FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Annexes to the Policy Statement PSR PS15/1A

A new regulatory framework for payment systems in the UK – Annexes

March 2015

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General and Specific Directions given by the Payment Systems Regulator

General and specific directions given by the Payment Systems Regulator

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General directions on general and transitional provisions, participants' relationships with the Payment Systems Regulator, access to, and governance of, regulated payment systems

Powers exercised

The Payment Systems Regulator makes these general directions in accordance with the following sections of the Financial Services (Banking Reform) Act 2013 ('the Act'):

- sections 49 to 53 (General duties of regulator)
- section 54 (Regulatory and competition functions – directions)
- section 96 (Guidance)
- section 104 (Consultation in relation to generally applicable requirements)

Commencement

These general directions come into force as follows:

General direction	Applicable to	Commencement date
General directions on General Provisions (GP1, GP2, GP3, GP4 and GP5)	Participants in regulated payment systems	30 April 2015
General directions on Transitional Provisions (TP1, TP2)	Participants in regulated payment systems	30 April 2015
General direction 1 (Participants' relationships with the Payment Systems Regulator)	Participants in regulated payment systems	30 April 2015
General direction 2 (Access)	Non-PSR 2009 payment system operators*	30 June 2015
General direction 3 (Access)	PSR 2009 payment system operators	30 June 2015
General direction 4 (Governance)	Operators of non-card regulated payment systems*	30 September 2015
General direction 5 (Governance)	Operators of non-card regulated payment systems*	30 April 2015
General direction 6 (Governance)	Operators of non-card regulated payment systems*	30 April 2015

* excluding *Northern Ireland Cheque Clearing*

Citation

These general directions may be cited as:

- General directions on general provisions (General Provisions)
  - General direction on general provision GP1 (General Provision GP1)
  - General direction on general provision GP2 (General Provision GP2)
  - General direction on general provision GP3 (General Provision GP3)
  - General direction on general provision GP4 (General Provision GP4)
  - General direction on general provision GP5 (General Provision GP5)
- General directions on transitional provisions (Transitional Provisions)
  - General direction on transitional provision TP1 (Transitional Provisions TP1)
  - General direction on transitional provision TP2 (Transitional Provision TP2)
- General direction 1 (Participants' relationships with the Payment Systems Regulator)
- General direction 2 (Access)
- General direction 3 (Access)
- General direction 4 (Governance)
- General direction 5 (Governance)
- General direction 6 (Governance)

By order of the Board of the Payment Systems Regulator

18 March 2015

General directions on *general provisions* regarding the interpretation, definitions used and application of general directions and general requirements on participation in *regulated payment systems*

These General Directions set out general provisions regarding the application of general directions and general requirements on participation in regulated payment systems.

Guidance:

General directions are made under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act), general requirements under section 55 of the Act and guidance under section 96 of the Act.

Guidance, including in this section, appears in a separate box.

Breaching a general direction or general requirement is a compliance failure, which makes a participant liable for regulatory sanctions. Guidance, on the other hand, does not give rise to a binding obligation. Guidance may be used, among other things, to explain the implications of other provisions (such as general directions), to indicate a possible means of compliance and to recommend a particular course of action. Guidance is generally used to throw light on a particular aspect of a regulatory requirement, not to be an exhaustive description of a participant's obligations. Guidance provides clarification about what is required under a general direction or general requirement, and sets out what the Payment Systems Regulator expects in terms of behaviours when complying with a general direction or general requirement.

A participant cannot be liable for a compliance failure merely because it has not followed guidance. Nor is there any presumption that departing from guidance is indicative of a breach of the relevant direction or requirement. However, if a participant acts in accordance with guidance in the circumstances contemplated by that guidance, then the Payment Systems Regulator will proceed as if that participant has complied with the aspects of the direction or requirement to which the guidance relates.

General direction on general provision GP1

General directions and general requirements only apply to *participants* in *regulated payment systems*.

Guidance:

The application of general directions or general requirements on participation in *regulated payment systems* will depend on who the direction or requirement is aimed at. In some instances this will be obvious from the direction or requirement itself. For example, some directions only apply to *operators*. The following General Provisions restrict the application of the directions and requirements to take into account, among other things, matters reserved for authorities and regulators under EU instruments, including authorities and regulators in other EEA States.

General direction on general provision GP2

The application of the directions and requirements made by the *Payment Systems Regulator* are restricted by the following:

a. directions and requirements do not apply to any *participant* that provides services to persons in the United Kingdom in so far as responsibility for the matter in question is reserved by an EU instrument for another EEA State (or an authority in that EEA State)

b. the reference to the provision of services to persons in the United Kingdom includes both services provided on a cross-border basis and services provided from an establishment in the United Kingdom.

Guidance:

The general directions and general requirements on participation in *regulated payment systems* are not intended to apply to foreign *participants* exercising the freedom to provide services or the right of establishment where the supervision of the relevant activities of that *participant* is reserved by an EU instrument to an authority in another EEA State. In particular, the general directions and general requirements on participation in *regulated payment systems* are not intended to apply to a *participant* insofar as the matter in question is reserved for an authority in another EEA State by, for example:

- Regulation 575/2013 (the Capital Requirements Regulation)
- Directive 2007/64/EC (the Payment Services Directive)
- Directive 2009/110/EC (the E-Money Directive)

The general directions and general requirements on participation in *regulated payment systems* are not intended to apply to a service provider within the meaning of article 2(b) of Directive 2000/31/EC (the E-Commerce Directive) that provides services to persons in the United Kingdom from an establishment in another EEA State to the extent that the service provider is acting as such.

General direction on general provision GP3

A *participant* will not be subject to a direction or requirement to the extent that it would be contrary to the United Kingdom's obligations under an EU instrument.

Guidance:

The general directions and general requirements on participation in *regulated payment systems* will not apply to the extent that they purport to impose an obligation which is inconsistent with the requirements of an EU instrument. For example, there may be circumstances where the scope of a direction is limited by the harmonised obligations contained in Directive 2007/64/EC (the Payment Services Directive) or Directive 2009/110/EC (the E-Money Directive).

General direction on general provision GP4

The general directions and general requirements on participation in *regulated payment systems* apply to activities of *participants* within the United Kingdom, or which impact on the activities of *participants* in the United Kingdom in relation to *regulated payment systems* and services provided by *regulated payment systems*.

General Provision GP5: Definitions

Words or expressions will have the meaning assigned to them in this General Provision GP5, and except where the context otherwise requires, other expressions have the meanings attributed to them in Part 5 and Schedules 4 and 5 of the *Act*.

access requirements	the rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a *regulated payment system*
Act	the Financial Services (Banking Reform) Act 2013
Bacs	the *Bacs regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
Cheque & Credit	the *Cheque & Credit regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
card payment system	a *regulated payment system* that enables a holder of a payment card to effect a payment
central infrastructure	a package of systems and services, comprising hardware and software, provided under contract to an *operator* for the purposes of operating the relevant *regulated payment system*, including the processing of funds transfers
central infrastructure provider	an *infrastructure provider* when providing *central infrastructure*
CHAPS	the *CHAPS regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
direct access	access to a *regulated payment system* to enable a *payment service provider* to provide services for the purposes of enabling the transfer of funds using the *regulated payment system*, as a result of arrangements made between that *payment service provider* and the *operator* (and other *participants*, as applicable)
direct payment service provider	a *payment service provider* with *direct access* to a *regulated payment system*
direct technical access	a direct connection by a *payment service provider* or another third party with the *central infrastructure* used by a *regulated payment system*
director	in relation to an unincorporated association or a body corporate, any person appointed to direct its affairs, including a person who is a member of its *governing body*
Faster Payments	the *Faster Payments Scheme regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
General Provisions	*citation for the General Direction* on *general provisions* regarding interpretations and definitions used within these general directions on participants' relationships with the *Payment Systems Regulator*, access to and governance of *regulated payment systems* (numbered GP1, GP2, GP3, GP4 and GP5 respectively)
governing body	the board of *directors*, committee of management, or other body entitled to take management decisions, as set out in the memorandum and articles of association or equivalent constitutional document
indirect access	access to a *regulated payment system* through a contractual arrangement with a *direct payment service provider* to enable it to provide services (for the purposes of enabling the transfer of funds using that *regulated payment system*) to persons who are not *participants* in the system

indirect payment service provider	a *payment service provider* that has *indirect access*
infrastructure provider	as defined in section 42(4) of the *Act*
LINK	the *LINK regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
MasterCard	the *MasterCard regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
non-card payment system	a *regulated payment system* other than a *card payment system*
non-PSR 2009 payment system	a *regulated payment system* other than a *PSR 2009 payment system*
Northern Ireland Cheque Clearing	the *Northern Ireland Cheque Clearing regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015
operator	as defined in section 42(3) of the *Act*
participant	as defined in section 42(2) of the *Act*
payment service provider	as defined in section 42(5) of the *Act*
payment system	as defined in section 41 of the *Act*
Payment Systems Regulator	the body corporate established under Part 5 of the *Act*
PSR 2009	Payment Services Regulations 2009 (SI 2009/209), as amended from time to time
PSR 2009 payment system	a *regulated payment system* to which Part 8 of the *PSR 2009* applies
public interest matters	a matter concerning the *operator*, the *regulated payment system* operated by the *operator* or the payments industry for the long-term benefit of the United Kingdom, its citizens and businesses as a whole, with particular emphasis on customer needs, competition, innovation, reducing barriers to entry in the payments industry and limiting systemic risk, as set out in the memorandum and articles of association or equivalent constitutional document of the relevant *operator*
regulated payment system	a *payment system* designated by HM Treasury under section 43 of the *Act*
service-users	those who use or are likely to use services provided by *regulated payment systems*
Transitional Provisions	*citation for the General Direction* on *transitional provisions* regarding access to and governance of *regulated payment systems* (numbered TP1 and TP2 respectively)
Visa	the *Visa Europe regulated payment system* designated by HM Treasury under section 43 of the *Act* in March 2015 in March 2015

For the purpose of interpreting general directions:

- the General Provisions are to be read as directions under section 54 of the *Act* or as guidance under section 96 of the *Act*, as appropriate
- headings and titles shall be disregarded, and
- the Interpretation Act 1978 shall apply as if these directions were an Act of Parliament.

Emergency

Guidance:

The *Payment Systems Regulator* recognises that there may be occasions when, because of a particular emergency, a *participant* may be unable to comply with a particular direction or requirement. The purpose of this guidance is to provide insight into our approach in such circumstances.

If any emergency arises which:

- makes it impracticable for a *participant* to comply with a particular direction or requirement
- could not have been avoided by the *participant* taking all reasonable steps, and
- is outside the control of the *participant* and its agents (and any of their employees)

the *Payment Systems Regulator* will not normally consider the *participant* to be failing to comply with that direction or requirement to the extent that, in an emergency, compliance with that direction or requirement is impracticable.

This would normally be the position of the *Payment Systems Regulator* only for as long as:

- the consequences of the emergency continue, and
- the participant can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the direction or requirement, and to mitigate losses and potential losses to service users (if any).

We expect such a *participant* to notify us as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

In the context of the above in emergencies, an action is normally considered not practicable if it involves a *participant* going to unreasonable lengths. The above does not affect our powers to take action in an emergency. For example, the *Payment Systems Regulator* may exercise its power to grant access or to issue a specific direction in an emergency.

General direction on *transitional provisions* in relation to the general directions on access to and governance of *regulated payment systems*

General direction on transitional provision TP1

In the first year following designation of a *payment system* by HM Treasury under section 43 of the *Act*, references to the '12-month period' in General Direction 2 (access), General Direction 3 (access) and General Direction 4 (governance) are to be read as references to the period beginning with the date of designation and ending with the specified date on which the relevant report is due.

General direction on transitional provision TP2

For reports due in 2015, the following transitional provision applies:

a. the report due on 31 July 2015 from non-*PSR 2009 payment system operators* need only include the following:

i. a self-assessment by the *operator* on preparatory work it has carried out to ensure that its *access requirements* are compliant with the obligation in Direction 2.1 by 30 June 2015, and

ii. the items in Directions 2.4(e) and 2.4(f);

b. the report due on 31 July 2015 from *PSR 2009 payment system operators* need only include the following:

i. a self-assessment by the *operator* on its compliance with the obligation in regulation 97 of the *PSR 2009* covering the period from 1 July 2014 to 30 June 2015, and

ii. the items in Directions 3.4(e) and 3.4(f);

c. the report due on 31 October 2015 from *regulated payment system operators* need only include the following:

i. a self-assessment by the *operator* on preparatory work it has carried out to ensure that it is compliant with the obligation in Direction 4.1 by 30 September 2015, and

ii. the items in Direction 4.2(c).

General direction 1 (Participants' relationships with the Payment Systems Regulator): participants in regulated payment systems

1.1 A *participant* must deal with the *Payment Systems Regulator* in an open and cooperative way and must disclose to the *Payment Systems Regulator* appropriately anything relating to the *participant* which could materially adversely impact on the advancement of the *Payment Systems Regulator*'s statutory objectives and duties.

1.2 This direction comes into effect on 30 April 2015.

Guidance:

The *Payment Systems Regulator*'s statutory objectives referenced in Direction 1.1 include those set out in the *Act* as well as any objectives or duties under any other legislation that we are designated the competent authority for.

Direction 1.1 is relevant to the *Payment Systems Regulator*'s powers of information gathering and investigation and more generally its powers of regulatory intervention.

Direction 1.1 applies in so far as it:

a. requires or prohibits the taking of specified action in relation to a *regulated payment system* or

b. sets the standards to be met in relation to the *regulated payment system* in which a *participant* participates.

In dealing with the PSR,

- the *Payment Systems Regulator* expects a 'no surprises' culture from *participants*, and for *participants* to engage meaningfully and constructively with it
- the *Payment Systems Regulator* expects the *governing bodies* of *participants* to take responsibility for fostering an open and co-operative relationship with it, bringing to its attention in appropriate ways the most important information the *Payment Systems Regulator* needs
- the *Payment Systems Regulator* relies on *participants* to exercise sound judgement in determining the developments or changes that could materially adversely impact on the advancement of the *Payment Systems Regulator*'s statutory objectives and duties and, when communicating particular information to the *Payment Systems Regulator*, to explain why they are doing so and how that information is relevant. The *Payment Systems Regulator* does not expect *participants* to notify it of the minutiae of running their businesses.

General direction 2 (Access): non-PSR 2009 regulated payment system operators

2.1 An *operator* of a *regulated payment system* which is a not a *PSR 2009 payment system* or *Northern Ireland Cheque Clearing* must have objective, risk-based and publicly disclosed *access requirements* which permit fair and open access to the *regulated payment system*.

Guidance:

This General Direction applies to the *Bacs*, *CHAPS*, *C&C* and *Faster Payments regulated payment systems* designated by HM Treasury.

2.2 For the purposes of Direction 2.1, public disclosure of the *access requirements* means by providing at least the following:

a. a copy of such *access requirements* in a prominent, easily accessible position on any relevant website operated or controlled by that *operator*

b. the *Payment Systems Regulator* with a link to the relevant website referred to in Direction 2.2(a), and

c. a copy of such *access requirements* to the *Payment Systems Regulator*.

Guidance:

The *Payment Systems Regulator* does not expect *operators* to provide or publicly disclose in the *access requirements* of the *regulated payment system* any technical information which could compromise the security or integrity of the payment system.

2.3 The *Payment Systems Regulator* must be informed, as soon as reasonably practicable, of any material updates and changes which are made to the *operator's access requirements*.

2.4 A report on compliance with the obligation in Direction 2.1 must be provided to the *Payment Systems Regulator* by 31 July covering the 12-month period to 30 June in each year. This report must include at least the following:

a. a self-assessment by the *operator* on compliance of its *access requirements* with the obligation in Direction 2.1 throughout the relevant 12-month period

b. details of all occasions in the relevant 12-month period when an expression of interest in potentially securing *direct access* or *direct technical access* has been made and details of the *operator's* response to, and outcome of, such expression of interest

c. details of all occasions in the relevant 12-month period when an enquiry or objection regarding potential changes to the *access requirements* has been made to the *operator* and details of the *operator's* response to, and outcome of, such enquiry or objection

d. details of all occasions in the relevant 12-month period when the *operator* has engaged with, and considered, the views of *payment service providers* and other interested parties on the operation and effectiveness of its *access requirements*

e. details of any anticipated *operator* review, or engagement with *payment service providers* and other interested parties, that the *operator* plans to take over the following 12-month period in relation to its *access requirements*, and

f. details of any anticipated future developments that the *operator* considers may require or justify material updates or changes to its *access requirements*.

2.5 This direction comes into effect on 30 June 2015.

Guidance:

Examples of 'material updates and changes' as referred to in Directions 2.3 and 2.4(f) may include, but are not limited to, changes to:

- terms and conditions relating to fees or charges for *direct access,* or technical requirements for entry to, or ongoing participation in, the *regulated payment system,* where the update or change could noticeably affect (positively or negatively) *direct access* or *direct technical access* for *payment service providers*
- eligibility requirements for *payment service providers* to obtain or continue to have *direct access*, or
- any rule, criteria, term or condition, policy or procedure governing access to, or participation in, a *regulated payment system* that may affect *indirect access* to that *regulated payment system* – to the extent that *operators* believe that such changes could noticeably affect (positively or negatively) *indirect access* (i.e. routine changes to technical requirements, such as non-significant software updates, do not need to be notified).

General direction 3 (Access): PSR 2009 regulated payment system operators

3.1 An *operator* of a *regulated payment system* which is a *PSR 2009 payment system* must publicly disclose its *access requirements*.

Guidance:

This General Direction applies to the *LINK*, *MasterCard* and *Visa regulated payment systems* designated by HM Treasury.

3.2 For the purposes of Direction 3.1, public disclosure of the *access requirements* means by providing at least the following:

a. a copy of such *access requirements* in a prominent, easily accessible position on any relevant website operated or controlled by that *operator*

b. the *Payment Systems Regulator* with a link to the relevant website referred to in Direction 3.2(a), and

c. a copy of such *access requirements* to the *Payment Systems Regulator*.

Guidance:

The *Payment Systems Regulator* does not expect *operators* to provide or publicly disclose in the *access requirements* to the *regulated payment system* any technical information which could compromise the security or integrity of the payment system.

3.3 The *Payment Systems Regulator* must be informed, as soon as reasonably practicable, of any material updates and changes which are made to the *operator's access requirements*.

Guidance:

Examples of 'material updates and changes' as referred to in Directions 3.3 and 3.4(f) may include, but are not limited to, updates and changes to:

- terms and conditions relating to fees or charges, or technical requirements for entry to, or ongoing participation in, the *regulated payment system,* where the update or change could noticeably affect (positively or negatively) *direct access* or *direct technical access* for *payment service providers*
- eligibility requirements for *payment service providers* to obtain or continue to have *direct access*, or
- any rule, criteria, term or condition, policy or procedure governing access to, or participation in, a *regulated payment system* that may affect *indirect access* to that *regulated payment system* – to the extent that *operators* believe that such changes could noticeably affect (positively or negatively) *indirect access* (i.e. routine changes to technical requirements, such as non-significant software updates, do not need to be notified).

3.4 An *operator* of a *regulated payment system* which is a *PSR 2009 payment system* must provide a report on compliance of its *access requirements* with the obligation contained in regulation 97 of the *PSR 2009* to the *Payment Systems Regulator* by 31 July covering the 12-month period to 30 June in each year. This report must include at least the following:

a. a self-assessment by the *operator* on compliance of its *access requirements* with the obligation contained in regulation 97 of the *PSR 2009* throughout the relevant 12-month period

b. details of all occasions in the relevant 12-month period when an expression of interest in potentially securing *direct access* or *direct technical access* has been made and details of the *operator's* response to, and outcome of, such expression of interest

c. details of all occasions in the relevant 12-month period when an enquiry or objection regarding potential changes to the *access requirements* has been made and details of the *operator's* response to, and outcome of, such enquiry or objection

d. details of all occasions in the relevant 12-month period in which the *operator* has engaged with, and considered, the views of *payment service providers* and other interested parties on the operation and effectiveness of its *access requirements*

e. details of any anticipated *operator* review, or engagement with *payment service providers* and other interested parties, that the *operator* plans to take over the following 12-month period in relation to its *access requirements*, and

f. details of any anticipated future developments that the *operator* considers may require or justify material updates or changes to its *access requirements*.

3.5 This direction comes into effect on 30 June 2015.

General direction 4 (Governance): operators of non-card regulated payment systems

4.1 An *operator* of a *regulated payment system* which is not a *card payment system* or *Northern Ireland Cheque Clearing* must ensure that there is appropriate representation of the interests of *service-users* in the *operator's governing body's* decision-making processes.

Guidance:

This General Direction applies to the *Bacs*, *CHAPS*, *C&C, Faster Payments* and *LINK regulated payment systems* designated by HM Treasury.

