

Consultation paper

Powers and Procedures Guidance

Consultation on proposed
revisions to our Powers and
Procedures Guidance

October 2023

We welcome your views on our proposed revisions to our Powers and Procedures Guidance. If you would like to provide comments, please send these to us by **5pm on 23 October 2023**.

You can email your comments to **PPGReview@psr.org.uk** or write to us at:

PPG Review
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential. We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website:

www.psr.org.uk/updated-ppg-consultation-2023/

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1 Executive summary

In this consultation paper, we revisit our Powers and Procedures Guidance on our regulatory and enforcement powers and procedures under the Financial Services (Banking Reform) Act 2013 (FSBRA), which was first published in March 2015 prior to our operational launch, with a view to amending some of our procedures.

We present for consultation an updated and refreshed version of our guidance.

Introduction

- 1.1** We are consulting on a revised version of our existing Powers and Procedures Guidance (PPG) published in June 2020, as reflected in Annex 1.
- 1.2** We propose to replace the existing PPG with the revised version. The changes we have made add to the content of, update and otherwise improve the PPG.
- 1.3** This document is intended to give a high-level overview of the changes we propose to make to the PPG. It is important that stakeholders read the revised PPG so that they are aware of and understand all the potential changes.

Background

- 1.4** Our PPG outlines the procedures and processes that we would generally apply in relation to our regulatory and enforcement powers and functions under the Financial Services (Banking Reform) Act 2013 (FSBRA).
- 1.5** We published the original PPG in March 2015, before the operational launch of the Payment Systems Regulator (PSR). We acknowledged at the time of publication the need to keep its contents under review, and to update it when necessary.
- 1.6** Between July and October 2019, we consulted on a number of proposed revisions, which we published in CP19/7, *Consultation on proposed revisions to our Powers and Procedures Guidance* (July 2019).¹
- 1.7** We published a revised version of the PPG in June 2020. This sought to give practical information on how we would:
 - exercise our powers to take regulatory action under sections 54 to 58 of FSBRA (including the access provisions)
 - take enforcement action in relation to compliance failures under sections 71 to 75 of FSBRA
 - gather information and conduct investigations under sections 81 to 90 of FSBRA

¹ <https://www.psr.org.uk/publications/consultations/cp19-7-psr-powers-and-procedures-guidance-consultation/>

What we are consulting on

- 1.8** In Chapter 3, we summarise the reasons for revising the PPG and outline the changes we are proposing to make to it. The revisions are intended to make it easier for regulated parties² to understand our approach to using our powers, and how we work in practice.
- 1.9** We are consulting on the proposed revised draft in Annex 1.

Reasons for and aims of revising the PPG

- 1.10** We are revising the PPG for two main reasons:
- it does not accurately reflect our current management structure and its practices, particularly in regard to how we make decisions to open enforcement cases
 - it restricts how we can deploy staff across our enforcement and monitoring functions
- The changes we propose will allow us greater flexibility to deploy staff to most effectively support our objectives.
- 1.11** We consider that there are other ways we can improve our procedures, which we highlight in Chapter 3.

Next steps

- 1.12** This consultation will close on 23 October 2023. We welcome comments from all stakeholders and interested parties, not only entities that we regulate.
- 1.13** During our consultation, we intend to engage with stakeholders to obtain as wide a variety of views as possible on our revised guidance. This consultation is likely to be of interest to:
- regulated parties and other persons who may be subject to our regulatory, enforcement and information and investigative powers
 - individuals, firms and other organisations that have an interest in when and how we use our powers
- 1.14** We expect to make final decisions on the content of the PPG before the end of the year. We aim to publish our finalised, updated PPG before early next year.
- 1.15** Our overall aim is to make our guidance as clear and accessible to users as possible.

Consultation question

Do you have any comments on the revised version of the PPG in Annex 1?

² For the purposes of the PPG, a 'regulated party' is any entity that may be the subject of regulatory or enforcement action by us.

2 Introduction

This introduction sets out in more detail the background to the publication of our PPG and gives an overview of how we have revised the draft in Annex 1.

