

DRAFT Guidance

Access to regulated payment systems

General Direction 2 and
sections 56 and 57 FSBRA
[sections 131Z13 and 131Z14
FSMA 2000]

[Month] 2027

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1 Executive summary

What this guidance does

- 1.1** This guidance sets out the legislative framework governing access to payment systems, the approach to monitoring compliance with that framework, and the process that the regulator will follow when considering applications to grant new access to regulated payment systems¹ or to vary an agreement relating to regulated payment systems.

Who this guidance is for

- 1.2** This guidance is intended for participants in regulated payment systems, including those seeking to participate in, or otherwise access, such systems. This comprises the eight payment systems designated by HM Treasury: Bacs, CHAPS, Cheque and Credit (C&C), Faster Payments Scheme (FPS), LINK, MasterCard, Visa and Sterling Finality Payment System ('the regulated payment systems').
- 1.3** It replaces two sets of previous guidance – the PSR's draft guidance on handling applications under sections 56 and 57 FSBRA (published in July 2016²) and the PSR's approach to monitoring and enforcement under the Payment Services Regulations 2017 (published in September 2017³). This combined guidance is shorter and aims, alongside the changes detailed below, to reduce the compliance burden for regulated firms.
- 1.4** Throughout this guidance the party that is providing access is referred to as the 'access provider' (either a direct access provider (a payment system operator) or a PSP [PSSP] acting as an indirect access provider (IAP)). The party seeking access is referred to as the 'applicant'.

Key changes

- 1.5** This guidance is aligned to the new regulatory framework for access to regulated payment systems, which is now governed by the requirements set out in the PSR's revised General Direction 2 (GD2).⁴ This includes:
- a single substantive test for both direct and indirect access, maintaining the core principles that currently underpin the access regime, including the requirement that access arrangements are proportionate, objective and non-discriminatory (POND)
 - extending the requirement to have publicly-disclosed access requirements to all operators of FSBRA-designated payment systems, to increase consistency and coherence to the access regime
 - amending the format of the annual report of compliance for operators, in a template specified by the regulator and attached as an annex to the revised GD2

¹ A regulated payment system is one designated under section 43 FSBRA [section 131Z5 FSMA 2000]

² <https://www.psr.org.uk/publications/consultations/cp164-draft-guidance-on-our-approach-to-handling-applications-under-sections-56-and-57-fsbra/>

³ <https://www.psr.org.uk/publications/policy-statements/the-psr-s-approach-to-monitoring-and-enforcement-under-the-payment-services-regulations-2017/>

⁴ [Link to revised General Direction 2]

- 1.6** This new guidance also reflects several minor amendments, aimed at making it easier to understand and quicker to navigate for firms, to ensure they are compliant. These include:
- removing the pre-application phase, as this was rarely used by applicants and was therefore an unnecessary stage in the application process
 - removing the reference to Regulation 105 of the Payment Services Regulations 2017 (Access to bank accounts) as this overlaps with powers that the FCA already has and will continue to have after the PSR is abolished
 - updating the timelines for assessment of access applications, to align with the practical experience of dealing with such applications, which are now set at 6 months for straightforward applications and up to 12 months for more complex applications

2 Introduction

- 2.1** For banks, building societies and other PSPs [PSSPs] to operate, they need to be able to transfer money on behalf of the customers they provide services to (their clients) – and they need access to payment systems to do that.
- 2.2** There are a number of different ways to get access to regulated payment systems. These comprise direct and indirect access, including the use of third-party aggregator services for some payment systems. We are committed to supporting entry of and ongoing access for PSPs [PSSPs] by fostering an environment that enables them to choose the access option that best suits their needs.

Background

- 2.3** This guidance is given by the Payment Systems Regulator (PSR) in relation to the exercise of its powers under the Financial Services (Banking Reform) Act 2013 (FSBRA). However, this guidance is given noting that the PSR is to be abolished, with the Financial Conduct Authority (FCA) replacing it as the regulator of payment systems.
- 2.4** As part of the transfer of functions to the FCA, guidance issued by the PSR, including this guidance, is to be treated as having been made by the FCA. To assist readers, this guidance includes in square brackets our interpretation of how the guidance will apply, once the responsibility for supervision and enforcement has been transferred to the FCA (including identifying the equivalent section in the Financial Services and Markets Act 2000 (FSMA 2000)).⁵
- 2.5** The Payment Systems Regulator (PSR) has developed this guidance to help parties understand the regulatory framework governing access to payment systems. For revised General Direction 2 this includes the approach to monitoring compliance and the actions available to the regulator for enforcement. In the case of sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] it concerns our approach to determining applications.
- 2.6** This includes the criteria contained in the “always on” requirements governing access to regulated payment systems (as set out in the PSR’s revised General Direction 2), as well as the process for submitting and assessing applications for access (under section 56 FSBRA [s.131Z13 FSMA 2000]) and applications to vary existing agreements concerning access and the use of services provided by a regulated payment system (under section 57 FSBRA [s.131Z14 FSMA 2000]).
- 2.7** The PSR issues this guidance under section 96 FSBRA. The regulator will take this guidance into account when considering potential breaches of the requirements set out in General Direction 2, as well as applications submitted under sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000].

⁵ IMPORTANT NOTE FOR CONSULTATION: this paragraph assumes that Parliament passes the relevant provisions of the Financial Services and Markets Bill 2026-27 and transitional arrangements put in place mean that this guidance is to be treated, after PSR abolition, as having been made by the FCA, in respect of its powers in sections 131Z13 and 131Z14. Other references to FCA having relevant powers, and to relevant terms such as “payment system service provider” also assume this.

