

Responses to Consultation Paper PSR CP14/1 – A new regulatory framework for payment systems in the UK

Respondents - I to P

Respondent (<i>non-confidential responses</i>)
IBM
IBOS Association
Intelligent Processing Solutions Ltd
Kingfisher PLC
Laurasia Associates.pdf
LINK Scheme
Lloyds Banking Group
Maclay Murray & Spens LLP
MasterCard
Metro Bank
MRM
Nabarro LLP
National Savings and Investments
Nationwide Building Society
NCR
Orwell Group
Paragon Bank
Payments Council
PayPoint
Prepaid International Forum

IBM

IBM

IBM response to:
Autumn 2014 PSR Consultation Paper (PSR CP14/1)
A new regulatory framework for payment systems in the UK

IBM welcomes the publication of this Consultation Paper and wishes to congratulate the PSR on its decision to invite all interested parties to submit their views. IBM and its industry partners are major providers of solutions and services to payment system infrastructures and payment service providers (PSPs). We have therefore limited our responses to areas relevant to our role.

Questions related to the PSR's approach to payments industry strategy.

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

IBM agrees with the approach to set up a Payments Strategy Forum. It is essential that strategic objectives and priorities are agreed by all stakeholders involved to enable them to plan and optimise resources to meet users' requirements and foster competition and innovation. IBM would welcome the opportunity to participate in the Forum.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The challenge will be to ensure representation by all stakeholders whilst ensuring efficient and rapid decision making.

The emergence of many new PSPs, whether start-ups or traditional players broadening their offerings, as well as the finer segmentation of users, have vastly increased the number of stakeholders. Not all have the resources and bandwidth of the major players to dedicate time and people to traditional consultation formats e.g. meetings, white papers, forums.

IBM suggests that in a world where innovation is global, multidisciplinary and open, and where there is a need to bring different minds and different perspectives together to create solutions, a new style of collaborative approach is needed.

IBM has over a decade of experience of running large-scale innovative collaboration programmes (often referred to as "jams") internally and for clients or external organisations. These open up tremendous possibilities for including and embracing the views of stakeholders across industries, disciplines and borders, which could be beneficial to the PSR.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The indicative model appears sound but should not result in the creation of too many working groups. They should be set up when needed with defined objectives, deliverables and time frames, and disbanded when these are met.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

IBM believes that resilience, security, confidentiality and protection against cybercrime should be additional themes for consideration. These systemic issues require a collaborative approach across all stakeholders, PSPs, infrastructures and users, as well as coordinated responses in case of breaches and/or failures.

Questions related to the PSR's proposed approach to access to payment systems.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

IBM agrees with the proposed approach in relation to the development by industry of Technical Access solutions. A flexible 'à la carte' solution, reflecting part E in figure SP4-4, unbundling settlement by the Sponsor Bank from payment processing and technical access to multiple payment systems by several Direct and Indirect PSPs is feasible and would appear the most cost efficient.

12 January 2015.

IBOS ASSOCIATION

IBOS ASSOCIATION

IBOS Association – Response to Autumn 2014 PSR Consultation paper (CP14/1)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons

IBOS Association response:

IBOS would question the underlying assumptions of the PSR's programme, namely around innovation and new entrants, which are the main devices to be used to open up the market.

The PSR's proposals are particularly not borne out by the excellent report it has commissioned from Accenture

- Report 2 Accenture Innovation Report (rpt 2 accenture innovation report.pdf)

Accenture address the "Barriers faced by PSPs" p24. Only 4% of these barriers correspond to "Lack of access to infrastructure", the PSR's subject. Against the barriers described as "Need to incentivise industry collaboration" and "Network effects in a two sided market", which collectively account for 72% of barriers, does it not mean there is actually not a market space for the new PSP, unless others change their behaviour without there being a compelling commercial reason for them to do so? If the proposition of the new PSP is along the lines of one to a merchant where the merchant must accept a big discount in order supposedly to get more sales, the merchant's refusal to take up such a proposition could fit under either of these headings, and the refusal is not a problem: it is a commercial decision not requiring official intervention.

The Accenture Innovation Report cites the features that result in low Payer and Payee adoption levels on p25:

Feature	Payer	Payee	Average
High cost of implementation	0%	41%	20.5%
Lack of security	38%	13%	25.5%
Lack of trust	33%	30%	31.5%
Lack of customer protection	26%	16%	21.0%
High cost of membership	5%	0%	2.5%

The 41% figure against Payees for "High cost of implementation" merits investigation, because "cost of implementation" may mean that the new entrant trying to get the Payee connected is imposing a technology solution or other conditions that have little to do with access to payment systems and a lot to do with the new entrant's business case, which is then demonstrated as flawed: the market will not hold the cost of the solution they want to launch. The Payee's refusal to pay up to join is not a problem: it is a commercial decision not requiring official intervention.

The reasons for 95% of the failure rate for new entrants whose proposition fell down towards the Payer, regardless of which of the three reasons was selected (security, trust or protection), is stunning and should have merited a much larger influence on the PSR's proposals than it apparently has done. In IBOS' view these objections are not three but one: the consumer has no interest.

The PSR's supposition that there is even a market for such new propositions is consequently not demonstrated, and, as a consequence, it is not justified to require efforts and changes of the existing market players in order to accommodate new players whose proposition is rejected by the user. The user is entitled to reject a proposition: that is a personal decision not requiring official intervention.

Regarding resistance to new entrants whose proposition is towards the merchant, the theme was consistent: the new entrant promises extra customers to the merchant if only the merchant will accept a big discount on the face value of the goods/services the merchant sells.

Accenture's report demonstrates that innovation is very narrowly based:

P30 - 60% of innovations involve mobile phones

P31 - >55% of innovations are internet-based

P31 - 25% occur at point-of-sale

P31 - 70% of cases impact payment initiation and authorisation; around 50% are processing and settlement innovations

Accenture's report also draws attention to the number of new payment propositions that are actually not about enhancing the payment experience for the consumer but about:

- Creating an advertising channel towards the consumer
- Obtaining data on the consumer in order to exploit that data

In IBOS' view, the interests of such players should be disregarded in the PSR's deliberations. The sole concern should be the new entrants whose objective is and whose business model depends upon the enhancement of the payment experience.

Lastly, on P32, Accenture draws attention to the lack of impact and lack of relevance of the vast majority to innovations to the UK - only 7% fall into the top category on both measures:

Impact of Innovation	Innovation		Categorisation	Matrix
	Highest	8%	13%	7%
	High	18%	9%	3%
	Medium	32%	6%	5%
		Medium	High	Highest
Relevance to UK				

Accenture has used a sample of 100 or so innovations to reach these figures, and the in-scope innovations have both:

1. Made it to the market
2. Achieved some success in their initial launch field

It is notable that the figures do not contain the categories "Low" and "None". Accenture should be asked to revisit the figures and include a wider sample, to show whether 7% becomes 1% or less if one counts in all innovation propositions that at least were launched.

The PSR's deliberations do not take adequate regard of the fact that the payments business is a zero-sum game. Consumers do not make more payments just because it is easier to do so: they make their payments by different means based on the relative merits of those payment means.

Regulatory Policy Institute/approach to strategy setting states that “there is a view across many jurisdictions that innovation in payments systems is critical for future economic performance and growth”: is this statement regarded as evidence in itself?

When a statement like this is made that having better means of payment leads to economic growth, one has to be very careful:

- Does it simply mean shorter times for checking out at shops, such that the shop can have more throughput?
- Does it lead to people buying things they do not want or need, and depleting their resources?
- Does it mean they buy more of what it is easier to pay for because of the associated payment means, rather than buying accommodation, heating, clothing and food?

There is quite a body of academic evidence that consumers who use cash and cheque spend less in aggregate and spend a greater proportion of their funds on items that have value for them, with debit and credit cards being less advantageous, and contactless being the least advantageous of all.

In this respect the PSR’s proposals – which appear to push strongly towards those means of payment that can have negative socio-economic consequences – are questionable. There appears to be a desire simply to reduce the market power of the big banks, to replace vertical integration with horizontal integration - and the selected means are to be “innovation” and “new entrants”, regardless of possible collateral damage, whereas the PSR’s supporting papers and reports repeatedly state that, although the big banks do have positions at multiple levels in the payments business, there is no evidence that these positions are being used to distort the market.

IBOS would conclude its initial observations by making specific negative comments about the following reports commissioned by the PSR and included with the consultation:

Report 4/LSE

Statement	IBOS view
viii “there appear to be separate markets at the infrastructure level”	Untrue – there is very significant overlap, but also points of underlap
ix “predominance of fixed costs over variable costs”	This is a statement of the obvious and is superfluous. Central banks and governments demand resilience, hot and warm back-up sites etc, and that causes fixed cost
xii “the level of substitutability among different interbank payment products seems at present to be low”	Untrue – there has been significant migration from cash to card, from cheque to card, from CHAPS/BACS for FPS, from cash and cheque to FPS...

Report 6/Regulatory Policy Institute/approach to strategy setting:

- lack of examination of Eurozone, the most relevant foreign jurisdiction because the UK is in the EU and has to comply with EU law
- Lack of evidence that the new organisations created in Canada, USA and Australia have delivered, yet these are the ones held up for emulation

Report 7/Regulatory Policy Institute/assessment of suitability of different regulatory approaches

- Telecoms always emerges as the market model most similar to payments
- Australia is again highlighted as the most relevant foreign jurisdiction; the author of the report is Australian
- At 3.9 we finally come to some cursory examination of the Eurozone but only stretching to the Interchange Fee Regulation and PSD2 – 2 pages

To conclude, the PSR's Supporting Papers disconnect substantially with the important evidence contained in the reports it has commissioned. The important evidence risks being submerged in the large quantity of material that is more "mood music" than evidence.

The PSR's proposals are in line with its own Supporting Papers but, because of the underlying disconnect, make proposals requiring quite radical change, enormous effort, larger volume of governance activity and bureaucracy in order to foster a new market in which:

- 97% of innovations rejected are rejected by consumers because they do not trust them
- Only 7% of the innovations that were successful to some degree somewhere had real impact and are relevant to the UK
- Circa 65% of all innovations are somehow about using a mobile device to initiate payments, which is a very small segment of the payments business now, and which is forecast to grow... by telecoms companies and internet service providers

The PSR has not made the case in terms of benefits and costs at the highest level for its proposals.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

IBOS Association response:

In our view the Report 3 KPMG Infrastructure Report for PSR (rpt 3 kpmg-infrastructure-report-for-psr.pdf) covers a lot of ground and provides much data and many statistics, but misses the point by failing to identify some key problems.

What is projected as coherent in the KPMG report and which may also appear so when looked at by the Bank of England does not follow through to the consumer, and there are some significant issues caused by Bank of England policies and procedures:

- Pushing what it sees as "non-systemically important payments" off the RTGS process within CHAPS
- Creation of the "non-urgent" category of payments within CHAPS in 2013, which KPMG appear to applaud as progressive but is not so for the paying customer
- Encouragement of Faster Payments – to get volume off CHAPS
- Discouragement of smaller PSPs having settlement accounts at the Bank
- Not allowing any bank to have a Custody Account at the Bank in which it can hold gilt-edged securities and the equivalent government agency bonds that the Federal Reserve Bank allows its members to hold in the Fed's books, and against which a bank can instantly overdraw its Settlement Account

- Causing gilt-edged securities and the equivalent government agency bonds instead to reside in CREST, a separate infrastructure, with interlinking arrangements for Delivery-against-Payment within CREST, the CREST cash settlement in the RTGS Processor at the Bank, and then the balancing off of CREST cash settlement accounts with Settlement Accounts in CHAPS – but without an option simply to leave eligible securities in the Bank and borrow at the Bank against them: that is a normally a core function of a central bank
- Allowing banks who are part of the PRA Reserves system to mobilise all or part of those reserves intraday and have them as a cash balance on their Settlement Account for CHAPS or their earmarked account to meet FPS/BACS/cheque obligations: the reserves cease then to act as Reserves and are instead hypothecated or spent. It is a logic flaw to permit Reserves to be mobilised in this way intraday
- Not allowing any bank to overdraw its Settlement Account or indeed any other accounts at the Bank: the only version of central bank money that can be used for settlement is cash, not even note&coin in the Bank's vaults because that has also been outsourced
- Eligible bonds have instead to repo'd by a bank with the Bank of England through CREST to create liquidity i.e. cash: there is no facility simply to overdraw an account against pledged security as there is at the Federal Reserve – which would mean a zero time delay between the need for cash arising and the ability of a bank to meet the need
- Because the process to mobilise securities in CREST and either move them or repo them takes at least ½ hour, anecdotal evidence suggests that the largest volume of intraday repo business is done at start-of-day, and that banks do not want to run the risk of having inadequate coverage on Settlement Accounts, so they overfund: this is inefficient and results in all banks having to dedicate a larger-than-necessary share of resources to payment settlement

A particular logic flaw was to create the process within CHAPS for “non-systemically important payments” to go off the RTGS process and be settled in a Delayed Net Settlement process. This is flawed for the paying customer. When a customer requests and (normally) pays for a CHAPS payment (possibly paying £30) they should have the right to expect that their payment be delivered instantly and in central bank money to the beneficiary's bank and credited – in same-day and immediately available funds – to the beneficiary.

This should be the same business deal for the two customers as Faster Payments: if the sender has immediately available funds in their account, the banks will settle the payment amount in immediately available funds to the beneficiary's account within seconds. Faster Payments is free and available 24x7 – but only possible up to £25,000. CHAPS costs £30, is available 5x9 but has no upper limit.

The diversion of a CHAPS payment into the Delayed Net Settlement process is very questionable given what the consumer believes they have paid for. In the CHAPS outage in October 2014 it was the Delayed Net Settlement process that was closed down while the “urgent” payments were put through manually – “urgent”, that is, according to the Bank's definition.

KPMG's analysis also does not take account of how the anomalies between the infrastructures become magnified when a consumer's PSP is interposed. In this respect their rather emollient opinion about the UK's payment systems has been derived from looking down the telescope only one way.

Having CHAPS, FPS and BACS with their individual purposes and definitions set from the central perspective may appear coherent on paper, but the situation has become somewhat disjointed for the end-user when one factors in the access channel, the cost, amount limits and opening times at the PSP level, through which the user interfaces to the payment systems.

	Channel	Cost	Amount limit	Opening
CHAPS	Bank branch, phone or fax; requires AML form and branch manager sign-off	£30 – but the customer is usually unaware that the payment is not an RTGS payment and will be classed by their bank as non-urgent	None	Bank branch opening hours
FPS	Mobile, internet banking, standing order	Free	£100,000 at the system level, but normally £25,000 per payee per business day	24x7
BACS	Same as FPS for consumer – used for FPS-eligible payments over £25,000	Free	None	24x7 but with settlement date rolling one day forward around 22:00 – always being D+2

The normal logic is that payments of a higher amount get made urgently – in other words an FPS payment over £25,000 should go through CHAPS not BACS, but then:

- CHAPS is not 24x7
- CHAPS is not free
- CHAPS is subject to the sender bank's designation of payments as non-urgent, introducing a chance of a delay in the payment which conflicts with the FPS terms for the customer

The result is that larger business and consumer payments are often paid through a less attractive scheme.

At the same time one has two schemes with near-free usage, and another which is quite expensive and which has features overlapping one of the free offerings.

The three payment systems do take traffic off one another as result, so they are not as distinct from one another as KPMG (or the LSE) might think:

- FPS from CHAPS – urgent payments under £25,000
- FPS from BACS – payments where the parties do not want to wait 3 days and are able to initiate online or via mobile

The result is a portfolio of schemes which are partially overlapping but which leave certain bases uncovered, especially when one factors in the IT architecture of some of the major UK sponsor banks.

To give a concrete example, an IBOS employee and customer of Lloyds Bank received the proceeds of an endowment mortgage policy in July 2014 and wanted to use it to pay off their mortgage at Cheltenham & Gloucester – a Lloyds subsidiary. Cheltenham & Gloucester had issued a Redemption Amount – of about £52,000 – for a specific date in July, so the customer requirement was for the whole payment to arrive onto a specified account at Cheltenham & Gloucester on that date and with a specific string of numbers in the reference field (10 digits, so the BACS reference field would have accommodated it):

Methods attempted	Outcome
Phone Cheltenham & Gloucester and get them to take the payment using a debit card	<ul style="list-style-type: none"> Cheltenham & Gloucester only accept debit card payments of up to £5,000
Lloyds eBanking	<ul style="list-style-type: none"> Amount too big for a Faster Payment The system defaulted to D+2 – a BACS payment – but then that would have arrived 2 days late and not been the correct Redemption Amount for that date The consumer had to abort the payment
Lloyds Telephone Banking	<ul style="list-style-type: none"> Could not offer anything better than D+2 on the phone because their systems had the same limitations imposed on them They suggested going to a branch and asking for a CHAPS payment
Lloyds Surbiton branch	<ul style="list-style-type: none"> Yes CHAPS payment no problem as long as the consumer completed a five-page AML questionnaire, that is a customer of 25 years' standing with a credit balance visible, a balance created from an incoming credit transfer from Standard Life, to whom a direct debit was paid monthly for the preceding 25 years for the endowment policy The payment out to C&G was between two accounts on which a direct debit had been paid monthly for the preceding 20 years, and Lloyds own C&G The AML form needed to be countersigned by the branch manager who was out at a meeting at 11am but was expected back at 2pm The AML form was faxed through to Lloyds Money Transfer processing The consumer was assured verbally that the payment would be completed that day, but the consumer left the branch with no paper guaranteeing that

Will the PSR's proposals make any contribution towards resolving such incoherence? In IBOS' view not.

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons

IBOS Association response:

Yes, with the proviso that it is assured that the any organisation purporting to represent service users is subjected to a certification process about its own governance and accessibility, so that the organisation can be proven to really represent the views of the group it claims to be representing.

It has to be avoided that organisations like AGE Platform – <http://www.age-platform.eu> a pan-European organisation claiming to speak for all EU consumers over the age of 50 – gain a seat at the table as they have done in the European Retail Payments Board, when AGE Platform is simply an umbrella organisation on top of national umbrella organisations on top of domain/age-range-specific umbrella organisations....

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

No, because there are insufficient numbers of knowledgeable people in this field. The Bank of England's long-standing direction, for example to have each payment means lodged in its own scheme company, and then to separate the schemes from the infrastructure and push activities away from itself, has simply created a large number of separate organisations requiring to staff up a board and possibly a secretariat, just to administer the same underlying business volume.

Then these organisations have to communicate with one another and coordinate/collaborate, but with the strings not all being in one hand: the result can be wasteful, both in terms of added weight of governance and communication effort, and disconnects when the governance and communication effort does not deliver.

With a blanket exclusion such as that proposed by the PSR, rather than risk-based controls, the door opens to:

- Incoherence: decisions made by owners of different links in the payment chain mismatch and then require intermediaries to step in (this is a danger behind Technical Access proposals, that the need for Technical Access solutions should not derive from the creation of a market model that lays open the risk of mismatches)
- The utilisation as board members of “quangocrats” or of those disposing only of “soft skills” rather than domain-specific knowledge, such people who sit on many bodies in many fields but do act as quorum-creators. In such organisations there is a high risk that the board is either dominated by a very few agendas or else makes many mistakes due to lack of expertise in the field.

The marketplace post the implementation of the PSR's proposals will likely have many more actors in it, all requiring boards of directors: there is not enough talent to fill those boards, still less if onerous restrictions are introduced.

The reports commissioned by the PSR referenced that the existence of directors on the boards of multiple players did create the possibility of conflict of interest or abuse of market power, but stated repeatedly that there was no proof that this was actually happening.

IBOS' view, in the light of that, is that the proposed remedy is draconian and likely to cause collateral damage of greater weight than the problem it means to address.

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

It is all very well to have Access Rules but they are likely to have little commercial impact when:

- The Bank of England's rules about Settlement Accounts are restrictive
- Even if a new entrant is allowed a Settlement Account, the amount of cash that has to be lodged, for example, for FPS membership (which is the amount of their net sender cap between settlement cycles) is high, due to the intervals between settlement windows being long
- Direct membership is all-but-impossible for new entrants if they are eMoney Institutions and need to have their own funds to meet collateral requirements (e.g. to maintain a balance in the amount of their net sender cap in FPS) because they have to keep their clients' money segregated and cannot use it to support their operations
- Settlement Accounts cannot go overdrawn, even when the PSP could pledge or lodge eligible collateral

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

Likewise it is all very well to have Reporting Rules about compliance with Access Rules but the reports are likely to simply supply evidence of the difficulties of overcoming the issues in getting access, which will not be solved by the PSR's proposals in their current form.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

IBOS Association response:

No. As the benefits are likely, in IBOS' opinion, to be very small given the large barriers that will remain, the costs will certainly be disproportionate.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

It is hard to disagree but the information will necessarily be incomplete: it will not enable the new entrant to decide whether they want to do it with that sponsor and whether that sponsor will do it with them.

There is no point in discussing "risk-based" in the context of a sponsor bank arrangement when two of the risks involved in being a sponsor bank are either absolute or necessarily subjective:

1. AML risk:
 - a. A sponsor bank may simply take the view that "Money Service Companies" is a sector that contains risks that it is not possible to manage (especially if traffic is sent direct to a payment system by the customer and is not filtered in the sponsor bank's IT environment)
 - b. The fines for AML breaches are very large, measured to the size of the sponsor bank and not to the size of the new entrant, and bear no relationship to the amounts of the payments upon which the AML breach occurred: the sponsor bank will not get full reimbursement of such a large fine on the back of the indemnity it will have from the new entrant itself, because the new entrant will not have the capacity to pay
 - c. The sponsors of the new entrant will not wish to offer the sponsor bank an indemnity: they wish to limit their exposure to their capital contribution, which they will try to keep as thin as possible
 - d. The AML risk on a new entrant is therefore seen as unquantifiable in terms of the new entrant's size
 - e. The risk is an absolute because AML events can lead to the risk of the loss of the sponsor's US banking licence, and a consequent loss of ability to make and receive payments in USD, the world's main trading and reserves currency
 - f. The loss of that ability means the bank cannot continue to operate
2. Credit risk:
 - a. The sponsor may well not be willing to grant the new entrant any unsecured credit at all and will want full collateral upfront
 - b. It is a false assumption to make that a sponsor bank will be asked, for example in FPS, to collateralise its net sender cap with cash, but will then not set net sender caps for each of its sponsored entities and ask them each to put up cash

- c. The sponsor by doing that runs no credit risk but then the new entrant must have all the necessary financial resources: the sponsor's position is then absolute – no credit risk on the sponsored entity, regardless of the sponsored entity's own financials
- d. If the sponsor is willing to establish an unsecured credit line, it will be based on its own analysis model, an Internal Risk-based Model that the sponsor will not wish to expose
- e. A majority of current sponsor banks are Global Systemically Important Banks and by definition they must apply a Basel Advanced Internal Risk-based Model which assesses each piece of business separately: what the piece of business is and who it is with
- f. Each bank has its own model. The results are therefore subjective: the results for a given sponsored entity will differ between a Barclays' and Lloyds' models
- g. The PSR's proposal infers the possibility that there can be an objective "risk-based" test, and this is not the case
- h. As a result the information that sponsor banks will be willing to share will not tell the new entrant what they want to know: will that sponsor bank sponsor me?

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

An Information Hub might answer questions about connectivity, standards, timings, collateral needs of a payment system, but it will not take the new entrant all the way.

A prescriptive approach would be more likely to lead current sponsor banks to cease to sponsor any entity that was not part of their own banking group. Then the result would be direct membership or no access at all, which puts the ball back into the Bank of England's court regarding access to Settlement Accounts.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

In IBOS' view the sponsor banks will not be willing to submit to a code of conduct that commits them either to explain their internal credit analysis methodologies or to take any AML risk, or even to have a banking division that deals with "Money Service Companies".

Co-Operative Bank has decided acting as a sponsor bank is non-core. The case for other banks to come to the same conclusion rises in line with the costs, effort and risks imposed onto this Line of Activity.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

IBOS Association response:

This could be another panacea, because the real blockers are AML and settlement.

At any rate and if the AML and settlement issues can also be solved, it would for sure be better if all payment systems in the UK worked off one messaging template, the obvious one presenting itself being ISO20022.

It would also be better if there were not so many different payment systems each dealing with one (or maximum two) payment means, and if each one did not have its own scheme company. This is what has led to an incoherent picture, with each scheme having its own message standard, business process, communications channel, limits, settlement etc.

If “Technical Access solutions” are just a way of continuing with the fissures at the surface level while making the consumption of the services a little easier, an opportunity for progress will have been lost.

The UK is in a sense its own pre-SEPA environment, if one perceives the UK’s scheme companies in the UK as countries in the SEPA Area: each one has its own business model, standards and processes for achieving something that is tantamount to the same thing, and in the same currency.

In France it has been perfectly possible (pre-SEPA) to clear all the payment schemes through one infrastructure and using one data template. SIT (the predecessor of STET) had just one dataset for the clearing of debit transaction such as card claims, direct debits and cheques, likewise just one for credit transactions such as card reimbursements, direct debit reimbursements and credit transfers. Other products – like supply chain finance – were built on top of these datasets.

For example, the dataset submitted by a BNP into SIT would have been identical whether the bank:

- Had a cheque drawn on SocGen paid in over BNP’s counters that BNP truncated at their datacentre
- Had a customer use their carte bancaire issued by BRED in a BNP ATM
- Received a file of “prelevements” from France Telecom over Etebac

Each one went through the retail clearing – the SIT – process as a debit transfer transaction.

SEPA has forced France to use the SEPA (ISO20022 XML) datasets for credit transfer and retail direct debit, whilst the non-SEPA datasets pertain for other transaction types. In that sense SEPA is, for the time being, a step backwards for France.

The UK could learn from that and put all schemes onto the ISO20022 dataset, and ensure that the data to be exchanged for clearing was identical between credit payment means (CHAPS, BACS, FPS, debit payment reimbursement) and between debit payment means (card claim, direct debit claim, credit transfer reimbursement), also with maximum commonality between credit and debit messages.

INTELLIGENT PROCESSING SOLUTIONS LTD

INTELLIGENT PROCESSING SOLUTIONS LTD

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

iPSL are generally supportive of the proposed PSR regulatory approach and its objectives.

Whilst the objectives and principles of the regulatory approach have been outlined through the consultation process it still remains somewhat unclear how the regulatory regime will impact Infrastructure providers such as iPSL from the point the PSR becomes operational in April 2015, particularly in relation to competition, access and governance expectations.

It is understood this is likely to become clearer following the planned Infrastructure Provider market review in 2015, which iPSL welcome and is willing to support as required.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

iPSL are supportive of Option 1, the creation of a Payments Strategy forum. We feel this would provide all stakeholders with an opportunity to inform the broader strategy debate and drive innovation in a collaborative manner.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

All stakeholder groups should be represented. It is important the interests and concerns of all the relevant stakeholder groups, either as a collective group or individual organisations can be represented.

Should any organisations not have the opportunity for direct membership into the strategy

group, mechanisms should be developed to ensure both opportunity to input and receive feedback from the group's discussions, recommendations and conclusions.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Further to the above, the PSR may want to consider facilitating stakeholder sub-groups / workshops who then have the opportunity to feed in any issues/discussion points into the particular groups representative who has a seat on the strategy group, this can also be used as an effective mechanism to disseminate information.

The role of the stakeholder group representative, and the arrangements for the sub-groups, would need to be clearly defined.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

No additional items.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

iPSL support the PSR approach in this area as outlined in the consultation paper.

In addition to ensuring greater Operator consideration to the service users, iPSL would also encourage greater engagement/collaboration between the system Operators and Central Infrastructure providers to support the achievement of the stated PSR objectives.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

From a Cheque Clearing perspective it is not entirely clear how the C&CCC, as the system Operator (as defined by the PSR), can demonstrate this as they (C&CCC) do not provide Operational Cheque clearing services to its members or service users, unlike some of the other payment scheme operators.

Currently C&CCC central service proposition is limited to the IBDE file exchange and settlement system. Its members, PSP's, currently procure its Cheque Clearing Operations independently from C&CCC, who set the processing rules/standards and monitor performance against them.

The current model may make it challenging for the operator to demonstrate appropriate representation of the interests of service users as the core services are not provided by C&CCC – an area that should be given some consideration.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Agreed.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

The PSR may want to give consideration to the potential conflicts that may exist where PSP representatives who also sit on the Operators board and whether there is sufficient benefit to be realised from having completely 'independent' Operator Board membership.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Agreed.

However it is appreciated that processes will need to be established for commercially sensitive information, where appropriate, to be omitted from any publically published minutes. Conversely, arrangements will need to be in place to ensure relevant information, which is in the interest of other service users / stakeholders, is not

inappropriately omitted.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Agreed

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agreed

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agreed.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Agreed

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

n/a

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Agreed, however we would like to see greater prescription in terms of the expectations the PSR have for Infrastructure providers evidencing that the directives are being complied with or how they will be assured by the PSR.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Partially agreed. The majority of the existing directives have greater relevance to the System Operators and PSP's. Infrastructure providers are included in the regulatory designation however there is little detail in terms of specific directions for this group at this time. We appreciate that this will become clearer following the planned market review.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Agreed. Consideration should also be given to assuring the Financial Prudence of PSP's / Sponsoring Banks. Failure of these organisations presents equally significant risk of the payment system being impacted.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed

Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Agreed, however consideration should be given to ensure these principles do not duplicate / conflict with directive/standards set by other regulators.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agreed

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

No comment

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

No comment

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Agreed, however the consultation papers do not outline the appeals process for any potential fines to be disputed.

KINGFISHER PLC

KINGFISHER PLC

As you will be aware, the dialogues for the **Multilateral Interchange Fees (MIF) Regulation** started on November 19 and are due to continue on December 4 in the Committee on Economic and Monetary Affairs.

This is a matter of great interest for Kingfisher, Europe's largest home improvement retailer. In particular, the **Parliament's position on harmonised caps on debit cards proposed at 0.2% or 7 cents**. The Council removed this harmonisation to allow certain countries to protect their existing lower domestic rates.

For UK retailers like Kingfisher, it is crucial that, alongside the 0.2% cap, there should also be fixed pence per transaction. A percentage cap alone would actually act to increase the cost of processing debit cards transactions for over a third of UK retailers, contrary to the aim of the Regulation.

The current average UK debit rate is 8 pence; therefore a 0.2% cap would increase cost for any transaction over £40, which includes a significant percentage of the transactions taking place at our UK stores. Therefore Kingfisher strongly supports a fixed fee per transaction to avoid unintended increases in debit card fees for our transactions over £40.

Moreover a **weighted average fee for domestic debit transactions** would be unsatisfactory for merchants and consumers, as they lack transparency and allow high fees to continue, disadvantage small business, are unnecessarily complex and cumbersome and are contrary to the single market. This is divergent to the principles driving the regulation.

Kingfisher is Europe's largest home improvement retailer with more than 1,000 stores and almost 60,000 employees in eight countries across the EU, serving almost six million customers every week.

In the UK, we have 731 B&Q and Screwfix stores with more than 25,000 employees. We also trade in France, Poland, Ireland, Spain, Romania, Germany and Portugal. As such, the outcome of the Multilateral Interchange Fees negotiations will have an important impact.

LAURASIA ASSOCIATES

LAURASIA ASSOCIATES

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Laurasia Associates (Laurasia) agrees with the proposal to establish a Payments Strategy Forum (Option 1).

From our engagement with the Payments Council and the financial services sector over the past 3 years, whilst the Payments Council has delivered a number of programmes, such as Bank Account Switching and PAYM, nevertheless, from our observations it is evident that the Payments Council is predominantly an industry forum driven by its "stakeholders" interests, ie, the financial services sector, rather than embarking on a structured strategic framework to deliver fundamental change and improvement in the financial services/ payments sector for the benefit of consumers and the economy, in terms of banking/payments product quality, service delivery efficiency and establishing an equitable and transparent financial services sector.

Laurasia shares the view held by other stakeholders that the Payment's Council is no longer appropriate for the new era in Banking to be revolutionised by the PSR and FCA. Laurasia firmly believes that the proposed Payments Strategy Forum approach, open to a much wider range of diverse, interested and specialist parties who can bring a broader, more balanced and open outlook to support the much needed evolution and revolution of the UK payments/ financial services and banking sector.

We believe that this is the best approach to deliver innovation and infrastructure changes such as those indicated in 2.113 (including Account Number Portability) so that end users can benefit from world class payments services.

We agree with some of the high level principles outlined in the consultation document, namely:

- The Forum is led by the PSR providing strategic direction with a clear agenda. This includes providing secretariat services.
- The Forum has an independent chair.
- The Forum meets every 6- 12 weeks. In our experience Groups such as this should meet every 6 weeks to maintain momentum.
- The Forum should be used to drive through projects that require collective action from stakeholders and where collaboration is required.
- Working Groups should be established to develop proposals in more detail.
- The Forum should be comprised of a wide group of stakeholders
- Clearly defined Terms of Reference for the Payments Strategy Forum and the subsidiary working groups.

We believe that for the Forum to be successful, the Regulator must set clear objectives and targets for delivery against key milestones. This should be for all phases of a project from Consultation, through development, implementation, launch and operation. It is important that stakeholders or groups of stakeholders do not disrupt or delay the objectives set by the PSR so monitoring and reporting will be required to ensure delivery of key initiatives.

Laurasia comprises a consultancy team of more than 50 experts comprising former CEOs and senior executives of respected regulatory authorities and service providers from across the world, both emerging and developed markets, who are experts in the management & delivery of multiple stakeholder, complex central service programmes, including working with regulators to introduce Telecoms number portability services in Nigeria, Ghana, Kenya, Russia, Kazakhstan, Qatar, Kuwait, the Bahamas, Haiti, delivering complex Digital TV switchover programmes across Africa, etc.

Laurasia has actively engaged a wide range of financial services stakeholders in crossing the boundary between the converging financial services and telecommunications sectors in sharing and applying best practices gained over 17 years in evolving telecoms number portability services to optimising financial services switching and account portability service delivery.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum?

In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We agree with the model for the Payments Forum as laid out in the consultation, with the key features being:

- Strategic direction being set by the PSR.
- Secretariat provided by the PSR
- An independent chair.
- Regular meetings (at least every 6-12 weeks)
- The establishment of Working Groups to deliver more detailed proposals.
- The Forum consists of a wide range of stakeholders.

We agree that the Forum should consist of a broad range of stakeholders to enable diversity of views and opinions in strategic developments, and that this should include smaller organisations who have shown to be the most innovative. We agree with the broad representation that you highlight in the consultation such as Card Operators, PSPs, emerging market players, consumer groups, charity and voluntary sector organisations, Infrastructure

providers, innovators and Government representatives. Laurasia considers itself to be one of these stakeholders and would like to be involved in the Forum in the future.

