PSR & FCA Response to HM Treasury consultation on consolidation

We, the Payment Systems Regulator (PSR) and Financial Conduct Authority (FCA), welcome the proposals set out in 'A Streamlined Approach to Payment Systems Regulation' – the government's consultation on consolidating the PSR's functions with the FCA.

The government is proposing that the FCA take on all of the PSR's responsibilities, including for promoting competition and innovation in payment systems and the services provided by them, as well as supporting the interests of consumers and businesses who make payments every day.

In the time the PSR has been operational, we have achieved a huge amount of which we are very proud. Our work has made payment systems safer, more competitive and increasingly innovative. It provides a strong foundation on which to build the payments options of the future, within a new regulatory framework.

We agree with the overarching approach to the consolidation, and it aligns with the benefits articulated in chapter one of the consultation document. We also believe that the proposed model will help to facilitate a coherent and holistic view of regulatory issues that affect the payments ecosystem, including both payment systems and payment services.

This will enable a strategic and joined-up approach, for example in how we use our overall toolkit of powers to deliver solutions.

Increasing efficiency and joined-up approach

Consolidation builds on our recent work to improve coordination, and clarifies our regulatory responsibilities. As highlighted in the consultation document, we have already done a lot to foster closer working across the PSR and FCA. We have taken steps to increase efficiency and ensure joined-up and strategic prioritisation right across the payments landscape.

We have:

- combined the role of the PSR's Managing Director with that of a new Executive Director of Payments and Digital Finance. This enables us to more effectively ensure efficiency and coherence across our work on payments, driving regulatory streamlining and simplification
- updated the Memorandum of Understanding, in partnership with the Bank of England and Prudential Regulation Authority (PRA), to enhance coordination and support even closer working
- formed joint project teams in areas such as digital wallets and open banking, supporting pace and clarity, streamlining engagement with stakeholders and allowing us to drive forward the delivery of variable recurring payments
- integrated certain operational and support functions

And we are working together on:

- establishing a framework for renewing the retail payments infrastructure, with the Bank of England and Treasury through the Payments Vision Delivery Committee
- tackling fraud holistically, protecting users from fraud in payments and from wider financial crime
- stakeholder engagement to support coherence and ensure stakeholders get clear, joined-up messages

- horizon-scanning to support forward-looking priorities
- creating joint project teams on areas of mutual interest to bring together perspectives across the authorities
- innovation – from tech sprints on topics such as data-sharing, to joint work in the Global Financial Innovation Network

A continued role for economic regulation

As the government has set out, payment systems can face competition issues, driven by factors such as strong network effects, market power and vertical integration. This can lead to the ecosystem being dominated by a limited number of large players, and to challenges in co-ordinating delivery of systems investment and innovation. This can limit innovation and the pace of change.

We agree that the UK's regulatory framework must be equipped to protect against these issues and promote an open, diverse and innovative payments sector to support economic growth and deliver good outcomes for consumers and businesses.

That is why we support the continuation of the scope and substance of the PSR's core functions, objectives, and powers – including powers over designated payment system operators, infrastructure providers and other payment system participants, as set out in chapter two. Transferring the PSR's powers and duties to the FCA enables a continuation of the important work of economic regulation of payments systems to promote competition, innovation and user interests.

The PSR and FCA have worked together, and with the Treasury, to consider how a new legislative framework might best allow for the effective integration of the two regimes. From the outset, we have sought to ensure coherence of the overall framework, avoiding unnecessary duplication, complexity, or uncertainty, while retaining the scope of both regimes (noting some adjustments as set out in the consultation, for example to the FCA's objectives for payment systems).

We are pleased that the consultation reflects these principles.

Streamlining and enhancing the legislative framework

We support the government's approach to consolidating the PSR's functions within the FCA's existing framework of objectives and powers in the Financial Services and Markets Act 2000 (FSMA 2000) to the extent this is practicable and appropriate. This reflects the benefits of an integrated and joined-up approach that avoids duplication.

We will need to pay close attention to the differences and similarities of the two current regimes to deliver an overall framework that is streamlined (including for firms that are regulated under both regimes at present) and recognises the unique characteristics of payment systems, as set out in chapters three and four.

We have been working with the Treasury to identify specific areas where simplification would enhance the regulatory framework. These are reflected in the consultation publication – such as the proposal to move to a single access regime.

We also welcome the government considering whether there are opportunities for making improvements in other areas of the PSR's current powers, such as the routes for appealing decisions and the enforcement powers for breaching notices requiring information or documents to be provided.

By seizing these opportunities, we can ensure we have a regulatory framework that is more coherent and effective than the status quo, so as to better serve the payments ecosystem and wider economy. We welcome ongoing engagement with the Treasury in coming months as these proposals are refined and legislation is prepared for Parliament.

Smarter regulation is a key pillar of the FCA's strategy – and this means being predictable, purposeful and proportionate in everything we do. We feel this is reflected in the core aspects of the design of the new framework (chapter five), including retaining existing key definitions, along with the scope and substance of the oversight and accountability mechanisms, as set out in the Financial Services (Banking Reform) Act 2013 (FSBRA).

These decisions will mitigate against any undue expansion or reduction in the scope of existing regulations and provide for appropriate regulatory scrutiny (see paragraph 2.11 of the consultation document).