When complying with Direction 4.1, the *Payment Systems Regulator* recognises that an *operator* may have *service-users* outside the UK, but we accept that *operators* can take a reasonable approach to considering as relevant for the purpose of Direction 4.1 those *services-users* who engage with the services and activities of that *regulated payment system* in the UK. Direction 4 should also be read in light of *General Provision GP4*.

4.2 A report on compliance with the obligation in Direction 4.1 must be provided to the *Payment Systems Regulator* by 31 October covering the 12-month period to 30 September in each year. This report must include at least the following:

a. a self-assessment by the *operator* on compliance with the obligation in Direction 4.1 throughout the relevant 12-month period

b. details of all occasions in the relevant 12-month period when the *operator* has engaged with, and considered, the views of *service-users* (including *indirect payment service providers*) and other interested parties on the effectiveness of the representation of the interests of *service-users* in its decision-making processes of its *governing body*, and

c. details of any anticipated review, or engagement with *service-users* (including *indirect payment service providers)* and other interested parties, that the *operator* plans to take over the following 12-month period in the representation of the interests of *service-users* in its decision-making processes of its *governing body*.

4.3 This direction comes into effect on 30 September 2015.

General direction 5 (Governance): operators of non-card regulated payment systems

5.1 An *operator* of a *regulated payment system* which is a not a *card payment system* or *Northern Ireland Cheque Clearing* must take all reasonable steps to ensure that any person acting as a *director* of that *operator* must not be appointed to, retain the position of or act as a *director* of a *central infrastructure provider* to that *regulated payment system*.

5.2 This direction comes into effect on 30 April 2015.

Guidance:

This General Direction applies to the *Bacs*, *CHAPS*, *C&C, Faster Payments* and *LINK regulated payment systems* designated by HM Treasury.

Direction 5.1 applies where a *central infrastructure provider* is currently supplying that *regulated payment system*.

It also applies where a *central infrastructure provider* is participating in a tendering exercise or otherwise bidding to supply that *regulated payment system*.

As soon as a *regulated payment system* is considering organising a tendering exercise or otherwise inviting bidding to supply *central infrastructure* to that *regulated payment system*, the *operator* of that *regulated payment system* must take all reasonable steps to ensure that any person acting simultaneously as a *director* of that *regulated payment system* and of any *central infrastructure provider* participating in that tendering exercise, or otherwise bidding to supply that *regulated payment system,* must give up one of those *director* positions.

General direction 6 (Governance): operators of non-card regulated payment systems

6.1 An *operator* of a *regulated payment system* which is not a *card payment system* or *Northern Ireland Cheque Clearing* must, as soon as reasonably practicable, publish minutes of its *governing body*, in accordance with Directions 6.2, 6.3, 6.4, 6.5 and 6.6.

Guidance:

This General Direction applies to the *Bacs*, *CHAPS*, *C&C, Faster Payments* and *LINK regulated payment systems* designated by HM Treasury.

6.2 The minutes published must include at least the following, in a clear, comprehensive and easily accessible form:

a. an accurate summary of the discussions of the *governing body*, including any dissenting views

b. a record of all decisions and all votes by *directors* (where a decision is made by consensus, all *directors* present and entitled to vote must be recorded as supporting that decision, with any absentee or recused *directors* being recorded)

c. the reasons behind each decision, including the reasons given by *directors* for their vote, and including where the decision is to reject a proposal made to the *governing body*, and

d. if applicable, a statement from all independent *directors* explaining how they have exercised their discretion related to *public interest matters*.

Guidance:

The minutes required under Directions 6.1 and 6.2 are not expected to be verbatim transcripts of meetings but, rather, to demonstrate clearly what proposals have been made, what discussions were held and what decisions were arrived at, including reasons for decisions and any votes (in favour, dissenting, abstentions and recusals).

6.3 Publication of the minutes must be effected by providing:

a. a copy of the minutes in a prominent, easily accessible position on any relevant website operated or controlled by the *operator*

b. the *Payment Systems Regulator* with a link to the relevant website in Direction 6.3(a), and

c. a copy of the minutes to the *Payment Systems Regulator*.

Guidance:

Minutes should be published as soon as possible after the meeting of the relevant *governing body* to be effective in achieving transparency over decision-making. The *Payment Systems Regulator* would typically expect that this would involve publication of the minutes within eight weeks after the relevant meeting.

6.4 The minutes published in accordance with Direction 6.3 may be published in redacted form where this is necessary to protect commercial confidentiality, candid debate and the financial stability or integrity of the *regulated payment system*, but any and all redactions must be:

a. limited to the extent necessary, reasonable and justifiable

b. consistent with retaining the sense or meaning of the remaining text so that the matters referred to are capable of being understood by interested parties, and

c. in accordance with the policy in Direction 6.6.

6.5 Redactions to minutes in accordance with Direction 6.4 may also include information relating to the *operator*'s activities outside of the United Kingdom, to the extent that those activities do not impact on the relevant *regulated payment system* in the United Kingdom, but any and all redactions must be:

a. limited to the extent necessary, reasonable and justifiable

b. consistent with retaining the sense or meaning of the remaining text so that the matters referred to are capable of being understood by interested parties, and

c. in accordance with the policy in Direction 6.6.

6.6 An *operator* of a *regulated payment system* which is not a *card payment system* or *Northern Ireland Cheque Clearing* must have a stated and reasoned policy regarding the redaction of minutes of its *governing body* and must provide the *Payment Systems Regulator* with a copy of that policy.

6.7 This direction comes into effect on 30 April 2015.

Specific direction 1 on access to regulated payment systems

Powers exercised

The *Payment Systems Regulator* makes this specific direction in accordance with the following sections of the Financial Services (Banking Reform) Act 2013 ('*the Act*'):

- sections 49 to 53 (General duties of regulator)
- section 54 (Regulatory and competition functions – directions)
- section 62(2)(a) (Duty to consider exercise of powers under Competition Act 1998)
- section 96 (Guidance)

Application

This specific direction applies to *Barclays*, *HSBC*, *Lloyds* and *RBS*.

Commencement

This specific direction comes into force on 30 June 2015.

Citation

This specific direction may be cited as Specific Direction 1 (Access: sponsor banks).

By order of the Board of the Payment Systems Regulator

18 March 2015

Interpretations and definitions used within this specific direction on access to *regulated payment systems*

Specific Definitions

General Provision GP5 (Definitions) is incorporated into this specific direction and is to be read as directions under section 54 of the *Act* or as guidance under section 96 of the *Act*, as appropriate.

Words or expressions will have the meaning assigned to them in these specific definitions and in General Provision GP5 and, except where the context otherwise requires, other expressions have the meanings attributed to them in Part 5 and Schedules 4 and 5 of the *Act*.

Barclays	Barclays PLC, and all companies and business owned or controlled by Barclays PLC to the extent that they participate in a *regulated payment system* and provide *sponsor bank services*, including but not limited to Barclays Bank PLC and Barclays Bank
HSBC	HSBC Holdings PLC, and all companies and business owned or controlled by HSBC Holdings PLC to the extent that they participate in a *regulated payment system* and provide *sponsor bank services*, including but not limited to HSBC Bank PLC
Lloyds	Lloyds Banking Group PLC, and all companies and business owned or controlled by Lloyds Banking Group PLC to the extent that they participate in a *regulated payment system* and provide *sponsor bank services*, including but not limited to Lloyds Bank PLC, HBOS, Bank of Scotland PLC and Halifax
major office	a *sponsor bank's* registered office or head office
RBS	The Royal Bank of Scotland Group PLC, and all companies and business owned or controlled by The Royal Bank of Scotland Group PLC to the extent that they participate in a *regulated payment system* and provide *sponsor bank services*, including but not limited to The Royal Bank of Scotland, NatWest, National Westminster Bank and Coutts & Co
sponsor bank	a *payment service provider* that has *direct access* to a *regulated payment system* and provides *indirect access* to that system to other *payment service providers* for the purpose of enabling the transfer of funds within the United Kingdom
sponsor bank eligibility criteria	the criteria that a *payment service provider* must meet to be eligible for the supply of *sponsor bank services*
sponsor bank services	services provided to a *payment service provider* or potential *payment service provider* who is not a *participant* in a particular *regulated payment system* to enable them to become and continue to be an *indirect payment service provider* using that *regulated payment system*

Interpretation

For the purpose of interpreting this specific direction:

- General Provisions GP1, GP2, GP3 and GP4 are incorporated into this specific direction and are to be read as directions under section 54 of the *Act* or as guidance under section 96 of the *Act*, as appropriate
- headings and titles shall be disregarded, and
- the Interpretation Act 1978 shall apply as if these directions were an Act of Parliament.

Guidance:

Specific directions are made under section 54 of the Financial Services (Banking Reform) Act 2013 (the *Act*) and guidance under section 96 of the *Act*.

Guidance, including in this section, appears in a separate box.

Breaching a specific direction is a compliance failure, which makes a *participant* liable for regulatory sanctions. Guidance, on the other hand, does not give rise to a binding obligation. Guidance may be used, among other things, to explain the implications of other provisions (such as specific directions), to indicate a possible means of compliance and to recommend a particular course of action. Guidance is generally used to throw light on a particular aspect of a regulatory requirement, not to be an exhaustive description of a *participant's* obligations. Guidance provides clarification about what is required under a specific direction, and sets out what the *Payment Systems Regulator* expects in terms of behaviours when complying with a specific direction.

A *participant* cannot be liable for a compliance failure merely because it has not followed guidance. Nor is there any presumption that departing from guidance is indicative of a breach of the relevant direction. However, if a *participant* acts in accordance with guidance in the circumstances contemplated by that guidance, then the *Payment Systems Regulator* will proceed as if that *participant* has complied with the aspects of the direction to which the guidance relates.

Specific direction 1 (Access): sponsor banks

1.1 This specific direction 1 requires each of *Barclays*, *HSBC*, *Lloyds* and *RBS* to take the specific actions set out below.

1.2 *Barclays*, *HSBC*, *Lloyds* and *RBS* must each publish clear and up-to-date information on its *sponsor bank services* in respect of access to, and use of, any *non-card regulated payment system* which is not *Northern Ireland Cheque Clearing* by an *indirect payment service provider*, in accordance with Specific Directions 1.3 and 1.4.

Guidance:

Barclays, HSBC, Lloyds and RBS, in their capacity as sponsor banks, make and receive payments using regulated payment systems as part of international correspondent banking relationships. For the purposes of this specific direction, the Payment Systems Regulator does not consider such relationships as falling within the definition of sponsor bank services.

The definition of indirect access includes services provided by sponsor banks to payment service providers, for the purposes of enabling those payment service providers to transfer funds on behalf of 'persons'. The reference to 'persons' refers to both individuals and business customers.

For the purpose of this specific direction, the definition of indirect payment service providers is a broad one which includes among others credit institutions, credit unions, payment institutions, electronic money institutions, regardless of whether they have a unique sort code or not.

For the purpose of this specific direction, the definition of sponsor bank services excludes services provided to payment service providers which are only for the purpose of transferring funds on their own behalf. Examples of such excluded services are:

- Services to firms such as utilities or retailers, which are used purely for corporate transactions such as receiving payments from customers and paying staff and suppliers.
- Services to *payment service providers* that have a corporate relationship with a bank solely for transactions such as paying staff and suppliers (i.e. services on their own behalf), and not for the purpose of transferring funds of behalf of other end customers.

Conversely, services provided to *payment service providers* by a *sponsor bank* for multiple purposes, which include services for the purpose of enabling the transfer of funds using a *regulated payment system* to persons who are not *participants* in the system, are **within** the scope of the definition of *sponsor bank services*.

Specific Direction 1.2 requires the provision of information on *sponsor bank services* in respect of access to, and use of, any *non-card regulated payment system* which is not *Northern Ireland Cheque Clearing*. For the avoidance of doubt, this means information on *indirect access* to the *Bacs*, *CHAPS*, *C&C*, *Faster Payments* and *LINK regulated payment systems* designated by HM Treasury.

1.3 The information published must include at least the following, in a clear, comprehensive and easily accessible form, for each of *Barclays*, *HSBC*, *Lloyds* and *RBS*:

a. its corporate name, *major office* address and contact details of an appropriate named contact person in relation to its *sponsor bank services*

b. a description of the *sponsor bank services* offered, including the relevant *regulated payment system(s)* in relation to which the *sponsor bank services* are offered, and

c. details regarding any *sponsor bank eligibility criteria* an *indirect payment service provider* may be required to satisfy to obtain *sponsor bank services*.

1.4 Publication of the information means by providing at least the following:

a. a copy of such information in a prominent, easily accessible position on any relevant website operated or controlled by each of *Barclays*, *HSBC*, *Lloyds* and *RBS*

b. the *Payment Systems Regulator* with a link to the relevant website referred to in Specific Direction 1.4(a), and

c. a copy of such information to the *Payment Systems Regulator*.

1.5 This direction comes into effect on 30 June 2015.

Guidance:

Which information about sponsor bank services?

The sponsor bank services on which information must be provided include, but are not limited to, the following:

- a description of the terms and conditions for the provision of a bank account to be used to settle payments sent and received on behalf of the *indirect payment service providers'* customers
- a list and description of the *regulated payment systems* to which the *sponsor bank* offers *indirect access* and the services of each *regulated payment system* that *indirect payment service providers* can access, including a description of the connectivity options available to *indirect payment service providers* for sending and receiving payment instructions
- a description of the services offered for the provision of sort codes to *indirect payment service providers*, including in relation to unique sort codes and the transfer of unique sort codes between *sponsor banks* and in relation to which specific *regulated payment systems* such transfer is possible
- a description of any other services the *sponsor bank* views as being part of its wider *sponsor bank service* offering (e.g. access to branch network, payment message transformation services)
- a high level description of the types of transaction fees and other charges an *indirect payment service provider* can expect to pay for services provided, and the key elements of those fees and charges.

Specific Direction 1.2 does not require a *sponsor bank* to disclose specific price points or price ranges that it charges customers or other information which it reasonably considers to be commercially sensitive.

Which information about* sponsor bank eligibility criteria*?

The sponsor bank eligibility criteria *on which information must be provided include, but are not limited to, the following:*

- types of factors the *sponsor bank* takes into consideration in deciding whether to accept an *indirect payment service provider* as a customer (e.g. assessment of creditworthiness, strategic risk, expected volume)

- criteria an *indirect payment service provider* must satisfy to qualify for a unique sort code (e.g. regulatory status, compliance with payment system rules)
- criteria an *indirect payment service provider* must satisfy to obtain certain *sponsor bank services* (e.g. for host-to-host connections, systems testing and security standards that must be met).

Specific Direction 1.2 does not require a *sponsor bank* to disclose information which it reasonably considers to be commercially sensitive.

Annex B
Objectives Guidance

FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Objectives Guidance

March 2015

Our objectives underpin everything we do, driving the activities we undertake and how we prioritise our work. We will use our regulatory powers to advance our statutory objectives, function and duties.

1. Purpose

1.1 Our responsibilities are primarily set out in the Financial Services (Banking Reform) Act 2013 (FSBRA). We are an economic regulator, and share competition powers with the competition authorities.[1] We are required to give guidance on how we intend to advance our objectives in discharging our functions for different categories of payment system or participants[2] in payment systems.[3] Our primary focus is on making payment systems work well for service-users.

1.2 We will keep this guidance under review and update it as appropriate.

[1] See Section 8 below concerning our competition law powers and Section 9 concerning how we will work with other authorities.
[2] Participants in regulated payment systems are Operators of payment systems, Infrastructure Providers and Payment Service Providers (PSPs), see section 42(3)(5) FSBRA.
[3] Section 96 FSBRA.

2. Overview

2.1 Everything we do when discharging our general functions must, so far as reasonably possible, advance one or more of our objectives. These are[4]:

- the competition objective
- the innovation objective, and
- the service-user objective.

2.2 In addition, when carrying out our functions we must have regard to the importance of maintaining the stability of, and confidence in, the UK financial system. We must have regard to the importance of payment systems in relation to the performance of the Bank of England's (the Bank) functions. We must also have regard to certain regulatory principles in FSBRA;[5] which we have set out in section 10 of this document.

2.3 You will find three main sections in this document, each of which deals with one of our statutory objectives.

2.4 There is no hierarchy in our objectives – each is as important as the others. For the most part they are mutually supportive. For example, competition will tend to drive innovation in infrastructure, and service-users should benefit from greater innovation in payment systems. If tension arises between our objectives, we will take the course of action that aligns with our strategic priorities and that is in the best interests of service-users.

2.5 We will be open about the role our objectives play in our decisions. We will communicate the actions we are taking by engaging with stakeholders, through our website, and through publications such as reports, studies, decisions and our Annual Report.

[4] See sections 50–52 FSBRA, and see also Appendix 1.
[5] See section 53 FSBRA, and see also Appendix 2.

3. How we define service-users

3.1 Service-users are those who use, or are likely to use, services provided by payment systems.[6] This is a wide definition, which includes, but is not limited to:

- Payment service providers (PSPs[7]) including direct and indirect participants in payment systems such as banks, building societies, credit unions, ATM operators, authorised and small e-money institutions,[8] and authorised and small payment institutions.[9]

- Customers of direct and indirect participants of payment systems, including government departments, large corporations, small and medium-sized enterprises (SMEs), mid-market enterprises (MMEs), retailers, utilities, charities and individual consumers.

[6] See section 52 FSBRA.
[7] PSP, according to section 42(5) FSBRA, in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system.
[8] A person that has been granted authorisation under a national legislation implementing title II of the Electronic Money Directive (2009/11/EC) including, for the avoidance of doubt, a person who has been granted a waiver from full authorisation and been registered in accordance with Article 9 Electronic Money Directive (a 'small EMI').
[9] A person that has been granted authorisation under a national legislation implementing the Payment Services Directive (2007/64/EC) (PSD) or been granted a waiver from full authorisation and been registered in accordance with Article 26 PSD (a 'small PI').

4. Our competition objective

4.1 This objective is to promote effective competition in the markets for payment systems and for services provided by payment systems in the interests of service-users. Our work will focus on promoting and protecting the process of competition in the interests of service-users, rather than promoting or protecting specific competitors.

4.2 The legislation stipulates that promoting effective competition includes promoting effective competition between different:

- operators of payment systems (Operators)[10]
- PSPs
- infrastructure providers (Infrastructure Providers)[11]

4.3 We will promote effective competition where it is in the interests of service-users.

4.4 As set out in FSBRA, we may have regard to the following when assessing how effective competition is:

- existing and potential service-users – their needs, how easy it is for them to use the services provided by payment systems and how easy it is for them to switch suppliers
- existing and potential PSPs – their needs, how easy it is for them to provide services using payment systems and to switch providers
- existing and potential Infrastructure Providers – their needs and how easy it is to provide infrastructure for operating payment systems
- Operators – their needs and how easy it is for them to change the infrastructure used to operate their payment systems
- new entrants – how easy it is for them to enter the market
- how far competition is contributing to the development of efficient and effective infrastructure for operating payment systems
- how far competition is encouraging innovation, and
- the level and structure of fees, charges or other costs associated with participation in payment systems[12].

4.5 While competition generally brings better outcomes for service-users, collaboration between participants in payment systems may sometimes be appropriate and ultimately in the interests of service-users. For example, collaboration within payment systems can enable smaller PSPs to have access to payment systems and, therefore, increase competition between PSPs at the retail level.

[10] Operator, according to section 42(3) FSBRA, in relation to a payment system, means any person with responsibility under the system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.
[11] Infrastructure Provider, according to section 42(4) FSBRA, in relation to a payment system, means any person who provides or controls any part of the infrastructure used for the purposes of operating the payment system.
[12] Section 50(3) FSBRA, and see also Appendix 1.

4.6 We will consider market features that could indicate that there are competition issues, including, for example:

- levels of market concentration
- barriers to entry or expansion
- common ownership of competing facilities
- market power of buyers or suppliers
- laws and regulations
- information asymmetries[13] between competitors or between those already in the market and new entrants
- transparency and the flow of information between participants
- degree of vertical integration
- service-user behaviour, and
- ease of switching.

4.7 For example, we may seek to promote competition by ensuring that barriers to entry are reduced or removed, where appropriate. Facilitating new entry may drive competition and innovation. This in turn, can lead to more cost-effective, efficient and improved quality services being available to service-users.

4.8 We will use our regulatory powers where this will foster greater competition in the interests of service-users. Except where we are considering making general directions or requirements, we must consider first whether it is more appropriate to use our competition powers, rather than our regulatory powers.[14]

4.9 We aim to develop and protect competitive markets, where preferable, and contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected. We will aim to prioritise actions that will have a widespread positive impact across the market and that will lead to good outcomes when measured against our objectives, functions and duties.

[13] Information asymmetry refers to circumstances in which one party has access to greater or better information than the other.
[14] Section 62 FSBRA.

