

Consultation on the proposed revision of the Powers and Procedure Guidance

Stakeholder submissions to
consultation

June 2020

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Names of individuals and information that may indirectly identify individuals have been redacted.

The Co-operative Bank

From: [REDACTED]
Sent: 31 October 2019 09:15
To: [REDACTED]
Subject: FW: Update to 3884:CP19/7 - PSR Powers and Procedures Guidance Consultation

From: [REDACTED]
Sent: 31 October 2019 09:14
To: [REDACTED]
Subject: Update to 3884:CP19/7 - PSR Powers and Procedures Guidance Consultation

Morning

In response to your request to your Powers and Procedures guidance, we are supportive of the proposed changes as we understand these changes are positive in that they make the guidance much clearer and easier for regulated firms to understand the PSR's approach to using it's powers and how they work in practice.

Many thanks

[REDACTED]



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HSBC

HSBC UK BANK PLC / HSBC BANK PLC

**REVIEW OF THE PSR'S
POWERS AND PROCEDURES GUIDANCE**

**RESPONSE TO CONSULTATION PAPER DATED JULY 2019
30 OCTOBER 2019**

Introduction

HSBC UK Bank plc and HSBC Bank plc (HSBC) welcome the opportunity to respond to the Payment System Regulator's (PSR) Consultation Paper (CP19/7) on proposed revisions to its Powers and Procedures Guidance (PPG).

In our view, the proposed changes and improvements to the PPG are both valuable and appropriate. The changes reflect better the PSR's functions which have evolved and extended since the PSR was first established. They also provide more detail and transparency on the PSR's established ways of working, processes and procedures to stakeholders such as ourselves.

We also support the proposed changes to the IFR guidance, to ensure consistency with the broader PPG.

We further note and support the PSR's intention to consult later this year on the powers and procedures in relation to the PSR's rule under the EU Payment Services Directive 2015 and access to payment systems.

Q1: Do you have any comments on the revised version of the PPG in Annex 1?

- 1.1 We have no specific comments on the revised version of the PPG. The guidance is clear and accessible. Whilst the proposed revisions are relatively extensive, they reflect the PSR's expanded jurisdiction, scope of work, priorities as well as changes to the legislative framework that governs the PSR.
- 1.2 Our only point of comment concerns the period allowed for notice/consultation upon a proposed direction or requirement. The revised PPG states that the PSR will generally allow three weeks for representations in the case of either a specific or general direction or requirement. It is noted that the precise duration of the consultation period will depend on the complexity of the proposed action and circumstances surrounding it, including the level of meaningful engagement the PSR has already had with stakeholders.
- 1.3 We regard this approach as sensible and pragmatic but note that three weeks is a very short timeframe to prepare a high quality response, even for reasonably straightforward proposals. HSBC will generally need to provide a response on behalf of both HSBC UK Bank plc and HSBC Bank plc requiring internal consultation with subject matter experts and relevant lines of business, to ensure we are able to provide a well-considered, thorough and accurate response to the PSR. We would invite the PSR to consider the timeframe linked to each individual direction or requirement, to ensure participants and directed institutions have sufficient time to review and respond in the right way that supports the PSR's statutory objectives.

- 1.4 In our view, the revisions to the procedures, process and practices are sensible changes that introduce greater clarity, transparency and flexibility.

Q2: Do you have any comments on the revised version of current Chapter 7 of the IFR Guidance in Annex 2?

- 2.1 We have no comments to make on the revised version of the current Chapter 7 of the IFR Guidance.
- 2.2 As stated above, in the interest of consistency, we support these changes and agree with the rationale to reflect the proposed changes to the PPG in this Guidance. We agree it is sensible to apply the same procedures to the use of the FSBRA powers in different contexts, so far as it is practicable to do so.

Q3: Other than our Penalties Guidance, do you consider that the proposed revisions to the PPG will require us to amend any other of our published guidance?

- 3.1 We have not identified any points in other published guidance that will require amending in light of the proposed revisions to the PPG.

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LINK

From: [REDACTED]

Sent: 27 October 2019 19:14

To: [REDACTED]

Subject: PSR seeks feedback on updated Powers and Procedures Guidance: Consultation extended to 31 October

Good afternoon

Thank you for the opportunity to provide feedback on the Powers and Procedures Guidance.

I confirm that LINK has reviewed this guidance and has no substantive comments to make, other than to welcome the clarity provided.

Kind regards

[REDACTED]

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Lloyds

LLOYDS BANKING GROUP PLC
**Response to PSR Consultation on Powers and
Procedures Guidance**

Submission Date 31/10/2019

Introductory Comments

Lloyds Banking Group (LBG) is pleased to respond to the Payment Systems Regulator's (PSR) consultation on its revised Powers & Procedures Guidance.

We welcome the PSR revising and updating this guidance, which should give firms a greater understanding of the PSR's approach to using its powers and how they apply in practice. We agree that now is the appropriate time to do so given that the guidance was originally published in March 2015 when the PSR first became operational. Overall, we are supportive of the proposed revisions. We do though have some specific points of feedback, which we have set out below in our responses to the consultation questions.