One of the key benefits of the Forum must be to ensure that end users are given the opportunity to deliberate in the strategy of payment services.

In order for the Forum to operate effectively, it is critical that a number of factors are addressed early in establishment of the Forum:

- Identify key stakeholder requirements and investments.
- Identify the different motivations of each stakeholder
- Engage with all stakeholders early in the life of the Forum.
- Understand different stakeholder agendas and viewpoints.
- Identify potential conflict touch points early.
- Build strong consensus early, or if not strong direction will be required which should be clear and not ambiguous.

The UK Government has requested that the FCA/PSR assume responsibility to undertake a fundamental review of the current Bank Account Switching service with a view to progressing to full Bank Account Number Portability.

Laurasia and its partners would welcome the opportunity to support the Payments Strategy Forum, with a view to advising a potential Account Number Portability stakeholder working group, in a similar manner to the support and advice we are providing to the OFGEM Change of Supplier Expert Group (COSEG). Laurasia has acted as specialist switching advisors to the OFGEM COSEG working group meetings advising OFGEM and the COSEG stakeholders on the application of telecoms number portability best practices including, maximising customer porting/ switching experience, optimising porting/ switching service process delivery between the different stakeholders, technical interworking between central porting/ switching platforms and stakeholder systems, developing and delivering effective public awareness and education campaigns and underpinning/ supporting regulatory and commercial frameworks.

Laurasia and its partners have extensive experience and expertise of undertaking complex national market and economic feasibility studies to assess the benefits and costs of introducing or refining switching/ portability services. Laurasia is practiced and versed in economic and regulatory techniques and models, as well as the appropriate application of previous case studies and precedents from markets around the world.

As the financial services and telecommunications sectors continue to converge on a global basis, the delivery and usage of mobile/internet and banking/payments services are becoming more intertwined. Laurasia and its global consultancy team has recognised the increasing interdependency between the telecoms and payments sectors across both developed and developing markets and has been working to evolve and build its mobile payments service development and delivery expertise from assignments across Africa, Asia and Latin America. Laurasia would be pleased to be involved in a potential Payments Strategy Forum mobile payments working group to share our experiences of advising and working on complex and leading edge mobile payments services assignments around the world.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

In order for the indicative model for the Payments Strategy to work effectively, and deliver strategic change to deliver a world class payments service, Laurasia believes that the indicative model should have a formal management framework, with focused working groups reporting to a suitable steering group (the Forum). In addition, in order for the model to be

effective, we believe that:

- The Working groups need clear objectives from the Forum, with key deliverables and milestones. The groups should be resourced from appropriate experts in the area that the working group is specialising in.
- There should be strong direction and management from the Regulator to maintain momentum and direction.
- There should be commitment from stakeholders to collaborate positively.
 - We note that there is no process for voting arrangements in the event that consensus is not reached. This needs to be carefully thought through with appropriate voting rights, however should not be so bureaucratic to slow the decision making progress down.
- There should be dedicated resource from stakeholders on the Panel and subject matter experts in the working groups.
- The Terms of Reference for the Forum and Working Group are clearly defined.
- A detailed plan with key milestones is underwritten by all stakeholders.
- The Forum provides progress reports against key deliverables, which should be available to the Regulator.
- The Forum should identify and address contentious issues early.
- The Forum should work openly and honestly and be transparent.
- The Forum should seek to adopt best practice from other sectors.
- PSR should be acquainted with complex team management techniques, team dynamics and potential stakeholder tactics and mitigation approaches, to ensure the Forum and Working Groups are able to operate in a collaborative, effective, positive and focussed manner.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Using Account Number Portability in the Retail and SME Current Account Switching Process

Laurasia is recognised as a global expert in the implementation of number portability and switching in the telecommunications market and has successfully worked with operators, regulators and governments in a wide range of countries and has implemented a number of different vendor solutions for the central number portability system.

Over the last 3 years, Laurasia has been leading the application and evolution of leading edge and proven operational, commercial and regulatory Number Portability and Switching techniques and practices that have been honed over 17 years in the global telecommunications sector, into similar non-telecoms service sectors, to support the switching of a range of services, such as bank account, pension, electricity, gas and water.

Our proven methodology of implementing number portability (both Mobile Number Portability (MNP) and Fixed Number Portability (FNP)) has been successful. Our expert team has in-depth experience in both undertaking complex number portability Cost Benefit Analysis (CBA) and benchmarking and as well as thoroughly understanding the specific challenges and issues to be addressed in implementing number portability.

Laurasia has considerable experience in telecommunications and has worked on a broad range of fixed and mobile number portability programmes across the world for regulators and operators.

Laurasia believes that the principles that have been applied to centralised Number Portability/ Switching services in the telecoms sector worldwide can also be

applied to retail and SME current account switching infrastructure thereby delivering a world class service for consumers.

Telecoms Porting

The basic telecoms porting process is highlighted in Figure 1. The key point from this process is that it is simple, it is recipient led, and has a small number of transactions that occur in real time. The Number Portability Clearing House is central to the process and controls all of the process steps as well as maintaining the central database for all telephone numbers.

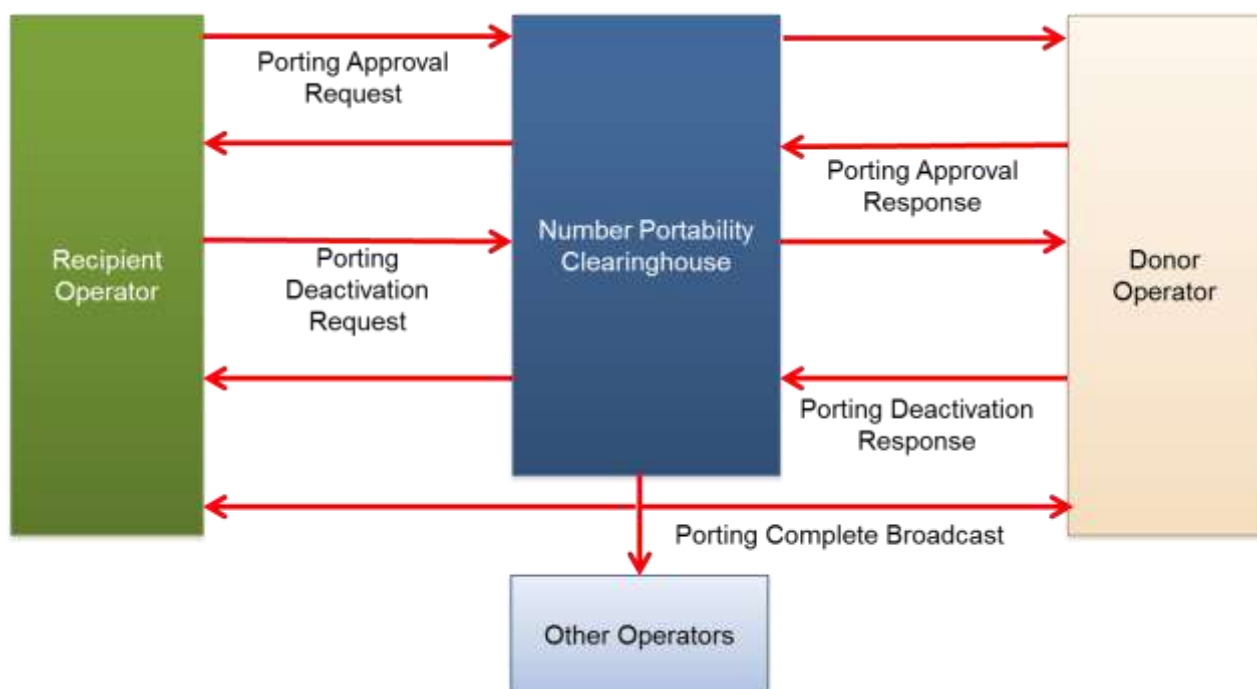


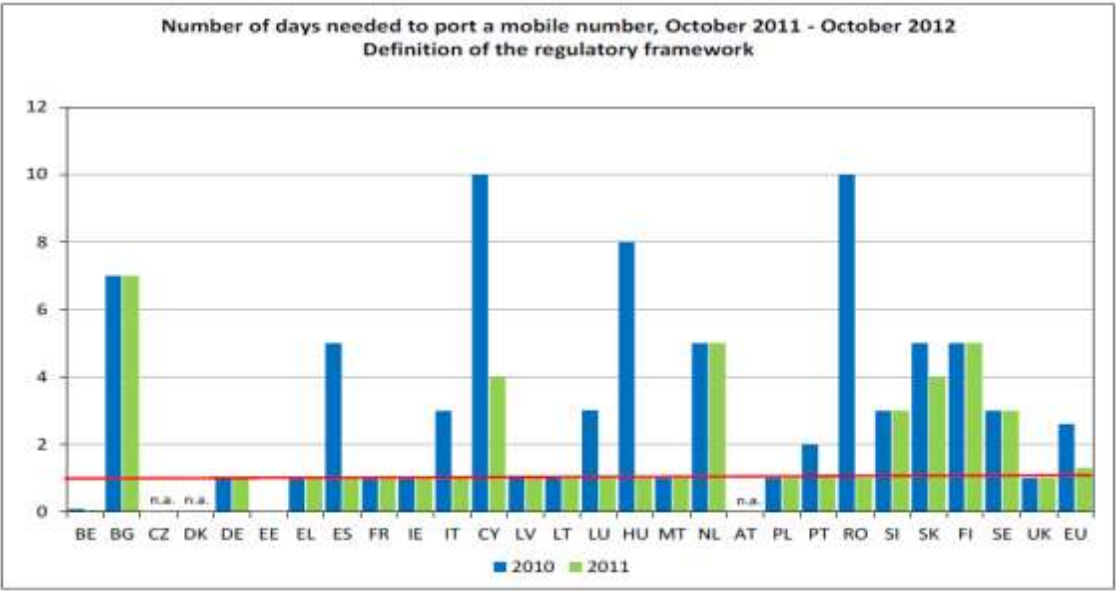
Figure 1 : Illustration of a high level porting process used in the telecoms sector (Source: Laurasia Associates)

From Laurasia's experience there are a number of key factors that have made number portability a success. Many of these are focussed on ensuring that the consumer receives a quick and reliable switching experience and that there is a limited number of reasons for a switch not being successful. These key factors can be described as:

- **Recipient Led** – the operator who is signing up the customer drives the porting process. The Donor operator, the operator losing the customers has limited activities in the process, therefore reducing the opportunities to delay the process
- **Centralised** Number Portability Clearing House
- **Quick** – porting can be completed within 24 hours
- **Simple porting process – automated – real-time**
- Customer **validation** & communication
- **Minimal rejection** and failure rates – **limited rejection** reasons
- Cheap or **preferably free** to the consumer

One of the main benefits of this centralised portability process in telecoms market is the

speed, simplicity, permanence and reliability of the switch. This in turn has driven an increase in consumer confidence and the graphs in figures 2, 3 and 4 demonstrate this. Figure 2 shows the number of EU countries where porting processes of 1 day are in place for mobile numbers and figures 3 and 4 show a correlation between high volumes of ported numbers for those countries that have shorter porting times.



Source: Communications Committee

Figure 2: Number of days to port a mobile number (Source: EU)

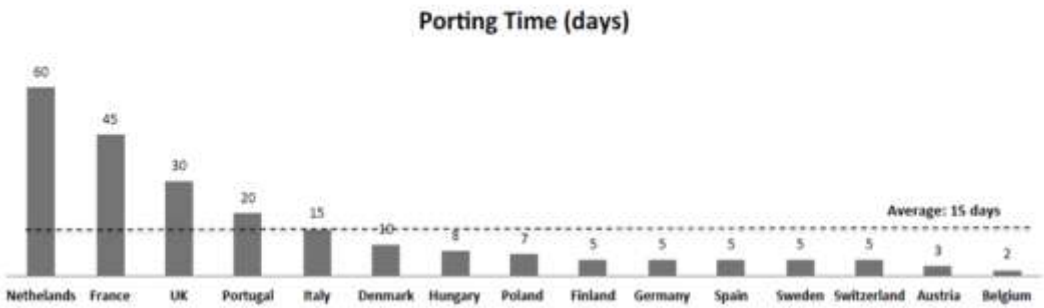
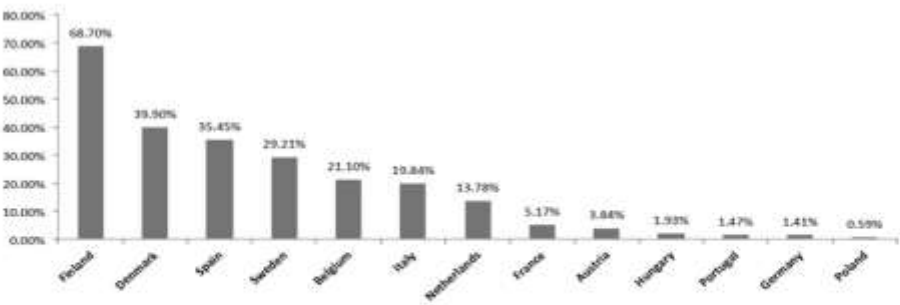


Figure 3: Porting Time (Days) – 2008 (Source EU)



Source: European Commission (2010)

Figure 1: Percentage of Numbers Ported across Countries up to October 2008

Figure 4: Percentage of Number Ported across countries up to 2008 (Source EU)

Similarities between Telecoms Porting and Bank Account Switching

There are many similarities between telecoms number portability and bank account switching.

- There are both recipient and donor providers with separate porting administration and operational processes.
- From a customer perspective it is important that there is an efficient and speedy migration of the account with minimal customer involvement and disruption.
- Customer accounts are identified by a separate provider and account data, and routing is accurate and secure with high volume/real time trafficking of data.
- Ahead of any number portability traffic/transactions are routed by the provider reference (Network Code for telecoms and sort code for banking)
- Efficient and reliable routing of high volumes of complex and critical services traffic, the routing of payment transactions having similar criticality features as the processing of voice calls and SMS messages.

Figure 5 outlines these similarities in more detail.

Requirement	Banking	Telecoms
Recipient & Donor Providers	Yes	Yes
Separate Porting Administration & Operational Processes	Yes	Yes
Efficient migration of consumer account from Recipient to Donor	Yes - key consumer requirement	Yes
Minimal customer involvement & disruption on porting process	Yes – key consumer requirement	Yes – key consumer requirement
Porting speed & simplicity drive porting demand	Yes – key consumer requirement	Yes – key consumer requirement
Accurate and secure routing and processing of high-volume/ real-time traffic/ transactions are critical	Yes	Yes
Security is critical portability concern	Yes	Yes
Customer accounts identified by separate provider and account data	Yes	Yes
Pre NP introduction, traffic/ transactions routed/ processed by provider reference	Yes - Sort Code	Yes - Network Code
Third parties need to be able to identify & route traffic/ transactions	Yes	Yes
Post NP introduction – traffic/ transaction routing via provider specific references no longer appropriate	Yes – Key operational Requirement	Yes – Key operational Requirement

Figure 5: Similarities between Telecoms Number Portability and Account Number switching

Telecoms Porting Processes driven by robust and efficient Routing approaches

In telecoms, mobile numbers are structured such that the first 5 digits indicate the service provider, and the following 6 digits represent your unique number within that provider. In this industry a central "exceptional routing table " is maintained so that when a number is ported , then an entry is created in the exceptional routing table to link the 5+6 digit to the

new service provider. Whilst the table is maintained centrally it is distributed to all service providers, who are mandated to route calls in accordance with the routing table.

Figure 6 demonstrates the process at a high level.

Network Code + Subscriber Number

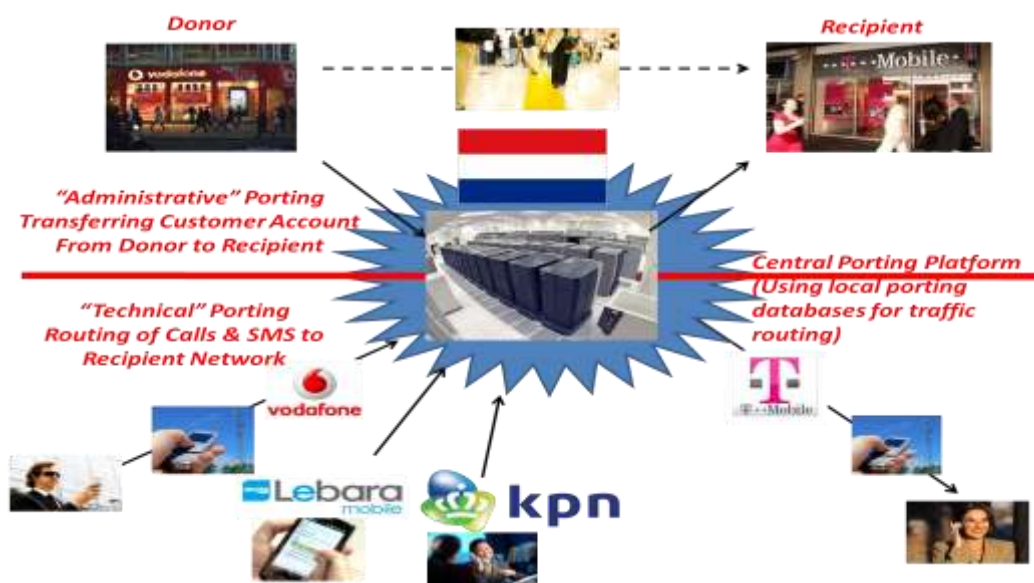


Figure 6: Telecoms Number Portability – Central Routing (Source Laurasia Associates)

Proposal to evolve Current Account Switching into full Account Number Portability

We believe that a similar scheme to telecoms number portability could be applied to evolve the existing current account switching process into full account portability, enabling permanent routing of transactions to ported numbers, faster or even same day porting and catalysing wholesale competition by enabling tier 2 banks to move their clearing service providers. For example the "portable" bank account number would be a 14 digit Personal Account Identifier (PAI) made up from the sort code and account number.

The relationship between the PAI and the sort code/bank at which the account resides would be maintained on a central database, and would be used by central clearings (ie BACS and FPS) to route payments correctly, or by banks for non-central clearings such as CHAPS. The proposed switching service evolution would involve changes to the banks' internal databases to enable them to interact with a new centralised portability routing database to support the permanent routing of payment transactions to ported accounts. Figure 7 demonstrates the high level principle and Figures 8 and 9 show the proposed routing process in more detail.

Sort Code + Account Number
******* *******



Figure 7: Proposed Banking Account Number Portability. Source Laurasia Associates

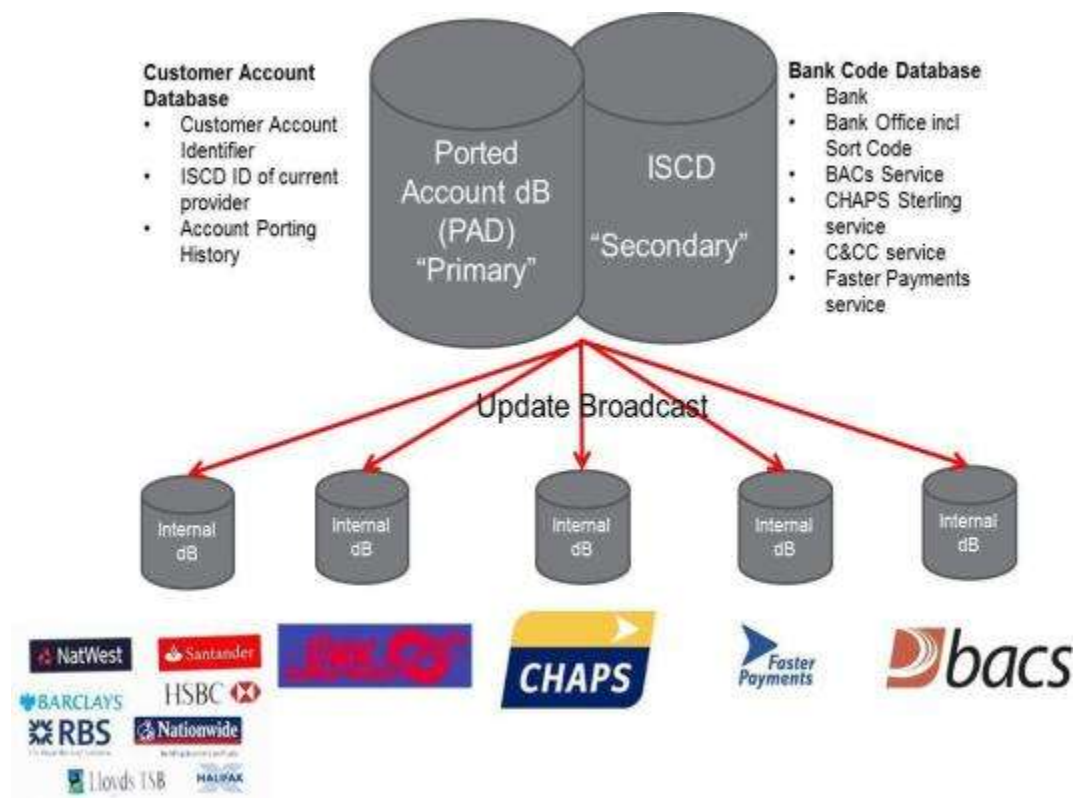


Figure 8: Proposed 2 Stage Routing Process. Source Laurasia Associates

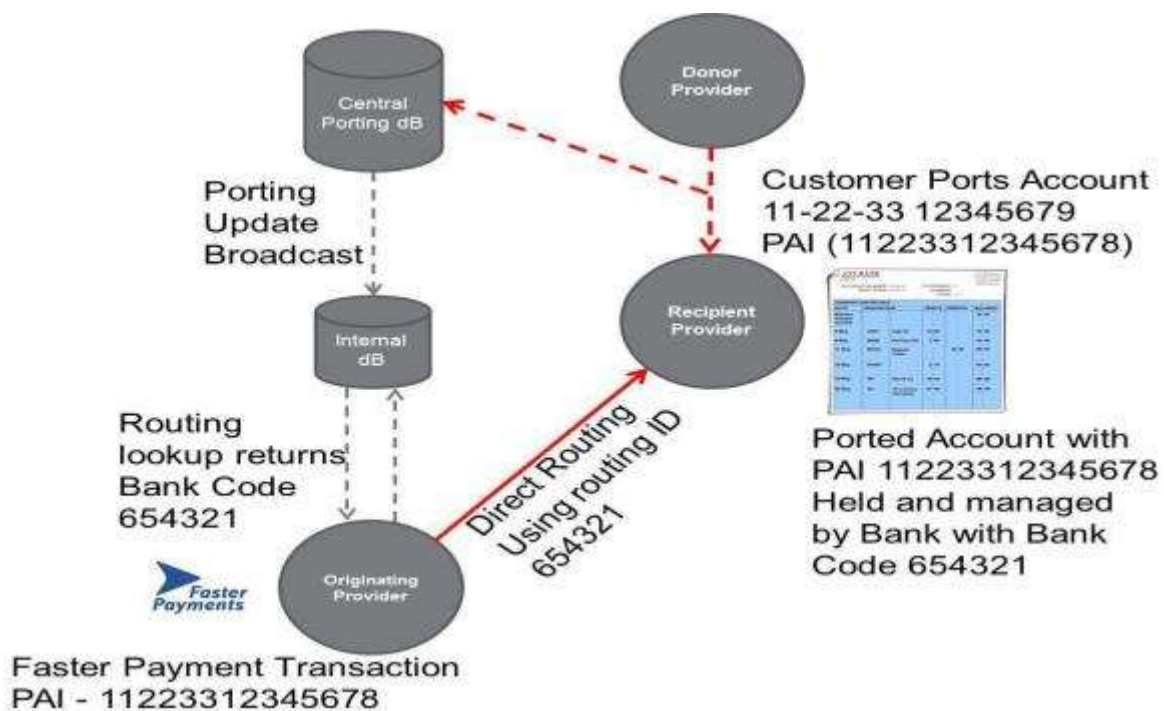
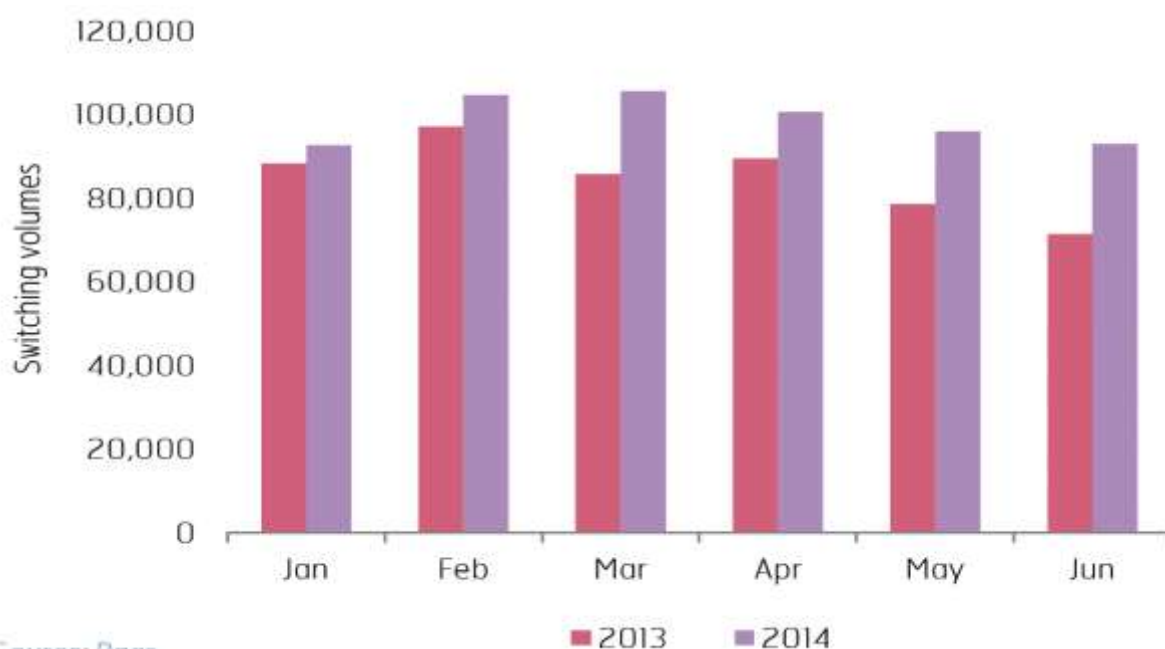


Figure 9: Proposed Routing Approach with PAI and Bank Codes. Source Laurasia Associates

Benefits of Account Number Portability in Bank Account Switching

Whilst there has been a small increase in the number of current account switches since the introduction of the Current Account Switch Service (CASS) in September 2013, in relation to the number of energy switches per month it still remains relatively low. (Around 100k current accounts switch every month compared to c 250 - 300 k electricity switches per month (source Energy UK). See Figure 10.



Source: Bacs

Figure 10: Impact of 7 day bank account switching service

We also await the FCA's review of CASS and it's consideration of ANP as an option for current

account switching.

There are a number of benefits of introducing ANP.

- With the 4 main banks having c80% of the current market share of personal current accounts and SME lending market, enabling personal and business customers to switch quickly (which ANP would achieve), would be a huge boost for consumer choice.
- It would improve the competitive outlook in UK banking encouraging new entrants and product innovation (which is currently missing).
- Encourage wholesale competition enabling tier 2 banks to move their client accounts en-masse to alternative clearing service providers who offer better wholesale service quality and value.
- Ensuring transactions are permanently and securely routed without time limitations or restrictions.
- As well as stimulating competition among banks, it should improve customer service and transparency.
- The ability to retain a PAI would make it easier and more attractive for consumers to change provider and give consumers confidence that switching bank accounts is as easy as switching your mobile provider.
- In future if a bank failed, there would be no risk to customers as the regulator would ensure that all accounts were moved to another secure bank.
- There would be improvements in the monitoring of fraud and money laundering activities.

The diagram in Figure 11 indicates the number of steps that could be removed from the current 7 day switching time line, thereby speeding up the switching process from 7 days to 4 days or less.

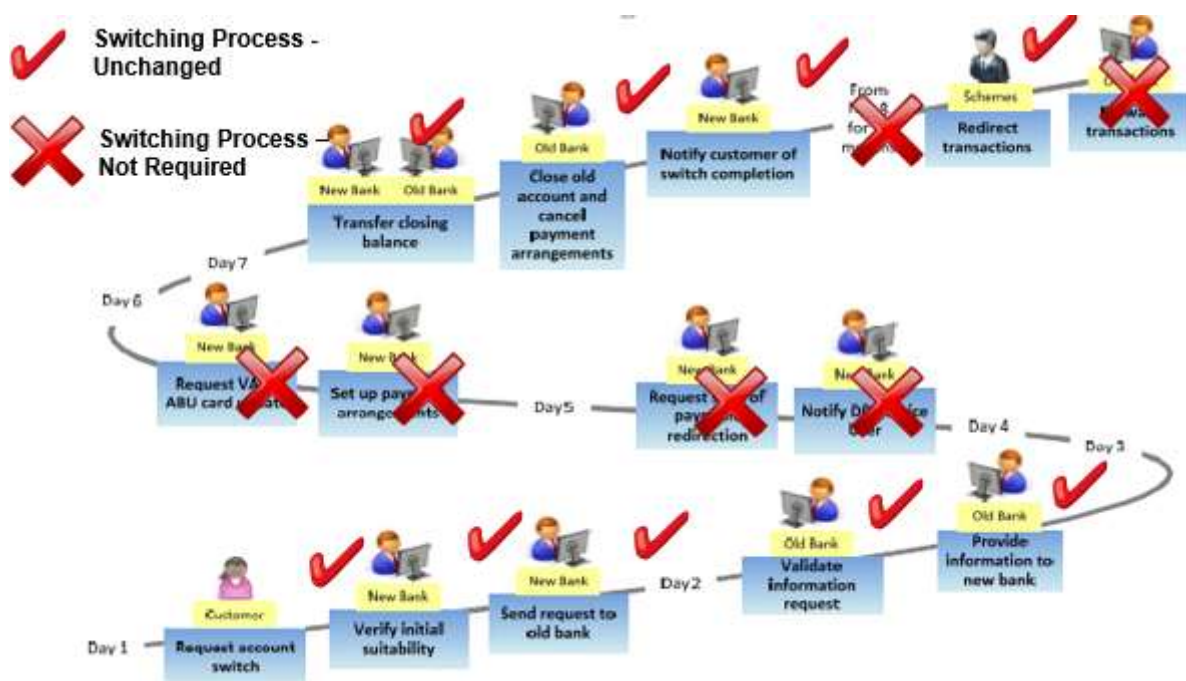


Figure 11: Impact of Full Number Portability on 7 day switching Process

Through our experience of Cost Benefit Analysis of Telecoms Number Portability projects

worldwide, we believe that the costs to introduce ANP into the current account switching market are considerably lower than the figures currently being circulated by the industry. In addition we believe that the timescales to implement such a transformation could be shorter than currently anticipated.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Yes – Laurasia believes it is critical that stakeholders demonstrate commitment by ensuring board-level commitment and accountability to their organisation's contribution to the Payments Strategy Forum.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

From our experience of undertaking cost / benefit feasibility assignments for service number portability assignments across the world, it is often very difficult to quantify the tangible benefits directly attributable to specific initiatives. Consequently, we would recommend that the PR and Payment Services Forum actively includes qualitative assessment elements and considers the fundamental rights of consumers in their deliberations.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Agreed – the PSR as regulatory authority has the fundamental responsibility to ensure the integrity and removal of potential conflict of interest in the provision of central payment services and the establishment of clearly defined boundaries between central infrastructure providers and other stakeholder interests.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We believe that the PSR should establish clear guidelines and parameters to the financial services sector to enable the sector to develop its own appropriate corporate governance model.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Agreed – the sector governance framework must be based around sound principles of transparency, accountability and traceability, if public and government confidence are to be restored.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Agreed – In view of the Payments Council's narrow and restricted stakeholder base, we believe that it is appropriate for some Payments Council initiatives to be migrated to the Payment Services Forum to allow wider involvement of other interested parties,

transparency and fairness of stakeholder engagement and clear monitoring of progress by the PSR, as regulatory authority.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Not appropriate for Laurasia comment.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Not appropriate for Laurasia comment

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Not appropriate for Laurasia comment

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Not appropriate for Laurasia comment

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Agree with proposed approach.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree with proposed approach.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree with proposed approach.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree with proposed approach. However, we believe the PSR should reserve the right to take a more prescriptive approach or issue directives if progress by industry or the Payments Service Forum is limited

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Agree – see earlier comments regarding our recommendations regarding quantifying intangible benefits and the consideration of qualitative and associated elements.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Not appropriate for Laurasia comment

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Agree

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Agree

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Agree that all the proposed principles should be adopted to ensure the regulatory

framework is comprehensive, based on proven best practices, clearly defined and appropriate to effectively address the broad range of functions and issues that require regulation.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agree

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Agree

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Agree –Regulatory authorities must have effective punitive powers to enforce stakeholder compliance and co-operation. Our experience from advising regulatory authorities across the world shows that the consistent application of financial penalties can be a more effective tool, rather than the customary “Nuclear Deterrent” approach of terminating licences etc, to establish the authority and credibility of the regulatory body, but it is critical that the appropriate balance is established in ensuring the penalties are proportionate but act as an effective deterrent.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Penalties should be proportionate and act as an effective deterrent to the broad range of stakeholders to who they will apply.

Setting penalties as a percentage of revenue or turnover can be effective in certain situations where the contravening or non-compliant party is a commercial entity. Fixed penalties may be appropriate in other situations and the application of non-financial penalties, such as the termination of rights or removal of directors may be appropriate in other situations, such as where non-profit making bodies are involved.