Approach to regulating access

The PSR's objectives⁶

2.8 The PSR has three statutory objectives.⁷ In giving general guidance, we are required to act in a way which advances, so far as is reasonably possible, these objectives.⁸ These are to:

- ensure that payment systems are operated and developed in a way that considers and promotes the interests of service-users (the businesses and consumers that use services provided by payment systems)
- promote effective competition in the markets for payment systems and services in the interest of service-users – between operators, PSPs and infrastructure providers
- promote the development of and innovation in payment systems, particularly the infrastructure used to operate those systems, in the interest of service-users

2.9 In addition, when giving general guidance we are also required to have regard to:⁹

- the importance of maintaining the stability of, or confidence in, the UK financial system
- the functions of the Bank of England in its capacity as a monetary authority
- our regulatory principles under section 53 FSBRA¹⁰

"Always on" access requirements (General Direction 2)

2.10 The PSR had previously given two directions specifying the requirements governing access to payment systems: General Direction 2, concerning access conditions under FSBRA, and General Direction 3, concerning access conditions under the Payment Services Regulations 2017 (PSRs 2017).

2.11 HM Treasury is expected, as part of the legislative changes being implemented around the abolition of the PSR, and the transfer of its functions to FCA, to revoke the access provisions concerning payment systems in the PSRs 2017. Therefore, in order to ensure the continuing application of the substantive requirements concerning access to regulated payment systems, the PSR has decided to give a revised General Direction 2.

6 The FCA will have similar objectives once it takes on the PSR's functions.

7 Sections 50-52 FSBRA [s.131Z7 FSMA 2000]

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

9 S. 96(2) FSBRA.

10 S. 53 FSBRA.

- 2.12** This revised General Direction 2 sets out the requirements concerning access to regulated payment systems, including that any access requirements imposed by an operator of a regulated payment system or a payment service provider (PSP) [payment system service provider (PSSP)¹¹] providing indirect access:
- must be proportionate, objective and non-discriminatory (POND).
 - must not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks (such as settlement risks, operational risk or business risk), or to protect the financial and operational stability of the payment system.
- 2.13** Any requirement must be justifiable in those terms. This means that an operator or IAP must be able to demonstrate that their approach to giving access complies with the legal requirements set out in General Direction 2. This includes rules and conditions relating to the provision, variation and termination of access.
- 2.14** The revised General Direction 2 also includes a provision revoking General Direction 3, which will be redundant following HM Treasury's revocation of regulation 103 of the PSRs 2017.

Applications for access to a regulated payment system

- 2.15** Separately, sections 56 and 57 FSBRA [sections 131Z13 and 131Z14 FSMA 2000] provide a mechanism whereby a party ('the applicant') that has a commercial dispute with another party (or parties) can ask the regulator to determine the outcome.
- Section 56 FSBRA [s.131Z13 FSMA 2000] gives the regulator the power, on application, to require an operator of a regulated payment system or a PSP [PSSP] that provides indirect access to enable the applicant to become a PSP [PSSP] in relation to the system.
 - Section 57 FSBRA [s.131Z14 FSMA 2000] gives the regulator, on application, the power to vary certain agreements relating to payment systems.
- 2.16** This guidance explains how the regulator will assess such applications. It sets out the criteria the regulator may take into account, the information and evidence applicants may be asked to provide, and the process for assessing applications.
- 2.17** Before submitting an application, the regulator expects applicants to have reasonably investigated all potential means of resolution directly with the relevant parties, including any potential alternative access options that might be available and to provide evidence of the same.
- 2.18** Once an application has been accepted, the regulator will collect and analyse more evidence and information to reach a reasoned decision. For straightforward cases we would aim to determine an application in up to six months, while for more complex applications the assessment may take longer (up to twelve months).

¹¹ The equivalent of a payment service provider under FSMA 2000 is payment system service provider (see sections 42 FSBRA and 131Z4 FSMA 2000) which is why "PSSP" is included in brackets after "PSP".

Structure of the guidance

- 2.19** This guidance explains how the regulator will interpret the regulatory requirements and monitor compliance with the access requirements set out in General Direction 2, including assessing potential breaches, along with the process for considering applications made under sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000]. The regulator will consider applications on a case-by-case basis and may deviate from this guidance if it considers that this would better advance its statutory objectives, giving reasons when it does this.
- 2.20** This guidance will be kept under review by the regulator and may be amended as appropriate in light of the experience of applying it, best practice considerations or in response to legal, regulatory or market changes.
- 2.21** The remaining chapters of the guidance are as follows:
- **Chapter 3** sets out the regulator's approach to monitoring compliance with the regime governing access to regulated payment systems.
 - **Chapter 4** sets out the process for making an application for access under section 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000], including what is expected of parties and how the regulator will decide whether to take an application forward.
 - **Chapter 5** describes how the regulator will assess applications, including the assessment framework, what may be required of parties and the regulator's process for issuing decisions.
 - **Annex 1** sets out the information required from parties when making an application.

3 Monitoring & compliance

This chapter sets out how the regulator interprets the requirements placed on operators governing access and arrangements for monitoring compliance with those requirements, including regular reporting through annual compliance reports submitted to the regulator.

The information received through these reports may be used as the basis of compliance-focused discussions between the regulator and the relevant party. In certain circumstances, the regulator may decide to carry out an in-depth review to understand if there are any wider implications arising from the compliance with these requirements.

Regulatory requirements

- 3.1** As set out above, the regulatory framework governing access to regulated payment systems is now contained entirely in the revised General Direction 2, given by the PSR under FSBRA.
- 3.2** This chapter sets out these requirements in more detail, including how the regulator interprets the requirements placed on operators governing access and arrangements for monitoring compliance with those requirements, including regular reporting.