2.1 The PSR is the economic regulator for the payment systems industry in the UK. We were established under the Financial Services (Banking Reform) Act 2013 (FSBRA) and launched in April 2015. FSBRA gives us statutory objectives (the 'payment system objectives') that require us to:

- ensure that payment systems are operated and developed in a way that considers and promotes the interests of service users (the businesses and consumers that use services provided by payment systems)
- promote effective competition in the markets for payment systems and services in the interests of service users – in particular, between payment system operators, payment service providers and payment system infrastructure providers
- promote the development of and innovation in payment systems, particularly the infrastructure used to operate those systems, in the interests of service users.³

2.2 In June 2020, the PSR published a revised version of the PPG, which sought to outline our powers and the processes and procedures that we would generally apply in relation to our regulatory functions under FSBRA.

³ FSBRA, sections 50 to 52.

3 Reasons for and aims of revising the PPG

This chapter explains our aims when revising the PPG, outlines the reasons behind the changes we propose and highlights key changes.

- 3.1** Our work so far has contributed greatly to our practical knowledge base and to our understanding of how and when we should use our formal powers, if at all. It has allowed us to develop our own good practice, which also reflects the good practice of regulators and authorities who perform functions similar to ours. Our work so far has also shown us that we need to adapt some of the procedures set out in the existing PPG and reflect these changes in a revised version. These needs reflect the nature and size of our organisation as well as the scale, form and technicality of our work.
- 3.2** There are two main reasons to revise the PPG. The existing PPG does not:
- accurately reflect our current management structure and its practices
 - enable staff who are deployed on monitoring or enforcement to work across functions
- 3.3** We explain these reasons further below. Annex 1 highlights key changes to the content of the revised PPG.
- 3.4** We believe these changes to our procedures will make our work more effective and efficient. They include amendments to our processes for deciding:
- whether to open an enforcement case to investigate a potential compliance failure
 - who we may appoint from among our staff to become part of the enforcement case team we allocate to a case
- 3.5** Our overall aim is to make our guidance more appropriate in view of our statutory objectives. We consider that revision of the PPG to achieve this will significantly benefit regulated parties, other external stakeholders and our own staff.

Process for opening an investigation

- 3.6** We propose adding more information about our process for deciding whether to open an enforcement case to investigate a potential compliance failure. Specifically, we propose saying who the decision-makers are (by reference to role and title).
- 3.7** We propose revising the PPG to reflect recent changes to our management structure and practices, including the creation of our new Supervision and Compliance Monitoring Division.

3.8 We also propose adding more information to give us greater flexibility in who we can appoint for the purpose of opening an enforcement case. To streamline our processes more effectively, we consider that we should have the flexibility to appoint the following body to decide whether to open an enforcement case:

- at the Managing Director's discretion, an individual or committee as set out in the Corporate Governance Resolution (CGR)

3.9 Therefore, we propose to revise paragraph 5.7 of the PPG to explain that the decision to open an enforcement case and investigate a compliance failure may be made by two 'case openers' or, alternatively, by the body just mentioned.

Flexibility for staff deployed on monitoring or enforcement to work across functions

3.10 The revised PPG (paragraph 5.12) also proposes changes in which staff we may appoint to become part of the enforcement team allocated to a case. Where an enforcement case is opened, staff that have been involved in monitoring conduct relating to a particular suspected compliance failure are not permitted to investigate.

3.11 We consider that removing the current restriction would enable us to deploy staff working on monitoring or enforcement across different functions. We expect this will allow us to assign resources to where they can best support our operational priorities, react rapidly to emerging issues and deliver outcomes more quickly.

3.12 As a relatively lean organisation, we need to make the best use of our available resources. This is especially important as we have issued several directions in recent years, which now require extensive monitoring for compliance.

3.13 Last year was also significant in reshaping our organisation, ready for our future challenges. We completed an organisational redesign – leading to the creation of the new Supervision and Compliance Monitoring Division – and refocused our working methods to improve our effectiveness.

3.14 Flexible use of resources is an important way for us to be efficient and agile in how we take decisions. Therefore, we propose to amend paragraph 5.12 of the PPG to enable staff that have been directly involved in monitoring conduct relating to a suspected compliance failure to become part of the enforcement case team investigating that same suspected compliance failure, should an enforcement case be opened.

3.15 We believe that by amending paragraph 5.12 in this way, we can make the most effective use of our resources to better reflect our emerging operational priorities, identify compliance failures, act to bring firms into compliance quickly and, where appropriate, take enforcement action. We believe that this would support our statutory objectives by letting us identify compliance failures more quickly, ensuring our remedies have the best chance of being effective and giving enforcement outcomes a greater impact.

3.16 We believe that the proposed change allows for judgements to be made about whether staff should be involved (and the extent of their involvement) on a case-by-case basis. We will pay due regard to the composition of the case team.