Ultimately, the range of penalties should be carefully tailored to address the specific activities that are to be discouraged or punished. Each penalty should be set to either deter non-compliance or specific stakeholder behaviours or should remove the identified benefit accrued/ gained by the non-compliant or contravening party.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Re previous comments, we recommend that each punitive measure should be assessed to effectively address the issue to be punished or discouraged, but should consider a range of environmental factors to ensure the penalty is appropriate and effective.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Agree

LINK SCHEME

LINK SCHEME

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes. LINK Scheme operates in a competitive marketplace and there are alternative providers of ATM services in the UK. These providers have all been designated and we believe that the regulatory approach will be effective if it is applied in a manner that maintains a level playing field across competitive payment operators.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes. Complete transparency will be essential so that participants not directly involved in a particular collaborative activity can still highlight unintended consequences. An illustrative example would be if work to develop collaborative processing infrastructure for one area of the marketplace had the effect of reducing competition and innovation elsewhere by removing infrastructure choices in other parts of the marketplace. We also recommend that the Forum is sufficiently focused in membership to operate effectively. Whilst broad input needs to be sought, we suggest a working membership of designated Operators, consumer representatives, and a representative group of PSPs.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Type your answer here

Please see our response to the previous question SP2-Q1 for our comments.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Type your answer here

We agree with the model proposed. We suggest that a step is added. This step would be to ensure a transparent and a well-structured process to manage the scope of what is and is not in the pipeline of potential collaborative areas. This should be supplemented by clear criteria to be used for prioritising and selecting potential initiatives. This is an important design principle for the new Payments Strategy

Forum and we would welcome this being included in its specification. This is to allow all participants including the many who will not be asked/able to directly get involved, to influence areas of potential strategic focus at an early stage.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Type your answer here

It would be useful to note that the scope of the Payments Strategy Forum does not include all collaborative infrastructure activity. For example LINK Scheme, whilst a competitive entity, had an extensive collaborative activity between its Members. This includes areas such as which transactions to automate via ATMs, the commercial arrangements that apply between various participants, how financial inclusion is maximised, and the access criteria for the Scheme. We suggest that the Payments Strategy Forum takes steps to ensure that it be aware of these other collaborative activities and how to align with them.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes.

Service Users is defined in PSR CP14/1 Annex 1 as “those who use, or are likely to use, services provided by payment systems”. LINK takes this to mean all of the direct participants in the Scheme (there are no in-directs) and the consumers who make use of the cards and ATMs provided by those participants. NMC will therefore review the Scheme’s governance as directed by you by 30th September primarily from the perspective of promoting the interests of consumers of LINK card and ATM services.

You state that your proposals will apply to LINK’s NMC and note that it is an unincorporated entity (PSR CP14/1.3 note 9). Much of your language uses terms such as director, boards, and governance processes relating to corporate entities. In order to achieve your objectives we believe that it will be necessary for LINK Scheme (and any other designated operators) to become corporate entities and NMC had authorised the Scheme’s management to set the Scheme up as a corporate entity. It is intended to recommend to NMC that this entity will conduct the governance review described above on behalf of NMC, taking into account your requirements for service user representation.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We believe that the opportunity is understated for competitive schemes such as LINK. The benefit of effective service user representation will be enhanced competition and innovation with the potential for

significant value creation. This will also attract investment if the opportunity is robust. It is reasonable to assume that achieving this state may require more extensive changes than the illustrative examples given and we assume that you wish operators such as LINK not to be constrained in its thinking and to focus on how to maximise the benefits for service users/consumers.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes. The potential for conflict also exists where a Central Infrastructure Provider exercises direct control other than through a common Director. For example in the case of LINK, there is a veto against change which VocaLink has the potential to use via the Network Members Agreement. It would be helpful if this sort of situation is also noted as a potential area of conflict, even if not subject to an explicit direction.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes. In the case of LINK, we believe that the governance review of the Scheme to be conducted as part of the PSR's direction to ensure effective service user representation will identify where other conflicts might be hindering effective innovation and competition for LINK and how to address them.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

Yes and this has already been implemented in the case of the LINK NMC.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes and this has already been agreed in the case of the LINK NMC. Some commercial matters will be redacted although the PSR will have full access.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here
As SP3-Q2.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Type your answer here
This does not apply to LINK.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Type your answer here
This does not apply to LINK.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here
Yes as set out in 4.124.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here
Yes.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here
We do not anticipate any material costs or benefits to LINK.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Type your answer here

We note that this is stated as not relevant to LINK in 4.265. However, development of access approaches that allow third parties to act as aggregators and provide connection to LINK Scheme have the potential in theory to circumvent the LINK direct access requirement. It is important to note that the provisions of regulation 97 PSRs 2009 should apply in considering access to LINK for any proposed aggregator to ensure that high standards operational integrity and risk management are maintained. It would be helpful if 4.266 notes that there is not an assumption of direct membership for these third party service providers by the PSR to schemes such as LINK.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

LINK will support a collaborative industry approach to provide information on the basis that the information provided will mirror or provide a gateway to what is to be reported on LINK's website under 4.155.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

We do not believe that this applies to LINK.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

We welcome the PSR's intention to engage with the industry on the development of potential technical access solutions. The ownership by VocaLink of LINK's technical access platform, given that VocaLink is also likely to be engaged with discussions on industry technical access solutions, risks an uneven playing field for LINK versus its competitors including VISA and MasterCard. This is because areas such as LINK's ability to commission technical innovation, encourage VocaLink's focus on LINK infrastructure, and maintain commercial clarity on the costs of connection, all have the potential to be affected should there be a proposed development of a technical access solution where the LINK infrastructure is brought into scope by VocaLink and integrated in some way. LINK Scheme's ability to influence this is not strong under the existing Network Members Agreement. This is not an issue faced by LINK's competitors and we would welcome PSR engagement in the development of potential technical access solutions so that any threats to LINK's competitiveness can be readily identified and discussed.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Type your answer here

We agree with the analysis. In order to help avoid the unintended consequences noted in 4.324, LINK would welcome imputing into the scoping work for the market review into the supply of indirect access.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Type your answer here

5.8 states that ATM interchange is not in scope and we agree with this. However, any optimisation of LINK's ownership, governance and control, as discussed in Supporting Paper 3, will include consideration of commercial matters such as interchange arrangements. Therefore we intend that the governance review set out in that Paper will have interchange governance in scope.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

Yes. We believe that it would be appropriate for operators to be asked to write formally to their participants and ask for them to confirm their willingness and ability to adhere to the Principles on Relations with Regulators and on Compliance. This is because some participants outside of the major banks and building societies may not be aware of the PSR's requirements. In the case of LINK, this may include the Independent ATM Operators that make up its direct membership.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Type your answer here

Yes. It is unlikely that LINK's existing structure will support the Principle as it stands given that the Scheme is an unincorporated Members organisation with limited ability to raise funds for example in relation to meeting regulatory obligations or going concern challenges. Therefore, the Scheme will conduct a review of its ability to meet this Principle and any necessary actions, as part of the governance review set out SP3-Q1 for September 2015.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Type your answer here

LINK is not formally subject to CPSS-IOSCO Principles, although it adheres to them on a voluntary basis. Therefore, there is merit in the PSR adopting the suggested additional Principles as set out as they will bring them into scope for LINK and the other schemes not covered by CPSS-IOSCO. Although the Management and Control and Service-users' Interests Principles suggest excluding PSPs from scope, given that these are fundamental requirements of a safe and consumer friendly scheme and require the support of all direct participants, we believe that they should also apply to participants.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

Yes as they represent how LINK operates at present, with the exception of the Financial Prudence Principle where, as stated above, actions may be required that will generate additional costs in order to achieve the required standard of the Principle.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Yes.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Type your answer here
Yes.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here
Yes.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here
Yes. We agree that a flexible approach is sensible given the nature of payments. It is not clear if Members of schemes such as LINK could avoid liability for any penalty by resigning from the Scheme after the compliance failure but before the application of a penalty. It would be helpful if it could be clarified that this is not an option to avoid unintended instability should that situation occur. If fines are very large the only way the Scheme could pay is to call on Members. This potential uncapped liability could deter PSPs from joining and thus act as a barrier to entry. A cap related to Scheme turnover therefore might be sensible.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Type your answer here
Yes we agree with a broader base of measures as suggested.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Type your answer here
Yes we agree with a broader base of measures as suggested.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here
As noted above, LINK does not currently have mechanisms to call for funds in line with the Financial Prudence Principle. Whilst we agree with the Principle, being able to support it will be subject to the findings and recommendations of the review to be carried out as part of the governance review set out SP3-Q1 for September 2015.

LLOYDS BANKING GROUP

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LLOYDS BANKING GROUP RESPONSE – EXECUTIVE SUMMARY

Lloyds Banking Group (LBG) is pleased to have the opportunity to respond to the Payment Systems Regulator's (PSR) consultation paper – A new regulatory framework for payment systems in the UK.

Our vision is to be the UK's best bank for customers and to help Britain prosper and we therefore support the PSR's vision for the UK to have world class payment systems, to ensure payment systems operate in the best interests of service-users and the wider UK economy and promote rather than constrain innovation and competition.

We aim to continually improve the customer experience and support increased choice, ease, interoperability and availability that ensure our customers are able to make and receive payments accurately, quickly and safely. We also believe that we have a key role to play in supporting the PSR's achievement of its objectives by reflecting the interests of a range of service-users through insight and research into what customers want. We can also represent the full range of customers given the full service we offer based on our national footprint.

The objective of our response is to help the PSR to achieve an outcome that works in the best interests of service-users (particularly consumers), other payments users, the wider economy and the industry by ensuring an approach to regulation that delivers the regulatory certainty and predictability necessary for stakeholders to make long term investment decisions with confidence.

We support the broad thrust of the PSR's proposals although there are some points of detail where we have concerns or seek further clarification. We are concerned about the PSR's proposed regulatory approach in relation to some elements of its regulatory tools and how these might be applied. Where we have identified issues we have explained the basis for our concerns and suggested an alternative approach where appropriate.

We would also welcome the opportunity to discuss these aspects with the PSR in more detail.

Turning now to the headlines of our response, these can be summarised as follows.

Regulatory Approach and Tools

We are generally supportive of *what* the PSR seeks to achieve through regulation but note that its proposed approach to *how* it will regulate the industry departs from the mainstream of economic regulation, reflecting more closely the approach of a conduct regulator. Our main concern is that this may not lead to the regulatory stability and predictability necessary for stakeholders to make long term investment decisions with confidence.

In particular, we request the PSR to reconsider its proposals for introducing Principles of Participation. We also suggest that the PSR consider the style of Ofcom's General Conditions of

Entitlement as a more appropriate template for its directions than the Financial Conduct Authority's (FCA) Handbook.

Industry Strategy

We support the PSR's proposal to establish a Payments Strategy Forum and welcome the opportunity to be part of the working group it is setting up to develop and launch the Forum. We believe we are well placed to support the PSR with this proposal.

In establishing the Forum it will be important for the PSR to ensure it is set up to gather the full range of views and opinions from stakeholders during the strategy setting process, that it has a method to agree funding of initiatives up front and a robust approach to prioritisation of individual deliverables within the overall strategy, and that it is supported by one or more delivery bodies established by the industry.

Once the strategy has been agreed, it will be equally important that the PSR and the Forum give the industry time and 'breathing space' to implement the strategy over an agreed investment horizon.

We propose that the strategy is set over a 3 to 5 year period and that the PSR and/or the working group investigate models used in other UK regulated industries (e.g. rail) and/or other international markets to set strategy for payment systems to see if any of these would work in the UK.

Ownership, Governance and Control

We are supportive of the PSR's proposals designed to ensure that there is fair representation of all participants in the decision making processes of the payment system operators. We are confident that this can be achieved by the operators using existing methods and, where necessary, developing new models.

We are supportive of the PSR's goal to achieve greater transparency of decisions taken by the payment systems operators. We are however mindful of the competitive nature of some of the business of the payment systems operators and have suggested an alternative approach to the proposed blanket publication of redacted board minutes and votes.

Direct Access to Payment Systems

We note that the PSR proposes to issue a direction to payment system operators to ensure they have fair, open and transparent access arrangements. We support the PSR's proposals for payment system operators to publish access requirements and to report annually on compliance with these.

To avoid the publication of sensitive security information and protocols we recommend that operators are only required to publish the criteria necessary to determine if a prospective payment service provider (PSP) would qualify for Direct Access, with all further requisite detailed

information provided without reservation under a non-disclosure agreement (NDA) between the PSP and the payment system operator. We also highlight the need to ensure that any drive to increase the number of PSPs directly accessing payment systems does not undermine the stability and integrity of those systems.

Indirect Access to Payment Systems

We support the industry creating a Sponsor Bank Code of Conduct but we highlight concerns about the timelines by which it is proposed the industry deliver and comply with the code.

We also request that publication of Sponsor Bank information strike a balance between providing greater transparency of services available to PSPs and the competitive nature of agency banking.

Interchange Fees

Now that the draft Regulation on multilateral interchange fees has been agreed by the EU institutions, we look forward to working with the PSR to discuss interchange and how we can help to promote competition and the interests of service-users. In advance of the opportunity to discuss this directly we flag several key points which we believe are of particular importance to future decisions about domestic interchange: (1) we believe that interchange plays an important role in ensuring all parties benefit from electronic payments; (2) interchange at current levels supports customer experience improvement and technological innovation and; (3) whilst it looks as if the final draft of the Regulation deals effectively with the issue, we had been concerned about the unintended consequences of cross-border arbitrage and a 'race to the bottom'.

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We welcome the opportunity to comment on *how* the PSR will go about delivering its objectives. *What* it seeks to achieve is addressed below in our responses to its questions in supporting papers 2 to 5. While closely linked, we believe these issues can – and must – be considered separately. This is important not just because of general arguments in favour of better regulation but also because economic regulation of payment systems is being introduced at a time of accelerating technological change and disruptive market entry, both affording opportunities to meet service-users’ needs in new and innovative ways. It is therefore good to see that the PSR has already put so much thought into this issue.

As the PSR’s Chairman said at its consultation event on 9 December 2014, it has no peers, so much about its regulatory approach is by definition ground-breaking for payment systems. However, it equally has no need to start from an entirely blank piece of paper. HM Treasury (HMT) stated in its consultation *Opening up UK payments* that the Government proposed to establish a “utility-style regulator”¹ and went on to confirm in its response to the consultation that the PSR would “adopt a utility-style approach, distinctive from the FCA’s existing remit.”² While the UK’s economic regulators - Ofcom, Ofgem, Ofwat and the like - constitute a broad church of roles and responsibilities, they nonetheless also possess a body of experience and a commonality of approach that the PSR can and should adopt for its own purposes.

This is more than just an academic consideration. As Richard Price, Chief Executive of the Office of Rail Regulation and Chairman of the UK Regulators Network (of which the PSR is a member), said in a speech on 11 December 2014, “The strengths of our regimes are recognised: stability, predictability, tried-and-tested regulatory structures. A track record of behaviour that has given investors the confidence to put hundreds of billions of pounds into UK essential infrastructure.”³ This echoes the Government’s *Principles for Economic Regulation*, which note that, “Appropriate economic regulation is a critical enabler of infrastructure investment. . . . The existing regulatory regime has . . . improved efficiency and competitiveness, promoted competition wherever appropriate, improved service quality for

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221903/consult_opening_up_uk_payments.pdf, paragraph 2.4.

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249085/PU1563_Opening_up_UK_payments_Government_response.pdf, paragraph 2.14.

³ <http://www.ukrn.org.uk/wp-content/uploads/2014/07/Richard-Price-UKRN-Investor-Guide-launch-event-speech.pdf>.

business and individual users and, in some sectors, enabled social and environmental goals to be met efficiently.”⁴ By following that utility-style approach, the PSR will deliver a regulatory environment that promotes investment certainty and so unlocks the improvements in payment systems that best meet service-users’ interests. Only where there is a compelling case, justified by the characteristics of the sector it regulates, should the PSR adopt approaches of its own and always following full, transparent consultation.

We are therefore very glad to see where the PSR has adhered to the utility-style approach, for example in:

- Expecting parties to attempt to resolve their differences commercially before seeking regulatory intervention in disputes;⁵
- Proposing to cap fines for compliance failures at 10% of relevant turnover, notwithstanding the absence of limits in the Financial Services (Banking Reform) Act 2013 (FSBRA);⁶ and
- Recognising that the best it can do to promote innovation is to help create the conditions in which it can flourish.⁷

However, in other instances, the PSR has proposed departing from the utility-style approach without adequately explaining why this is necessary to deliver its objectives. Indeed, in some cases, it has drawn on FCA approaches that may well work for a conduct regulator in the wider financial services sector but have no precedent in economic regulation.

We are particularly concerned by the proposed Principles of Participation, which will introduce uncertainty and unpredictability into the PSR’s decision-making. Participants will inevitably react with caution, reducing the likelihood that they will commit to riskier investments that will deliver the very competition and investment the PSR wishes to promote. This seems to run counter to the *Principles for Economic Regulation* inasmuch as they state that “the framework for economic regulation should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence.”⁸ We therefore urge the PSR to abandon the Principles of Participation in favour of clear rules setting out the specific requirements to which it decides participants need to adhere. If it nonetheless believes that the Principles are an indispensable element of its regulatory toolkit, we strongly suggest that

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf, paragraph 5.

⁵ Supporting paper 6, paragraph 6.72.

⁶ Supporting paper 6, paragraph 6.95.

⁷ Supporting paper 6, annex 1, paragraph 5.2. We also note with interest the UK Regulators Network’s summary report on innovation in regulated infrastructure sectors, published on 12 January 2015 (www.ukrn.org.uk/wp-content/uploads/2014/07/Cross-sector-infrastructure-investment-enabling-innovation.pdf)

⁸ Page 5.

it seek to minimise the uncertainty of their application wherever possible, including by limiting their application to designated payment systems only.

We also suggest that the PSR consider Ofcom's General Conditions of Entitlement as a template to adopt for its own directions. Such a drafting style – similar to legislation, not least in being self-supporting without the need for guidance – would serve as a better model than the FCA Handbook for giving participants the simple and clear exposition that they want of the requirements with which they must comply.⁹

Finally, we accept that it is not always possible to quantify the costs and benefits of regulatory interventions, as recognised in section 104(8) of FSBRA. Nonetheless, a great many of the PSR's proposals in the consultation paper cite this to justify a lack of such an analysis. While we recognise that the PSR has needed to produce these proposals unusually quickly and it may not have been able to undertake the typical analyses in the time available, we hope that it will undertake to do so in all cases in future.

These and other comments on the PSR's proposed regulatory approach are addressed in more detail in our responses to its questions on regulatory tools in supporting paper 6.

⁹ See <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

The UK payments industry has seen a number of changes in recent years including (i) increased competitive pressures and new entry including from non-traditional players; (ii) rapid advances in technology; and (iii) an increased role for regulation.

As the industry faces a period of continual change, it is perhaps more crucial than ever for it to have a clear vision and strategy. The PSR has clearly defined its vision for UK payment systems to be world class and operate in the best interest of service-users and the wider economy whilst promoting competition and innovation. We support this vision, which is closely aligned with our strategy of being the best bank for customers.

We support the PSR's proposal for the creation of a body with the remit to set the strategy for UK payment systems. Agreeing the high level process by which a strategy will be determined will allow the industry to work collaboratively whilst promoting competition and innovation in other areas of payments, for example where competitive pressure, including from new entrants, is already enhancing customer experience through new technology.

We envisage the Payments Strategy Forum playing a key role in determining the medium to long term strategy. With regards to the level of change seen in technology, we understand that setting a strategy which looks too far into the future may inhibit the industry's ability to adapt to the changing needs of service-users. This nevertheless must be balanced against setting a strategy which is too short term and therefore does not provide the industry with the certainty of an agreed investment horizon and the 'breathing space' to deliver the change necessary to achieve the PSR's vision.

We propose that the Forum look to set a three to five year strategy to which the industry can agree. This should then be revisited during its final year to ensure the strategy for the following period is fit for purpose. Whilst the strategy is being determined, we would expect the Forum to meet regularly as outlined in the consultation paper. Once it has been set, we would propose the Forum focus on oversight of delivery and reduce the frequency of its interactions to quarterly accordingly.

The construction of the Forum will be key to ensuring it is set up to gather the full range of views and opinions during the strategy setting process, that it has a method to agree funding of initiatives up front and a robust approach to prioritisation of individual deliverables within the overall strategy and that is supported by one or more delivery bodies set up by the industry.

We suggest the PSR, and/or the working group set up to develop and launch the Forum, investigate models used in other UK regulated industries (e.g. rail) and/or other international markets to set strategy for payment systems when designing the Forum.

In summary, we support the PSR's proposal to establish a Payments Strategy Forum. The construction of the Forum will be key to its success, ensuring the payments industry is given the certainty of an investment horizon and time to deliver the change agreed.

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We welcome the PSR's proposal to create a Payments Strategy Forum with the remit to set the strategy for UK payment systems. Agreeing the high level process by which a strategy will be determined will allow the industry to work collaboratively whilst promoting competition and innovation in other areas of payments. We agree that, given the pace of technological change and the regulatory pressures facing payments today, the creation of such a Forum is a better model for the UK than maintaining the Payments Council's or a successor body's role in setting industry strategy or the PSR itself developing the strategy for the industry. Whilst we are supportive of option 1, we are concerned about how the PSR will ensure that the Forum is more decisive than current arrangements and yet still fair to those participants who will be expected to fund any initiatives it agrees. The Forum must ensure any funding arrangements are agreed in a manner that is fair, transparent and proportionate and we would welcome clarification from the PSR about how it sees this being achieved. The participants who will be expected to fund the Forum's decisions should be key stakeholders and engaged fully during the decision making progress.

We feel the third option the PSR proposes would not be appropriate or proportionate to implement at this stage as it would not give the industry the opportunity to use its experience and expertise to help shape the strategy (as proposed by option 1).

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We agree it is important for the Payments Strategy Forum to have broad representation to ensure it covers the wide range of users with varying needs and expectations. It is however important to balance the size of the Forum with the need to deliver a clear strategy for the industry in a timely manner. Too many participants may lead to a disparate group pulling the Forum in different directions and slowing the pace at which a decision can be achieved. As well as ensuring the right balance between broad representation and the need to deliver a clear strategy, the Forum will need to include representatives who can deliver commitments on behalf of their institution and who have the technical expertise to support discussions. We

also believe representation must include the participants who will be expected to fund any initiatives it agrees

In order for the Forum to be effective, the PSR should be clear and transparent about the role it will play on the Forum and what its objectives are. We also note that it is intended that the Government and other regulators may also attend the Forum. Whilst we welcome such broad representation and understand its importance, the PSR should ensure public agencies do not politicise proceedings, bypassing the PSR's own decision-making processes requiring full, proper and rigorous cost/benefit analyses. We would also welcome clarification about how the PSR intends to interact with other regulators to ensure the strategy chosen does not have any unintended consequences for their responsibilities.

We support the strategic vision for a world class payments system for the UK but are under no illusion about the size of undertaking that this represents. Timing, funding and sequencing will all be critical and require the industry to move in step with the PSR and key stakeholders.

A key focus for the Forum must be reaching an agreement on how the investment underpinning the strategy it chooses is funded in a manner that is fair, transparent and proportionate. Once the strategy is set and funding agreed, the Forum must then give stakeholders certainty over an appropriate investment horizon to ensure there is confidence within the market to invest to deliver. Any assessment of costs should also take account of internal costs faced by providers and how these may differ between providers, particularly in adapting complex legacy IT systems. We would welcome clarification about how the Forum's decisions will be funded and prioritised in a way that is transparent, fair and proportionate.

We support wide engagement in the development of the strategy and agree this would necessitate the Forum's meeting every 6 to 12 weeks for a limited period, involving the input of a number of working groups. We would, however, expect that once the strategy has been agreed, the Forum would allow the industry 'breathing space' to deliver the strategy over the agreed investment horizon, meeting quarterly to reflect on progress against key milestones. We would then expect the strategy setting process to be repeated in line with the investment horizon (i.e. every 3 or 5 years).

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The Payments Strategy Forum should work with stakeholders and industry experts to determine the outcomes that the industry must deliver for service-users over an agreed period. The Forum would then leave those outcomes to the industry in the form of one or more delivery bodies to execute to agreed timescales. The Forum would monitor progress quarterly and the PSR could take enforcement action if necessary. We suggest the PSR or the working group investigate models used in other UK regulated industries (e.g. rail) and/or

other international markets to set strategy for payment systems when designing the Forum.

We believe it is important that, whilst the Forum sets the high level strategy, it allows for PSPs to continue having the discretion to compete by offering differentiated services and products. We believe this is appropriate because in many areas competitive pressure in payments markets, including from new entrants, is enhancing customer experience through new technology. This creates a powerful incentive for existing players to innovate to meet new customer needs and expectations. It is important that this competitive pressure is not diminished by Forum decisions about collaboration in areas where competition is currently strong.

Whilst we envisage the Forum setting the strategy for UK payments, we recognise a need for one or more delivery bodies to support the Forum to ensure the strategy is delivered. These will also remove the need for the Forum to meet more frequently.

It is currently unclear what level of influence a UK-based Forum will have over the card schemes which operate on a global scale. We would welcome clarification about how the PSR envisages this working.

We believe it is important that PSPs continue to have the discretion to compete by offering differentiated services/products. We believe this is appropriate where competitive pressure in the market, including from new entrants, is already enhancing customer experience through new technology. For example, innovation is changing the market through the introduction of digital wallets, contactless payments and mobile merchant solutions. This new technology can provide greater choice for consumers, make payments easier and improve information and transparency. This competitive pressure creates a powerful incentive for further innovation to meet customers' needs and expectations, which we believe should be encouraged.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

We agree that it will be important for the PSR or Payments Strategy Forum to consider and understand the list of key strategic initiatives under consideration at this time. This list should include the FCA's review of the Current Account Switch Service (including enhancements announced in the recent Autumn Statement), Account Number Portability, the Future Clearing Model, Ring-Fencing, Richer Data and Technical Access. We also note the PSR would like to consider Messaging Standards; whilst we agree these are important, we would highlight that standards are an enabler, not an outcome, and therefore should be reviewed in this context. We recommend that the Forum take time to ensure it has sight of all the changes likely to impact on the UK industry over the next 3 to 5 years as part of its strategy

setting process.

We would also like to highlight a number of additional changes that the consultation paper did not include. For example, we feel that the Forum should consider the impacts of the revised Payment Services Directive, the Bank of England's (BoE) plan to move to polymer banknotes, HMT's intention to introduce a new £1 coin and other key EU regulatory changes that impact UK payment systems. The Forum must be aware of the wider level of change impacting the UK payments industry and its implications for the strategy. We would also encourage the Forum to consider the impact of its decisions on settlement functionality to ensure it avoids unintentional consequences such as potential contagion emanating from the UK payments portfolio in times of stress.

It would be helpful to understand how the Forum will take into account initiatives, particularly at EU level, to standardise approaches across infrastructure provision.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

We support the continued role of LBG senior colleagues as directors on the boards of payment system companies. They take this role very seriously, including the duty to act in the best interests of the company to which they have been appointed.

We aim to be the best bank for customers and we can represent and reflect the interests of a range of service-users through insight and research into what customers want. We can also represent the full range of customers given the full service we offer based on our national footprint.

We acknowledge the stakeholder concerns raised about the ownership and control of payment systems and agree that important decisions on the way these systems are operated and developed are made by the boards of these Operators. We share the PSR's view that ownership structures for the Operators do not create concerns.

We agree in principle with the package of proposals made by the PSR intended to open up governance and control of payment systems by involving additional players in more transparent decision making. We do, however, have some concerns about the unintended consequences that may arise from the blanket requirement to publish the minutes and votes of Operator board meetings.

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We welcome the proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision making at board level.

We believe that some mechanisms exist already, which allow service-user representation. We would welcome other ways of ensuring service-users are represented, but believe any new mechanisms need to be introduced carefully because of a possible tension between opening up representation widely and diluting the voices with the most experience and expertise in the industry. This may be particularly the case where discussions are very technical or detailed, and thought will be needed about how to ensure some service-users can access these discussions without as much background information and expertise as other representatives.

It is also worth noting that we and others are major contributors to meeting the costs of

operators, and will want to ensure the most cost effective approach to deliver the desired outcomes is agreed.

It is therefore important that the approach to achieving appropriate representation of the interests of service-users recognise these tensions and interests, is fit for purpose and does not dilute the breadth and depth of experience and expertise available to the Interbank and Card Operators today.

Different approaches may need to be taken to the different payment systems, given the different board compositions of the Operators and the nature of their service-users, which is likely to mean that a 'one size fits all' approach may not be appropriate.

We will support the implementation of this direction as soon as possible through our membership at board level across the Operators.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Subject to the views expressed in this response, the costs and benefits and costs described in paragraphs 3.93 to 3.104 appear to be reasonable and sufficient for the Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision making at board level.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We welcome the continued role of LBG senior colleagues acting as Directors of Payment Systems Operators. They take this role very seriously, including the responsibility to act only in the interests of the Operators. We consider this representative role as a duty to service-users based on our experience and expertise.

We also support the proposed direction on requiring an Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure provider to that payment system.

We are already compliant with this proposal having made a decision previously to ensure different individuals are appointed as directors of payment systems and infrastructure

providers. Before an individual may take up a position on the board of a payment scheme, it must be approved through the appropriate governance. Training in competition and conflicts of interest is compulsory for all our colleagues and must be completed on an annual basis. When an individual takes up a position on a board of a payment scheme, the individual must also complete a number of additional, advanced training requirements including modules specifically designed for attendees at industry association meetings.

In addition to the training we provide internally, the individual will also receive an induction from the payment scheme and a director's information pack providing further information on the role and the scheme. It is important to note that at the start of any board meetings, the chairman will remind board members of their fiduciary duties and ask for any declarations of conflicts of interest.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We believe that the broader concerns in relation to conflicts of interest considered in paragraphs 3.110 to 3.135 can be addressed effectively by the Interbank Operators reviewing their conflicts of interest policies and mechanisms to ensure these are sufficiently robust. In this regard we agree that it is also important that perceptions of conflicts of interest, as well as actual conflicts, be addressed.

We therefore agree with the proposed approach not to issue directions at this time in relation to the other types of conflict of interest identified by stakeholders.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Subject to the views expressed in this response, the benefits and costs described in paragraphs 3.157 to 3.162 appear to be reasonable.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree with the principle of greater transparency and clarity around decision-making at Operators' boards. We do, however, have concerns about the unintended consequences that may arise from a blanket requirement on Operators to publish board minutes, including

votes, in a timely manner.

Furthermore, the proposal to include a record of votes may not work in the best way. Naming those who vote in favour or against a resolution could risk creating pressures on Directors' voting decisions beyond their existing fiduciary duties to the company (as recognised in paragraph 3.197). A record of the decision made and reasons for it should be sufficient to meet the transparency objectives the PSR seeks.

We acknowledge that the proposed direction makes allowance for minutes to be published in redacted form where this is absolutely necessary to protect commercial confidentiality (as recognised in paragraph 3.178). However, this in itself may give rise to more questions than are answered if minutes are heavily redacted and may not improve transparency unless clear guidelines on the redaction of board minutes are published.

We do not therefore think that the direction will have the desired effect of improving transparency. Instead, we would support an expectation on boards to make available, either publicly or to all interested stakeholders, a statement outlining and explaining a change/decision including the rationale behind it wherever possible unless information is sensitive for either commercial or security reasons. We believe that this would allow all decisions that can be shared to be communicated in a way which is open and transparent, in context, and accessible to those not at the board meeting. It may also provide an opportunity for stakeholders to ask follow-up questions and could inform future debates when similar issues arise again.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Subject to the views expressed in this response, the benefits and costs described in paragraphs 3.157 to 3.162 appear to be reasonable.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Given the steps which we understand are already being undertaken by the relevant Interbank Operators and the Payments Council to modify or terminate these reserved matters before 1 April 2015, we agree with the proposed approach not to issue a direction at this time in relation to Payments Council reserved matters.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

We welcome the PSR's consideration of how all PSPs can gain access to payment systems as this is a fundamental requirement to operate their business. In our aim to help Britain prosper, we recognise the role that other PSPs fulfil for their customers and we are committed to supporting these clients through our own direct participation in payments systems and through commercial offerings for Indirect Access.

We recognise the need to ensure that access to payment systems must be provided on a fair and reasonable basis to any PSP. We believe that this already exists today through the range of Direct and Indirect Access options available. The current access requirements are driven by the need for consistency, certainty and integrity of service which is paramount to all participants and end-users and not with any intent to discriminate or restrict access. We acknowledge though that the concerns raised by stakeholders indicate that there needs to be more transparency in this respect and we support in principle the proposals made by the PSR.

Whilst we agree that these proposals will encourage wider Direct Access to the payments systems we do have concerns that the broader range and number of participants will increase the risk to the stability of payment systems and to the integrity of the service particularly should different terms of access be deemed desirable for some potential participants. For example, the need for a BoE settlement account has been identified as a restriction but also there is mention that potential PSPs could not meet the funding requirements. The fundamental principle for participation in every payment system is reliance on the assurances and guarantees of settlement. Therefore, any proposals that may change any principles upon which the stability and integrity of payment system rely must be subject to a rigorous assessment of the implications for all participants as well as the benefits of wider Direct Access.

We recognise that there is an increased demand for Direct Access. However, as noted in the supporting paper, there are only a small number of PSPs interested in this relative to the total number that require access to the payment systems. This reflects our experience and therefore underpins our intention to provide Indirect Access services for our customers who will continue to be satisfied with this access method. We believe that this should remain as primarily a competitive service and that changes to the regulation of Indirect Access must be appropriate and not increase the risk that current providers no longer find it commercially viable to offer services as witnessed by the recent withdrawal of one provider. We therefore support the consideration of a Code of Conduct. However, we believe this should be restricted to governing what requirements/minimum standards must be covered in a contracted service from the Sponsor Bank to ensure the reliability and integrity of the payments system.

It is difficult at this stage to assess the full cost implications of the proposal beyond the proposed governance and non-technical changes outlined. It is clear, however, that if there are requirements to change the nature and terms of Direct Access that are a fundamental basis for the operation, integrity and financial stability of each payment system, there will be an inevitable requirement for change to the payment system itself, thereby incurring, in our

experience, a significant cost which cannot be assessed at present and may outweigh any benefits to be gained.

In summary, we would welcome the achievement of the anticipated benefits arising from the proposals outlined in the consultation paper. However, we would urge caution that implementation only be undertaken after an analysis of the implications, costs and specifically the potential risks to financial stability that may arise from a wider number of PSPs participating directly and indirectly in the payment systems.

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree that the implementation of an Access Rule based on Principle 18 of the CPSS-IOSCO Principles would be appropriate and proportionate given the relevant Operators' current regard to these principles as systemically important for payments systems. We are also supportive of the decision to apply this rule to BACS, C&CCC, CHAPS and FPS only and acknowledge that it is not necessary to apply it to NICC or to change the existing Rule for LINK, MasterCard and Visa.

Rules must be objective, proportionate and non-discriminatory and we believe the current rules have always sought to meet these criteria whilst meeting the overriding requirement to protect the financial and operational stability of the systems. The current access rule has evolved over time in keeping with this primary requirement. We nevertheless acknowledge this may be perceived to be limiting the wider adoption of Direct Access by emerging PSPs.

