

# General Direction 1

## Cooperative relationships with the PSR (2020)

March 2020

# General Direction 1: Cooperative relationships with the PSR (2020)

## 1 Recitals

### **Whereas:**

- 1.1 The PSR gave General Direction 1 under the Financial Services (Banking Reform) Act 2013 (FSBRA). It came into force on 30 April 2015.
- 1.2 The PSR has reviewed General Direction 1 and, following consultation, has decided to broaden its scope and make the wording clearer.
- 1.3 The PSR has decided to give a new General Direction 1, replacing the General Direction 1 we gave in 2015.

## 2 Powers exercised and purpose

- 2.1 The PSR gives this General Direction in accordance with:
  - sections 54 (1) and (3) of FSBRA
  - regulations 125 (1) and (4) of the Payment Services Regulations 2017 (PSRs 2017)
  - regulations 4(1) and 4(5) of the Payment Card Interchange Fee Regulations 2015 (PCIFRs)
- 2.2 References to FSBRA in this direction are to be taken as references to Part 5.
- 2.3 References to the PSRs 2017 in this direction are to be taken as references to Part 8 and regulation 61.
- 2.4 We have had regard in particular to the following provisions of legislation as appropriate:
  - **FSBRA:**
    - sections 49 to 53 (General duties of the Regulator)
  - **PSRs 2017:**
    - regulation 124(2) (Functions of the Payment Systems Regulator)
    - regulation 106(3) (General policy and principles)
  - **PCIFRs 2015:**
    - regulation 3(4) (Designation as a competent authority and functions)

# Direction

**NOW the PSR gives the following General Direction:**

## 3 Cooperative relationships with the PSR

- 3.1** Participants and regulated persons must deal with the PSR in an open and cooperative way. They must notify us, in an appropriate way, of anything relating to them which we would reasonably expect notice of.
- 3.2** Participants and regulated persons must notify us about such matters as soon as possible, using a medium that most effectively communicates the information.

## 4 Application

This General Direction applies to participants under FSBRA and regulated persons under the PCIFRs 2015 and the PSRs 2017.

## 5 Revocation of 'day one' General Direction 1

Our original General Direction 1, which we gave in 2015, is revoked.

## 6 Commencement

This General Direction comes into force on 5 April 2020.

## 7 Citation

This General Direction may be cited as General Direction 1: Cooperative relationships with the PSR (2020).

## 8 Interpretation

- 8.1** The headings and titles used in this General Direction are for convenience and have no legal effect.
- 8.2** The Interpretation Act 1978 applies to this General Direction as if it were an Act of Parliament, except where words and expressions are expressly defined.
- 8.3** References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 8.4** In this General Direction, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.

**8.5** In this General Direction the following definitions and abbreviations apply:

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<b>indirect access provider</b>	a PSP that provides access to a payment system through a contractual arrangement to enable provision of services (to allow the transfer of funds using that payment system) to persons who are not participants in the payment system
<b>operator</b>	as defined in section 42(3) of FSBRA
<b>participant</b>	as defined in section 42(2) of FSBRA
<b>PSP</b>	payment service provider as defined in section 42(5) of FSBRA
<b>payment system</b>	as defined in section 41 of FSBRA
<b>PSR</b>	the Payment Systems Regulator, the body corporate established under Part 5 of FSBRA  references to 'we', 'us' and 'our' mean the PSR
<b>regulated person</b>	a person who is regulated under either the PSRs 2017 or the PCIFRs
<b>service-users</b>	those who use or are likely to use services provided by payment systems

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**Made on 5 March 2020**

**Chris Hemsley**  
Managing Director  
Payment Systems Regulator

# Explanatory notes

- 1.** The PSR is an economic regulator, focused on making sure that payment systems work well for all those that use them. Our statutory objectives underpin everything we do. These are:

  - a.** to ensure that payment systems are run and developed in a way that takes account of and promotes the interests of those that use, or are likely to use, them
  - b.** to promote effective competition in the market for payment systems and markets for services provided by payment systems in the interests of those who use, or are likely to use, them
  - c.** to promote the development of, and innovation in, payment systems in the interests of those who use, or are likely to use, them
- 2.** In order to achieve our statutory objectives, we need to have an open and cooperative relationship with those we regulate. We also need regulated persons and participants to tell us, in an appropriate and effective way, about matters which may be relevant to, or have an impact on, our objectives. This includes policy changes, events and matters which might have an impact on the wider payments ecosystem.
- 3.** General Direction 1 (GD1) is relevant to our statutory objectives, functions and powers. While this direction is necessarily broad, we do not expect participants and regulated persons to notify us about the minutiae of running their businesses.
- 4.** GD1 applies to all dealings that participants and regulated persons have with the PSR. This is an ongoing obligation. It covers bringing a matter to our attention for the first time, and throughout the course of an existing dialogue. GD1 applies to regulatory requirements such as section 81 FSBRA notices or other formal uses of our powers, as well as to informal information requests, conversations and other engagement with the PSR.
- 5.** Participants and regulated persons must provide accurate information to help us achieve our statutory objectives and functions. They must give us sufficient information to enable us to understand the nature of the relevant issue. Where applicable, they must provide supporting evidence.
- 6.** Where GD1 and a different reporting obligation are both engaged, notifications due under the different reporting obligation should be made under that obligation. A participant or regulated person only needs to notify the PSR once to satisfy both GD1 and that obligation. However, failure to notify us under the different reporting obligation will also constitute a failure under GD1.
- 7.** Even where a different reporting obligation exists, a participant or regulated person should consider whether any additional related information, which falls outside the scope of that different reporting obligation, nevertheless should be reported under GD1.
- 8.** Where GD1 is engaged and a different reporting obligation exists but the reporting threshold for that competing obligation has not been reached, the obligation to report to the PSR under GD1 continues to apply.

