

Annexes and illustrative directions

Regulatory framework for  
the New Payments  
Architecture central  
infrastructure services

December 2021

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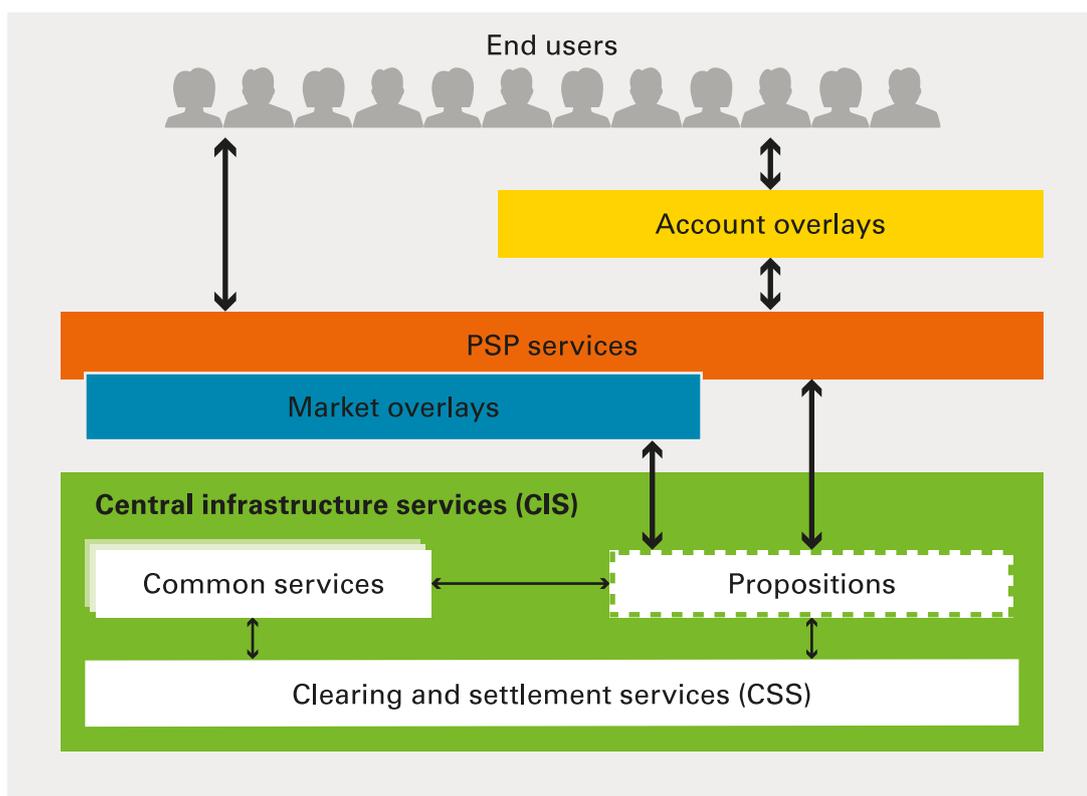
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# Annex 1

## Current design of the NPA

- 1.1** Pay.UK, the operator of Bacs and Faster Payments, is responsible for the design and delivery of the NPA. This role includes procuring central infrastructure services (CIS) for the NPA. The CIS consists of 'core' clearing and settlement services (CSS), several common services and functionality to determine the NPA proposition used by an individual payment. This annex provides an overview of the current design of the NPA.
- 1.2** Figure 1 shows our representation of Pay.UK's current thinking on the design of the NPA. The current design consists of the separate layers shown in Figure 1 and explained in paragraphs 1.3 to 1.7. The NPA ecosystem comprises all the layers shown in Figure 1 and all the participants<sup>1</sup> in those layers.

**Figure 1: Pay.UK's current design of the NPA**



<sup>1</sup> The term 'participant' is used broadly to refer to all parties offering services within the NPA ecosystem and is not limited to PSPs.

### 1.3 The CIS consist of the following:

- The 'core' **clearing and settlement services** (CSS). These include services that are essential to payment clearing and for supporting the net settlement processes at the Bank of England (for example: payment message validation, orchestration and routing; netting and settlement reporting; security features; and payment redirection and reference data management services).
- A number of **common services**. Pay.UK deems that each common service is:
  - critical to ensuring that the CIS can support the intended payment propositions and services, including some common services that are intended to support the migration of payments from Faster Payments (and potentially subsequently from Bacs)
  - best provided centrally, through a single provider<sup>2</sup>
- System functionality to determine the **NPA proposition** used by an individual payment (that is, the payment type). This will dictate which, if any, of the common services are needed to process the payment.

**1.4** In the NPA context, an overlay service will be a service that is not provided as part of the CIS. Overlay providers are participants in the NPA ecosystem that provide overlay services. Through the analysis that Pay.UK has conducted to date, it envisages two types of overlay service: market overlays and account overlays. These are described below.

**1.5** Market overlays are services delivered by third parties to service-users. These will use the CIS, CIS data, or NPA propositions, for which Pay.UK will set the technical standards and rules. Pay.UK may also procure or create a data environment and develop the frameworks that market overlay providers use when providing data or reporting services. The third-party market overlay providers will develop their own customer-facing standards and rules for use of the services or solutions they develop and provide. Examples could include fraud identification or prevention services, access-related solutions such as payment gateways and software products, and reference data distribution services.

**1.6** Account overlays are services that are provided by third parties to end users to support them in initiating or receiving NPA payments but do not directly use the CIS or CIS data. They include Pay.UK's existing account overlay propositions for Confirmation of Payee and Request to Pay, which support users to initiate payments but are not payments in themselves.

**1.7** Payment service provider (PSP) services consist of end-user channels, products and services provided by PSPs to their customers (end users), including mobile apps and browser-based applications (such as online banking services).

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2 Each individual common service could be provided either by the same entity that is providing the CSS, or by a different single provider, but in any event the contract terms and duration for each common service must be capable of being separated from contracts for the CSS and any other common service.

# Annex 2

## Additional views raised by respondents

**2.1** We received comments on CP21/2 about risks to competition and innovation relating to when the NPA is operational that we have not covered in Chapters 3 to 5 of PS21/3. We summarise those comments in this annex. They relate to:

- our views of how to best promote and facilitate effective competition in the NPA ecosystem
- our assessment of the competition risks and their practical implications within the NPA ecosystem
- whether the provision of some common services could raise competition risks that differ substantially from those raised by provision of the CSS
- our proposal to bring forward regulatory measures to ensure the specific mitigations and governance principles are implemented
- additional pricing principles that Pay.UK should adhere to when setting a methodology for CIS user prices
- other comments on the NPA programme

**2.2** This annex does not cover comments on de-risking delivery of the NPA. We summarised and responded to these comments in our July 2021 policy statement (CP21/8).<sup>3</sup>

## Our views on promoting and facilitating effective competition

### Respondents' views

**2.3** Question 7 of CP21/2 asked stakeholders if they agreed with our description of how best to promote and facilitate effective competition in the NPA ecosystem. Most respondents that answered this question agreed or broadly agreed with our description. The remainder partially agreed or – in one case – did not express a clear view.

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<sup>3</sup> PSR, *Lowering risks to delivery of the New Payments Architecture* (2021). See: <https://psr.org.uk/publications/consultations/cp21-8-lowering-risks-to-delivery-of-the-new-payments-architecture/>

**2.4** Most respondents agreed or broadly agreed with our view of what it means for Pay.UK to promote effective competition within the NPA ecosystem. Some provided specific comments on what effective competition would look like:

- **Low barriers to entry and participation for PSPs and overlay providers.** Most large PSPs agreed but said this should not undermine the resilience and integrity of the payment system. A consultancy said the focus should be on ensuring appropriate access and participation criteria instead. A large PSP expected existing access requirements in our General Direction 2<sup>4</sup> to be applied to the NPA. It also argued that **access requirements should reflect the scale of responsibility participants hold, which should be the same for all participants.**
- No scope for any entity to exercise market power anti-competitively or gain unfair advantages through its position in the ecosystem. While agreeing with this, two large PSPs, a small PSP and UK Finance said we rather than Pay.UK should be responsible for monitoring the market for participants with significant market power.
- **Easy comparison and switching between PSP and overlay providers by payers, payees and other users.** A small percentage of respondents said we should be responsible for this rather than Pay.UK. A large PSP argued a range of directly substitutable services is not a given. Another large PSP said switching was not directly relevant to the NPA ecosystem. A technology services provider said functionality to enable switching must not introduce disproportionate cost and complexity, and a consultancy said that to ensure ease of switching, the operation of reference data required for routing transactions should be carefully placed in the NPA. It suggested this should be provided within the CIS, not as an overlay service.