We support the objective of the Access Rule to ensure that criteria for access are clearly understood, justified and published as appropriate to enable any prospective direct participant PSP to assess suitability to their business requirement. However, we have concerns over the level of detail which Operators would need to publish to allow a prospective participant to make a comprehensive technical and financial assessment. We would recommend that Operators be required to only publish the criteria necessary to determine if a prospective PSP would qualify for Direct Access, with all further requisite detailed information provided without reservation under an NDA. This would allow the prospective PSP to complete their assessment without compromising the security of critical payment systems. This would also seem appropriate given the very small number of PSPs that have expressed an interest in Direct Access.

The Payment System Operators will be able to describe the rationale for the current Direct Access criteria and the risks to the systems that these are designed to minimise. These are primarily there to ensure the integrity, settlement and finality of the payment system due to

their criticality to the UK economy.

In describing the rationale for the Direct Access criteria, it will be also possible to determine to what extent these are still appropriate and proportionate or whether there is an inherent restriction or discrimination as a result. This will establish to what extent the Access Rule changes proposed by the PSR will improve the ability for other PSPs to have Direct Access. Whilst we endorse the view that competitive benefits would arise from an increase in the number of PSPs with Direct Access, as noted in the consultation paper, these systems are critical to the UK economy and need to provide stability, reliability and financial certainty of the operation and settlement that is currently achieved through requirements on funding and central bank settlement. We believe that the move to a pre-funding approach for the payment systems will alleviate some of this risk but note the comment from one PSP about the difficulty in meeting funding criteria which are deemed to be necessary and critical requirements. The essence of pre-funding is very clear and requires that every direct participant must be able to pre-fund the level of risk it brings to the system and its participants as a whole.

Any changes to Direct Access must be considered in light of the need to maintain the financial stability and operational integrity of payment systems. Changes must be subject to a thorough and rigorous risk assessment that has considered the impact on the system, participants and service-users. Our initial assessment is that any variation in the criteria and, in particular, the introduction of differing requirements to increase number of PSPs which are eligible for Direct Access could lead to increased risks to the stability of the system. This would be due to the increase in the number of self-reliant participants (e.g. if the economic climate resulted in stressed conditions for many small PSPs) and where discretion is allowed in the operational rules and technical requirements. These risks are currently managed through the Indirect Access services provided by Sponsor Banks where the risk is mitigated and underpinned by the Sponsor Bank through knowledge, management and support of the PSP's broader banking and financial requirements. We would recommend that the views of the BoE are sought where changes to settlement may be deemed appropriate.

In setting the criteria for the Access Rule consideration must also be given to the due diligence that would be required to assess suitability of interested parties to ensure that the requirements and costs of establishing a new Direct Access participant are also understood and clear to the PSP.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We support the introduction of a Direct Access rule and therefore it follows that there is a need to have a means of monitoring compliance through reporting. We agree that annual reporting is an appropriate frequency.

We would recommend that the reporting should, like the Access Rule, be appropriate and proportionate by establishing relevant and clear requirements that are not too onerous on the Operator and hence do not lead to significantly increased costs for operating the system.

We note that there is a requirement to report an “expression of interest” by a PSP. As noted above, there need to be clear requirements for reporting, and what would constitute an interest sufficient to warrant inclusion in an annual report needs to be defined.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We agree with the proposals to include LINK, MasterCard and Visa in accordance with our response to SP4-Q1 above. We would re-iterate the need to maintain security of the payment system and to protect against the risks of misuse of published information by restricting public access to qualifying criteria only and that the provision of full detailed technical information is through an NDA with qualifying PSPs.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We agree that the approach proposed will address the concerns raised by stakeholders regarding Direct Access and that, subject to our other comments, the measures proposed are appropriate and will achieve the majority of the benefits outlined in paragraphs 4.170-4.175 and 4.184-4.187 of supporting paper 4. Subject to the views expressed in this response, the costs highlighted seem to be a fair estimate for defining and publishing the proposed Direct Access requirements, assuming these do not place any unforeseen or onerous burden on the operator.

However, defining criteria for proportionate access requirements may not in its own right lead to an increase in the take up of Direct Access; it will be dependent on a combination of factors, particularly the operational and technical requirements. As noted above, the stability and integrity of the payment system is paramount and will need to be reflected in the way

that PSPs both access and use the system and the terms of access. The Operator's risk assessment will determine what changes may be viable to make Direct Access more attractive whilst maintaining the stability and integrity of the systems. This will then determine how the systems may need to be developed to create the functionality required to support more PSPs under potentially different access arrangements (e.g. different settlement arrangements). The costs of these changes cannot be determined at this stage and therefore it is not possible to determine to what extent the objective to increase Direct Access is achievable as the nature of the access requirements and subsequent commercial arrangements (resulting in the cost of changes to the system) will affect each potential PSP's assessment to adopt Direct Access.

Furthermore there is an implied assumption in the consultation paper that subsequent changes across all payment systems will lead to a common way of accessing these systems which will further reduce the costs to participating PSPs. Each payment system is different resulting in a different technical and operational basis for each one. Achieving such an outcome will require significant investment and it is questionable whether this is more easily achieved, where required, through indirect participation or the potential Technical Access proposed. Whilst there is scope to work in a coordinated way across all payment systems to achieve this, it is also not possible to estimate the costs to realise the benefits this would bring. We believe this should be one of the initial key discussion points for the Payments Strategy Forum.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

We are committed to continuing to provide Indirect Access services as well as supporting the need for Direct Access options for those who express an interest. We always strive to provide our clients with the best service possible and note the concerns raised by stakeholders in the consultation paper, although these are not views that we have been directly advised of by clients. We therefore acknowledge there is potential to enhance the way that Sponsor Banks manage the provision of these services. We believe that this can be best achieved by a Code of Conduct that addresses the concerns of stakeholders whilst engendering an environment that supports and encourages competition and innovation to enhance the PSPs' experience.

We agree in principle with the requirement for Sponsor Banks to publish information that enables PSPs to make an informed decision in line with the response to the principles for Direct Access as given in SP4-Q1 above.

However, this requirement sits within the competitive arena for Sponsor Banks, and therefore, in addition to the risks identified in SP4-Q1, there is also the need to maintain commercial confidentiality. In particular, the ability to support any individual customer is

determined by our credit and risk policies and appetite and the ability to ensure conformance to regulatory requirements under criteria that would not be desirable to publish from a competition or regulatory perspective.

In addition, should the Indirect Access requirements dictate the choices and services that a Sponsor Bank must provide, this will have the effect of limiting competition and stifling innovation in this arena.

We recognise the need for PSPs to understand each Sponsor Bank's potential Indirect Access capability to meet their needs and we are therefore supportive of publishing sufficient information for this purpose. We recommend that publication of such information should be limited to the types of PSP and the range of payment systems supported. Any information that a Sponsor Bank wishes to freely publish in addition should be at their discretion. We would commit to providing any additional detailed information on request to legitimate PSPs but would recommend that this be done under a normal commercial NDA. This would allow PSPs to gather all the information they require to make an informed decision without compromising any security or commercial considerations.

Whilst we agree that prospective clients will require an understanding of the charges for the Indirect Access services provided to make an assessment of the options available, we do not agree with the need for Sponsor Banks to publish these as they are commercially sensitive. We have no reason to object to providing these to a prospective customer; it would be under normal commercial confidentiality. However, commercial arrangements with any complex customer such as a PSP will be based on the services provided under the whole relationship taking into account other transaction banking services used and non-transactional products along with any other bi-lateral or reciprocal arrangements.

Our experience is that the current level of information is not a barrier and we have experience of PSPs changing Indirect Access providers, normally under competitive tender. We acknowledge the observations made by stakeholders and are supportive of the objectives of the proposal. We nevertheless believe these must take into account commercial and competitive considerations.

We are very concerned, however, with the requirement to publish information by 1st April 2015 given the breadth of the proposals within the consultation paper. We do not believe that it will be possible to meet this deadline, in particular given that the PSR is still consulting on its proposals and will not finalise them until closer to 1st April. To gain clarity and agreement on the information to be provided whilst at the same time a Code of Conduct is being developed and a market review of indirect access is being undertaken will not be feasible.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree that it will be beneficial to prospective PSPs to have a central point of reference when considering the options available to access payment systems. For reasons previously stated the level of detail available must be appropriate to the requirement of the PSP without undermining security and commercial confidentiality. It is also necessary to ensure that the information referenced is up to date. This is best achieved by ensuring content is the responsibility of the individual Operators and Sponsor Banks and held on their own public websites.

We support the proposal to have a central information hub and note that this is already in hand with the Payments Council on a voluntary basis and do not see that a more prescriptive approach is required for an information service only.

We believe that, as this Information Hub is likely to be the starting point for any new PSP that does not already have a contact with Operators or Sponsor Banks, the content should reflect the need to explain what payment systems are available in the UK and the relative differences between them, along with contact points for each of the schemes. The content should also explain the different choices in respect of access and include contact points to the different Direct and Indirect Access providers.

The proposals within the consultation will result in more detailed information being available to help prospective PSPs make an assessment of the options available to meet their business needs. We would therefore recommend that Operators and Sponsor Banks are given the opportunity to publish the requisite information before a more prescriptive approach is considered.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree that the development of a Sponsor Bank Code of Conduct providing Indirect Access will be of benefit in addressing concerns raised by stakeholders. We believe that the code should define a set of minimum standards that should apply to all banks providing 'in scope' Indirect Access. These minimum standards would be built in the individual contractual arrangements between Sponsor Banks and the indirect participants they support. We do not believe that the code should be a contract in its own right separate to the commercial contract as indicated in the proposal as this will result in additional activity and increase the Sponsor Banks' cost of providing Indirect Access services. It should provide guidance in respect of the outcomes required. Specifically, we believe it should be aimed at ensuring the

requirements and obligations of each payments system are met by all parties and provide the indirect participant with a clear expectation of the technical and operational services to be provided and how certainty of supply, costs and management of change will be achieved. We believe that it should be a description of what must be provided but not descriptive of how it should be provided by the Sponsor Bank as this may vary according to the services provided and is part of the competitive offering of Sponsor Banks. It will need to be clear and unambiguous in terms of scope and requirements in order that a Sponsor Bank can determine what it must do to be compliant and demonstrate how it achieves the requirements.

We understand that the PSR does not want traditional correspondent banking arrangements used by overseas banks to send and receive pound sterling payments to and from the UK to be subject to the Code of Conduct. It will therefore be very important to ensure there is a clear an agreed definition of indirect participant that falls within the scope of the code to avoid creating uncertainty, this will also ensure that access arrangements for other entities such as large business customers will not inadvertently be subject to the code.

The PSR will be aware that work has already been started by the Payments Council and Sponsor Banks covering the provision of existing services. We are actively involved in development of the code, contributing our extensive knowledge and expertise to ensure that it is relevant and applicable in a commercial context. We believe the parties involved have the necessary experience to both develop the relevant code with input from all relevant parties and adopt it on a voluntary basis without the need for a more prescriptive approach.

It is not clear from the consultation paper whether the code will apply to new contracts for Indirect Access services or retrospectively to all existing contracts. We would welcome clarification on this point as it will have a bearing on the timescales for implementation once the code is finalised and applied.

It is also not clear whether compliance with the code will be self-assessed by the Sponsor Banks or some other form of attestation. We would however recommend that the method used to assess compliance with the code be built on the tried and tested methodology already deployed by the payment system operators to assess compliance with system rules, technical and security standards.

Whilst we endorse the introduction of a Sponsor Bank Code of Conduct, we believe it would not be appropriate to set dates for approval and compliance before the scope, content and method of assessing compliance has been agreed. In particular, and as mentioned above, the current deadlines suggested by the PSR may not be feasible.

industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

As noted in paragraph 4.278 of supporting paper 4, there is a need to meet the range of differing requirements from a diverse set of PSPs which will be satisfied through a choice of different Direct and Indirect Access solutions. Financial institutions are a key market sector for us, and PSPs are an important segment for the services we provide. As witnessed in paragraph 4.20 of supporting paper 4, there are an estimated 1,900 PSPs in total. In reality there are just 400+ that access the (BACS, FPS, CHAPS & C&CCC) payment systems in their own right (via a unique sort code) of which only a relatively small number are potentially seeking Direct Access and primarily for Faster Payments alone (see paragraph 4.17). It is our intention to continue to support and develop our range of Indirect Access services (including Direct Technical Access) with the intention of enabling PSPs to choose an appropriate service that meets their individual needs and, where appropriate, is as near as technically possible to those we utilise as a Direct Access PSP.

We therefore welcome the development of additional Technical Access methods that can meet the range of needs. It should be noted though that the greater the direct involvement in the payment system of Direct Technical Access, the greater the need to comply with strict requirements to ensure operational integrity. Whilst alternative Technical Access options can be considered, the certainty of settlement that underpins the financial stability of the service must be of paramount importance. It is the ability to address both these requirements that makes the provision of Indirect Access more effective. It provides choice of access methods whilst limiting the risks as the Sponsor Bank underpins the settlement obligation across all payments systems accessed by the PSP. Access through Sponsor Bank systems often supports other services provided by the Sponsor Bank.

Whilst the use of a shared Technical Access would meet the requirements for facilitating wider access and reducing overall costs to indirect PSPs, we have three key concerns compared to the Direct Access and other Indirect Access solutions.

1. Concentrating access for a number of PSPs onto a very small number of technical providers could create a reliance on commercial organisations that may not operate to the strict requirements of regulated financial organisations. It may also increase the risks that arise from the commercial liability for failure to process high values of payments
2. Increasing the number of providers will benefit the PSPs with an increased choice of access but will erode the commercial viability of providing Indirect Access services to a decreasing number of customers. High volume clients that do not utilise Direct Access would be commercially attractive to the technical providers and likely to be cherry picked and reduce Sponsor Banks ability to facilitate scale and investments in Indirect

Access services. The recent withdrawal of a provider of Indirect Access services demonstrates the difficulty of sustaining a viable commercial offering within the existing competitive environment.

3. There is also a need to consider how such an arrangement would be organised and funded if it is anticipated that it will offer services across all payment systems and changes are required to each payment system. We believe that such an arrangement should be organised as a standalone, self-funded commercial arrangement if it is to offer a true competitive service.

There is already a choice of alternative Indirect Access solutions available from a number of Sponsor Banks. Whilst we would support extending the choice available, this should be done with due consideration to the potential implications and unintended consequences. We believe that there is sufficient incentive for the Operators and Sponsor Banks to continue the work already underway to develop alternative Technical Access solutions on an industry led basis and there is no requirement for a more prescriptive approach at the current time.

We would also suggest that the scope of the Indirect Access market review should consider all aspects of Indirect Access including quantifying unmet demand for improved payment system access and the potential impact of/economic model for the proposal for industry developed Technical Access solution designed to meet this demand.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

We note the timing of the proposed market review of Indirect Access and acknowledge the scope required to achieve the objectives of the review are not included within the directions already given in the consultation paper. We have highlighted above other aspects of this consultation that we believe it would be appropriate to include in the scope of the review and request these are given due consideration.

Notwithstanding the explanation for the timings given in the consultation paper, we question whether it is appropriate to undertake a market review at the same time as, or before, the directions given in this consultation are implemented. We would suggest that by allowing the industry to address concerns regarding the understanding of the current services available before carrying out a market review and allowing time for the directions already given to take effect, this will enable the review to focus on any other residual concerns that PSPs still have.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

We welcome the proposed approach to track developments and engage with relevant stakeholders, ahead of deciding on appropriate action to take regarding domestic interchange. Recent developments, due to competition law, regulatory scrutiny, and scheme pricing decisions, have resulted in extensive change across the industry. Following these developments, and ahead of further change once the EU Regulation takes effect, we believe a stable approach to interchange would benefit all stakeholders with an interest.

Now that a political agreement has been reached by the EU institutions on the draft Regulation on interchange, we look forward to working with the PSR to discuss domestic interchange and how we can help to promote competition and the interests of service-users. In advance of the opportunity to discuss directly, we want to flag several key points which we believe are of particular importance to future decisions about domestic interchange.

Firstly, we believe that **interchange plays a vital role in ensuring benefits of electronic payments for all parties** and any changes should allow this role to continue. Benefits are shared by consumers (e.g. security and convenience), merchants (e.g. payment guarantees and quicker transaction times), and society as a whole (e.g. reduced fraud and tax evasion). However, interchange can only provide the mechanism for securing these benefits if it is able to ensure that costs (including the significant costs of card issuing, such as card production, fraud costs and IT system maintenance) are shared fairly. If UK interchange caps/rates are set at levels which are too low, these costs would not be covered, which would damage the card issuing incentive and displacement of cash.

Secondly, **interchange at current levels supports customer experience improvements and technological innovation**, which would be put at risk if caps are too low. Banks are currently investing in improvements that make payments easier for customers, and increase security and transparency. This investment is currently viable as innovations increase card usage and associated interchange repays the initial investment cost. However, low interchange caps in the UK would remove interchange funding for this investment.

Thirdly, while it looks as if the final draft of the Regulation deals effectively with this issue, we had been concerned about **the unintended consequence of cross-border arbitrage and a 'race to the bottom'** as a result of domestic flexibility. Without defining cross-border transactions carefully, there is a risk that very low interchange rates selected by one EU Member State could lead to a race to the bottom if all acquiring business moves to that market in order to access the lower rates. We believe this would be detrimental to the UK

economy and would have a very serious impact on the funding available for the payments innovation and customer improvements referred to above. We believe this risk will be avoided by the definitions of cross-border and domestic transactions in the current draft Regulation but it will be important to monitor these in light of this risk during the final stages of the legislative process.

Finally, we welcome the **flexibility in the draft Regulation for Member States to exempt three party licensed models** from interchange caps for 3 years, given their basis is bi-lateral agreements with merchants and they can provide effective competition to other schemes. Indeed, we believe that the PSR should implement this exemption in the UK.

We would be happy to meet at the earliest convenience to discuss the domestic interchange options left open to Member States and the most appropriate rates/decisions for the UK.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

General

We are concerned by the proposed Principles of Participation. According to the PSR, these state “the fundamental obligations” of participants and set out “behavioural standards to which we expect participants to adhere.”¹⁰ As such, they represent a fundamental departure from the utility-style approach of economic regulation, yet this is all the justification that the PSR offers for their introduction. It is therefore unclear why:

- The obligations set out in statute and specified by the PSR under sections 54-58 of FSBRA will not be adequate to establish the rules of the game and ensure that participants are confident in their dealings with the PSR and each other, as is the case in other sectors subject to economic regulation. Why are they needed to “underpin” the PSR’s other proposals on access and governance? and
- The PSR feels it necessary to address individual participants’ behavioural standards at all. HMT clearly recognised “the fact that utility regulation is a significantly different function from that which the FCA currently performs” in its response to *Opening up UK payments*,¹¹ while the PSR itself commented at its consultation event that it would not focus on individual participants’ conduct unless it had market- or system-wide impacts (much as, for example, Ofcom has addressed the problem of telephone “slamming”).

The consequence of the Principles will be to introduce uncertainty and unpredictability into the PSR’s decision-making because breach, which will mean that a participant liable to regulatory sanctions, will be judged not against statutorily-based rules proposed, consulted on and set out clearly for all participants to see but rather “what is the appropriate conduct expected.”¹² Participants will inevitably react to this with caution, reducing the likelihood that they will commit to riskier investments that will deliver the very competition and investment the PSR wishes to promote (e.g. because they instead increase their reserves, as a result of Principle 3, imposing costs beyond those considered in the PSR’s analysis). This seems to run counter to the Government’s *Principles for Economic Regulation* inasmuch as they state that “the framework for economic regulation should provide a stable and objective environment

¹⁰ Supporting paper 6, paragraphs 6.7 and 6.8.

¹¹ Paragraph 2.54.

¹² Supporting paper 6, paragraph 6.8.

enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence.”¹³

It is also not sufficient for the PSR to say that it expects “many participants will already be organising and conducting themselves in ways which are compliant with our Principles.”¹⁴ That is a reason not to impose them in first place, as the PSR itself seems to recognise in proposing not to issue a direction at this time in relation to Payments Council reserved matters given “the steps which are already currently being taken” by the relevant parties.¹⁵ And as the Principles have been explicitly inspired by CPSS-IOSCO, the ECB and the FCA - as well, it seems, by company law - it is unclear what they add to existing regulation or how these bodies will liaise to ensure a collaborative approach, who will be competent and what the consequences will be for participants found to be in breach.

We therefore urge the PSR to return to the utility-style approach envisaged by the Government and to abandon the Principles of Participation in favour of clear rules setting out the specific requirements to which it decides participants need to adhere.

If the PSR nonetheless believes that the Principles are an indispensable element of its regulatory toolkit, we strongly suggest that it seek to minimise the uncertainty of their application wherever possible, including by limiting their application to designated payment systems only. We also set out below some specific points on each proposed Principle in turn.

PRINCIPLE 1: Relations with Regulators

We note that Principle 1 is widely drafted. In its current form, it is unclear from the wording whether the term “regulators” includes all regulators or only those in relation to a participant’s participation in a regulated payment system. Direction 2.2 seeks to clarify this point (i.e. the Principle applies only in relation to participation in a regulated payment system) but also attempts to extend the Principle’s reach extraterritorially to non-UK regulators. In addition, the Principle attempts to influence participants’ relationships with other potential regulators which may not themselves impose the same requirements (i.e. they have their own powers and procedures). Extending the scope beyond the PSR’s remit and extraterritorially would also render the applicability and enforceability of this Principle difficult. Given the potentially severe consequences of breaching a Principle, this is extremely undesirable.

We would therefore suggest that Principle 1, if it is deemed necessary and for the avoidance of doubt, be amended to read, “A participant must deal with ~~its regulators~~ the Payment Systems Regulator in an open and cooperative way...”

PRINCIPLE 2: Compliance

¹³ Page 5.

¹⁴ Supporting paper 6, paragraph 6.11.

¹⁵ Supporting paper 3, paragraph 3.204.

We take compliance with regulation very seriously. However, we feel that Principle 2, as currently drafted, would impose a significant burden with regard to a participant's obligation to refrain from activity which prevents another participant from complying with its regulatory obligations. In particular, this Principle should not require us to unreasonably support other participants simply because, without our continuing support, they would be unable to meet their obligations, (e.g. as a result of putting in place adequate measures). We would welcome further clarification about the application of Principle 2, should the PSR decide to adopt it.

PRINCIPLE 3: Financial prudence

To the extent that it goes beyond the existing requirements of EU and UK company law, it is unclear how Principle 3 would work in practice and how this could be measured, in particular for those participants that are not already subject to similar requirements (i.e. card payment systems and infrastructure providers).

The Guidance provided in Direction 2 in Annex 2 to the consultation paper extends the participant's responsibility for compliance in relation to Principles 1 and 3 beyond itself to its entire group. It is unclear how that would work practically as the participant may not have oversight, in particular, in relation to Principle 1, should this be applicable to regulators other than the PSR (see above).

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Please see our comments in relation to SP6-Q1 above.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Please see our comments in relation to SP6-Q1 above. Insofar as the PSR includes this Principle in its final framework, we agree that the scope should be limited to Operators and Central Infrastructure Providers and not to Participants.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply?

Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

As mentioned in our response to SP6-Q1, we think that the three Principles set out in the consultation paper are unnecessary for the attainment of the PSR's objectives. Going beyond them and including the possible additional Principles, on the basis that they are covered in one or more other principles/standards documents, would be equally inappropriate for an economic regulator such as the PSR. It would also be insufficient to include them without proper consideration (including proportionality and cost/benefit analyses), in particular as many of the additional Principles are either covered in or explicitly left out of consideration by the proposed Directions.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Please see our comments in the General section in response to SP6-Q1.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

While it is helpful for the PSR to set out its draft Objectives Guidance, there are many unresolved issues that are not addressed.

- The PSR says on many occasions that it will consider further use of its competition and regulatory powers if its proposals fail to achieve its aims. This is right and proper, but the consultation paper is relatively light on how the PSR will react if it discovers that problems are *caused* by poorly conceived or implemented regulation. We hope that the PSR will generally assess such regulatory risks when considering intervention in order to ensure that its proposed actions will not make a problematic situation even worse. We equally hope that it will be as open to withdrawing existing regulation - and to doing so swiftly - where this is at least as likely to promote competition, innovation and/or service-users' interests as imposing new requirements.
- It is unclear how the objectives interact with the matters to which the PSR must have regard in discharging its general functions, e.g. the importance of maintaining the stability of, and confidence in, the UK financial system.
- In particular, there is no reference to the veto of the BoE, the FCA or the Prudential Regulation Authority over PSR decisions and how this may work in practice.
- We hope that the PSR will examine issues in the round to ensure that the right solutions can be applied to the right problems, even where these fall outside its regulatory ambit.

For example, under section 42(8) of FSBRA, the BoE is not to be regarded as a participant of any kind in any payment system, but the PSR's proposed infrastructure market review cannot fail to recognise that CHAPS transfers settle on its Real Time Gross Settlement system. If problems or solutions better fall to other public authorities to address - either because of legal necessity or simply because they are better placed to do so - the PSR must be willing to publicly assert this. There is widespread precedent for this among other economic regulators (e.g. Ofcom's recognition of the implications of Crown use of radio spectrum for civil users).

- There is no discussion of how the PSR will interpret its service-user objective given the large variety of participants and their different interests.
- We are concerned that the PSR is unduly skewing its assessment of when to use its Competition Act 1998 (CA98) powers rather than its FSBRA powers in favour of the latter. The consultation paper states that the PSR is unlikely to use its CA98 powers without "clear" evidence of appropriateness,¹⁶ but the test established by section 62 of FSBRA is a balanced one, requiring the PSR simply to consider whether it would be "more appropriate." As schedule 14 to the Enterprise and Regulatory Act 2013 introduced similar tests for many of the other economic regulators and Schedule 4 requires the Competition and Markets Authority (CMA) to report annually on how concurrency is operating, this is an area where we would expect the PSR to act consistently with its peers (albeit recognising the practical limits to competition law, e.g. in respect of interchange). And to the extent that there is scope for a differentiated approach, it is unclear why the PSR proposes to follow the FCA rather than other economic regulators.¹⁷
- We note that FSBRA does not require the PSR to find market power before it imposes obligations on participants to promote competition, as is the case in the other notable sector - electronic communications - where the economic regulator does not license individual participants.¹⁸ We nonetheless urge the PSR to bear this concept in mind in the interests of promoting regulatory stability and predictability and in recognition of its duties under sections 53(a) and (b) of FSBRA - to use its resources in the most efficient and economic way and not to impose burdens or restrictions on a person unless they are proportionate to the benefits - as effective competition can be presumed in the absence of market power. This issue is explored in detail in the Regulatory Policy

¹⁶ Supporting paper 1, paragraph 1.76.

¹⁷ Supporting paper 6, paragraph 6.112.

¹⁸ Section 33 of the Communications Act 2003 requires network and service providers only to notify Ofcom in advance of their intention to operate. Sections 78ff address the assessment of (significant) market power and the conditions that can be imposed only when it has been found.

Institute's assessment for the PSR of the suitability of different regulatory approaches to economic regulation that could be applied to payment systems.¹⁹

- While the PSR briefly sets out the other authorities with whom it will have to interact given overlapping powers, it is left unclear how such delineation from the perspective of the participant may work.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We consider it helpful for the PSR to set out its Administrative Priority Framework. However, given the systemic importance of the designated payment systems, we consider that the PSR should add the risk that the issue presents to the stability of and confidence in the UK financial system as one of its key factors to be considered within the impact assessment.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Choice of regulatory power

The PSR has been described as an economic regulator, which has a competition objective and an obligation to consider using its CA98 powers before certain other powers. We believe that this should be reflected more clearly in its regulatory approach and in its Powers and Procedures Guidance.

In particular, it would be helpful for the Guidance to include a clear statement of the co-primacy of its CA98 powers, and to set out in practice how the PSR will reflect this in its procedures (e.g. how and at what stage of the process the PSR will decide which power is most appropriate for addressing any specific concerns and how this will be communicated to the parties concerned).

At paragraph 43.5 of the Guidance, the PSR notes that in deciding which powers to use, it may consider "the quality of the evidence or information in our possession." We would be very concerned if this suggested that the PSR will take action under other powers in circumstances where it does not consider that it has sufficient evidence to proceed under its CA98 powers. In our view, a lack of evidence sufficient to take action under CA98 powers would suggest that it is unlikely to be appropriate to take *any* action intended to advance the PSR's objective of promoting competition.

We note that the PSR is not obliged by statute to consider using its CA98 powers before

¹⁹ <http://www.fca.org.uk/static/documents/psr/rpi-regulatory-approach-report-for-the-psr.pdf>.

exercising its powers to give a general direction under section 54 of FSBRA or to impose a generally imposed requirement under section 55. However we believe that it would be in the best interests of the market and service-users, and advance the PSR's competition objective, if the PSR assessed the likely impact on competition of any action that it proposes to take under these powers and gave market participants an opportunity to provide information relevant to this assessment.

Model for procedures

It is not clear to us that the FCA's Decision Procedure and Penalties Manual and Enforcement Guide are necessarily the most appropriate or only models for the PSR's Powers and Procedures Guidance, particularly given its competition focus and role as an economic rather than conduct regulator. In this respect, we would encourage the PSR to build on best practice from other economic regulators, and note in particular the enhancements to administrative practice made by the CMA and concurrent competition regulators in recent years, which have been widely regarded as successful innovations. We provide some specific examples below.

Grounds for action

As the PSR will appreciate, it is vital that any regulatory intervention is supported by robust evidence of the likely costs and benefits for those directly affected and the market in general. Proportionality requires robust evidence if more interventionist measures are in contemplation. We are concerned that in some respects the Guidance does not provide sufficient detail about how the PSR will ensure that it has received and considered all relevant evidence before taking action.

For example, it is not clear to what extent the PSR will undertake investigations before using its powers. The Guidance notes, for example, that before exercising its powers to issue specific directions the PSR will "normally have engaged in some information gathering" and "would expect to have previously engaged with prospective addressees on the subject matter of the specific direction" (paragraph 4.1). Similar wording is used in relation to the PSR's power to require the disposal of an interest in an operator. Such steps should be the minimum requirement before the PSR undertakes any action.

The exercise of these powers could have a substantial impact on individual companies and on markets as a whole. They are among the most interventionist available to any regulator, akin to powers potentially available to the CMA at the conclusion of an in-depth Phase 2 market investigation (if it identified concerns). We consider that the Guidance should be clear that the PSR will undertake detailed information gathering before exercising these powers and engage with affected parties during that process, and provide further detail on how this will be implemented in practice. This is particularly crucial if the PSR is contemplating requiring a divestment; the CMA's guidance on Phase 2 market investigations and the circumstances in

which Ofcom can impose functional separation under sections 89A-89C of the Communications Act 2003 would be relevant benchmarks for this type of measure.

Given the potential impact of these measures, it would also be helpful for the PSR to explicitly set out its procedures for assessing proportionality before using its powers.

Similar concerns arise in respect of the PSR's enforcement powers. At paragraph 21.5, the Guidance states "When we consider it appropriate, or the EDC requests it, relevant supporting documents or evidence will be provided to the EDC." We consider that any enforcement decision must be fully supported by all relevant evidence, meaning that full details of any inculpatory and exculpatory evidence should be provided as a matter of course to the Enforcement Decision Committee (EDC).

We consider that the PSR should also have regard to any initiatives by other relevant regulators before implementing any action so as to ensure a coordinated approach, and that the Guidance should reflect this.

Transparency

We support the PSR's view that transparency is critical to effective regulation, not least because it enhances regulatory predictability and allows regulated participants to engage more effectively with the PSR. We believe that principle should be followed to the extent appropriate in all aspects of the PSR's work, including at least:

- When commencing any investigation or programme of work, specifying the objectives, subject matter and expected stages and timescales for that work;
- Explaining under what powers the work is being undertaken;
- Explaining what criteria are used for reaching decisions on potential regulatory action; and
- Providing reasons for taking any such action.

Our specific comments below reflect these principles.

- **Criteria and thresholds for taking action:** we believe that greater clarity about the PSR's criteria and thresholds for taking action would be helpful, particularly in respect of specific directions. For example, will the PSR set out why any proposed specific directions are necessary in order to achieve its objectives, and why it considers issuing such directions to be more appropriate than other potential measures?
- **Scope of investigations:** where the PSR launches an investigation we believe that it should provide as much information as possible at the outset (to the extent that such

information would not prejudice the investigation or the confidentiality of third party information) to the subject of the investigation so that they can understand the nature of the PSR's concerns and provide appropriate responses (see paragraph 33.2). This information should be updated if the scope of the investigation changes; we consider the PSR's threshold for informing the subject of any changes to be too high (see paragraph 34.2). Our experience is that enhanced transparency in investigations can support businesses in identifying and resolving any genuine concerns at an early stage or otherwise providing evidence that may suggest that the concern is unwarranted allowing both the regulator and the business to save time and resources.

- **Notice of potential action:** except in the most exceptional circumstances, we consider that the PSR should always give sufficient prior notice of proposed actions that could affect the interests of a regulated entity, including details of the proposed action and the PSR's reasons for implementing it. This notice should be sufficiently detailed to allow those potentially affected by a decision to assess its likely effect on them, and provide a sufficient opportunity to make representations to the PSR (see further below). We do not consider that the Guidance provides sufficient comfort on this point (see, for example, paragraphs 4.2-4.3 of the Guidance).
- **Warning notices:** for the same reasons, we believe that if the PSR proposes to issue a penalty or publish a compliance failure, it should always, to the extent legally permitted, provide access to the underlying material on which it has based its warning notice in order to allow recipients to exercise their rights of defence (see paragraph 21.11). This should include both potentially inculpatory and exculpatory evidence in the PSR's possession.
- **Preliminary findings:** similarly, in all investigations in which the PSR proposes to take action we believe that the PSR should send a preliminary findings letter (see paragraph 40.3). Such letters should also include, in addition to relevant facts, evidence supporting those facts, and the PSR's assessment of the relevant law (see paragraph 40.4).

Right of response

We believe that giving those who may be affected by a regulatory decision a full opportunity to respond leads to better and more robust decisions. Indeed, other economic regulators have in recent years taken steps to enhance opportunities to respond and to provide for more engagement between decision makers and affected parties.

The PSR could usefully consider whether it could offer more opportunities to meet decision makers in addition to submitting written evidence. We recognise that it will not wish its processes to become unwieldy, but in our view the default should not be that parties will only be allowed to submit written responses.

To exercise their rights of response, parties require details of the legal and factual basis for proposed decisions, including any relevant evidence, and sufficient time to assess the information, analyse the commercial, prudential and technical implications of the decision, gather any additional information or evidence, prepare their response, and undertake appropriate internal governance and accuracy checks prior to submission to the PSR. We consider that the Guidance does not provide sufficient comfort that this will be available in all cases, particularly given the complexity of issues in these markets.

