DECISION NOTICE

To: **National Westminster Bank Plc**
Royal Bank of Scotland Plc
Ulster Bank Ltd
Coutts & Company

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Date: **12 May 2022**

1. ACTION

1.1. For the reasons given in this Decision Notice ('Notice'), the Payment Systems Regulator ('PSR') hereby:

(1) imposes on National Westminster Bank Plc, Royal Bank of Scotland Plc, Ulster Bank Ltd and Coutts & Company (together 'the Banks') a financial penalty of £1,820,000 pursuant to Regulation 6 of the Payment Card Interchange Fee Regulations 2015 ('PCIFRs');

and,

(2) has decided to publish details of the Banks' compliance failures and related financial penalties pursuant to Regulation 5 of the PCIFRs.

1.2. The Banks agreed to settle at the earliest possible stage and therefore qualified for a 30% early settlement discount in accordance with the PSR's approach to early settlement, as set out in the relevant penalty statement applicable to these breaches. Were it not for this discount, the PSR would have imposed a financial penalty of £2,600,000 on the Banks.

2. SUMMARY OF REASONS

2.1. The Banks were all members of NatWest Group during the Relevant Period. The Banks failed to comply with Articles 4 and 10(5) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (the 'EU IFR').

Article 4 of the EU IFR and commercial cards

2.2. In most cases, when a consumer (payer) uses their card to make a payment for goods or services in a shop or online (i.e. to pay a merchant/payee), the consumer's bank (the issuer/payment service provider) will request a fee from the merchant's bank (the acquirer). This is known as the interchange fee. A diagram setting out a typical 'four-party' transaction appears in Annex 2 below.

2.3. Acquirers typically pass on the cost of interchange fees to their merchants through the fees they charge them (the 'Merchant Service Charge'). In turn, merchants may incorporate these costs, like other costs, into the price they charge for their goods and services. Therefore, consumers potentially bear the ultimate cost of high interchange fees.

2.4. Card schemes, also known as card payment systems, enable card payments by providing a network that joins up the consumer, the issuer, the merchant and the acquirer. Interchange fees are determined by the card schemes in the case of multilateral interchange fees. Historically, competition between card schemes to attract issuers to issue cards with their scheme has led to higher rather than lower interchange fees, which is in contrast with the usual effect of competition in a market economy. This is because the higher the interchange fee, the higher the incentive for the issuer to join that particular card scheme.

2.5. From 9 December 2015, Articles 3 and 4 of the EU IFR capped the interchange fees that an issuer can request on consumer debit card and consumer credit card transactions at 0.2% (for debit cards) and 0.3% (for credit cards) of the transaction value. In capping the interchange fees that can be requested on consumer card transactions, the EU IFR sought to facilitate a reduction in the fees passed on to merchants and, ultimately, consumers.

2.6. Transactions with commercial cards are exempt from the interchange fee caps. However, this exemption only applies where the card is limited in use to business expenses and the balance of the card is settled directly from the business' bank account. This is called 'central settlement'. For centrally settled cards, the statement requiring payment is typically sent directly to the business for payment.

2.7. The balance of a business card can also be paid from the personal bank account of the employee of the business who is entitled to use the card. In such cases, the employee cardholder will typically seek reimbursement from its employer of the business expenses incurred. When the balance of the business card is settled from the bank account of the employee cardholder, this is called 'individual settlement'. With individually settled cards, the statement requiring payment is typically sent directly to the employee cardholder for payment.

2.8. An employee cardholder is less likely to use a centrally settled business card for personal expenditure, as its employer will settle the balance of the card directly from a business account.

2.9. However, an employee cardholder might use individually settled business cards for both business and personal expenditure, and then seek reimbursement of the business expenses. Accordingly, due to the increased risk of individually settled cards being used by card holders for non-business transactions, these cards are not regarded as 'commercial cards' for the purpose of the IFR and are instead treated as 'consumer cards' which are subject to the interchange fee caps.

The Banks' failures to comply with Article 4 of the EU IFR

2.10. The Banks issued individually settled credit cards across a range of card products to business customers (the 'Relevant Cards'). After publication of the EU IFR (dated 29 April 2015), the Banks considered that there was a low risk that the Relevant Cards would not be considered commercial cards for the purpose of the EU IFR and, therefore, a low risk that they would be subject to the interchange fee caps due to come into force on 9 December 2015. Consequently, the Banks did not cap the interchange fees they requested on transactions with the Relevant Cards when Article 4 of the EU IFR came into force on 9 December 2015.

2.11. In early December 2015, the PSR published for consultation its draft Phase 1 IFR Guidance on its approach to monitoring and enforcing compliance with the articles of the EU IFR which came into force on 9 December 2015. The draft guidance explained the PSR's position that individually settled cards were not commercial cards for the purpose of the EU IFR and were subject to the interchange fee caps. The Banks supported the UK Cards Association's objection to this interpretation and awaited the final version of the PSR's Phase 1 IFR Guidance to assess whether this position might change.

2.12. By the time the PSR published its finalised Phase 1 IFR Guidance on 24 March 2016 (which confirmed that individually settled cards would be subject to the interchange fee caps), the Banks were without a substantive plan to achieve immediate compliance with Article 4. They continued to request uncapped interchange fees on UK domestic transactions with the Relevant Cards for approximately two years after publication of the PSR's Phase 1 IFR Guidance.

2.13. From 9 December 2015 to 14 March 2018, the Banks collectively received £1,441,871 in excess interchange fees from UK domestic transactions carried out with the Relevant Cards and, of this amount, the Banks collectively received £1,179,179 during the Relevant Period (being 24 March 2016 to 14 March 2018).

2.14. Despite being aware of the ongoing breach of Article 4 of the EU IFR, the Banks did not try to reach compliance with sufficient urgency. Whilst there was an intention to rectify matters and become compliant, there were significant and unacceptable delays in progressing and implementing compliance plans and failure to allocate sufficient resources to do so. To mitigate ongoing non-compliance, the Banks stopped offering individually settled cards to new business customers with immediate effect from 25 April 2016.

2.15. However, no other steps to reduce ongoing detriment to acquirers or merchants (and potentially also to consumers) were contemplated or taken in the interim.

2.16. The Banks only progressed their compliance plans on a more urgent basis in late 2017, following engagement with the PSR on the matter. The PSR, however, expects regulated firms to be proactive (not reactive) in taking steps to achieve compliance and to maintain a focus on achieving the aims of regulatory regimes such as the IFR so that their intended benefits can be realised.

2.17. The PSR also expects firms to take a proactive approach to providing redress, where it is appropriate. In this case, it was only following the initiation of the PSR's investigation that the Banks considered the potential detriment caused to other parties by their non-compliance with Article 4 and sought to reimburse the excess interchange fees they had received. The Banks therefore reimbursed the acquirers a total of £1,751,204, being the excess interchange fees which the Banks calculated they had received on UK domestic transactions with the Relevant Cards from 9 December 2015 (when Article 4 came into force) to 14 March 2018, plus 8% interest. Of this amount, the Banks reimbursed £1,416,002 (inclusive of an 8% interest) in respect of the excess charges obtained during the Relevant Period (i.e. from 24 March 2016 to 14 March 2018).

2.18. The Banks' delay in complying with Article 4 allowed them to profit from the excess interchange fees they were requesting on transactions with the Relevant Cards for almost two years at the expense of acquirers, merchants (and potentially also consumers). It also delayed the intended benefits of the EU IFR (lower interchange fees and potentially also lower costs of goods and services) being realised by acquirers, merchants and consumers.

Article 10(5) of the EU IFR

2.19. In addition to the interchange fee caps, the EU IFR also introduced several business rules, including Article 10(5). These business rules aimed to increase transparency around card use and provide merchants and consumers with information that would enable them to make an informed choice on what types of cards to use and accept and what payment service providers to use. This can in turn lead to increased competition and, consequently, to a wider offering, lower prices and a higher quality of payment services.

2.20. From 9 June 2016, Article 10(5) imposed an obligation on issuers to ensure that all their cards are electronically identifiable, and in the case of newly issued cards also visibly identifiable, so that the brand and category of the card (i.e. prepaid, credit, debit or commercial) is unequivocally clear to merchants and consumers. This meant that issuers were required to clearly print the brand and category of the card on their newly issued cards, and, in terms of electronic labelling, ensure the bank identification number (the first 6 digits of the card number) and required fields on the electronic chip of the card accurately reflected the brand and category of card.

2.21. Article 10(5) sought to ensure that consumers and merchants can easily identify the different categories of card and, consequently, understand the level of fees associated with them, which would help consumers and merchants to make decisions on which type of card to use and accept respectively.

The Banks' failures to comply with Article 10(5)

2.22. Between June 2016 and March 2018, the Banks' existing Relevant Cards retained labels which indicated they were 'commercial cards' when they were in fact deemed to be 'consumer cards' under the EU IFR. When issuing replacement Relevant Cards to existing customers during this period, the Banks also continued to label these cards electronically and visibly as 'commercial cards'. The cards therefore continued to be treated by acquirers and merchants as if they were 'commercial cards', exempt from interchange fee caps. This issue ceased when the Relevant Cards were withdrawn, and all the accounts were closed by March 2018.

2.23. If the Relevant Cards had been correctly labelled in accordance with Article 10(5) of the EU IFR, then the merchants accepting the cards might have been able to identify the anomaly between the labels on these cards (which should have indicated the cards were consumer credit cards, subject to the interchange fees cap) and the level of interchange fees being requested (which exceeded the cap on transactions for consumer credit cards). This may have prompted engagement with the Banks on this issue and may have encouraged the Banks to withdraw the Relevant Cards and/or to address the ongoing detriment sooner.

