/powers-and-procedures-guidance .
PRA	Prudential Regulation Authority.
PSD (EU Directive on Payment Services)	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC of 13 November 2007, published in the Official Journal of the EU on 5 December 2007.
PSR (Payment Systems Regulator)	The Payment Systems Regulator Limited, the body corporate established by the FCA under section 40(1) of FSBRA.
PSRs 2009 (Payment Services Regulations 2009)	The Payment Services Regulations 2009 (SI 2009/ 209), which implement the PSD in the UK, as amended from time to time.
RBS	The Royal Bank of Scotland Group PLC, and all companies and business owned or controlled by The Royal Bank of Scotland Group PLC to the extent that they participate in a regulated payment system and provide sponsor bank services, including but not limited to The Royal Bank of Scotland, NatWest, National Westminster Bank and Coutts & Co.
regulated payment system	Any payment systems designated by the Treasury in accordance with s. 43 FSBRA. As of the date of publication, this included Bacs, C&C, CHAPS, FPS, LINK, NICC, MasterCard and Visa.
service-user	Those who use, or are likely to use, services provided by regulated payment systems.
SFD (EU Settlement Finality Directive)	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems published in the Official Journal of the EU on 11 June 1998.
Specific Direction 1 (also known as the 'Sponsor Bank Information Direction')	Specific Direction 1 (Access: sponsor Banks), a direction published on 25 March 2015, in force from 30 June 2015, and accessible at www.psr.org.uk/psr-specific-direction-1 .
technical access	The manner in which a PSP technically connects with either a payment system infrastructure provider, an operator, a provider of indirect access, or a third-party service provider in order to enable the transfer of funds.
TFEU (Treaty on the Functioning of the European Union)	The Consolidated Version of the Treaty on the Functioning of the European Union (2012 OJ C326/47).
(the) Treasury	Her Majesty's Treasury.
Visa (Visa Europe)	The regulated payment system supporting payments made by cards and operated by Visa Europe and Visa UK Limited.