By way of example, the proposed timescales set out in the Guidance are in many instances far too short to allow these steps to be completed. These include the suggested 14 days to make representations on proposed directions or to respond to preliminary findings in an investigation, the 21 days to respond to a warning notice, and the 28 days to respond to a proposed direction to dispose of an interest.

Information gathering

We recognise that the PSR will need to gather information and evidence to make well-founded decisions, and we seek to be cooperative in assisting our regulators by providing information. However it is also important for the PSR to recognise and aim where possible to reduce the burden imposed by information gathering processes, which in our experience can be considerable - particularly for financial services businesses which are often subject to multiple concurrent requests from different regulators. This is particularly relevant in cases where there is no suggestion of wrongdoing by the business providing the information (e.g. in relation to general information gathering). We set out suggestions below for improvements to the Guidance in this respect.

In our experience the appointment of skilled persons can be a particularly costly and resource-intensive information gathering tool. We would strongly encourage the PSR to use this power sparingly – ideally only in relation to designated payment systems and not participants therein – and only where it has reasonable grounds to believe that there may be a concern.

The Guidance could usefully state that before issuing an information request, the PSR will have regard to other sources of information available to it, including from public sources or within the PSR.

We also believe that it would be beneficial for the PSR to consult with other relevant regulators prior to issuing a request so that it can seek to minimise potential duplication.

We welcome the PSR's proposal to issue requests in draft before they are issued. In addition to highlighting potential difficulties in responding to requests, we have previously been able to assist regulators in targeting requests more effectively in order to obtain the most useful information. This should be the usual approach unless there are exceptional circumstances.

We do not consider that it would be necessary, in most instances, to issue information requests under the PSR's compulsory powers. We believe that, like us, most businesses will respond on a voluntary basis and that it would be more proportionate for the PSR to seek to use voluntary requests for information in the first instance.

FSBRA provides for specific sanctions for non-compliance with the PSR's investigatory power, and a process for enforcing those sanctions. We strongly disagree with the PSR's proposal to impose additional obligations and sanctions for non-compliance through the use of its Principles (see paragraph 37.5). Any failure to comply with the PSR's investigatory powers should be addressed through the mechanisms set out in the FSBRA in relation to those powers.

Voluntary cooperation

We strongly disagree with the suggestion in the Guidance that adverse inferences may be drawn from a decision not to voluntarily submit information, attend an interview or answer questions in an interview. The PSR has specific compulsory information gathering powers which it should use if it does not receive the information required to pursue its functions. FSBRA also includes specific legal safeguards on the extent of the PSR's compulsion powers and on the ways in which information provided under compulsion can be used. The potential of drawing adverse inferences from a refusal to provide information voluntarily could risk undermining those statutory safeguards.

Similarly, given the fundamental importance of being able to receive legal advice under privilege to allow businesses to understand and comply with their legal obligations, the PSR should be alert to the risk that taking into account a voluntary disclosure of investigation reports when deciding what actions to take does not implicitly create any undue pressure on businesses to disclose privileged legal advice (see paragraph 30.2).

Decision-making

We welcome the use of EDCs, separate from investigatory teams, to take decisions on enforcement measures. We would encourage the PSR to consider whether the separation of decision makers and investigation teams could be used more widely for other types of decision which could have significant financial consequences for businesses, such as issuing directions.

We would also welcome the opportunity for parties to engage on a regular basis during the process of an investigation with senior individuals within the PSR. This can help to target the investigation on areas of greater concern and to identify opportunities for early resolution.

We would encourage the PSR to consider implementing within its investigations some of the procedural enhancements that have been introduced in CA98 investigations by the CMA and concurrent regulators, such as the availability of an independent procedural adjudicator to seek to resolve areas of procedural disagreement between parties and regulators without

having to resort to judicial review.

Other points

The Guidance does not appear to address the important issue of the timescales within which directions or other actions are required to be implemented after they come into effect. Given that implementing change in payments systems often involves significant technical and other challenges, it would be helpful for the Guidance to note that this will be appropriately taken into account.

In respect of market reviews, it would be helpful if the Guidance incorporated more of the details of the process and procedures for market reviews set out in Part I of the consultation paper.

In paragraph 6.60 of the consultation paper, it is unclear what the PSR means when it refers to taking action if it sees that participants are “acting in a ways which could pre-empt... our directions” [emphasis added]. Does this suggest that the PSR would seek to take action in respect of a direction that is not yet in force?

In respect of settlement procedures, we agree that these can be a very useful tool for regulators and businesses. It would be helpful if the settlement procedures could provide for an early indication of likely settlement discounts in order to incentivise settlement.

In respect of confidentiality, we believe that the PSR should be very cautious about publishing the identity of a party subject to investigation before any adverse finding has been reached, given the potentially significant reputational consequences this can entail.

In respect of the PSR’s approach to consultations, in our view best practice would suggest that:

- There should be a presumption of a 12-week consultation period unless there is a good reason to the contrary;
- The PSR should publish all responses as they are received in order to inform debate; and
- The PSR should establish a Consultation Champion to ensure these principles are followed.

We would welcome an opportunity to discuss any of these points in more detail.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

We broadly support the PSR's proposed approach to its dispute resolution procedures under sections 56 and 57 of FSBRA. Our principal concern relates to the extension of its role to what it terms "other commercial disputes". We are concerned that the PSR has not specified the nature of disputes that it considers would be subject to its dispute resolution functions and that accordingly there is a risk that the scope of regulation may be inappropriately extended to matters that are more properly the subject of commercial negotiation and resolution. This proposal also appears potentially to exceed the PSR's functions under sections 56 and 57 and could therefore be *ultra vires*.

In our view, it would not be appropriate for the PSR to extend its regulatory remit to commercial disputes outside the scope of matters contemplated by FSBRA. If the PSR considers that its powers include resolving such disputes, we would welcome clarity on the legal basis for this and on which types of dispute the PSR considers fall within the scope of these powers.

Specific comments

We strongly welcome the PSR's proposal that parties seek to exhaust available commercial and other dispute mechanisms before resorting to its dispute resolution process. We believe that this will encourage parties to seek resolution by agreement and allow the PSR to focus its resources on the right cases.

The Guidance does not set out the PSR's decision-making procedures in respect of disputes. We believe that further transparency would be helpful for all parties, including potential complainants.

We would encourage the PSR to consider mechanisms that could allow respondents to complaints access to the full evidence set available to the PSR, in order to exercise their rights of defence. Such mechanisms could include, for example, "confidentiality rings" in which only external advisers and certain individuals within respondents' organisations are permitted to see confidential information for the purposes of preparing responses.

We do not consider that it would be appropriate to publish information about an ongoing dispute except in the most exceptional circumstances. This could have a significant reputational impact at a time when no findings have been made (see paragraph 10.2 of the Guidance). In any case, including in respect of completed adjudications, we strongly believe that the Guidance should provide parties with an opportunity to comment on whether any information should be published and the content of such publication.

The PSR should have regard to the potentially considerable costs and burden of appointing a skilled person before it considers whether to require this in respect of a dispute. It may wish to consider whether these costs should be borne by the party seeking adjudication.

As noted in our response to SP6-Q8, we strongly believe that the PSR's procedures should

allow parties a proper opportunity to respond to any proposed actions in all cases. This should include providing parties with the legal and factual basis for proposed decisions, including any relevant evidence, and sufficient time to respond. In most cases, 14 days is likely to be far too short a period in which to do so.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We do not have any comments.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Setting the maximum level of penalties

We agree with the PSR's proposed approach to set the maximum penalty payable by reference to the revenues associated with the business activity to which the compliance failure relates.

We strongly believe that the use of a threshold set by reference to funds transferred in the system would have no rational relationship to the economic significance of the relevant activity to the business receiving the fine. (We believe that an analogy can be drawn from payments services provided by a bank to its customers; it would clearly be inappropriate to suggest that the economic value of the service to the bank should be determined by reference to the value of the funds transferred by its customers, rather than to the revenue the bank received from providing those services.)

We recognise that establishing the appropriate basis for calculating revenue may require some flexibility of approach to take account of the circumstances of different entities or schemes. For example, in respect of some Operators it may be appropriate to calculate the maximum penalty by reference to transaction fees paid by direct participants.

However, we believe that the PSR's proposed approach should be clarified in two key respects:

- The PSR should clarify what it means by "the business activity in the United Kingdom to which the compliance failure relates". We believe that, in respect of a PSP, the business activity should refer to the provision of payment services through the payment scheme to which the compliance failure relates.
- The PSR should clarify what it means by "revenue or billings." In the first place, it is unclear how the PSR distinguishes between "revenue" and "billings" in this context. More fundamentally, this should relate to *net* revenue associated with providing the relevant services, which would exclude transaction fees paid to third parties.

Calculation of penalties

We agree that it would not be appropriate for the PSR to set a floor for penalties, given the range of circumstances that may apply in any given case. However we are concerned that by not including any indication of a potential starting point for setting a fine, the penalties guidance gives insufficient detail to be meaningful and is not in line with the approach adopted by other regulators. The PSR could provide an indication of a starting point, for example, that would be in the range of 0-20% of the maximum fine potentially applicable to the compliance failure.

It is unclear to us why the size and financial position of the participant is incorporated into the PSR's calculations in "Step 1" or how this would operate in practice since this is not mentioned further in paragraph 3.10 of the Guidance.

If there was genuine uncertainty as to the legal requirements whose breach led to the compliance failure, we believe that this should be taken into account as a mitigating factor. We also believe that the existence of compliance programmes should be a mitigating factor.

If a business has already received a penalty from another regulator and/or made payments to affected third parties for matters relevant to the compliance failure in question, we believe that these amounts should be deducted from any penalty or disgorgement payment so as to avoid the risk of "double jeopardy."

In setting, enforcing and recovering penalties, the PSR should have regard to the need to ensure a proportionate response and to avoid disincentivising investment or participation in regulated schemes.

Other points

If a participant is compliant with the PSR's guidance, regulatory principles, other published materials or any steer provided by the PSR in response to a specific request from a participant, we can conceive of no circumstances in which it would be appropriate to issue a penalty, and believe that paragraph 2.2 of the Guidance should reflect this.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Please see the response to SP6-Q11 above.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business

activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Please see the response to SP6-Q11 above.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Please see the response to SP6-Q11 above.

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SPENS LLP

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We believe that regulation needs to be carefully designed, with constant reflection on how consumer needs are being advanced through investment in, and the supply of, services that they value. The costs of regulation should not exceed the benefits to consumers from that regulation.

The proposed regulatory approach appears, at this stage, to strike the right balance between driving forward effective change where it is most needed and maintaining a light touch in other areas where it is still unclear whether there are benefits to regulatory action. Focusing on the effectiveness of competition and innovation in the sector should help deliver the structural and behavioural changes necessary in the sector, which, in turn, should reduce the need for interventionist regulation.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree with the establishment of a Payments Strategy Forum. It seems an appropriate way to encourage strategy development and collaborative innovation. It is preferable to the other two options. Option 3, in particular, seems unlikely to produce results, as it would appear that the development of strategy in this industry requires the involvement of all stakeholders, albeit with clear oversight by the regulator to provide the requisite guidance and impetus, as well as the ability to facilitate collaboration by removing blockers.

One particular blocker to collaboration might be competition law. We note that the regulator expects all industry participants to understand that any collaboration must comply with competition law. Whilst it is, of course, the responsibility of participants to ensure that they stay on the right side of the law, we believe that the regulator also has an important role to play.

Part of this role is advocacy and ensuring that the participants understand where the boundaries lie. An industry body, such as the Forum, which is tasked with driving forward strategy and innovation, clearly relies on information from various stakeholders, many of which will be actual or potential competitors (particularly at the Payment Service Provider level). There should be clear guidelines for those involved in the Forum setting out the

types of information which can safely be exchanged when considering strategy or collaboration. Each meeting should have a clear agenda to ensure that conversations do not stray into risk areas. The Forum itself should have a competition law compliance policy.

The regulator can also help remove any particular blockers arising as a result of competition law. Many competition law issues can be overcome with appropriate forward planning and involvement of the regulator. For example, if it is envisaged that a particular area of strategic focus requires the exchange of commercially sensitive information between actual or potential competitors, the regulator can, as necessary, act as an independent facilitator, collating the information, analysing (if necessary), and reporting it back in a format which does not identify the commercially sensitive information of individual competitors.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Transparency will be key to ensuring that all stakeholders are represented and engaged. General meetings should be open, in principle, to all stakeholders. If numbers need to be limited, there should be agreed and objective procedures for limiting numbers which ensure the proportionate representation of relevant interests. This could involve, for example, any decisions being taken only when a quorum, including interests from all relevant stakeholder groups, is present. A clear work programme should be established early. We agree that working groups are the most appropriate way to develop detailed proposals and solutions. Clearly these working groups need to be representative of the different groups of stakeholders and should be constituted with that in mind for each particular workstream (as interests may differ depending on the working group's objectives). Membership of work groups should be rotated regularly, providing this does not jeopardise the work product. Publication of the working group's findings will allow those not directly involved to be consulted.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Type your answer here

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Type your answer here

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We agree that this is a sensible precaution which is proportionate to the risks identified. As highlighted in Supporting Paper 3, cross-directorships of this kind may result in the exchange of competitively sensitive information. We would add that this may involve the director being privy to information in relation to other Operators (when acting as director to an infrastructure provider which supplies different Operators) and suppliers of infrastructure (when acting as director to an Operator). The former may be less of a concern at the moment given the lack of competition between interbank payment systems, but the latter is a serious concern. The resulting reduction in competition may reduce innovation, stifle price competition and result in an incumbency advantage for the infrastructure provider. We cannot envisage any other safeguards that would appropriately address these issues.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We note that the regulator will keep cross-directorships between PSPs and Operators under review, but that there are a number of justifications for such cross-directorships and safeguards in place. However, these safeguards do not appear to deal with the risk of the director obtaining commercially sensitive information about competing PSPs via his or her position as director of an Operator (which will deal with many other PSPs). Whether this is a significant risk in practice should be considered.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that

any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB

Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Type your answer here

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Type your answer here

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it

should apply to and why.

Type your answer here

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Type your answer here

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We believe that an Administrative Priority Framework is required to manage expectations, in a transparent and upfront manner, about how the regulator's powers and resources will be deployed. It is clearly not possible, nor is it in the public interest, to pursue every complaint, regardless of its merits or considering the wider impact that pursuing the case will have.

However, the way in which prioritisation is implemented will affect the industry's view of the effectiveness of the regulator. An overly rigid approach to prioritisation, which means that very few complaints are taken forward, will reduce deterrence and incentives to approach the regulator. The Competition and Markets Authority faces the same challenge in light of its predecessor, the Office of Fair Trading, arguably relying on its prioritisation principles to take on far fewer complaints than many would have expected. The result is that many companies facing anti-competitive practices are reluctant to approach the regulator or spend the money compiling a complaint. The regulator should be mindful of this effect when applying its Administrative Priority Framework. A willingness to apply the Framework flexibly would provide a range of benefits.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Type your answer here

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Type your answer here

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

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MasterCard's response to the Payment Systems Regulator consultation: A new regulatory framework for payment systems in the UK

MasterCard Worldwide ('MasterCard') submits this response to the Payment Systems Regulator ('PSR') consultation on a new regulatory framework for payment systems in the UK ('the consultation'), which seeks views on the proposed regulatory framework and policies that the PSR proposes to adopt ahead of its operational launch on 01 April 2015. As one of the entities proposed to be designated for regulation by the PSR, MasterCard welcomes the opportunity to provide our comments on this important matter.

MasterCard is a public-listed, global payments technology company that connects billions of consumers, thousands of financial institutions, millions of merchants, governments and businesses in more than 210 countries and territories around the world, including the United Kingdom. MasterCard owns the MasterCard family of well-known brands, including MasterCard®, Maestro® and Cirrus® and licenses financial services providers to use those brands in conducting payment transactions. We operate the world's fastest payments network to facilitate the processing of payment transactions in more than 150 currencies, including authorisation, clearing and settlement. We also provide value-added offerings such as information services and consulting. MasterCard's 'open' system delivers solutions for consumers, businesses and governments who seek faster, more secure and smarter payment methods for the widest possible range of goods and services.

EXECUTIVE SUMMARY

EXAMINING THE DESIGNATION OF CARD PAYMENT SYSTEMS

We appreciate that the government rather than the PSR determines the firms to be designated for regulation. However, we continue to believe that card payment systems should not be designated for regulation by the PSR. The absence of competition concerns following the resolution of the interchange fee debate and a flawed designation process has led to the arbitrary and unjustified exclusion of certain card payment systems, providing them with an unfair advantage. We strongly encourage the government to exclude card payment systems from regulation while the PSR conducts a full review as to whether there is a market failure. This will help mitigate the risk of unintended consequences to the electronic payments market in the UK.

THE PSR, ITS VISION AND REGULATORY APPROACH

If card payment systems are to be designated:

- **It is vital that the PSR is able to regulate on an equal basis** so as to enable it to fulfil its objectives and vision and avoid the risk of market distortion. Proprietary three-party payment systems such as American Express and PayPal and the four-party models that three-party systems employ should therefore be included. If not, these three-party systems will unfairly seize market share, increasing costs for both consumers and small businesses, as has now been acknowledged by the Australian authorities.
- **MasterCard already meets the PSR objectives and vision for world class payment systems** and therefore the **PSR should adopt a proportionate and evidenced-based approach to regulation**. We believe the PSR would benefit from benchmarking how payment systems in the UK compare to payment systems in other countries and recognise the significant differences between the domestic, bank-owned interbank payment systems and MasterCard as a global, public-listed retail card payments system. We are encouraged that the PSR intends to adopt a systematic and thorough approach prior to proceeding with any potential regulatory activity, including applying its Administrative Priority Framework ('APF') to ensure the best use of its resources.

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- **As an economic regulator, the PSR should ensure that it remains fully independent and impartial**, both from other regulators, in particular the Financial Conduct Authority ('FCA') and political influence, to the PSR can act in a proportionate and appropriate manner, placing the industry and service-users at the heart of its vision.
- **A 'no surprises' culture should be achieved via mutual understanding and cooperation**, so that both the PSR and designated firms achieve the appropriate balance of information provision.

PAYMENTS INDUSTRY STRATEGY AND AREAS FOR COLLABORATION

We appreciate why the PSR favours establishing a Payments Strategy Forum ('PSF') over the other options. However, its remit must be clearly defined so that the PSR can lead on the strategy setting *process* whilst also ensuring that the strategy is mutually delivered against its objectives and vision. As such, we outline a number of points that may benefit from further thought and development.

OWNERSHIP, GOVERNANCE AND CONTROL OF PAYMENT SYSTEMS

For MasterCard, ensuring that the needs of all service-users are fully considered when developing our system, products and solutions is absolutely fundamental to our business. Much of our business entails interaction with service-users as well as organisations across many different industries. However, the proposed directions around governance and control must be appropriate and proportionate for all business models and we are concerned that this is not the case for global, public-listed card payment systems such as MasterCard. We therefore suggest some alternative solutions that we believe balance the PSR's desire for greater service-user representation with the need for proportionate and appropriate directions.

ACCESS TO PAYMENT SYSTEMS

We question the suggestion in the consultation that MasterCard's technical criteria and requirements are onerous and complex and would therefore welcome further information from the PSR to better understand these concerns. The very nature of four-party schemes means that they are non-discriminatory, coupled with the access requirements under Article 28 of the Payment Services Directive ('PSD'). We also believe that concerns over transparency are misplaced as our rules are also readily available on the internet and therefore cannot see the benefit of public disclosure beyond what is already standard practice.

INTERCHANGE FEES

Electronic payments offer a wide range of benefits to all participants in the payments value chain. Interchange reflects the extraordinary value merchants receive from accepting our products – merchants pay their fair share rather than putting all costs of operating the system on cardholders. Where interchange fees have been regulated, consumer and small merchant costs have risen – we therefore strongly urge the PSR not to reduce interchange rates below the rates agreed in the EU Interchange Fee Regulation.

EXAMINING THE DESIGNATION OF CARD PAYMENT SYSTEMS

MasterCard appreciates it is the government that determines the firms to be designated for regulation and that this consultation concerns the regulatory framework of the PSR. We are supportive of and grateful for the PSR's very open approach to engagement and consultation ahead of its launch on 01 April 2015. We believe that as part of this process it is helpful to reiterate our view that this positive relationship can continue without the need to designate card payment systems for regulation. The PSR would benefit from conducting a proper review of card payments and the government should refrain from making any designation decisions regarding card payments systems until such a review has been undertaken:

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- ***Designation should not occur in the absence of competition concerns*** – we recognise that the extraordinary success of electronic payments in the UK has occurred against a backdrop of criticism, much of it focused on the costs merchants pay for accepting those payments. We are confident this will be resolved shortly with the adoption of the forthcoming EU interchange fee regulation and MasterCard's voluntary reductions in UK domestic interchange rates. This resolution removes the key competition concern in relation to card payment systems. All other concerns identified by the government and PSR consultations concern domestic interbank payment systems. There is therefore no evidence for including card payments for regulation – on the contrary, card payment systems such as MasterCard already meet the PSR objectives and vision, as explained later in this response.
- ***The process for designating card payment systems for regulation is flawed*** – the lack of evidence of any wider concerns about card payment systems has led to disarray surrounding their designation. The government's decision in 2013 to set up a full economic regulator to resolve multiple concerns with interbank payment systems led to card payment systems being included simply because they comprise a significant segment of payments in the UK but not because of any concerns about card-based payments. Throughout the remainder of 2013 and 2014, the intention of the government was to include the three main international card payment systems for designation, yet towards the end of 2014 the government changed its stance again to arbitrarily exclude American Express from regulation while retaining Mastercard under designation. MasterCard considers that the procedure followed by the government in conducting its consultation on proposed designations likely does not meet the requirements set out in Section 45 of the Banking Reform Act, including, notably, the requirement properly to consider representations made by MasterCard¹.
- ***The arbitrary exclusion of certain card payment systems is unjustifiable*** – card payment systems excluded from regulation will be provided with an unfair advantage. The PSR's statutory objectives do not justify the regulation of MasterCard and not three-party schemes and there is no rational or objective basis for doing so, particularly knowing the relative similarities between the two systems under the statutory standards. If the government considers the PSR's statutory objectives along with the four statutory criteria that it must consider during designation decisions², it should be apparent that card payment systems should not be designated. Furthermore, designating MasterCard and not three-party schemes is unsupportable both under the four statutory standards and the PSR's competition objective – if the criteria set out in Section 44 were to be deemed met in relation to MasterCard, they must also be deemed met in relation to three-party schemes and the four-party models they employ.
- ***Card payment systems should be exempted from regulation pending a proper review*** – We therefore strongly support the government providing the PSR with the ability to undertake a full review prior to the government making any designation decisions in relation to card payment systems. This would identify where actual market failure may exist and assess in a systematic fashion the additional costs and burdens that regulation might impose on both providers and users of retail payment systems, while also giving the market a chance to respond to any market failures that are identified instead of simply applying blanket regulation. There has been no analysis of the impact that regulation is likely to have on card payment systems and there is a significant risk that regulation will lead to a number of unintended consequences and a disproportionate adverse impact on card payment systems.

¹ <http://www.legislation.gov.uk/ukpga/2013/33/section/45/enacted>

² Financial Services (Banking Reform Act) 2013, Section 44: (a) the number and value of the transactions that the system processes or is likely to process in the future; (b) the nature of the transactions that the system presently processes or is likely to process in the future; (c) whether those transactions of their equivalent could be handled by other payment systems, and (d) the relationship between the system and other payment systems. In addition, Section 44 of the Act instructs HMT that it may make a designation only if it "is satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely to have serious consequences for those who use, or are likely to use, the services provided by the system."

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MasterCard is committed to ensuring that UK consumers, businesses and government continue to receive the benefits of our efficient, open, safe and reliable retail payment system. We are ready to work with the PSR to conduct a review to maximise the potential for informed decision-making and can bring considerable insight and expertise from similar activities in other countries.

Our comments in the remainder of this response are made in the event that card payment systems are designated for regulation by the PSR and are without prejudice to our view that it would be inappropriate and disproportionate for card payment systems to be designated for regulation by the PSR.

1. THE PSR, ITS VISION AND REGULATORY APPROACH

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

The PSR has been given an unprecedented opportunity to consider anew the debate around competition in UK payments. In so doing, we are encouraged that the consultation outlines how the PSR intends to approach any regulation of the sector in a proportionate and appropriate manner, taking into account its objectives, duties and regulatory principles and proposed APF. We also support the PSR being deliberate, transparent and predictable, as this should provide greater certainty not merely for designated firms but for all participants. Adopting such an approach will hopefully provide clarity around decision-making and minimise any unintended consequences.

To recall, the PSR's objectives are:

- to promote effective competition in the markets for payment systems and for services provided by those systems, including between Operators, PSPs and Infrastructure Providers, in the interests of service-users;
- to promote the development of and innovation in payment systems, in particular the infrastructure used to operate payment systems, in the interests of service-users; and
- to ensure that payment systems are operated and developed in a way that considers and promotes the interests of service-users

The PSR is seeking to “understand the concerns the earlier reviews into payment systems identified, but also the growing challenges and opportunities that industry development brings.”³ Its vision is for the UK to have world class payment systems, which means systems that:

- are responsive to, and focused on, the changing needs of service-users
- promote innovation, both technological and commercial, to meet future challenges
- enable effective competition between providers of payment services
- are efficient, provide value and are easy and cost-effective to use
- are reliable, secure, stable and predictable

The PSR has designed its proposed regulatory framework to realise this vision, whilst bearing in mind the need for it to be proportionate and effective by accounting for the different characteristics of payment systems in the UK. As the PSR acknowledges, it must also have regard to the need to use its resources in the most efficient and effective way, hence the development of its APF. This latter point

³ PSR CP 14/1 “A new regulatory framework for payment systems in the UK”, p. 16

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is important, as it will assist the PSR in determining the potential significance of an issue when measured against its objectives and ongoing workload and what if any action the PSR might take.

In our response to the FCA/PSR 'Call for Inputs' paper in April 2014, we provided considerable detail around our views regarding payment systems regulation and how we believe MasterCard already meets the PSR's objectives and, as a consequence, its vision. While we do not intend to cover these points again in depth, we believe that it is useful to provide a succinct summary in the context of discussing the PSR's regulatory approach.

- ***It is vital that the PSR is able to regulate on an equal basis***

A fundamental issue that sits at the heart of an effective regulatory regime for payments is equal regulatory treatment of all card payment systems, without which the PSR will be unable to meet fully its objectives and vision for a world class payments system. This includes the proprietary three-party payment systems such as American Express and PayPal and the four-party models that three party systems employ. We appreciate it is the government that determines which entities to designate for regulation by the PSR; however the PSR has a vested interest in ensuring that it is able to regulate equally all card payment systems so as to minimise the risk of market distortion. It is not within the PSR's statutory goals and does not fit with the general spirit of the Financial Services (Banking Reform) Act 2013 ('The Act') to favour one private sector entity to the detriment of another.

This is particularly important given that the EU Interchange Fee Regulation looks likely to not only exempt completely three-party card schemes from the interchange cap but to also enable a Member State (if it so chooses) to exempt the four-party models these schemes use from the interchange fee cap if the total annual domestic spend on these cards falls below three percent of the total annual domestic spend on all types of cards. American Express had 8% of the total UK consumer credit card spend in 2013 and will likely seek to take advantage of any exemption from interchange regulation by using its four-party models to replicate MasterCard. The most prevalent of these four-party models used by three-party schemes is American Express Global Network Services ("GNS"), where American Express contracts with financial institutions to issue their cards and connect with merchants, while American Express operates the network used to complete the transaction. Amongst these four parties, merchants are charged a per transaction fee, a portion of which is paid to the issuing financial institution as an interchange equivalent.

The GNS model not only operates in the same way as the other four party schemes, it competes directly with them for precisely the same consumers, merchants and financial institution customers. This will place American Express at a distinct competitive advantage compared to designated payment systems such as MasterCard and will unfairly distort the competitive landscape in their favour. As we have seen in Australia for many years now, excluding American Express from interchange regulation creates an uneven playing field which, over time, American Express will convert into increased market share. Issuers will issue American Express GNS cards to mass-market consumers seeking the richer product offerings they provide. Not only will cardholders pay more for these cards, with millions more GNS cards in the market and these cardholders incentivised to use them over regulated cards, merchants will find it increasingly difficult to refuse expensive American Express cards without losing business. Australian authorities have come to recognise the anti-competitive consequences of an American Express exclusion from interchange regulation. Indeed, to advance 'competitive neutrality', the recent final report of the Australian Financial Systems Inquiry includes a recommendation to broaden interchange fee caps to include service fees in companion card systems such as American Express.⁴

⁴ <http://fsi.gov.au/publications/final-report/>

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Excluding three-party schemes and the four-party models they employ from regulation without understanding the likely impact cannot be considered sound regulatory practice. We understand the PSR is undertaking further evidence gathering on behalf of the government to inform subsequent designation decisions in advance of the official PSR launch on 01 April 2015. In order to avoid an unbalanced market and the risk of unintended consequences, we urge the PSR to request the government reconsider its position regarding American Express and other three-party schemes and, more broadly, not apply any exemption from designation to three-party card schemes, thereby also including the four-party models they use. Without an equal and proper regulatory approach towards card payments in the UK the PSR cannot properly achieve its objectives of competition, innovation and securing the interests of service users.

- ***MasterCard already meets the PSR objectives and vision for world class payment systems***

As we have outlined in previous consultation responses, we believe that the PSR's statutory objectives under the Act are already being met by card payment schemes such as MasterCard as a result of our open, four-party system. Our desire is for an environment that recognises and accounts for the importance and success of electronic payments as an efficient, convenient, safe and cost-effective means of transacting, as well as one that facilitates vigorous competition and continuing innovation for all stakeholders in the system. E-commerce, mobile payments and much of the cross-border commerce that we now take for granted would not exist without the type of electronic payments MasterCard's open system and network technology provides. Below we set out some examples of this:

- **Responding to, and focused on, the changing needs of service-users** – by offering a wide range of products and solutions, global, open, four-party card systems such as MasterCard provide equal opportunity to everyone to participate in the modern economy. Cards provide **consumers** with protections against loss, fraud, theft and liability and enable consumers to make transactions across the globe. By accepting cards, **merchants** move customers more quickly and securely through checkout, reduce costs such as those linked to cash and receive a guarantee of payment even if the consumer does not pay for the transaction. Moreover, merchants who accept cards enjoy one of the most significant commercial benefits – increased sales. **Small businesses** now also experience the beneficial impact of payment cards. As payment schemes such as MasterCard have invested and innovated to make it easier and more cost effective for merchants of all sizes to join payment systems, even the smallest merchant can join and compete for the same customers as the largest retailer.
- **Promoting innovation, both technological and commercial, to meet future challenges** – innovation is at the heart of global card payment systems such as MasterCard. As a direct result of open, competitive systems such as ours, which are able to respond rapidly to demands for better products from consumers, merchants and governments, a new revolutionary era of payments innovation is underway. Developments in the UK include the widespread adoption of contactless payments, extending into the transit sector; mobile e-wallets; prepaid cards increasing access to a transactional bank account; and Mobile Point of Sale solutions. Many of these have been developed in partnership with other parties.
- **Enabling effective competition between providers of payment services** – we strongly believe that there are already high levels of competition in UK card payments and in many ways the UK leads Europe and the rest of the world in this regard. Competition is fierce not only between card payment systems but also within them, with new entrants in each part of the value chain who directly and indirectly benefit from the long-term investment and development that organisations like MasterCard have made in payments technology. We

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understand that the PSR is alive to this and wants to see a continuation of this thriving, vibrant and innovative card payments environment.

- **Efficient, provide value and are easy and cost-effective to use** – open access is central to the success of a four-party card payment system such as MasterCard. Although we are subject to the access requirements under Article 28 of the Payment Services Directive (as implemented into UK law in 2009), in any case the very nature of our system means that it is open and accessible. Subject to compliance with the scheme rules that govern their interaction and certain mandates linked to products, issuers and acquirers are entirely free to set their charges or define specific product features. Scheme rules are vital for ensuring global interoperability and the smooth, efficient and effective operation of the system. Working under the rules of the scheme, every single issuer can offer its customers (consumers) the combined acceptance level of all the scheme's acquirers, and every acquirer can offer its customers (merchants) access to the combined customer base of all the scheme's issuers. This drives down prices and improves service levels without losing the network effects that are so crucial for the success of a payment product and explains the growth of these 'open' four-party payment systems as opposed to 'closed' three-party ones. Additionally, the last five years in particular have seen a plethora of new entrant third party payment providers and technology companies accessing and utilising our open system at low cost and with low barriers to entry.
- **Reliable, secure, stable and predictable** – MasterCard's network combines the benefits of both the distributed and centralised network models. This ensures that transactions are routed based on (in order of importance) availability, needed service/functionalities and speediness. So for example, a low-value, quick-service transaction is routed immediately to the receiving bank, whereas a high-value, specialised transaction is routed to the central server before routing it to the receiving bank. MasterCard's tri-dundant transaction monitoring (primary, secondary and tertiary layers of protection) works to provide multiple routing paths for seamless transaction processing, even during disasters, to ensure the highest quality and fewest dropped transactions. MasterCard has co-processing sites which function as data and network operations centres processing both production and recovery workloads. The MasterCard data processing and storage system is highly redundant, fault tolerant, and designed to eliminate single points of failure. MasterCard systems and data are backed up on a regular basis. Backup media is clearly labelled, encrypted, isolated, and protected. MasterCard stores backup media in secure areas away from the location of the original data.

What is particularly apparent in almost all of the points above is the beneficial interaction that is absolutely vital in network systems such as electronic card payments and which is best fostered without, or at the very least with minimal and well-considered regulation. This interaction has facilitated fierce competition amongst an ever-increasing number of market players, as individual companies make investment decisions, to which the market is able to respond quickly. This in turn has resulted in UK card payments being at the forefront of innovation in Europe, a point acknowledged by policy makers, with the direct result that these market conditions have enabled an expansion of electronic payments with increasing numbers of consumers and merchants using card payment technology.

- ***The PSR should adopt a proportionate and evidenced-based approach to regulation***

The PSR is required to act, wherever possible, to advance at least one of its objectives and to have regard to its regulatory principles under the Financial Services (Banking Reform) Act 2013 ('FSBRA'). As stated above, we are encouraged that the PSR intends to adopt a proportionate and evidence-

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based approach to regulating payment systems in the UK. This will be vital for achieving the PSR's vision of world class payment systems. The PSR should benchmark how payment systems in the UK compare to payment systems in other countries and in so doing be cognisant of the significant differences between the domestic, bank-owned interbank payment systems and MasterCard as a global, public-listed retail card payments system. As outlined above, we believe that MasterCard is already delivering on the PSR's vision. We believe that some elements in the proposed regulatory framework that are intended to apply to all payment systems in the UK will not help to realise the PSR's vision in respect of card payment systems.