When determining how to use its powers, LBG also considers that, where relevant, the PSR should liaise closely with other regulators with an interest in payments. This liaison should aim to limit duplication of regulator and firm activities, and also enable effective sequencing of any change initiatives that are required – for example, in order to comply with a specific direction. We provided detailed thoughts and suggestions in this area in our response to the HMT call for Evidence on Regulatory Co-ordination.

Response to Consultation Questions

1. DO YOU HAVE ANY COMMENTS ON THE REVISED VERSION OF THE PPG IN ANNEX 1?

- 1.1 Yes, LBG has some comments on the revised version of the PPG set out in Annex 1.

Receiving and gathering information

- 1.2 We are supportive of the PSR's reference to using other methods to try to secure good regulatory outcomes – including engaging with industry to encourage it to find solutions to issues arising in the market or to encourage further innovation as set out in Section 2.29.
- 1.3 We find workshops an effective way for firms to engage more closely with regulators and policy makers in the early stages. Detailed workshops, even before legislation is established, can enable the sort of dialogue required for firms to understand the bigger picture, and regulators to understand the potential challenges at stake. It is important though that any such early engagement includes the whole range of firm types and sizes that could be affected by upcoming legislation or regulation, and therefore various engagement approaches are likely to be needed to ensure a representative range of inputs.
- 1.4 LBG is accustomed to engaging with a number of regulators on an open and cooperative basis, including disclosing potential or actual compliance failures of which we become aware. The proposed guidance in Section 2.40 sets out the need to tell the PSR about any issues which could materially, adversely impact on the advancement of the payment system objectives and the performance of statutory functions. The guidance goes on to say that any such issues would include the disclosure or declaration of any potential or actual compliance failures that a firm is aware of.
- 1.5 In practice, we understand that the PSR would expect firms to make a judgement as to whether a potential or actual compliance failure is of a materiality that would warrant reporting it to the PSR. However, this is not obvious from the proposed guidance wording. Therefore, we suggest that the PSR makes a specific reference in Section 40 to materiality in relation to disclosing actual or potential compliance failures to ensure consistent reporting across the industry.

Using direction and requirement powers

- 1.6 LBG is mindful of the guidance provided in Section 4.14 which states that, if a recipient does not raise early concerns when providing a response to an Information Requirement Notice, the PSR could consider this as an indication that the recipient is not properly complying with the information requirement and will consider what, if any, other action to take.

- 1.7 In LBG's view, there are sometimes good reasons in practice why a recipient might not raise early concerns, specifically in instances when issues only become apparent once the information gathering has progressed and a more detailed explanation of issues and timelines can be provided. We are therefore concerned that reference to the PSR considering further action in such circumstances risks driving the wrong behaviour from organisations choosing to exercise caution and routinely applying for early requests for extensions. We therefore suggest that the PSR nuances sections 4.13 and 4.14 in relation to organisations raising early concerns on receipt of an IRN as to whether they are able to comply with its requirements.
- 1.8 Lastly, when closing a matter under consideration, Section 4.42 states that, if a matter is closed, the PSR may, or may not confirm this to the relevant parties. In our view, the PSR should always aim to inform the relevant parties of the outcome of a matter under consideration for the purposes of good governance and completeness. We therefore suggest the PSR considers amending this section to say the default position is that the PSR will inform the relevant parties of the outcome of a matter under consideration, unless it has good reason to believe that it would not be appropriate or reasonable in the specific circumstances to do so.

Taking enforcement action using FSBRA powers

- 1.9 LBG recognises that the settlement procedure set out in Section 5.32 now more closely mirrors the guidance set out by the FCA which is helpfully provides additional clarity. However, we consider that the PSR could go further to mirror the FCA guidance, which we find to be more detailed. For example, the FCA guidance sets out what may be included as part of the agreement made between the regulator and the organisation concerned.
- 1.10 We welcome the additional guidance on the Enforcement Decisions Committee set out from section 5.62. We consider that correspondence between EDC colleagues could be key to the party being investigated as part of their right of defence as it is likely to show the thinking and decision-making of EDC.
- 1.11 Furthermore, it is important that a clear and comprehensive explanation as to why cases are placed in the hands of the EDC is provided to ensure that parties' responses should be comprehensive. If engagement is open and transparent from the outset, it will avoid the necessity to provide additional material to the EDC as set out in section 5.89.
- 1.12 In summary, it is in all cases extremely helpful when the regulator is able to provide full context and detail from at the outset of any investigation or enforcement, including the legislation behind the intervention, the objectives, intended outcomes and proposed timescales.

2. DO YOU HAVE ANY COMMENTS ON THE REVISED VERSION OF CURRENT CHAPTER 7 OF THE IFR GUIDANCE IN ANNEX 2?

- 2.1 No, LBG does not have any comments on the IFR Guidance in Annex 2.

- 2.2 We understand that the European Commission is not likely to review IFR effectiveness until early next year and that the PSR is also preparing new guidance. With this in mind, we plan to review and comment in due course as more guidance on IFR is published.