**2.5** In CP21/2, we also set out technical design principles that Pay.UK should ensure are embodied in the functional and technical specifications for the CIS to facilitate competition. Most respondents agreed or broadly agreed with the individual principles and some provided specific comments on each:

- **Ensure a CIS design that minimises the scope of services provided centrally by a single supplier.** A smaller PSP said such a design will support innovation and competition in the provision of recurring payments, but argued that common services required to enable a Bacs replacement overlay service should be included to outweigh the downsides of running two simultaneous systems (that is, Bacs and the NPA). A large PSP and Vocalink argued that CIS design needs to also be mindful of resilience, efficiency and speed to market. Another large PSP said the principle should not rule out that an overlay service could, for efficiency purposes, involve a CIS provider. A payment system operator said it was important we hold Pay.UK to account for a CIS that minimises the scope of services provided centrally.

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4 PSR, *General Direction 2: Access (FSBRA)* (2020). See: <https://www.psr.org.uk/publications/general/general-direction-2-access-fsbra-2020/>

- **A CIS provider should not be able to discriminate in service quality depending on participant and user.** Two large PSPs and UK Finance said service level agreements (SLAs) in the CIS contract will appropriately mitigate the risk of discriminatory behaviour. Another large PSP said potentially some CIS users might prefer to pay a lower price in return for lower service levels and suggested there could be different service options.
- **Services should be scalable and modular to allow cost-efficient capacity expansion and/or changes.** A smaller PSP said it was important for products to go live promptly and be flexible to accommodate a variety of services, that would ultimately help futureproof the NPA. A large PSP and a technology services provider advocated cloud technology in the build of the NPA and the latter said cloud technology could support on-demand and cost-effective scaling.
- **A wide range of access options.** A large PSP said that for efficiency reasons, some access options should be prioritised and enhancements to the agency bank model<sup>5</sup> should be considered. A technology services provider said the ongoing need for bank-agnostic payment initiation channels like that provided by Bacstel-IP<sup>6</sup> needs to be considered. Another large PSP said a business case approach should be adopted to quantify the case for each additional access option as a small number of institutions cannot fund every demand.
- **Open standards for each overlay to promote competition.** A large end user said standards and appropriate assurance would provide confidence in a service, while a large PSP said there are trade-offs to be made between innovation and interoperability. UK Finance agreed Pay.UK should act as the market catalyst for developing standards relevant to the NPA, but where market participants launch bespoke services based on or competitively to the NPA, it does not see a reason why these should be inhibited by a centralised role of Pay.UK. A technology services provider said competitive overlay services should be allowed to define their own standards. UK Finance and a large PSP discussed the NPA CIS intellectual property – the former argued innovative firms should not be required to share intellectual property with the entire industry.

**2.6** Of the remaining respondents, a large PSP and Vocalink cautioned design principles should not be overly detailed, as this could reduce flexibility in the implementation of the NPA. Vocalink said the key design principle should be operational and cyber resilience, with Pay.UK given flexibility to balance other principles.

**2.7** Around a quarter of respondents to this question also discussed opportunities for payments and the NPA from technological changes and initiatives such as Central Bank Digital Currencies (CBDCs) and cloud processing. A large PSP said CBDCs could organically address some potential competition concerns. Two other large PSPs said an additional design principle should be that technology must be future-proofed,

5 The agency bank model allows PSPs to 'indirectly' participate in a regulated payment system through another PSP that has direct access to the system ('indirect access provider') and who will also provide the indirect PSP with its own sort code.

6 *Bacstel-IP* is a delivery channel which gives corporate users secure online access to Bacs to submit, track, and view payment files, and collect reports.

given significant technological developments since the Payment Strategy Forum's blueprint<sup>7</sup> including in cloud processing and application programming interfaces (APIs). They also said inclusion of the Image Clearing System (ICS) in the NPA at a future date should not be precluded. A technology services provider argued that open APIs, as well as event-driven architectures and cloud-based services can significantly reduce barriers to entry, enable quick scaling of services, and facilitate switching between providers. It also said consideration should be given to the relationship between benefits envisioned from the NPA and those deliverable through new initiatives such as a CBDC.

- 2.8** The Global Legal Entity Identifier Foundation highlighted the importance of interoperability in the technical implementation of the NPA and suggested that the use of the Legal Entity Identifier (LEI) in a centralised governance framework would diminish transition risk and could help support innovation in payment services.

## Our response

- 2.9** We note the comments on our description of what it means for Pay.UK to promote competition in the NPA ecosystem. We agree that Pay.UK is not wholly responsible for realising the outcomes, but it has a role to play. As set out in PS21/3, we will introduce requirements on Pay.UK specifying what it must do to carry out this role effectively in relation to provision of CIS. We also agree with those respondents that argued it is necessary to take account of resilience when setting rules and standards for the NPA ecosystem.

- 2.10** We remain of the view that Pay.UK should ensure that the following technical design principles are embodied in the functional and technical specifications for CIS, and embedded in the NPA:

- a CIS design that provides functionality that is necessary to maintain the ongoing resilient provision of services to service-users, and minimises the scope of services provided centrally by a single supplier (except where Pay.UK makes the case otherwise)
- inability for a CIS provider to discriminate in service quality (for example, transaction speed or information contained in a payment message) depending on the PSP, overlay provider, payer, or payee
- scalable and modular services that allow cost-efficient capacity expansion and/or changes in functionality to accommodate innovations over time
- a wide range of access options

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<sup>7</sup> The Forum consisted of a mix of representatives from end users and PSPs. It prepared a strategy for the development of interbank payments, and a blueprint to deliver this strategy. See: <https://www.psr.org.uk/payments-forum-archive/>

- open standards for each overlay that promote competition by enabling sufficient interoperability between competing providers, so that providers face lower barriers to entry and service-users are not locked into a particular provider because of network effects

- 2.11** These technical design principles, together with our regulatory framework for the NPA CIS set out in Chapters 3 to 5 of PS21/3 and the existing obligations on Pay.UK to select a CIS provider through a competitive procurement process (see CP21/8), reduce the incentive and ability of a CIS provider to act in ways that distort competition or stifle innovation.
- 2.12** On the first technical design principle that **the CIS design should minimise the scope of services provided centrally by a single supplier**, we agree with those respondents that said Pay.UK must be mindful of resilience considerations. This is made clear in the principle, which recognises that a CIS design must provide functionality that is necessary to maintain the ongoing resilient provision of services to service-users. We have also amended the principle to clarify that there may be circumstances where there are grounds for expanding the scope of CIS other than for resilience reasons. This aligns with our decision to require Pay.UK to narrow the scope of the CIS contract to services needed to support single push payments (see CP21/8). Pay.UK will not be able to buy additional services or system functionality (including to support a future migration of Bacs transactions) unless it asks and we do not object. We set out our reasons for requiring Pay.UK to narrow the scope of the CIS contract in CP21/8. For the avoidance of doubt, the first technical design principle does not prohibit a CIS provider from offering competitive overlay services.
- 2.13** We agree with those respondents that said SLAs in the CIS contract can help ensure that a **CIS provider does not discriminate in service quality depending on participant and user** (the second technical design principle). We also note that this principle does not prohibit an NPA design that allows for different service options, such that service-users could pay less for lower service levels as one large PSP suggested. Our aim is to prevent a CIS provider providing different service levels to different participants and users without their (and Pay.UK's) agreement.
- 2.14** We note stakeholders' views on our third technical design principle that **services should be scalable and modular** as well as the general comments about the need for NPA delivery to take account of technological and market developments including CBDCs since the Payment Strategy Forum completed its work. We agree that such developments should be considered as part of the CIS procurement process, including the fact that PSPs are increasingly using cloud technology. Pay.UK said it will evaluate suppliers' technology stacks as part of the procurement process.
- 2.15** We remain of the view that there should be a **wide range of access options** for CIS (the fourth technical design principle). Respondents' views on this principle relate to how it is implemented and are for Pay.UK to consider as the NPA delivery body. It is also for Pay.UK to consider whether to use LEIs.