5. Our innovation objective

5.1 Our innovation objective is to promote the development of, and innovation in, payment systems and infrastructure to be used to operate payment systems in the interests of service-users. The purpose of this objective is to improve the quality, efficiency and economy of payment systems. This means services that are more responsive to service-users' needs and better systems that are accessible, easy to use, and cost-effective to operate and use.

5.2 Our role is not to innovate, but to encourage and support industry, and to help create the conditions in which innovation can flourish. We will only seek to promote innovation that is in the interests of service-users.

5.3 We will work with industry to ensure there are adequate opportunities and the right incentives for firms to innovate. This will involve assessing, among other things:

- barriers to innovation including laws and regulations
- standards and interoperability
- apportionment of risk
- access to payment systems
- costs of investment
- technological requirements (e.g. the need for both the payer and the payee to have the right technology)
- the need for scale of take-up in order for an innovation to be successful (network effects).

5.4 In most cases, competitive markets drive innovation. We appreciate, however, that, given the existence of network effects, participants may sometimes need to collaborate to develop innovations, for example the collaboration that was needed to develop Paym.

5.5 Innovations in payment systems may come from firms outside the financial services sector, such as technology and hardware providers. We want to facilitate such innovation where we can, where it brings greater competition and benefits to service-users.

6. Our service-user objective

6.1 Improving how payment systems are operated for service-users is at the heart of everything we do and is central to our competition and innovation objectives. We understand this to mean that payment systems should be operated and developed to take account of, and promote, the interests of service-users. This means we expect existing services to be improved and new, better services to be developed.

6.2 We expect payment systems to offer service-users choice, to be responsive in meeting their diverse needs, and to create opportunities for PSPs to bring innovative services to market. They should be high quality, good value, efficient and cost-effective, while offering a reliable, secure and stable service.

6.3 We will assess how well payment systems and services provided by payment systems are working for service-users by seeking their views and expect industry participants to raise issues and concerns with us. In addition, we have set up a PSR Panel which has representation from service-users.

7. Our regulatory powers

7.1 We have a range of powers over participants in regulated payment systems to support our functions. We can:

- require or prohibit a specific action or set standards[15]
- require Operators to establish or change rules of payment systems, require them to notify us of changes, or require that they get our approval before making rule changes[16]
- on application, require the Operator of a regulated payment system or a PSP with Direct Access to it, to grant access to that system[17]
- change the fees, charges, terms and conditions, or terms of access that Operators or PSPs impose on their customers[18]
- require the disposal of an interest in the Operator of a regulated payment system[19]
- provide guidance[20]
- conduct market reviews
- consider applications and complaints.[21]

7.2 We have a range of enforcement, information gathering and investigation powers. We can:

- require information or documents to be provided to us[22]
- require an Operator, Infrastructure Provider or PSP, or appoint a skilled person, to provide a report on any matter relating to their participation in a regulated payment system[23]
- investigate a potential compliance failure or the nature, behaviour or state of the business of an Operator, Infrastructure Provider or PSP of a regulated payment system, or appoint someone else to do so[24]
- appoint an investigator, who can require someone who has relevant information to attend an interview, or produce information or documents.[25]

7.3 A compliance failure[26] occurs when a participant in a regulated payment system does not comply with any of the following:

- one of our directions under section 54 FSBRA
- one of our requirements regarding systems rules under section 55 FSBRA

[15] Section 54 FSBRA.
[16] Section 55 FSBRA.
[17] Section 56 FSBRA.
[18] Section 57 FSBRA.
[19] Section 58 FSBRA.
[20] Section 96 FSBRA.
[21] Sections 56, 57 and 68 FSBRA.
[22] Section 81 FSBRA.
[23] Section 82 FSBRA.
[24] Sections 83 and 84 FSBRA.
[25] Section 85 FSBRA.
[26] Section 71 FSBRA.

- one of our requirements granting direct or indirect access to a relevant payment system under section 56 FSBRA.

7.4 We can use our enforcement processes to investigate a compliance failure, to publish a finding that there has been a compliance failure, to impose a penalty and to seek a court injunction, where appropriate.

7.5 We can also issue directions to order specific remedial action to be taken.

8. Our competition powers

8.1 We also have the power to investigate and enforce infringements of UK and EU competition law[27] and we can carry out market studies.

8.2 Where we conclude that a market is not working well, we have the option of using our competition powers to refer this market to the Competition and Markets Authority (CMA) for more detailed investigation (a market investigation reference).

[27] Chapters I and II of the UK Competition Act 1998, and Articles 101 and 102 of the Treaty on the Functioning of the European Union.

9. How we will interact with other authorities

9.1 We will work with other authorities to ensure that our activities are consistent with, and do not duplicate, those of others. This will involve working closely with authorities involved in UK financial regulation and the enforcement of competition law.

Financial authorities

9.2 We will work with the Bank, the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA) and the European Commission. The FCA and European Commission also enforce competition law (see paragraphs 9.7 and 9.8 below).

9.3 Some of the payment systems that we expect to be designated for regulation by us are also overseen by the Bank, which:

- Oversees payment systems that have been 'recognised' by the Treasury under the Banking Act 2009 to protect and enhance financial stability. The systems we expect to regulate and that have been recognised are the following interbank payment systems: Bacs, CHAPS, FPS and Visa.

- Determines whether to approve applications for a payment system to be 'designated' under the European Directive on Settlement Finality in Payment and Securities Settlement Systems (Directive 98/26/EC) (SFD). The systems we expect to regulate and that are designated under SFD are the following interbank payment systems: Bacs, C&CC, CHAPS and FPS. Designated systems benefit from certain protections from the normal operation of insolvency law.[28]

9.4 The FCA and the PRA are collectively responsible for the prudential supervision of financial services firms. The firms that are regulated by the FCA or the PRA from a prudential perspective are also subject to conduct regulation by the FCA. Some of the firms the FCA and PRA regulate will be participants[29] in regulated payment systems and will therefore also be regulated by us.

9.5 We have agreed a Memorandum of Understanding with the FCA, the Bank and the PRA, which sets out how we intend to work together.

9.6 Concerns about financial services firms that do not relate to payment systems or services provided by payment systems will usually be handled by the FCA and/or the PRA, as appropriate.

Competition authorities

9.7 On competition matters, we will work with the CMA, the European Commission and other competition authorities (particularly the FCA) to promote competition in the market for payment systems and the markets for services provided by payment systems. We will also participate in forums such as the UK Competition Network, the UK Regulators Network, the EU Competition Network and the International Competition Network.

9.8 We intend to enter into a Memorandum of Understanding with the CMA, which will set out how we intend to work together. We will also issue guidance on how we intend to use our concurrent competition law powers.

[28] For more information on the Bank's supervisory work, please refer to its website http://www.bankofengland.co.uk/financialstability/Pages/fmis/supervisory_app/supervisoryapproach.aspx.
[29] Financial services firms that use regulated payment systems to carry out payment services will come within the definition of participants since they will be PSPs.

10. Our regulatory principles

10.1 When discharging our general functions[30], we are required to have regard to the regulatory principles[31] set out below. The general functions include the function of determining the general policy and principles by reference to which we perform our particular functions. Under each regulatory principle we set out how we may take that principle into account when exercising our functions. We will provide a discussion of our regulatory principles whenever we conduct a formal consultation.

Efficiency and economy

The need to use the resources of the PSR in the most efficient and economic way.

10.2 As we state in our Administrative Priority Framework, we will take resource implications into consideration when making decisions such as whether to open an investigation and how we respond to applications about disputes, including applications we receive under section 56 and 57 FSBRA, and more generally in deciding how we allocate our resources to policy initiatives and work.

10.3 Where appropriate we will engage with other regulators to try to ensure that we coordinate our activities and do not impose unnecessary burdens on participants.

Proportionality

The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

10.4 In making judgements in this area, we will take into account the costs to participants and service-users. One of the techniques we may use to ensure proportionality is a cost-benefit analysis of our proposed regulatory requirements. Where we do not carry out a cost-benefit analysis, we will still seek to take into account, in general terms, the likely impact of our proposed course of action on participants and service-users and whether it is proportionate to the objective of that course of action.

10.5 In some instances we may engage with the participants and service-users likely to be affected by our proposals in order to assess their likely impact, either informally or as part of a formal consultation.

Sustainable growth

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term.

10.6 When carrying out our general functions, we will consider the impact of our action on economic growth. Our vision is to ensure that the UK's payment systems are innovative and responsive to the interests of service-users which should support sustainable growth in the UK economy.

Responsibility of service-users

The general principle that those who use services provided by payment systems should take responsibility for their decisions.

[30] The general functions are set out in section 49(4) FSBRA. They are: the function of giving of general directions (section 54 FSBRA), the function of giving general guidance (section 96 FSBRA) and the function of determining the general policy and principles by reference to which it performs particular functions.
[31] Section 53 FSBRA.

10.7 As set out above, service-users are a priority for us, in particular due to our service-user objective. However we will not protect service-users where this is inappropriate, for example where they have made poor commercial decisions.

Responsibility of senior management

The responsibilities of the senior management of persons subject to our requirements, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements.

10.8 We expect senior management to ensure compliance at all levels of their organisation. We do not expect senior management to adopt a 'tick box' approach to compliance or to delegate their compliance responsibility. We will seek to take these considerations into account when exercising our general functions and, where appropriate, we may require that certain decisions are made by the management body of a participant.

Recognising the differences in the businesses carried on by different participants

The desirability where appropriate of the PSR exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to our requirements.

10.9 We appreciate that the definition of participants in payment systems encompasses a broad category of businesses (including payment system operators, large credit institutions, small payment service providers and infrastructure providers).

10.10 We will seek to recognise differences where they exist and will tailor our measures appropriately. For example, we will take into account the size and financial position of a participant when setting a financial penalty for a compliance failure. Further details can be found in our Penalties Guidance.

10.11 Where a general direction applies to all participants or a specified category of participant, we recognise that there may be different ways in which a participant may comply with that requirement in order to achieve the required outcome, taking into account the nature and extent of its business activities.

Openness and disclosure

The desirability in appropriate cases of the PSR publishing information relating to persons on whom we impose requirements, or requiring such persons to publish information, as a means of contributing to the advancement of our objectives.

10.12 Where appropriate, we will use disclosure of information to contribute to the advancement of our objectives. For example, we may publish information about disputes, complaints and enforcement decisions to help other participants understand our expectations and in the case of enforcement decisions, to deter other participants from committing similar compliance failures or infringements.

Transparency

The principle that the PSR should exercise its functions as transparently as possible.

10.13 We recognise the importance of being open and accessible to both participants and service-users. We will seek to be as transparent as possible in terms of how we carry out our functions. For example, we have published guidance on our policies and procedures and other regulatory tools. We will be guided by the principle that there should be a presumption towards transparency unless there are compelling regulatory, legal or other reasons to the contrary.

APPENDIX 1 – FSBRA provisions concerning objectives

Financial Services (Banking Reform) Act 2013

49 Regulator's general duties in relation to payment systems

(1) In discharging its general functions relating to payment systems the Payment Systems Regulator must, so far as is reasonably possible, act in a way which advances one or more of its payment systems objectives.

(2) The payment systems objectives of the Payment Systems Regulator are—

(a) the competition objective (see section 50),

(b) the innovation objective (see section 51), and

(c) the service-user objective (see section 52).

(3) In discharging its general functions relating to payment systems the Payment Systems Regulator must have regard to—

(a) the importance of maintaining the stability of, and confidence in, the UK financial system,

(b) the importance of payment systems in relation to the performance of functions by the Bank of England in its capacity as a monetary authority, and

(c) the regulatory principles in section 53.

(4) The general functions of the Payment Systems Regulator relating to payment systems are—

(a) its function of giving general directions under section 54 (considered as a whole),

(b) its functions in relation to the giving of general guidance under section 96 (considered as a whole), and

(c) its function of determining the general policy and principles by reference to which it performs particular functions.

50 The competition objective

(1) The competition objective is to promote effective competition in—

(a) the market for payment systems, and

(b) the markets for services provided by payment systems, in the interests of those who use, or are likely to use, services provided by payment systems.

(2) The reference in subsection (1) to promoting effective competition includes, in particular, promoting effective competition—

(a) between different operators of payment systems,

(b) between different payment service providers, and

(c) between different infrastructure providers.

(3) The matters to which the Payment Systems Regulator may have regard in considering the effectiveness of competition in a market mentioned in subsection (1) include—

(a) the needs of different persons who use, or may use, services provided by payment systems;

(b) the ease with which persons who may wish to use those services can do so;

(c) the ease with which persons who obtain those services can change the person from whom they obtain them;

(d) the needs of different payment service providers or persons who wish to become payment service providers;

(e) the ease with which payment service providers, or persons who wish to become payment service providers, can provide services using payment systems;

(f) the ease with which payment service providers can change the payment system they use to provide their services;

(g) the needs of different infrastructure providers or persons who wish to become infrastructure providers;

(h) the ease with which infrastructure providers, or persons who wish to become infrastructure providers, can provide infrastructure for the purposes of operating payment systems;

(i) the needs of different operators of payment systems;

(j) the ease with which operators of payment systems can change the infrastructure used to operate the payment systems;

(k) the level and structure of fees, charges or other costs associated with participation in payment systems;

(l) the ease with which new entrants can enter the market;

(m) how far competition is contributing to the development of efficient and effective infrastructure for the purposes of operating payment systems;

(n) how far competition is encouraging innovation.

51 The innovation objective

(1) The innovation objective is to promote the development of, and innovation in, payment systems in the interests of those who use, or are likely to use, services provided by payment systems, with a view to improving the quality, efficiency and economy of payment systems.

(2) The reference in subsection (1) to promoting the development of, and innovation in, payment systems includes, in particular, a reference to promoting the development of, and innovation in, infrastructure to be used for the purposes of operating payment systems.

52 The service-user objective

The service-user objective is to ensure that payment systems are operated and developed in a way that takes account of, and promotes, the interests of those who use, or are likely to use, services provided by payment systems.

APPENDIX 2 - FSBRA provisions concerning regulatory principles

Regulatory principles

Section 53 FSBRA sets out the following regulatory principles to which we must have regard in discharging our general functions relating to payment systems:

(a) the need to use the resources of the Payment Systems Regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;

(d) the general principle that those who use services provided by payment systems should take responsibility for their decisions;

(e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Part, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements;

(f) the desirability where appropriate of the Payment Systems Regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Part;

(g) the desirability in appropriate cases of the Payment Systems Regulator publishing information relating to persons on whom requirements are imposed by or under this Part, or requiring such persons to publish information, as a means of contributing to the advancement by the Payment Systems Regulator of its payment systems objectives;

(h) the principle that the Payment Systems Regulator should exercise its functions as transparently as possible.

Annex C
Administrative Priority Framework

FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Administrative Priority Framework

March 2015

Our Administrative Priority Framework helps us to use our resources in the most efficient and effective way to further our statutory objectives, functions and duties.

Introduction

We need to use our resources in the most efficient and effective way to further our statutory objectives, functions and duties, in accordance with section 53(a) of FSBRA. This means that we need to make decisions regarding, for example, which investigations we open and continue, and how we respond to applications and complaints, subject to any specific legal duties we might have.[1]

In making these decisions, we will initially consider the degree to which taking action provides us with an opportunity to advance one or more of our statutory objectives, functions and duties, as we are unlikely to pursue an action which does not clearly do this.

We will then weigh up the impact and strategic importance of taking action with respect to the advancement of our statutory objectives, functions and duties, against the associated risks and resource implications (as set out below). In other words, we will decide whether taking action would be consistent with our administrative priorities. We have adopted this Administrative Priority Framework based on the types of issue we will consider and questions we will ask ourselves in order to help make these decisions.

We will make decisions on a case-by-case basis. We will consider only factors which we consider to be relevant to each specific case, and we may therefore not consider all of the factors listed below in reaching our decision. Our Administrative Priority Framework is illustrative, rather than exhaustive, and we will consider other factors where and as appropriate.

The factors we may consider are grouped in four main themes, which are listed below in alphabetical order, without ranking them with particular weighting (the relative importance and weighting of individual factors will vary from case to case).

This Administrative Priority Framework is to be read alongside our Objectives Guidance. The impact and strategic significance of taking action are directly related to the advancement of our statutory objectives, functions and duties.

[1] For example, we are required to respond within 90 days upon the receipt of a complaint from a representative body in accordance with ss.68 and 69 FSBRA.

1. Impact (with respect to the advancement of our statutory objectives, functions and duties)

a. The risk that the behaviour or issue presents to service-users (including consumers) and participants in payment systems – this includes us considering whether that risk is immediate or not, whether the impact is direct or indirect, and what the scale and magnitude of the impact would be if the risk or issue was not addressed by us at this time.

b. The risk that the behavior or issue presents to the stability or resilience of payment systems and to wider financial stability.

c. The likely short-term and long-term impacts that our action is likely to have – this includes the direct as well as the indirect impact (for example deterrence and awareness effects).[2]

d. The severity of the behaviour or issue and whether it is ongoing.

e. Whether the behaviour or issue is repeated, intentional or a particularly flagrant contravention or infringement.

f. Whether, if the behaviour or issue directly relates to a particular organisation, they have a history of similar contraventions or infringements or applications, or a demonstrated record of poor compliance.

g. The extent to which the behaviour or issue impacts on the development or protection of competitive markets, contributes to the creation or stifling of market conditions in which innovation thrives and service-users' interests are protected, and/or has a widespread impact across the market.

2. Resources (implications for the Payment Systems Regulator)

a. The resource implications for us of taking action, given:

   i. the need to act fairly in the interests of all parties likely to be affected (for example: service-users; the complainant or applicant; the target of the investigation; the party in relation to which the application is directed; third-parties)

   ii. the extent to which the resource requirements are proportionate to the anticipated benefits of action

   iii. the timing and resource requirements of other existing or anticipated work

   iv. the need for, and availability of, specific policy or specialist skills in order to take action

b. Whether there are alternatives to us taking action (by considering an application or investigation, or continuing an investigation, or progressing to the next phase in treating an application) that are likely to achieve the same ends, or deal with the same issues on a sufficiently timely basis (for example: dispute resolution; private enforcement; planned market reviews or studies; other proceedings we are undertaking; the use of alternative powers; action by other authorities; market developments; anticipated UK or EU legislative developments or self-regulation).

[2] We will keep the impact of our actions under review and this might inform future administrative prioritisation decisions.

3. Risk (relating to the likelihood of success of any action by us)

a. The likelihood of our action resulting in a successful outcome.

b. The existence of a relevant decision by us or other authorities establishing the existence (or not) of an infringement or position of significant market power in a market which appears relevant to the complaint or application, and how this interacts with the issue before us.

c. The strength and quality of the evidence presented and available on which to base any action we might take.

4. Strategic importance (with respect to the advancement of our statutory objectives, functions and duties)

a. Whether the issue that has been identified relates to our broader strategic goals or priorities (including those within our Annual Plan) and portfolio of work in support of our statutory objectives, functions and duties.

b. The strategic and economic significance of the issues raised.

c. Whether other agencies might be better placed to undertake the work, including for example other UK regulators, law enforcement bodies or the European Commission.

d. Whether there is a point of public policy or law of wider application such that action by us would help to clarify our approach for our stakeholders.

e. The extent to which knowledge that would be gained in us taking action would progress our responsibilities and/or fulfil our monitoring role under any relevant UK or EU-driven legislation.

Annex D
Powers and Procedures Guidance

FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Powers and Procedures Guidance (PPG)

March 2015

Contents

Introduction

1 Scope of the Powers and Procedures Guidance (PPG)

1.1 The PPG principally relates to the processes and procedures that the PSR will generally apply in relation to its regulatory functions under the Financial Services (Banking Reform) Act 2013 (FSBRA).

1.2 The PPG does not attempt to describe in detail all the provisions of FSBRA and interested parties are advised to refer to the text of that legislation for a complete description of the PSR's statutory functions and powers.

1.3 References in the PPG to a 'section' or 'sections' are references to the relevant provisions of FSBRA.

1.4 The PPG has been developed prior to the operational launch of the PSR. It is not exhaustive. We will keep it under review and update it as appropriate. Where we become the competent authority for other national or EU legislation, we may revise the PPG or issue separate guidance as appropriate.

2 Our FSBRA powers

2.1 Under FSBRA, we have a range of powers over participants in regulated payment systems. These include among others:

- powers to exercise particular regulatory functions (sections 54 to 58)
- powers to enforce certain regulatory decisions where parties do not comply (sections 71 to 75), and
- powers to gather information and to conduct investigations (sections 81 to 90).

2.2 The PPG sets out practical information on how we will exercise these powers, where we have determined that it is appropriate to do so.

2.3 Any project or programme of work by the PSR might lead us to consider that it is appropriate to exercise a particular regulatory function, based on the information we gather and our engagement with stakeholders. Where this is the case, we would expect to inform affected parties of our thinking on our possible course(s) of action and seek their views before proposing to exercise the relevant power(s).