It is also encouraging that the PSR is establishing its APF to ensure the best use of its resources. As the PSR is aware, there have been investigations and inquiries into the competitive landscape of payment systems in the UK dating back to 1999. While there has been a long-running competition debate surrounding interchange fees for card payments, we expect this to be resolved with the adoption of the European Interchange Fee Regulation and MasterCard's voluntary reduction in UK domestic interchange rates. Aside from this, card payment systems are not thought to pose any other significant issues. Certainly during 2012 -2014 the focus has been on the interbank payment systems and the Payments Council with which they contract, most notably around the issues of ownership, governance and control, access, competition and innovation. This has not only been the case in the responses to the 'Call for Inputs' consultation but the public sessions that have occurred subsequently. This theme also continues in the consultation – while the PSR identifies some points for card payment systems to examine regarding end-user representation and access, the large majority of the proposals seek to address concerns with interbank payment systems.

As both the PSR and the government have acknowledged, designation does not of itself automatically trigger regulation and we are therefore encouraged that the PSR is proposing to adopt a systematic and thorough approach prior to proceeding with any potential regulatory activity. Central to this will be ascertaining whether there are any real market failures or a lack of competition and innovation in card payment systems – the PSR must find evidence of a market failure and beyond that weigh the benefits of regulation with the costs of such action in undertaking regulation in order to avoid misdirected "corrective" measures. The resolution around the long standing interchange fee debate removes a key concern. We are of the view that regulation is not needed to promote innovation in card payments – on the contrary, card payment systems are at the forefront of driving payments innovation, something that is covered in some detail in the accompanying PSR innovation paper. Ironically, it is likely that the interchange fee caps in the EU Interchange Regulation will act as a significant inhibitor of innovation in card payment systems. Finally, regarding end-user interests, MasterCard operates in a two-sided market and therefore the very nature of our business means we must ensure that the interests of all end-users are met as fully as possible. MasterCard's ownership model, as a public-listed company with an obligation to serve the interests of its shareholders, also drives us to take into account equally both merchant and consumer interests, in order to maximise their demand for our products and services and thus our revenue.

- ***As an economic regulator, the PSR should ensure that it remains fully independent and impartial***

The Cruickshank Report published in 2000 recommended that any payments regulator be independent of industry, government and other regulators. The PSR has been established as an economic, 'utility-style' regulator, which by its very nature means that its focus should be on the underlying market conditions of payments in the UK. This is in contrast to the FCA, which as a conduct regulator is concerned about the activities of individual firms. In our previous responses to the government consultations on payments regulation, we argued strongly for the PSR to not sit within an existing regulator for fear that there would be inadequate delineation of practice. While it is encouraging that the PSR acknowledges the need for it to be fully independent, we continue to be

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concerned about the independence of the PSR in practice. The high level principles proposed by the PSR are a case in point – while we understand the rationale for developing these principles, they are more in keeping with a conduct regulator and may erode the economic regulatory nature of the PSR. They are also arguably unnecessary, given that not only will most participants already comply with them (as acknowledged by the PSR in paragraph 6.11) but that the PSR also already has powers under the FSBRA to initiate measures against participants who do not comply with its directions or requirements.

Similarly, the PSR must be able to remain independent from the government. It is already the responsibility of the government under the FSBRA to determine which payment systems to designate for regulation by the PSR. While the PSR is able to provide evidence to the government to support these decisions, it is vital that the ongoing operations of the PSR remain free from political influence, to ensure the PSR is able to place the industry and service-users at the heart of its vision for world class payment systems.

- ***A ‘no surprises’ culture should be achieved via mutual understanding and cooperation***

MasterCard understands that designated schemes are expected to share with the PSR on a periodic or ad hoc basis information that is of significant importance to the UK payments industry. MasterCard looks forward to maintaining such mutually beneficial dialogue and working together with a view to supporting the PSR’s objective to promote competition, innovation and service-users interest.

2. PAYMENTS INDUSTRY STRATEGY AND AREAS FOR COLLABORATION

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council’s or a successor body’s role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The PSR states that in order to advance its objectives and realise its vision of having world class payment systems in the UK, a formal strategy-setting process must be created so that collaborative change with industry can be agreed. The key word here is ‘collaborative’ – as the PSR acknowledges, it did not receive significant feedback on processes for developing strategy adopted individually by Operators and it is important that designated firms are able to continue to develop their own proprietary strategies⁵.

The question therefore is whether a PSF as proposed under Option 1 will likely be the most effective mechanism for achieving this and on balance MasterCard believes this to be the case. We agree with the PSR that Option 2 is not preferable. We appreciate that the PSR recognises that it is industry that has the experience, expertise and resource to develop new products and solutions and meet service-

⁵ Supporting Paper 2 PSR CP14/1.2 - Payments industry strategy and areas for collaboration, p.15

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user needs and that therefore Option 3 (the PSR leading in setting industry strategy) would also not be appropriate at this time.

- ***The purpose and operation of the Payments Strategy Forum must be clearly defined***

There is an inherent tension with all of the options as regards the level of involvement and ownership of strategy setting by the PSR. The PSR groups the concerns raised in responses to the 'Call for Inputs' consultation into three distinct areas – the first relates to the capacity of the industry to plan ahead whilst dealing with external demands such as domestic or EU legislation; the second revolves around the level of stakeholder involvement or influence over payments strategy development; and the third focuses on the process for developing strategy and collaborative change. Focusing on Option 1, the PSR states that the rationale for establishing the PSF is so the PSR can lead on the strategy setting *process* rather than the strategy itself, yet simultaneously the PSR will want to ensure that the strategy is delivered against its objectives and vision for world class payment systems.

There are a number of points where we believe further thought and development would benefit the PSF in delivering a payments strategy focused on collaborative issues. MasterCard has offered to participate in the working group to establish the PSF, where these and no doubt other issues can be discussed constructively in greater detail:

- **Defining 'collective action'** – this is the fundamental purpose of the PSF and a clearer definition would therefore be beneficial, as it will set the parameters of the PSF. The PSR suggests that the development of, or innovations in, payment systems might be an area for strategic coordination. This is an example where a clearer focus would reduce the risks of not only overloading the PSF but also affecting the strategy setting of and development of innovations by individual operators. A more focused definition would centre on issues such as the rollout of contactless payments, the use of mobile point of sale devices, or the determination of common standards for product development.
- **Collaboration vs competition** – linked to the point above, as the PSR already recognises, there is a tension between the desire to develop a collaborative payments strategy and the need to avoid adversely affecting competition, particularly when it concerns the development of innovations in payments technology. For example, card payment systems are subject to fierce competition and it would therefore seem appropriate to avoid developing a payments strategy that imposes unnecessary burdens/restrictions on the strategies of card payment systems.
- **PSF membership** – the PSF will likely be a sizeable body and will have a number of competing and, in some cases, diametrically opposed views. The Chair, Members and the PSR itself should therefore expect that this may well lead to difficulties in reaching a consensus on strategy unless set at a high level. This is likely to be particularly acute at the commencement of the PSF as members get used to this different way of working. Defining how consensus/agreement is reached will be vital. In terms of the members themselves, MasterCard believes the PSF would benefit from a membership that largely reflects that of the PSR Statutory Panel ('PSRSP'), for the same reasons that the PSRSP members were appointed.
- **PSR expectations** – linked to the above point, MasterCard would welcome the PSR establishing clearly its expectations regarding level and speed of progress on the various aspects of the final agreed strategy. This is not least to take account of the fact that, as acknowledged by the PSR itself, developments in payments often have considerable investment and long lead times behind them.
- **Evidence-based strategy** – under Option 3 the PSR discusses how the Reserve Bank of Australia and the Federal Reserve System set payments strategy. A significant aspect of both

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processes is in-depth research and stakeholder consultation. While the PSF should ultimately set the strategy, MasterCard believes that it would benefit from this type and level of input. Conducting wider research, particularly consumer research, and consultation will enable the PSF to fully consider the views of all participants and service-users of payment systems.

- **Working groups** – while it makes practical sense for working groups to be established to determine the finer detail of specific aspects of the agreed strategy, it is unclear who will establish the working groups (the PSF, the PSR itself, another body etc.), who will sit on them, how and to whom they will be held accountable and whether the recommendations of these working groups have to be accepted by the PSF.
- **Resourcing** – the PSR states that it expects members of the PSF to be of sufficient seniority to make executive decisions on behalf of their organisation. However, the proposed frequency of PSF meetings (every 6-12 weeks) may make this difficult to achieve and we therefore recommend they should occur every 12 weeks, with future meetings being agreed at least six months ahead to allow enough time to accommodate calendars of members. As regards the working groups, to ensure a strong level of detail and consistency, it is likely that the PSR would need to facilitate discussions and coordinate outputs.
- **Statutory Panel** – the PSR must be absolutely clear about the delineation of practice between the PSF and the PSRSP. While it is understood that the Panel will be concerned with the regulatory approach of the PSR as a whole, payments strategy will clearly be an important part of its remit and it will therefore be important to determine what role the Panel will play in this regard.
- **PSF independence** – as with the PSR itself, the PSF must remain independent from other regulators and from political influence.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

For global card payment systems such as MasterCard, interoperability is absolutely vital and global standards like EMV/PCI underpin this. There may well be a role for the PSR to play in, for example, facilitating collaboration to gain agreement on open standards that allow faster roll-out of new technologies. At European level, there is the work done by the EPC Cards Stakeholders Group and SEPA Council, now called the ERPB (European Retail Payment Board). If the PSF does agree to include standards as part of the strategy, the PSR should lead discussions with its counterparts across Europe and the European Commission to ensure this interoperability continues. Other infrastructure-related issues mentioned above include the wider adoption of contactless payments, particularly for SME merchants and transit outside London and the rollout of mobile point of sale devices, which are becoming increasingly important in enabling micro-merchants to accept card payments for the first time. It will also be important for the PSR to consider how it will work with other industries and their regulators, mobile payments being one such example. While a number of handsets are now Near Field Communication (NFC)-enabled and the launch of Apple Pay may well provide a much-needed spur, investment in this technology has been patchy across handset manufacturers. The PSR could work with industry and Ofcom to develop a strategy for faster and wider rollout of NFC-enabled handsets.

3. OWNERSHIP, GOVERNANCE AND CONTROL OF PAYMENT SYSTEMS

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

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SP3-Q6: Do you agree with our proposed direction to require all Operators to publish Board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

The consideration of service-users and likely users of payment services, which is found in all three statutory objectives, is extremely important. For MasterCard, ensuring that the needs of all service-users are fully considered when developing our system, products and solutions is absolutely fundamental to our business. Our open system fosters beneficial interaction across many different industries and with a multiplicity of different stakeholders precisely because we must maximise the demand of all for our products and services.

- ***The proposed directions around governance and control must be appropriate and proportionate for all business models***

The focus of the analysis and proposed solutions appear to be largely around interbank payment systems rather than card payment systems and the consultation provides little detail about specific examples of how acquirers and merchants believe their views are not sufficiently accounted for. The PSR even states that to address the concerns they have identified around ownership, governance and control of payment systems, particularly their degree of openness and representation of service users, “we will change the way these systems are controlled and governed, and how decisions are made. This is particularly relevant for not-for-profit interbank systems the owners of which have the ability to control and influence the payment systems’ rulebooks.”⁶

While MasterCard has a strong presence in the UK, we are a truly global business and our rules are established from the perspective of a global scheme to ensure that transactions meet global standards. As a result of both our market focus and our ability to invest and drive innovation as a result of our open system, we provide a wide range of products and services to all of these stakeholders and many others in our payments system. Our over-arching corporate strategy is established at a global level and individual regions and countries determine their own business strategies:

- **Representation of service users at board level** – as the PSR acknowledges in the consultation, the OFT Task Force report in 2004 concluded that the governance arrangements for card payment systems were no longer a priority area⁷. For a public-listed card payment system such as MasterCard, which floated on the NYSE in 2006, we have concerns that the PSR is trying to apply its proposed solutions to card payment systems where there is no problem to solve. The historic debate around card payments has very much been focused on merchant costs. This in turn has generated claims that competition is lacking, that card payment systems are issuer-centric and that market intervention is therefore necessary. The forthcoming adoption of the IF Regulation has resolved this debate.

Therefore, we disagree with the proposed direction requiring card scheme operators to ensure that there is appropriate representation of service-users in board level discussion and decision-making. This level of service-user involvement may be appropriate for a non-profit, utility-like system that is owned by its service users. However, it is inappropriate for a public-listed company that has a fiduciary duty to its shareholders. Moreover, for a global company such as MasterCard, the board does not conduct discussion and decision-making on a

⁶ PSR CP 14/1 “A new regulatory framework for payment systems in the UK”, p. 28

⁷ Supporting Paper 3 PSR CP14/1.3 - Payments industry strategy and areas for collaboration, p.8

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country-by-country basis. Consequently, even if service-user participation at the board level were appropriate in concept for public-listed companies, it would not work in practice for a global public-listed company such as MasterCard because its board focuses on global policy setting rather than country-by-country decisions. While we are cognisant that many companies choose to consult service-users, as we do, we are unaware of any regulator that requires this, particularly when confidential issues are being discussed. We would strongly discourage the PSR from imposing the proposed requirement on public-listed companies.

As the PSR acknowledges, MasterCard already complies with the European Central Bank's 'Oversight Framework for card payment schemes', which sets out requirements for adequate and transparent governance arrangements that balance the needs of all stakeholders⁸. In this regard, MasterCard's cooperation with service-users includes the following:

- MasterCard holds a Europe Advisory Board meeting twice a year.
- Key customers are invited to an annual 'European Summit'
- Four Advisory Committees meet on a periodic basis, i.e. the European legal and regulatory advisory committee (ELRAC), the European payments advisory committee (EPAC), the European debit advisory committee (EDAC) and the European Fraud Advisory Council (EFAC)). Members of these advisory bodies include UK customers that provide MasterCard with valuable feedback and advice on key issues.

We would welcome working further with the PSR to explore other ways that service-users might be appropriately represented. For example, this might be achieved via service-user representation on the PSF, which would enable them to provide their views on high level strategic priorities.

- **Publication of board minutes** – MasterCard supports increased transparency in decision-making. However, as a public-listed company, we do not believe that MasterCard suffers from a lack of transparency of decision-making at the board level, given our corporate governance requirements. We therefore do not believe that it would be appropriate for MasterCard to publish board minutes. Even if this were appropriate, MasterCard board minutes would be of little practical use to UK service-users because as a global company, our board decisions very rarely relate to specific countries. The PSR appears to recognise this conundrum to some extent when it sets out the terms under which redactions may be made.⁹ However, redactions are insufficient to address our fundamental concern.

None of this is to say that MasterCard does not envision an important role for service-users. On the contrary, as an open, four-party card scheme, much of our business entails interaction with service-users as well as organisations across many different industries to ensure that all stakeholders in the market derive maximum benefit from our system. MasterCard can demonstrate to the PSR how it consults with all service users to help with product development and responding to market needs and trends, either directly or through third parties such as consultancy or research groups. MasterCard regularly carries out consumer research to check demand for products and solutions.

4. ACCESS TO PAYMENT SYSTEMS

⁸ Supporting Paper 3 PSR CP14/1.3 - Payments industry strategy and areas for collaboration, p.18

⁹ Supporting Paper 3 PSR CP14/1.3 - Payments industry strategy and areas for collaboration, p.36: "to protect commercial confidentiality, candid board debate and the financial stability or integrity of the payment system, or in respect of information relating to an Operator's activities outside of the UK, to the extent that those activities do not impact on the relevant payment system in the UK."

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SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

- ***Concerns around access to MasterCard's system are misplaced***

We do not recognise the suggestion in the consultation that MasterCard's technical criteria and requirements are onerous and complex and we would therefore welcome further information from the PSR to better understand these concerns. The very nature of four-party schemes means that they are non-discriminatory, allowing many different types of businesses, including thousands of issuing and acquiring institutions, to utilise our network and develop specific products and services on a fair basis.

The thresholds set by MasterCard to access our network are low and we believe that our licensing conditions and rules and prudential requirements continue to help to facilitate this incredibly wide access. The fact that we are a public-listed company only strengthens this imperative. Four-party card schemes are subject to access requirements on objective, non-discriminatory and proportionate conditions under Article 28 of the PSD as implemented in UK law. However three-party schemes (e.g. American Express, PayPal) are not currently subject to any access requirements, which results in the absence of competition in terms of issuance and acquiring of their products, which in turn results in higher prices for end users. It is MasterCard's view that three-party card schemes should be subject to the same requirements, as currently proposed by the EC in the PSD II.

We also question the assertion in the consultation that information around access requirements to the MasterCard network is not always clear or readily available. MasterCard's rules, including those on access, are readily and easily available and accessible and are published on the internet. This not only makes it clear and simple for anyone wishing to access our system but also enables the PSR to see how we interpret and apply our access requirements under Article 28 of the PSD. As such, we question the necessity of introducing a reporting rule that is applicable to card payment systems such as MasterCard, as it is not clear to us what problem the PSR is trying to solve and as a result, the reporting requirements themselves are likely to be overly-burdensome¹⁰. We would welcome further dialogue with the PSR on this matter.

Similarly, as the information is readily available on the internet we are unsure of the benefit for requiring card payment systems to publicly disclose access requirements beyond what is already standard practice.

5. INTERCHANGE FEES

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

- ***The regulation of interchange fees will fundamentally alter the economics of card payments***

We recognise that the extraordinary success of electronic payments in the UK has occurred against a backdrop of criticism, much of it focused on the costs merchants pay for accepting those payments.

¹⁰ PSR CP 14/1 "A new regulatory framework for payment systems in the UK", Annex 2, p. 20

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Electronic payments offer a wide range of benefits to all participants in the payments value chain – consumers and businesses who use our products to make payments; businesses that accept payments using our products; banks which issue and acquire MasterCard products and transactions respectively; and governments. Like any valuable service with advanced technology behind it where innovation and development is vital, flexibility in pricing is essential to ensure the service keeps pace with the needs of all stakeholders.

The interchange fee is a small fee that reflects the extraordinary value merchants receive from accepting our products. The interchange fee ensures that merchants pay their fair share for the value they receive rather than putting all costs of operating the system on cardholders. Setting interchange at the appropriate levels provides a balance between consumers and merchants in which each party pays its fair share of the costs of the value and benefits it receives and each receives maximum value at the lowest possible costs. By setting interchange at the appropriate levels, MasterCard is able to achieve a balance that delivers maximum value to consumers and merchants at the lowest costs possible to each.

The interchange fees applied to MasterCard transactions in the UK will soon be reduced due to voluntary reductions that MasterCard announced on Tuesday 4 November 2014 (and which have triggered the “Competition and Markets Authority” (CMA) to continue to suspend its competition law investigation against MasterCard), as well as the adoption of pending EU Interchange Fee Regulation in Q1 2015 that will see interchange fees capped throughout the EEA.

The consumer and small business consequences of interchange regulation are well documented and we will not repeat them here. Suffice to say that consumers who hold regulated cards are expected to pay more for those cards and receive less in return because issuing institutions will make less money on each card issued and small merchants are unlikely to see the benefits of interchange regulation whereas large merchants will see a significant reduction of their cost of accepting cards, which they are unlikely to pass onto consumers in the form of lower retail prices. As such, we strongly urge the PSR not to reduce interchange rates below the rates agreed in the EU Interchange Fee Regulation.

Also, as mentioned above, we urge the PSR to request the government designate three-party card schemes, thereby also including the four-party models they use. This will help to avoid an unbalanced market and the risk of unintended consequences and enable the PSR to properly achieve its objectives of competition, innovation and securing the interests of service users.

6. REGULATORY TOOLS

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Please see our comments in section 1.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users’ interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

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Given our comments in section 1, we do not think that, at this point, the PSR should adopt any additional proposed Principles.

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Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Metro Bank agrees with your approach and is pleased to see the PSR working closely with the CMA. We believe this will benefit indirect participants to schemes who have not felt they had a voice in the past to influence strategy and decisions being taken. This in turn will have a positive effect on customers, who will experience better service as a result.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Metro Bank would prefer to see a more directive approach (outlined in Option 3) which we believe would enable and drive innovation faster, and promote better outcomes for customers (end users), while also ensuring that there is strong governance in place to enable constructive change across the industry. In our view, Option 1 seems to lack appropriate governance and could result in the larger (more technically complex) banks taking the lead. This could slow down the rate of change and the opportunity for the UK to have a World Class Payment System. The comments within the paper show that concerns may exist (from the PSR Review Team) about the ability of strategy setting and delivery if the approach in Option 1 is taken forward (reference section 2.102 and 2.108 and the statement 'we will consider over time whether we need to become more prescriptive in our approach'). If the ability to become more prescriptive via Option 3 is introduced, we could move toward Option 1 in time and achieve better collaboration.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The challenge will be to ensure that the forum represents all payment providers and users, without becoming bureaucratic and large in size. Of course, the needs and challenges that smaller PSPs face are different to the larger players, so the forum must

take into account these nuances to ensure that all participants are represented equally. We would certainly expect to see representation in the forum from challenger banks and building societies.

Clarity is also needed on how ECB (European Central Bank) regulations and ICB (Independent Commission on Banking) incentives will dovetail into the forum, as these can be very prescriptive and detailed.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

It is not clear if Members of the Forum will represent their 'constituency' or their organisation. For this Forum to be a success we would like members to be able to represent the whole 'constituency' or community. As stated in section 2.112 there will be working groups that sit underneath this forum. These will be key to the success of the Strategy Forum and keeping each work stream connected. Working groups could be set up for each 'constituency' or community chaired by the Forum member. This will enable the needs of all to be considered. The PSR is listening to the concerns of members (section 2.36) around the inability of PSPs and end users to input into, or influence decisions relating to, the development of payment industry strategy, and this is the opportunity for all to have a say in the future of payments. The time and resource invested will give all a voice and ensure all banks, regardless of size, have the opportunity to contribute towards decisions to change and innovate the payment landscape. This will improve the experience that banks are able to provide to their customers.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

There is currently no mention of the 'World Class Payment System'. We believe that achieving this should be a key objective of the PSR, and therefore we would like to see this as a theme with success metrics placed on it.

Most importantly, we believe that the Payments Strategy Forum must discuss the possibility of a payment utility that banks can plug into e.g. an interface for multiple schemes (this was previously mentioned by Hannah Nixon on the 26th November 2014.) As a challenger bank that has indirect access to the payments system, we firmly believe that a system of this sort would significantly reduce barriers for new entrants and ultimately encourage a more competitive banking sector.

Payment Services Directive (PSD2) is an important regulatory change, which we expect to be finalised in 2015. This will impact all PSPs in the UK and this needs to be added to the roadmap and infrastructure under related themes. Given that there may be key systems and processes to change as a result of this, we would expect to see this incorporated as soon as possible.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Metro Bank welcomes the more prescriptive approach the PSR is proposing to ensure appropriate representation at the boards of all banks, as currently the payment systems are operated largely to the advantage of the incumbent banks and direct participants. If CPSS-IOSCO Principle 18, which governs Financial Market Infrastructure, is also applied to Payment Operators, it would require a wide set of stakeholders to be engaged as outlined in section 3.18.3. Appropriate representation of all PSPs at board level would facilitate payment systems being operated for the benefit of end users (customers) and not just for the benefit of Direct PSPs.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The requirement to ensure appropriate representation of all PSPs would impose minimal costs for the Operators, as many of the Operators already have existing arrangements for this collaboration e.g. CHAPS Co. Although, these may of course need reviewing. The benefits for this type of engagement at Board level are positive and will go some way to reducing the influence that larger banks have in the decision making process, which is currently having a detrimental impact on competition and customers.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

While we agree with the proposed direction around segregation of duties, we think this needs to go a step further. We should be wary of Central Infrastructure (CI) providers that are able to offer commercially driven access solutions to the CI as this could limit or stifle competition of other Fin Techs who would like to be present in this market. Limited solutions also reduce the options for PSPs and suffocate the opportunity for commercially competitive tenders, which has a detrimental effect on end users.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

As articulated in SP3-Q3, we believe the implications for how CI providers offer commercially driven access solutions to the market should be considered, as well as the governance placed on their independence.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the assessment that the costs should be minimal, and we agree that taking the articulated approach will enable more competition in the market and encourage other suppliers to participate in tendering processes. The proposed segregation will encourage competition, reduce pricing, improve the quality of service provided to end users and encourage innovation.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree that all Operators (payment scheme owners rather than the banks themselves) should be obliged to share relevant board minutes in a timely fashion. This will be a significant step to improve transparency, as it will be clear if decisions are made at the expense of end users or in favour of larger players / direct participants. Indirect Participants will have sight of decisions and votes made by their sponsor bank, which are currently (at times) made without their consultation.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Metro Bank agrees with the PRS proposal that costs will be minimal and the benefit to all PSPs will be wide. Published Operator board minutes will aid communicating change and promote a challenge culture which will give more of a voice to Indirect Participants. Having knowledge of the decisions being made for PSPs who are not members will aid the decision making process for Indirect Participants, specifically in relation to innovation and adopting new technologies.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach, providing the contractual modification between the Payments Council and the Operators are concluded in a timely manner. If this does not occur, we would expect the PSR to use their powers to enforce this segregation. The Operators cannot have reserved matters, including strategy, appointment of staff and infrastructure contracts, controlled by a collaborative body.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree with this. The Access Rule and CPSS-IOSCO Principle 18 have consistent approaches to access to systems. They both support fair and open access on a risk based approach that promotes efficient and low-cost payments. This will aid competition and is beneficial to end users, which we support.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

The PSR, as an economic regulator, will need to ensure that the Access Rule and CPSS-IOSCO Principle 18 are complied with. Without a reporting tool encompassing these regulations it would be hard to ensure compliance. The results of the Reporting Rule need to be transparent and available to all PSPs in order to aid informed decisions around options of joining schemes.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes we agree. The results of the Reporting Rule need to be transparent and available to all PSPs in order to aid informed decisions around options of joining schemes.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package

(i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes, publishing Access requirements will aid with the transparency of costs, which will allow informed decisions of indirect or direct access. Less onerous Access Requirements for PSPs that have lower volumes and less complex infrastructure (as outlined in 4.173), as identified through risk assessment, will deliver more choice to current indirect PSPs.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Metro Bank agrees with the recommendation that Sponsor Banks should publish information on Indirect Access. However, we would also recommend that it is also the Sponsor Bank's responsibility to guide indirect participants into the schemes when this is requested or deemed to most appropriate route.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We would like to see a more prescriptive approach to the information required to be submitted to the Information Hub. Without direction there is a risk that different schemes will give inconsistent levels of details.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

A definition of the term 'Industry' is needed in the first instance, as it is currently unclear whether this relates to settlement banks or all PSPs. This definition will help to explain who is responsible for the development of the Code of Conduct and will help us comment on the PSR approach. It is also unclear how the PSR proposes to monitor Sponsor Banks on their compliance to the Code of Conduct and what detail and / or metrics they would be expected to abide by. Without defined guidelines we believe Sponsor Banks will interpret the code differently leading to ambiguity.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We are surprised that there is no mention of a Payment Utility that banks could plug into, e.g. an interface for multiple schemes, as this was mentioned as a technical option by Hannah Nixon on the 26th November 2014 when she met with the House of Commons Treasury Committee. We would like this option to be added, as it would be extremely beneficial for new and challenger banks, for whom payment systems are a barrier to

entry.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Yes we agree that the proposal cost will be minimal and is a quick solution to implement.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

We believe that at this stage the PSR has considered all relevant issues and are supportive of the ongoing monitoring.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Principle 1 – Relations with the Regulators – We would like to see greater structure to help PSPs comply with the PSR request for '*disclosure to the PSR of anything appropriate relating to the PSP of which the PSR would reasonably expect notice*'. A list of events and activities that the PSR would expect to be informed of would be helpful and ensure PSP compliance. The list does not need to be absolute but it would aid understanding of the level of disclosure needed.

Principle 2 – Compliance - This principle is worded in a way that could confuse understanding on what needs to be disclosed to the FCA, as regulator of conduct Vs, and the PSR, as an economic regulator. Better clarity in the wording would help to ensure the correct regulator has sight of the relevant information in order to provide assurance and remove confusion (and possible duplication) of reporting.

Principle 3 – Financial Prudence – We fully support this principle, and believe that the providers of infrastructure and Operators need to have the finance to ensure reliable, secure, stable and predictable to allow PSPs to operate in-line with end users expectations.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

As stated in SP6 –Q1 the PSR Principles on Relationships with the regulators and on Compliance need further detail and explanation to avoid confusion and incorrect interpretation.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

As replied in SP6-Q1 Principle 3 – Financial Prudence – we fully support this principle, and believe that the providers of infrastructure and Operators need to have the finance to ensure reliable, secure, stable and predictable to allow PSPs to operate in-line with end users expectations.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

The additional principles around Integrity and Skill care and diligence are very similar to the FCA's Principle 1 and Principle 2, and if these are included in the PSR Principles this could lead to confused and possible duplication of reporting. There needs to be a defined difference of the needs of the FCA, as the regulator of conduct Vs, and the PSR, as an economic regulator.

Management & control – an Operator or Central Infrastructure Provider must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems. To ensure adequate risk management exists, we would suggest that the PSR audits and inspects these organisations in order to drive best practice.

Governance - an Operator or Central Infrastructure provider must have governance arrangements that are effective, clear and transparent – we fully support this as a principle.

Service – users' interests - an Operator or Central Infrastructure Provider must pay due regard to the interest of its service-users and treat them fairly – we would like this principle to include end users (customers) or a separate principle looking at end users' should be added.

Conflict of interest – an Operator or Central Infrastructure Provider must manage conflicts of interest fairly. We would like more detail about how the PSR will regulate this to ensure 'fair' is consistent, and how this will be articulated.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We agree with the PSR that costs and benefits will be difficult to quantify as they will be different for all PSPs and, at present, the Principles are yet to be defined.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the objectives but would suggest that 'How we define the industry' should be considered. The payment 'industry' is often discussed and it is unclear if this covers settlement banks and Operators, or a wider remit including all PSPs.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We agree with the PSR's proposed approach to the Administrative Priority Framework outlined in Annex 2, as it is linked to the Financial Services Banking Reform Act (FSBR) 2013 section 53, which, as a regulator, the PSR will need to comply to.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

The Powers & Procedures Guide references the 'industry', and as previously stated, we believe this must first be defined. Metro Bank supports the Powers and Procedure Guide and would like a Road Map and timescales added to understand the implementation timeframe. This guide mentions, in section 6.60, that the PSR will take action if the 'industry' is too slow. We would like to know how 'slow' will be determined, and who will advise on this. The speed of implementation could be very different for larger technically complex Banks compared to more agile Challenger Banks. Metro Bank fully support Annex 3, linked to this guide, '*disputes over access to a payment system, fees, changes to terms and conditions*', as this will greatly benefit challenger banks and building societies to gain direct access to the operators' applications, and will also ensure 'fair' charges for indirect participants.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

We fully support the PSR's proposed approach for dispute resolution and applications

procedures. In particular we agree that details, including updates and final outcomes, should be posted on the PSR website. Clarity is needed on who will appoint the members of the PSR Enforcement Decisions Committee (EDC) and this should be outlined in this consultancy paper.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Fully support the proposed approach to Super-Complaints and is aligned to the Enterprise Act 2002 section 11 and the Office of Fair Trading expectations and CMA principles.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We broadly agree with the approach but would need more information in order to assess this fully.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

As above, we broadly support the first methodology in section 6.94, i.e. that a percentage of revenues derived from the activity or systems to which the compliance failure relates. We believe this should protect not-for-profit entities and ensure economic benefits are not derived from a compliance failure. However, we would need to see more details of the proposed approach and structure to provide a more considered view.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

We do not feel that we can comment on this at this stage.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

We agree that the proposed approach should be aligned with the PSR's proposed principles

MRM

MRM

MRM Response to CP14/1 A new regulatory framework for payment systems in the UK

January 2015

1 Introduction

1.1 The following document is MRM's response to Consultation Paper 14/1 on a new regulatory framework for payment systems in the UK.

1.2 MRM is a multi-disciplined public relations consultancy, providing award-winning communications solutions for companies, organisations and individuals operating in and around the financial services sector.

1.3 It combines expertise from across the three core disciplines of:

- Public Relations
- Social and Digital
- Public & Regulatory Affairs

The team helps clients develop and articulate their stories more effectively to more of the people that matter.

1.4 We have developed considerable expertise in the arena of payment systems through our role in advising clients across a broad range of financial services disciplines. Consequently, we have decided to respond to the consultation on the basis of our experience given the likely importance of the Payment Systems Regulator (PSR) to the future of the financial services industry.

2 Overall observations

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

- 2.1 We agree with the overall approach outlined in CP 14/1. The UK payments infrastructure needs to be opened up to facilitate effective competition. However, we have a number of concerns about the approach of the PSR as set out in our response below.

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

- 2.2 MRM would like to make the following points in answer to these questions:

2.1 Structure

- 2.2 There appears to be some confusion, or even tension, between the role of the PSR and the other regulatory bodies. The PSR was deliberately established by Parliament as an independent body. Therefore, it must not be a creature of the FCA or the industry. Consequently, the role, operation and influence of the Payments Forum will be crucial. Moreover, given the Bank's importance in supervising systemic risk, it should have a greater role.

2.3 Effective competition

- 2.4 It is vital that the PSR learns the lessons of the Payments Council. The Payments Forum should be structured so that it avoids having a single dominant group of industry players, if the new Payments Regulator is to avoid a similar situation to the Payments Council. It is vital that the new regulator aggressively pursues competition and facilitates the entry of new firms and technologies into the marketplace. The PSR should look to the Payments Services Directive not only to ensure a consistent regulatory regime, but to see how hidden costs and charges can be unbundled to ensure effective competition.

2.5 Access to payment systems

- 2.6 There is a danger that fees and costs for accessing the PSR and its systems will be disproportionately large for small firms. FCA tendency towards one size fits all regulation

may inadvertently discriminate against smaller players and new market entrants. Therefore, the PSR should have a new *de minimis* regime for newer and smaller players.

2.7 Consumers

- 2.8 Consumers seem to have been forgotten in the consultation, despite the fact that it was industry action against the interests of consumers that triggered the establishment of the payments regulator. The interests of consumers should be more explicitly recognised through a greater role for the Financial Services Consumer Panel.