Access requirements

- 3.3** The requirements placed on operators of regulated payment systems and indirect access providers enabling others to have access are set out in the revised General Direction 2 – i.e. that any access requirements must:
- be proportionate, objective and non-discriminatory (POND).
 - not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks (such as settlement risks, operational risk or business risk), or to protect the financial and operational stability of the operator, indirect access provider or payment system.

How the regulator will assess compliance

- 3.4** In assessing the compliance of individual operators with each of the criteria governing access to regulated payment systems, the regulator will consider the following:

Access must be on POND terms

3.5 When considering whether payment systems operators and IAPs are complying with the obligations on them set out in General Direction 2 (for both direct and indirect access), the regulator may consider the following factors:

- Do the requirements imposed by the operator or IAP concerning access allow the operator or IAP to consider the PSP's individual circumstances, including the specific costs, risks and revenues it may present?
- Do the requirements imposed by the operator or IAP apply similar terms and conditions to all PSPs that engage in similar transactions or have a similar profile, taking risk considerations into account (in other words, are they all non-discriminatory)? We may ask the payment system operator or IAP to explain any differences.
- Can the operator or IAP justify each of its requirements relating to the provision, variation or termination of access?
- Are the requirements imposed by the operator or IAP relating to the provision, termination and variation of access proportionate? Are the requirements proportionate to the risks imposed on the payment system? We may assess proportionality by reference to the interests of the operator or IAP and the risks it needs to manage.
- Has the operator or indirect access provider imposed any restrictions on the basis of institutional status?
- Do an operator's requirements restrict effective participation in other systems?

3.6 This is not an exhaustive list and it will be the responsibility of the operators of relevant payment systems and IAPs to ensure that their requirements comply with the obligations on them under General Direction 2.

Operators and IAPs must not prevent, restrict or inhibit access or participation more than is necessary to safeguard against specific risks or protect the financial and operational stability of the operator, IAP or payment system

3.7 Payment system operators and IAPs must make sure that their requirements for access do not prevent or inhibit access to the system or impose unnecessary restrictions on access or participation in the system.

3.8 The requirements can take account of legitimate specific risks to the operator or IAP's business (such as settlement risk, operational risk or business risk), and/or to the financial and operational stability of the operator, IAP or payment system, of providing, varying or terminating access. Any inhibitions or restrictions must be justified and go no further than necessary to mitigate the risks set out in General Direction 2 and protect stability.

3.9 The regulator may assess in detail any restrictions or inhibitions imposed by the requirements to understand the particular restrictions involved, how they are necessary to safeguard the interests of the operator, IAP or payment system and how they mitigate the specific risks the operator or IAP has identified.

Compliance reporting

- 3.10** As set out in General Direction 2, it is a requirement for operators to submit an annual assessment to the regulator of how they are complying with the obligations on them under General Direction 2.
- 3.11** This report reflects a self-assessment by the operator of its compliance with the requirements of General Direction 2 throughout the relevant 12-month period. This report must be submitted in the form a completed template specified by the PSR, as may be amended by the PSR from time to time. The current form of the template is attached as an annex to General Direction 2.
- 3.12** The information received through these reports may be used as the basis of compliance-focused discussions between the regulator and the relevant party. Where appropriate, the regulator may require parties to provide additional data or information during each year.
- 3.13** In certain circumstances, the regulator may decide to carry out an in-depth review of any issues in order to understand if there are any wider implications arising from the compliance with these requirements.

4 Making an application to the regulator for access

Before submitting an application, the regulator expects applicants to have reasonably investigated all potential means of resolution directly with the relevant parties, including any potential alternative access options that might be available.

This chapter sets out the types of applications that can be made to the regulator, the regulator's approach to confidentiality and publication and the context in which the regulator will apply these powers (including interaction with competition law powers and working with other regulators).

To ensure that applications are properly considered, applicants should provide detailed information about the nature of the dispute and the outcomes sought. Further guidance on the format and content of applications is set out in the Annex.

- 4.1** Access providers take account of various operational, technical, system-integrity, financial crime and commercial considerations in deciding whether, and on what terms, to supply access. How and on what terms access is supplied has direct implications for the parties involved. This may give rise to commercial disputes which may, in certain situations, have implications for the advancement of the PSR's statutory objectives (competition, innovation and service-user interests).¹²
- 4.2** Therefore, sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] provide a mechanism whereby a party ('the applicant') that has a commercial dispute with another party (or parties) can ask the regulator to determine the outcome.
- 4.3** In line with the PSR's statutory objectives and wider work, the regulator's overall aim when exercising these powers is to continue to promote competition and innovation in payment systems markets for the benefit of service-users, while taking account of the commercial, operational, technical and financial risk factors of all parties involved.
- 4.4** In circumstances where the risks of supply are manageable, access to payment systems should not be used as a means of restricting entry and competition. The regulator also does not want PSPs [PSSPs] to be treated in a way that is unreasonable and which has the effect of limiting a PSP's [PSSP's] ability to supply services to their customers.
- 4.5** Before submitting an application, the regulator expects applicants to have reasonably investigated all potential means of resolution directly with the relevant parties, including any potential alternative access options that might be available.

¹² In taking on payment systems regulation, the FCA will have similar objectives in relation to payment systems to the PSR.