3. DEFINITIONS

3.1. The definitions below are used in this Notice (note: all 'forum' and 'committee' names have been anonymised):

'acquirer' means a payment service provider that is contracting with a merchant/payee to accept and process card-based payment transactions, which will result in a transfer of funds to the merchant/payee (see Article 2(1) of the EU/UK IFR);

'the Act' means the Financial Services (Banking Reform) Act 2013;

‘the Banks’ means NatWest, RBS, Ulster and Coutts, each of which are payment service providers and issuers (by virtue of their status as credit institutions) that are therefore subject to Articles 4 and 10(5) of the EU/UK IFR;

‘BIN’ means bank identification number, the first 6 digits of the number on a card-based payment instrument, which can be used as a means to identify the brand and category of card;

‘centrally settled’ means the balance of a card-based payment instrument is paid directly from a bank account in the name of the business to which the card is issued, as opposed to a bank account in the name of the individual employee cardholder (see ‘facts and matters’ below regarding guidance issued by the PSR);

‘consumer’ means a natural person who, in purchasing goods or services, is acting for purposes other than their trade, business or profession (see Article 2(3) of the EU/UK IFR);

‘Coutts’ means Coutts & Company, FCA Register/Firm Reference Number: 122287;

‘Committee C’ means a relevant NatWest Group committee as referred to in the facts and matters below;

‘credit card’ means a card where the amount of the transaction is debited in full or in part on an agreed date, in line with a pre-arranged credit facility (see Article 2(5) of the EU/UK IFR);

‘EDC’ means the PSR’s Enforcement Decisions Committee;

‘EU’ means the European Union;

‘FCA’ means the Financial Conduct Authority;

‘Forum N’ means a NatWest Group governance forum where the risks of new products are considered and addressed, including products driven by regulatory change;

‘IFR’ means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (see ‘facts and matters’ and Annex 1 below for the distinction between the EU IFR and UK IFR);

'individually settled' means the balance of a card-based payment instrument is paid from a bank account in the name of the individual employee to whom the card is issued, as opposed to a bank account in the name of business customer (see 'facts and matters' below regarding guidance issued by the PSR);

'interchange fee' means a fee that acquirers pay to issuers each time a card is used to buy goods or services (see Article 2(10) of the EU/UK IFR);

'issuer' means a payment service provider that is contracting to provide a consumer/payer with a payment instrument to initiate and process the consumer/payer's card-based payment transactions (see Article 2(2) of the EU/UK IFR);

'NatWest' means National Westminster Bank Plc, FCA Register/Firm Reference Number: 121878;

'NatWest Group' means the banking group of parent company NatWest Group Plc (formerly known as the Royal Bank of Scotland Group Plc), of which NatWest, RBS, Ulster and Coutts were subsidiaries during the Relevant Period;

'PCIFRs' means the Payment Card Interchange Fee Regulations 2015 (as amended) which came into force on 9 December 2015;

'Phase 1 IFR Guidance' means the PSR's guidance on its approach as a competent authority for the EU IFR, which the PSR published on 24 March 2016;

'Phase 2 IFR Guidance' means the PSR's guidance on its approach as a competent authority for the EU IFR, which was published in October 2016 (see 'facts and matters' below for the difference between this and the Phase 1 IFR Guidance);

'payment service provider', under EU IFR Article 2(24), included persons authorised to provide certain payment services listed in the Annex to the European Parliament and of the Council Directive of 13 November 2017 (Directive 2007/64/EC). Under UK IFR Article 2(24), it has the meaning given by regulation 2(1) of the Payment Services Regulations 2017. Under both the EU IFR and UK IFR, a payment service provider may be an issuer, acquirer or both;

'PSR' means the Payment Systems Regulator Limited, established pursuant to Part 5 of the Act;

'RBS' means Royal Bank of Scotland Plc, FCA Register/Firm Reference Number: 114724;

'Relevant Cards' means the individually settled card-based payment instruments issued by the Banks across the card products listed in Annex 3;

'Relevant Period' means from 24 March 2016 to 14 March 2018, being the overall period within which the Banks committed compliance failures following the publication by the PSR of the final Phase 1 IFR Guidance on 24 March 2016 (see below for further breakdown of 'Relevant Periods' per each of the Banks and each compliance failure);

'Relevant Periods for non-compliance with Article 4' means:

a. NatWest: 24 March 2016 – 1 March 2018

b. RBS: 24 March 2016 – 14 March 2018

c. Ulster: 24 March 2016 – 2 January 2018

d. Coutts: 24 March 2016 – 1 February 2018

'Relevant Periods for non-compliance with Article 10(5)' means:

a. NatWest: 9 June 2016 – 1 March 2018

b. RBS: 9 June 2016 – 14 March 2018

c. Ulster: 9 June 2016 – 2 January 2018

d. Coutts: 9 June 2016 – 1 February 2018

'Risk Forum 1' means a NatWest Group forum which dealt with general matters relating to the commercial cards across the Banks including, but not limited to, strategy and risk (this forum was later incorporated into a new 'Risk Forum 2' - see 'Risk Forum 2' definition below);

'Risk Forum 2' means a NatWest Group forum (which Risk Forum 1 became a part of as NatWest group restructured responsibilities within their non-personal products business area);

'Risk Forum 3' means a further NatWest Group forum, as referred to in the facts and matters below;

'UK' means the United Kingdom;

'UK domestic transaction' means a card transaction where the issuer, acquirer and point of sale are all in the UK (see Article 2(8)-(9) of the EU IFR and Article 5(A) of the UK IFR);

'Ulster' means Ulster Bank Ltd, FCA Register/Firm Reference Number: 122315. Note: the Banks have informed the PSR that, since the compliance failures set out in this Notice, the ongoing business of Ulster has been transferred to NatWest pursuant to an Order of the High Court of Northern Ireland dated 7 April 2021 concerning a business transfer scheme under Part VII of the Financial Services and Markets Act 2000.

4. FACTS AND MATTERS

The EU IFR

4.1. The EU IFR is an EU regulation which came into force on 8 June 2015, except for some articles which took effect from 9 December 2015 (including Article 4) and others which took effect from 9 June 2016 (including Article 10(5)). When the EU IFR first entered into force, the UK was part of the EU and the EU IFR was therefore directly applicable in the UK. From 11pm on 31 December 2020, an amended version of the IFR (the 'UK IFR') continues to be in force in the UK as Retained EU Law, post-Brexit (see Annex 1 for further details).

4.2. The EU IFR included measures to address the problems posed by highly divergent interchange fee rates within the EU and rules for clear distinctions to be made between consumer and commercial cards so that each would be readily identifiable (as set out in its Recitals – see Annex 1 below).

Article 4

4.3. With effect from 9 December 2015, Article 4 of the EU IFR introduced an EU wide cap on the interchange fees that an issuer can request from an acquirer when a consumer makes a payment with a credit card. The interchange fees were capped at 0.2% of the transaction value for consumer debit card transactions, and at 0.3% of the transaction value for consumer credit cards transactions. These caps continue to apply under the UK IFR (see Annex 1) and a diagram setting out a typical 'four-party' transaction appears at Annex 2.

4.4. Acquirers usually recover the cost of the interchange fee from their merchants through their Merchant Service Charge, which is the fee paid by the merchant to the acquirer for the service of processing its card payments. It is made up of several components, one of which is the interchange fee. Merchants in turn may pass the cost of interchange fees to consumers by raising the price of their goods and services.

4.5. The interchange fee caps set out above apply only to consumer card transactions and not commercial card transactions. Commercial card transactions are exempt under Article 1(3)(a), and are defined by Article 2(6) as cards which are limited in use for business expenses and the payments made with the cards are charged directly to the account of the undertaking, public sector entity or self-employed natural person to which the card is issued.

4.6. Cards issued to businesses that are paid off by employee cardholders from their personal bank accounts (individually settled cards) fall outside the IFR definition of a commercial card and are therefore regarded as consumer cards which are subject to the interchange fees caps (see further below regarding the PSR's guidance).

Article 10(5)

4.7. In addition to the interchange fee caps, the EU IFR introduced a series of regulations aimed at enhancing transparency around card use. In particular, from 9 June 2016, Article 10(5) introduced requirements to ensure that cards were visibly and electronically labelled with applicable brands and categories of cards (i.e. whether they are prepaid, credit, debit 'consumer' cards or 'commercial' cards). Electronic labelling requirements applied to all new and existing cards, while visible labelling requirements applied to newly issued cards only.

4.8. The aim of Article 10(5) was to ensure that consumers and merchants would be able to identify the type of card consumers were using and merchants were accepting. They would therefore have a better idea of the level of fees associated with using or accepting that type of card and could make an informed choice when selecting which card to use or accept.

The PSR's role

4.9. Regulation 3 of the PCIFRs appointed the PSR as the UK authority (in some cases alongside the FCA) responsible for monitoring and enforcing compliance with the EU IFR. The PSR also continues to be responsible for monitoring and enforcing compliance of the UK IFR.

4.10. As explained in Annex 1 below, the PSR continues to have jurisdiction over historic breaches relating to 'domestic UK payment transactions' (as they were referred to in the EU IFR; they are now referred to as 'UK credit card transactions' under the UK IFR). The PSR has jurisdiction to take action whether such breaches took place historically under the EU IFR or more recently under the UK IFR. This notice concerns historic compliance failures of the EU IFR. Accordingly, where required, references are to the contemporaneous provisions of the EU IFR and PSR guidance, as explained below.