3. **OTHER THAN OUR PENALTIES GUIDANCE, DO YOU CONSIDER THAT THE PROPOSED REVISIONS TO THE PPG WILL REQUIRE US TO AMEND ANY OTHER OF OUR PUBLISHED GUIDANCE?**

- 3.1 No, at this stage LBG does not consider that the proposed revisions of the PPG will require the PSR to amend any other published guidance other than the penalties guidance that the PSR has already identified. However, we note that the PSR is yet to publish the outcome of its Review of 2015 Directions and we expect that this would most usefully be published at the same time as the revised PPG.

Nationwide

PSR Powers and Procedures Guidance (PPG) Consultation

Response from Nationwide Building Society

About Nationwide

As a Society of nearly 16 million members and a balance sheet of £236 billion Nationwide is a systemic financial institution in the UK. We are focused on retail financial services products. Nationwide is a top three provider of mortgages and savings accounts and has just under 10% of the current account market.

We've closely supported the development of the Payments Systems Regulator and its work over recent years, notably through our contribution to the Payments Strategy Forum and recent efforts to combat Authorised Push Payment scams. We value the emphasis on competition, innovation and service that the PSR sustains and recognising the dynamics of our market, we know it's sometimes hard to reach our ambitions at the pace the PSR and indeed the industry might like. The PSR's Powers and Procedures need to be optimal to challenge and support the industry towards our shared ambitions but at the same time, we would emphasise it has been invaluable to be able to work closely and collaboratively with the PSR on a regular basis.

Question 1 – Do you have any comments on the revised version of the PPG in Annex 1?

Regulatory perimeter and interaction with other regulators

The PSR jurisdiction and the scope of its work has changed substantially since 2015 alongside the expanding legislative and regulatory framework that governs the PSR. Although this has been reflected to a certain extent in the revised PPG, we believe that there is scope for further clarity regarding how all those moving pieces interact and what this means in practice, which will help to make the guidance clearer and more accessible.

We are yet to see the evidence of joined up regulation between yourselves, the PRA, FCA, CMA and BoE to avoid duplication, confusion and inefficiency over roles and responsibilities and to minimise the burden on the industry. For example; the FCA is leading the current review of price discrimination and is recommending certain remedies like better disclosure. Concurrently, and perhaps in association with the FCA work, Pay. UK has initiated a review to ascertain whether CASS could be extended to savings accounts where 'switchability' might complement transparency on savings products and services - the mechanics of that will have implications for payment systems, operators and infrastructure provision (including overlay services such as CASS).

Nationwide urges the PSR to engage with industry stakeholders sufficiently before undertaking any significant workstreams to ensure these are appropriately framed to deliver maximum benefit considering the inevitable resource costs which will be incurred, both by PSR and the industry generally and so that confusion and regulatory duplication is avoided. We'd encourage the PSR to seek an appropriate balance of regulatory intervention and continuing organic development within the industry which will further support and ensure the achievement of the overall aims of the core objectives of the PSR.

Receiving, gathering and sharing information

In 2.17 of the new PPG the PSR confirm that information which may require it to take enforcement action under FSBRA is received in a number of ways including; *“by intelligence and complaints from other regulators, firms, other organisations and individuals”*. In a later section (2.20) the PPG then clarifies that where the matter falls outside of the PSR jurisdiction; *We do not generally forward complaints and intelligence received to another regulator or organisation*. This appears to highlight a contrast between regulators sharing information, as the PSR will rely on and use intelligence and complaints that they receive from other regulators to decide whether to take enforcement, but will not necessarily share similar intelligence and complaints with regulators outside of the PSR jurisdiction, which could deny those regulators the same opportunity. **This is also mirrored in Annex 2 and so is applicable for question 2.**

It seems proportionate for the PSR to leverage and capitalise on the access to financial and/or operational data already made available to other regulatory bodies such as the FCA/the PRA, given the PSR already has access to the FCA’s intelligence. Where additional information is required that goes beyond current requirements, consideration should be given to extending the requirements laid down by other regulatory bodies in order to gain commonality of approach and ensure efficiencies of scale in its production and delivery. For example, the re-use of existing reporting information would help restrict cost implications for firms without compromising the PSR’s objectives.

Deciding whether to give a specific direction

In 4.6 of the new PPG the PSR confirm that they will;

“usually consult on the draft specific direction or rule requirement more widely to seek the views of affected parties.”

This is a welcome strengthening of the PSR’s commitment to consult more widely when proposing a specific direction to allow a greater diversity of views from all potentially affected participants to be considered before giving the specific direction. We support this change to the PPG - we can gain assurance that consultation will usually and in most non urgent cases precede any giving of a specific direction. A prior consultation allows the PSR to gain confidence that the proposed direction will meet its objective. Prior consultation also provides stakeholders with an opportunity to influence the regulatory environment in which they operate.