Making an application

- 4.6** To ensure that applications made under sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] are properly considered, applicants should provide detailed information about the nature of the dispute and the outcomes sought.
- 4.7** Further guidance and detail on the format and content of applications is set out in the Annex. Applicants should ensure that the information provided is specific and relevant. For example, applicants should clearly identify and assess their access options and stipulate which access provider and regulated payment systems the application relates to. Submitting unnecessary or irrelevant information or evidence could delay our assessment. Documents created for the purpose of submitting the application should be provided to us in searchable electronic formats.
- 4.8** [The process for submitting applications will be confirmed prior to the final guidance being issued.]
- 4.9** We will aim to acknowledge receipt of applications made by email within five working days. We will review the application and assess whether it contains the necessary information, documentation and detail. We will ask the applicant for more detail if necessary.
- 4.10** The application must include a declaration in the form provided in the Annex, signed by an officer of the applicant. We will not assess an application until this declaration is provided.

Types of applications that can be made to the regulator

- 4.11** FSBRA [FSMA 2000] enables the regulator to consider applications for direct and indirect access to both enable new access (section 56 FSBRA [s.131Z13 FSMA 2000]) and to vary the terms of existing access agreements (section 57 FSBRA [s.131z14 FSMA 2000]).
- 4.12** These are broad powers, which, if used inappropriately, might have a detrimental effect on the promotion of effective competition. We expect that we will use these powers typically only when other access options have been exhausted, and where it is appropriate and proportionate to do so.

Submission of evidence and cooperation of parties

- 4.13** The regulator expects the parties involved in an application to cooperate in submitting relevant and comprehensive evidence and information when requested, at all stages of the regulator's assessment. The nature of the information and the timeframe for submitting it will vary according to the complexity of the matters in dispute and the availability of information.
- 4.14** If the requested information is not provided within the specified timeframe, the regulator may take this into account when deciding whether, and how, to progress the application, including whether it is appropriate to determine the application on the basis of the information available.

Confidentiality

- 4.15** Confidential information is protected under section 91 FSBRA [s.348 FSMA 2000]. Where applicants and access providers consider that information or documents they are submitting to the regulator contain non-public commercially sensitive confidential information, they should identify the specific information concerned and explain why they consider the specific items of information are confidential.
- 4.16** Applicants and access providers should also provide a non-confidential version of their application, any response to the application, and any representation or submissions in relation to the application, so that these can be shared with the other party (or parties) named in the application.
- 4.17** Any applicant and access provider should provide a waiver and consent to confidential information being shared with other regulatory authorities for the purposes of section 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] powers (this is to the extent that information gateways do not already permit such sharing of confidential information). Where consent is withheld, this may delay or impact on the assessment of any application and applications may not be able to be progressed if the regulator cannot access relevant information.
- 4.18** Parties should note that where the regulator considers it appropriate and, subject to certain conditions, the regulator has the power to disclose confidential information without consent under section 92 FSBRA [s.349 FSMA 2000]. Where the regulator proposes to disclose confidential information without consent, it may liaise with the party whose confidential information it is and give them an opportunity to make representations about that disclosure.

Publication

- 4.19** The regulator must exercise its functions as transparently as possible and must consider [have regard to] the desirability of publishing information relating to any persons on whom it imposes requirements.
- 4.20** In deciding whether to publish information relating to an application, the regulator will balance the interests of transparency in the exercise of their functions and wider awareness of their decisions with fairness to the parties to the dispute and commercial confidentiality.
- 4.21** The regulator may seek the views of the parties on what it proposes to publish when deciding whether and what information to publish. The regulator will normally not include commercially confidential information in any publication although, as noted above, it has the power to do so under section 92 FSBRA [s.349 FSMA 2000] under certain conditions.
- 4.22** Where a proposed requirement to grant new access or a proposed variation of an existing agreement is likely to have wider implications or relevance beyond the parties to the dispute, the regulator may decide to share a draft decision more widely and seek the views of other stakeholders. In such cases, the regulator will take into account the benefits of wider consultation as well the interests of the parties concerned (particularly in respect of any confidential information) and the nature of the proposed disclosure. The regulator may seek the views of the parties to the dispute, prior to any disclosure.
- 4.23** The regulator will normally publish a summary of any decision taken under section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000] on their website in connection with applications, or at a minimum a summary of the principles underpinning the regulator's decision.

The context in which the regulator will apply these powers

- 4.24** The regulator will not exercise these powers in a way that requires access providers to act unlawfully or take on undue operational or compliance risks, or that would expose it to unreasonable additional risks. In exercising these powers, the regulator will also take into account the differences between direct and indirect access, the competitive and market context and the nature of the providers of direct and indirect access.
- 4.25** The regulator expects to use sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] powers where, given its statutory objectives, it considers that it is appropriate and proportionate to take action, without introducing inappropriate risks or adversely affecting the development of the market.
- 4.26** Where the regulator identifies a market-wide, systemic or recurring issue, it may decide to take a wider policy view and seek to address the issue by using other more general powers, such as its power to give specific or general directions under section 54 FSBRA [make payment system rules under s.131Z9 or give payment system directions under s.131Z10 FSMA 2000].

Interaction with our competition law powers

- 4.27** The regulator is required to give primacy to investigation and enforcement under the Competition Act 1998 (CA98) in certain situations. This means that, before exercising powers under sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000], the regulator has a duty to consider whether it would be more appropriate to proceed under CA98. If the regulator considers that it would, it must do so rather than exercise its FSBRA [FSMA 2000] powers.
- 4.28** The regulator will decide if CA98 is more appropriate on a case-by-case basis. This decision will be informed by the potential harm to competition, whether there are reasonable grounds for suspecting an infringement of competition law, the resource and timing implications of the alternative actions available, and the potential outcomes (including their suitability for addressing the issues identified) and deterrent effect of those actions. Other factors may also be relevant.¹³
- 4.29** If the regulator considers that CA98 should not be given primacy at the start of its investigation, the regulator will continue to assess whether any issues that emerge during the assessment of a section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000] application should be investigated under CA98 or another competition tool.