PSR Guidance

4.11. On 2 December 2015, the PSR published its draft Phase 1 IFR Guidance relating to certain articles within the EU IFR (which would be in force by 9 December 2015) and began a consultation, requesting the views of stakeholders. At 3.10-3.13, the draft Phase 1 IFR Guidance explained that the PSR would monitor and enforce the interchange fee caps which apply to consumer card transactions.

4.12. It also explained that the caps would not apply to commercial card transactions where the business account is "directly debited" (i.e. "centrally settled" as opposed to being paid by the individual cardholder). This is because if a business card is settled directly from a business account of the employer, then a cardholder is more likely to use the card only for business expenses. Instead, individually settled cards have a higher risk of being used for personal as well as business expenditure, even if this is not allowed by the terms of use. The reason for this is that an employee with an individually settled card can settle the card balance, in full, from his own bank account and then claim back from his employer only his business expenses.

However, any personal consumer transactions made on such a card would not be processed with the applicable interchange fee caps, if the card is treated as a 'commercial card'. The merchants and consumers would not therefore receive the intended benefit of capped interchange fees applicable to consumer cards.

4.13. Following the consultation (in which the PSR considered the industry's feedback and alternative views on the definition of commercial card), the PSR's final Phase 1 IFR Guidance, published on 24 March 2016, confirmed (at 3.10-3.13) that the interchange fee caps apply to all transactions *"except commercial card transactions where the funds that are used to settle with the issuer come directly from the business account".*

4.14. Accordingly, and in light of the above, the Relevant Period in this case has been taken by the PSR to start from 24 March 2016 (i.e. the publication of the PSR's finalised views on the interpretation of Article 4 of the EU IFR). For the avoidance of doubt, however, this should not be taken as an indication that the PSR considers the Banks to have been in compliance from 9 December 2015 (i.e. the date on which Article 4 of the EU IFR came into force).

4.15. Further Phase 2 IFR Guidance was then published on 6 October 2016. This related to the articles within the EU IFR which came into force on 9 June 2016 as well as those articles which had come into force on 9 December 2015. Regarding "consumer or commercial cards" (at 3.10-3.13), the Phase 2 IFR Guidance re-stated, with no amendments, the position as set out in the final Phase 1 IFR Guidance above.

The entities involved

4.16. The Banks that are the subject of this Notice are NatWest, RBS, Ulster and Coutts. NatWest and RBS are two of the major retail and commercial banks in the UK. Coutts operates as a private bank in the UK. During the Relevant Period, Ulster was an active retail and commercial bank in Northern Ireland.

4.17. During the Relevant Period, the Banks were all subsidiaries within NatWest Group. In practice, it was NatWest Group that determined the common approach for the Banks to compliance with the EU IFR in respect of the Relevant Cards. This was applied at an operational level by each of the Banks without further consideration.

4.18. While the Banks individually fall within the definition of payment service provider under Article 4 and issuer under Article 10(5) of the IFR, and therefore have direct obligations under those articles, the NatWest Group itself is not a payment service provider, issuer or acquirer as defined in the IFR and is not authorised by the FCA to provide payment services. Consequently, NatWest Group itself has no direct obligations under Articles 4 or 10(5) of the IFR. However, actions and decisions of its forums and committees are detailed in this Notice insofar as they operated on behalf of the Banks, and those actions and decisions are relevant to the Banks' compliance with Articles 4 and 10(5).

The Relevant Cards

4.19. The Banks issue a variety of card products to retail and business customers in the UK. Most of the cards that the Banks issue to business customers are 'centrally settled cards'. However, at the time the EU IFR came into effect, the Banks also issued 'individually settled cards' for certain business card products.

4.20. During the Relevant Periods for non-compliance with Article 4, the Banks offered an individually settled card option across 11 different credit card products. As of 31 March 2016, the Banks had 841 organisations or business customers that used these 11 different credit card products for individually settled cards and there were 17,608 Relevant Cards. A list of the product names of the Relevant Cards is set out in Annex 3 to this Notice.

4.21. As noted at paragraph 4.5 above, to be considered as a 'commercial card' (as defined by the IFR) the card must be limited in use to business expenses, which the terms and conditions of the Relevant Cards did specify, and it must be centrally settled. However, the Relevant Cards were 'individually settled' cards and so should have been treated as 'consumer cards' and should have had their interchange fees capped.

4.22. Instead, the Banks treated the Relevant Cards as 'commercial cards' and requested a range of different interchange fee rates on UK domestic transactions made with the Relevant Cards which exceeded the 0.3% interchange fee cap applicable to consumer cards. The interchange fees which exceeded the fee cap typically ranged between 0.31% and 1.9%, depending on the type of transaction. As a result, the Banks collectively received £1,179,179 in excess interchange fees from UK domestic transactions with the Relevant Cards, during the Relevant Periods for non-compliance with Article 4.

4.23. By 14 March 2018, the last of the Relevant Card accounts had been closed. However, a further number of UK domestic transactions with the Relevant Cards (under 100) were honoured by the Banks after this date. These transactions had occurred prior to 14 March 2018, but the merchant accepting the card had either delayed posting the transaction or had initiated the payment as part of an ongoing subscription renewal.

The Banks' actions regarding the EU IFR

4.24. Concerning the EU IFR, NatWest Group and the Banks identified that, while commercial cards were exempt from the interchange fee caps, there was a debate as to whether individually settled cards would fall within this exemption.

4.25. Ahead of the EU IFR coming into force, the possibility that the Relevant Cards might not be considered commercial cards for the purposes of the EU IFR was raised at Risk Forum 1 on 15 April 2015. Risk Forum 1 was a NatWest Group forum which dealt with general matters relating to commercial cards across the Banks, including (but not limited to) strategy and risk.

4.26. At that meeting, it was decided that external legal advice on the EU IFR definition of commercial card, and the likelihood that individually settled cards would fall within such definition, should be sought.

4.27. In May 2015, prior to the receipt of such advice, a presentation for the next Risk Forum 1 meeting on 17 June 2015 was prepared. It contained an assessment of the options available in respect of the Relevant Cards, in the event they did not come within the EU IFR exemption for commercial cards. The preliminary options identified were:

a. maintaining the Relevant Cards;

b. offering customers with Relevant Cards the option to shift to cards that were centrally settled; or,

c. closing all of the Relevant Cards accounts.

4.28. The legal advice was received in early June 2015 and indicated to NatWest Group that there was a low risk that individually settled cards would not be regarded as commercial cards, as

defined in the EU IFR. However, it also recommended monitoring the publication of any future regulatory guidance on what would and would not qualify as a commercial card.

4.29. Taking account of this advice, the option recommended to Risk Forum 1 at the meeting on 17 June 2015 was that the Relevant Cards be maintained. However, it was also recommended that contingency planning should start immediately after the 17 June 2015 meeting to prepare for the other two options: a migration of customers to cards that were centrally settled or closure of the Relevant Cards accounts. The aim was to implement the contingency options (if needed) by the end of November 2015, as Article 4 of the EU IFR was going to take effect from December 2015. However, in respect of the migration option, it was noted that a migration like this had not occurred before, so further scoping was required to consider feasibility, complexity and timelines.

4.30. The recommendations made to take steps to mitigate this risk (including the contingency planning) were approved by Risk Forum 1 at the meeting on 17 June 2015. The minutes of the meeting recorded that these steps would reduce the risk of maintaining the Relevant Cards to within the risk appetite.

The Banks' actions regarding the PSR's draft Phase 1 IFR Guidance

4.31. On 2 December 2015, the PSR published a consultation on its draft Phase 1 IFR Guidance regarding its proposed approach to monitoring and enforcing the EU IFR. The following day, NatWest Group identified that its interpretation of the EU IFR definition of commercial card (namely, that it included individually settled cards) differed from that adopted by the PSR in its draft guidance and that, consequently, continuing to request uncapped interchange fees on the Relevant Cards posed a potential compliance risk.

4.32. On 4 December 2015, a 'risk' was noted by the Banks regarding the interpretation of 'commercial card' contained in the PSR's draft guidance, and that it appeared to be at odds with advice received by the Banks. This risk was noted in the risk register of Risk Forum 2 (previously known as Risk Forum 1), which had the responsibility of addressing risks relating to commercial cards across the Banks. While this risk entry detailed the potential for individually settled cards to become non-compliant (if the PSR's definition of commercial card was confirmed in the final guidance), the entry failed to record the potential impact of this, which was that acquirers would be overcharged until the issue of compliance was resolved.

4.33. On 9 December 2015, the interchange fee caps came into force. Although the compliance risk had been noted by this point, no immediate action to address it was taken by the Banks or NatWest Group in December 2015. Before deciding whether to maintain or withdraw the Relevant Cards, NatWest Group decided to make representations on the PSR's draft guidance through the UK Cards Association (the then trade body for the cards industry in the UK) and wait for the PSR to either revise or confirm its position.

4.34. However, in early January 2016, in case the PSR did not change its position, the relevant NatWest Group commercial card team also recommended to stakeholders across the Banks that, at the same time as engaging in the consultation process, contingency plans should be developed for the withdrawal of the Banks' Relevant Cards.