Settlement

In 5.35 – 5.37 of the new PPG the PSR confirms it is receptive to any regulated party under enforcement to enter into a settlement discussion and that the PSR themselves may invite the party to engage in settlement discussions. If it is deemed appropriate to enter into settlement discussions, an early settlement notice will be provided confirming the maximum reduction in the financial penalty for the enforcement action and the window that the reduction will be available for. A lesser discount may be available for settlement that is agreed outside of the settlement window.

We are supportive of the option to allow regulated parties under enforcement to settle early or partially settle without admitting full liability. Both are welcome options and early settlement will reduce lengthy and costly enforcement investigations, while partial settlement allows firms to continue to contest part of the proposed action. **Again, this is also mirrored in Annex 2 and so is applicable for question 2.**

Issuing a warning notice

In 5.78-5.83 of the new PPG the PSR confirms its intent to issue a warning notice to the regulated party under enforcement action to allow the parties to make representations on the enforcement action being proposed. This provision aims to ensure that Panel members, EDC and Regulated parties will receive relevant material when under enforcement subject to considerations of confidentiality under section 91 FSBRA, legal privilege and PII. Again, this is a sensible change that will ensure that the regulated party subject to the enforcement will receive access to the material that is being used to demonstrate the grounds of the enforcement issue, help parties under investigation to better understand the charges against them and could help with early settlement. This will align with the approach of other regulatory bodies.

General Direction 1 (G.D.1)

We are interested in the revised PPGs dependence on G.D.1 to enforce openness and co-operation by regulated participants, of which the revised version is yet to be published. Nationwide believes this will bring positive additional clarity regarding notification once finalised, which aligns to the clarity in the revised PPG and alignment of powers.

Disclosure of underlying material

In 5.102 of the new PPG the PSR confirms it will consider whether fairness requires the PSR to disclose any other relevant evidence to recipients including any evidence that we consider may undermine recommendations to the ERC. While supportive of the intention to share information on a fairer basis, we would suggest that consideration is given as to whether the PSR is bound under a duty of candour to disclose confidential information.

Effectiveness and impact

We would be interested to understand the PSR's processes to assess its impact in delivering the objectives set out in FSBRA and the effectiveness of its actions in the wider industry's context.

Market reviews

It would be helpful to include from a PSR perspective, what instigates a market review and will future market reviews follow a consistent approach and what this approach looks like.

Question 2 – Do you have any comments on the revised version of the current Chapter 7 of the IFR Guidance in Annex 2?

Applications and disputes

In the existing IFR guidance the PSR implies that there may be separate processes for dealing with 'complaints' and disputes, in practice would the PSR not deal with all communications received about non-compliance with the IFR in the same way, as complaints? The revised IFR in Annex 2 therefore now removes references to IFR applications and disputes and reflects instead the parts of the revised PPG that describe our complaint handling processes.

This change confirms that complaints and disputes received under IFR will now be addressed under the complaints handling process rather than a separate application process to resolve disputes that existed in the previous PPG. Bringing into the general PPG complaints handling process and removing the 'application process' seems appropriate on the rationale provided that a dispute

would always be received on the back of a complaint. As long as that is the case, and that a dispute can't be logged without a complaint being received, we are supportive of this change.

Taking urgent or interim action

Whilst it is appreciated there may be scenarios where a giving a specific direction at short or no notice maybe required as a preventive measure, we feel it is important the impact in doing so, for regulated persons and impacted parties, is fully understood. Where no notice or prior consultation is given it may be difficult for the PSR to fully assess the impact of the proposed specific direction and therefore could lead to unintended consequences for affected parties or ultimately consumers.

This will also be relevant for question 1.

Question 3 – Other than our Penalties Guidance, do you consider that the proposed revisions to the PPG will require us to amend any other of our published guidance?

We feel the PSR is best placed to establish where revisions of the PPG impact other PSR published guidance and ensure alignment where appropriate. Consideration would need to be given to new entrants and the PSR Access Requirements if the focus turns heavily to regulatory compliance and risk. This could be perceived as a blocker on the ability for new innovative FinTechs to join.

[REDACTED]

Pay.UK



31 October 2019

Our response to the Powers and Procedures Guidance: Consultation on proposed revisions to our Powers and Procedure Guidance CP19/7 (Consultation Document)

Pay.UK notes the review of the Powers and Procedures Guidance (**PPG**) which is being conducted by the Payment Systems Regulator (**PSR**). We have considered the contents of the Consultation Document and have a limited number of issues which we summarise below and discuss in detail overleaf. If our interpretation is correct, these issues would cause us significant concern if implemented.

Pay.UK always looks to be open and transparent with both of its primary regulators. We consider that the current information sharing arrangements provided for in the Financial Services (Banking Reform) Act 2013 (**FSBRA**) have worked well to date. Based on the history of General Direction 1 (**GD1**), our understanding of the scope of the GD1 obligation is that it requires us to proactively identify issues that Participants consider that the PSR would need to be aware of and to highlight these to the PSR in a timely manner. We do this where relevant. However, we have concerns regarding the effective expansion of the scope of GD1 that appears to be proposed via the revised PPG. We think the proposal to link responses to informal information¹ requests with GD1 compliance risks undermining the effectiveness of the information sharing arrangements.