¹³ <https://www.psr.org.uk/publications/policy-statements/ps152-final-psr-competition-concurrency-guidance-and-responses-to-cp151/>

Working with other regulators

- 4.30** The regulator may make enquiries with other regulatory bodies at any point during the process and seek their advice as appropriate. This includes those bodies responsible for prudential, conduct and financial crime regulation of PSPs [PSSPs], and other regulators with responsibilities connected to regulating payments systems and payment services.
- 4.31** Under the Memorandum of Understanding agreed between financial regulators¹⁴, there is a duty to coordinate and consult with them, and to seek their advice on areas of common regulatory interest. The regulator may also liaise with HMRC and other regulatory bodies and agencies as it considers appropriate. However, the regulator's cooperation with these authorities does not replace the responsibility that individual parties have to engage with these regulatory bodies themselves.
- 4.32** Under the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 ('the 2014 Regulations')¹⁵, the PSR has 'information gateways', which enables the disclosure of confidential information with other authorities and persons under certain conditions. [Under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ('the 2001 Regulations')¹⁶, the FCA has 'information gateways', which enables the disclosure of confidential information with other authorities and persons under certain conditions.]
- 4.33** The regulator can also share information with other authorities and persons with the consent of the party whose confidential information it is.

Decision on progressing an application

- 4.34** In deciding whether to progress an application, the regulator may consider a range of factors. For example, whether the submitted application is complete, whether the application falls within the scope of the regulator's statutory powers or whether it would be more appropriate to consider the issue under other regulatory or competition powers. In some cases, there may also be a need to clarify the facts of the case and/or the scope of matters to be determined.
- 4.35** In addition, the regulator may consider the potential impact of the application in terms of advancing its statutory objectives, functions and duties, as well as the urgency of the application and the timelines involved in handling it.
- 4.36** As set out above, the regulator may also make preliminary enquiries with other regulatory bodies to help determine whether it is appropriate to consider some applications.
- 4.37** As part of this initial decision-making process, the regulator will usually send the non-confidential version of the application to the other party (or parties) named in it.¹⁷

¹⁴ <https://www.psr.org.uk/publications/corporate-information/mou-between-the-bank-of-england-fca-psr-and-pra/>

¹⁵ SI 2014/882

¹⁶ <https://www.legislation.gov.uk/ukxi/2001/2188/contents>

¹⁷ Parties should note that, as set out elsewhere, where we consider it appropriate, and subject to certain conditions, we have the power to disclose confidential information without consent (s.92 FSBRA [s.349 FSMA 2000]).

Eligibility and scope

- 4.38** In order for the regulator to consider an application, certain statutory conditions must be met and the application must fall within the relevant scope of section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000]. These conditions are:
- the payment system in question is a regulated payment system
 - the application is a PSP [PSSP], or prospective PSP [PSSP], who participates in a regulated payment system, or a person who uses services provided by a regulated payment system
 - for access applications, the applicant uses, or intends to use, the regulated payment system to transfer funds on behalf of its clients (as opposed to for its own operational purposes such as paying salaries)

Suitability of section 56 or 57 FSBRA [section 131Z13 or 131Z14 FSMA 2000]

- 4.39** The regulator will consider whether it is more appropriate for the issues in dispute to be addressed through other means and mechanisms. This might include initiating regulatory enforcement proceedings under General Directions or regulatory proceedings to give a Specific or General Direction [make payment system rules or give a payment system direction].
- 4.40** These proceedings could be initiated alongside the exercise of the regulator's powers under section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000], or as an alternative to hearing a dispute under these powers. The regulator will also consider whether the nature of the issues in dispute is more appropriately considered via the relevant competition provisions under CA98 (as set out above at paragraphs 4.27-4.29).
- 4.41** The regulator will review the expected outcomes sought by each party and determine whether there is any provision in law which would prevent the applicant gaining access¹⁸ or that would affect their ability or discretion in making any order.
- 4.42** The regulator will also consider whether there are additional access options (or more appropriate means and mechanisms for dispute resolution) available to the parties, or any future changes (for example, legal or market-driven) that may mitigate the issues in dispute.

Clarification of facts and issues

- 4.43** The regulator may need to clarify certain points made in the application, and/or make enquiries to understand the precise scope of the matters under dispute. This would not normally include meetings with the relevant parties at this stage, but the regulator may do so where it considers it necessary to determine whether the application is within scope or is sufficiently complete.

Notification of decision to accept or reject the application

- 4.44** As soon as practicable after the regulator has decided whether to proceed with an application, the parties named in the application will be informed. If the regulator rejects the application, it will provide summary reasons for doing so.

¹⁸ For instance, Regulation 31 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 requires regulated entities to terminate business relationships where they are unable to apply customer due diligence measures.

5 Assessment of applications and issuing decisions

Once an application has been accepted, the regulator will collect and analyse more evidence and information to reach a reasoned decision. This chapter sets out the assessment framework and approach that the regulator will follow in assessing applications, including the substantive test and additional factors that may be taken into account.

This chapter also sets out the decision-making process, including potential outcomes, representations on the draft decision and appeals.

- 5.1** Once an application has been accepted, the regulator will collect and analyse more evidence and information to reach a reasoned decision. To do this, the parties to the dispute need to provide any information and documents requested and cooperate with the regulator in a timely and constructive manner. As set out above, if parties are found not to be co-operating in a timely and constructive manner, this may have an impact on the regulator's decision about whether to progress the application further. The regulator may also request information from other bodies such as other regulators or other parties.