Giving directions and imposing requirements

3 Overview of the powers

3.1 We can, by giving a direction to a participant in a regulated payment system, require or prohibit the taking of a specified action in relation to the system.[1] Further, we can require the operator of a regulated payment system to establish or change rules for the operation of the system, to notify us of rule changes or to seek our approval before making rule changes.[2] We refer to these powers as 'giving directions' and 'imposing requirements'.

3.2 Directions and requirements can be 'specific' or 'general', depending on whether they are addressed only at certain participants in regulated payment systems (for example, a named operator of a payment system) or whole classes of participants (for example, all operators of payment systems).

4 Deciding whether to give a specific direction or impose a specifically-imposed requirement

4.1 Any project or programme of work by the PSR might lead us to consider that it is appropriate to give a specific direction or impose a specifically-imposed requirement, based on the information we gather and our engagement with stakeholders. Where this is the case, we would expect to inform prospective addressees and other affected parties and to seek their views before proposing to exercise the relevant power.

4.2 Before giving a specific direction or imposing a specifically-imposed requirement, we will normally send addressees a notice of a proposed direction or a proposed requirement. That notice will give our reasons for proposing the direction or requirement, as well as the next steps and the timescale for representations to be made. Where applicable, the notice will also set out the proposed implementation timescale (that is, the period between the issuing of the direction or requirement and its commencement). In urgent cases, we may give specific directions or impose specifically-imposed requirements without giving notice.

4.3 Where we give notice, we will normally allow 14 days for addressees to make representations in writing. We will take into account the circumstances of each case. In some situations, it might be appropriate to give more time for representations to be made. In urgent cases, the period in which representations can be made might be shortened. We will consider written representations received alongside any views expressed orally in any meeting(s) held between the addressees and the PSR case team or staff during the window for representations. If the PSR does not seek such a meeting itself, an addressee may request one. In doing so, the addressee should state why a meeting is necessary. We will consider such requests and we may decide to convene a meeting between the addressee and the PSR case team or staff.

4.4 Where a proposed specific direction or specifically-imposed requirement is likely to have wider implications or relevance beyond the specific addressees, we might decide to share the draft direction or requirement more widely and seek the views of other stakeholders. We will balance the interests of such wider consultation with fairness to the specific addressees of the proposed direction or requirement. In deciding whether to share the draft direction or requirement more widely, we may seek the views of the specific addressees.

4.5 We will take account of representations received in deciding whether to give a specific direction or impose a specifically-imposed requirement.

[1] Section 54
[2] Section 55

4.6 When a decision is taken to give a specific direction or impose a specifically-imposed requirement, a final notice of a direction or a requirement will typically be addressed to the relevant participants. Alternatively, and where appropriate to do so (see paragraph 4.7 below), we may publish the direction or requirement on our website and bring it to the attention of the relevant participants. Either way, we will set out the reasons for the action taken. We will specify the commencement date of the direction or requirement.

4.7 We will decide whether to publish a specific direction or a specifically-imposed requirement based on the circumstances of each case. We will balance the interests of transparency in the exercise of our functions and wider awareness of our decisions with fairness to the specific addressees of the direction or requirement. In deciding whether to publish a direction or requirement, we may seek the views of the specific addressees.

5 Deciding whether to give a general direction or impose a generally-imposed requirement

5.1 Before giving a general direction or imposing a generally-imposed requirement, we will normally consult publicly by publishing a draft of the direction or requirement on our website and inviting representations on it. We might also issue a press release drawing attention to the draft, write directly to participants in regulated payment systems or take such other steps as we see fit to draw attention to the proposal.

5.2 However, we are not required to publish a draft direction or requirement if we consider that the delay involved would be prejudicial to the interests of service-users.

5.3 When we publish a draft direction or requirement, it will be accompanied by a cost-benefit analysis, an explanation of its purpose, our reasons for proposing it and a notice that representations may be made to us within a specified time. However, we will not publish a cost-benefit analysis where we do not consider that the proposal will lead to any significant increase in costs. Where the costs or benefits cannot reasonably be estimated, or where it is not reasonably practicable to produce an estimate, we will give our opinion and an explanation of it.

5.4 In responding to consultations on proposed general directions or generally-imposed requirements, respondents are urged to pay attention to the instructions and the timescale for responses in the consultation notice accompanying the draft direction or requirement. We will normally allow 4 to 12 weeks for representations to be made in writing. The precise duration of the consultation will depend on the complexity of the proposed action and the other circumstances of the case, including, for example, the extent to which there has already been meaningful engagement with stakeholders on the particular issues.

5.5 We will take account of consultation responses received in deciding whether to give a general direction or impose a generally-imposed requirement.

5.6 Where we decide to give a general direction or impose a generally-imposed requirement, we will publish it.

5.7 We will also publish an account, in general terms, of representations made during the consultation and our response to them.

6 Appeals

6.1 FSBRA (section 76) provides that decisions to give specific directions or to impose specifically-imposed requirements are appealable to the Competition Appeal Tribunal (CAT) by any person who is affected by the decision.

6.2 Decisions to give general directions or to impose generally-imposed requirements are not appealable in the same manner as specific directions or specifically-imposed requirements (see section 76).

6.3 Our decisions on whether to give directions or impose requirements, like all administrative decisions, can be the subject of judicial review by the courts.

Disputes over access to a payment system and fees, charges, terms or conditions

7 Overview of the powers

7.1 FSBRA provides a mechanism whereby a party ('the applicant') having a dispute with another party (or parties) can seek resolution of the dispute by the PSR.

7.2 In such cases, the applicant will make a formal section 56 or 57 application. Following such applications, we can require the granting of access to regulated payment systems or vary the fees, charges, terms or conditions of agreements relating to regulated payment systems. We understand that the timely resolution of disputes is important and we will try to reach a determination as soon as possible in the circumstances of each dispute that we decide to investigate.

7.3 In response to an application, we might decide to take informal action rather than to exercise our formal section 56 or 57 powers. We might take informal action before and/or after we decide to investigate a dispute.

8 Making an application

8.1 For us to properly consider disputes that are escalated under sections 56 and 57, we will need applications to contain detailed information on the nature of the dispute and the remedy that is sought. A common format for making such applications will also assist us in the task of processing and considering them.

8.2 Guidance on the format and content of applications is set out in Appendix 1 below. Parties making an application should ensure that the information provided is specific and relevant and does not go beyond what is needed to resolve the dispute. The submission of unnecessary or irrelevant information or evidence could delay our assessment of the application. In certain cases, particularly for smaller companies or individuals, we may consider relaxing some of these requirements.

8.3 We will expect that parties to a dispute will have first sought to resolve their disagreements through commercial negotiations and available alternative dispute resolution processes, which may include attempts at mediation. Where an applicant has not done (or attempted) this, we may decide that it is not appropriate to handle the application or to exercise any of our powers, at least until the applicant has demonstrated that they have reasonably pursued such alternative routes to resolve their dispute.

8.4 If you are a potential applicant and need any further guidance on how to make an application, please contact us by email at PSRapplications@psr.org.uk

8.5 Applications under sections 56 or 57 should be made to:

Post: Payment Systems Regulator, 25 The North Colonnade, Canary Wharf, London, E14 5HS

Email: PSRapplications@psr.org.uk

8.6 If an applicant considers that its application contains confidential information, it should provide a separate non-confidential version which can be copied to the other party (or parties) to the dispute, as well as explaining why it considers that the information is confidential.

9 Following receipt of an application

9.1 Where applications made under sections 56 or 57 are submitted by email, we will aim to acknowledge receipt within one working day.

9.2 Following receipt, we will review the application and assess whether it contains the requisite information and documentation. We will assess whether there is enough detail in the application to be able to consider it properly. We may need to revert to the applicant for further detail if this is lacking.

9.3 If we are satisfied that we have been provided with sufficient information by the applicant to consider the application, we will allocate an initial enquiry number to the dispute and open an initial enquiry. The initial enquiry phase involves the PSR considering whether or not it is appropriate for us to handle a dispute. We may decide that it is not appropriate for us to handle a dispute for various reasons, including that there are alternative means available for resolving the dispute or that our handling of it would not be an administrative priority (see our Administrative Priority Framework, available on our website: www.psr.org.uk).

9.4 Applications may require clarification on certain points and the PSR may need to raise these with the parties. We may also need to undertake some enquiries to assist us in understanding the dispute. The first step will usually be to send a non-confidential version of the application to the other party (or parties) to the dispute named in the application. However, where we consider it appropriate, and where it is permitted by legislation, we may also disclose confidential information. We expect to seek the views of the applicant before deciding to disclose any confidential information.

9.5 As part of the initial enquiry phase, we may convene meetings with parties to the dispute, separately or jointly.

9.6 As soon as practicable after we have decided whether or not it is appropriate for us to handle the dispute, we will inform the parties to the dispute of our decision and the reasons for it.

10 Where we decide to handle a dispute

10.1 If we have decided that it is appropriate for us to handle a dispute, we will open a case and allocate a case number. We may publish details of the dispute, including the business names of the applicant and the other parties, on our website.

10.2 We will proceed to gather information necessary for us to determine whether we should exercise our powers under sections 56 or 57. We might seek information from the other party or parties to the dispute, or third parties, through the exercise of our power to obtain information or documents (under section 81) or by obtaining a report from a participant or appointing a skilled person to provide a report (under section 82). We may convene meetings with the parties to the dispute, separately or jointly.

10.3 Deciding to handle a dispute and gather further information does not bind us to exercising our powers under sections 56 or 57. Our information gathering might reveal that there are no grounds for such action, or we may decide that exercising our powers is not justified or is not an administrative priority. Where we do decide to act, we may decide to exercise our powers to give directions or impose requirements under sections 54 or 55, rather than our powers under sections 56 or 57, depending on what we consider to be most appropriate in each case.

11 Deciding whether to require access or the variation of an agreement

11.1 Following our investigation of a dispute, we might decide that it is appropriate to determine the dispute by requiring the granting of access or the variation of an agreement.

11.2 Before requiring the granting of access or the variation of an agreement, we will normally send all parties to the dispute a notice of a proposed requirement to grant access or a proposed variation of an agreement. That notice will set out our reasons for proposing the access requirement or the variation of the agreement, as well as the next steps and the timescale for representations to be made. In urgent cases, we may require the granting of access of the variation of an agreement without giving notice.

11.3 Where we give notice, we will normally allow 14 days for representations to be made in writing. We will take into account the circumstances of each case. In some situations it may be appropriate to give more time for representations to be made. In urgent cases, the period in which representations can be made might be shortened. We will consider written representations received alongside any views expressed orally in any meeting(s) held between the parties to the dispute and the PSR case team or staff during the window for representations. If the PSR does not seek such a meeting itself, a party to a dispute may request one. In doing so, the party should state why a meeting is necessary. We will consider such requests and we may decide to convene a meeting between the party and the PSR case team or staff.

11.4 Where a proposed requirement to grant access or a proposed variation of an agreement is likely to have wider implications or relevance beyond the parties to the dispute, we might decide to share the draft terms of the requirement or variation more widely and seek the views of other stakeholders. We will balance the interests of such wider consultation with fairness to the parties to the dispute. In deciding whether to publish the draft terms of a requirement or variation, we may seek the views of the parties to the dispute.

11.5 We will take account of representations received in deciding whether to require the granting of access or the variation of an agreement.

11.6 When a decision is taken to require the granting of access or the variation of an agreement, a final notice of a requirement to grant access or a variation of an agreement will be addressed to the parties to the dispute. The notice will set out the reasons for the action taken. When a decision is made not to require the granting of access or the variation of an agreement, the parties will receive a statement summarising our reasons for this decision.

11.7 We will decide whether to publish the terms of a requirement to grant access or the variation of an agreement based on the circumstances of each case. We will balance the interests of transparency in the exercise of our functions and wider awareness of our decisions with fairness to the parties to the dispute. In deciding whether to publish the terms of a requirement or variation, we may seek the views of the parties to the dispute.

12 Publication of updates and final determination

12.1 We may publish updates on our website in connection with those disputes that we decide to handle. We may also indicate what final determination was made, such as whether we considered that there were no grounds for action, that action was not an administrative priority, that we would exercise our section 56 or 57 powers, or that alternative action was more appropriate. We will decide whether to publish updates or final determinations of disputes based on the circumstances of each case. In doing so, we will balance the interests of transparency and wider awareness of the PSR's work and decision-making process with fairness to parties to the dispute. In making these decisions, we may seek the views of the parties to the dispute on what we expect to publish. We will not include commercially confidential information in any published updates or final determinations.

12.2 When we exercise our powers to require the granting of access or to vary an agreement, we may publish a summary of the action we have taken.

12.3 When the final determination of an application is published, we may also publish the non-confidential version of the initial application.

13 Appeals

13.1 FSBRA (section 76) provides that decisions to require the granting of access or the variation of an agreement are appealable to the CMA by any person who is affected by the decision.

13.2 Our decisions on whether to require the granting of access or the variation of an agreement, like all administrative decisions, can be the subject of judicial review by the courts.

14 Other disputes

14.1 Disputes between participants, or between participants and service-users, over matters other than access to regulated payment systems, or the fees, charges, terms or conditions of agreements relating to participation in regulated payment systems or the use of services provided by regulated payment systems, can also be the subject of applications to us. Applicants should follow the same process as set out at paragraphs 8.1 to 8.6 above for applications made under sections 56 or 57.

14.2 Following receipt of an application that falls outside of sections 56 or 57, we will follow the same steps as set out in paragraphs 9.1 to 10.3 and 12.1 to 12.3 above for applications made under sections 56 or 57, where we consider that these steps are appropriate in the circumstances. However, where we decide to handle a dispute and ultimately decide that it is appropriate to take action, we will do so using our powers to give directions (under section 54) or impose requirements (under section 55).

14.3 If we consider that it is appropriate to give a specific direction or impose a specifically-imposed requirement, we will follow the process set out in paragraphs 4.1 to 4.7 above.

14.4 If we consider that it is more appropriate to give a general direction or impose a generally-imposed requirement, we will follow the process set out in paragraphs 5.1 to 5.7 above.

Requirement to dispose of an interest in a payment system operator

15 Overview of the power

15.1 We have the power to require a person who has an interest in the operator of a regulated payment system to dispose of all or part of that interest.[3] We may only exercise this power if we consider that, if the power is not exercised, there is likely to be a restriction or distortion of competition in the market for payment systems, or a market for services provided by payment systems. This power, like any other power we have, will only be used where it is appropriate and proportionate to do so.

16 Deciding whether to require the disposal of an interest

16.1 We may only exercise our power to require the disposal of an interest with the consent of the Treasury.

16.2 Where a project or programme of work by the PSR leads us to consider that it is appropriate to require the disposal of an interest, we will inform the operator, the person having an interest and other relevant parties and seek their views before proposing to exercise the relevant power.

16.3 Before requiring the disposal of an interest, we will send the operator and the person having an interest, a notice of a proposed disposal remedy. That notice will give our reasons for proposing the disposal, as well as the next steps and the timescale for representations to be made. We will normally allow at least 28 days for representations to be made to us. We expect that we would provide an opportunity for oral representations to be made by the operator and/or the person having an interest, where this is expressly requested and where good reasons are provided for why oral representations are necessary in addition to representations made in writing.

16.4 We will also normally publish a draft of the requirement on our website and invite representations on it from stakeholders other than the affected operator and the person having an interest. However, we are not required to publish a draft of the requirement and we will consider whether this is appropriate in all the circumstances of the case. The period allowed for written representations would not be longer, but might be the same, as the period allowed for representations by the operator and the person having an interest.

16.5 We will take account of representations received in deciding whether to require the disposal of an interest.

16.6 When a decision is made to require the disposal of an interest, a final notice of a disposal remedy will be addressed to the parties. The notice will set out the reasons for the action taken.

16.7 In those cases where we published a draft of the requirement, we will also normally publish an account, in general terms, of representations we received and our response to them.

16.8 Where we decide to require the disposal of an interest, we will publish our decision.

[3] Section 58

17 Enforcement of the disposal requirement

17.1 A requirement to dispose of an interest is enforceable by civil proceedings brought by us.[4]

18 Appeals

18.1 FSBRA (section 76) provides that decisions to require the disposal of an interest are appealable to the CMA by any person who is affected by the decision.

18.2 Our decisions on whether to require the disposal of an interest, like all administrative decisions, can be the subject of judicial review by the courts.

[4] Section 80

Enforcement action

19 Overview of the powers

19.1 A compliance failure is the failure of a participant in a regulated payment system to comply with:

- a direction (general or specific) given under section 54
- a requirement imposed (generally or specifically) under section 55, or
- a requirement to grant access to a payment system imposed under section 56.[5]

19.2 We have the power to take enforcement action in relation to these compliance failures. This includes the power to:

- publish details of the compliance failure (section 72(1))
- impose a financial penalty for the compliance failure (section 73) and publish details of that penalty (section 72(2))
- seek an injunction to bring the compliance failure to an end, remedy the compliance failure or restrain dealing with assets (section 75).

19.3 We may publish details of a compliance failure or impose a financial penalty in any situation when we have sufficient evidence that a participant in a regulated payment system has failed to comply with a direction or requirement that was addressed to it. For example, we might make this determination following:

- an investigation in response to a complaint made to us about non-compliance with a PSR direction or requirement
- an investigation commenced at our own initiative into compliance with a PSR direction or requirement
- a report of a skilled person which reveals a compliance failure.

19.4 A participant in a regulated payment system might also proactively approach us to disclose or declare a compliance failure. It might further undertake to change its practice, bring the compliance failure to an end and give assurances on how future compliance failures will be avoided. We reserve the option to publish details of a compliance failure or impose a financial penalty in such cases, if we are satisfied that a compliance failure occurred and that the sanction is appropriate.

20 Publication of compliance failures and imposition of financial penalties

20.1 We will consider each compliance failure on its merits and determine whether the publication of details relating to the compliance failure and/or relating to the imposition of a financial penalty is appropriate.

[5] A failure to comply with a decision of the PSR to vary the fees, charges, terms or conditions of an agreement relating to a payment system (under section 57) does not constitute a compliance failure. The effect of the PSR's regulatory decision is to vary the agreement itself. Any subsequent breach of the agreement would be enforceable as a matter of private law by the parties to that agreement.

20.2 When we decide to publish details of a compliance failure, those details (including, if relevant, the details of any financial penalty imposed) will generally be published on our website. We might also issue a press release.

20.3 We are required to prepare a statement of the principles we will apply in determining whether to impose a financial penalty and the amount of any penalty.[6] This statement is contained in our Penalties Guidance, which is available on our website: www.psr.org.uk

20.4 In applying the statement of penalty principles, we must apply the version in force at the time of the compliance failure. We must also review the statement from time to time and revise it if necessary.

21 Deciding whether to publish details of a compliance failure or to impose a financial penalty

21.1 Decisions on whether to publish details of, or to impose a financial penalty for, a compliance failure will be taken by the PSR Enforcement Decisions Committee (EDC). The EDC will determine whether a compliance failure has been committed and whether publication of details of the compliance failure or the imposition of a financial penalty is appropriate.

21.2 The EDC is a sub-committee of the PSR Board. It is separate from those persons who may investigate or otherwise ascertain that a compliance failure had been committed and recommend (to the EDC) that enforcement action be taken. EDC members are independent of the PSR and are appointed by the PSR Board on the basis of their relevant experience. The EDC has its own legal advisers and support staff.

PSR recommendation to the EDC to issue a warning notice

21.3 If our staff consider that it is appropriate to publish details of, or impose a financial penalty for, a compliance failure, they will recommend to the EDC that a warning notice should be issued. We may submit a draft warning notice to the EDC, along with our recommendation.

21.4 A recommendation to issue a warning notice may arise from a formal investigation involving appointed investigators (see paragraphs 32.1 to 41.3 below on the use of appointed investigators). In such cases, our recommendation to the EDC will usually be accompanied by the investigation report produced.

21.5 When we consider it appropriate, or the EDC requests it, relevant supporting documents or evidence will be provided to the EDC.

Deciding whether to issue a warning notice

21.6 The decision to issue a warning notice is made by the EDC.

21.7 In deciding to issue a warning notice, the EDC will:

- settle the wording of the warning notice, and

[6] Section 73(3)

- make any relevant decisions associated with the issue of the warning notice (for example, the relevant period for the recipient of the notice to make representations and whether the recipient should be provided with any material relevant to the issue of the notice).

21.8 If the EDC decides to issue a warning notice, we will make appropriate arrangements for the notice to be given.

Contents of the warning notice

21.9 The warning notice will set out details of the compliance failure it relates to and the EDC's proposal to publish details of the compliance failure and/or to impose a financial penalty. The warning notice will state the factual and legal basis for the proposed action and the EDC's reasons for proposing it.

21.10 When the EDC proposes to publish details of a compliance failure, the warning notice will set out the wording that it intends to publish. If the EDC proposes to publish details of any proposed financial penalty, this will be included in the wording set out in the warning notice.