Next steps

Moving beyond the high-level principles set out in the consultation, there is more work to do to develop the detailed legislation. As part of this, for example, the clarity of intent underpinning such legislation will be of paramount importance.

The consultation sets out an approach that can support delivery of the National Payments Vision, the government's ambitious plan to ensure the UK has a trusted, world-leading payments ecosystem delivered on next generation technology, where consumers and businesses have a choice of payment methods to meet their needs.

In the annex below, we set out our response to the specific questions, and highlight areas that would warrant continued attention going forward.

In the longer term, there may be aspects of the FSMA regime that may be appropriately adapted to payment systems regulation. There may also be further opportunities to review how the developing regime for the regulation of activities involving stablecoins or other cryptoassets fits together with the regulation of systems that use such technology to transfer funds.

We look forward to continued work with the Treasury to support the transition, to ensure that the review of legislation allows for effective integration of the two regimes, focusing on achieving the government's key goals of best serving the economy and public interest.

David Geale
PSR Managing Director and FCA Executive Director of Payments and Digital Finance

Annex A: Response to questions

Questions for respondents	PSR and FCA view
1. **Do you agree with the government's proposal to seek to integrate the PSR's functions within the FCA's current legislative framework as set out above and to the extent practicable? If not, please explain why**	We agree with the integration of functions to make the legislative framework as cohesive as possible, while also preserving the economic regulation of payment systems. We also agree with the principle that the FCA's pre-consolidation remit would not be altered as part of this work.
2. **Do you agree with the government's proposal to retain a designation regime in the new regulatory framework? If not, please explain why**	We agree that the current designation regime supports proportionate and effective regulation. Any longer-term review of how to modernise the framework of payments regulation should look across the whole payments ecosystem and consider payment systems too.
3. **Do you agree the FCA should have objectives and 'have regard' requirements in relation to payment systems that are equivalent in scope and substance to the PSR's in FSBRA as set out in the above? If not, please explain why**	Yes, we agree we should preserve the scope and substance of the existing objectives and 'have regard' requirements – these support proportionate and effective regulation of payment systems. Where these may be reviewed more generally, the PSR 'have regard' requirements would naturally form part of that subsequent review. We support looking carefully at the way that the objectives and 'have regard' requirements may be integrated most effectively and concisely, while also ensuring the scope and substance are preserved.
4. **Do you agree with the government's proposal to integrate these objectives and 'have regard' requirements within the FCA's current legislative framework as set out in the above and to the extent practicable? If not, please explain why**	Yes, we agree. This will support creating a streamlined and cohesive framework of functions and powers across the payments ecosystem, keeping in mind the links between the objectives and the FCA's regulatory toolkit. Careful drafting of legislation will be required to ensure the framework is as practical as possible to navigate. We favour integration into the FCA's existing operational objectives where this can be achieved without adding undue complexity or ambiguity, or affecting the substance. We also note that there are in places material differences in the wording, including the payment system-specific 'have regards' which sit within the competition objective. These differences will

	require care to ensure the substance is not inappropriately lost.
5. Do you agree with the government's proposal to apply the FCA's strategic objective and competitiveness and growth secondary objective when it acts in relation to payment systems? If not, please explain why	Yes, we agree that this would help the FCA promote desirable outcomes in relation to UK payment systems and support the creation of a joined-up, coherent regulatory approach.
6. Do you agree the FCA should have powers when it acts in relation to payment systems that are equivalent in scope and substance to the PSR's powers in FSBRA as set out in the above? If not, please explain why	Yes, we believe that the scope and substance of the PSR's powers (for example direction-making, rule-setting, enforcement, penalties, information-gathering) should be preserved. These powers are necessary, flexible, proportionate and broadly sufficient for future needs. We agree that there are opportunities to make other incremental improvements to current powers, for example streamlining the appeals process and improving enforcement powers, as well as clarifications that improve efficiency. We also welcome opportunities to minimise any ambiguity as to Parliamentary intent. We have raised a number of other potential opportunities directly with the Treasury. We would welcome a continued dialogue on possible enhancements in light of the consultation.
7. Do you agree with the government's proposal to integrate these powers within the FCA's current legislative framework as set out in the above and to the extent practicable? If not, please explain why	Yes, we believe that where FCA and PSR powers are generally aligned, there are opportunities to integrate and simplify the regulatory framework (for example, information-gathering, other investigation powers, super-complaints, concurrency, enforcement and confidentiality).
8. Do you agree with the government's proposal to move to a single framework for governing access to payment systems? If not, please explain why	Yes, we agree with moving to a single regime governing payment systems. We believe this will remove complexity and uncertainty.

9. Do you agree with the government's proposal to retain the existing definitions which are currently set out in Part 5 of FSBRA in the new framework as set out in the above? If not, please explain why.	Yes, we largely agree with the government's proposal to retain the existing definitions as set out in Part 5 of FSBRA. The government may wish to consider that, given the dynamic and fast-paced evolution of payments, these definitions may require revisiting in the future. We consider there would be merit in keeping this under review.
10. Do you agree with the government's proposed approach to the oversight and accountability provisions that would apply to the FCA when it acts in relation to payments systems as set out in the above? If not, please explain why	Yes, we agree. The current mechanisms for oversight strike a balance between regulatory independence and accountability.