- 2.16** We note stakeholders' comments on the fifth technical design principle that there should be **open standards for overlay services**. The principle applies to Pay.UK in its overlay services activities and does not restrict the ability of third-party providers to develop and launch their own overlay services.

## Our assessment of competition risks

### Respondents' views

- 2.17** Question 8 of CP21/2 asked stakeholders whether they agreed with our assessment of the competition risks and their practical implications within the NPA ecosystem. Most respondents that answered this question agreed or broadly agreed with us. In responding to this question, some respondents commented on our proposals for mitigating the risks we described. Such comments are summarised in Chapters 3 to 5 of PS21/3.

#### General

- 2.18** Some respondents to question 8 discussed the likelihood of competition risks materialising:
- The EMA said that not every competition scenario could be fully pre-empted and that our oversight of the NPA's design and governance should be the ultimate control. A large PSP added that likelihood and materiality of competition risks needed to be balanced against risks around sustainability and operational resilience.
  - Some respondents went further to say competition risks were unlikely to materialise. Pay.UK argued the likelihood of these risks materialising was untested, given they relate to new markets, or new market arrangements. Vocalink argued that the issues raised were hypothetical and that existing measures such as robust contractual frameworks would prevent issues from arising. A large PSP said the competition risks appeared plausible, but the harms identified would not occur if Pay.UK fulfilled its functions adequately.
- 2.19** Two respondents agreed only partially with our assessment of competition risks, one of which argued it may be over complicated. A large PSP said the PSR should set parameters for Pay.UK but not detailed requirements. It was concerned overly strict constraints relating to CIS provision could inhibit the emergence of synergies between the CSS and overlay services.
- 2.20** A smaller PSP said issues affecting Faster Payments needed to be considered for the NPA, including barriers to entry due to expensive and inefficient connectivity options. It suggested internet-based access through APIs or cloud connectivity should be adopted for the NPA.

## Monopoly risks

- 2.21** A small percentage of respondents to this question provided specific comments on our description of monopoly risks. A large PSP said it shared our view that a CIS provider might not have strong incentives to control costs and could set terms and prices that distort competition. A technology services provider said monopoly pricing would only be an issue if the procurement process failed.
- 2.22** UK Finance said that it was incumbent on Pay.UK to ensure competitive pricing for the provision of CIS services. Vocalink said profit incentives would give a CIS provider strong incentives to control its costs and not set terms and prices that could distort competition. It also argued that concerns in respect of additional services beyond CIS that a CIS provider may provide could be managed by including in the CIS contract obligations and pre-agreed rates and SLAs.

## Horizontal competition risks

- 2.23** A technology services provider said horizontal competition risks were concerning in the current environment. It argued that a CIS provider must be contractually bound and appropriately restricted, including in respect of usage of CIS data, to prevent first mover advantage. Similarly, another technology services provider argued that the greater risk was that the provider of the CSS also holds a dominant position providing a payment service that competes with the NPA.

## Vertical competition risks

- 2.24** A technology services provider argued a CIS provider should not be prevented from creating overlay services but that it should do so through interfaces available to all participants to ensure a level playing field. UK Finance agreed with the vertical competition risks as regards a CIS provider deploying market overlays or other PSP services, but did not agree that a CIS provider would have a significant advantage in providing account overlays, as this is a step removed from the provision of CSS.
- 2.25** Vocalink said that, to the extent any vertical competition risks existed, these could be managed. It argued, however, that a CIS provider's affiliates could in fact face higher marginal costs than their competitors (rather than lower marginal costs as we argued) in providing market overlay services (given Pay.UK sets standards and the proposal that CIS provider affiliates pay Pay.UK the same price as competitors). On the risk from a CIS provider using its better understanding of CIS operations to design new overlays or products, to give the impression that its account overlays are more secure, or to limit access to information, Vocalink argued this risk is implausible because of existing mitigations. These mitigations include Pay.UK's contractual control over access to data and obligations under the Banking Act 2009, Part 5 section 205.

## Our response

- 2.26** We note the general comment that not every competition scenario can be pre-empted. Our regulatory framework is based on our assessment of the information currently available to us about the risks to competition and innovation arising from the behaviour of a CIS provider. We are, however, mindful that we are publishing our regulatory framework at an early stage in the delivery of the NPA. We will monitor the delivery of the NPA including the CIS procurement and the development of overlay services. If we find that new risks have emerged or circumstances have changed, or that competition and innovation are not developing effectively in the NPA, then we will consider introducing different or further regulation. We would also be open to suggestions from stakeholders about other ways the risks could be mitigated.
- 2.27** We remain of the view that there are risks to competition and innovation from a CIS provider being a monopolist and from it (or an affiliate) potentially having a significant interest in another payment system or in overlay services. If these risks materialise, competition in payment services or between payment systems could be distorted or dampened, leading to higher prices, lower quality of service and less innovation. The scale of the harm could be significant. Our economy and society depend on interbank payments. Bacs and Faster Payments, which the NPA is intended to replace, accounted for nearly £7 trillion of payments in 2020 and are used by millions of us every day to pay bills or transfer money to a friend. In the future, interbank payments could also be used more often to pay for our shopping, providing more choice and better value.
- 2.28** As set out in 2.15, we consider there should be a wide range of access options for the CIS (the fourth technical design principle). As part of this, we expect Pay.UK to work with stakeholders to consider the appropriate choice of access options including use of internet-based options.
- 2.29** We agree that an effective procurement of CIS can help address **monopoly risks**. In CP21/8, we confirmed that the obligations on Pay.UK to carry out a competitive procurement under Specific Directions (SDs) 2 and 3 will remain. We agree that a CIS provider has commercial incentives that might be beneficial to efficient provision of CIS. Our requirements will not undermine any such incentives and will limit the ability of a CIS provider to act on incentives that might have the opposite effect.
- 2.30** Our assessment of **horizontal and vertical competition risks** has remained unchanged since CP21/2. We agree with respondents that a CIS provider's affiliates should not be prohibited from developing overlay services if the entity develops and provides these on a level playing field with its potential competitors. Ensuring this level playing field exists is the intention of our requirements.
- 2.31** Where a CIS provider (or an affiliate) has a significant interest in overlay services, our requirements are predominantly seeking to mitigate risks that it (or an affiliate) has an unfair advantage in provision of market overlays. We agree with respondents that vertical competition risks relating to pricing or quality of service provision do not apply for the provision of account overlays because such overlays do not directly use CIS or CIS data.

That said, we remain of the view that there are some areas where vertical competition risks could arise for account overlays; for example, a CIS provider (or an affiliate):

- could take advantage of its better understanding of the CIS operations to design new account overlays or to adapt existing products
- could use its position as CIS provider in its marketing to give the impression that the account overlay is part of the CIS – which could result in end users choosing this product on the assumption that it is more secure, reliable or otherwise superior or subject to more regulations than competitors' products
- might limit access to information that new and innovative account overlay providers need to develop their products – for example, a provider of a payment initiation service might need to access macro trend data held by a CIS provider

**2.32** Some respondents questioned to what extent such risks could materialise due to existing mitigations and the nature of account overlays as currently foreseen by these respondents. We consider that there remains uncertainty around the nature of account overlays and that the impact could be significant if risks were to materialise. We are not commenting here on the effectiveness of any current contractual controls. Unless otherwise stated in Chapters 3 to 5, our risk assessments apply in principle to all overlay services (where we use 'overlay services' this should be read as 'account and/or market overlay services'), with the caveat set out in paragraph 2.31 above.

**2.33** We note Vocalink's comments on our analysis of vertical competition pricing risks. We understand that Vocalink is suggesting that a CIS provider's affiliates might have higher costs than their competitors because of the characteristics of their respective businesses. This is, however, not the point we were making. We were and remain concerned that all users should face the same marginal costs for CIS rather than about the overall marginal cost for different participants.

## Provision of common services

### Respondents' views

**2.34** Question 10 of CP21/2 asked stakeholders whether the provision of any particular common services could raise competition risks that differ substantially from those raised by provision of the CSS. Most respondents said there would be no substantial differences in the competition risks. One large PSP said its answer assumed that existing restrictions on data use apply. Another large PSP said that the potential for the provider of a common service to behave anti-competitively could be addressed using the same measures that are applied to the CSS provider.