The Banks' actions following the PSR's final Phase 1 IFR Guidance

4.35. On 24 March 2016, the PSR published its final Phase 1 IFR Guidance. This re-stated that commercial cards must be centrally settled to qualify for the 'commercial' exemption from the interchange fee caps. By this stage, the NatWest Group and the Banks had only developed a high-level plan for the transition of their customers from the Relevant Cards to centrally settled cards (or closure of their accounts, if this was the customer's preference). Furthermore, the Banks had not agreed a timescale or allocated resources to implement the necessary changes to achieve compliance.

4.36. On 15 April 2016, in order to mitigate the ongoing breach, Risk Forum 2 decided that the Banks would stop offering individually settled cards to new business customers with immediate effect. This decision was communicated to staff across the Banks on 25 April 2016.

4.37. In addition, at this meeting on 15 April 2016, Risk Forum 2 approved the 'closure' of the risk entry concerning the Relevant Cards, which had been added to its risk register on 4 December 2015 following publication of the PSR's draft Phase 1 IFR Guidance. The risk entry was removed on the basis that the PSR's final Phase 1 IFR Guidance had now been issued and it was anticipated that another forum would be taking forward compliance plans and the associated risk.

4.38. Following the meeting which Risk Forum 2 held on 15 April 2016, it was decided that the appropriate forum to take the matter forward was Forum N.

4.39. Forum N was responsible for considering new products or changes to products across the Banks and allocating resources to deliver the changes through a Delivery Team. However, it did not expressly monitor any ongoing risks of non-compliance. Therefore, the 'closure' of the risk, by Risk Forum 2, left NatWest Group and the Banks without any active risk entry for the Relevant Cards.

4.40. In both raising and subsequently removing this risk entry, neither NatWest Group nor the Banks appear to have considered the excess fees charged to acquirers as a result of the uncapped interchange fees on transactions with the Relevant Cards, nor any potential ongoing detriment to merchants and, potentially, also consumers.

4.41. As stated above, Forum N had authority to make decisions relating to products across the Banks and the chair of Forum N led the operations and delivery team at NatWest Group. The approval process involved an initial review of the risk of a product proposal, which would then pass through several checkpoints prior to launch. At these checkpoints, Forum N would consider whether to proceed with the proposal (based on a high-level design of the product or service), how the proposal would be delivered, and, once a delivery solution was built, would make a final 'Go/No Go' decision. For products considered to be high risk, additional approval needed to be obtained by Committee C.

4.42. It was not until 24 May 2016, two months after the publication of the final Phase 1 IFR Guidance, that a business case to obtain resources was submitted to Forum N. This recommended that compliance be achieved by migrating customers with Relevant Cards to a centrally settled card product. The business case and the proposal were heard by Forum N on 6 June 2016 and were designated 'low risk' because there was a suitable alternative product that customers could be migrated to (the centrally settled cards). However, the guidance notes on the pro-forma questionnaire used to assess risk suggested that it ought to have been allocated a "high" risk rating instead, as it was "designed to address legal or regulatory requirements" and had "previously been raised as a significant (high) risk…". Designating it as "low risk" may have contributed to the project being allocated a lower priority in terms of resources. In any event, Forum N approved the business case, so that the project could proceed to the development of a detailed delivery plan.

4.43. The business case put before Forum N on 6 June 2016 suggested that the migration project would take between 9 to 12 months to complete, which NatWest Group deemed a reasonable

timeframe for compliance. There was, however, no express recognition of the onward impact of the Banks' ongoing non-compliance on merchants (and possibly also consumers) that would continue to bear the cost of higher interchange fees in the interim.

The Banks' delay in implementing compliance plans

4.44. When the project to withdraw the Relevant Cards and migrate affected customers to new centrally settled cards was approved by Forum N on 6 June 2016, the matter was passed to the Delivery Team. However, no resources were allocated within the Delivery Team to develop the detailed delivery plan needed to proceed to the next Forum N checkpoint, due to resourcing issues and a lack of a clear prioritisation framework, which meant priority was given to other projects.

4.45. Furthermore, although the project had passed the first of its Forum N checkpoints, Risk Forum 2 remained the main forum which managed the business risks relating to the Relevant Cards. However, Risk Forum 2 had removed the risk entry concerning the Relevant Cards from its risk register. This meant that the implementation of the compliance plans was not being closely monitored and this may have caused delays to the implementation.

4.46. Prior to the allocation of resources within the Delivery Team (which eventually occurred in April 2017), the Banks explored a technical solution to achieve compliance by changing the billing system for the Relevant Cards so that the statements requiring payment would be sent to (and settled directly by) the business, rather than individual cardholders. However, it was not until September 2016 that this solution began to be explored. This was ten months after the PSR first signalled in its draft Phase 1 IFR Guidance that individually settled cards would be subject to the interchange fee caps (and six months after this was reconfirmed by the final Phase 1 IFR Guidance).

4.47. In addition, the solution was not explored with urgency (notwithstanding the Banks' ongoing non-compliance with Article 4 and the harm this was causing). In fact, it was not until mid-February 2017 that this solution was considered not viable and it was decided that the Banks should proceed with the original plan approved by Forum N on 6 June 2016 (that is, to withdraw the Relevant Cards and migrate customers on to new centrally settled card products). Furthermore, while this solution was being explored by NatWest Group staff, no updates were given to Forum N or Risk Forum 2 and no Delivery Team Resources were allocated to deliver any compliance plans.

4.48. The ongoing delay to the migration project did not prompt NatWest Group or the Banks to consider any other steps they could take, in the interim, to reduce potential detriment to merchants (or, potentially, consumers) either in relation to excess interchange fees being charged or appropriate labelling of the Relevant Cards.

4.49. No significant progress was made on the migration project until April 2017. This was when Delivery Team resources were finally allocated so that a detailed project plan to deliver the migration could be developed and submitted to Forum N for approval. This was more than a year after the PSR published its final Phase 1 Guidance and 10 months after the Forum N approved the commencement of the migration project. This was also despite the fact that, in attempting to secure delivery resources, it had been acknowledged internally by the NatWest Group in March 2017 that there was an ongoing regulatory breach.

4.50. Despite acknowledging that they were non-compliant, it was not until 10 July 2017 that Forum N signed off the Delivery Team's plan for the migration. This was the second and penultimate Forum N checkpoint.

4.51. It was only after the PSR made enquiries in August 2017 (and NatWest Group and the Banks noted that the issue was now being focussed upon by PSR) that the last Forum N checkpoint was scheduled to make the final 'Go/No Go' decision on the product change.

4.52. Final approval to proceed with the migration was given by Forum N on 21 August 2017. This meant that the migration of customers from the Relevant Cards to centrally settled cards could now commence. By this time, the nine to twelve months forecast given in June 2016 for full completion of the migration project had already lapsed by two months.

4.53. In August 2017, the Banks notified the customers holding the Relevant Cards that in November they would receive new cards which would be centrally (rather than individually) billed and settled. Customers who did not wish to migrate to a centrally settled card product were advised to contact the Banks. A further reminder was sent to customers in October 2017. In December 2017, correspondence was sent to customers confirming that new cards had been sent and the existing Relevant Cards' accounts would be closed on 31 December 2017. In fact, due to ongoing engagement with certain customers, the last of the Banks' Relevant Cards accounts were not closed until 14 March 2018.

Engagement with the PSR regarding compliance with the EU IFR

4.54. On 26 January 2017, as part of its work to monitor compliance with the EU IFR, the PSR sought information from the NatWest Group (then Royal Bank of Scotland Group) and other banks on how they had ensured compliance with the IFR. In particular, the PSR sought information on how the Banks had satisfied themselves that credit cards issued to business customers met the IFR definition of a commercial card and, if they did not, how they had ensured that those cards complied with the interchange fee caps.

4.55. The NatWest Group responded to the PSR's information request on 1 March 2017. The response, which covered various processes and monitoring efforts regarding cards issued by each of the Banks, did not flag any ongoing compliance issue involving commercial cards. The Banks did not mention that they had individually settled cards in respect of which they continued to request uncapped interchange fees (i.e. the Relevant Cards) and nor did they mention that a project had been approved in June 2016 to either close these individually settled card accounts or migrate them to centrally settled accounts.

4.56. In June 2017, the PSR made further enquiries regarding the Banks' response to its information request, and it was only at this stage, on 26 June 2017, that NatWest Group disclosed the ongoing compliance issue involving the Relevant Cards. This disclosure prompted the PSR to seek further information relating to the Banks' commercial cards.

4.57. In July 2017, following this engagement with the PSR, Risk Forum 2 raised a 'risk' concerning the Relevant Cards which was classified as 'significant'. Due to this high classification, the risk was escalated to Risk Forum 3 that accepted the ongoing management of the risk on 27 July 2017.

4.58. This was the first time Risk Forum 2 had noted a live 'risk' concerning the Relevant Cards since April 2016 (see paragraph 4.37 above). However, this appears to have occurred only as a result of the increased engagement with the PSR on the matter.

4.59. As explained above, this live 'risk' was escalated to Risk Forum 3. The risk entry was then kept open by the Banks until April 2018, just after the individually settled card accounts were closed on the following dates:

a. NatWest: 1 March 2018

b. RBS: 14 March 2018

c. Ulster: 2 January 2018

d. Coutts: 1 February 2018

The Banks' remedial programme

4.60. Following commencement of the PSR's investigation, NatWest Group informed the PSR that it intended to carry out a remedial programme covering the excess interchange fees that the Banks had received from the Relevant Cards since 9 December 2015.

4.61. The NatWest Group calculated that the excess interchange fees the Banks had requested and received from UK domestic transactions with the Relevant Cards since 9 December 2015 was, in total, £1,441,871. The calculations were based on data obtained from the Visa and Mastercard card schemes and were quality assured by an independent data analyst that sat outside the NatWest Group team carrying out the remediation.