Detailed assessment of applications

- 5.2** The detailed assessment of any applications will be managed at the regulator by a case lead. The case lead will be responsible for corresponding with the parties to inform them what information is necessary for the regulator's assessment and the deadlines for providing such information.
- 5.3** For straightforward cases the regulator will aim to determine an application within six months, while for more complex applications the assessment may take longer (up to twelve months).¹⁹

Potential for urgent action

- 5.4** We may also consider whether urgent action is needed and would be appropriate or proportionate. For example, under section 54 FSBRA [s.131Z10 FSMA 2000] the regulator has the ability to give a direction to maintain an existing agreement while a detailed assessment of the application is carried out.
- 5.5** In urgent cases, the regulator may require the granting of new access or the variation of an agreement without giving notice, or may only give a short time period in which representations to the regulator can be made.
- 5.6** However, only in exceptional circumstances would the regulator view it as necessary, appropriate and/or proportionate to take urgent action.

¹⁹ The time it takes us to determine an application will depend, among other things, on the complexity of the issues raised and the speed with which information is provided to us by the parties.

Submitting additional evidence and information

- 5.7** In gathering additional evidence to carry out a detailed assessment, the regulator may require the parties named in the application, or third parties, to submit information, either voluntarily or through the exercise of regulatory powers to obtain information and documents (under section 81 FSBRA [s.165ZA FSMA 2000]). Where a complex issue is involved, the regulator may also require a report from a participant or from a skilled person on specific issues (under section 82 FSBRA [s.166 FSMA 2000]).²⁰
- 5.8** It is expected that the evidence and information provided will mostly be in documentary form (such as submissions, information, data, commercial or financial analysis, or representations by the parties), but the regulator may convene further meetings with the parties to clarify the issues and evidence or information submitted.

Assessment framework and approach

- 5.9** Sections 56 and 57 FSBRA [s.131Z13 and s.131Z14 FSMA 2000] do not specify an assessment framework that should apply when considering applications made under these provisions. However, in giving this guidance and determining general policy and principles, the regulator is required to act in a way that advances its statutory objectives, which must include giving guidance about how the regulator intends to advance those objectives.

Substantive test

- 5.10** The regulator is committed to promoting payment systems in which PSPs' [PSSPs'] access is not impeded more than is necessary to appropriately safeguard against the specific risks associated with supplying access. To determine whether access has been impeded 'more than is necessary', the regulator will assess applications having regard to the following substantive test:

'whether a provider's access requirements and approach to supplying access (including the terms, conditions, fees and charges on which any access is offered) to a regulated payment system are proportionate, objective and non-discriminatory, and do not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk, and business risk and to protect the financial and operational stability of that regulated payment system'.

Factors we may take into account in our assessment

- 5.11** The regulator's approach to assessing applications may differ, depending on the specific features of an application and the nature of the issues in dispute. For example, if an application concerns an indirect access provider's assessment of the financial crime risks of supplying a particular applicant, the assessment is likely to focus on the indirect access provider's approach to assessing these risks and whether it satisfies the substantive test above, given the risk framework in place to comply with financial crime regulation. Matters relating to more commercial considerations (such as prices, for example) may require a more detailed analysis of the underlying evidence.

²⁰ Paragraphs 3.21 to 3.33 of the PSR's Powers & Procedures Guidance (<https://www.psr.org.uk/media/u3fhtmn5/psr-powers-and-procedures-guidance-sept-2024.pdf>) include additional information on the PSR's information gathering and investigative powers.

5.12 In assessing an application, the regulator may take into account the following factors. This list is not exhaustive, and the regulator may take into account any other factors it considers relevant.

- How much actual and potential competition is there in the supply of access?
- Are there potential alternative access options available to the applicant? These could include direct access, technical access or supply from other access providers.
- Has the access provider discussed the dispute meaningfully and constructively with the applicant? Has the access provider given the applicant a meaningful opportunity to address any concerns the access provider may have?
- Has the applicant responded to any requests for information within appropriate timescales? Has the applicant taken concrete and timely steps to address the access provider's concerns?
- Has the access provider considered the applicant's individual circumstances, including the individual settlement, operational and business risks it may present?
- What, if any, are the potential impacts on end-users and financial stability?
- Has the access provider offered the applicant similar terms and conditions to other PSPs that engage in similar transactions or have a similar profile, taking risk considerations into account (in other words, is it acting in a non-discriminatory way)? We may ask the access provider to explain any differences.
- Can the access provider objectively justify the terms and conditions offered (including a decision to not supply access)? If an access provider has not given a sound justification for its decision, we may require it to provide further reasons.
- Are the access provider's terms and conditions, or is its decision to not supply access to an applicant, proportionate? We may assess whether the terms and conditions applied by the access provider to the individual applicant go beyond what may be necessary to achieve the access provider's objectives and the risks it has to mitigate. Could the same objectives be fulfilled in a less onerous and more effective way (for example, by charging a higher price for managing risks as opposed to deciding not to supply or to terminate existing supply)? We may therefore assess proportionality by reference to the interests of the access provider and the risks it needs to manage.
- Are there any previous cases in which the same applicant, or the same access provider, has been in a dispute and which has resulted in an application under section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000] being submitted to us?

Decisions on applications

5.13 Once the regulator has assessed an application, a draft decision will be issued to the parties, where applicable with a notice of [direction setting out] any proposed requirement to grant access or vary the terms of an agreement. This will set out the regulator's provisional decision and reasons for it, as well as the next steps and the timescale for representations to be made.