- 3.17** The obligations upon us are to make administrative decisions that are transparent, robust and fair, in line with public law and good regulatory practice. We summarise below our existing safeguards to ensure procedural fairness in enforcement cases.
- 3.18** First, the decision to open an enforcement case and investigate a compliance failure is currently made by two case openers (such as the Managing Director of the PSR, the Head of Policy, the Head of Regulatory and Competition Enforcement or a member of staff of at least managerial level), thereby providing executive oversight of the case opening process. If a case follows the settlement route, settlement decisions are taken by independent senior decision-makers (SDMs) who have had no prior involvement in the case.⁴ Although settlement involves an admission of liability by the subject of an investigation, SDMs will scrutinise the case team's conclusions regarding liability and appropriate sanction. If a case is contested, the independent Enforcement Decision Committee (EDC),⁵ not the investigation team, makes a finding that a compliance failure has occurred or that a sanction is appropriate on behalf of the PSR.⁶ Prior to a contested case even reaching the EDC, the case sponsor scrutinises the case team's preliminary findings, including those regarding liability.⁷ The EDC will hear evidence from both the case team and the subject of an investigation before reaching a decision regarding liability and sanction (if any).
- 3.19** We consider that the proposed revisions to the PPG will benefit regulated parties, any other person affected by our work, and other external stakeholders. Long enforcement cases place additional resource burdens on the subjects. We believe the proposed changes will enable us to act more quickly to remedy compliance failures and publish enforcement outcomes when they would have most impact. With the ability to move staff across functions, we will be able to deploy them where they are most needed. With greater flexibility to make the best use of the resources available in both teams, we will be able to enforce and monitor more efficiently and effectively.
- 3.20** Clear, robust guidance about how we use our powers will increase transparency and give more clarity and certainty to those who may be affected when we use them.

4 PPG, paragraph 5.36.

5 PPG, paragraph 5.66.

6 PPG, paragraph 5.65.

7 PPG, paragraph 5.56.

4 Next steps and consultation questions

This section sets out the next steps for our review of the PPG, including guidance on who can respond to our consultation, the recommended format for responses, and how and when to submit them.

- 4.1** We are now consulting on the proposed content of the revised versions of paragraph 5.7 and paragraph 5.12 of the PPG, as set out in Annex 1. We are asking for comments on this consultation paper by 5pm on 23 October 2023.
- 4.2** You can send your comments and responses to our consultation questions by emailing us at PPGReview@psr.org.uk. We would be grateful if you could provide your response in a Word document (rather than, or as well as, a PDF).
- 4.3** We welcome comments from all stakeholders and interested parties, not only entities that we regulate. During our consultation we will engage with stakeholders to obtain as wide a variety of views as possible on our revised guidance.
- 4.4** Following consultation and our assessment of the responses received, we expect to make final decisions on the content of the PPG in the autumn 2023. We aim to publish our finalised, updated version before the end of the year.
- 4.5** We intend to conduct a separate review of any guidance that we consider may also need updating to reflect any changes made to the PPG. Where appropriate, we will further consult on proposed changes to that guidance.
- 4.6** We will make all non-confidential responses to this consultation available for public inspection.

Annex 1

DRAFT Revised Powers and Procedures Guidance

Opening an enforcement case

Existing paragraph 5.7

The decision to open an enforcement case and investigate a compliance failure is made by two 'case openers'. These may be either the Managing Director of the PSR, the Head of Policy, the Head of Regulatory and Competition Enforcement or a member of staff of at least manager level.

Proposed paragraph 5.7

The decision to open an enforcement case and investigate a compliance failure may be made by two 'case openers'. These may be the Managing Director of the PSR, the Head of Policy, the Head of Strategy and Intelligence and the Head of Supervision and Compliance Monitoring. Alternatively, at the Managing Director's discretion, the decision may be delegated further to an individual or committee as set out in the Corporate Governance Resolution (CGR) provided the requirements for appropriate decision-making procedures and accountability set out in the CGR are met.

Existing paragraph 5.12

The case team will be comprised of staff who have not been directly involved in monitoring any conduct relating to a suspected compliance failure by the regulated party under investigation. However, staff who have previously been involved in our other monitoring, and policy work that relates to the subject matter of an open enforcement case (for example, the IFR), may support and provide technical advice to the enforcement case team.

Proposed paragraph 5.12

The case team may include staff who have been directly involved in monitoring any conduct relating to a suspected compliance failure by the regulated party under investigation.

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