**2.35** A small percentage of respondents said that competition risks could differ for some common services. For example, a smaller PSP said particular consideration should be given to certain common services including those that relate to collection, aggregation or provision of data, where access to such data provides insight into

competitors' behaviour. The respondent suggested that anonymisation of data might help address this concern. Pay.UK said that some common services provide greater information than what would be captured through sole operation of the CSS. Where that is the case, Pay.UK envisions that data usage agreements will be in place to prevent a provider from using it to distort competition elsewhere in the NPA ecosystem. Pay.UK also said that provision of file-based services or functionality necessary to support a multi-day payment proposition<sup>8</sup> would not materially increase the competition risks we identified.

**2.36** A small percentage of respondents argued that data and competition risks could be mitigated by enforcing the principle that CIS design should minimise the scope of services provided centrally and encouraging (or even requiring) other services to be provided competitively, rather than procured centrally as common services. Similarly, the EMA said clear boundaries needed to be defined and agreed between common services provided by a CIS provider and services that could be provided competitively by the market. A large PSP said some services that do not play a resilience role may still need to be common services (for example to support customer protections relating to their use of interbank payments) and that consideration would need to be given to how best to provide certain services on a case-by-case basis. It suggested Pay.UK develop a roadmap for common services.

## Our response

**2.37** We note respondents' views on whether the provision of any particular common services could raise competition risks that differ substantially from those raised by provision of the CSS. Our regulatory framework is based on our assessment of the information currently available to us about the risks to competition and innovation arising from the behaviour of a CIS provider. We will monitor the development of the NPA. If Pay.UK decides to procure new common services that we consider give rise to new or different risks, we will consider introducing different or further regulatory measures. We would also be open to suggestions from stakeholders about other ways the risks could be mitigated.

**2.38** We agree that Pay.UK should consider carefully whether services other than CSS need to be provided by a single provider (for example, for resilience reasons) and hence qualify as common services, or whether they can be provided competitively. One of our reasons for deciding to narrow the scope of the CIS contract is to provide an opportunity for market-led overlay services to emerge that can help the migration of Bacs transactions to the NPA (see CP21/8). We will be monitoring closely the decisions Pay.UK takes about how services should be provided.

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<sup>8</sup> The multi-day payment proposition aims to replicate some of the participant and end user perceived advantages of the existing Bacs service in the NPA, including the processing of payments over several days to enable lower processing costs and pre-notification of settlement amounts.

# Regulatory measures

## Respondents' views

- 2.39** Question 12 of CP21/2 asked stakeholders if they agreed with our proposal to bring forward regulatory measures to ensure the implementation of the proposed specific mitigations and governance principles.
- 2.40** Most respondents to this question agreed or broadly agreed with the proposal. Of these respondents, some argued bringing forward regulatory measures would provide clarity and certainty to Pay.UK, potential suppliers and participants. The EMA and a smaller PSP said regulatory measures should not be too prescriptive before risks materialise as this could introduce further delays or complexity. Two large PSPs said the regulatory measures should be proportionate and set the outcomes we want to see delivered. A large PSP argued ex-post approaches may be more appropriate than ex-ante approaches. It also said we already have a wide range of regulatory powers we could use to intervene if required.
- 2.41** Pay.UK, while agreeing with our proposal to bring forward regulatory measures, said any regulation should be outcome focused and that we should impose obligations that fit with its role, responsibilities, and risk appetite. A theme in Pay.UK's response to our consultation was that we should be cautious in introducing ex-ante regulation given the significant costs and design challenges this carries.
- 2.42** Some respondents were warier of or concerned about us bringing forward regulatory measures at least for some of our proposed specific mitigations and governance principles at this time.
- 2.43** One of these, UK Finance, while acknowledging that our regulatory framework could be beneficial, raised concerns (or reiterated those raised in response to other questions) about some of the measures we proposed including about their clarity, proportionality and the benefit they would bring. These concerns are summarised in Chapters 3 to 5 of PS21/3. A technology services provider said that, given the scale of change in the payments industry today, a principles-based approach would provide better outcomes and could avoid potential downsides of rule-based regulation. A large PSP argued it was not clear how regulatory measures would work. It was concerned about implications for the negotiation and operation of the CIS contract, and for cost.
- 2.44** A technology services provider and a large PSP argued that where the roles and responsibilities of all parties are clearly understood, regulatory measures would not be needed. They considered that regulatory measures could make a contract commercially unattractive and could restrict innovative ideas. The technology services provider argued appropriate scheme rules and strict monitoring of compliance with these rules, as well as clear role definitions would be sufficient. The large PSP, which was concerned about specific directions that are prescriptive in nature, said we should supervise and provide outcomes-focused expectations for the NPA, with our ex-post regulatory powers in place to enforce these if needed.

**2.45** Vocalink said formal regulatory measures such as directions would reduce flexibility in the implementation of the principles that we proposed for the purpose of mitigating risks to competition and innovation. It suggested we issue pricing and design guidance and for Pay.UK to have regard to this guidance, working with stakeholders to establish principles. Vocalink also said that ex-ante regulatory measures should be grounded in clearly evidenced competition issues, and that any interventions by us should be the minimum necessary to achieve the desired outcomes.

## Our response

**2.46** As part of developing our regulatory framework, we have considered the proportionality of the requirements – see Chapter 6 of PS21/3.

**2.47** Chapters 3 to 5 of PS21/3 provide more detail on how each individual measure can help address specific risks and policy objectives. Where appropriate, for example in our requirement for operational separation, the requirements we will implement are also designed around desirable outcomes.

**2.48** We plan to publish and consult on draft directions that implement our regulatory framework closer to the go-live date for the NPA before giving them to Pay.UK and any relevant CIS provider. According to Pay.UK's baseline plan, the NPA will go live in mid-2024. Once our directions are in force, we will monitor the actions taken to comply with them.

## Additional pricing principles

### Respondents' views

**2.49** In CP21/8, we proposed five pricing principles that Pay.UK should follow in its approach to CIS user pricing. Some respondents suggested additional pricing principles.

**2.50** A large end user suggested that pricing should reflect the level of complexity and risk associated with the services provided. As an example, the respondent suggested that services equivalent to the existing Faster Payment or Bacs services should be charged at the 'basic price', whereas overlay services, or other optional services which attract greater risk, should be charged at a price that reflects the risk.

**2.51** Two smaller PSPs suggested a pricing principle such that pricing does not disadvantage smaller and mid-tier participants and that pricing does not act as a barrier to entry for new market participants.

**2.52** Similarly, a technology service provider suggested an additional pricing principle for pricing to encourage emerging businesses to participate either directly or indirectly in NPA.

**2.53** A large PSP suggested a principle that costs should reduce over time as operational familiarity with NPA increases and supplier return-on-investment is achieved.

- 2.54** A payment system operator suggested an additional objective that CIS pricing should ‘confer the greatest possible benefits for end-users’. The respondent said that end users should be our ultimate concern and that this should be reflected in the pricing principles.

## Our response

- 2.55** We agree that risk and complexity can affect underlying costs of different types of transactions. In Chapter 4 of PS21/3, we set this out as one of the possible reasons why Pay.UK may choose to price different types of transactions differently (under pricing principle 3: CIS user prices do not distort competition). Therefore, we do not introduce an additional principle that would require Pay.UK to price its services around the risk of transactions. We expect Pay.UK to set CIS user prices having regard to our five pricing principles but do not expect Pay.UK to adhere to each individual principle. As a safeguard that Pay.UK has considered the relevant factors in setting CIS user prices, the proposed methodology will be subject to our non-objection.
- 2.56** We agree that CIS user prices should not disadvantage smaller and mid-tier participants and that these prices should not act as a barrier to entry for new market participants. We think that this is sufficiently addressed by our principle that CIS user prices do not distort competition in services to end users, and GD2. GD2 requires operators of certain payment systems to have access requirements that are proportionate, objective and non-discriminatory. Thus, we do not introduce a new pricing principle that CIS user prices must not disadvantage smaller and mid-tier participants.
- 2.57** We agree that pricing should encourage new entrants to participate in the NPA. To have regard to pricing principle 3 – ‘incentivise utilisation of the NPA’ – Pay.UK should consider how CIS user pricing (such as level and structure) can be used to increase participation in the NPA by all users including emerging businesses. We therefore do not think that an additional principle is necessary.
- 2.58** We agree that cost savings when realised by the CIS provider should be passed on to CIS users. Therefore, we have amended our fifth pricing principle to: ‘CIS user prices adapt to changes in market conditions, including CIS provider costs and competition’. To have regard to this pricing principle, Pay.UK should consider revising CIS user prices if there is a material reduction in CIS provider charges. In addition, as set out in paragraph 4.50 of PS21/3, it is important for Pay.UK to maintain flexibility over the profile of cost recovery. This is so it can set CIS user prices that incentivise utilisation of the NPA and are responsive to changes in market conditions over time. We do not therefore think that an additional principle requiring costs to reduce over time is necessary.
- 2.59** We agree that CIS user prices should aim to deliver greatest possible benefits for end users. We consider that having regard to our five pricing principles in the round will help Pay.UK achieve the greatest possible benefit to end users by developing an NPA ecosystem that is competitive and accessible to new entrants. We do not introduce a new pricing principle to state that ‘CIS pricing should confer the greatest possible benefits to end user’ as such a principle would be difficult to assess, monitor and enforce against in practice.