9. We expect participants and regulated persons to notify us of all relevant information under GD1, except to the extent that:
- a court order prevents disclosure to us
  - a statutory obligation which takes precedence prevents disclosure to us
  - an obligation from another regulator prevents disclosure to us
  - legal professional privilege prevents disclosure to us
10. For the avoidance of doubt, where one of the above obligations applies and prevents full notification under GD1, we still expect participants and regulated persons to provide us with as much information as they are able to.
11. We do not consider that contractual or commercial confidentiality obligations prevent participants and regulated persons from notifying us about matters covered by GD1.

## How to notify the PSR

12. Participants and regulated persons should notify the PSR that they are providing information under GD1. A notification under GD1 may be given orally or in writing although we expect to be notified of more complex matters in writing. Where a notification is provided orally, we may also request written confirmation of the matter. It is the responsibility of the participant or regulated person to tell us about matters promptly, properly and clearly.
13. Participants and regulated persons must notify us under GD1 as soon as possible. This could be in advance of an event occurring (for example, the implementation of a decision). Where participants and regulated persons are required to provide information to us, within a specified period or by a specified date, under any legislative provision, direction or otherwise, 'as soon as possible' means no later than by the last day of the specified period or the date given in that requirement. If they anticipate that they may not be able to comply with any such requirement, they should inform us in advance.

## Examples of when to report to us

14. Examples of compliance with GD1 include, but are not limited to, notifying us about the following situations.
15. In some examples we have highlighted particular types of participants and regulated persons as those most likely to trigger the GD1 notification obligation. However, this does not limit the application of GD1 if the example applies to any other type of participant or regulated person.

## Breaches, investigations and inquiries – all participants and regulated persons

- 16.** A participant or regulated person becomes aware of, or has information which reasonably suggests that any of the following has or may have occurred, or may occur in the foreseeable future:
- a set of facts giving rise to potential issues under any applicable competition law for example Competition Act 1998 (CA98)
  - a failure to comply with:
    - any of the PSR’s directions or any other requirement or obligation imposed by or under FSBRA
    - Regulations 61, 103, 104 or 105 of the PSRs 2017, or a direction given under Regulation 125 of the PSRs 2017
    - any obligation, prohibition or restriction imposed by the Interchange Fee Regulation or direction given under regulation 4 of the PCIFRs 2015
- 17.** Any investigations of any kind by other regulators which relate to matters relevant to the PSR’s statutory objectives and functions. The participant or regulated person under investigation is responsible for notifying us about this.
- 18.** Any matter relevant to a question or enquiry the PSR makes, whether in writing or orally, that is relevant to our statutory objectives and functions, whether that question or enquiry is made:
- pursuant to powers under FSBRA, PCIFRs 2015, PSRs 2017 or and any applicable competition powers – for example, our powers under CA98
  - in the course of compliance monitoring
  - in the course of an open investigation
  - in relation to the preparation of a skilled person’s report
  - or otherwise

The participant or regulated person to whom the question or enquiry was made is responsible for notifying us about this.

## System failures – payment system operators and indirect access providers

- 19.** Any failure of a payment system that has a substantial adverse impact on service-users. The payment system operator is responsible for notifying us about this.
- 20.** Any failure of an indirect access provider’s system that has a substantial adverse impact on service-users. The indirect access provider is responsible for notifying us about this.

## Changes to access – payment system operators, indirect access providers, credit institutions

**21.** A payment system operator, indirect access provider or credit institution's intention to:

- significantly change its access criteria or onboarding requirements
- stop granting access to, or withdraw existing access from, a particular class or type of PSP
- putting on hold onboarding processes, either temporarily or indefinitely

The responsibility for notifying us about any instances of this example lies with the payment system operator, indirect access provider or credit institution. It must also tell us the reasons for its decision.

This example could include, for instance, where the intention is to withdraw a particular product or service, or where a change in risk policy or appetite would result in the exit of a number of PSPs.

The PSR does not generally expect individual regulation 105 notifications to fall within the scope of GD1, as an individual refusal or withdrawal is unlikely to have a significant impact on our objectives. However, a policy change on access criteria, or withdrawal of access from a class of PSPs, would be likely to fall within GD1, and require notification.

## Changes to rules or pricing – payment system operators

**22.** A payment system operator significantly changes the rules, pricing structure or fees that it applies to participants. The responsibility for notifying us lies with the payment system operator.

# Status of Directions and explanatory notes

Directions give rise to binding obligations. Breaching a direction is a compliance failure which makes a party liable to regulatory sanction.

Explanatory notes may be used, among other things, to explain provisions and requirements (such as General Directions) and/or to indicate how to approach compliance.

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