4.62. The NatWest Group proceeded to refund the amount due (plus 8% interest) to each acquirer that had processed transactions with the Relevant Cards since 9 December 2015. Where the redress due was less than £50, a de-minimis threshold was applied and the relevant sum was paid to charity.

4.63. The total redress (including interest) paid to acquirers, relating to UK transactions with the Relevant Cards, amounted to £1,751,204. NatWest Group completed its remediation exercise in July 2019.

4.64. Acquirers which had processed the relevant transactions had likely passed the cost of excess interchange fees on to merchants as part of the Merchant Service Charge. NatWest Group therefore considered paying redress to merchants that had accepted transactions with the

Relevant Cards directly, instead of paying the acquirers. NatWest Group concluded that it was not practicable to do so (for instance, due to the lack of a contractual relationship between the Banks and the merchants), and instead provided breakdowns of the merchants that had accepted the Relevant Cards after 9 December 2015 to the reimbursed acquirers. However, NatWest Group was not able to guarantee that any potential onward harm to merchants from the charging of excess interchange fees was addressed.

The Banks' approach to compliance with Article 10(5)

4.65. From 9 June 2016, Article 10(5) has required issuers to ensure that cards are electronically identifiable and, in the case of newly issued cards, also visibly identifiable. This was to enable consumers and merchants to identify unequivocally which brands and categories of cards they use.

4.66. As noted at paragraph 4.42 above, to comply with Article 4 of the EU IFR, Forum N approved the recommendation to withdraw the Relevant Cards and migrate affected customers to cards that were centrally settled on 6 June 2016, three days before Article 10(5) came into force. However, the papers submitted to Forum N did not make any reference to the incoming requirements of Article 10(5) and how they might interact with, or impact on, the options and recommendations being made regarding the Relevant Cards.

4.67. However, the Banks have informed the PSR that they did, in another context, consider what changes would need to be made to the visible and electronic labels of the Relevant Cards. This was whilst considering their options to achieve future compliance by producing a new product. This option, though, was not seen as viable for them due to the number of Relevant Cards in circulation, the time it would take to deliver it and the fact customers would still need to be migrated to this product.

4.68. After 9 June 2016, when Article 10(5) came into force and pending completion of the migration of relevant customers to centrally settled cards, the Banks therefore do not appear to have had regard to whether new and existing individually settled cards should have continued to be labelled as 'commercial cards'.

4.69. From April 2016, individually settled cards were no longer offered by the Banks. However, the existing Relevant Cards remained electronically labelled as commercial cards when they were

in fact consumer cards. In addition, after 9 June 2016 (when Article 10(5) was in force), if an existing incorrectly labelled Relevant Card was lost, or expired, the Banks continued to issue a replacement card with visible and electronic labels that indicated the card was a commercial card. In particular:

a. all were printed with one of the following descriptors: business, commercial, corporate, purchasing, or company.

b. The relevant BIN on the cards corresponded to a commercial card product.

c. From early July 2016, a field on the electronic chip of the cards (the 9F0A tag) contained a numeric value that signified to merchants that the cards were commercial cards.

4.70. The Relevant Cards should not have been labelled as 'commercial cards'. The fact that they were labelled as such meant that consumers and merchants could not, as required by Article 10(5), unequivocally identify that the correct category of the Relevant Cards were was in fact 'consumer cards'.

4.71. As a result, merchants were not able to identify that incorrect levels of interchange fees were being requested for these consumer cards (which exceeded the Article 4 cap). Had merchants been able to do so, they might have challenged acquirers on the uncapped interchange fees that were being requested. Such a challenge might in turn have encouraged the Banks to ensure the Relevant Card accounts were closed without delay and to reimburse any excess interchange fees charged to acquirers.

4.72. The compliance failure of incorrectly labelling the individually settled cards was resolved when the Relevant Cards accounts were closed on the following dates:

a. NatWest: 1 March 2018

b. RBS: 14 March 2018

c. Ulster: 2 January 2018

d. Coutts: 1 February 2018

5. COMPLIANCE FAILURES

5.1. The regulatory provisions relevant to this Notice are referred to in Annex 1.

5.2. Based on the facts and matters described above, the PSR concludes that the Banks failed to comply with Articles 4 and 10(5) of the EU IFR.

Article 4

5.3. From 9 December 2015, Article 4 has prohibited payment service providers (like the Banks) from offering or requesting an interchange fee of more than 0.3% of the value of the transaction for any consumer credit card transaction.

5.4. Based on the facts and matters set out above, the PSR considers that the Banks failed to comply with Article 4 over the 'Relevant Periods for non-compliance with Article 4' in that:

a. From 24 March 2016, the Banks were aware of the PSR's final guidance that the Relevant Cards did not qualify for an exemption from the interchange fee caps and, therefore, were to be considered consumer (not commercial) credit cards for the purpose of the IFR. However, after that date, the Banks continued to request interchange fees above the 0.3% cap on transactions with the Relevant Cards.

b. The Banks' plans to achieve compliance with Article 4 (namely, the migration of customers with Relevant Cards to centrally settled products) were not approved until June 2016. In addition, such plans were not advanced or implemented until April 2017. It then took until March 2018 for the Banks to complete the migration. The breach of Article 4 therefore continued for a significant period.

c. As a consequence, the Banks profited from the delay and received £1,179,179 from acquirers in excess interchange fees for UK transactions.

Article 10(5)

5.5. From 9 June 2016, Article 10(5) has required issuers to ensure that their cards are electronically identifiable and, in the case of newly issued cards, also visibly identifiable, enabling consumers and merchants to identify unequivocally which brands and categories of cards they use.

5.6. Based on the facts and matters set out above, the PSR considers that the Banks failed to comply with Article 10(5) during the 'Relevant Periods for non-compliance with Article 10(5)' in that:

a. After 9 June 2016, the Banks continued to issue replacements for incorrectly labelled Relevant Cards with visible and electronic labels that indicated the cards were commercial cards, rather than consumer cards. The existing Relevant Cards also remained electronically labelled as commercial cards, rather than consumer cards.

b. In labelling the cards in this way, the Banks appear to have given insufficient consideration to (and failed to comply with) the requirements of Article 10(5) and the fact that, under the IFR, individually settled cards are deemed to be consumer credit cards.

6. SANCTIONS

6.1. For the reasons set out in this Notice, the PSR has found that the Banks have failed to comply with Articles 4 and Article 10(5) of the EU IFR.

6.2. In determining the appropriate sanctions, under regulation 6(4)(d) of the PCIFRs, the PSR must apply the IFR Statement of Penalty Principles which was in force when the compliance failures occurred (this was set out in Chapter 8 of the Phase 2 IFR Guidance). Chapter 8 is therefore referred to below as the '2016 Penalty Statement' and sets out the relevant PSR policy for imposing a financial penalty in this case.

6.3. The PSR, having considered the full circumstances of the case and the sanctions available, has concluded it is appropriate to impose a financial penalty on the Banks in respect of their compliance failures, pursuant to regulation 6(1) of the PCIFRs. The PSR considers that a financial penalty is necessary and appropriate for the purposes of penalising the Banks and for deterrence in light of the nature, seriousness and duration of the breaches.

6.4. In accordance with the PSR's usual practice when imposing a financial penalty (as stated in both the 2016 Penalty Statement and subsequent guidance), the PSR has also decided to publish details of the compliance failures and financial penalties imposed (pursuant to

regulation 5(a) and 5(b) of the PCIFRs). There are no exceptional circumstances which would warrant the PSR refraining from such publication.

6.5. The penalty regime is based on principles of disgorgement, discipline and deterrence. The amount payable by regulated persons may therefore be comprised of disgorgement of the economic benefit as well as a financial penalty.

First Element – Disgorgement

6.6. Pursuant to paragraph 8.17 of the 2016 Penalty Statement, the PSR will seek to deprive a firm of the financial benefit derived directly from, or attributable to, the non-compliance (which may include any profit made or loss avoided) where it is practicable to quantify this.

6.7. As noted at paragraph 8.19 of the 2016 Penalty Statement, the PSR will take account of any remedial programme carried out by a regulated person (which may include redress to compensate those who have suffered a loss) when considering whether disgorgement is appropriate. Where remediation has been carried out, the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

6.8. As set out in paragraphs 4.60 to 4.64 of this Notice, NatWest Group carried out a remedial programme on behalf of the Banks and paid redress in the sum of £1,751,204. This sum represented the excess interchange fees requested and received from UK domestic transactions with the Relevant Cards from 9 December 2015 to the end of the Relevant Period (14 March 2018), plus 8% interest.

6.9. The Banks' remedial programme has therefore already resulted in the Banks being deprived of the economic benefit resulting from their breach of Article 4 during the Relevant Period (from 24 March 2016 to 14 March 2018). The remedial programme also deprived the Banks of the economic benefit arising from the earlier period of 9 December 2015 (Article 4 coming into force) to 24 March 2016 (the beginning of the Relevant Period in this case). No further financial benefit has been identified resulting from the breach of Article 10(5). Accordingly, the PSR considers that no disgorgement element is necessary as part of the sanctions in this case.

Second Element - Penalty

6.10. The PSR applies the four-step approach set out at paragraphs 8.20 to 8.25 of the 2016 Penalty Statement when determining the appropriate level of financial penalty.