## Other comments

### Respondents' views

**2.60** Respondents also commented on other aspects relevant to the NPA programme.

#### **Consumer protections**

**2.61** The British Retail Consortium (BRC) argued competition and pricing will be crucial to get right to incentivise merchant adoption of interbank payments. It also argued the consumer protection regime for interbank payments must be bolstered to support consumer confidence and demand for these payments. The BRC recommended protections should be focused on higher risk use cases rather than replicating protections in cards, which could be more expensive and reduce merchant incentives to accept interbank payments.

#### **NPA governance, Pay.UK capability and planning**

**2.62** A few respondents said Pay.UK needs to be capable and have the expertise to carry out its functions effectively and manage competition risks. A technology services provider specifically argued Pay.UK needs to have the capability to create roadmaps for the rollout of market overlay services without having to use staff and knowledge from a CIS provider, to avoid putting a CIS provider at an advantage.

**2.63** A large PSP said it welcomed Pay.UK's recognition that greater engagement and involvement of PSPs is needed for the NPA programme to succeed. UK Finance said its members had continuing concerns about the governance of the NPA programme that may need future consideration as regards, in particular, industry and service-user input on major design and implementation decisions. A payment system operator also said Pay.UK needs to set clear and transparent targets around operational resilience and uptime, to provide clear expectations for stakeholders.

#### **Competition issues relating to existing interbank payment systems**

**2.64** A payment system operator argued many of the competition issues we identified for the NPA may also apply to today's interbank systems, and suggested we consider levelling the playing field between interbank and other payment systems today. This included considering how to ensure there is no cross-subsidisation between interbank and other payment systems, and improving transparency in the current governance of interbank systems.

## Alternative models

**2.65** A few respondents discussed the option of a decentralised/distributed payment system model and commented on the merits of bilateral exchanges of payment instructions between participants. They said they would welcome an approach that does not preclude future bilateral procurement and engagement between PSPs – overseen by Pay.UK – as this could enable greater competition.

## Our response

**2.66** **Consumer protection for interbank payments is an ongoing priority for us;** we recently published the outcome of our work to assess whether the current level of protection provided for interbank payments is fit for purpose.<sup>9</sup> As part of that work, we set out our expectation that all Faster Payments participants should be able to identify and share payment risk levels and to act responsibly to minimise customer harm. We agree that Pay.UK should also consider how the NPA can facilitate enhanced consumer protections for interbank payments.

**2.67** We agree that **Pay.UK needs to have the right capability and skills** to comply with our regulatory framework and help facilitate competition and innovation in the NPA ecosystem. Pay.UK has time to further build these capabilities over the coming years before the NPA goes live (which is due to happen in mid-2024 according to Pay.UK's baseline plan). We will monitor this work.

**2.68** It is important that Pay.UK **appropriately engages with stakeholders** to allow them to input into key decisions and explains to them how their views have been taken into account. We consider this an important part of being an effective delivery body and operator of the NPA. As explained in Chapter 4 of PS21/3, we intend to take account of the adequacy of stakeholder consultation in deciding whether to object to Pay.UK's proposed methodology for CIS user prices. We also note that Pay.UK has recently made changes to enhance how it engages with stakeholders about how it makes decisions regarding the NPA programme. This includes creation of a new forum that allows its non-executive directors to discuss NPA matters with representatives from the Strategic Participant Group<sup>10</sup>, which was created in response to industry calls for more involvement in NPA decisions.

**2.69** We note the comments from a payment system operator that we should consider taking action to level the playing field between existing interbank payment systems and other payment systems. This is outside the scope of our NPA work but we are open to discussing with stakeholders specific issues of concern relating to existing payment systems.

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<sup>9</sup> PSR, *Consumer protection in interbank payments* (2021). <https://www.psr.org.uk/publications/policy-statements/ps21-2-consumer-protection-response-to-cp21-4/>

<sup>10</sup> The Strategic Participant Group is a forum set up to advise the NPA programme, consisting of a number of banks, building societies, and some non-bank PSPs.

**2.70** As discussed in CP21/8 in July, we do not consider that **alternative models for the NPA's infrastructure**, such as a decentralised, bilateral exchange model as discussed by some respondents, should be pursued at this time. The Forum considered this option at the time of creating its blueprint. It concluded the NPA should be based on having CIS that routes payment messages and determines participants' settlement obligations. There have been important changes in the payments sector and the adoption of new technologies during recent years. We are not persuaded, however, that it would be beneficial to reconsider alternative NPA designs that the Forum deemed unsuitable, given respondents' widely shared views on the need to make progress with delivering the NPA. Such action could result in significant further delays to the NPA programme, as could designing a new strategy for interbank payments. Nevertheless, we expect the design of the NPA CIS to consider participants' changing approaches and use of technology.

# Annex 3

## Illustrative directions

**3.1** We plan to give directions to Pay.UK and any CIS provider to implement the NPA CIS regulatory framework described in Chapters 3 to 5. This annex sets out three illustrative directions that are examples of how we would implement our regulatory framework:

- one that would require Pay.UK to take specified actions to help lower the risks to competition and innovation and set a methodology for CIS user prices that adheres to certain pricing principles
- one that would require any CIS provider to operationally separate its CIS functions from other parts of its (or an affiliate's) business where it (or an affiliate) has a significant interest in another payment system or in overlay services
- one that would require a CIS provider that does not have a significant interest in another payment system or in overlay services to notify us if this might change due to any proposed action or change in circumstances and in any event report annually on its position

**3.2** We have based the illustrative directions on our standard format for directions. We have not included the first two standard sections (*Recitals and Powers exercised and purpose*), as these do not contain obligations. We have included headers for other non-substantive sections (such as *Commencement and duration*) to make the section numbering clear.

# Annex 3A

## Illustrative only<sup>1</sup>

### To be read alongside PSR publication PS21/3

Specific Direction imposing requirements on the operator of the NPA payment system concerning provision of central infrastructure services

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<sup>1</sup> As described in the PSR's policy statement PS21/3, *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021) (in particular Chapter 7), this illustrative direction is published to show how a direction to the operator of the NPA payment system to implement the regulatory framework could look. The draft direction we consult on may differ from this illustrative direction.

# Summary of illustrative direction

Section	Provisions
<b>3</b>	Operator must be the primary interface and decision maker
<b>4</b>	Obligations on the operator about: <ul style="list-style-type: none"><li>a. prioritising change requests</li><li>b. CIS facilitating competition and innovation</li><li>c. information</li><li>d. having regard to the pricing principle</li></ul>
<b>5</b>	Sets out the pricing principles
<b>6</b>	Sets out the non-objection process by which the PSR will consider the pricing methodology and changes to it
<b>7</b>	Sets out requirements relating to reports that the operator must submit to the PSR
<b>11</b>	Interpretation provisions

## 3 The operator is the primary interface and decision maker

- 3.1** The operator, and not a CIS provider, must be the primary interface with a CIS user.
- 3.2** Being the primary interface means being the person that communicates with CIS users about CIS provision except if the condition set out in paragraph 3.5 is met.
- 3.3** The operator, and not a CIS provider, must be the primary decision maker.
- 3.4** Being the primary decision maker means being the person that makes any decision about the provision of CIS to a CIS user except if the condition set out in paragraph 3.5, when read with paragraph 3.6, is met.
- 3.5** The condition is that if the communication were to be conducted, or the decision were to be made, by the CIS provider, rather than the operator, there would not be a material risk that:
- a. competition or innovation will be reduced, or
  - b. the CIS provider will be able to take advantage of its position as a monopoly provider of services
- 3.6** The operator, and not a CIS provider, must always be the decision maker concerning:
- a. whether to provide CIS
  - b. whether to terminate CIS provision
  - c. the terms (including the prices) on which CIS are provided
  - d. the type of CIS that is provided
  - e. whether to change the type or scope of the CIS provided, including whether to agree to a request by a CIS user to do so
  - f. the priority of a CIS user's request to change the type or scope of the CIS provided
  - g. the rules and standards concerning the provision of CIS
  - h. the service levels provided to CIS users

## 4 Other obligations on the operator

### Prioritisation

- 4.1** The way the operator prioritises requests referred to in paragraph 3.6(f) must be transparent and impartial.