Access to underlying material

21.11 There is no statutory requirement to provide a recipient of a warning notice with any underlying material. However, the EDC will consider in each case whether it is appropriate to do so. In some cases, the EDC may consider it appropriate to provide the recipient with the written submissions and documents that the EDC considered when reaching the decision to issue a warning notice. The EDC will consider whether access to underlying material is likely to be necessary for the recipient of a warning notice to understand the case against it.

21.12 If documents or submissions are covered by our confidentiality obligations, such material will only be provided to the recipient of the warning notice where there is lawful authority to do so. For example, there may be authority to disclose material where an exception applies under the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 (SI 2014/882) or where we have received the consent of the person from whom the information was received and (if different) to whom the information relates.

Making representations to the EDC

21.13 Once a warning notice has been issued, the recipient will have at least 21 days to make representations to the EDC in writing. The EDC will, when issuing a warning notice, state the time in which representations are to be made and to whom those representations should be addressed.

21.14 The format and content of any representations is a matter for the recipient of the warning notice. However, the representations should be confined to the material necessary for the EDC's determination of whether the factual and legal basis for the proposed action is correct and whether the proposed action is appropriate. Representations should identify clearly what facts, legal grounds or reasons for the proposed action the recipient of the warning notice is contesting. Representations should be as concise as possible. The EDC may also signal, when the warning notice is issued, the expected format, content and length of representations that can be made to it.

21.15 In some circumstances, the EDC may agree to an extension of the time in which the recipient of a warning notice can make representations. A recipient of a warning notice must apply to the EDC for such an extension and must state why the extension is necessary and, in particular, why it is not possible to respond adequately in the period already provided.

21.16 A single member of the EDC will decide whether to grant an application for an extension. In considering the application, they will balance the interests of fairness to the applicant and those of procedural efficiency.

21.17 If the recipient of a warning notice indicates that they wish to make oral representations, the EDC staff, in conjunction with the Chairman or a Deputy Chairman of the EDC, will fix a date for a meeting (an oral hearing) at which the relevant EDC members will receive those representations.

21.18 The EDC Chairman will be the Chair of the oral hearing. The EDC Chairman will specify the running order and timings of the oral hearing, and will ensure that representations run to time during the hearing. They may also intervene if oral representations merely reiterate or restate representations previously made in writing, or do not meaningfully advance the EDC's understanding of those representations. Any member of the EDC may pose questions to the participant making the oral representations to clarify the representations being made.

The final decision of the EDC

21.19 If representations were made, the EDC will consider those representations when reaching its decision on whether it is appropriate to publish details of a compliance failure or impose a financial penalty.

21.20 If no representations were made, the EDC will generally regard as undisputed the matters set out in the warning notice. In such circumstances, the decision to publish details of the compliance failure or to impose a financial penalty can be taken by the EDC Chairman alone, without the need to convene or consult all members of the EDC, if the EDC Chairman so determines.

21.21 If the EDC decides to publish details of a compliance failure, it will settle the wording of those details to be published.

21.22 If the EDC decides to impose a financial penalty, it will determine the amount of any penalty. See our Penalties Guidance (available on our website: www.psr.org.uk), which contains our statement of the principles we will apply in determining whether to impose a penalty and the amount of that penalty.

Communication of the EDC's decision

21.23 Following the decision of the EDC, we will, as soon as practicable, give the subject of the decision a written notice (the 'decision notice') stating whether or not we will publish details of, or impose a financial penalty for, the compliance failure.

21.24 When the EDC decides to publish details of a compliance failure, the decision notice will set out the wording that we will publish (including, if the EDC so decides, the details of any financial penalty imposed). We will also inform the recipient of the notice of the day on which we intend to publish the details of the compliance failure.

21.25 When the EDC decides to impose a financial penalty for a compliance failure, the decision notice will state the amount of penalty that we will impose. We will also inform the recipient of the notice of the date for payment of the penalty, which will typically be 14 days following the issue of the decision notice.

21.26 We will make appropriate arrangements for the details of the compliance failure to be published and/or for the collection of the financial penalty.

22 Appeals

22.1 FSBRA (section 76) provides that decisions to publish the details of a compliance failure or to impose a financial penalty in respect of a compliance failure are appealable to the CAT by any person who is affected by the decision.

22.2 When the EDC decides to publish details of a compliance failure, the details cannot be published until after the expiry of the period in which the decision can be appealed to the CAT or, if an appeal against the decision is made, following the determination of that appeal.

22.3 When the EDC decides to impose a financial penalty for a compliance failure, and an appeal against the decision is made to the CAT, the penalty is not required to be paid until after the appeal has been determined.

22.4 Our decisions on whether to publish the details of a compliance failure or to impose a financial penalty in respect of a compliance failure, like all administrative decisions, can be the subject of judicial review by the courts.

23 Settlement decision procedure: uncontested decisions to publish details of a compliance failure or to impose a financial penalty

23.1 Settlement has many potential advantages, including the saving of our and industry resources and the prompt communication of compliance messages to the industry or to the markets for payment systems and payment services. As such, we consider that it is normally in the public interest for matters to be settled, and early, if possible.

23.2 Accordingly, a participant in a regulated payment system may settle with us by agreeing to the publication of details of and/or the imposition of a financial penalty for a compliance failure, rather than contesting our decision.

23.3 Settlements are still regulatory decisions. We would not normally agree to detailed settlement discussions until we have a sufficient understanding of the nature and gravity of the suspected compliance failure to make a reasonable assessment of the appropriate outcome. However, a participant in a regulated payment system may enter into settlement discussions with us at any time, if both the participant and we agree.

23.4 Settlement discussions between the participant in a regulated payment system and us are likely to revolve around the discussion of a draft warning notice based on evidence obtained by us, or on sufficient agreed facts to support a regulatory decision.

23.5 Settlement decisions must be taken jointly by two settlement decision makers (SDMs), who will be senior PSR/FCA staff (at least one of whom will be from the PSR). Neither of the SDMs will have been directly involved in establishing the evidence on which the settlement decision is based. The SDMs may, but need not, participate in settlement discussions between the participant in a regulated payment system and the PSR.

23.6 The SDMs may accept the proposed settlement by deciding to issue a warning notice. Alternatively, they may decline the proposed settlement, in which case settlement discussions might continue.

23.7 The warning notice will constitute our proposed decision about the compliance failure and will set out the details of the compliance failure that we propose to publish and/or the financial penalty that we propose to impose.

23.8 Once a warning notice has been issued and the participant in a regulated payment system has confirmed that it agrees with its contents, the SDMs will conclude the settlement by deciding to issue a final decision notice. The decision notice constitutes our regulatory decision about that compliance failure.

23.9 In recognition of the benefits and savings afforded by settlement, any financial penalty specified in the warning notice may be reduced to reflect the timing of the settlement (that is, the stage of the process when settlement is concluded).

23.10 The amount of the financial penalty specified in the warning notice will take into account all the factors in our statement of penalty principles (contained in our Penalties Guidance) apart from the existence of the settlement discount that will be applied if the settlement is concluded. If a settlement is concluded, the discount will be detailed in the decision notice.

23.11 Compliance failure proceedings may still be settled, if appropriate, where a warning notice has been issued by the EDC. In these circumstances, settlement discussions will still be undertaken by our staff and decisions made by the SDMs.

23.12 All settlement communications are made without prejudice. Consequently, if the settlement discussions break down and the matter proceeds through a contested administrative process through the EDC, the EDC will not be told about any admissions or concessions made during settlement discussions.

24 Injunctions

24.1 Applying to the court for injunctive relief is another way that we can enforce some of our regulatory decisions.[7] Our powers to seek injunctions apply in relation to the same compliance failures that give rise to our powers to publish details or impose a financial penalty.

24.2 In making a decision to apply to the court, we will consider whether the legal test that the court will apply is met, as well as the nature, impact and seriousness of the actual or potential compliance failure and whether injunctive relief is appropriate.

24.3 On our application, the court may make an order:

- restraining the conduct, if it is satisfied that there is a reasonable likelihood of a compliance failure or, if a compliance failure has taken place, that it is reasonably likely to continue or be repeated

- requiring the participant in a regulated payment system, and anyone else who appears to have been knowingly concerned in the compliance failure, to take steps to remedy it, if it is satisfied that there has been a compliance failure and that steps could be taken to remedy it, or

- restraining the participant in a regulated payment system or the person (as the case may be) from dealing with any assets which it is satisfied the participant or person is reasonably likely to deal with, if it is satisfied that there has been a compliance failure or that the person may have been knowingly concerned in a compliance failure.[8]

24.4 We may seek only one type of order or several, depending on the circumstances of each case.

[7] Section 75
[8] The court may also make an order freezing assets under its inherent jurisdiction.

Information gathering and investigation powers

25 Overview of our powers

25.1 We have various powers to gather information and to conduct investigations.[9] In any particular case, we will decide which powers, or combination of powers, are the most appropriate to use.

26 Power to obtain information or documents

26.1 We have the power to require a person to provide information and documents which we need to exercise our statutory functions under FSBRA.[10]

26.2 We expect to use this power for general information gathering purposes, including updating our knowledge on the state of the market for payment systems (or the markets for services provided by payment systems). We also expect to use this power in the context of our market reviews.[11]

26.3 We might also use this power to obtain information or documents to assist, for example, in determining whether there has been a compliance failure by a participant in a regulated payment system. However, where one or more investigators have been appointed to investigate a suspected compliance failure (see paragraphs 32.1 to 41.3 below on the use of appointed investigators), we generally expect to use the information gathering powers exercisable by those investigators (see paragraphs 28.1 to 28.8 below).

26.4 Requests for the provision of information and documents will be made through a formal written notice (known as an information request or a section 81 notice). The notice will set out the form or manner in which information or documents should be provided and will specify the deadline for responses.

26.5 We expect to give recipients of information requests advance notice so that they can manage their resources accordingly. Also, where it is practical and appropriate to do so, we will send the information request in draft and take account of comments on the scope of the request, the actions that will be required in responding, and the deadline by which information must be provided. In certain circumstances, it will not be appropriate to provide advance notice or to send information requests in draft (for example, if it would be inefficient because the request is for a small amount of information).

27 Reports by skilled persons

27.1 We have the power to require a participant in a regulated payment system to provide a report by a skilled person. We can also appoint a skilled person to provide a report.[12]

[9] Sections 81 to 90
[10] Section 81
[11] We also have powers to obtain information or documents under the Enterprise Act 2002 (EA02), as amended, in connection with market studies. Detailed guidance on how we will exercise our EA02 powers will be published by the PSR as soon as possible after our 1 April 2015 operational launch. We consulted on this guidance in January 2015. See: http://www.fca.org.uk/news/psr/psr-cp15-01-psr-competition-concurrency-guidance
[12] Section 82

27.2 We expect to use these powers where we need to better understand any matter relating to participation in a regulated payment system and where particular skills or specialist knowledge are required to produce a report. We will make it clear, to the participant in the regulated payment system and to the skilled person, the nature of the matters that led us to decide that a skilled person's report was necessary and the possible uses of the results of that report.

27.3 A possible use of a skilled person's report is to assist us in determining whether there has been a compliance failure or if it is appropriate to conduct an investigation into a suspected compliance failure.

27.4 Where we require a participant in a regulated payment system to provide us with a skilled person's report, we will issue a notice in writing (known as a notice to provide a skilled person's report). This notice will specify such things as:

- the procedure by which the skilled person is to be nominated or approved by us
- the terms of the appointment of the skilled person
- the procedures to be followed and the obligations of the participant in the production of the skilled person's report
- practical matters, such as arrangements for interaction between the skilled person and us
- the subject matter which the report must cover and the form the report should take, and
- the deadline for the submission of the report.[13]

27.5 We expect to give advance notice before we require the provision of a skilled person's report, so that the participant can manage its resources accordingly. Also, where it is practical and appropriate to do so, we will send the notice to provide a skilled person's report in draft and take account of comments on the scope and contents of the report, the work that the skilled person will be required to undertake (or the assistance they will require) and the deadline by which the report must be provided. We will assess each case on its facts to determine whether it would be appropriate to provide such advance notice and an opportunity to comment before formally requiring a report to be provided.

27.6 When we require a participant in a regulated payment system to provide a report by a skilled person, that participant will pay for the services of the skilled person. When we appoint a skilled person to produce a report, we may direct the participant who is the subject of the report to pay any expenses we incur. In both situations, we will consider the cost implications of skilled persons' reports and the facts and circumstances of each case, including the availability of alternative options for gathering information on the matter concerned.

28 Powers exercisable by appointed investigators

28.1 We may appoint investigators to conduct an investigation (see paragraphs 32.1 to 41.3 below on the use of appointed investigators). If investigators are appointed, they will have powers (under section 85) to:

- require persons under investigation (and persons connected with them) to provide information and to attend and answer questions in interview, and
- require any person to produce documents.

[13] Following the appointment of the skilled person, we may also give specific directions to the participant about the procedures to be followed and their obligations under the notice to provide a skilled person's report.

28.2 The requirements described above may be imposed only so far as the investigator reasonably considers them to be relevant to the purposes of the investigation.

28.3 For investigations into suspected compliance failures, appointed investigators can also require the attendance or the provision of information by any persons who, in the investigator's opinion, are or may be able to give relevant information. Such persons may also be required to give the appointed investigators all assistance in connection with the investigation as they are reasonably able to give.

28.4 The appointed investigator(s) will exercise these powers by issuing formal notices in writing (known as investigatory requirement notices or section 85 notices). These notices will set out the requirements and the deadlines for compliance.

28.5 We expect to give recipients of investigatory requirement notices advance warning so that they can manage their resources accordingly. Also, when it is practical and appropriate to do so, we will send the investigatory requirement notice in draft and take account of comments on the scope of the requirements, the actions that will be required in complying with them, and the deadline for compliance. In certain circumstances, it will not be appropriate to provide advance warning or to send investigatory requirement notices in draft, for example if we think it would prejudice the investigation.

28.6 We do not expect to send draft investigatory requirement notices when the information or document requirements are straightforward and we consider that it is reasonable to expect the information or documents to be made available within our specified timeframe.

28.7 The timeframe for comments on a draft investigatory requirement notice would usually be no more than three working days. After considering any comments, we will then confirm or amend the investigatory requirement notice.

28.8 Once we have formally issued an investigatory requirement notice (whether or not it has been preceded by a draft), we will not usually agree to an extension of time for complying with the notice, unless compelling reasons are provided to support an extension request.

29 Search and seizure powers

29.1 We have the power to apply to a justice of the peace for a warrant to enter premises where documents or information are held.[14] The circumstances under which we may apply for a search warrant include:

- when a person has been issued with an information request or an investigatory requirement notice requiring the provision of information or documents and has failed (wholly or in part) to comply with the requirement, or
- when there are reasonable grounds for believing that, if an information request or an investigatory requirement notice requiring the provision of information or documents were to be issued to a participant in a regulated payment system, the requirement would not be complied with or the information or documents would be removed, tampered with or destroyed.

29.2 A warrant obtained under section 88 authorises a police constable or a person in the company, and under the supervision of, a police constable, to do the following:

- enter and search the premises specified in the warrant
- take possession of any information or documents appearing to be of a kind for which the warrant was issued, or

[14] Section 88

- take any other steps which may appear to be necessary to preserve or prevent interference with such information or documents.

29.3 During the search, we may require any person on the premises to provide an explanation of relevant information or documents, or to state where such information or documents can be found.

29.4 During a search under warrant, we would expect to take copies of documents rather than to seize originals, when it is reasonably practicable to do so and not disproportionately time-consuming. When it is necessary to seize original documents, we expect to return these to the participant in a regulated payment system as soon as reasonably practicable to do so. We will adopt the same approach with respect to electronic copies, in that we will endeavour to take copies of hard-drives where it is reasonably practicable to do so and not disproportionately time-consuming. When it is necessary to seize hard-drives, laptops, or other data-storage devices, we expect to return these to the participant in a regulated payment system as soon as reasonably practicable to do so.

30 Non-compliance

30.1 Our direction on relations with the PSR (Direction 1) specifies that:

"A participant must deal with the PSR in an open and cooperative way, and must disclose to the PSR appropriately anything relating to the participant which could materially adversely impact advancement of the PSR's statutory objectives and duties."

A breach of this direction could lead to compliance failure proceedings.

30.2 If a person does not comply with an information or investigatory requirement imposed under any of our statutory powers (sections 81 to 88), they can be dealt with by the courts as if they were in contempt of court (when penalties can be a fine, imprisonment or both). We may also choose to bring compliance failure proceedings for breach of Direction 1 by a participant in a regulated payment system, as this is a serious form of non-cooperation.

31 Voluntary provision of information

31.1 We may, where appropriate to do so, make use of voluntary information requests rather than formal requests under section 81. We understand that some parties may prefer to receive a voluntary information request while others may prefer to receive a formal information request. Where we have sought information voluntarily but the recipient of the request considers that it would be helpful for this to be formalised into a statutory request, they should discuss this with the PSR case team in the first instance.

31.2 Information may also be provided to us voluntarily, without us requesting it. For example, participants in a regulated payment system may commission an internal investigation or a report from an external law firm or other professional adviser and decide to pass a copy of this report to us. Such reports can be very helpful for us when an investigation (for example, into a suspected compliance failure) is anticipated or is underway.

31.3 Participants in a regulated payment system are not obliged to share the content of legally privileged reports they are given or advice they receive. It is for the participant to decide whether to provide such material to us. But a participant's willingness to volunteer the results of its own investigation would be welcomed and is something that we may take into account when deciding what action to take, if any.

The use of appointed investigators

32 Appointed investigators

32.1 We may appoint one or more investigators to conduct an investigation into the nature, conduct or state of the business of any participant in a regulated payment system if we consider it desirable to do so in order to advance any of our statutory objectives.[15] We may also appoint investigators to investigate a suspected compliance failure where it appears to us that there are circumstances suggesting that one may have occurred.[16]

32.2 An appointed investigator could be a member of the PSR's staff, a member of the FCA's staff or an external person. Appointed investigators are able to exercise certain investigatory powers not otherwise exercisable by the PSR (see paragraphs 28.1 to 28.8 above).

32.3 In some cases, we may consider it appropriate to appoint investigators for a general purpose and subsequently decide that it is appropriate to extend the investigation to cover a suspected compliance failure. In other cases, it may be appropriate to appoint investigators for both purposes at the outset.

33 Written notice of the appointment of investigators

33.1 We will give written notice of the appointment of investigators to the person under investigation, except when this would be likely to result in the investigation being frustrated or when investigators have been appointed to investigate a suspected compliance failure. We will assess each case on its facts to determine whether it would be appropriate to provide written notice.

33.2 When a notice of the appointment of investigator(s) is issued, it will specify the provision under which the investigator(s) were appointed and the reasons for their appointment.

33.3 If a notice of the appointment of investigator(s) is not issued at the time investigator(s) are appointed, we will normally issue the notice at the time we exercise our statutory powers to require information from the person under investigation, provided that such notification will not prejudice our ability to conduct the investigation effectively.

34 Scoping discussions

34.1 If notice is given at the outset of an investigation (when investigators are appointed), we will generally hold scoping discussions with the person under investigation close to the start of the investigation. The purpose of these discussions is to give the parties an indication of:

- why we have appointed investigators (including the nature of and reasons for our investigation)
- the scope of the investigation

[15] Section 83(1)
[16] Section 83(2)

- how the process is likely to unfold, and
- the individuals and documents the team will need access to initially.

34.2 However, there is a limit as to how specific we can be about the nature of our concerns in the early stages of an investigation.

34.3 In addition to the initial scoping discussions, there will be an ongoing dialogue with the person under investigation throughout the investigative process.

35 Changes in the scope of an investigation

35.1 If the nature of our concerns change significantly from those notified to the person under investigation and we are satisfied that it is appropriate to continue the investigation, we may change the scope accordingly.

35.2 If there is a change in the scope or conduct of the investigation we may give written notice of the change.

35.3 One situation (but not the only situation) in which we will give written notice of the change is where we think that the person under investigation is likely to be significantly prejudiced if they are not made aware of this. We cannot give a definitive list of all the circumstances in which a person under investigation is likely to be significantly prejudiced by not being made aware of a change in the scope or conduct of an investigation. However, it may include situations where there may be unnecessary costs from dealing with an aspect of an investigation which we no longer intend to pursue.

36 Appointment of additional investigators

36.1 In some cases, we will appoint additional investigators during the course of the investigation. If this happens and we have previously told the person under investigation that we have appointed investigators, then we will normally give the person written notice of the additional appointment(s).

37 Notice of the termination of investigations

37.1 When we have given the person under investigation written notice that we have appointed investigators and later we decide to discontinue the investigation without any present intention to take further action, we will confirm this to the person, as soon as we consider it appropriate to do so.