Step 1: The seriousness of the compliance failure

6.11. In the circumstances of this case, the PSR has concluded it is appropriate to impose a single penalty on the Banks in respect of their failures to comply with both Articles 4 and 10(5), as the Articles are closely related, as is the conduct which has given rise to breaches of each Article.

6.12. Pursuant to paragraph 8.13 and 8.20 of the 2016 Penalty Statement, at Step 1 the PSR determines a figure which reflects the seriousness of the compliance failures and the size and financial position of the regulated person. In many cases, the amount of revenue generated by a regulated person from a particular business activity is indicative of the harm, or potential harm, that the compliance failure may cause. In such cases, the financial penalty will usually be based on a percentage of the regulated person's annual gross revenue. This will be derived from the business activity in the United Kingdom to which the compliance failure relates, and in the year preceding the termination of the compliance failure (or the PSR's final decision notice, if earlier).

6.13. The PSR has determined that the relevant business activity in this case is 'the issuing of individually settled cards to business customers as commercial cards, and the use of individually settled cards as commercial cards for UK domestic transactions.' In the circumstances of this case, the PSR considers that the revenue derived by the Banks from this business activity is indicative of the harm or potential harm caused by the Banks' compliance failures with Articles 4 and 10(5).

6.14. The Banks' total revenue from the relevant business activity in the year preceding termination of the compliance failures was £941,236.

6.15. Paragraph 8.21 of the 2016 Penalty Statement lists factors which may be relevant when assessing the appropriate level of financial penalty. The PSR considers the following factors to be relevant:

(a) Deterrence: the principal reason the PSR imposes sanctions is to promote high standards of regulatory behaviour by deterring the subjects of the sanctions and other

regulated persons from committing similar compliance failures. While this case concerns breaches of the EU IFR (in force during the Relevant Period), going forward the PSR must also deter breaches of the equivalent provisions of the UK IFR, which is now in force.

(b) The nature of the compliance failures:

(i) The nature of the obligations imposed by Article 4 and 10(5) are important (they prevent the overcharging of interchange fees) and their requirements during the Relevant Period were clear. However, the Banks acted too slowly in remedying their non-compliance.

(ii) The separate, but related, compliance failures by the Banks of Article 4 and 10(5) lasted for a significant duration (approximately two years).

(iii) The awareness and involvement of senior staff within the NatWest Group is also relevant. The PSR considers these individuals to be 'senior management' for the purposes of penalty calculation. This is because they were charged by the Banks with making decisions on the development and implementation of compliance plans regarding the Relevant Cards and some of them were aware of non-compliance with Article 4 from 24 March 2016. They were key decision makers at the various forums that dealt with compliance risks relating to the Relevant Cards and made decisions on how to achieve compliance with Article 4 within the Relevant Periods. They were also aware of ongoing delays to migrating customers with Relevant Cards to centrally settled cards. However, notwithstanding the involvement and oversight of senior management, the Banks failed to deliver timely compliance with Articles 4 or 10(5) and failed to implement steps to reduce the detriment arising from the ongoing compliance failure.

(c) The compliance failures had a significant impact on the aims of the EU IFR to: (i) reduce the burden of high interchange fees being passed to merchants (and potentially also consumers); and, (ii) provide merchants and consumers with information to assist them to understand, and potentially challenge, the fees associated with particular card products. Neither of these aims could be achieved, nor the intended benefits of them could be realised by merchants or consumers, while the Banks remained non-compliant with Articles 4 and 10(5) of the EU IFR.

6.16. In assessing 'seriousness' at Step 1, the PSR has applied the following percentage scale in relation to breaches of the EU IFR:

Level 1 – Lesser Seriousness: 0-20%
Level 2 – Moderate Seriousness: 20-40%
Level 3 – High Seriousness: 40-60%

6.17. Taking the above factors into account, the PSR considers this to be a severe case of 'moderate seriousness'. Accordingly, the PSR considers that 40% is the percentage which reflects the seriousness of the Banks' compliance failures with Articles 4 and 10(5) of the EU IFR.

6.18. Applying 40% to the revenue set out in paragraph 6.14 above, the Step 1 figure for the Banks is £376,494.

Step 2: aggravating and mitigating factors

Aggravating factors

6.19. Pursuant to paragraph 8.24 of the 2016 Penalty Statement, at Step 2, the PSR may increase or decrease the amount of the financial penalty arrived at in Step 1 to take account of factors that aggravate or mitigate the compliance failure.

6.20. The PSR considers the following factors to be aggravating:

(a) *Delay in disclosing the breach*: the Banks' compliance failures were not brought to the attention of the PSR in a timely manner. After the final Phase 1 IFR Guidance was published on 24 March 2016, the Banks did not proactively advise the PSR that they had Relevant Cards that were non-compliant with Article 4. They also did not initially disclose their ongoing breach of Article 4 when responding to an information request from the PSR in March 2017. The non-compliance was only disclosed in June 2017, following additional questions from the PSR.

(b) *Remedial steps*: the remedial steps that the Banks took to achieve compliance after the final Phase 1 IFR Guidance was published on 24 March 2016 were not taken promptly and, in part, may not have been fully effective (as explained below in 'mitigating factors'). The effective implementation of plans to achieve compliance with Article 4 was negatively

impacted by slow planning, reactive risk management, significant delays in resource allocation and inadequate oversight of progress. A year and a half elapsed before the Banks took substantive steps to close or migrate all the Relevant Card accounts. In the intervening period, insufficient consideration was given to what steps could be taken to mitigate the ongoing effect of the breaches (such as promptly allocating resources to enact the contingency plans). When considering the remedial steps to be taken, there was also an apparent absence of detailed consideration by the Banks of how to comply with Article 10(5), which required the Banks to electronically and visibly label the Relevant Cards correctly.

(c) *PSR Guidance/Concerns*: from 24 March 2016, the PSR's final IFR Phase 1 Guidance made clear to the Banks that Article 4 required them to cap the interchange fee for the Relevant Cards at 0.3% of the transaction fee. The Banks were also aware of the likely approach the PSR would be taking to this issue since December 2015 (when the PSR published the draft Phase 1 IFR Guidance), but the Banks failed to deliver the changes required to comply with Article 4 and 10(5) in an appropriate timeframe.

(d) *Commitment to the EU IFR*: the Banks did not achieve or demonstrate a clear and unambiguous commitment to: (i) compliance with the obligations and prohibitions imposed by the EU IFR throughout the organisation (from the top down); and, (ii) taking appropriate steps to identify regulatory risk, risk assessment, risk mitigation and review.

This is illustrated, in particular, by the following facts:

(i) The weakness in the governance arrangements that covered the management of commercial card products within the Banks saw an emerging risk concerning the Relevant Cards being raised in December 2015 and subsequently 'closed' in April 2016, without progress towards compliance. No further risks concerning the Relevant Cards were raised until July 2017, and this occurred only following engagement with the PSR which was monitoring compliance with the IFR. Thus, between April 2016 and July 2017, there was an absence of adequate identification and mitigation of risks relating to the Relevant Cards, as well as a clear lack of commitment to achieve compliance with the IFR obligations placed on the Banks.

(ii) On 6 June 2016, it was projected that the migration of customers from the Relevant Cards to centrally settled cards would take nine to twelve months,

which the Banks regarded as a reasonable timeframe, notwithstanding that the requirements of Article 4 of the EU IFR were already in force and the Banks were in breach. There was insufficient acknowledgement of the risks of ongoing detriment to acquirers, merchants (and potentially also consumers) as a result of the non-compliance.

(iii) There was also an apparent absence of detailed consideration by the Banks of the requirements of Article 10(5) in considering the remedial steps to be taken to become compliant, suggesting a lack of understanding of the relevant requirements and the consequent risks of the compliance failures.

(e) *Size/Resources*: the size and financial resources of the Banks were considerable and the PSR would expect large retail banks to strive to comply with the law as soon as possible, should any issues arise.

(f) *Relevant Compliance History/Other Regulatory Action*: in relation to the previous disciplinary record and general compliance history of the Banks, and action taken by another authority, the PSR notes that on 27 August 2014 NatWest and RBS were fined £14,474,600 by the FCA for breaches of Principles 2 and 9 of the FCA Principles for Businesses and certain requirements in the FCA's Mortgage and Home Finance: Conduct of Business sourcebook. The FCA concluded that both NatWest's and RBS's response to issues raised by the FCA had been seriously inadequate due to a delay in addressing the issues, poor planning, under-resourcing and a lack of adequate oversight and governance. This resulted in the issue not being dealt with as quickly as it should have been, to the detriment of customers. As in this case, NatWest's and RBS's response was managed using resources and individuals at group level.

The PSR considers NatWest's and RBS's failure to promptly resolve issues is analogous to their conduct in this case. This is because, in this case, there was equally a delay in addressing a compliance issue in a timely manner and, likewise, a lack of resourcing to bring matters into compliance, as well as poor oversight. The relevant period of the breaches in the above FCA case (c.2011-2013) is also relatively close in time to the Relevant Period in the present case (c.2016-2018). This suggests that these analogous and concerning issues appear not to have been addressed between the relevant periods of these cases. For this reason, when calculating the penalty, the PSR considers that the action taken by the FCA against NatWest and RBS is an aggravating factor, but only

against these two banks (in contrast, the other aggravating factors above apply to all the Banks).

Mitigating factors

6.21. The PSR has considered whether the following two factors provide any mitigation for the compliance failures in this case:

(a) *Co-operation*: while the Banks have co-operated fully with the PSR throughout the investigation (and conducted an internal investigation into the compliance failures), this co-operation does not go beyond what the PSR would reasonably expect in the circumstances.