5.14 The regulator may decide that it is appropriate to use powers under section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000] to require the access provider to grant access or vary an existing access agreement (or agreement for services provided by regulated payment systems). In urgent cases, the regulator may require the granting of new access or the variation of an existing access agreement without giving notice.

Potential outcomes

Direct access

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

Indirect access

- 5.17** Similarly, for indirect access applications, the regulator may conclude that an indirect access provider's approach or requirements do not meet the standards set out in General Direction 2 (in which case, the regulator may also take regulatory enforcement action against the system operator for failing to comply with General Direction 2).
- 5.18** If an individual applicant has been given non-standard terms or treatment, or the access requirements otherwise do not meet the standards set out in General Direction 2, the regulator may order the indirect access provider to provide direct access on standardised and compliant terms.
- 5.19** For section 56 FSBRA [s.131Z13 FSMA 2000] indirect access applications, the regulator may also consider it appropriate to issue an order requiring an indirect access provider to enter into a new agreement to enable the applicant to become an indirect PSP [PSSP] with regard to a specific regulated payment system. Depending on the nature of the application, the regulator may also specify other terms of access, or simply require the terms applied to the applicant to be consistent with the substantive test.
- 5.20** For section 57 FSBRA [s.131Z14 FSMA 2000] indirect access applications, the regulator may issue an order [give a direction] varying particular contractual terms, conditions, fees or charges.

Opportunity to make representations on the draft decision

- 5.21** The regulator will send the parties a draft decision and any notice of [direction setting out] a proposed requirement to grant access or a proposed variation of an agreement. The regulator will allow 14 days for representations to be made in writing and will take into account the circumstances of each case. In some situations, it may be appropriate to give parties more time for representations to be made while, in urgent cases, the period in which representations can be made might be shortened.
- 5.22** The regulator may also hold meetings with one or more of the parties. If the regulator does not propose a meeting, a party affected by the draft decision may request one.

- 5.23** In the period after issuing a draft decision to the parties, the regulator will continue to encourage the parties to negotiate to try to resolve their dispute before the regulator publishes a final decision.

Final decision

- 5.24** The regulator will take account of representations received in reaching a final decision on whether to require an access provider to grant new access or vary an existing agreement.
- 5.25** If the regulator decides to require either of these actions, it will send the parties named in the application a final notice of a requirement to grant new access [direction requiring new access is granted] under section 56 FSBRA [s.131Z13 FSMA 2000] or a variation of an existing agreement under section 57 FSBRA [s.131Z14 FSMA 2000]. The notice [direction] will set out the regulator's reasons for the decision.
- 5.26** If the regulator decides not to require the granting of new access or the variation of an existing agreement, it will give the parties a statement summarising their reasons.

Appeals

- 5.27** Section 76(7) FSBRA [s.131Z16 FSMA 2000] provides that any person who is affected by a decision to require the granting of new access or the variation of an existing agreement can appeal that decision to the Competition and Markets Authority (CMA).
- 5.28** Section 79 FSBRA [s.131Z16 FSMA 2000] sets out additional provisions relating to such appeals to the CMA:
- a. In determining the appeal the CMA must have regard, to the same extent as the PSR [FCA] must, to the matters to which the regulator must have regard in discharging its functions, including its statutory objectives.
 - b. In determining the appeal the CMA may have regard to any matter to which the regulator was not able to have regard in relation to the decision, but the CMA must not, in the exercise of that power, have regard to any matter to which the PSR [FCA] would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
 - c. The CMA must either dismiss the appeal, or quash the whole or part of the decision to which the appeal relates.
 - d. The CMA may quash a decision only to the extent that it is satisfied that the regulator's decision was wrong on one or more of the following grounds:
 - The regulator failed to properly have regard to any matter that it must have regard to in discharging our functions.
 - e. The regulator failed to give the appropriate weight to any matter that we must have regard to in discharging our functions.
 - The regulator's decision was based, wholly or partly, on an error of fact.
 - The regulator's decision was wrong in law.
- 5.29** The regulator's decisions to not require the granting of access or the variation of an agreement, like all administrative decisions, can be the subject of judicial review by the courts.

Annex

Information required from parties when making an application

The contents of the application

- 1.1** This annex sets out guidelines for applicants on the format and content of applications made under sections 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000].
- 1.2** Applicants should ensure that they follow these guidelines carefully. Failure to do so may mean that the application does not contain sufficient information for us to assess it properly.
- 1.3** If an application does not contain all the necessary information, we will advise the applicant what other information we need in order to consider the application. On receipt of an application, we will allocate an initial enquiry number to the application.
- 1.4** It would be helpful if applicants could, wherever possible, provide their application and any relevant supporting documents in Word format (ideally) or in other searchable electronic formats (including searchable PDF).
- 1.5** Applications should contain the business name, address, telephone number and email address of the applicant and the contact details of an individual who can discuss the details of the application.
- 1.6** An application should contain the following information:²¹

Section A: Overview of the application

- The nature of the applicant's business and its scale (local, national, international), as well as details of relevant turnover and/or values and volumes of relevant transactions.
- The broad facts of the application and its commercial context.
- The legal basis for the application (for example, section 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000]).
- The proposed specific outcome or outcomes sought by the applicant for the dispute.

²¹ Where the applicant considers that any information is not relevant, or believes that any information is not available, they should explain why this is the case.