38 Approach to information and document requirements

38.1 Appointed investigators will normally use the powers exercisable by them to require the provision of information or documents, rather than seeking information or documents on a voluntary basis. This is for reasons of fairness, transparency and efficiency. However, it might occasionally be appropriate to depart from this standard practice in limited circumstances, for example where the investigators are gathering information from third parties with no professional connection with the payments industry.

38.2 Appointed investigators will make it clear to the person concerned whether they are required to provide information or documents (through the use of an investigatory requirement notice) or whether information or documents are being sought on a voluntary basis.[17]

38.3 Investigatory requirement notices requiring the provision of information or documents are discussed at paragraphs 28.1 to 28.8 above.

38.4 As delays in the provision of information and/or documents can have a significant impact on the efficient progression of an investigation, we expect recipients to respond to investigatory requirement notices in a timely manner and within applicable deadlines.

39 Approach to interviews

39.1 Appointed investigators will normally use the powers exercisable by them to require the attendance and answering of questions at an interview, rather than seeking this on a voluntary basis. This is for reasons of fairness, transparency and efficiency. However, it might be appropriate to depart from this standard practice in limited circumstances, for example where the investigators are gathering information from third parties with no professional connection with the payments industry.

39.2 Appointed investigators will make it clear to the person concerned whether they are required to attend and answer questions at an interview (through the use of an investigatory requirement notice) or whether this is being sought on a voluntary basis.[18]

39.3 Investigatory requirement notices requiring the attendance and answering of questions at an interview are discussed at paragraphs 28.1 to 28.8 above.

39.4 When we interview a person, we will allow them to be accompanied by a legal adviser, if they wish. We will also, where appropriate, explain what use can be made of their answers in proceedings against them. If the interview is recorded, the person will be given a copy of the recording of the interview, along with a copy of any transcript.

[17] We will not treat it as a compliance failure (for breach of PSR Direction 1) if, in the exceptional circumstances where it is appropriate to depart from the standard practice of appointed investigators using the powers exercisable by them, a participant in a regulated payment system declines to respond to an informal information or document request. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of that participant to provide information or documents voluntarily.

[18] We will not treat it as a compliance failure (for breach of PSR Direction 1) if, in the exceptional circumstances where it is appropriate to depart from the standard practice of appointed investigators using the powers exercisable by them, a participant in a regulated payment system declines to attend or answer questions at a voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of that participant to attend or answer questions voluntarily.

40 Preliminary findings letters and preliminary investigation reports (as regards compliance failures)

40.1 Appointed investigators may find that there has been a compliance failure by the person under investigation. The PSR may decide to recommend to the EDC that details of a compliance failure be published or that a financial penalty be imposed for a compliance failure. In cases where our recommendation to the EDC is based on the findings of appointed investigators, our recommendation will usually be accompanied by an investigation report.

40.2 When we propose to submit an investigation report to the EDC, we expect to send a preliminary findings letter to the person under investigation first. The letter will normally annex the investigators' preliminary investigation report. Comments will be invited on the contents of the preliminary findings letter and the preliminary investigation report.

40.3 Preliminary findings letters serve a very useful purpose in focusing decision-making on the contentious issues in the case. This makes for better quality and more efficient decision-making. However, there are circumstances in which we may decide that it is not appropriate to send out a preliminary findings letter. These include when:

- the person under investigation consents to not receiving a preliminary findings letter
- it is not practicable to send a preliminary findings letter, for example when there is a need for urgent action, or
- we believe that no useful purpose would be achieved in sending a preliminary findings letter, for example, when we have already substantially disclosed our case to the person under investigation and they have had an opportunity to respond.

40.4 If a preliminary findings letter is sent, it will set out the facts which the appointed investigators consider relevant to the matters under investigation (normally, as indicated above, by means of an annexed preliminary investigation report). We will then invite the person under investigation to confirm that those facts are complete and accurate, or to provide further comment.

40.5 We will generally allow a reasonable period of time for a response to this letter. This period will depend on the circumstances of the case, but we would normally allow 14 days. We will consider any responses received within the period stated in this letter, but we are not obliged to take into account any responses received after this time.

40.6 If we send a preliminary findings letter and then decide not to take any further action, we will communicate this decision promptly to the person under investigation.

40.7 When we submit an investigation report to the EDC, with a recommendation that details of a compliance failure be published or that a financial penalty be imposed, we will inform the person under investigation promptly after the submission of that report.

41 Transparency in respect of appointed investigators

41.1 We may wish to publicise information regarding the appointment and use of investigators. For example, we may wish to publish on our website a summary of the subject matter of the investigation and the identity of the person under investigation. We may also wish to publish details of what action, if any, we ultimately decide to take (such as the issuing of a warning notice or a decision notice).

41.2 We will consider the circumstances of each case and balance the interests of transparency (including enabling participants in payment systems, service-users and the wider public to understand the nature of our concerns and what we are doing to address them) and fairness to the person under investigation.

41.3 We may consult the person under investigation and take account of any evidence they provide which suggests that publication of information about the investigation would be unfair.

Concurrent competition powers

42 CA98 and EA02 powers

42.1 We have the power to apply certain aspects of competition law alongside the Competition and Markets Authority (CMA), if an issue relates to participation in payment systems.

42.2 Under the Competition Act 1998 (CA98), we can conduct investigations in relation to anti-competitive agreements, decisions or concerted practices, or the abuse of a dominant position.

42.3 Our concurrent competition powers under the Enterprise Act 2002 (EA02) enable us, among other things, to make references to the CMA to carry out a market investigation. We can do this if we consider that there are reasonable grounds for suspecting that any feature, or combination of features, of a market or markets relating to participation in payment systems prevents, restricts or distorts competition.

42.4 Detailed guidance on how we will exercise our concurrent competition law functions will be published on our website (www.psr.org.uk) as soon as possible after our 1 April 2015 operational launch.[19]

43 Interplay between FSBRA and CA98 powers

43.1 We have a duty to consider whether it would be more appropriate to exercise our concurrent competition powers under CA98 before exercising certain of our FSBRA powers, as set out below.[20]

43.2 This duty does not arise in all circumstances. Rather, it takes account of the proper focus of CA98 action, which is designed to address either:

- agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition (the Chapter I prohibition), or
- conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market (the Chapter II prohibition).

43.3 The Chapter I and Chapter II prohibitions are not intended to tackle more general concerns about the nature of competition in a market or set of markets.[21] Accordingly, when we intend to exercise our power to give a general direction[22] or to impose a generally-imposed requirement,[23] we are not obliged to consider whether it would be more appropriate to proceed under CA98.

43.4 However, if we intend to give a specific direction or impose a specific requirement (for example, a direction or a requirement addressed to an individual payment systems operator), we will consider our CA98 powers first. The duty to consider our CA98 powers also arises in connection with our

[19] We consulted on this guidance in January 2015. See: http://www.fca.org.uk/news/psr/psr-cp15-01-psr-competition-concurrency-guidance
[20] See section 62
[21] However, Part 4 of EA02, as amended, governs the UK 'markets regime', under which the CMA and the concurrent authorities can act to address any feature, or combination of features, of a market that prevents, restricts or distorts competition.
[22] Section 54
[23] Section 55

powers to:

- require the granting of access to a payment system[24]
- vary agreements relating to payment systems,[25] and
- require the disposal of an interest in the operator of a payment system.[26]

43.5 When we decide that it is more appropriate to use our FSBRA regulatory powers, in preference to our CA98 powers, we will state our reasons. In doing so, we expect to make reference to the quality of the evidence or information in our possession and to our Administrative Priority Framework.

[24] Section 56
[25] Section 57
[26] Section 58

Other functions of the PSR

44 Keeping markets under review

44.1 We also have the function of keeping the market for payment systems and the markets for services provided by payment systems under review.[27]

44.2 We will, from time to time, initiate a market review or a call for information to gather information on a required (statutory) and/or voluntary basis.

44.3 When we seek the input of participants in payment systems, service-users and others, we will publicise specific contact details on our website. We may provide the contact details of core project team members) and/or a designated project email address.

45 Giving guidance

45.1 We will, from time to time, issue general guidance consisting of such information and advice as we consider appropriate.

45.2 This document is an example of the type of general guidance that we will issue on procedural matters and the operation of the provisions of FSBRA. However, we will also, from time to time, issue general guidance on any substantive or operational matters about which we consider it desirable to give information or advice (including on how we intend to advance our objectives).

46 Consultation

46.1 We have a duty to consult on the extent to which our general policies and practices are consistent with our general duties and on how our objectives may be best advanced.

46.2 The most common forms of consultation will be where we consult on:

- draft general directions or generally-imposed requirements (see paragraphs 5.1 to 5.7 above)
- draft general guidance (see paragraphs 45.1 to 45.2 above), and
- our general policies and principles under which we will perform our particular functions.

46.3 When we consult in any of these ways, we expect that we will use a combination of our website, press releases and direct correspondence to draw attention to the consultation (and any drafts to which they relate).

[27] Section 64

46.4 Our consultations are likely to pose a number of questions, some of which may not be of relevance to all stakeholders. Respondents should feel free to answer only those questions where they have strong opinions or relevant experience. In all cases, the consultation paper will set out detailed information on how to respond and the deadline for doing so.

46.5 Some of our consultations will be accompanied by an online response form on our website. When responding to our consultations by email we request that you provide your response in a Word document (rather than, or in addition to, providing your response as a PDF). You may also respond by post (although we request that respondents provide their responses electronically wherever possible).

46.6 We may, following certain consultations, make all non-confidential responses available for public inspection. The consultation paper will indicate whether we intend to do this. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. You should identify those specific items in your response which you claim to be commercially confidential. We may nonetheless be required to disclose 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 in handling such a request. Any decision we make not to disclose a response is reviewable by the Information Commissioner and the Information Rights Tribunal.

Contacting us

47 Complaints (within the payments industry)

47.1 If you wish to make a complaint about a breach of regulatory directions or requirements (under FSBRA), a breach of competition law or a breach of other relevant legislation (including European payments legislation which the PSR is the competent authority for), you can contact us by post or by email to: **PSRcomplaints@psr.org.uk**

48 Super-complaints

48.1 If you are a designated representative body and wish to make a super-complaint (under section 68 FSBRA) to us, please see our Super-Complaints Guidance for details on how to do so. Our Super-Complaints Guidance is available on our website: www.psr.org.uk

48.2 Our mailbox address for super-complaints is: **PSRsuper-complaints@psr.org.uk**

49 Applications about disputes

49.1 If you are in a dispute with another party (or parties) and wish to apply to us for resolution of the dispute, please see paragraphs 8.1 to 8.6 above and Appendix 1 below for details on how to do so.

49.2 Our mailbox address for applications made under sections 56 or 57 and in connection with any other disputes is: **PSRapplications@psr.org.uk**

50 For general purposes

50.1 If you wish to contact us for general purposes (for example, to provide us with information which is likely to be of relevance to our work, or to request a meeting), you can contact us by post or by email to: **contactus@psr.org.uk**

50.2 We will endeavour to respond to all general queries or correspondence seeking a response within 12 working days of receipt.

51 Our postal address

51.1 You can contact us by post at:

Payment Systems Regulator
25 The North Colonnade
Canary Wharf
London
E14 5HS

Appendix 1:

The content of applications about disputes

1 Content of applications

1.1 This appendix sets out guidelines for applicants on the format and content of applications made under sections 56 or 57 and in connection with any other disputes.

1.2 Applicants are reminded that failing to follow these guidelines may result in the application lacking sufficient information for the PSR to be able to consider it properly.

1.3 If an application does not contain all the necessary information, we will advise you on what else is needed before we will be able to consider the application and allocate an initial enquiry number to the dispute. (Please note that the allocation of an initial enquiry number does not mean that the PSR has decided to open a case or that it is appropriate for us handle the dispute.)

1.4 It would be helpful if applicants could, wherever possible, provide their application and any relevant supporting documents in Word format (ideally) or in searchable PDF format.

1.5 An application should contain the business name, address, telephone number and email address of the applicant and the contact details of an individual who can discuss the details of the dispute.

1.6 An application should contain the following information:[28]

Section A: Overview of the application

- The nature of the applicant's business and its scale (local, national, international).[29]
- The broad facts of the dispute and its commercial context.
- The legal basis according to which the application to the PSR is being made (e.g. section 56 or 57).
- The proposed remedy or remedies for resolution of the dispute.

Section B: Details of the dispute

- The relevant payment system(s) and downstream products or services.
- The full facts of the dispute and its commercial context, including all relevant background and evidence.
- The full details of any justification given for the behaviour or action leading to the dispute.
- The reasons why an application has been made to the PSR.
- If the dispute relates to a request for access to a payment system: the business plans of any relevant product or service, including forecasts, demonstrating how and when it is intended to launch the products or services that would be provided in the event that access is granted.

[28] Where the applicant considers that any information is not relevant, or believes that any information is not available, they should explain why this is the case.
[29] Details of relevant turnover or volumes/values of relevant transactions would also be helpful.

- If the dispute relates to fees, charges, terms or conditions of an agreement relating to a payment system: a copy of the relevant version of the agreement or contract, clearly identifying the clauses that are at issue.

- If the dispute relates to fees or charge being too high: benchmarking data in relation to those fees or charges, or an explanation of why no such data is applicable or available.

- If the dispute relates to another matter: sufficient information and supporting evidence to enable us to understand the context and subject matter of the dispute.

- If there are any ex ante regulatory conditions applying to any party to the dispute: the full details of those conditions and whether (and, if so, why) the applicant considers that a relevant obligation is not being met by the other party.

Section C: History of commercial negotiations

- The full details of any negotiations which have taken place between the applicant and the other party (or parties) to the dispute, including documentary evidence of those negotiations.

- In the event that a party has refused to enter into negotiations: full details of the applicant's attempts to enter into negotiations, including evidence of those attempts.

- The details of any options or proposed solutions put forward by any party during negotiations, including what was accepted or rejected, and why.

Section D: Remedy sought

- The full details of the remedy sought by the applicant, with reasons and justifications.

- The legal basis for the remedy sought (e.g. section 56 or 57 FSBRA).

- The applicant's assessment of how the remedy sought would be consistent with the PSR's statutory duties, objectives and/or regulatory principles (as set out in sections 49 to 53 FSBRA).[30]

Section E: Supporting information and evidence

- If applicable, details about the provision of any relevant product or service which depends on access to the payment system which is the subject of the dispute, including business plans relating to the relevant product or service (see Section B).

- If applicable, copies of the relevant contract or terms which are the subject of the dispute (see Section B).

- If applicable, benchmarking data in relation to any fees or charges which are in dispute, or an explanation of why no such data is available (see Section B).

- Relevant documentary evidence of commercial negotiations between the applicant and the other party (or parties) to the dispute, and a chronology of events where appropriate (see Section C).

- Any other relevant supporting information or documentary evidence.

[30] The applicant may also wish to give a view on how the subject matter of the dispute and the remedy sought relate to broader regulatory issues or policies (for example, where the matter in dispute is also subject to any investigation, review, consultation or other programme of work by the PSR or another regulator).

2 Confidentiality

2.1 When submitting an application, applicants should identify information which they consider to be confidential and which, if disclosed to the other party (or parties) to the dispute, or to third parties (as the case may be), would significantly harm the legitimate interests of the party to whom the information relates. Applicants should also explain why they consider the information to be confidential.

2.2 Applicants should provide us with a non-confidential version of their application and any supporting documents in which they redact the information they consider to be confidential.

3 Form of Declaration by an officer of the company

3.1 Applications made under sections 56 or 57 FSBRA and in connection with any other disputes should be accompanied by the following declaration by an officer of the company:

'Before making this application to the PSR, to the best of my knowledge and belief, [company name] has sought to resolve the dispute concerned through commercial negotiation and available alternative dispute resolution processes. All information and evidence provided in making this application to the PSR is, to the best of my knowledge and belief, true and accurate.

Signed: [ ]

Position in the company: [ ]

Date: [ ]'

Annex E
Draft Super-Complaints Guidance

FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Draft Guidance for designated representative bodies on making a super-complaint under s.68 FSBRA

March 2015

Note: this guidance will be reissued in final form once the Treasury has designated representative bodies under section 68 FSBRA

1. Purpose

1.1 The Financial Services (Banking Reform) Act 2013 (FSBRA) provides that certain representative bodies may complain to the Payment Systems Regulator (PSR). These "super-complaints" should be about a feature, or combination of features, of a market for services provided by payment systems in the UK that is, or appears to be, significantly damaging the interests of service-users. We must respond to such a super-complaint within 90 calendar days.

1.2 This process is intended to provide representative bodies with a mechanism to raise issues with us about features of the market that may be affecting service-user interests. A service-user is any person that uses, or is likely to use services provided by payment systems. While this may include service-users who do not reside in the UK, there may be a more limited range of actions that we can take for complaints about damage to the interests of those service-users.

1.3 Our super-complaints process has been modelled on the 'super-complaints' mechanism applicable to the Competition and Markets Authority (CMA) provided for in section 11 of the Enterprise Act 2002. Under section 70 FSBRA, we are required to provide guidance on the presentation of a reasoned case for a super-complaint under section 68 FSBRA. This guidance is intended to fulfil that requirement. It also aims to help designated representative bodies make comprehensive and robust super-complaints so that we can respond in a manner that addresses a super-complainant's concerns most appropriately.

1.4 We will continue to engage with other economic regulators including the Competition and Markets Authority (CMA) and Financial Conduct Authority (FCA) on their approach to super-complaints and to share best practices, as appropriate. We will keep our Super-Complaints Guidance under review and amend and update it as appropriate in light of experience.

2. Who can bring a super-complaint?

2.1 The Treasury decides which representative bodies should be able to make super-complaints. The Treasury can make any organisation a designated representative body provided it "represents the interests of service-users of any description".[1]

2.2 The Treasury [will be publishing] criteria to be applied by it in determining whether to make or revoke a designation. Designated representative bodies will be informed bodies that are used to representing the interests of consumers and service-users, including small businesses, who are users of payment systems and services provided by payment systems. Designated bodies are run independently, and with impartiality and integrity, and they are able to provide clear reasoning and evidence in support of any super-complaint they make.

2.3 [This guidance will be updated once the Treasury has designated bodies as designated representative bodies for the purposes of making a super-complaint under section 68 FSBRA[2].]

2.4 Representative bodies that want to apply for designated status should contact the Treasury for further information or can find information [link to Treasury guidance when available – to be inserted in final document].

2.5 In this guidance we refer to designated representative bodies that are making a super-complaint as "super-complainants".

2.6 Where a body considers that it is in a strong position to represent the interests of service-users but does not believe that it would meet the conditions for designation by the Treasury such a body may want to contact us for further information on how it can represent the interests of its service-users most effectively. We may be able to advise such a body on how to pursue a complaint with us or with another body, including by working with a designated super-complainant.

[1] Section 68(3)(a) FSBRA
[2] [To be inserted]

3. How to process a super-complaint

3.1 When making a super-complaint, the super-complainant should write to us setting out the reasons why, in its view, a UK market for services provided by payment systems has a feature, or a combination of features, that is, or appears to be, significantly damaging the interests of service-users and should therefore be investigated. The super-complaint should be clearly identified as such.

3.2 Super-complainants are encouraged to discuss their complaints with us before submitting a formal super-complaint. This may allow us to suggest an alternative course of action to the super-complainant, or inform them of other work we are doing that is likely to address the issues it intends to raise.

3.3 If the complaint is suitable for the super-complaints process, early discussion of it will also enable us to highlight any gaps in the information or analysis the super-complainant is proposing to provide. If we have information that may be relevant to the super-complaint, an early discussion may also help us do some preliminary investigative work before formally receiving the complaint. Where relevant, a designated representative body that is also designated to make super-complaints to the CMA or FCA may want to discuss their super-complaint with those authorities before deciding where best to submit their complaint.

3.4 Super-complaints and related enquiries should be submitted electronically to PSRSuper-Complaints@psr.org.uk or in hard copy to:

PSR Super-complaints
The Payment Systems Regulator Limited
25 The North Colonnade
Canary Wharf
London E14 5HS

3.5 We will aim to acknowledge a super-complaint within one working day of receipt if submitted electronically. Acknowledgement of receipt of a super-complaint does not signify that we consider it to have merit, to be complete or indicate that we intend to investigate it. We may need to ask for more information in order to evaluate the super-complaint and to decide whether to investigate further.

4. Features of the UK market

4.1 The super-complainant should highlight the features of the relevant market for services provided by payment systems that may be significantly damaging the interests of service-users. FSBRA[3] provides that a feature of a market in the UK for services provided by payment systems is to be read as a reference to:

- the structure of the market concerned or any aspect of that structure
- any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires services in the market concerned, or
- any conduct relating to the market concerned of customers of any person who supplies or acquires services.