(b) *Redress*: the PSR has considered whether the redress exercise carried out by NatWest Group on behalf of the Banks mitigates the compliance failures (see paragraphs 4.60 to 4.64 above). The PSR has concluded that it does not do so, for three reasons. Firstly, the redress exercise was not undertaken promptly and appears to have been a reactive measure initiated following the PSR commencing its investigation in May 2018. Secondly, it did not go beyond what would have been expected. Third, the remediation undertaken was unable to address the onward harm suffered by merchants (and potentially consumers) as a result of the Banks' compliance failures. The Banks have been unable to confirm whether all the acquirers that benefited from the Banks' redress then in turn reimbursed all the merchants that were overcharged. The remediation undertaken, therefore, may not have completely redressed the onward harm caused by the compliance failures. Whilst this is not a criticism of the Banks, under the circumstances, it remains a relevant consideration as to why the redress exercise does not provide any mitigation for the compliance failures.

6.22. The PSR has, therefore, not identified any factors which mitigate the Banks' compliance failures.

6.23. Having taken the above aggravating factors into account, and in the circumstances of this case, the PSR considers that the Step 2 figures should be increased by 40% for RBS and NatWest and increased by 35% for Coutts and Ulster.

6.24. The final total Step 2 figure for the Banks is therefore £526,453.

Step 3: adjustment for deterrence

6.25. As explained at 8.15 of the 2016 Penalty Statement, the overall penalty arrived at pursuant to our penalty framework must be appropriate and proportionate to the relevant compliance failure. The PSR may decrease the level of the penalty which would otherwise be determined following Steps 1 and 2 if we consider that it is disproportionately high having regard to the seriousness, scale and effect of the compliance failure. The PSR has taken this into consideration and has concluded that the figures arrived at following Step 2 are not disproportionate. Accordingly, a reduction is not required.

6.26. Pursuant to paragraph 8.24 of the 2016 Penalty Statement, the PSR may also increase the financial penalty at Step 3, if it considers that the figures arrived at are insufficient to deter the regulated person that committed the compliance failure, or others, from committing further or similar compliance failures.

6.27. The PSR has determined, on the facts of this case, that the value of the financial penalty reached at Step 2 (as set out at paragraph 6.24 above) is too small and is insufficient to meet the PSR's objective of credible and effective deterrence. The PSR therefore considers that this is an appropriate case where an upward adjustment for deterrence is necessary.

6.28. The PSR considers the following factors to be of relevance to its assessment, in light of the particular facts of this case:

(a) the Step 2 figure of £526,453 is significantly less than the amount of excess interchange fees that were remediated for the UK domestic transactions either from 9 December 2015 (£1,441,871) or during the Relevant Period itself (£1,179,179).

(b) The Step 2 figure of £526,453 is, similarly, significantly less than the total amount of revenue the Banks received on UK domestic transactions with the Relevant Cards over the Relevant Period, which was £2,603,344.

(c) The Banks are part of one of the largest banking groups in the UK and therefore the Step 2 figure, being significantly smaller than either the excess interchange fees charged for UK transactions or the revenue from the individually settled cards in the Relevant Period, would not constitute a credible deterrent.

(d) As explained at 6.20 (f) above, NatWest and RBS were previously sanctioned by the FCA for similar behaviour (i.e. delay in addressing a compliance issue, failure to appropriately resource a project, poor oversight and governance), but their behaviour did not improve.

(e) Any financial penalty should also generally deter other regulated persons (such as other payment service providers and issuers) from committing similar breaches of the UK IFR which is now in force.

6.29. As stated above, the value of the financial penalty reached at Step 2 is insufficient to meet the PSR's objective of credible and effective deterrence on the facts of this particular case. An upward adjustment for deterrence is therefore necessary.

6.30. To achieve credible and effective deterrence, and in light of the factors referred to above, the PSR has therefore increased the financial penalty at Step 3 to £2,600,000. On the facts of this particular case, this also aligns with the amount of revenue the Banks received on UK domestic transactions with the Relevant Cards over the Relevant Period.

6.31. The PSR has again taken proportionality into consideration and has concluded that the figure arrived at Step 3 is proportionate having regard to the seriousness, scale and effect of the compliance failure, for the reasons set out above.

Step 4: settlement discount

6.32. Pursuant to paragraph 8.25 of the 2016 Penalty Statement, the PSR and regulated person on which a penalty is to be imposed may agree the amount of the financial penalty and other terms. If this occurs, the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the PSR and the regulated person reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated in the first element.

6.33. The PSR and the Banks reached agreement at the earliest possible stage, and so a 30% discount has been applied to the financial penalty reached at Step 3.

6.34. The final Step 4 figure for the Banks is therefore £1,820,000.

Penalty

6.35. The PSR hereby imposes a financial penalty of £1,820,000 on the Banks for their compliance failures with Articles 4 and 10(5) of the EU IFR.

7. PROCEDURAL MATTERS

7.1. This Notice is given to the Banks pursuant to Regulation 7 of the PCIFRs. The following statutory rights are important.

Decision maker

7.2. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Payment of financial penalty

7.3. The financial penalty must be paid in full by the Banks to the PSR by no later than Thursday 26 May 2022.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on Friday 27 May 2022, the PSR may recover the outstanding amount as a debt owed by the Banks and due to the PSR.

Publicity

7.5. Regulation 5 of the PCIFRs provides that the PSR may publish details of compliance failures and penalties imposed on regulated persons under Regulation 6. The PSR intends to publish this Decision Notice, and such information about the matter to which it relates, as the PSR considers appropriate.

PSR contacts

7.6. For more information concerning this matter generally, contact Sara Santomauro at the PSR (sara.santomauro@psr.org.uk).

Lesley Ainsworth

Settlement Decision Maker, for and on behalf of the PSR

David Thomas

Settlement Decision Maker, for and on behalf of the PSR

ANNEX 1

RELEVANT REGULATORY PROVISIONS AND GUIDANCE

1. Post-Brexit, and from 11pm on 31 December 2020, the text of the Interchange Fee Regulation ('Regulation (EU) 2015/751… on interchange fees for card-based payment transactions') was adopted into UK Law as Retained EU Law with certain amendments, pursuant to s.3 and s.8 of the European Union (Withdrawal) Act 2018 (as amended) ("EUWA"). The previous text of the IFR (in force during the Relevant Period) is referred to here as "EU IFR" and the version now in force in the UK as the "UK IFR". The PCIFRs were also amended to be consistent with the UK IFR. All emphasis in the quotations below is our own.

Payment Card Interchange Fee Regulations 2015

2. Regulation 2 of the PCIFRs (before and after amendment) defines:

   a. 'regulated person' as "a person on whom an obligation, prohibition or restriction is imposed by any provision of the interchange fee regulation."

   b. 'compliance failure' as including "a failure by a person to comply with… an obligation, prohibition or restriction imposed by the interchange fee regulation."

   c. 'the interchange fee regulation' as "Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions."

3. Regulation 3 of the PCIFRs (before and after amendment) confirms that the PSR is responsible (in the United Kingdom) for maintaining arrangements that enable it to:

   a. determine whether regulated persons comply (in the United Kingdom) with obligations, prohibitions and restrictions imposed on them by the interchange fee regulation; and

   b. enforce compliance (in the United Kingdom) by regulated persons with those obligations, prohibitions and restrictions.

4. Regulation 5 of the PCIFRs (before and after amendment) states that the PSR may publish details of a compliance failure by a regulated person or the imposition of a penalty imposed under Regulation 6 of the PCIFRs.

5. Regulation 6 of the PCIFRs (before and after amendment) states that the PSR "may require a regulated person to pay a penalty in respect of a compliance failure" and that, in applying its statement of penalty principles to such a compliance failure, the PSR must "apply the version in force when the compliance failure occurred."

EU IFR & UK IFR - Recitals

6. The Recitals of both the EU IFR and UK IFR explain as follows concerning the background to the implementation of Articles 4 and 10:

> *"(10) Interchange fees are usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain payment card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services. Competition between payment card schemes to convince payment service providers to issue their cards leads to higher rather than lower interchange fees on the market, in contrast with the usual price-disciplining effect of competition in a market economy. In addition to a consistent application of the competition rules to interchange fees, regulating such fees would… contribute to reducing transaction costs for consumers.*
>
> *(11) The existing wide variety of interchange fees and their level …[are] to the detriment of potential economies of scale and scope and their resulting efficiencies. This has a negative impact on merchants and consumers and prevents innovation…*
>
> *…(13) …there is a need… to take measures to address the problem of high and divergent inter-change fees…*
>
> *…(18) All debit and credit card-based payment transactions should be subject to a maximum interchange fee rate.*
>
> *…(38) A clear distinction between consumer and commercial cards should be ensured by the payment service providers both on a technical and on a commercial basis. It is therefore important to define a commercial card as a payment instrument used only for business expenses charged directly to the account of the undertaking or public sector entity or the self-employed natural person.*
>
> *(39) Payees and payers should have the means to identify the different categories of cards. Therefore, the various brands and categories should be identifiable electronically and for newly issued card-based payment instruments visibly on the device…"*

EU IFR & UK IFR – Relevant Articles

7. The UK IFR states:

> *"Article 4 Interchange fees for consumer credit card transactions*
>
> *1. Payment service providers must not offer or request a per transaction interchange fee of more than 0.3% of the value of the transaction for any UK credit card transaction.*

2. The Treasury may by regulations amend paragraph 1 so as to specify a per transaction interchange fee cap lower than 0.3% of the value of the transaction."

