

The Payment Systems Regulator Ltd

Minutes

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| Meeting: | PSR Board | |
| Date of Meeting: | 14 September 2016 | |
| Venue: | 25 The North Colonnade, Canary Wharf, London E14 5HS | |
| Present: | Andrew Bailey | Noel Gordon |
| | Carole Begent | John Griffith-Jones (Chair) |
| | Bradley Fried | Hannah Nixon |
| | Amelia Fletcher | Christopher Woolard |
| In attendance: | Set out in Annex A | |

Quorum and Conflicts

The Meeting noted there was a quorum present and proceeded to business.

1 Minutes and Matters Arising

1.1 Minutes of the PSR Board meeting held on 13 July 2016

The minutes of the Board meeting held on 13 July 2016 were approved as a correct record of the meeting.

1.2 Matters arising

The Board noted the progress in respect of the matters arising from previous meetings.

2 Board Committee Reports

The Board noted that the Audit Committee did not meet in September. The Chair reported that the FCA Audit Committee had met but nothing relating to the PSR had been discussed. The PSR Internal Audit report would be discussed at the next Audit Committee.

3 Report from the Managing Director

The Board received and discussed the report from the Managing Director and noted the following points:

- July was a busy period for PSR with publication of final reports for two market reviews and the Payments Strategy Forum's Strategy Consultation. The Board discussed stakeholder reactions. The deadline for formal stakeholder responses to the final Infrastructure Market Review (IMR) report was 22 September.
- An initial meeting had been held with the Bank of England (Bank) regarding its Real Time Gross Settlement consultation published on 16 September. PSR Board discussions centred on how the Bank's proposals could open up access to non-bank Payment Service Providers and help develop universal aggregator business models.

The Board also noted the challenges the Bank had identified with the current CHAPS arrangements and that the consultation included a question as to whether to move CHAPS in-house. It was explained that the PSR would be engaging further with the Bank on the implications of this proposal and its consultation more generally.

- The Board discussed the PSR Risk framework and management. The Chair and Ms Nixon undertook to revert with a proposal.
- The Board discussed the PSR's oversight of market development.
- The Chair inquired on the status of resourcing. The Board was informed that resources were adequate, and a more accurate picture on resourcing would emerge once the full financial information was available at the end of year.

4 Specific items of business

4.1 Payments Strategy Forum – the future role of the Forum and the PSR

The Board received an update on the future role of the Forum and its strategy and discussed the following points:

- The proposal that the Forum be continued in 2017, the key activities to include:
 - a) in the first implementation phase (December 2016 to December 2017), to design a 'blueprint' for the new payments architecture; and
 - b) a detailed assessment, including the costs and benefits, of a subset of financial crime solutions.
- It was envisaged that the Forum would reach general agreement on the design of the new payments architecture (New Payments Architecture) in November, although an in-depth detailed design would be required for further analysis. It was expected that the second phase of design would enable these analyses to be undertaken.
- The Forum's draft strategy had proposed eleven solutions out of which four have already been taken forward. The Board received a summary of the components of the New Payments Architecture including the adoption of a common messaging standard (ISO 20022), and a simplified delivery mechanism. The Forum was working towards finalising its strategy in November supported by Ernst & Young.
- The Board discussed the implementation of the strategy and whether it was consistent with and could help achieve the PSR objectives, and was aligned to the IMR's potential remedies. The Board enquired who would own and run the New Payments Architecture and highlighted the need to avoid any potential conflicts of interest. The Board discussed the options for final ownership. The Board noted that in accordance with the PSR's proposed remedy in relation to the IMR, any provider of central payments architecture should be selected via a competitive tendering process.
- The Board discussed the implementation risks to the PSR and mitigants, in relation to the Forum's proposals. The Board further discussed its concerns including the management of residual risks and the degree of influence required to ensure an outcome in line with the PSR objectives and stakeholder requirements. The Board agreed that it should consider the implications on competition and innovation of consolidation.

The Board concluded that whilst certain parameters could be built into the Forum's terms of reference to prevent any serious failures, it needed a better understanding of

the proposed process to gain confidence in the process and the Forum's direction of travel.

Subject to the above, the Board approved the proposal to continue the Forum in 2017 to run the first implementation phase of the New Payments Architecture, and lead on a number of solutions including an assessment of a subset of financial crime solutions.

4.2 Interchange Fee Regulation draft guidance - Phase 2

The Board received an update on the consultation on the final guidance of the PSR's approach to monitoring and enforcing compliance with the Interchange Fee Regulation (IFR) (the "Final Guidance").

The Board discussed the following points.

- It was reported that the respondents to the consultation had in general been supportive of the draft guidance albeit there were some common issues raised for re-consideration.
- The strongest objection had been to the interpretation of Article 8(2) for co-badging, the objections being supported by legal analysis.
- Some respondents had requested greater clarity on the requirements for unblending under (Article 9(1)). Accordingly, the draft guidance has been amended to better clarify the Article's requirements and the instances when the article provisions are triggered.

Following due consideration of the Final Guidance, the Board approved that:

- a) the Final Guidance be published on the PSR website;
- b) authority be delegated to Hannah Nixon, PSR Managing Director (MD) or her nominee to sign off any non-material changes to the version of the Final Guidance submitted to the Board;
- c) the approach to monitoring and enforcing compliance with Article 7(1)(a) remain largely unchanged from that in the draft guidance but some of the wording of the Final Guidance be amended to clarify the PSR's approach to working with competent authorities in other countries;
- d) the draft guidance be revised to advance an optional, issuer-led interpretation of Article 8(2) in relation to co-badging. The Board took this decision having regard to: the ambiguity inherent in Article 8(2) of the IFR; the costs and challenges associated with implementation of a mandatory, consumer-led co-badging requirement; and the potentially negative impact on competition in the market of such mandatory requirement. The Board noted that this approach is supported by the FCA and HM Treasury; and
- e) the Final Guidance be based on the following applications of the IFR;
 - i. four categories of payment instruments for electronic and visual identification; and
 - ii. issuers are required to identify separately Merchant Service Charges (MSC) for each category and brand of payment card but if one or more of the brands and / or categories have the same interchange fee – or if all have no interchange fee – a single MSC may be identified.