4.2 This may cover, for instance, super-complaints about issues arising from the characteristics of a payment system or services provided by or to such a system, or from the conduct of any participant or participants[4] in payment systems, whether or not the system has been designated for the purposes of FSBRA. "Conduct" or behaviour includes any failure to act (whether or not intentional) and any other unintentional conduct.[5]

4.3 While we may consider super-complaints about any feature of a market for services provided by payment systems, we may have limited authority to take action in certain circumstances. This may especially be the case where another regulator is already dealing with the matter or may be better placed to address the concerns raised, such as the FCA or CMA. In these circumstances we will work, where appropriate, with other authorities to establish which one is best placed to deal with the super-complaint. We will agree with the FCA and CMA how we will engage with each other in such circumstances to ensure that any super-complaint is dealt with appropriately.

4.4 For the purposes of making a super-complaint, a market must be in the UK and includes:

- any market which operates in the UK (or part of the UK) and in another country or territory (or in a part thereof), and
- any market that operates only in a part of the UK.

4.5 We expect that a cross-border issue that may affect service-users in the UK or that involves participants in UK payment systems is likely to satisfy this requirement.

4.6 We will not consider an issue that solely affects service-users, participants in payment systems or markets in overseas jurisdictions.

[3] Section 68(4) FSBRA
[4] Participants in payment systems are Operators, Infrastructure Providers and Payment Service Providers as defined under s.42 FSBRA.
[5] Section 68(4) FSBRA

5. The interests of service-users

5.1 The super-complainant should set out why it considers that a feature of the relevant market for services provided by payment systems is, or may be, significantly damaging the interests of service-users, including, where applicable:

- the features of the relevant market, including any details about market practice, features and/or pricing in relation to the relevant service
- details of the conduct of the relevant participants in payment systems identified as significantly damaging the interests of service-users
- details of any relevant PSR principles, directions, requirements, guidance or other relevant legislation, guidance, or policies (for instance, EU rules) that the relevant participants in payment systems may be failing to comply with or that may otherwise be relevant to protecting the interests of service-users
- whether harm falls disproportionately on a certain class or classes of service-users
- how the relevant feature of the market is or may be causing damage to the interests of the relevant class or classes of service-user, including the impact and extent of the damage or potential damage and an explanation of how this has been assessed or estimated, and
- an indication of what outcome(s) the super-complainant is seeking in order to address the damage to service-users that has been identified.

5.2 It is not necessary for a super-complaint to demonstrate that the interests of service-users have actually been damaged. Where a super-complaint does not demonstrate that service-users are actually suffering harm, super-complainants should provide us with clear information about why they consider that service-user interests are at risk of being damaged.

5.3 Super-complaints should relate to the interests of service-users generally or to those of a specific class or classes of service-user identified in the complaint. Complaints about damage to the interests of individual service-users should be addressed in writing to us.[6]

5.4 Where possible, all matters raised in the super-complaint should be supported by documented facts and evidence. While we do not expect super-complainants to provide the level of evidence necessary for us to take formal action, the information provided by the super-complainant should be sufficient to enable us to determine whether we need to carry out further investigation.

5.5 Where relevant and feasible, the super-complainant should try to provide us with evidence about:

- details of the market (including details about the nature of the service concerned) to which the super-complaint relates, and whether there are particular aspects of the service causing actual or potential problems for service-users
- whether the super-complaint relates to the market as a whole or only to certain participants in payment systems or parts of the market

[6] See Our Powers & Procedures Guidance – email: PSRcomplaints@psr.org.uk.

- details of service-user needs, how easy it is for them to use the services provided by payment systems and the general quality of the services they receive
- whether particular aspects of the services provided by payment systems, the way in which they are sold or provided, lack of transparency or difficulties in properly assessing cost, risks and benefits of different systems, present particular problems for service-users
- the terms on which the services provided by payment systems are supplied, including the level and structure of fees, charges or other costs associated with the services
- any costs incurred or practical difficulties experienced by service-users as a direct result of switching to alternative suppliers or of seeking to exit or terminate a service
- practices by payment systems participants in the relevant sector that may be restricting or distorting competition, or stifling innovation
- whether the relevant service is only supplied together with other services rather than separately
- whether service-users or specific classes of service-users are facing barriers to accessing relevant services
- the steps the super-complainant has already taken or attempted to take in relation to the issue (or the steps the service-users which the super-complainant represents have already taken or attempted to take in relation to the issue)
- details of any industry codes of practice or guidance that apply to the service, and
- any other matter that may be relevant to assessing whether a feature or combination of features of the relevant market is or may be significantly damaging the interests of service-users.

6. How will super-complaints be handled?

6.1 We will examine the contents of the super-complaint in more detail to determine if it meets the criteria set out above, that is:

- the super-complainant is a designated representative body
- the super-complaint is about a feature, or the combination of features, of a market in the UK for services provided by payment systems, and
- there is a reasoned case showing that the feature, or combination of features, complained of is, or appears to be, significantly damaging the interests of service-users.

6.2 All the criteria must be satisfied for the complaint to receive super-complaint status.

6.3 If the super-complaint satisfies these criteria, we will assess the quality of information and evidence supplied. We will decide whether it is possible to proceed on the basis of the information provided or if further evidence or clarification is required. Where we find that a reasoned case for complaint has not been made or that it requires clarification, we will contact the designated body as soon as possible requesting further information or clarification. Where a request for clarification or further information is made, the super-complainant will be given a set time period within which to respond. If it fails to do so, we may consider making a formal response that no action will be taken regarding the complaint. We may choose to meet with the designated body making the complaint to raise any immediate questions about the evidence submitted and to offer a broad indication of our lines of enquiry.

6.4 We may then carry out wider enquiries, with a view to testing the evidence provided and obtaining any further information we consider necessary to form a reasoned view on whether the complaint justifies further action. Exactly how we do this will be determined on a case-by-case basis, but may involve:

- internal research
- requests for information
- carrying out a review of the relevant participants in payment systems
- approaching relevant businesses or trade associations for information
- publishing information that we already hold
- approaching consumer organisations, trading standards departments, government departments and/or other public bodies for information
- initiating other work such as a market study, market review, research or commissioning a report
- consultation with the Bank of England, the FCA, the Prudential Regulation Authority, the PSR Panel or any other relevant body, or
- any other action we deem necessary and appropriate.

6.5 We will keep the super-complainant informed of material developments in the progress of the case and the super-complainant can contact us to clarify issues or for further information as appropriate. Any discussions held with the super-complainant will be subject to the general restrictions on us relating to the disclosure of confidential information in section 91 FSBRA.

6.6 If a super-complainant considers that its super-complaint contains commercially confidential information, it must explain why this information is commercially confidential, and it must provide a separate non-confidential version of the complaint. Super-complainants should avoid making claims of confidentiality over entire documents unless there are good grounds for doing so.

7. What action will result from a super-complaint?

7.1 We are required under section 69 FSBRA to publish a response to the super-complaint within 90 calendar days setting out how we propose to deal with the complaint, explaining in particular whether we have decided to take any action and, if so, what action, and the reasons for our decision. Any action we take will be subject to the usual procedures and controls that may be relevant to that action. For example, if we propose to make general directions or requirements as a response to a super-complaint, we will follow our general consultation process[7] for making general directions. The possible outcomes of a super-complaint include, but are not limited to:

- regulatory action by us (including, but not limited to, taking enforcement action against a participant or participants in a regulated payment system, or launching a market review under our regulatory powers)
- using our competition law powers (including launching an investigation into anti-competitive conduct of a participant or launching a market study)
- initiating a review of our relevant directions, requirements or guidance
- referring the complaint to another authority or regulatory agency that may be better able to address the complaint
- initiating further assessment of the matters raised in the complaint
- deciding that no action should be taken, or
- dismissing the super-complaint as unfounded, frivolous or unnecessary.

7.2 It is possible that following the submission of a super-complaint, a super-complainant may be able to achieve a resolution of the matters raised with the subject of the super-complaint directly. We will consider such developments when determining whether to take action and the nature of such action. The fact that a super-complainant has been able to achieve a resolution of the matters in the super-complaint to its own satisfaction does not of itself prevent us from taking further action where we deem this to be appropriate and proportionate.

[7] Section 104 FSBRA

8. Publicity for super-complaints

8.1 It is for a super-complainant to decide whether or not to issue a press notice recording its super-complaint. However, super-complainants should consult with us to avoid jeopardising investigations that could be hampered by prior disclosure of the super-complaint. In such circumstances, the agreement of the super-complainant may be sought to keep the existence of the super-complaint confidential for a period.

8.2 It should be noted, however, that we are required to publish our response to the super-complaint. As a minimum, this publication will include a non-confidential version of the complaint and our reasons for our proposals on our website. If it is appropriate, a press notice may also accompany the response.

8.3 In some circumstances we may decide that it would also be appropriate to issue a press notice ourselves when we receive a super-complaint, for example if the announcement of the super-complaint was to be combined with a public request for information. This will be decided on a case-by-case basis. Super-complainants may be encouraged to create a public summary of their complaint, where not already in the public domain, to encourage interested parties to submit relevant information to us.

Annex F
Penalties Guidance

FINANCIAL CONDUCT AUTHORITY
PAYMENT SYSTEMS REGULATOR™

Penalties Guidance

March 2015

1. Introduction

1.1 Under section 73(1) Financial Services (Banking Reform) Act 2013 (FSBRA), we may require a participant in a regulated payment system to pay a penalty in respect of a compliance failure.[1]

1.2 A 'compliance failure' means a failure by a participant in a regulated payment system to comply with:

- a direction given by us under section 54 FSBRA; or
- a requirement imposed by us under section 55 or 56 FSBRA.

1.3 This document contains our statement of the principles which we will apply in determining (a) whether to impose a penalty; and (b) the amount of that penalty. We are required to prepare this statement of principles under section 73(3) FSBRA. Details of the procedures that we will generally apply in relation to our regulatory functions under FSBRA, including rights of appeal, are set out in our Powers and Procedures Guide.

1.4 We will have regard to this statement of principles:

- in respect of any compliance failure which occurred, or is continuing, on or after 1 April 2015
- in deciding whether to impose a penalty
- in determining the amount of any penalty.

1.5 We will apply this statement of principles in respect of all participants. This does not imply that the same compliance failure would necessarily result in the same financial penalty across and within different categories of participant.

1.6 We may, from time to time, revise this statement of principles. In so doing we will liaise with other relevant regulators to ensure that this statement reflects current best practice as appropriate to our regulatory functions and the payments industry. Any revised statement will be issued for consultation and published.[2]

[1] In this document references to a 'participant' shall have the same meaning as defined in section 42 FSBRA.
[2] Except insofar as the context requires, words or expressions will have the meaning assigned to them in the PSR's relevant directions and requirements, and otherwise any word or expression will have the same meaning as it has in FSBRA.

2. Deciding whether to impose a penalty

2.1 We will consider the full circumstances of each individual case when determining whether or not to impose a financial penalty.

2.2 Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive, and not all of these factors may be applicable in a particular case. There may also be other factors, not listed here, that are relevant in an individual case. The factors we may consider include:

- The nature, seriousness, duration, frequency and impact of the compliance failure.
- The behaviour of the participant after the compliance failure has been identified.
- The previous disciplinary record and compliance history of the participant.
- Our guidance and other published materials: we will not generally take action against a participant for behaviour that we consider to be in line with guidance, our regulatory principles or other materials published by us pursuant to our statutory functions and duties, and which were current at the time of the behaviour in question.
- Action taken by us or a relevant regulator (i.e., another relevant domestic or international regulatory or competition authority) in previous similar cases.
- Action taken by a relevant regulator: where a relevant regulator proposes to take action in respect of the compliance failure which is under consideration by us, or one similar to it, we will consider whether the other regulator's action would be adequate to address our concerns, or whether it would be appropriate for us to take our own action.
- The extent to which the compliance failure in question may relate to a novel issue which has not been the subject of previous guidance or statements by the PSR or another relevant regulator.

2.3 Where we impose a financial penalty, our normal practice will be to also publish details of the compliance failure.[3]

2.4 In deciding whether it is appropriate to publish details of a compliance failure (instead of imposing a financial penalty), we will consider all the relevant circumstances of the case. The key factor is the nature and seriousness of the compliance failure, but other considerations include the following non-exhaustive factors:

- whether or not deterrence may be effectively achieved by publishing details of the compliance failure
- if the participant has derived an economic benefit (including made a profit or avoided a loss) as a result of the compliance failure, this may be a factor in favour of a financial penalty, on the basis that a participant should not be permitted to retain any benefit from its compliance failure

[3] Under section 72(1) FSBRA we may publish details of a compliance failure by a participant in a regulated payment system.

- if the compliance failure is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the compliance failure; other things being equal, the more serious the failure, the more likely we are to impose a financial penalty

- if the participant has brought the compliance failure to our attention, this may be a factor in favour of only publishing details of the compliance failure

- if the participant has admitted the compliance failure and provided full and immediate cooperation to us, and has taken steps to put in place effective remedial action, this may be a factor in favour of only publishing details of the compliance failure, rather than also imposing a financial penalty

- if the participant has a poor disciplinary record or compliance history this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases

- the approach of the PSR or other relevant regulator in similar previous cases (where appropriate, we will seek to achieve a consistent approach to our decisions on whether to impose a financial penalty or to publish details of a compliance failure) and

- the impact on the participant concerned, although it would only be in an exceptional case that we would be prepared to agree to only publish details of the compliance failure, and not impose a financial penalty, if a penalty would otherwise be the appropriate sanction.

2.5 Where we impose a financial penalty, our normal practice will be to also publish details of that financial penalty as set out under section 72(2) FSBRA. We will only refrain from publishing details of a financial penalty in exceptional circumstances.

3. Determining the appropriate level of the financial penalty

3.1 Our penalty-setting regime is based on the following general principles:

- *disgorgement* – a participant should not benefit from any compliance failure
- *discipline* – a participant should be penalised for wrongdoing; and
- *deterrence* – any penalty imposed should deter the participant who committed the compliance failure, and others, from committing further or similar compliance failures.

3.2 The total amount payable by a participant subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the compliance failure; and (ii) a financial penalty reflecting the seriousness of the compliance failure. These elements are incorporated in the following framework.

- *First element:* the disgorgement of any economic benefits derived directly from the compliance failure (see paragraphs 3.6-3.8).
- *Second element*: the financial penalty, calculated as follows:
    - *Step 1*: in addition to any disgorgement (see first element), the determination of a figure which reflects the seriousness of the compliance failure and the size and financial position of the participant (see paragraphs 3.9-3.10)
    - *Step 2*: where appropriate, an adjustment made to the Step 1 figure to take account of any aggravating or mitigating circumstances (see paragraphs 3.11-3.12)
    - *Step 3*: where appropriate, an upwards adjustment made to the amount arrived at after Steps 1 and 2, to ensure that the penalty has an appropriate and effective deterrent effect (see paragraph 3.13); and
    - *Step 4*: if applicable, one or both of the following factors may be applied to the figure determined following Steps 1, 2 and 3:
        - a settlement discount (see paragraphs 3.14 and 5.1-5.7)
        - an adjustment based on any serious financial hardship which the PSR considers payment of the penalty would cause the participant, or if the penalty could adversely impact the stability of or confidence in the UK financial system (see paragraphs 3.15 and 4.1-4.7).

3.3 For the avoidance of doubt, any settlement discount does not apply to disgorgement of any financial benefit derived directly from the compliance failure (under the first element of paragraph 3.2).

3.4 We recognise that the overall penalty arrived at pursuant to our framework approach must be appropriate and proportionate to the relevant compliance failure. We may decrease the level of the penalty which would otherwise be determined following Steps 1 and 2 if we consider that it is disproportionately high having regard to the seriousness, scale and effect of the compliance failure. In determining any deterrence uplift at Step 3, we will also ensure that the overall penalty is not disproportionate.

3.5 The factors and circumstances relevant to determining the appropriate level of penalties set out below are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

Our framework for determining the level of penalties

First element – disgorgement

3.6 We will seek to deprive a participant of the economic benefit derived directly from, or attributable to, the compliance failure (which may include any profit made or loss avoided) where it is practicable to quantify this. We may also charge interest on the disgorgement.

3.7 Where the success of a participant's business model is dependent on failing to comply with regulatory obligations related to payment systems and services provided by payment systems, and the compliance failure is at the core of the participant's activities related to payment systems and services provided by payment systems, we will seek to deprive the participant of all the financial benefit derived from such activities.

3.8 Where a participant agrees to carry out a remedial programme (which may include redress to compensate those who have suffered a loss or not realised a profit as a result of the compliance failure), or where we decide to impose a redress programme, the PSR will take this into consideration. In such cases the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

Second element – the penalty

Step 1 – the seriousness of the compliance failure

3.9 As noted in paragraphs 3.2-3.3, the penalty is calculated separately from, and in addition to, any disgorgement. We will determine a figure for the penalty that reflects the seriousness of the compliance failure. In many cases, the amount of revenue generated by a participant from a particular business activity is indicative of the harm or potential harm that its compliance failure may cause. In such cases the PSR will determine a figure which will be based on a percentage of the annual gross revenues derived by the participant from the business activity in the United Kingdom to which the compliance failure relates.[4] Where appropriate the PSR may have regard to a participant's "billings" (i.e. the revenues invoiced to third parties) in respect of the relevant business activity, for example where revenues information is not available or differs from billings.

[4] Annual revenues realised in the year prior to the PSR's final decision notice or termination of the relevant compliance failure, whichever is earlier.

3.10 The following factors may be relevant to determining the appropriate level of financial penalty:

- *Deterrence:* when determining the appropriate level of penalty, we will have regard to the principal purpose for which we impose sanctions, namely to promote high standards of regulatory behaviour by deterring participants who have committed compliance failures from committing further compliance failures and helping to deter other participants from committing similar compliance failures.

- *The nature of the compliance failure:* the following considerations may in particular be relevant:

    - the nature of the requirement imposed on, or the direction given to, the participant which was not complied with

    - the duration and/or frequency and/or repetition of the compliance failure

    - the extent to which the participant's senior management were aware of the compliance failure, the nature and extent of their involvement in it, and the timing and adequacy of any steps taken to address it.

- The impact or potential impact of the compliance failure on the following may in particular be relevant:

    - competitiveness of and competition in the market for payment systems or the markets for services provided by payment systems

    - innovation in the market for payment systems or the markets for services provided by payment systems or the markets for infrastructure to be used for the purposes of operating payment systems

    - the interests of those who use, or who are likely to use, services provided by regulated payment systems.

- The extent to which the compliance failure was deliberate or reckless.

Step 2 – mitigating and aggravating factors

3.11 We may increase or decrease the amount of the financial penalty arrived at after Step 1 (but not including any amount to be disgorged as set out in paragraphs 3.6-3.8) to take into account factors which aggravate or mitigate the compliance failure.

3.12 The following list of factors may have the effect of aggravating or mitigating the compliance failure:

- the behaviour of the participant in bringing (or failing to bring) quickly, effectively and comprehensively the compliance failure to our attention (or the attention of other relevant regulators, where appropriate)

- the degree of cooperation the participant showed during the investigation of the compliance failure by us, or any other relevant regulator working with us, and the impact of this on our ability to conclude our investigation into the compliance failure promptly and efficiently

- any remedial steps the participant has taken or has committed to take since the compliance failure was identified, how promptly they were or will be taken, and their effectiveness
- whether the participant has arranged its resources in such a way as to enable or avoid disgorgement and/or payment of a financial penalty
- whether the participant had previously been informed about our concerns in relation to the issue or behaviour in question
- whether the participant had previously undertaken to us or another relevant regulator not to perform a particular act or not to engage in particular behaviour which relates to the compliance failure, or has undertaken to perform a particular act or to engage in particular behaviour which relates to the compliance failure
- the extent to which the participant concerned has complied with our requests or requirements or those of another relevant regulator relating to the issue
- the previous disciplinary record and general compliance history of the participant in relation to us or another relevant regulator
- action taken against the participant by another relevant regulator that is relevant to the compliance failure in question
- whether our guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials
- whether adequate steps have been taken by the participant to achieve a clear and unambiguous commitment to compliance with our regulatory requirements throughout the organisation (from the top down) – together with appropriate steps relating to regulatory risk identification, risk assessment, risk mitigation and review activities[5]
- whether the failure is due (in whole or in part) to the actions of a third party and whether the participant was or ought to have been aware of it, and took or ought to have taken reasonable steps to avoid the compliance failure.
- the size, financial resources and other circumstances of the participant on whom the penalty is to be imposed.

Step 3 – adjustment for deterrence

3.13 If we consider that the figure arrived at after Step 2 is insufficient to deter the participant who committed the compliance failure, or others, from committing further or similar compliance failures, then we may increase the penalty. Circumstances where we may do this include (but are not limited to):

[5] The mere existence of compliance activities will not be treated as a mitigating factor. The participant will need to demonstrate that the steps taken were appropriate to the size of the business concerned and its overall level of regulatory risk. It will also need to present evidence on the steps it took to review its compliance activities, and change them as appropriate, in light of the events that led to the investigation at hand. We will not, subject to some exceptions, ordinarily regard the existence of a compliance programme as a factor to warrant an increase in the amount of the penalty to be imposed against that participant for the compliance failure. The exceptions include situations where the purported compliance programme had been used to facilitate the compliance failure, to mislead us or another relevant regulator as to the existence or nature of the compliance failure, or had been used in an attempt to conceal the compliance failure.