And: *"Article 2 Definitions*

(5A) 'UK credit card transaction' means a credit card transaction where— (a) the issuer and the acquirer are both located in the United Kingdom, and (b) the point of sale is in the United Kingdom;"

8. The previous version of Article 4 in the EU IFR, which is no longer in force in the UK, applied to both UK domestic transactions and cross-border transactions as it stated:

"Payment service providers shall not offer or request a per transaction interchange fee of more than 0,3 % of the value of the transaction for any credit card transaction. For domestic credit card transactions Member States may define a lower per transaction interchange fee cap."

9. Domestic transactions (and cross-border transactions) were previously defined in EU IFR Article 2 as follows:

> *"(8) 'cross-border payment transaction' means a card-based payment transaction where the issuer and the acquirer are located in different Member States or where the card-based payment instrument is issued by an issuer located in a Member State different from that of the point of sale;*
>
> *(9) 'domestic payment transaction' means any card-based payment transaction which is not a cross-border payment transaction;…"*

10. However, Article 1(3)(a) of both the EU IFR and UK IFR state that Chapter II (which includes Article 4 above) does not apply to "transactions with commercial cards".

11. Article 2(5)-(6) of both the EU IFR and UK IFR define 'credit card transactions' and 'commercial cards' as:

"(5) 'credit card transaction' means a card-based payment transaction where the amount of the transaction is debited in full or in part at a pre agreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest;" and,

"(6) 'commercial card' means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person."

12. Article 10(5) of both the EU IFR and UK IFR sets out the same requirements relating to the labelling of payment instruments and states:

"Issuers shall ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify which brands and categories of prepaid cards, debit cards, credit cards or commercial cards are chosen by the payer."

13. Although Article 10 remains unchanged as between the EU IFR and UK IFR, the scope of the UK IFR generally differs from the original EU IFR by confining itself to UK matters, e.g., Article 1 (Scope) of the UK IFR now clarifies:

"1. This Regulation lays down uniform technical and business requirements for card-based payment transactions carried out in [the United Kingdom] {formerly "the Union" in the EU IFR}, where both the payer's payment service provider and the payee's payment service provider are located [in the United Kingdom] {formerly "therein" in the EU IFR}."

14. Since 11pm on 31 December 2020, under the UK IFR and PCIFRs (as amended) the PSR no longer has jurisdiction over compliance failures for cross-border transactions. However, pursuant to the provisions of the UK IFR (see also EUWA Schedule 8, paragraph 37), the PSR continues to have jurisdiction over 'domestic [UK] payment transactions' or 'UK credit card transactions', whether the breaches took place under the EU IFR or more recently under the UK IFR.

Phase 1 and Phase 2 IFR Guidance concerning the PSR's approach to the EU IFR

15. The Phase 1 IFR Guidance published on 24 March 2016 set out the PSR's approach to monitoring and enforcing the EU IFR in the UK during the Relevant Period.

16. The Phase 2 IFR Guidance was published on 6 October 2016 and related to articles within the EU IFR which came into force on 9 June 2016 as well as those articles covered by the Phase 1 IFR Guidance which had come into force on 9 December 2015.

17. Regarding "consumer or commercial cards" the Phase 1 and Phase 2 IFR Guidance both stated as follows:

"Consumer or commercial cards

3.10 *The interchange fee caps set out above only apply to* ***consumer*** *card transactions. Commercial card transactions are exempt from the IFR interchange fee caps by virtue of Article 1(3)(a).*

3.11 *The definition of a commercial card is set out in Article 2(6) of the IFR. It states:*

> *"'Commercial card' means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person."*

3.12 *Recital 38 of the IFR contains language similar to Article 2(6) but explains that it is "important to define a commercial card as a payment instrument used only for business expenses charged directly to the account" of the same parties referred to in Article 2(6).*

3.13 *The interchange fee caps provided for in the IFR apply to all transactions* ***except*** *commercial card transactions where the funds that are used to settle with the issuer come* ***directly*** *from the business account (those cards being exempt from the caps by virtue of Article 1(3)(a)). The fact that the individual cardholder might receive a statement or 'bill' showing the transactions made on that specific card will not affect this*."

18. Paragraphs 5.49 to 5.53 of the Phase 2 IFR Guidance concerning Article 10(5) of the EU IFR stated as follows:

> ***"Electronic and visual identification of card-based payment instruments***
>
> ***5.49*** *Article 10(5) lays down requirements which enable payees and payers to identify unequivocally which brands and categories of cards the payer has chosen.*
>
> ***5.50*** *All issuers shall ensure that all their cardbased payment instruments are electronically identifiable in terms of brand and category. This requirement applies to existing and new payment instruments.*
>
> ***5.51*** *Newly issued cardbased payment instruments shall also be visually identifiable, displaying clearly and visibly the brand and category.*
>
> ***5.52*** *The IFR requires that any cardbased payment instrument is categorised as one of the following:*
>
> *[Consumer] Prepaid*
> *[Consumer] Debit*
> *[Consumer] Credit*
> *Commercial*
>
> ***5.53*** *We consider that consumer cards do not need to be specifically identified with the label 'consumer' (although issuers can choose to do so), and that they can be identified by the absence of the label 'commercial'."*

Statement of Principles for Imposing Penalties

19. Chapter 8 of both the Phase 1 and Phase 2 IFR Guidance contained the PSR's statement of principles for imposing penalties which were in force during the relevant period. There were no

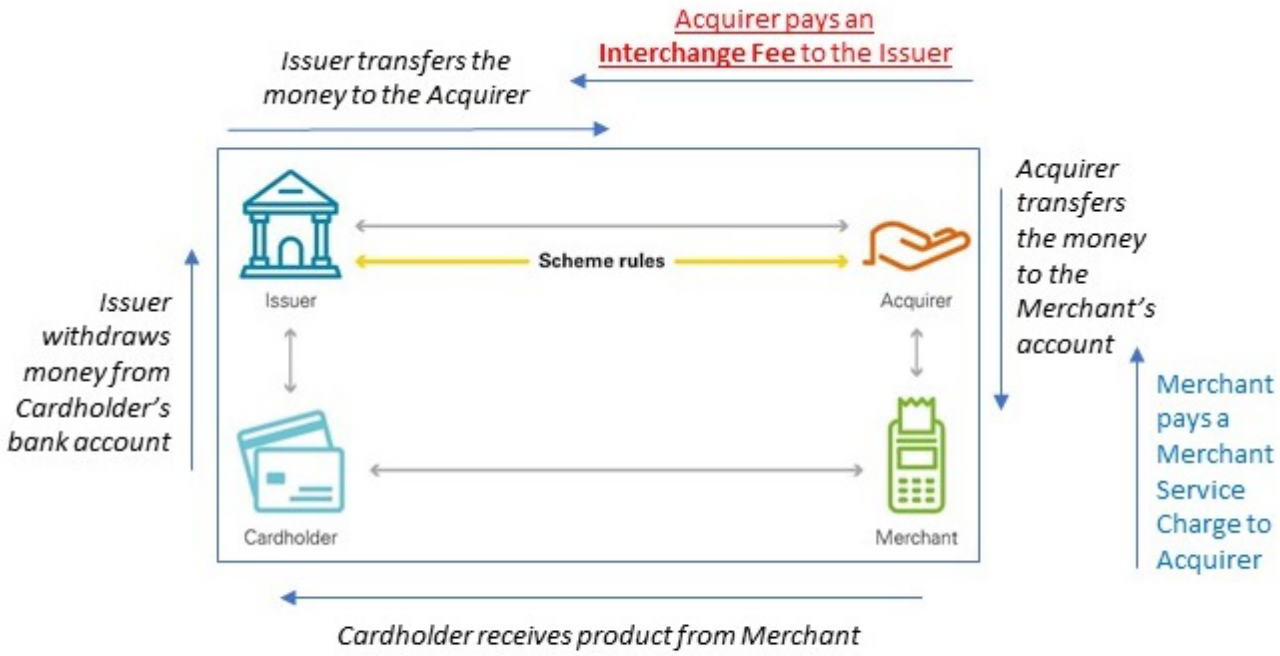
substantive differences between the two versions, and so the PSR refers only to the 2016 Penalty Statement as set out in Chapter 8 of the Phase 2 IFR Guidance in this Notice for the purpose of deciding sanctions and calculating penalty (https://www.psr.org.uk/media/dwcjuiow/psr-ifr-guidance-phase-2.pdf).

20. The current guidance is set out in the PSR's revised IFR Guidance which was issued in September 2021.

ANNEX 2

DIAGRAM – INTERCHANGE FEE TRANSACTIONS

"Four-Party Schemes" diagram as per the PSR's IFR Guidance (Sept 2021) paragraph 2.4, with additional arrows/text describing a typical four-party transaction:



Note

Issuers/Acquirers also pay 'scheme fees' to the relevant Card Scheme.

ANNEX 3

LIST OF RELEVANT INDIVIDUALLY SETTLED CARDS / PRODUCTS

Bank	Relevant Cards / Products
NatWest	- Mastercard OneCard - Visa Corporate Card - Visa Company Card - Visa Purchasing Card - Mastercard Business Credit Card
RBS	- Mastercard OneCard - Visa Corporate Card - Visa Purchasing Card - MasterCard Business Credit Card
Ulster	- Mastercard Onecard
Coutts	- Visa Business Card

Total number of cards in circulation (as at 31 March 2016): **17,608**

Total number of customers (as at 31 March 2016): **841**