### The CIS must facilitate competition and innovation

- 4.2** The operator must ensure that the CIS facilitate competition and innovation. The ways it must do this include through:
- a. the rules and standards referred to in paragraph 3.6(g)
  - b. appropriate service level agreements with any CIS provider
  - c. its decisions on:
    1. how and when CIS should be developed
    2. the level of investment in particular developments

### Obligations about information

- 4.3** The operator must prevent a CIS provider from using or disclosing information:
- a. about the provision of CIS, or
  - b. that it has because it is a CIS provider

except where this is necessary to provide those services (including developing or improving services).

- 4.4** This obligation in paragraph 4.3 includes preventing the CIS provider sharing information with its affiliates.
- 4.5** The requirements set out in paragraphs 4.3 and 4.4 do not apply in respect of information that is publicly available.
- 4.6** The operator must make available to the market any information about the provision of CIS where such information might reasonably be expected to facilitate competition or innovation. It must do so on a non-discriminatory basis and in a timely manner.

- 4.7** If making information available to only part of the market (which may be only one person) would better facilitate the development of competition or innovation (or both) in payments or related services, the operator complies with paragraph 4.6 if it makes information available on that more limited basis.

## CIS pricing methodology

- 4.8** In setting a pricing methodology for CIS, the operator must have regard to the pricing principles in Section 5.

# 5 Pricing principles

- 5.1** The pricing principles are that CIS prices should:
- a. reflect efficiently incurred costs (to be determined by reference to the period of the applicable contract for the provision of CIS services as a whole)
  - b. incentivise utilisation of the NPA
  - c. not distort competition in services to end users
  - d. be transparent and predictable
  - e. adapt to changes in market conditions, including CIS provider costs and competition
- 5.2** The operator must comply with the requirements of Section 6 in relation to setting and using a pricing methodology for the CIS.

# 6 Non-objection process – CIS prices

- 6.1** The operator must not set, or use, a pricing methodology for CIS unless:
- a. it has given notice of its proposal to the PSR in writing
  - b. the PSR has given notice in writing that it does not object to the proposed methodology
- 6.2** These requirements also apply if the operator intends to make a material change to a pricing methodology (with the reference in paragraph 6.1 to “set, or use” being a reference to setting or using the methodology with the change incorporated and to the “proposed methodology” to the methodology with the proposed change incorporated). As an alternative to deciding whether to object as described in paragraph 6.1(b), the PSR may decide (contrary to the view of the operator) that the change is not material and therefore is not subject to the non-objection process.

- 6.3** The PSR may attach conditions to a notification that it does not object to a proposal. For example, it may require the operator to replace the methodology in certain circumstances (subject to the non-objection process). The operator must comply with the conditions when it sets and uses its proposed methodology (or implements a proposed change).
- 6.4** In the notice it gives under paragraph 6.1(a), the operator must:
- a. set out its proposed methodology or change
  - b. explain why the proposed methodology or change is appropriate (by reference to the pricing principles); this includes setting out:
    1. alternative options it has considered but discounted (with its reasons for discounting them)
    2. how it has taken account of the matters set out in the PSR's regulatory framework for the NPA central infrastructure services<sup>2</sup>
  - c. provide details of its engagement with stakeholders on the proposed methodology or change, including the views provided and its consideration of them
- 6.5** The PSR may:
- a. waive the requirement for the operator to provide any of the material mentioned in paragraph 6.4 (to any extent)
  - b. require the operator to provide further material that it considers appropriate for the non-objection process
- 6.6** In deciding whether to object (and whether to attach conditions to not objecting), the PSR will take into account matters it considers relevant. These include the pricing principles set out in paragraph 5.1.
- 6.7** If the operator proposes to change a pricing methodology but does not consider the change material, it must notify the PSR in writing of the proposed change.
- 6.8** Subject to paragraph 6.9, the operator must not implement the change notified under paragraph 6.7 until at least [14 days] have elapsed, beginning with the day the notice is received by the PSR.
- 6.9** If the PSR gives notice in writing within the [14 days] that it considers the change to be material, the operator must comply with the requirements in paragraphs 6.1 and 6.2.

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<sup>2</sup> Currently set out in the PSR's policy statement PS21/3, *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021).

- 6.10** The PSR may by giving written notice to the operator:
- a. provide that the operator does not need to notify under paragraph 6.7, either indefinitely or for a set period
  - b. provide that the operator only needs to notify the PSR of certain types of change under paragraph 6.7
  - c. vary any provision it gives under paragraph 6.10(a) or (b) (including to reinstate the requirement to notify)

## 7 Reporting requirements

- 7.1** At least [90] days before the NPA payment system begins to operate, the operator must provide the PSR with a report setting out the steps it has taken, or proposes to take, to comply with the requirements of this specific direction.
- 7.2** Not earlier than 12 months after the NPA payment system's first day of operation, and not later than 13 months after that date, the operator must provide the PSR with a report setting out the steps it has taken to comply with the requirements of this specific direction.
- 7.3** That report must also contain:
- [list of data reporting requirements considered appropriate]
- in respect of the first 12 months after the date the NPA begins to operate.
- 7.4** The operator must provide the PSR with reports containing the information in paragraphs 7.2 and 7.3 at intervals not exceeding 13 months. Each report must cover the 12 months that immediately follow the period covered by the previous report.
- 7.5** The PSR may publish any report provided under this section, or require the operator to do so (and impose such conditions on publication as it considers appropriate). The PSR will not publish (or require the operator to publish) confidential information belonging to another person without their consent. For publication purposes, the PSR may require the operator to provide a version of the report with confidential information omitted.
- 7.6** Without prejudice to the notification requirements in section 6:
1. the operator must notify the PSR in writing if it intends to change its CIS provision in a way that it considers will materially affect how it complies with this specific direction, or its ability to comply
  2. it must not implement the change until at least [21] days after the day the PSR receives the notice

## 8 Application

This specific direction applies to the operator of the NPA payment system.

## 9 Commencement and duration

## 10 Citation

## 11 Interpretation

- 11.1** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 11.2** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 11.3** 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.
- 11.4** In this specific 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.
- 11.5** Any obligation arising by virtue of this specific direction about the use or disclosure of information does not affect the application of any other obligation relating to that information that arises under the law of the United Kingdom or any part of it (for instance obligations concerning the processing of personal data (within the meaning of the General Data Protection Regulation), money laundering or requiring information to be given to regulators).
- 11.6** Further, any such obligation does not prevent the provision of information:
- a. by a CIS provider to the operator
  - b. to a regulator in circumstances where there is no legal obligation to provide it but where it is appropriate to do so for the purposes of the regulator carrying out its functions (whether the information has been requested by the regulator or not)

(and does not prevent the subsequent use of that information by the operator or regulator).

- 11.7** Any period comprising solely of testing the NPA payment system is not to be regarded as the operation of that system.
- 11.8** Where reference is made to the date when the NPA payment system is to begin operating, where the date is not known, the best estimate must be used (having regard, for instance, to project planning material).
- 11.9** Reference to competition or innovation being reduced includes:
- a. reducing the likelihood of the introduction of additional competition or innovation
  - b. giving a competitive advantage to a CIS provider, or an affiliate of the CIS provider, over another
- 11.10** Reference to a CIS provider taking advantage of its position as a monopoly provider of services includes putting itself in the position where it can recover greater remuneration or provide services of a lower quality, than would otherwise be the case (whether relating to a particular CIS user, to a number of users or generally).
- 11.11** In this specific direction:

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**Act** means the Financial Services (Banking Reform) Act 2013.