We note the proposed removal of the PPG provisions relating to the PSR's role in resolving disputes which do not clearly fall under sections 56/57 FSBRA (i.e. any disputes which are not clearly access disputes). In our view, keeping those provisions is beneficial for the good functioning of payment system markets and consistent with other economic regulators.

Finally, we think that wherever possible the PPG ensures fair and equivalent treatment of card and interbank payment systems operators. We would therefore ask that the PSR to the greatest extent possible remains agnostic as between types of payment systems.



¹ By informal information requests we mean anything not requested under a s81 or via Specific or General Direction reporting requirements



Question 1 Do you have any comments on the revised version of the PPG in Annex 1?
Effective expansion of the scope of General Direction 1 (GD1).

Current approach

1. GD1 currently sets out how the PSR expects Participants to interact with it. It states at paragraph 1.1 that, “ *A Participant must deal with the Payment Systems Regulator in an open and cooperative way and must disclose to the Payment Systems Regulator appropriately anything relating to the Participant which could materially adversely impact on the advancement of the Payment Systems Regulator’s statutory objectives and duties.*”
2. GD1 was originally called Principle 1 in the PSR’s original consultation, and was based on a similar requirement applied by the Financial Conduct Authority, Principle 11. The PSR indicated in that consultation that: “*We expect a ‘no surprises’ culture. We expect industry Participants to engage meaningfully with us, and to keep us informed of anticipated developments before they are implemented.*” (paragraph 168, PSR CP14/1, A new regulatory framework for payment systems in the UK). The PSR also indicated “*Our proposed Principle 1 on Relations with regulators sets the whole tone for our relationship with our regulated entities and vice-versa, and underpins our ‘no surprises’ culture. Having a principles-based approach is appropriate and proportionate, and avoids the risk of us being overly prescriptive*”, and “*We do not expect Participants to notify us of the minutiae of running their business, we rely on them to exercise sound judgement in determining what are the developments or changes that we would reasonably expect notice of given our objectives and the concerns we are looking to address*” (paragraphs 6.21 and 6.23 of Supporting Paper 6 (PSR CP14/1.1, Regulatory Tools) to PSR CP14/1). It is our understanding that this principle-based approach was also specifically intended to contrast with the approach formally followed by the Payments Council with respect to the interbank payment systems that are now part of Pay.UK, where there was a very detailed and burdensome schedule of information to be regularly reported on to the Payments Council in its quasi-regulatory role.
3. Following its 2014 consultation, the PSR then decided to adopt GD1 in its current form, and indicated (introduction to paragraph 1.31 of PSR PS15/1, A new regulatory framework for UK payment systems):

“*This will help underpin our expectations of Participants, including:*
 - *of a ‘no surprises’ culture, in which Participants engage meaningfully and constructively with us*
 - *that Participant governing bodies will take ownership of an open and co-operative relationship with the PSR, bringing to our attention in appropriate ways the most important information we need*”
4. The PSR can also make formal requests for information from Participants using the powers granted to it under section 81 of FSBRA. Formal information requests must be made in a prescribed manner, must contain certain information and follow the procedure set out in the PPG. Importantly, Participants have a right to make

representations in relation to such formal requests. This helps to ensure that the scope of a request for information is correctly understood and sized, that it takes into account what type of information a Participant is actually able to gather and in what format, and the time it will take to gather that information considering the resources available, potential other competing priorities and any information system constraints.

5. The current PPG is also clear that should a party fail to comply with an information or investigatory requirement imposed through the PSR's formal powers, that failure may bring compliance proceedings under GD1:

"30.2 If a person does not comply with an information or investigatory requirement imposed under any of our statutory powers (sections 81 to 88), they can be dealt with by the courts as if they were in contempt of court (when penalties can be a fine, imprisonment or both). We may also choose to bring compliance failure proceedings for breach of Direction 1 by a Participant in a regulated payment system, as this is a serious form of non-cooperation".

Our understanding of the PSR's proposal

6. From the Consultation Document, it appears that the PSR is now looking to increase the scope of GD1 by creating an obligation to also comply with informal information requests. The proposal also appears to be aligning the consequences of non-compliance with an informal information request with the consequences of non-compliance with a section 81 (formal) request for information. (i.e. both could bring proceedings for breach of GD1).