3 Structure - the new regulatory framework and Payments Forum

- 3.1 We broadly welcome the new regulatory framework as an improvement on the Payments Council that preceded it. Even if this was not the reality, the perception was that this was an industry closed shop that severely overreached itself with the attempted unilateral abolition of cheque payments.
- 3.2 However, we are concerned that its replacement could be overly bureaucratic and remain dominated by the established players. This could have a negative effect on new market entrants. Although nominally independent from the FCA and possessing a different, more competition focused remit, the PSR is still effectively the creature of the FCA and reports to it.
- 3.3 At board level, the PSR remains FCA dominated and we are therefore not convinced that it will have a very different approach. Ideally it should be more independent from the FCA as otherwise it will have a tendency to simply follow the FCA's culture rather than be more competition focussed.
- 3.4 Organisational culture is a key concern, as an overly risk averse approach to payment systems could result in the ossification of the regulatory framework with new players effectively excluded from the market.
- 3.5 We also believe that there needs to be a more explicit role for the Bank of England so that there is greater clarity over issues of systemic risk, particularly with regard to new technologies or market entrants. We are not convinced there is a sufficient link to the Bank of England. It is not regarded as a participant of any kind in any payment system, but the consultation paper states that the regulator will be working with it in matters of financial stability and managing the Real Time Gross Settlement system. It is unclear as to how this will work in practice.

4 Industry structure and the challenge of ensuring effective competition

- 4.1 Presently, the UK payments sector is dominated by a limited number of players who have an intimate relationship that effectively restricts competition to new entrants. The best example of this can be seen with the length of time it has taken for new entrants such as Metro Bank to be admitted to the Payments Council.
- 4.2 The consultation and supporting papers recognise the challenges of the present structure to encouraging competition in the industry. It is crucial that the PSR is sufficiently robust and competition minded to be able to fulfil the first of its statutory objectives, that of promoting effective competition. This will be particularly important if this means overruling existing players.
- 4.3 Allowing effective integration and competition from new players will undoubtedly be the future. It is also the area which will garner the greatest levels of controversy around system stability and soundness. The regulator will need to be forthright and decisive in overruling those who stand in the way of effective competition.
- 4.5 In terms of facilitating competition, there needs to be greater transparency over fees, charges and arrangements. Many of these discussions have already taken place at a European level. This is referenced in supporting paper 5 on Interchange Fees and the Interchange Fee Regulation (IFR). We believe that these measures will act to drive greater competition and should be transcribed into law as soon as is practicable so that the UK regime is not at odds with the EU wide regime. We believe that there should be a presumption in favour of transparency of fees and charges.
- 4.6 The PSR should take early steps to bring its regime into compliance with the PSD and IFR so that UK firms are spared costly changes at a later stage.

5 Access to payment systems

- 5.1 We share the consultation's concern over the present regime with regard to sufficient access to payment systems to new firms and providers. Therefore, we welcome the introduction of the new Access Rule by the 30th June 2015.
- 5.2 Our concern is that this section of the consultation doesn't do more to recognise the diverse nature of financial services providers. Credit unions and building societies don't always have the large compliance departments of major banks. Consequently, any system must be designed to ensure that smaller players are not accidentally excluded from the market.
- 5.2 Thus, we have a concern that in setting new objective risk based access rules there may still be issues with the fairness and objectivity of access requirements and the proportionality of fees. We would advocate a tiered system whereby fees are based on transaction volumes to encourage new market entrants.

6 The role of consumers

- 6.1 What isn't particularly clear in the consultation is how the PSR itself will be held to account with regard to consumers. We do not believe that the present system of accountability via the FCA and the Payments Forum is credible. Consumers do not necessarily share the same interests as payments providers in moving to new payments systems. Moreover, consumers are subject to ever greater challenges to personal freedom and privacy from the data that payments providers collect with regard to how they spend their money.
- 6.2 Given the recent history whereby consumer interests in cheques have been deliberately disregarded, we would have expected more robust mechanisms and greater detail in terms of how the voice of consumers is heard. Moreover, MRM would like to see a more robust system of accountability to Parliament, and the Treasury Committee in particular, to ensure that the PSR doesn't simply continue to be the creature of the existing payments industry.
- 6.3 The PSR should be required to report to Parliament and consumer groups on its actions to open up the payments infrastructure and to unbundle costs. At present, there is insufficient evidence of this in the consultation paper.
- 6.4 We believe that the existing FCA Consumer Panel should be given a much stronger role in relation to the Payment Systems Regulator and that its business plan and proposals should be scrutinised by the Consumer Panel. Given the technical nature of Payment Systems and their importance to consumers, additional resourcing should be made available to the Consumer Panel to ensure that it can undertake this role.

7 Conclusion

- 7.1 Overall, the new regulatory framework is a welcome change from the arrangements of the past. However, only time will tell if it is able to behave in a way that is genuinely different from the previous structures.
- 7.2 The introduction of new technology and greater competition is vital to meet the future needs of firms - particularly small and medium enterprises and, ultimately, consumers.

NABARRO LLP

NABARRO LLP

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We agree with the approach proposed by the PSR in general.

We consider the payment industry is expanding rapidly and becoming more and more central to many users' lives. The use of cash is decreasing year-on-year and innovations such as contactless payments, Pay-m and mobile wallets will only increase the UK's dependency on payments systems. Consumers, as well as other users and stakeholders, will expect them to become quicker, easier to access and slip seamlessly into their technology-focussed lives. It is imperative that regulation, regulators and the industry keeps pace with, and ideally leads on, technological change. With this growing importance in mind, we think the role of the PSR and the Forum could be essential.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree that the creation of a new Payments Strategy Forum is the better approach, especially given Option 2 would effectively require the Payments Council to become an entirely new body in any event. Option 3 should be reserved as the "stick" if the industry, through the Forum, is unable to deliver the necessary innovation and change. As the PSR notes, it could then step in force change through other methods.

We also think it is important for the Forum to be seen to be independent and representative of the entire industry. If this is not the case, wider players (who could be the ones most likely to drive innovation, such as new technology companies or mobile operators) will be less likely to engage with the Forum, in our view.

We also think the Payments Council has been an effective body but perhaps the payments industry has rapidly expanded in recent years in a manner that the Payments Council has not kept pace with. The emergence of new industry participants has the potential to disrupt the current payments landscape in a way in which the existing PSPs do not like due to the threat to their profitability. The Forum would hopefully provide a means of access and consultation for these new players.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We think the Forum should use public consultations where necessary, such as this and other FCA/PRA consultations. This should be promoted with the assistance of the PSR, via the FCA's website for example.

In addition, the Forum should consult with other industry bodies representative of different sectors of the industry to ensure as wide a view as possible is achieved within the possible timescales and budgets.

As envisaged by the diagram on page 22 of SP2, we also think the PSR should retain a role in the Forum, even if this is a passive role as a "listener" so as to avoid reporting delays in progressing new initiatives (i.e. the Forum would have to report to the PSR and the PSR then approve/take action before progressing. With a representative of the PSR on the Forum's committee, hopefully this process can be streamlined).

One other suggestion is some manner of accountability for the Forum although we are not sure how that would work in practice and the PSR would presumably step in if sufficient progress was not being made.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Other than the suggestions above, we have no further comments other than agreeing with the PSR's proposed model for how the Forum could operate.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Type your answer here

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with these proposals in theory. It is important for service users to be represented for the reasons set out in paragraphs 3.61 to 3.65 of Supporting Paper 3.

We note the FCA does not currently intend to adopt prescriptive rules on how service-users will be represented but will monitor the approach being taken. In this respect, the exact method of obtaining this appropriate representation may differ from one organisation to another. In our view, it is important to allow flexibility in this area, with Interbank and Card Operators having systems in place that are appropriate for their individual business.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We agree with this approach. Rules relating to potential conflicts of interest exist in other areas of financial services and it is appropriate to include conflicts of interest provisions in relation to the payments industry.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We agree with this approach. However, the FCA Conduct of Business rules include a number of general obligations relating to conflicts of interest which firms are required to interpret and apply in relation to their own business. A similar general obligation may also be appropriate for the payments industry.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons

for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed direction to publish board minutes in a timely manner, which will ensure service users are aware of the decisions that have been made. However, we believe the requirement to publish a record of votes and reasons for decision making should be further considered. The current wording of the direction suggests that each director's individual vote, and reasoning for their vote, will be published. This may lead to individual directors being the focus of undue attention, both from service users and possibly news agencies. As an alternative, perhaps this information could be published anonymously (so that the views of each particular director cannot be identified) or the view of the entire board is published (rather than the views of individual directors).

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Type your answer here

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Whilst accepting that Options 1 and 2 are reasonably similar, our view is that Option 2, based on Article 28 of the PSD would be a more effective Access Rule. It could aid inter-platform competition if access obligations were better aligned across all Operators (as set out at para 4.138) and it would be more straightforward for all concerned to have categories of risk that could limit access more specifically outlined. If the PSR will require all access requirements to be disclosed in any event, the omission of a specific obligation to publish within the Access Rule would not, in our view, be problematic.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

A Reporting Rule will clearly be of value to those seeking Direct Access to Payment Systems. Any published information that aids understanding of the obstacles they could face in advance making an application should allow those applications to be better prepared and able to be accepted in a faster time-frame. On balance, therefore it is appropriate that a Reporting Rule is introduced.

This will clearly lead to additional cost for Operators, however; the PSR should ensure that the obligation is proportionate and request no more reporting than is necessary to allow Operators to demonstrate their compliance with the Access Rule.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes. There is no reason why these requirements should not be freely available and each Operator's website is a reasonable location for that information. As regards proposals for a 'Hub' that could aggregate this information, please see our response to Question SP4-Q6 below.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

As a professional advisor we are not able to comment meaningfully on estimates for projected costs of compliance. However, we would expect the benefits of any Access Rule and Reporting Rule to clearly outweigh their costs.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Yes; clearly enhanced information on Direct Access needs to be complemented by enhanced information on Sponsor Banks in the context of Indirect Access, so that an Operator can take a fully informed decision on the route of access they will seek. The proposed direction would merely crystallise the publication of information that one expects to see in a fully-functioning market for the provision of services by Sponsor Banks.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a

more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree with the approach taken so far on the proposed Information Hub. The payments industry is clearly aware of the functionality that the PSR will expect to see and will endeavour to deliver that. Any attempt by the PSR to be more prescriptive could be counter-productive because it will not be in a position to understand the most reasonable scope of information to be provided (by balancing transparency against reasonable costs of compliance as well as achievable timelines for implementation) in the same way as industry participants.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We consider a non-prescriptive approach, by requiring the development of a Code of Conduct, would be correct and proportionate. This is especially so given that the PSR's main concern appears to be increasing transparency over the service that may be legitimately expected from Sponsor Banks, rather than tackling any real or perceived discrimination by Sponsor Banks.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Yes. We agree that it would not be appropriate or proportionate for the PSR to seek to stipulate Technical Access solutions at this stage, as these should be determined by industry participants among themselves.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

As a professional advisor we are not able to comment meaningfully on estimates for projected costs of the proposed direction on Indirect Access, nor provide data to further any analysis undertaken. However, we would also expect any benefits accrued to outweigh costs incurred, in due course.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should

consider at this stage?

Type your answer here

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Yes. In a similar way to other regulatory bodies, we agree with adopting high level principles as opposed to prescriptive rules in order to afford the participants flexibility to adapt the principles to their specific circumstances.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

In order to promote transparency within the industry, we agree that the PSR principles 1 and 2 should apply to all participants.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

For the reasons set out in Part B, paragraph 6.20, we agree that PSR Principle 3 should apply to Operators and Central Infrastructure Providers.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

We consider that the proposed principles should also be adopted in order to add further overarching guidance as to what is to be expected from the participants.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes we agree with the analysis of the anticipated costs and benefits identified.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the approach taken in the Objectives Guidance.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We agree with the four main themes (impact, resources, risk, strategic importance) to be considered when considering whether to take any taking action.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

We agree with the comprehensive and clear guidance given in the Powers & Procedures Guide.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

We agree with the approach for dealing with commercial disputes and particularly endorse the fact that parties are expected to engage in commercial discussions and ADR processes before consulting the PSR.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the approach to be adopted for dealing with 'super-complaints'.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We agree that the level of penalty imposed should be based initially on the seriousness of the failure and decreased / increased in light of the factors identified (i.e. previous mis-

conduct and whether the participant brought it to the PSR's attention). A further mitigating factor to consider when setting penalties is whether the relevant participant is in breach as a result of a third party's conduct.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

We consider that other metrics (such as a percentage of the value of funds transferred) should be considered when dealing with not for profit organisations.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

As above, we consider that the upper limit should differ depending upon the category of the participant e.g. not for profit organisations.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

We support the approach adopted for the enforcement and enforceability of the penalties.

NATIONAL SAVINGS AND INVESTMENTS

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

NS&I broadly supports the regulatory approach and the scope of the payment services to be regulated.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

NS&I agree with the proposed option 1.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Whilst the Forum should have representation from all interested parties, NS&I suggest the Public sector, both as a major user and as a centre of expertise, has a significant contribution to make and should be represented on the Forum. NS&I would be pleased to participate.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

No Comments

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

NS&I is pleased to see the reference to work on Account Number Portability (page 10). Progress on this is very important to us as, with 25m customers, if we change details of where they have to send funds it is a major exercise.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Agreed

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

In principle agreed – although no data available.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Agreed

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Agreed

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Agreed

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agreed

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Based on statements in para 115 of the consultation paper this is an area that the PSR will need to keep under review.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

In principle agreed – although no data available.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agreed in principle

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree with the proposed approach to developing the Sponsor Bank Code of Conduct, but with the PSR retaining the right to be more prescriptive if needed.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agreed

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction

on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Agreed.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Fee structure should be transparent and promote competition

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Agreed

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Agreed

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control,

Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Agreed

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

In principle agreed – although no data available.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Agreed

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you

disagree with our proposed approach, please give your reasons.

Generally agreed. However, further analysis is needed. For example to evaluate the effect of penalties as a deterrent to "bad behaviour" and to evaluate the extent of the possible economic impact on potential new and existing participants (and therefore how penalties may affect competition).

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

See answer to SP6-Q11

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

See answer to SP6-Q11

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Agreed

NATIONWIDE BUILDING SOCIETY

NATIONWIDE BUILDING SOCIETY

Executive Summary

Nationwide Building Society welcomes the opportunity to respond to the Payment Systems Regulator (PSR) and its Consultation Paper on the New Regulatory Framework for Payment Systems in the UK.

The Society is supportive of the principle of economic regulation and believes that the adoption of a new economic regulator will:

- help drive the payments industry in developing and delivering innovative services to all users in the UK,
- encourage open access to payment systems for existing and new Payment Service Providers (PSPs) that will offer users competitive and efficient payment mechanisms,
- ensure that the interests of all participants using the services have appropriate representation and a voice to develop options with which to do effective business.

The proposed Payments Strategy Forum is crucial to the success of the framework; the development of its Terms of Reference will be critical. As an active participant of the payments industry, Nationwide is involved in the current 'World Class Payments System' initiative and sees this as a clear example of the collaborative approach that can stimulate strategy development and enable the new Forum to chart a clear direction and seek consensus on the priority objectives that we would see the PSR wanting to pursue.

Nationwide looks forward to working with the PSR in achieving its objectives and, as a member of various payment Schemes, will contribute to the development of world class payment systems for the UK which are fit and appropriately serve the public.

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

- Nationwide supports the proposed approach to be proportionate and effective, avoid unintended consequences, and to be deliberate, transparent and predictable.
- The payments industry operates in an increasingly busy regulatory environment with the FCA, PRA, BoE and the European Commission etc, each having payments within their remit to some extent. The PSR should adopt a transparent and collaborative approach to prevent duplication of effort and avoid conflict.
- To ensure predictability, there needs to be clear delineation between the respective roles of the PSR and other authorities.
- In particular the PSR should ensure it does not impose on participants, financial burdens, penalties or other sanctions that may hinder that participant operating or playing a competitive role in the industry.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach as described in Option 1 with the PSR setting strategic objectives. It might be appropriate to also set up an advisory strategic panel that meets less frequently which could be used as a sounding board for these objectives.
- The industry should own and develop the strategy to meet the objectives set by the PSR and we therefore need to work collaboratively on how the Forum can achieve this.
- Whatever type of Forum is set up, it has to represent all stakeholders' interests and could therefore be difficult to co-ordinate and optimise. Expertise in operating such a body is essential. There needs to be a robust prioritisation methodology that examines the attributes of any innovation or development with an appropriate escalation process where difficulties in such prioritisation are encountered. It will be highly unlikely that all suggestions can be taken forward which could lead to stakeholders criticising the process and calling into question the validity of objectives. The Forum has to have a clear Terms of Reference and representatives should be at a senior level such that commitments to progress can be made in an efficient way.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

- There needs to be appropriate representation from all Stakeholder sectors. This may present a number of challenges and the PSR will need a robust mechanism for obtaining such representation. The current use of constituency representation in bodies across the industry should be considered to allow for the Forum to be efficient in activity whilst broad in its representation and connectivity to the industry.
- The Forum will need to balance broad representation with being nimble and focused enough to ensure it has effective decision making otherwise it could descend into a combative talking shop.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

- We are keen to see how the model will work in practice. We are aware of the plan to formulate a working group to define further the process and the required terms of reference and we have provided a nomination for this activity.
- The indicative model should be flexible enough to evolve over time as the needs and wants of the stakeholders are considered.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

- The six items listed are well known to the industry and progress is being made on each, though maybe not at the desired pace. We have pointed below to two further themes for consideration, however the PSR needs to ensure that the industry and the Forum does not get overloaded with activities since resource and budget requirements may present challenges to those parties presented with the challenges.
- From a card and card payments perspective Standards are key to ensuring interoperability and the PSR can play a vital role in managing the competing standards and protocols coming out of Europe and the USA. In our view, it is unlikely that the proposed Forum would be able to manage standards discussions, which can be highly technical, without clear direction from the PSR. The PSR should lead standards discussions with its counterpart regulators and the European Commission, and use the Forum and relevant working group to develop or test proposals that are made at an international/European level.
- One area for strategic development is the liaison with other industries in the UK. A world class payments system needs to be developed in coordination with a clear strategy for relevant industries. For example, until recently there was limited availability of Near Field Communication (NFC) technology in mobile phones, which was proving a disincentive to implementation of NFC terminals in retailers. The PSR could work with Ofcom and relevant trade bodies such as the GSMA to find a mutual roadmap that could be made public for MNOs and financial firms to buy into.
- Another example is transit operators and card schemes looking to roll out contactless cards, where there is a clear consumer benefit to having a homogenous customer journey. At the moment, individual operators are having discussions with individual card firms, without much strategic direction from the Department for Transport, leaving a potential patchwork of systems across the UK. There is no doubt that a balance is to be drawn between allowing free and fair competition in this development, although there are intervention options that may be considered to further encourage market innovation and improvement.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

- From a card and card payment perspective the need for international interoperability systems makes this difficult. We need to ensure that this is called out in terms of the overall response otherwise we will end up with a service offering which restricts service to our card holders worldwide and vice versa.
- The proposed direction has been considered by the industry as we approach the 1st April and indeed a number of the points are already in place, e.g. there is an Affiliates Forum with the Electronic Schemes (Bacs and FP) so that those, albeit limited number, of stakeholders can raise matters for Board discussion. Whether this should be extended to say, for example, the Chairman of the Affiliates to become a Board member or having 'observer' status will need to be addressed through appropriate governance objectives.
- The PSR needs to ensure that any tensions between the broader representation of service user interests and the ability for the Board to make decisions and progress with innovations is managed to the benefit of all parties.
- In addition there are good principles regarding individuals not being able to hold directorships with Operators and Infrastructure, this was put in place in 2003 when Bacs Ltd was split into Scheme (BPSL) and Infrastructure (VOCA) companies.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

- We agree with the benefits outlined so long as there is proportional representation from the Stakeholder community and that this is well managed. The real question is how to appoint such Non Executive Directors with the appropriate skills and the representational reach this person would have given the number of Service Users in the UK
-

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed direction and would add that there is a responsibility on the individual and/or his/her employer nominating that individual to ensure that they declare any potential conflicts or in the case of the latter do not put an individual in such a situation.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

- We agree with this approach however the PSR must take appropriate steps to address such conflicts when they arise as quickly as possible. There is a need to ensure that service user representatives are held to a similar level of account as other directors on board, including resolving any conflicts of interest.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

- We agree with costs and benefits identified, we do not have any data to inform your analysis.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

- We support the approach for Board minutes to be published. We have no objections to including voting outcomes and reasoning..
- Caution needs to be exercised as to the content of the minutes and what will eventually be in the public domain or whether the minutes should be redacted to disclose only relevant information. We need to avoid requirements for full disclosure that may simply lead to the minutes becoming sanitised to the point of being meaningless. The PSR should also consider whether minutes of Board meetings on individual firms are disclosed and assess if the information contained is appropriate for disclosure.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

- In principle we agree with the costs and benefit of the proposed direction though the PSR and the Operators must ensure that appropriate measures are taken to eliminate risks of legal challenge to the companies or individuals acting as Directors and the NEDs in those companies.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

- We agree with this approach and in particular given that the relevant Scheme contracts with reserved matters for Payments Council were mutually terminated by all parties on the 19th December 2014.
- Nationwide is a member of a variety of trade associations including but not limited to Payments Council, as such we believe that at the current time it is wholly appropriate that as PSR does not issue a direction in relation to the Payments Council. We understand work has commenced to review the current structure and remit of the various trade associations to enable improved co-ordination of work to ensure effective industry focus on consumers.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

- We agree with the preferred option, access requirements are well established and publicly available on Scheme websites. Whilst the non-technical aspects of membership can be modified by the Schemes to meet regulatory changes, the real challenge to new entrants is their ability in obtaining a BoE account as a Direct Member and the technical development required to meet the Scheme operational needs, e.g. the need for a 24x7 near real time operation in Faster Payments. Within the card and card payment industry this is not an issue as there are already clarity around the access. For LINK Scheme you can only be a direct member, for Visa and MasterCard you are sponsored in to the scheme.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

- We agree with the introduction of a Reporting Rule, this would put reporting to the PSR in the same context as Schemes reporting to existing Regulators. Such a Rule would clearly enable Schemes to demonstrate their compliance to the Regulator. From a card and card payment perspective this is not an issue as there is already clarity around the access.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposal for public disclosure.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

- We agree with costs and benefits identified and have no data to inform your analysis. The costs will reside with the Schemes as relevant and they would need to resource appropriately for any changes.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed direction, it is important that Sponsor Banks take responsibility in publishing information for their clients. It is equally important that those Sponsor Banks take account of their clients' compliance with Scheme Rules and Operating procedures. In particular there needs to be clarity between the sponsoring bank for card payment system and customer services.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by

industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach to develop an information hub that it will serve the community in a more consistent manner. The Payments Council has commenced work on this already; the hub will provide PSPs with information on how to connect to the payment systems both by direct and indirect means and will direct them to the relevant payment Scheme's website.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

- We agree with the principle of developing a Sponsor Bank Code of Conduct which will establish a common set of values for Sponsors to incorporate into the terms and conditions. This is certainly for industry to own.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

- There are a number of Technical Designs within Schemes that enable solution suppliers to offer competitive access to payments systems. These could be enhanced through the provision of a PSR led solution and would suggest that this emerges as business needs dictate.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

- We agree with the benefits identified.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

- Interchange fees have already been regulated at a European level; it is difficult to argue that further impacts on the level of interchange in the card transaction would provide any benefit to either the consumer or UK PLC. We have already seen a significant proportion of the merchant acquiring market off shoring to ensure benefits to the merchant community which are unlikely to be passed to the consumer based on reduction in merchant costs.
- Consumers should expect to see a reduction in the overall card charges which are applied by the merchant when undertaking a card transaction via the internet – known as card transaction fees.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

- We agree with the high-level principles outlined accepting that these need to be consistent with Membership obligations, operating procedures and other documents relating to that payment system. We also believe that the relationship with other Regulators must be along consistent lines with those of the PSR and avoid having to 'serve' several masters through differing requirements, ensuring, for example, there is no conflict between economic regulation and conduct regulation.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

- We agree with this approach

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for

disagreeing, and explain which categories of participants you consider it should apply to and why.

- It is important that Financial Prudence applies to all parties within the payment systems and as such should apply to infrastructure providers as well. The question will be whether this principle places an unacceptable burden on potential providers that would hinder competition in the market.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

- These additional PSR principles are sound and indeed already adopted by the Schemes as part of existing regulations and CPSS-IOSCO principles. The only question for debate is the 'Service User Interests' and whilst the Operators and Infrastructure Providers currently pay attention to these businesses there needs to be a link to the Sponsor aspect in that the PSR could discharge appropriate interests to those Sponsors.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

- We are not sure that costs will be insignificant for all participants: the cumulative cost for compliance with these three principles could be disproportionate to the benefits.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

- We agree with the approach taken however the PSR must be mindful of the increased effort required by all parties when complying with and responding to the objectives; too much oversight and too many requirements could restrict competition and innovation.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach and would hope that adequate prioritisation is given to various aspects otherwise the PSR could fail in its objectives or require significant increase in resource to achieve them.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach and would expect such powers to be exercised proportionately to the failure offering 'offenders' adequate time to remedy the failure.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach however the PSR needs to define clearly what 'commercial' means since, otherwise, there would be the opportunity for any dispute to be referred to them, placing a significant burden on a small team.
- It might be preferable to consider themes of disputes; using a thematic approach will permit the PSR to develop a generalised and directive view on key themes and enable stronger thought leadership and enactment.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach to Super-Complaints with the expectation that parties resolving the complaint will be given adequate time to address the same.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach and would expect the penalties applied to be justified and proportionate to the offence.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

- Any penalties should be proportionate to the offence and also consider the status, business and profitability of the miscreant. The PSR should avoid levying penalties on organisations that would bring a detrimental effect to that participant in terms of its competitiveness and operational survival.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

- The upper limit should not be so great that it would place the miscreant in a disadvantageous position within its market; it should not hinder the potential growth of the business relating to the offense or the possibility of further failures. This will really have to be based on each case in its own merits.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

- We agree with the proposed approach to support, in particular, the 3rd principle and these should operate in conjunction with other obligations for maintaining financial stability in the relevant party.
- We think a good place to start with penalty setting is the approach that other economic regulators take. The main UK economic regulators have a maximum penalty of 10% of global turnover set in statute.
- We would ask the PSR to clarify that penalties/fines would be paid to the Treasury.

NCR

NCR

NCR submission to the Payment Systems Regulator

A new regulatory framework for payment systems in the UK

January 2015

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

NCR agrees with your approach

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.

NCR agrees with option 1

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The Forum will need to be both representative and effective. To achieve that we recommend organizing it into groupings of related organisations. Specific issues could then be discussed amongst relevant experts and appropriate recommendations made.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Please note comment above.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

ATMs and other technologies that will in the coming years will revolutionize the interface between customers and their financial service providers. Monitoring technological developments both in the UK and abroad will help the PSR anticipate change.

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

The effectiveness of this direction will depend on the quality of the individuals selected and the openness of the organisations to their input.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

No comment



SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Conflicts of interest should be eliminated wherever possible.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

As noted above, conflicts of interest should be eliminated wherever possible.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Please see our comments above.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

This is a reasonable direction.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Yes.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

No comment.

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

This will help create a level playing field.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Please see our comments above.



SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

This will enhance transparency, which should be welcomed.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

This too should enhance transparency.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Our experience is that there are few technological challenges that are truly insurmountable. There is growing availability of international, scalable, interoperable off-the-shelf technologies available from a wide range of providers. Expensive, unproven, bespoke technologies should be commissioned only where absolutely no alternative exists.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

No comment.

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

ATM interchange needs to be recognized as distinct from point of sale interchange.



SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

These are appropriate.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

The market will work most effectively if all participants are governed by the same set of principles and requirements.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial Prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

No comment.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

No comment.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

No comment.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

No comment.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

No comment.



SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

No comment.

SP6-Q10: Do you agree with our proposed approach for our Super-complaints Guidance? If you disagree with our proposed approach, please give your reasons.

No comment.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

No comment.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

No comment.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

No comment.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

No comment.

ORWELL GROUP

ORWELL GROUP

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Yes, I agree.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Within the Options given we believe the best way forward is a mix of Options 1 and 3. The PSR would firstly fix the high-level priorities and then a Forum would have the task of achieving industry collaboration, within the scope of the defined objectives and parameters.

However, we believe the ideal solution would be that the PSR fixes the high level objectives and parameters and then an independent group of engineers, completely unrelated to the payments industry, are given the task of developing a solution free from interference by the industry.

Such an exercise would most probably return a payments systems completely different in all respects to what we have now. Also, most probably a such system would be based on the kind of technologies and principles used by cryptographic systems.

The objective of industry collaboration is a logical and a democratic one, however **technology is not a matter of consensus but of scientific facts**. The problem of the payments industry, not just in the UK, is technological; there is a huge knowledge gap between what we call the 'industry' and its decision makers, on the one hand, and the people who actually have or can design a solution on the other. In this case the key industry decision makers are most probably the least capable of devising a new system and also most probably the least capable of taking a fresh and unbiased look at what is really required.

In Australia, industry collaboration is moving towards adopting something similar to Faster Payments but with enhanced features, while preserving all existing infrastructure. They claim to have asked the 'hard questions', but they have not even considered the needs of their key trading partner, New Zealand, in their plans. Their main aim seems to have been

to avoid addressing the the key areas of inefficiency, a cynic might suggest that this is because they provide significant income to the incumbent providers; the card schemes and corresponding banks. The fact that Australia and NZ have very intertwined economies and that 10% of Kiwis live and work in Australia was ignored. This is what happens when the incumbents dictate the direction of industry collaboration. The unwillingness of the incumbent banks to address the issues on their own forced the Australian central bank to make the industry collaborate and seek new solutions. . The result, however, was a 'tick box' approach that failed completely to embrace the potential of new technology.

In the UK, CASS is held up as a good example of industry collaboration. CASS would not, however, be necessary if the industry had moved toward a payment system that allows account portability – which it could have done some time ago. But because account portability makes account switching easier, but this was not in the interest of incumbent banks, who do not wish to facilitate churn. Why would they? Once again CASS is an example of collaboration forced on a reluctant industry by the government – leading to a sub-optimal outcome.

Paym is another example of industry collaboration, in this case to facilitate payment with mobile devices. Curiously, Paym assumes people and businesses are not mobile but caged in a single country, so Paym will not be operable internationally or even accessible to most agency banks (given the poor access they receive to Faster Payments via their sponsor banks). Once again, So Paym is a way of 'ticking the innovation box' whilst protecting established interests. A mobile payment system that works internationally would compete with card payments, whereas key incumbent banks do not want to see their significant revenues from cards payments fade. Once again, why would they? They will never engage in self harm. Instead, the way Paym is being implemented has missed the opportunity to use it as a unitary underlying payment technology that provides value added services and apps using 'rich data'.

With these examples in mind it is critical to ensure we do not miss another opportunity to innovate as a result of allowing vested interests to dictate the course of change. The UK is a sovereign country but its economy is part of a larger economic reality, the EU. A consensus at Eurozone level led to the development of of SEPA. SEPA is a great advance compared to what existed before, yet, once again it failed to exploit the potential of technology and reinforced existing interests and dominant positions.

The UK has taken the courageous step to create a payments regulator, whose board is formed by non industry specialists. This intellectual independence is its greatest asset. At a time in which the payments industry is at a crossroads, courage is required to take the right decisions. The UK could lead the rest of Europe into renewing its payments industry, but only if the UK decides to embrace the potential offered by new technologies and adopt a new system that can then extended beyond its borders. The UK can do this alone as, not being a member of the Eurozone, it will not not need to consult with other EU members.

The industry is at an inflexion point because of a change in technical paradigm (mankind would have not got to the moon by enhancing propeller engines or by adding more propellers, it was necessary to find a complete new technology to take us there. No propeller specialist was part of the NASA team designing the Apollo rockets)

All these realities must be taken into account when deciding the future of the payments industry and how to get there. I encourage the PSR to reflect on the path taken by the mobile telephony industry, why it is so successful and has resulted in so much innovation and competition: it all started with a standard that set out the basic criteria: true mobility, interoperability and quality of telephony service. The rest followed naturally.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

From our previous answer, we think the Forum should be mainly formed of engineers from outside of the industry. The Forum should be given an introduction to the key regulatory principles of the payments industry and then given freedom to design something new. It is key that this forum receives very ambitious objectives and principles to work with. RTGS should also be part of the systems to be considered for replacement.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The Forum, could adopt the form of a contest open to all (from within or from outside the industry). The contest rules would be published by the PSR along with a period to receive applications to participate. Once past this deadline, the candidate teams or individuals would be given further information, an introductory course and hear points of view from industry players and regulators. They would then be given a period of time to present proposals. Proposals would be analysed against the initial criteria. The result could be to setup a working group to further dig into selected proposals to design a new system to replace all others. Innovation and competition need a common foundation, just as mobile telephony has one. It is a standard that needs to be created.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

The payments industry starts with the Bank of England, the way RTGS works should also be up for review and replacement. The infrastructure should evolve to provide a systems with the following characteristics:

- Real-time or near- real time: cross currency and cross country.
- Operable 24/7
- Irrevocable
- Interoperable (also cross country and cross currency)
- Enabling rich data applications
- Compliant with regulations and enabling traceability
- Allowing replacement of physical cash (anonymous transactions)
- Working as a decentralised system: no single point of failure
- Peer-to-peer (peer can be a bank or a user)
- Providing payments as a network service (PANS)
- Allowing Third Party Payments
- Being "identification" agnostic

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We agree, the representation should be as broad as possible.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Yes we agree.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

The objectives of the regulator make clear enough to all stakeholders that conflicts of interests must be addressed. We think it is reasonable to leave stakeholders time and space to react by themselves in certain areas. The PSR can always intervene later if the spirit of regulation is not respected.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree. We do not have data to back our view, although the cost of appointing two different individuals does not seem much, as opposed to one single person to two different boards.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our

proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We think that the Payments Council should also have a broader representation of the larger payments industry on its board, especially representation of new entrants and non bank-PSPs. It is non-bank PSPs who suffer the most from the current situation if the payments industry. Their special prudential regimes and business models are often ignored when designing new payment systems, initiatives or other. However these are the player that will certainly bring most innovation to the market.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Yes, we agree.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, we agree.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, we agree. Also to publicly report all costs associated by access and on-going membership and its various kinds and levels.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We agree. We do not have data that may support our view.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

We agree. It would be a good starting point to be able to assess what they offer and their access criteria. This will not solve the problem of their appetite (currently very low) to sponsor PSPs, specially non-bank PSPs. Access will remain just as difficult to obtain.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Using a hub should make finding information easier; we agree that this would be a good initiative. The hub should not, however, be a replacement for a prescriptive approach; the fact that the industry is willingly moving towards disclosure should not stop the PSR from prescribing what and when such information should be provided. In any case the problem in the industry is not at information level. Even if it is hard to find information and it is always a "discovery expedition" when it comes down to finding a sponsor and getting to know its terms, the problem remains in the willingness of those direct participants to grant access. Regulation is such that it is easy to deny service regardless of how clear the access criteria may be. At this point in time it is not possible override a direct participant's right to choose its own clients or to evaluate its AML risk.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We think that a more prescriptive approach should be taken regarding this point. At least the PSR should set the general lines of such code of conduct and the very minimum standards the PSR is expecting to find. The industry could then work out the detail and

the “how” and propose it to the PSR

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Technical access solution could be of great benefit to simply access and reduce costs for PSPs. We agree with this proposal.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

We agree in general, although we are not certain that this information will bring any much bargaining pressure on direct participants.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

None

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Yes we agree

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Yes we agree

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Yes we agree

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

We think such principle should apply only to designated schemes. They apply already to regulated PSPs through their FCA permissions.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes, we do agree

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We do agree

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Yes, we do agree

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Yes, we do agree

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Yes, we do agree

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We agree. We think however that it would be necessary to define “representative body” in a way that accommodates for the current fragmented situation of the market participants and its evolving landscape. There may be cases of PSPs encountering the same problem and willing to file a joint complaint that could be treated as a super-complaint. Given the variety of PSPs and their business models, their existing representative bodies may not feel concerned by a few member’s problems. The joint effort of number of PSPs could then be treated as a super-Complaint.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Yes, we do agree

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Yes, we do agree

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

It is hard to define a general formula to determine the penalty that will achieve the desired effect. The penalty must be proportionate to the financial means of the participant, that does not force a bankruptcy, yet is strong enough to act as a deterrent to future misbehaviour and as a deterrent to others. Financial penalties may need to be complemented with other elements, such as change of board members, inability to distribute dividends for a period of time, or others that directly affect the members of the governance bodies of the participant.