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**Affiliate** in relation to a person (person A) refers to another person that is part of the same undertaking (within the meaning of Chapters 1 and 2 of the Competition Act 1998) as person A or is another business or enterprise over which person A, or another part of the undertaking of which person A is part, exercises, or has the ability to exercise, material influence.

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**CIS** means central infrastructure services: the whole, or any part of, a package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating the NPA payment system, including the processing of funds transfers.

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**CIS provider** means a person that provides CIS in respect of the NPA payment system.

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**CIS user** means a person that uses CIS or is a prospective user of CIS.

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**Competition** means competition in payment and related services.

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**Confidential information** means information that:

- a. relates to the business or other affairs of any person
- b. has not been made available to the public (or it has but that disclosure was unlawful), and
- c. is not in the form of a summary or collection of information that is framed in such a way that it is not possible to ascertain from it information relating to the person

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**Information** includes data relating to transactions and other usage of CIS.

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**Innovation** means innovation in payment and related services.

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**NPA** means the New Payments Architecture.<sup>3</sup>

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**NPA payment system** means the regulated payment system designated by HM Treasury under section 43 of the Act in [xx].

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**Operator** has the meaning given by section 42(3) of the Act.

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**Payment system** has the meaning given by section 41 of the Act.

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**Pricing methodology** means the method by which the pricing for the provision of CIS is determined.

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**Prioritisation** is transparent and impartial if it is determined by factors known to CIS users and is done on the basis of objective considerations.

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**PSR** means the Payment Systems Regulator established under Part 5 of the Act.

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**Services to end users** means services provided to those who initiate or receive payments.

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<sup>3</sup> <https://www.psr.org.uk/our-work/new-payments-architecture-npa/>

## Annex 3B

### Illustrative only<sup>1</sup>

### To be read alongside PSR publication PS21/3

Specific Direction imposing requirements on a provider of NPA central infrastructure services where the significant interest test concerning operational separation is satisfied

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<sup>1</sup> As described in the PSR's policy statement: *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021), see in particular Chapter 7, this illustrative direction is published to show how a direction to the operator of the NPA payment system to implement the regulatory framework could look. The draft direction we consult on may differ from this illustrative direction.

# Summary of illustrative direction

Section	Provisions
3	Obligations on the CIS provider relating to separation and achievement of outcomes
4	Obligations on the CIS provider to: <ul style="list-style-type: none"><li>a. provide an initial report on separation, subsequent changes relating to separation, and the connected non-objection process</li><li>b. provide an annual report relating to compliance with the direction</li></ul>
5	The PSR's power to require the CIS provider to consider changing the way it has implemented separation
9	Interpretation provisions

## 3 Obligations in respect of a CIS provider's business

### Requirement to separate

- 3.1** A CIS provider ('directed person') must separate, and then operate separately, that part of its business which provides CIS from other parts of its business, and the business of its affiliates, to achieve the outcomes at paragraphs 3.4 to 3.8.
- 3.2** In determining the elements of the separation, and the way in which they are implemented, the directed person must take account of the PSR's policy statement PS21/3, Regulatory framework for the New Payments Architecture central infrastructure services (December 2021), in particular the reasons for requiring separation and the non-exhaustive list of potential elements of separation it sets out.
- 3.3** The directed person must have in place effective arrangements to ensure it complies with the obligations of this section. This includes ensuring that its affiliates implement the measures required of them for the obligations to be met.

### Outcomes concerning discrimination and commercial advantage

- 3.4** The directed person does not unduly discriminate between CIS users, including unduly discriminating in favour of other parts of its business or the business of its affiliates.
- 3.5** The directed person does not give other parts of its business, or the business of its affiliates, an unfair commercial advantage.

### Outcomes concerning information

- 3.6** Information:
- a. received by the directed person because it is a CIS provider, or
  - b. derived by the directed person from other information it has because it is a CIS provider

is not used by, or shared within, the directed person, except where necessary to provide CIS (including developing or improving services).

- 3.7** The information referred to at 3.6(a) and (b) is not shared with any affiliate.

## Outcome concerning interests in providing other services

- 3.8** The provision of CIS by the directed person is not influenced by the fact that it, or an affiliate, provides services other than CIS.

## 4 Reporting requirements and the non-objection process

### Initial report

- 4.1** A directed person must give the PSR a written report describing the current arrangements of its business and the business of its affiliates (and its relationship with those affiliates), identifying in particular all matters relevant to the significant interest test. The report must explain how the directed person proposes to organise its business to comply with the requirements of section 3. The report should also cover its affiliates where relevant. It must submit this report on or before [90] days after the date this direction is given. The report must:
- a. set out details of the separation to be put in place
  - b. set out the policies, procedures and other measures it proposes are put in place to ensure it complies with this specific direction
  - c. include drafts of the documents that it proposes to issue for use that:
    1. set out its proposed policies, or
    2. provide guidance to those working for, or on behalf of, the directed person or an affiliate
  - d. set out the timeline for:
    1. putting in place the new organisational arrangements
    2. implementing the policies, procedures and other measures referred to in 4.1(b)
    3. issuing the documents referred to in 4.1(c) for use
  - e. be accompanied by confirmation that the directed person's board has approved the report and any draft documents included in it
- 4.2** The directed person must not:
- a. begin providing CIS (except to the extent permitted by a notice given under paragraph 4.11)
  - b. implement the new organisational arrangements, or

- c. issue for use the documents referred to in 4.1(c) (except where the exception in paragraph 4.10 applies)

unless the PSR has notified the directed person in writing that it does not object to the proposed arrangements and documents.

- 4.3** The directed person must put in place the proposed arrangements and issue the documents by the deadline in the notice (which may be set by reference to an event).
- 4.4** In providing notification that it does not object, the PSR may attach conditions to a notification that it does not object to the proposal. For example, it may require the directed person to change its approach to achieving one of the outcomes set out in a document.
- 4.5** The directed person must comply with these conditions and ensure that its affiliates comply where relevant.
- 4.6** The PSR may require the directed person to provide further material that the PSR considers appropriate for the non-objection process.
- 4.7** In deciding whether to object, the PSR will take into account matters it considers relevant. These include how effective the proposed arrangements or documents are likely to be in ensuring that the directed person complies with the requirements of section 3.
- 4.8** Where the documents referred to in paragraph 4.1(c) are to be issued for use following the non-objection process, the directed person must publish them before, or at the same time as, doing so. The directed person may omit confidential information from the published version.
- 4.9** As an exception to paragraph 4.8, the PSR may agree in writing that the directed person does not have to publish any particular document or content.
- 4.10** The PSR may give notice in writing to a directed person that a document is not subject to the non-objection process. This means the directed person may issue it without the PSR giving the notice referred to in paragraph 4.2.
- 4.11** Where the PSR objects to the new organisational arrangements or documents, it may give a notice to the directed person setting out steps it must take (or must not take) and requirements it must meet. The notice may set out deadlines for the directed person to take the relevant action.

Examples include submitting renewed proposals for separation (including deadlines for submission), and requirements relating to whether, and for how long, the directed person may provide CIS without the PSR having given the notice set out in paragraph 4.2.

- 4.12** The directed person must take the actions set out in the notice referred to in paragraph 4.11 and notify the PSR in writing within [seven] days of completion.

## Material changes to arrangements and documents

- 4.13** Paragraphs 4.1 to 4.12 apply to material changes to the arrangements for separation and to the documents (including replacing one document with another).
- 4.14** In their application to material changes, those paragraphs apply as if the references to the initial proposed arrangements or documents are to the changes to those arrangements or documents.
- 4.15** Without prejudice to the general provision in paragraph 4.14, the following changes apply:
- a. The provisions of paragraph 4.1(a) to (c) are to be treated as requiring the material change to be identified.
  - b. Paragraph 4.2(a) is to be ignored.
  - c. The requirement in paragraph 4.8 is to be read as a requirement to publish the document with the change highlighted (or, if it is a replacement for another document, to identify it as such).