7. For example, paragraphs 3.74 and 3.75 which state,

"3.74 In the revised PPG we explain the full effect of General Direction 1 by way of making two further amendments, namely:

- We have made it clear that the requirements of General Direction 1 apply whenever we request information from a regulated party, whether we make that request using our formal powers or not (paragraphs 2.38 to 2.41).*
- We have removed the suggestion that we will not consider exercising our power to take enforcement action under FSBRA for non-compliance with General Direction 1 if a party fails to respond to an information request in circumstances where we have appointed investigators but have not followed the usual course of requesting information via an Information Requirement Notice (under section 85 FSBRA) (paragraph 4.37). The PPG currently says that in these circumstances we will instead consider holding an adverse inference against the party in respect of the matter they are being investigated for.*

3.75 *In relation to the second amendment we consider that the reference to drawing adverse inferences from a failure to give information to investigators voluntarily is not strictly appropriate, particularly because this approach is not consistent with what happens when we do not appoint investigators and we request information on a voluntary basis. In that situation, a failure to cooperate with our request could result in enforcement action for non-compliance with General Direction 1, not in an adverse inference being considered. We do not think that there are good reasons for having different approaches in these two scenarios.*

8. When the PSR came into being, it was very clear that for policy decisions to work and for its future work to be effective it needed to have “*a good, open and constructive relationship with the industry*” and this was the regulatory approach that the PSR advocated (paragraph 5 of the Policy Statement PSR PS15/1: A new regulatory framework for payment systems in the UK).
9. Indeed, in its initial consultation the PSR specified that for its regulatory approach: “*We expect a ‘no surprises’ culture. We expect industry Participants to engage meaningfully with us, and to keep us informed of anticipated developments before they are implemented. This includes expecting industry Participants to cooperate with us by responding fully, accurately and promptly to any information requests we issue.*” (paragraph 1.96, Supporting Paper 1 (PSR CP14/1.1, The PSR and UK payments industry) to PSR CP14/1, A new regulatory framework for payment systems in the UK).

Our assessment of this proposal

10. It is our view that the PSR’s current information gathering requirements work effectively and they have supported the development of an open and transparent relationship and the effective sharing of information without undue burden for either Pay.UK or the PSR. In addition, the current arrangements provide the PSR with a formal power to require the disclosure of specific information when appropriate and contain sufficient protections for Participants – i.e. via a section 81 request. If there are concerns about a Participant’s approach to meeting informal information requests, then the PSR has a powerful tool that it can use to ensure it receives the information that it requires.
11. We note that **no evidence has been provided in the consultation to justify such a significant change from the current arrangements as is proposed.**
12. We consider that the implications of the proposed change could be significant for Pay.UK and our engagement approach with the PSR, as the change would create legal uncertainty and additional enforcement risk. It could, in order to mitigate this potential risk, result in Pay.UK becoming more formal and cautious in its engagement with the PSR which would in turn reduce the overall effectiveness of Pay.UK’s engagement with the PSR.

13. For example, the PSR currently makes a large volume of informal requests to Pay.UK (more than 70 written questions or other requests in the last 6 months have been logged via the Regulatory Engagement & Policy team, which does not cover all of the requests made to Pay.UK including oral requests). Responding to all of these requests requires significant contribution from around the business and takes up a significant amount of Pay.UK's time. The requests vary in level of detail, specificity, the context or project to which they relate, the evidence required, the format of response sought and also the timeframes attached to a response.
14. The challenge Pay.UK has had is meeting all of these requests on a timely basis with limited resource, despite new requests being made on a regular and often urgent basis. To deal with this, an internal team has established an information request management process and agreed this with the PSR which allows us to be flexible in responding to and prioritising the PSR's needs and requirements. However, strengthening the PPG/GD1 in the way proposed would exacerbate the risk attached to meeting these requests. Pay.UK may then need to be less flexible in the way it meets the PSR's requests in order to mitigate the increased legal risk that is being created.
15. We also note that there is a lack of clarity around what constitutes an informal information request. Might it, for example, include oral requests? The lack of a record of such requests creates clear challenges from a compliance perspective – which again increases legal and compliance risk.
16. Whilst Pay.UK expect that most of the PSR's information requirements can be met through informal information request, we recognise that in some instances it will be more appropriate for the PSR to request certain information using its formal section 81 powers. These statutory requests do have benefit for Pay.UK in that the PSR is committed to considering our representations on scope, format and timing. In addition, we are able to share confidential information with you via section 81 requests. As a comparison, complying with informal information requests from the PSR because of the threat of GD1 enforcement would not provide us with equivalent protections. This may be important in circumstances where we could not otherwise comply with an informal information request, for example where contracts prohibit any sharing of confidential information unless there is a formal request from a regulatory authority.
17. Finally and importantly, we note that the PSR's recent "Day One Directions review" consultation did not contain any explicit (or implicit) proposal that the scope of the GD1 obligation would be expanded in the way that the PPG consultation now appears to be proposing. Having recently consulted on the Day One Directions and not included an expansion of the scope of GD1 of the type which appears to be contemplated via the PPG, it seems inappropriate from a process point of view to effectively expand the scope GD1 through a change in the PPG, which is a process document (as opposed modifying GD1 itself via an appropriate consultation).

18. Notwithstanding the concerns expressed above and our view that the proposed change is one that should not be taking place, we would require much greater clarity from the PSR around the practicalities of our having an obligation to comply with informal requests for information. We have many unanswered questions relating to how this would work in practice. For example:
- what types of requests would be covered?
 - how could they be made (phones calls, emails?)?
 - what would a reasonable timeframe for response be?
 - how would clarification of the scope of an informal request for information be managed (outside the s81 process)?
 - how would the aggregate volumes of request and burden on the organisation be factored into deadlines?
 - under what circumstances would it be reasonable for a regulated party to refuse such a request?
19. We would therefore ask the PSR to clarify the legal position regarding this proposed expansion of scope of GD1.