In any case when setting the penalty, it must be at a level that prevents it becoming ‘a normal cost of doing business’ – which is what it is has become for many of the large retail banks, where the fines are insignificant in comparison to their financial means, do not damage the their managers’ reputations and, as result, have had little impact on their behaviour..

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Yes, we agree.

PARAGON BANK

PARAGON BANK

PARAGON BANK

FCA Payment Systems Regulator Consultation Paper PSR CP14/1

A new regulatory framework for payment systems in the UK – A response from Paragon Bank

Paragon Bank welcomes the opportunity to respond to the Payment Systems Regulator's (PSR) consultation on a new regulatory framework for payment systems in the UK.

Paragon Bank is a new entrant British bank focused on expanding competition and choice in the UK banking market for consumers and SME customers with a targeted range of savings and loan products.

Paragon Bank launched in February 2014 and is a wholly owned subsidiary of The Paragon Group of Companies PLC, a FTSE 250 company established in 1985. The Paragon Group of Companies is the UK's leading independent buy-to-let lender and consumer finance specialist. It has over £10 billion of assets under management and has serviced more than 1.5 million customers.

The development of Paragon Bank is a key element of Paragon Group's proactive growth strategy. In particular, Paragon Bank builds on the Group's heritage, model and resources – extending the Group's specialist lending expertise into new markets, leveraging its low-cost, centralised operating model to minimise start-up costs and enabling the Group to raise retail deposits to fund new lending.

Paragon Bank welcomes all measures that seek to level the playing field for new entrant banks. As a new entrant to the sector, Paragon does not ask for special treatment but it does seek to compete fairly with incumbents. Within this context, cost effective and equal access to key payment systems is a critical factor and will be instrumental in developing strong and effective competition for UK banking customers.

Paragon Bank is supportive of the establishment of the new PSR, its vision and its proposed regulatory approach.

Ownership, control and governance of the UK's key payment systems are at present concentrated in the hands of incumbent banks and are relatively opaque. While new entrants are able to access the existing systems indirectly, there is limited opportunity to participate in any debate around service operation, charging methodology and future development priorities. Moreover, discussion around the possibility of direct access to key payment systems and the opportunities that may offer a growing bank remain unexplored.

Against this background, Paragon Bank welcomes the PSR's central proposals put forward in this consultation:

- to establish a new Payments Strategy Forum with broad industry representation;
- to open up governance and control of key payment systems by involving additional players and establishing more transparent decision making;
- to require operators to have objective, risk-based and publicly disclosed access requirements; and
- the obligation for Sponsor Banks that provide Indirect Access to publish information on the sponsor services they offer.

In our opinion, giving a wider range of stakeholders and system users a voice in the development of the UK's payments systems and promoting transparency will encourage greater participation, innovation and competition and is an important first step in ensuring fair and cost-effective access for all service providers.

Yours sincerely,

Richard Doe
Managing Director, Paragon Bank

PAYMENTS COUNCIL

PAYMENTS COUNCIL

**RESPONSE TO PSR CONSULTATION PAPER PSR CP14/1:
A NEW REGULATORY FRAMEWORK FOR PAYMENT SYSTEMS IN THE UK
NOVEMBER 2014**

Introduction

The Payments Council welcomes this opportunity to respond to the Payment Systems Regulator's consultation *A New Regulatory Framework for Payment Systems in the UK*.

The Payments Council is supportive of the new economic regulator and what it aims to achieve for the industry and its customers. The UK is already a world-leader in its payment systems and services and the Payment Systems Regulator (PSR) can play a positive role in helping the industry to maintain that position.

The creation of the Payments Strategy Forum will have the potential to help the industry deliver change at an increased pace. The development of the Forum's Terms of Reference will be vital to ensuring its effectiveness and to provide clarity on its remit, scope and governance.

The industry is continuing to develop and deliver enhancements to payment services. A key piece of work currently underway is developing a plan for what a future World Class Payments System (WCPS) for the UK could look like. This plan is based on customer outcomes and taking their needs as the starting point. We look forward to sharing this work with the Payments Strategy Forum.

The industry is also currently designing a new collaborative body for payments. The Payments Council will cease to exist as this new entity takes over certain aspects of its role. This body will have a wider membership from across the industry with a delivery function core to its activity. Thought leadership activity, such as that undertaken in the WCPS project, will continue in the new collaborative body and can feed into the Forum's work to provide a mechanism for delivering agreed outcomes.



Responses to the consultation questions

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1:	Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.
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Economic regulation of the payments industry and the powers given to the PSR can help to deliver effective competition and promote innovation for the benefit of UK consumers, businesses and the economy.

We are pleased to note that the PSR intends to apply its powers in a proportionate and appropriate way, focusing its actions on specific issues and outcomes. Equally, the PSR intends to describe the outcomes required with a timeframe for implementation. Whilst we very much support this approach, it would be prudent for the regulator to work with the industry on implementation timeframes to understand what is feasible for the market to achieve without presenting unintended and potentially costly problems for some participants. This should also be a key part of the Payments Strategy Forum discussions. This needs to take into account the other demands on the industry as overall capacity to deliver is always going to be finite. Additionally it would be helpful to have guidance on those circumstances under which the PSR would choose to stipulate not just what, but also how an outcome should be achieved, rather than leaving it for the industry to design the detail (paragraph 1.97 in Supporting Paper 1). We believe that the industry is generally best placed to design the solution.

One concern that we do have is how to ensure that the PSR acts as an economic regulator and not a conduct regulator – the two approaches are fundamentally different. The FCA has significant influence over the PSR, whose Board is constituted of FCA Board members, and the two regulators share the same chair. The PSR needs to ensure that it is independent both of other regulators and of the government in its approach, notwithstanding the need to work closely with other authorities with overlapping remits and complementary powers.

The PSR’s expectations for a ‘no surprises’ culture is understandable in order for it to regulate effectively and to minimise the potential need for regulatory intervention. We would still expect payment service providers (PSPs) to be able to launch competitive payment



services without first having to disclose commercial information to the PSR, on the basis that as regulated firms they would undertake due diligence on the regulatory and legislative requirements imposed on them.

We were pleased to note the recognition of the role of collaboration in payments and how this has enhanced competition in the interests of service users, with the development of the Faster Payments Service (FPS) given as a recent example. The Current Account Switch Service (CASS) is another more recent example showing how the industry has worked together to create common standards and a consistent customer experience, to enable and empower consumers to move bank accounts with a minimum of administration, an agreed switch date and a guarantee to provide confidence.

Likewise, the consultation paper acknowledges that whilst competition drives innovation, and PSPs can innovate individually, there are many occasions where PSPs need to collaborate to provide innovations that deliver value to customers and a ubiquity that increases ease of use and integrity of the system – such as the development of Paym, the mobile payments service.

It is vital that we ensure that collaboration of this nature can continue in the new regulatory environment being implemented by the PSR. Any payment involves two parties; consistency and common standards are therefore crucial for enabling payments to give customers reliability and security. Collaborative innovation spurs competition by providing a common platform built through shared investment on which incumbent and new market participants of all sizes can develop their own competitive customer propositions. This collaborative innovation enables change to be achieved at a lower cost overall (a particular benefit for new entrants as well as for customers) and provides the ubiquity and reach in payments that is crucial for customers.

We note that the PSR's concurrent competition powers are not limited just to participants in designated payment systems so action could potentially be taken against other institutions or payment services.

One final point is on the transparency of how the PSR operates. It would be very helpful for information on the PSR Panel to be published on your website to ensure clarity around its role, remit and participants. It would also be useful for its agendas and minutes to be published.



Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1:	Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in <i>Supporting Paper 2: Payments industry strategy and areas for collaboration</i> ? If you disagree with our proposed approach, please give your reasons.
SP2-Q2:	Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.
SP2-Q3:	Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The Payments Council supports the PSR in its proposed approach to set up the Payments Strategy Forum. We believe that if well implemented, the Payments Strategy Forum working with the PSR and industry will have the potential to help the industry deliver change at an increased pace. The PSR has been clear that it does not want to set industry strategy itself – this has never been the role of a regulator – but it does wish to own the process to ensure that meaningful and timely outcomes are delivered that meet its regulatory objectives. Whilst the Forum is being set up by the PSR, who will provide the secretariat function (at least initially), our understanding is that the proposal is designed to allow the industry to drive strategic developments. It would be useful to understand the PSR's view on what role Government (departments) will have in strategy setting and how Government will be engaged in the work of the PSR's Strategy Forum.

The creation of a Payments Strategy Forum setting high-level strategic outcomes and objectives, and the industry delivering against these, has similarities to the workings of another economic regulator, the Office of Rail Regulation (ORR) with the Rail Delivery Group (RDG). It was recommended by an Independent Report (The McNulty Review) into GB rail that the high-level strategic objectives and policy aims of the Government and ORR should be supported by the industry developing co-ordinated strategies through the RDG. We believe this process is even more applicable to the payments industry and the Payments Strategy Forum – the PSR and the Forum should determine what the industry should deliver, but the industry should determine how this is to be achieved and set logical priorities.



We have also noted strong similarities between the proposed Forum and the structure and workings of the Euro Retail Payments Board (ERPB) set up by the European Central Bank (ECB). Though still in its infancy, we believe the PSR may wish to look at this model as a potential starting point for the Forum:

- The ERPB has a similar makeup as the proposed Payments Strategy Forum, as stands the ERPB consists of:
 - Seven representatives from the demand side (e.g. consumers, retailers and corporations) and seven from the supply side (banks and payment and e-money institutions). They are joined by five representatives from the euro area national central banks and one representative from a non-euro area EU national central bank (all on a rotating basis).
- The ERPB is chaired by the ECB.
- The European Commission is invited to join as an observer.
- The ERPB meets every 6 months.
- The ECB provides secretarial support.
- Only relevant European stakeholder associations are members of the Board.
- The ERPB's work mainly identifies strategic issues and work priorities (including business practices, requirements and standards) and ensures they are addressed, to help foster the development of an integrated, innovative and competitive market for retail payments in euro.
- The ERPB sets up working groups to look at specific issues. It sets the Terms of References for the working groups and the groups report back to ERPB. Often the secretariat is provided by members or the European Payments Council (EPC)

The ERPB tasks various organisations with implementation, including the European Payments Council (EPC).

Setting of strategy

We agree with the proposed approach that the Forum would develop and agree the strategic priorities for the long term future of payment systems. We believe that the Payments Strategy Forum should be responsible for agreeing the high-level industry strategic objectives and outcomes, but it is for the industry to develop and co-ordinate a collaborative plan to design and deliver against these objectives by setting up issue-specific working groups. In the initial period after the PSR becomes fully operational on 1 April 2015, a period of condensed work may be required to establish the Forum and to agree the initial set of objectives and outcomes. This is important to avoid any potential planning blight and understand the various priorities of the industry already in motion. Between now



and then, the industry does not wish to lose momentum on the current work that is under way on a World Class Payments System and so will continue to develop this into a plan that can be presented to the Forum as soon as it is up and running.

The industry will always have limited capacity to deliver change and there may be conflicting views from the different parties involved – including within the service users - as to the prioritisation and sequencing. As noted in the consultation document, other strategic developments will, and need to, continue outside of the Forum framework. The industry may also decide that there are additional collaborative innovations that it wishes to deliver (for example, Paym was delivered voluntarily by the industry outside of any regulatory driver) that are not considered a priority by the PSR or the Forum. Equally, there will be change requirements on the industry that will not necessarily be on the Forum's radar, such as UK and EU regulatory requirements. All of these need to be factored into the prioritisation and sequencing of delivery.

Implementing any change involves costs, and for the UK payment systems to remain competitive for the benefit of customers and the UK economy a large part of that is keeping costs down. Therefore, any decisions taken must be accompanied by a thorough cost benefit analysis showing that the benefits delivered provide sufficient value.

We are pleased that the PSR recognises the important role of collaboration in co-ordinating industry strategy and implementation. We believe there are certain key functions that are best delivered by and for the industry in the collaborative space, particularly where innovation requires ubiquity to meet customer requirements and successful implementation. This approach means functions are coordinated, holistic, efficient and effective, and work is not duplicated over a number of payment services incurring unnecessary additional cost and resources.

Development and delivery of proposals

We support the creation of working groups constituted of the relevant experts to develop and design detailed proposals for the high-level objectives agreed by the Forum. Our understanding from the PSR is that it expects the industry to set up the working groups and be responsible for them; the new collaborative body that the industry is now working to set up would be one such suitable home for these working groups (depending on issue).



We also support the view that delivery should be outside the Forum and PSR, and that the industry is held accountable for this. The new collaborative body will incorporate a delivery function that could provide one such mechanism.

The intention is to have the new collaborative body in operational readiness for April 2015 and that transitional arrangements will follow in the period to September 2015. It will be a collaborative industry association that provides thought leadership, policy and industry positions, advocacy and engagement, and will be a centre of excellence for payments in the UK. It will aim to have a wide membership, expected to be open to any organisation defined as a PSP under the Payment Services Directive, with an associate member proposition or other categories of membership for anyone with a role (or potential role) in payments. The intention is to have a much wider representation than Payments Council currently has, and as part of the value proposition we will be developing different constituency categories within the membership options to encourage more types of institutions to get directly involved. The delivery function will be a ring-fenced arm of the new association with clear governance and reporting line into the association's Board, but will not be limited to working with only those organisations that are members of the new collaborative body.

We will continue to engage with the PSR as we progress the design and the development of the collaborative industry body, and determine how it can best serve the PSR's objectives and support collaborative delivery on behalf of the industry for the Forum. The current industry trade association review will also be taken into account. During the transition for both the collaborative body and the creation of the Payments Strategy Forum, it is important that there is no delay and that work continues on projects such as the World Class Payments System so that there is no interruption in delivering potential new services for the end users.

Development of the Terms of Reference

Developing the Terms of Reference for the Forum will be vital to ensure its effectiveness as well as providing clarity on its remit, scope and governance. Points that we would particularly welcome being discussed and agreed for the Terms of Reference are:

- **Forum composition:** Having a clear definition of what the PSR means by "industry" so that the membership of the Forum is appropriately representative. It would also be helpful to understand the intentions on representing service users as this is an equally disparate group. One of the challenges that will need to be quickly



addressed is how the make-up of the Forum will sufficiently represent the industry and service users without being unwieldy in size.

- **Participant representation:** The Terms of Reference also need to be clear regarding in what capacity participants are attending the Forum; specifically whether the attendees will have a mandate to represent their 'constituency' or if they are attending purely on behalf of their own organisation. If they are acting as representatives, there needs to be a mechanism by which 'constituencies' are able to feed into their representative and vice versa (especially when making decisions on behalf of their 'constituencies'). The same also applies for the service user perspective. We note that listed under the potential attendees are payments industry bodies, which would help to provide a wider representation of the industry on this Forum. The Forum participants need to be of senior enough positions to drive forward at pace the decisions required, either within their own organisations or the wider stakeholder group they represent.
- **Frequency of meetings:** We note that the PSR has suggested the Forum meets every 6-12 weeks; we'd recommend that an appropriate meeting frequency is discussed and agreed as part of the Terms of Reference discussions.
- **Funding of the Forum:** The Terms of Reference will need to be clear on how the Forum will be funded and what this funding would cover (e.g. the operation of the Forum or would it also cover the costs of required research, cost benefit analysis, etc.).
- **Forum decisions:** It needs to be clear how decisions will be taken by the Forum and how they will be mandated once made, including whether there would be any circumstances where waivers may be given to individual institutions on a case by case basis. The Terms of Reference need to set out the process of validating customer requirements and assessing the priority of issues, including by what process and criteria the PSR intends to break any 'stalemate' situations on prioritisation.
- **Role of working groups:** The Forum's Terms of Reference should be clear on how it will delegate agreed outcomes and objectives to working groups, including how it expects the working groups to be set up, timetables for operation and how it expects them to formally report back to the Forum.
- **Implementation of agreed deliverables:** The Terms of Reference will also need to provide clarity on how the high-level strategic priorities of the Forum will progress to become delivery projects for implementation and the governance and funding mechanisms that would surround this.



We note that the PSR plans to set up a working group to look at and create the terms of reference for the Forum. We would welcome the opportunity to feed into this working group and share our experience of engaging with stakeholders on payments issues and industry representation according to constituency groups as well as moving strategic objectives / outcomes to delivery.

SP2-Q4:	Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.
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The Payments Council notes that there are a number of emerging regulatory issues that will have a broad impact on the UK payments industry and should therefore be brought to the notice of the Forum. It is helpful that the consultation paper has flagged the topic of ring-fencing. The industry has been analysing the ring-fencing proposals and believes the ring-fencing changes will impact not only directly affected banks and access to payments, but also the collaborative part of the payments industry (for example, we would expect an impact owing to the fact that banks may have to change sort codes arrangements and may have to move customers to new sort codes and account numbers) and should therefore be factored in to any infrastructure strategy. We have been engaging with our membership, the BBA and the Bank of England on this topic and would be pleased to discuss this further with the PSR.

Another important regulatory change is the revised Payment Services Directive (PSD2), which we expect to be finalised in 2015. The PSD impacts on all PSPs in the UK and wider European Union. As such, any requirements emerging from the text will have an industry-wide impact. While the exact requirements of the text are yet to be made clear, we do expect that there will be collaborative work required, particularly concerning the interface between current PSPs and 'third party providers' (TPPs). We therefore suggest that the PSR and Forum should also include PSD2 on its list of infrastructure-related themes (working closely with the FCA as the competent authority for this piece of legislation, with the exception of Article 28 concerning access which will be moved to the PSR).

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)



The Payments Council has some general comments to make with regards to the ownership, governance and control of the payment systems.

The structure of the UK payments industry is currently fragmented with a number of interbank payment schemes providing complementary service lines. Each interbank scheme has evolved historically to serve a specific purpose in terms of the clearing needs of service users and customers. Each of these has its own governance structure with differing rules and access criteria. The Payments Council believes that simplification of the current structure could achieve efficiencies and support investment in innovation.

Potential benefits include:

- **Easier access to payment systems:** PSPs would not need to negotiate access to multiple schemes (either directly or indirectly), which for new institutions would reduce a burden for entry.
- **Cost efficiencies across the industry:** implementing a change once across a whole industry is generally cheaper than fragmented change, which creates standalone systems that are not always interoperable.
- **Simpler governance:** PSPs, particularly for those new to the market, would not need to circumnavigate the multiple governance structures, rules and requirements. If joining schemes directly, PSPs would also not need to provide the resource to sit on the boards of the multiple scheme companies and the responsibilities that come with that.

Overall, a simpler structure at the centre of the payments industry would allow PSPs to access the schemes more easily and free up their internal resource to concentrate on their own customer propositions, thereby supporting competitive behaviour.

This suggestion of simplifying the industry and examining the potential benefits it could bring are being explored in our current project looking at a World Class Payments System for the UK.

The PSR's proposal of pursuing, at least initially, changes to governance rather than ownership is sensible. This would address the issue of control and how this is managed. The current ownership model allows for the costs of infrastructure change (which ultimately benefits all end-users) to be split amongst direct members. While indirect members without an ownership stake are required to pay for access to the payment system, they do not bear the majority of infrastructure costs – but do benefit downstream from improvements to the system. If ownership and thus costs were split equally amongst all, this could disadvantage



smaller challenger banks and create additional (and potentially restrictive) cost to new entrants.

Secondly, ownership by the banks of the scheme companies allows shared resources and shared infrastructure, minimising costs passed down to consumers. This is also beneficial for resilience of the system. Under a 'for-profits' model, scheme owners could pursue speculative investments that may undermine the stability of core payment systems.

SP3-Q8:	Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.
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The Payments Council can confirm that the generic contracts with the Interbank Operators have now been terminated.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

Access to the payment systems is a fundamental part of a PSP's ability to operate and offer payment services to its customers. Given the importance of this business operation and the focus it has received from government and regulators alike, the Payments Council has undertaken work to identify the key issues associated with access and to take forward actions in response.

The Payments Council's focus has been on the non-commercial aspects of access and those that are in the collaborative space rather than specific to individual payment schemes. The types of issues that are out of our scope are the competitive aspects such as price transparency of schemes, pricing and contracts in agency relationships, areas relating directly to the Bank of England's responsibilities, or areas that are broader than payments such as access to branch and counter services.

The Payments Council has actively sought to engage with both smaller and incumbent financial institutions, payment schemes, infrastructure providers, government and regulators to explore and identify the issues payment service providers have faced (whether perceived or real) in accessing payment systems.



At a high level, we have found that smaller financial institutions face three key considerations when accessing the payment systems:

1. their ability to provide customer propositions in a competitive environment but on a level playing field;
2. how to meet the technical and system requirements to secure access to the full range of payment systems; and
3. how to put settlement and liquidity arrangements into place.

It is the liquidity and collateral requirements, and the need to set up and run their own complex IT system, that provide the real cost barriers to new and challenger institutions; the transaction cost of making payments (whether directly or indirectly via the schemes) is negligible in comparison. These are outside of the scope of Payments Council and payment schemes to act upon.

Additionally, simplification of the industry would help to facilitate access by reducing the number of individual schemes that an institution would need to consider joining, thereby lessening the pressures on internal resource and different IT system requirements. This would also have the benefit of improving the overall efficiency of the industry and therefore the cost of running it.

Agency services represent a relatively small part of sponsor banks' overall business operations across both retail and wholesale services, but sponsor banks allocate considerable resource to these services in relation to the size of this line of business. We must be mindful not to make any requirements so burdensome that agency banking becomes unsupportable. A feature of these 'supply side' dynamics – and as evidenced in other networked markets - is that the number of sponsor banks providing these services is relatively small.

It is therefore positive that the market review into the supply of indirect access will focus on developing a deeper understanding of the economics of the supply of indirect access generally.

SP4-Q6:	Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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We support the development of an Information Hub. The Payments Council had already identified the lack of transparency on information regarding access to payment systems as a concern when examining access issues.

An information hub website is currently under development to help any organisation such as banks, building societies or other payment service providers, who need access to the UK's payment systems. It will provide these organisations with an information resource setting out their options for connecting to payments systems, including information on both direct and indirect access, and will direct them to the relevant payment scheme's website. The information provided might be particularly helpful to a new entrant to banking who needs to provide one or more payment services as part of its customer product offering.

The information housed on the website will include:

- information about UK payment systems and who operates them;
- information on the different types of payment services available in the UK;
- a guide to help PSPs assess what payment services they may need to best support their business; and
- a checklist describing the key steps and activities a PSP needs to be aware of to access UK payment systems.

The Payments Council will be working closely with the interbank schemes on the website and the intention is to launch the first version in January 2015, allowing time for review following the publication of this consultation.

The website will then be further developed to take into account the additional content required to be published by Sponsor Banks and Scheme Operators, in line with the PSR's expectations stated under paragraph 4.293 in Supporting Paper 4 in this regard.

SP4-Q7:	Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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We support the PSR's proposed approach to the development of a Sponsor Bank Code of Conduct.



The Sponsor Banks have already started working on a draft Code and the Payments Council will help facilitate the process of getting the final text agreed and approved by the PSR as soon as possible in readiness for having it in place by the deadline of 30 June 2015.

The Code of Conduct will be housed on the Information Hub.

We will continue to work closely with the PSR as the Code of Conduct is developed to ensure that it meets the PSR's expectations.

SP4-Q8:	Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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In line with the PSR's objectives on innovation and competition, we agree with the proposed approach to the development of Technical Access solutions. This is an area where the payments and IT industries can develop innovative products that are aimed at delivering against the needs of different sectors of the market; there's unlikely to be one solution that would suit all.

As part of the World Class Payments System (WCPS) project, the Payments Council will be assessing what is required to enable PSPs to have fair and transparent access to payment services with common technical standards, rules and practices where it isn't already the case. Part of this may be the development of a Technical Access solution. We recognise that many institutions choose to access the payment systems through other institutions because it suits their business requirements, and the payments landscape must acknowledge and enable that to happen seamlessly.

We are aware that the Faster Payments Service (FPS) is also undertaking work in this area with regards to its own scheme and has recently published a White Paper setting out proposals for a New Access Model. We will continue to work closely with FPS, and the other schemes, as we progress our work on WCPS and what this might mean for access.

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Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We support the proposed regulatory approach and believe it is essential that the specified payment systems are opened to a greater diversity of service users and members.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposed approach as set out in Option 1 being to set up a Payment Strategy Forum.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

PayPoint believes the Forum must represent a greater diversity of members than the existing Payment Council. The membership should not be fixed but have the flexibility to evolve so that new payment strategies can be considered and recommended.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

It is essential the Forum should be more than a vehicle for general discussions. If innovation and competition are to be enhanced the decision process must include clear timescales to avoid procrastination or delay in recommendations. In the past discussion forums have been used to delay decision processes and innovation in order to protect the status quo. Any new forum must have clear mandate and timescales for decision process.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Where possible the Forum should promote industry standards to provide a level playing field for all users and members. This should include access to new services and new technology developments. The strategy should promote increased competition, innovation and that should not be limited to traditional infrastructure.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal. The existing structure has the potential to restrict the decision process to a limited number of users and does not create the environment to enhance competition or represent the interests of minority or non bank users. This in turn maintains barriers to new entrants. In addition, the existing procedures that limit access to information such as scheme rules should be revised in order that other users can support services to consumers and businesses.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

PayPoint is comfortable that the costs and benefits identified in the proposal reflect the potential impact of the changes to representation.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the view that there is potential for conflict and that there should be a clear demarcation between the two roles. If there is to be growth in the number of service users, the central infrastructure provider should support all users and all users should be given equal access to services and information.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

While PayPoint understands that the process is evolving but feels that guidance on conflicts of interest matters should be provided. At present the potential for conflict is considerable.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

PayPoint believes it is essential that the potential for conflict is reduced.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal to require all Operators to publish board minutes in a timely manner and that such minutes include records and reasons for decisions. The proposal will assist with the development of greater transparency for users of the decision making process and the issues influencing those decisions. It would also help to provide users with the opportunity to input into and if necessary challenge the decision process if issues have not been addressed in a manner which is beneficial to all users.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We are comfortable the costs and benefits identified in the proposal reflect the potential impact of the changes to disclosure of minutes.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

PayPoint considers there may be confusion over the nature of "reserved functions" and would welcome more clarity once the Payment Council has completed its review.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for an Access Rule. PayPoint would wish that any access rule is transparent and achievable. Potential participants should have a clear understanding of the standards that need to be achieved. Any such tests should be objective rather than subjective.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for a Reporting Rule.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for the public disclosure of access requirements. As part of the process, PayPoint would like to see safeguards so that decisions made by organisations, such as Link are always to be subject to prior discussion with service users. At present there is potential for service users to be excluded from the decision process.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for a direction requiring sponsoring banks to publish certain information.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for an Information Hub.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We support the proposal for a Sponsor Bank Code of Conduct. However, there should be consequences if a sponsor bank fails to comply with the code. The PSR should consider whether, if in the context of compliance with the code, organisations supporting the service user should be classed customers. If this were done, the existing framework for treating customers fairly could be adapted to cover such organisations.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal in relation to Technical Access.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

No comment.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

PayPoint understands the PSR and FCA will both have a role in the future implementation of regulations in relation to interchange fees. However, it would wish to stress that any such implementation should not have the adverse effect of creating more favourable circumstances for organisations offering off shore services to those in the domestic market. In addition, the changes should not be used to undermine other interchange

structures such as those in relation to ATMs. For example, recent regulatory changes have had the undesirable consequence of making UK debit card payments more expensive. It is important to acknowledge that there should not be unforeseen consequences associated with interchanges rules aimed at card payments as interchange performs differently under different product models.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposed high level PSR Principles.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

The application of the Principles should be proportionate so as not to create undue burdens on participants. For example, an organisation providing technical support should not have financial burdens linked to value processed as the payment risk is held elsewhere. Similarly, compliance with any Code should not become an excuse used by Operators or Sponsor Banks to exclude or restrict access by service providers. Application should be proportionate and risk based when reviewed against the service provided.

Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

PayPoint supports the proposal that the PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to

adopt some or all of the additional Principles, please give reasons for your response.

As stated in SP6 – Q2 above, PayPoint believes the application of the Principles should be proportionate and not create undue burdens on participants. Any additional requirements in relation to Integrity, Skill Care & Diligence, Management & Control, Governance, Service-users' interests, and/or Conflicts of Interest should be proportionate to the service provided and the role of the parties. The proposal should not create a fresh regulatory burden that would act as a barrier to existing service providers or new entrants. It is also important to consider that not all participants support all the service users.

In addition, relief must also be given to organisations providing access to services to consumers that are excluded by circumstance or inclination from existing banking products where the potential of additional revenue generated by the consumer is limited.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for Objectives Guidance.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for the Administration Priority Framework.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for the PSR powers and procedures guide.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for dispute resolution and application procedures.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints

Guidance? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for super complaints guidance.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal for setting penalties but organisations should not be subject to double jeopardy as the same event can be covered by more than one regulatory body. There is scope for regulators to co-operating in this area.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

The methodology should be consistent with the type of organisation. For example a Central Infrastructure service provider should have obligations linked to revenue but a genuine not-for profit organisation should not have such a burden.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

The limits should be consistent with those applied in other EU member states so as not to avoid rogue operators creating establishments in more lenient locations. Penalties should be linked to revenue associated with the specific business activity, allowing for the exclusion of revenue that is outside the control of the service provider, such as interchange

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

PayPoint supports the proposal on enforcement and enforceability of penalties.

PREPAID INTERNATIONAL FORUM

PREPAID INTERNATIONAL FORUM

Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

The Prepaid International Forum welcomes the Consultation and believes that the PSR, as a new economic regulator with responsibility for payment systems will, if effective, enhance UK payments from a competition, innovation and service-user perspective and level the playing field for all payments providers.

We believe that the proposed regulatory approach is broadly right. Our members have long cited lack of transparency and appetite for change in UK payment systems, for example, lack of clarity around card scheme rules, barriers to access, changes to effect regulatory developments are often minimised to the letter of the law, rather than embraced as to their spirit, and the 'established' view results with minimum adaptation to the new.

From the perspective of the prepaid industry the concept of 'lifting the veil' on the way payment systems have operated in the past, particularly in relation to increasing transparency around membership criteria to improve direct and indirect access, is welcomed.

We also support the PSR's proposed approach to payments industry strategy. Our view is that payments industry strategy and collaboration is one of the most important areas contemplated in the PSR's regulatory approach. While the Payments Council has undertaken some good work, we are in favour of a new strategy setting body that adopts a broader remit and range of stakeholders and greater independence from the banks. If effective, the proposed approach will address our members' concerns about their ability to input to and influence payments industry strategy.

Finally, we would advocate that to be effective the regulatory approach must be focused, objective and applied persistently, given the time to develop and implement change within this networked industry.

Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*?

If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach (Option 1) – see our comments above.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We see that balancing the differing priorities and views of industry participants and service-users will be one of the biggest challenges to overcome when it comes to designing the Payments Strategy Forum. We agree that the Forum will need to be limited in size to be effective but we encourage the PSR to ensure that the views of all industry participants are represented on one hand and duplication is avoided on the other.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

While we see no problems with the indicative model set out in Supporting Paper 2, the way the Forum operates in practice will depend on a number of factors, e.g. the composition of the Forum, the process for discussing and agreeing priorities, the method industry and service-users must adopt to raise issues or submit proposals. Its operation may also depend on whether priorities will be advanced through consensus and subject to coercive deadlines.

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

While we do not believe there are any other infrastructure-related themes, our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)

SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Yes, the proposed direction is aligned with the PSR's service-user objective.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach.

Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the PSR's preferred option. If effective this will remove the current opaqueness around criteria for access and provide certainty for those wishing to access payment systems.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with this proposal. Access to payment systems is one of the most important aspects covered by the Consultation – see our comments above.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, the proposed approach is broadly right.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package

(i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with this direction on the basis that the proposed requirement is aligned with the PSR's objectives to increase transparency in payment systems.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach. We do not advocate a more prescriptive approach.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We support the development of a Sponsor Bank Code of Conduct to address some of the concerns payment services providers have about service continuity. We do not advocate a more prescriptive approach.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed principles as these appear to underscore everything the PSR will do as a regulator.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Yes, we agree with the proposed approach to apply the PSR Principles to all participants in designated payment systems. It would be strange to exclude certain categories of participants from the obligations which underpin the PSRs overall package of regulatory measures and it would seem to go against the transparency, compliance and financial soundness needed for UK payment systems to work.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Yes, we agree with the proposed approach.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you

agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Our members may comment from the perspective of their own businesses and experience. These views will be contained in their individual responses to the Consultation.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Please see our response to SP6-Q4 above.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Yes, we agree with the proposed approach. From a prepaid industry perspective this should help to address the challenges faced by new entrants gaining direct or indirect access to payment systems.

SP6-Q10: Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Please see our response to SP6-Q4 above.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Please see our response to SP6-Q4 above.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Please see our response to SP6-Q4 above.