4.3 PSR Financial Penalty Scheme

A report on the PSR Financial Penalty Scheme (“the FPS”) was presented.

The Board noted and discussed the following points.

- The paper concerned the proposed approach to the treatment of that part of the PSR penalty receipts representing enforcement costs that is retained from penalties (Retained Amount) imposed for compliance failures on participants in regulated payment systems, and regulated persons, under FSBRA and IFR, and certain penalties that may be imposed under the Payment Services Regulations 2009.
- FSBRA required the PSR to use the Retained Amount in a manner that benefits the participants in regulated payment systems, and regulated persons, some of whom are fee payers.
- The recommended approach to return the Retained Amount to the fee payers (bar any fee payer who was penalised) in the financial year following a penalty, by way of a reduction of fees (Recommended Approach) was outlined.
- It was highlighted that the Recommended Approach was consistent with the FCA’s approach albeit with some non-material differences, for example that in the context of the PSR, a penalty could be imposed on a person (i.e. a PSO) who is not a fee payer. The Board noted that in some circumstances a fee payer may not be responsible for the compliance failures of its PSO.
- The Board discussed the merits of the Recommended Approach, and the alternative approach to use the monies for special projects commissioned by PSR as is permissible under the legislation.

Following due consideration, the Board approved that:

- a) the Recommended Approach be adopted for the FPS subject to consultation responses;
- b) a consultation paper on the Recommended approach be published on the PSR website;
- c) authority be delegated to the PSR MD or her nominee
 - i. to sign-off the final consultation paper; and
 - ii. to bring into effect the FPS following consultation, subject to submitting to the Board for approval any significant changes to the policy outlined in the paper as a result of any significant issues raised in the consultation.

4.4 PSR Fees 17/18

A paper on the proposed PSR regulatory fees for 2017/2018 was presented.

4.5 PSR Governance: Enforcement Decisions Committee terms of reference

A paper on the changes to the Enforcement Decisions Committee (EDC) terms of reference (ToR) was presented.

The Board noted the rationale for the two main amendments to the current ToR

After due consideration the Board approved the amendments to the EDC ToR to:

- i. reflect the Board's decision to authorise EDC to act as decision makers with respect to compliance failures and sanctions for certain EU based legislation for which PSR is the competent authority in the UK;
- ii. extend the scope of EDC powers to determine whether a compliance failure had occurred in instances where it determines sanctions for compliance failures; and
- iii. include any consequential and stylistic changes.

4.6 PSR Governance: Competition Decision Committee enforcement

The Board noted and discussed the following points:

- It was explained that provisions under the Competition Act 1998 Competition and Markets Authority's Rules (CA98 Rules) required the appointment of certain categories of persons to perform specific functions in CA98 settlement cases.
- Accordingly, the Board had previously approved; the Case Sponsor (from a pool of PSR managers and Senior Managers) as the "single relevant person" to follow a settlement procedure and issue an infringement decision, and the PSR MD and one of the PSR Heads of Department as the "different relevant persons" to approve the Case Sponsor decisions, the Settlement Decision Makers (SDM).
- The PSR's CA98 Guidance provides that the SDM should not comprise of any person, authorised to act as a procedural Officer in CA98 cases or have been directly involved in the establishing evidence for the Case Sponsor decision. Given the size of the PSR, it was proposed that the current SDM pool be extended to include Competition Decision Committee (CDC) members, and Senior Advisor members of the executive committee.
- The Board discussed the proposal to extend the SDM pool and considered if this pool should be further expanded. The Board discussed the need for SDM to be experienced in competition law, and importance of one of the SDM being a PSR employee, to ensure the final decision is made in accordance with PSR policy and due process.

Following due consideration, the Board approved that:

- a) the Case Sponsor be the "single relevant person" under CA98 Rules that takes the decision to follow a settlement procedure and proposes to make a an infringement decision, both decisions being subject to the approval of two different SDM;
- b) the following additional categories of persons be included in the SDM pool as "different relevant persons" under CA98 Rules who can approve the Case Sponsor's decision as outlined in (a) above;
 - i. CDC members;
 - ii. Senior Advisor members of the executive committee who have not been authorised to act as a procedural Officer in CA98 cases;
 - iii. Competition Heads of department, and Competition Directors of the FCA Strategy and Competition Division; and
- c) authority be delegated to the PSR MD to appoint the two SDM to each CA98 settlement case ensuring that at least one is a PSR employee.

5 Papers for noting

5.1 PSR ExCo minutes

The Board noted the PSR ExCo minutes of 5 July 2016.

5.2 Forward Agenda

The Board noted the forward agenda.

6 Any Other Business

Amelia Fletcher advised that she had recently been appointed as a non-executive director to the Board of the Competitions and Markets Authority.

Marion Amersekere

Assistant Company Secretary

Annex A: Attendees

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| Marion Ameresekere | Assistant Company Secretary |
| Simon Pearce | Company Secretary |
| Louise Buckley | Head of Department, Communications and Operations |
| Paul Smith | Head of Department, Regulatory Strategy and Policy |
| Dora Guzeleva | Manager, PSR (items 4.1, 4.3 & 4.4) |
| Nancy Johnson | Manager, PSR (for items 4.3 & 4.4) |

Relevant associates and technical specialists also attended the meeting