Dispute resolution

20. We note that the current PPG has a disputes section (see paragraph 14 PPG). It appears, from the revised PPG, that the PSR is looking to remove the PPG provisions relating to its role in resolving disputes which do not clearly fall under sections 56/57 (i.e. any disputes which are not clearly access disputes).
21. Pay.UK's internal "Enforcement of Participant Compliance" process also envisages that in these circumstances, Pay.UK would escalate the issue to the PSR. Our concern is that by removing these provisions from the PPG, the PSR may be less willing to become involved and Pay.UK could be tasked with addressing issues where we simply do not have the enforcement powers to do so, or risk being sanctioned ourselves.
22. The risk is also that Participants could try to "engineer" an access dispute as a way of ensuring that the PSR does need to be involved – thereby making disputes wider than they might otherwise be.
23. We think that keeping these general dispute resolution powers contribute to making markets function better and that it is therefore helpful for these dispute provision to be maintained (even if they are very infrequently used), and that this is consistent with other economic regulators who have dispute resolution powers.

Question 2 Do you have any comments on the revised version of current Chapter 7 of the IFR Guidance in Annex 2?

Equal treatment of interbank and card payment systems

24. We think it is important that wherever possible the PPG ensures fair and equivalent treatment of card and interbank payment systems. As a key principle we would not expect process differences to be able to inadvertently create a regulatory advantage or disadvantage for one type of system (or its Participants) versus another. This “net neutrality” approach is adopted in the telecoms industry and one that should apply within payments. We would therefore ask that the PSR to the greatest extent possible remains agnostic as between types of payment systems and keeps this in mind as it finalises its various guidance.

Question 3 Other than our Penalties Guidance, do you consider that the proposed revisions to the PPG will require us to amend any other of our published guidance?

25. As mentioned above in our response to Question 1, it is our view that it is inappropriate to expand the scope GD1 through a change in the PPG, which is a process document (as opposed modifying GD1 itself).

UK Finance

CP19/7 PSR Powers and Procedures Guidance Consultation

Date: 31st October 2019

Address:

[REDACTED]

Sent to: [REDACTED]

UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

1. The banking and finance industry welcomes the PSR's consultation on its powers and procedures. We agree that the revision of the guidance, first published in 2015, is timely and can be informed by the PSR's operations since then.
2. We note too that the PSR has removed some guidance from the PPG, on access to market reviews, since that is now set out separately and that revisions to the PPG will lead to consequential amendments to the Interchange Fee Regulation Guidance.
3. We support the principles articulated in the guidance – that the PSR should act in a way that is evidence based and consider objectively and widely amongst the options at its disposal. It is important that regulatory action is proportionate to the detriment, consistent and focussed on promoting customer benefit and allowing industry to innovate.
4. It is helpful for industry to understand the way in which the PSR exercises its powers, the choices it makes about the actions at its disposal and the procedures it follows. We are pleased that as well as outlining the formal processes the PSR undertakes and the internal mechanisms it uses, such as the Administrative Priority Framework, the PPG recognises the value of informal consultation with firms and their representative bodies and that it is now approachable.
5. To bring that to life, UK Finance felt that the first timelines set out by the PSR¹ (in November 2018) for the implementation of confirmation of payee were overly ambitious and mis-set public expectations. Once the PSR engaged in dialogue with industry, we were able to work together

¹ <https://www.psr.org.uk/psr-publications/news-announcements/PSR-opens-consultation-on-Confirmation-of-Payee>

with a shared objective towards implementation timelines that remain challenging but are much more achievable.

6. In discussion with UK Finance members, they have commented that there is now 5 years' worth of experience of the regulatory regime for payments introduced in 2014. The payments landscape is now very different and much has changed in a short time period – including the market reviews, the protection of free-to-use ATMs, access to payments systems, the creation of Pay.UK and merger of Bacs, the Faster Payments Scheme and Cheque and Credit Clearing, open banking and Payment Services Directive 2. Further changes are imminent, including the introduction of Confirmation of Payee.
7. The PSR has played an important role catalysing change in the UK's domestic payments industry.
8. Industry would like to see a clear rationale as to why the PSR is proposing to use one type of approach rather than another, and the relative merits of the chosen measure compared to the alternatives at its disposal. For example, the circumstances when the PSR should pursue supervisory versus enforcement action should be clearly set out, given the significant variation in process and the level of independent oversight. There should also be clear circumstances or principles to determine when action being taken by the PSR may be published. There will also be cases where a change in approach requires further consultation, as demonstrated by Ofcom (c.f. its further consultation on imposing a network-access obligation on providers with significant market power, occasioned by new information about the scope of those obligations²), Ofgem (c.f. its further consultation on DCC's application for a baseline margin adjustment, in the light of different interpretations of relevant licence conditions³) and Ofwat (c.f. its further consultation on the 2010-15 final reconciliation for the change protocol and overlap mechanisms, reflecting alternative approaches suggested in response to its initial consultation⁴). We therefore suggest that the PSR amend Para. 4.64 of the draft revised guidance to make clear that it will consult further if it proposes significant differences between the draft and final general direction.
9. It has also been emphasised that the time given to respond by the PSR is important, for example requests for information typically provide a six week deadline which should not be shortened. We also suggest that paragraph 4.7, which states that the PSR will 'consider' sending a draft IFN, should be amended to make clear that it will be the default or normal approach to share a draft IRN, with a reasonable timeframe for comment (i.e. a minimum of two weeks).
10. Para. 3.16 of the consultation states: . . . *we will consider taking either regulatory or enforcement action in circumstances where both possibilities are available, regardless of whether a decision was initially taken to open an enforcement case or look into the matter in some other way.* We note that PSR chair Charles Randell observed in a speech at the Association for Financial Markets in Europe annual conference on 2 October 2018 that: *Just as governments can tend to prioritise legislation over delivery, regulators can tend to prioritise rulemaking. So we need to make sure that we don't reach for the rulemaking tool when it isn't*