Section B: Details of the dispute

- The relevant regulated payment system(s) (and any non-regulated payment systems used, for example, SWIFT) and relevant access products or services.
- The full facts of the dispute and its commercial context, including all relevant background and evidence.
- The full details of any justification given for the behaviour or action leading to the dispute.
- If applicable, copies of the relevant contract or terms which are the subject of the dispute.
- If the application relates to a request for access to a regulated payment system: the business plans of any relevant product or service, including forecasts, demonstrating how and when the applicant intended or intends to launch the products or services that depend on access to the relevant regulated payment system(s).
- If the application relates to fees, charges, terms or conditions of an agreement relating to a regulated payment system: a copy of the relevant version of the agreement or contract, clearly identifying the relevant clauses.
- If the application relates to fees or charges being too high: an explanation of why the applicant considers that the fees are inappropriately high and might be different from those applied to other PSPs [PSSPs] in similar circumstances.
- If the application relates to another matter: enough information and supporting evidence to enable us to understand the context and subject matter of the application.
- If there are any regulatory conditions or legal obligations (for example, obligations arising under the Interchange Fee Regulation, competition law, financial crime legislation or other applicable legal requirements) applying to any party to the dispute: the full details of those conditions and whether (and, if so, why) the applicant considers that a relevant obligation is not being met by the other party.

Section C: History of commercial negotiations

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

Section D: Outcomes sought

- The full details of the specific outcomes sought by the applicant, with reasons and justifications.
- The legal basis for the desired outcome (for example, section 56 or 57 FSBA [s.131Z13 or s.131Z14 FSMA 2000]).

- The applicant's assessment of how their desired outcome would be consistent with the regulator's duties, including in respect of our objectives and with our substantive test (as set out in chapter 5 of this guidance).²²

Section E: Other supporting information and evidence

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

Confidentiality

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

Form of declaration by an officer of the company

- 1.9** Applications made under sections 56 or 57 FSBRA [s.131Z13 or s.131Z14 FSMA 2000] and in connection with any other disputes should be accompanied by the following declaration by an officer of the company:

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

Signed: []

Position in the company: []

Date: []'

²² The applicant may also want to give its view on how the subject matter of the dispute and the desired outcome relate to broader regulatory issues or policies (for example, where the matter in dispute is also subject to any investigation, review, consultation or other programme of work by the PSR [FCA] or another regulator).

Types of evidence and information required from parties

- 1.10** Following receipt of an application and as part of its assessment, the types of evidence and information that the regulator may require from the parties will vary, according to the specific issues raised in the application.
- 1.11** The following sets out examples of the types of information and evidence the regulator may request. It is not an exhaustive list, and the regulator may request additional information or evidence where it considers this relevant to its assessment.

Contextual information

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

Cost and revenue information

- Cost, price and revenue information relevant to the application. This will generally be forward-looking but may also involve historical information. It might include information about:
 - the expected costs of serving the applicant (including costs relating to financial crime regulatory compliance and controls)
 - the applicable tariff structure
- The past or expected volumes and associated revenues attached to the particular applicant
- This information might also include estimates of costs and revenues from the provision of services other than access (to enable us to assess revenues and costs across the whole relationship between the access provider and the applicant) and the level of economic return required from the applicant to make it commercially attractive to the access provider.

- Comparative information on the prices, costs, revenues, volumes and products offered to similar types of PSPs [PSSPs] (for example, those with similar sizes or volumes of transactions, serving similar client bases, similar uses of regulated payment systems, similar geographies and so on).
 - This may include any models or studies the access provider has produced that provide information about the costs of serving different types of PSPs [PSSPs] (including for internal purposes).
- We may also request information about the extent to which specific contractual terms (including price) vary across similar types of PSPs [PSSPs], and the average economic return derived from other, similar types of PSP [PSSPs]. This information will have to be provided in a way that enables us to benchmark the applicant relative to other PSPs [PSSPs] supplied by the access provider.

Risk impacts

- Information about the assessment of the operational, business and settlement risks that apply to the applicant, and the cost implications of these risks.
 - For indirect access we may also request information about the risk-based financial crime assessment process and the level of risk (including what risk factors and variables were taken into account). This information will have to be provided in a way that makes it clear to us how such risks compare to similar types of PSPs [PSSPs] supplied by the access provider.
 - We may also request information about any commercial thresholds applied and how they are linked to underlying costs.
 - We may require access providers to demonstrate their methodology for linking commercial thresholds to underlying costs.
 - We may also request information about any 'risk premiums' attached to the commercial terms offered to PSPs [PSSPs], how any such risk premium is linked to underlying risks and the costs associated with managing those risks, and how that risk premium was quantified.

Application assessment process

- Information about the internal governance process used by the access provider to assess the access request. In particular, we may request information which will enable us to assess whether the PSP's [PSSP's] application had an appropriate internal review by the access provider.
- We may also ask for other relevant documentation about how the access provider assessed the application, including but not limited to copies of any internal recommendations and assessments used to decide whether to supply or the terms on which to supply access to the applicant.
- We may also ask the access provider for information about how it handled access requests from other similar types of PSPs [PSSPs] (those with, for example, a similar size or volume of transactions, a similar client base, similar use of payment systems, similar geographies etc.), and the outcome of those assessments.

- 1.12** The regulator may also require an access provider to explain, and provide evidence about, how it considers its grounds for refusal, variation or termination of access are consistent with the substantive test set out in chapter 5, with evidence to support its argument.
- 1.13** In relation to applications under section 57 FSBRA [s.131z14 FSMA 2000], the regulator may also ask the access provider to explain the specific commercial or risk factors that have changed, which have led the access provider to vary the terms or terminate the access arrangement, with evidence to support its explanations.
- 1.14** The regulator may also request that other regulatory bodies – such as financial crime supervisory authorities – provide information in relation to the parties named in the application.

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