## Annual report

- 4.16** Not earlier than 12 months after the NPA payment system's first day of operation, and not later than 13 months after that date, the directed person must provide the PSR with a report setting out:
- a. the steps it has taken to comply with the requirements of this specific direction
  - b. any proposed course of action or change in circumstances that may affect whether, and how, the directed person or an affiliate meets the significant interest test (or confirm there is none)
- 4.17** The directed person must provide the PSR with reports containing the information in paragraph 4.16 at intervals not exceeding 13 months.
- 4.18** A report provided under paragraph 4.16 or 4.17 must be accompanied by confirmation that the directed person's board has approved it.
- 4.19** The PSR may publish any report provided under this section, or require the directed person to do so (and impose such conditions on publication as it considers appropriate). The PSR will not publish (or require the directed person to publish) confidential information belonging to another person without their consent. For publication purposes, the PSR may require the directed person to provide a version of the report with confidential information omitted.

## 5 The PSR's power to require consideration of changes

- 5.1** If the PSR considers that the requirements of section 3 might be implemented, or better implemented, by changes to the organisational arrangements or to documents, it may issue a notice to the directed person setting out:
- a. the changes it considers are appropriate
  - b. the reasons for holding that view
  - c. the deadline by which the directed person must indicate to the PSR in writing whether it agrees with the proposed changes
- 5.2** If the directed person does not agree with the proposed changes (or any of them), it must set out why in writing by the deadline.
- 5.3** If the directed person agrees that it is appropriate to make the changes (or any of them), it must set out in writing the steps it will take to implement them, including a proposed timetable (and notify the PSR in writing within [seven] days of implementation).
- 5.4** Paragraphs 4.1 to 4.15 apply to changes to be implemented under paragraph 5.3, except that the PSR may dispense with any requirement for the changes (or any of them) to be subject to the non-objection process.
- 5.5** The material provided under paragraph 5.3 may be treated as the report required under paragraph 4.1 (read with paragraph 4.13 to 4.15) if it contains the required information.

## 6 Application

- 6.1** This Specific Direction applies to a directed person.

## 7 Commencement and duration

## 8 Citation

## 9 Interpretation

- 9.1** The headings and titles used in this specific direction are for convenience and have no legal effect.

- 9.2** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament, except where words and expressions are expressly defined.
- 9.3** 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.
- 9.4** In this specific 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.
- 9.5** Any obligation arising by virtue of this specific direction about the use or disclosure of information does not affect the application of any other obligation relating to that information that arises under the law of the United Kingdom or any part of it (for instance, obligations concerning the processing of personal data (within the meaning of the General Data Protection Regulation), money laundering or requiring information to be given to regulators).
- 9.6** Further, any such obligation does not prevent the provision of information:
- a. by a CIS provider to the operator
  - b. to a regulator in circumstances where there is no legal obligation to provide it but where it is appropriate to do so for the purposes of the regulator carrying out its functions (whether the information has been requested by the regulator or not)
- (and does not prevent the subsequent use of that information by the operator or regulator).
- 9.7** Any period comprising solely of testing the NPA payment system is not to be regarded as the operation of that system.
- 9.8** Where reference is made to the date when the NPA payment system is to begin operating, where the date is not known, the best estimate must be used (having regard, for instance, to project planning material).
- 9.9** In this specific direction:

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**Act** means the Financial Services (Banking Reform) Act 2013.

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**Affiliate** in relation to a person (person A) refers to another person that is part of the same undertaking (within the meaning of Chapters 1 and 2 of the Competition Act 1998) as person A or is another business or enterprise over which person A, or another part of the undertaking of which person A is part, exercises, or has the ability to exercise, material influence.

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**CIS** means central infrastructure services: the whole, or any part of, a package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating the NPA payment system, including the processing of funds transfers.

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**CIS provider** means a person that provides CIS in respect of the NPA payment system.

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**CIS user** means a person that uses CIS or is a prospective user of CIS.

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**Confidential information** means information that:

- a. relates to the business or other affairs of any person
  - b. has not been made available to the public (or it has but that disclosure was unlawful), and
  - c. is not in the form of a summary or collection of information that is framed in such a way that it is not possible to ascertain from it information relating to the person
- 

**Directed person** means a person to which this direction is given.

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**Information** includes data relating to transactions and other usage of CIS.

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**NPA payment system** means the regulated payment system designated by HM Treasury under section 43 of the Act in [xx].

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**Payment system** has the meaning given by section 41 of the Act.

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**Significant interest** has the meaning given in Box 3 of paragraph 3.5 of PS21/3, *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021), and a reference to meeting the test for significant interest is a reference to the circumstances applicable to the directed person or an affiliate falling within that meaning.

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# Annex 3C

## Illustrative only<sup>1</sup>

### To be read alongside PSR publication PS21/3

Specific Direction imposing notification requirements on a provider of NPA central infrastructure services where the significant interest test concerning operational separation is not satisfied

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<sup>1</sup> As described in the PSR's policy statement: *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021), see in particular Chapter 7, this illustrative direction is published to show how a direction to the operator of the NPA payment system to implement the regulatory framework could look. The draft direction we consult on may differ from this illustrative direction.

# Summary of illustrative direction

Section	Provisions
3	Obligations on the CIS provider relating to notification of proposed courses of action or changes in circumstance, and to report annually
7	Interpretation provisions

## 3 Notification requirements

### Obligation to report proposed courses of action or change in circumstances

- 3.1** The CIS provider ('directed person') must notify the PSR promptly in writing of any proposed course of action or change in circumstances that may affect whether it meets the significant interest test.
- 3.2** The directed person must notify the PSR as soon as reasonably possible after:
- the proposed course is determined, or
  - it becomes aware of the change in circumstances
- 3.3** The directed person must ensure its affiliates inform it promptly of anything that may affect whether it meets the significant interest test and that it may need to report under this direction.
- 3.4** In the notice it gives under paragraph 3.1, the directed person must:
- a. set out the proposed course of action or change in circumstances
  - b. set out the timeline for the action or change to take place
  - c. explain why it considers it is required to notify the PSR under this direction, in particular by reference to the significant interest criteria
- 3.5** The PSR may:
- a. waive the requirement for the directed person to provide any of the material mentioned in paragraph 3.4 (to any extent)
  - b. require further material that it considers appropriate
- 3.6** The PSR may, by giving written notice to the directed person:
- a. provide that the directed person does not need to notify it (or notify it about certain types of proposed action or change) under paragraph 3.1, either indefinitely or for a set period
  - b. vary any notification it gives under 3.6(a) (including to reinstate the requirement to notify)

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- 3.7** Not earlier than 12 months after the NPA payment system's first day of operation, and not later than 13 months after that date, the directed person must provide the PSR with a report setting out any proposed course of action or change in circumstances that may affect whether, and how, the directed person or its affiliates meet the significant interest test (or confirm there is none).
- 3.8** The directed person must subsequently provide the PSR with reports containing the information required under paragraph 3.7 at intervals not exceeding 13 months.
- 3.9** The PSR may publish any report provided under this section, or require the directed person to do so (and impose such conditions on publication as it considers appropriate). The PSR will not publish (or require the directed person to publish) confidential information belonging to another person without their consent. For publication purposes, the PSR may require the directed person to provide a version of the report with confidential information omitted.

## 4 Application

This Specific Direction applies to a directed person.

## 5 Commencement and duration

## 6 Citation

## 7 Interpretation

- 7.1** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 7.2** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament, except where words and expressions are expressly defined.
- 7.3** 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.
- 7.4** In this specific 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.

**7.5** Any period comprising solely of testing the NPA payment system is not to be regarded as the operation of that system.

**7.6** In this specific direction:

---

**Act** means the Financial Services (Banking Reform) Act 2013.

---

**Affiliate** in relation to a person (person A) refers to another person which is part of the same undertaking (within the meaning of Chapters 1 and 2 of the Competition Act 1998) as person A or is another business or enterprise over which person A, or another part of the undertaking of which person A is part, exercises, or has the ability to exercise, material influence.

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**Directed person** means a person to which this direction is given.

---

**NPA payment system** means the regulated payment system designated by HM Treasury under section 43 of the Act in [xx].

---

**Payment system** has the meaning given by section 41 of the Act.

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**PSR** means the Payment Systems Regulator established under Part 5 of the Act

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**Significant interest** has the meaning given in Box 3 of paragraph 3.5 of PS21/3, *Regulatory framework for the New Payments Architecture central infrastructure services* (December 2021), and a reference to meeting the test for significant interest is a reference to the circumstances applicable to the directed person or an affiliate falling within that meaning.

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