² <https://www.ofcom.org.uk/consultations-and-statements/category-3/further-consultation-mobile-call-termination-market-review>

³ <https://www.ofgem.gov.uk/publications-and-updates/further-consultation-dcc-baseline-margin-adjustment-ry-201516>

⁴ <https://www.ofwat.gov.uk/consultation/consultation-2010-15-final-reconciliation-change-protocol-overlap-mechanisms/>

*the best response.*⁵ We would welcome recognition of that sentiment in its guidance, if not a bias in favour of enforcement over regulatory action unless the former is demonstrated to be insufficient to addressing the relevant issue.

11. Para. 4.13 of the draft revised guidance states: *We are aware that a recipient of an IRN could be responding to several requests (from us or other authorities) concurrently. Generally, this will not of itself be an acceptable reason for delay.* We would propose that the PSR is more pragmatic about the difficulties multiple requests can cause a firm. In particular, we recommend it await the outcome of HM Treasury's (HMT) call for evidence on regulatory co-ordination in the financial services sector⁶, which explicitly welcomed views on how UK bodies work together to coordinate data/information requests.
12. Para. 3.53 of the consultation states: *The revised PPG explains that it is usual practice to publish the final versions of all of our directions on the website, together with a statement explaining, in general terms, the responses we received and how we have taken these and other, relevant, factors into account when determining whether to make the direction.* We would propose that the PSR routinely publish all non-confidential responses to consultations. This is consistent with the principle of exercising its functions as transparently as possible (indeed, it is what the PSR proposes in Para. 4.7 to do with responses to this consultation), and standard practice for other economic regulators (e.g. Ofcom⁷ and Ofgem⁸).
13. In our response to HMT's call for evidence, we have argued that effective coordination between the multiple bodies responsible for regulatory change is vital to achieving the aims of ensuring financial stability and maximising benefits to consumers. This needs to be reflected in the way regulators exercise their powers and procedures. Again, we would ask the PSR to consider whether this intent – and its duty under section 98 of the Financial Services (Banking Reform) Act 2013 to ensure the coordinated exercise of its functions with the Bank of England, the Financial Conduct Authority and the Prudential Regulatory Authority⁹ – is fully reflected in Para 2.21 of the draft revised guidance, which states (our emphasis): *Where the issues are within both our jurisdiction and that of another regulator or competition authority (for example, the FCA and the BoE), we will typically discuss the matter with the appropriate team within that organisation. **Each organisation will consider its own priorities to decide which, if any, takes further action.***
14. In such cases, we are asking regulators to consider the action they take collectively.
15. In calling for greater co-ordination, we draw on the recent experience in the payments industry of competing regulatory requirements, we note that similar technical change requirements often draw on the same constrained technical capability in firms for delivery. It is important therefore that all consultation and directions consider the costs, benefits, feasibility and impacts.

⁵ <https://www.fca.org.uk/news/speeches/rolling-rock-cycle-deregulation-crisis-and-regulation>

⁶ <https://www.gov.uk/government/consultations/financial-services-future-regulatory-framework-review>

⁷ <https://www.ofcom.org.uk/consultations-and-statements/how-will-ofcom-consult>

⁸ <https://www.ofgem.gov.uk/consultations/our-consultation-policy>

⁹ <http://www.legislation.gov.uk/ukpga/2013/33/section/98>

16. For example, the API deliverables required for Confirmation of Payee, the CMA Order on Open Banking and PSD2 are a stand-out example of projects competing for the same technical resources within broadly the same time frames. This draw focusses that resource on regulatory compliance and risks crowding out innovation, reducing the development of competitive services and, ultimately, negatively impacting the end-user.
17. This is, of course, a point that goes wider than the PSR. It is however at the heart of industry's narrative on regulation and we hope you will consider it as part of the regulatory response to that review and in the use of the powers and procedures set out in your consultation.

[REDACTED]