- where we consider that the value of the penalty is too small in relation to the compliance failure to meet our objective of credible and effective deterrence

- where previous action by us or another relevant regulator in respect of the same or similar issues has failed to improve the relevant behavioural standards of the participant which is the subject of our action and/or relevant industry behavioural standards; and

- where we consider that there is a risk that similar compliance failures will be committed by the participant or by other participants in the future in the absence of such an increase to the penalty.

Step 4 – discounts

3.14 The PSR and the participant on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the PSR and the participant concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated under the first element, pursuant to paragraphs 3.2-3.3. Details of the PSR's policy on settlement discounts are provided at paragraphs 5.1-5.7.

3.15 Details of our policy on serious financial hardship are provided at paragraphs 4.1-4.7.

4. Serious financial hardship

4.1 Our starting point is that we consider that it is only in exceptional cases that we would grant a discount to a penalty based on a claim of serious financial hardship for the reasons set out in paragraphs 4.2-4.4.

4.2 We note that many Payment Service Providers (PSPs) authorised by the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA) are subject to their own prudential requirements.

4.3 In the context of penalties imposed on a participant for a compliance failure, we expect in particular that Operators[6] or Central Infrastructure Providers[7] organised as not-for-profit entities should have in place effective arrangements with their owners, shareholders, guarantors or direct participants (as the case may be) to call upon such persons to contribute sufficient funds from time to time in order to enable the Operator or Central Infrastructure Provider to meet its current and future debts and liabilities as they fall due. This would cover a debt owed to us as a penalty for a compliance failure.

4.4 With respect to any claim that a decision to impose a penalty on a participant could adversely impact the stability of, or confidence in, the UK financial system, or where we consider that such a risk exists, we will liaise with the Bank of England before taking such a decision.

4.5 Subject to paragraphs 4.1-4.4, our approach to determining penalties is intended to ensure that financial penalties are proportionate to the compliance failure. We recognise that penalties may affect participants differently, and that we should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship, and/or if this could adversely impact the stability of, or confidence in, the UK financial system. Where a participant claims that payment of the penalty proposed by us will cause it serious financial hardship, we will consider whether to reduce the proposed penalty (resulting from Steps 1, 2 and 3) only if:

- the participant provides verifiable evidence that payment of the penalty will cause them serious financial hardship and/or could adversely impact the stability of or confidence in the UK financial system; and

- the participant provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by us about its financial position.

4.6 The onus is on the participant to satisfy us that payment of the penalty will cause it serious financial hardship and/or that this could adversely impact the stability of, or confidence in, the UK financial system.

[6] As defined under s.42(3) FSBRA, in relation to a payment system, Operator means any person with responsibility under the system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.
[7] An Infrastructure Provider who provides Central Infrastructure to an Operator under a contract. Central Infrastructure means a package of systems and services provided under contract to an Operator for the purpose of operating the relevant payment system, and specifically the processing of payment transactions and funds transfers. The package must include at a minimum the provision of hardware and software (including related ancillary support services). It may include additional services such as secure telecommunications networks, facilities, physical security or support staff. Central Infrastructure may be provided to the Operator by an external provider, or internally.

4.7 There may be cases where, even though the participant has satisfied us that payment of the financial penalty would cause serious financial hardship, we consider the compliance failure to be so serious that it is not appropriate to reduce the penalty. We will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether (as applicable):

- an individual who has the ability to exercise control or material influence over the management or operation of the participant (Individual Controller):
    - directly derived a financial benefit from the compliance failure and, if so, the extent of that financial benefit
    - that individual acted fraudulently or dishonestly with a view to personal gain
- previous action by us in respect of similar compliance failures has failed to improve industry standards
- a participant or Individual Controller has spent money or dissipated assets or otherwise used financial structures in anticipation of enforcement action by us or another relevant regulator with a view to frustrating or limiting the impact of action taken by us or other regulators.

5. Settlement discount

5.1 As set out in paragraph 3.3 and for the avoidance of doubt, any settlement discount does not apply to disgorgement of any financial benefit derived directly from the compliance failure (under the first element of paragraph 3.2).

5.2 Participants subject to enforcement action may be prepared to agree the amount of any financial penalty and other conditions which we seek to impose by way of such action. We recognise the benefits of such agreements, in that they offer the potential for securing earlier protection for service-users and the saving of costs to the participant concerned in contesting the financial penalty and to the PSR itself. The penalty that might otherwise be payable in respect of a compliance failure by the participant concerned will therefore be reduced to reflect the timing of any settlement agreement.

5.3 In appropriate cases our approach will be to discuss with the participant concerned to agree in principle the amount of a financial penalty having regard to our statement of principles as set out here. This starting figure (resulting from Steps 1, 2 and 3) will take no account of the existence of the settlement discount. Such amount (A) will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The maximum percentage reduction shall be no more than 30% of A. The resulting figure (B) will be the amount actually payable by the participant concerned in respect of the compliance failure. However, where part of a proposed penalty specifically equates to the disgorgement of any profit accrued, or loss avoided, then the percentage reduction will not apply to that part of the penalty.

5.4 In certain circumstances, the participant concerned may consider that it would have been possible to reach a settlement at an earlier stage, and argue that it should be entitled to a greater percentage reduction in penalty. It may be, for example, that we no longer wish to pursue enforcement action in respect of all of the acts or omissions previously alleged to give rise to the compliance failure. In such cases, the participant concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from a greater discount. Equally, we may consider that greater openness from the participant concerned could have resulted in an earlier settlement.

5.5 Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.

5.6 However, in exceptional cases we may accept that there has been a substantial change in the nature or seriousness of the action being taken against the participant concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the PSR and the participant concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

5.7 In cases where we apply a discount in the penalty for settlement, the fact of settlement and the level of the discount to the financial penalty that would otherwise have been imposed by us will be set out in the final decision notice.

6. Apportionment

6.1 In a case where we are proposing to impose a financial penalty on a participant for two or more separate and distinct compliance failures, we will consider whether it is appropriate to identify in the warning notice and final decision notice how the penalty is apportioned between those separate and distinct areas. Apportionment will not, however, generally be appropriate in other cases.

7. Payment of financial penalties

7.1 Financial penalties will be paid to the Treasury after deducting our enforcement costs as provided for in Schedule 4 FSBRA, paragraph 10(1).

7.2 Financial penalties must be paid within the period (usually 14 calendar days) that is stated on the final decision notice. Our policy in relation to reducing a penalty because its payment may cause a participant serious financial hardship is set out in paragraphs 4.1-4.7.

7.3 We will consider agreeing to defer the due date for payment of a penalty or accepting payment by instalments where, for example, the participant requires a reasonable time to raise funds to enable the totality of the penalty to be paid within a sensible period. Each case will be treated on its facts and extra time will not be given where the participant could or should have organised its business affairs in order to allow it to pay within the specified time.

7.4 We will remain vigilant to any attempt by participants to seek to avoid or pass on the financial consequences of any penalty to third parties in circumstances where it would be unlawful or inappropriate to do so.[8] In this context, it should be noted that pursuant to section 42(8) FSBRA, the Bank of England is not a participant within the meaning of section 42 FSBRA, and accordingly participants on whom a penalty has been imposed should not seek to pass on any liability for penalties to the Bank of England, whether directly or indirectly as a cost recoverable from the Bank.

7.5 We have a mechanism which enables us to require participants to justify their fees and charges. Section 57 FSBRA enables us to vary any of the terms or fees or charges payable under relevant agreements, including (but not limited to) agreements between a PSP with direct access to a regulated payment system and another person for the purposes of enabling that other person to obtain indirect access to the payment system. It would therefore be open to an Indirect PSP to apply to us under section 57, should there be grounds for concern that the fees charged under their agreement with a Direct PSP to obtain indirect access to a payment system, represent an attempt to indemnify the Direct PSP from the financial consequences of penalties, or to otherwise pass on the effects of such penalties to Indirect PSPs.

7.6 In meeting their obligation to pay a penalty, participants must satisfy themselves that their arrangements are consistent with public policy. For example, those participants who are also subject to Chapter 6 of the General Provisions module of the FCA Handbook (GEN)[9] will be reminded that it contains rules prohibiting a firm or member from entering into, arranging, claiming on or making a payment under a contract of insurance that is intended to have, or has, the effect of indemnifying a relevant party against a financial penalty. We expect participants in a regulated payment system who are subject to GEN to comply with those provisions as relevant for the purposes of financial penalties imposed under FSBRA. We would typically expect participants in a regulated payment system who are not subject to GEN to comply with these general principles.

[8] Including, potentially, any attempt by a participant to withdraw from participation in a payment system as a Direct PSP after a penalty is imposed or when a penalty appears to be reasonably likely in order to avoid meeting liability for penalties imposed or likely to be imposed by us.
[9] See http://fshandbook.info/FS/html/FCA/GEN/6/1

Annex G
Statutory purposes & regulatory principles

Statutory purposes & regulatory principles

1. We are introducing a package of measures to enhance the functioning and development of payment systems and the services they provide for the benefit of service-users, including consumers, and the wider UK economy. Consistent with the aims behind the creation of the PSR as an independent economic regulator, and our statutory objectives, functions and duties, our package of measures is focussed on promoting effective competition and innovation in payment systems where this is in the best interests of service-users, while ensuring that payment systems are stable, reliable and efficient. We have also had regard, in introducing our package of measures, to the importance of maintaining the stability of and confidence in the UK financial system, and the importance of payment systems in relation to the performance of functions by the Bank of England in it capacity as a monetary authority.

2. One set of measures is directed at promoting effective competition in payment systems by reducing barriers and other impediments to Direct and Indirect Access to payment systems.

a. We are introducing an Access Rule to apply to pan GB-Operators (who are not already subject to access obligations) requiring that access be provided based on objective, risk-based and publicly disclosed Access Requirements that permit fair and open access. This should improve the ability of PSPs to gain access to, and use, the services provided by payment systems. We are requiring all pan-GB Operators to publish their Access Requirements, and to report annually on their compliance with the access rule applicable to them (either our Access Rule in the case of Bacs, CHAPS, C&C and FPS, or Regulation 97 of the PSRs 2009 in the case of LINK, MasterCard and Visa).

b. We are requiring the four primary Sponsor Banks (Barclays, HSBC, Lloyds and RBS) to publish clear and up-to-date access-related information on the sponsor services they provide, which will enable Indirect PSPs to compare different offers, increasing the competitive pressures on these Sponsor Banks and the ability of Indirect PSPs to negotiate with them.

c. Alongside these directions, we are supporting industry efforts to develop an Information Hub, explore Technical Access solutions and establish a Sponsor Bank Code of Conduct which we will then approve. These initiatives should improve the ability of PSPs to obtain and compare information about different service offerings, make different access arrangements, and increase confidence in the security of the supply of sponsor services provided by Sponsor Banks enabling PSPs to plan their operations and to make investments.

3. A second set of measures is directed at improving the governance of interbank payment systems, thereby ensuring that payment systems are responsive to service-users' interests. To this end, we are issuing directions requiring changes to the ownership, governance and control of payments.

a. This includes a requirement that Interbank Operators ensure appropriate representation of service-user interests in the decision-making of their governing bodies, and a requirement that Interbank Operators publish board minutes, including votes, in a timely manner. Governance processes need to give a meaningful opportunity for service-users to influence decision-making which affects them and their needs. We expect our direction will enhance transparency and the clarity of decision-making, and increase the level of attention given to service-user interests in decisions.

b. We are also requiring Interbank Operators to publish board minutes, including votes, in a timely manner. We expect this increased transparency about decision-making will enable service-users to assess whether Interbank Operators are appropriately considering their interests when taking decisions. It will also make Interbank Operators' directors more accountable for their decisions. This should help service-users understand the reasons why decisions which affect them have been taken. This should increase confidence in the governance and decision making processes of the Interbank Operators.

c. We are also addressing concerns about perceived and potential conflicts of interest by requiring Interbank Operators to ensure that any individual acting as a director is not simultaneously a director of an actual or potential Central Infrastructure Provider. This measure should increase the confidence of PSPs that the decisions of Interbank Operators are not being compromised by other interests that directors may have, and addresses potential conflicts of interest which could stand in the way of new competing and innovative Infrastructure Providers having a fair opportunity to bid for and win contracts.

4. We are following developments on the proposed EU Interchange Fee Regulation (IFR) closely, and will begin a programme of work on card systems to examine issues about how the proposed IFR will apply in the UK and wider issues raised about card systems, including transparency, governance, access and fees. This programme of work will look further at the case for regulatory intervention around the effectiveness of service-user engagement by Card Operators, and the evidence on transparency of decision-making. Considering these issues in the round will ensure that our decisions in our anticipated capacity as the competent authority for monitoring and enforcing the IFR are well informed and do not have unintended consequences.

5. A third set of measures is directed at promoting the development of and innovation in payment systems. We are establishing a Payments Strategy Forum charged with driving forward a new process for industry strategy-setting where industry needs to work together. To capture the diversity of potential sources of innovation, the Forum will involve a wide range of industry and service-user stakeholders, including consumer representatives. It will develop and agree strategic priorities for the long-term development of payment systems. We see this new process as an important opportunity for industry and service-users to jointly develop their own vision for the future of payments, to drive innovation and enable new and improved services for users.

6. We are also making a general direction covering how participants are to deal with us, and what they must disclose to us. This direction sets out that *'A participant must deal with the PSR in an open and co-operative way and must disclose to the PSR appropriately anything relating to the participant which could materially adversely impact advancement of the PSR's statutory objectives and duties.'* This will help underpin our expectations of participants, including: of a 'no surprises' culture, in which participants engage meaningfully with us; and that participant governing bodies will take ownership of an open and co-operative relationship with the PSR, bringing to our attention in appropriate ways the most important information we need.

7. We have developed our package of measures so that they reinforce and complement one another. By encouraging new entry and expansion in payment systems, our measures directed at promoting effective competition will advance our innovation objective to the extent that we expect that the range and nature of offerings to service-users users will expanded over time to take account of technological and market changes. Similarly, the establishment of the Payment Strategy Forum should promote the development of new payment system networks and services, which we expect will ultimately be beneficial for service users. Measures directed at governance and control of payment systems should improve transparency and remove any potential conflicts of interest, increasing the confidence of PSPs and service users about how decisions are taken and how their views and interests are represented. This increased insight into decision making should encourage PSPs to confidently undertake new investments, expand their operations and be innovative.

8. We also describe our regulatory approach including how we interpret our objectives, our Administrative Priority Framework and the processes and procedures we will follow in discharging our functions. This includes guidance on how we will approach super-complaints, our powers and procedures, and penalties. We recognise the importance of clarity regarding how the PSR interprets its statutory remit, and consistency in the processes and procedures it follows.

9. In developing our policies we have had regard to our regulatory principles as set out in section 49(3)(c) FSBRA. We have targeted our policies on the most important issues associated with the operation and development of payment systems, and where our actions are likely to yield the greatest benefit in light of our objectives. This is consistent with the principle that we use our resources in the most efficient and economical way.

10. In developing our policies we have taken care to ensure that our measures are proportionate to the problems and concerns identified, and that any burdens or restrictions imposed on parties are exceeded by the potential benefits when considered in general terms. We have also incorporated the principle that the users of payment systems and the services they provide should take responsibility for decisions.

11. Our policies have been developed in recognition of the critical importance of payment systems to the functioning of the UK economy. Measures such as the establishment of the Payment Strategy Forum and our policies relating to access to payment systems are aimed at encouraging competition and innovation in ways which should contribute to the sustainable growth of the UK economy over the medium to long term.

12. When considering the obligations attached to our policies, we have had regard to the responsibilities of senior management subject to requirements, and other affected persons who use payment services, in complying with our policies. Our Policy Statement also sets out clearly information about which persons are being subject to requirements under each of our policies.

13. The policies introduced allow for differences in the characteristics of payment systems participants, including differences in their objectives and the nature of the activities they undertake, and how they will implement our directions taking into account their specific circumstances. Our policies have been tailored such that they are targeted on those participants and activities which are most likely to promote effective competition and innovation, and bring benefits to service-users.

14. Our policies will require participants, in particular Operators and the four primary Sponsor Banks, to publish specific types of information. This will enable participants to be better able to assess and compare offerings from different providers of Direct and Indirect Access, and to enable service-users to have a meaningful opportunity to feed into Interbank Operators' decision-making processes and to understand the reasons why decisions which affect them have been taken. We expect that this will advance our competition and service-user objectives.

15. These policies have been developed following extensive consultation and stakeholder engagement. Alongside our Consultation Paper (PSR CP14/1) we published a set of commissioned reports, and with this Policy Statement we are publishing the non-confidential responses to our Consultation Paper. We are also setting out various pieces of guidance on how we will discharge our functions. This approach is consistent with the principle that we exercise our functions as transparently as possible.

Annex H
Equality Impact Assessment

1. Our statutory objectives are to promote competition and innovation, and to ensure that payment systems work in the interests of existing and likely future service users.

2. In this Policy Statement we have set out our final policies, regulatory directions and guidance, which are intended to advance our objectives. In doing this, we are required to have due regard to the need to:

- eliminate unlawful discrimination
- eliminate harassment and victimisation
- advance equality of opportunity
- foster good relations between people who share protected characteristics and those who do not.

3. To give due regard to these considerations, we carried out an Equality Impact Assessment of the policy proposals in our November 2014 Consultation Paper (PSR CP14/1) to examine whether our proposed policies and measures would have an adverse impact on equality, and to ensure that we represent the interests of all service users equally. We have reconsidered our assessment in light of the final proposals and measures contained in this Policy Statement.

4. Our policies and measures are set out in more detail in our Policy Statement. They can be summarised as follows:

General directions we are making	**General directions on general provisions** regarding the application of the general directions and general requirements on participation in regulated payment systems (General Provisions GP1, GP2, GP3, GP4 and GP5) (setting out general provisions which apply to all general directions and a central glossary)
	General directions on transitional provisions in relation to the general directions on access to and governance of regulated payment systems (Transitional Provisions TP1 and TP2) (relating to the compliance reports to be provided in 2015 on General directions 2, 3 and 4)
	General direction 1 (Participants' relationships with the Payment Systems Regulator) (covering how participants are to deal with us, and what they must disclose to us)
	General direction 2 (Access) (requiring the Bacs, CHAPS, C&C and FPS payment systems to have objective, risk-based and publicly disclosed Access Requirements which permit fair and open access – the 'Access Rule' - and to report on compliance with the Access Rule - the 'Reporting Rule')
	General direction 3 (Access) (requiring the LINK, MasterCard and Visa payment systems to publicly disclose their Access Requirements and to report on compliance with their access rule, Regulation 97 of the Payment Services Regulations 2009 – the 'Reporting Rule')

	General direction 4 (Governance) (requiring the Bacs, CHAPS, C&C, FPS and LINK payment systems to ensure appropriate representation of service-users' interest in their governing bodies' decision-making and to report on compliance)
	General direction 5 (Governance) (requiring the Bacs, CHAPS, C&C, FPS and LINK payment systems to take all reasonable steps to avoid certain conflicts of interest)
	General direction 6 (Governance) (requiring the Bacs, CHAPS, C&C, FPS and LINK payment systems to publish the minutes of their governing bodies)
Specific direction we are making	**Specific direction 1 on Barclays, HSBC, Lloyds and RBS on access to regulated payment systems** (requiring the four main Sponsor Banks to publish information on their sponsor services and indirect access offering)
General guidance (regulatory tools)	**Objectives Guidance** (which sets out how we propose to advance our statutory objectives)
	Administrative Priority Framework (which sets out how we will assess incoming work and prioritise our efforts and resources)
	Super-complaints Guidance (which sets out the procedure to follow for representative bodies complaining about harm to service-users)
	Penalties Guidance (which sets out the principles we will follow in setting penalties)
	Powers and Procedures Guidance (which sets out our powers and the procedures we will follow under FSBRA to adopt policy decisions, handle disputes, carry out investigations and information gathering, and take enforcement action)
Other policies	We will establish a new process for industry strategy-setting through a **Payments Strategy Forum.**
	We support industry developments and will work with industry on a range of access-related initiatives such as the **Information Hub**, **Sponsor Bank Code of Conduct** and **Technical Access**.
	We will begin a **programme of work on card systems** to examine a range of issues raised about card systems, including the Interchange Fee Regulation, transparency, governance, access and fees.
	We will launch **market reviews** into Indirect Access and into the ownership and competitiveness of infrastructure provision.

5. Our policies and measures are intended to promote competition, innovation and the interests of service-users. As a result, we do not expect that they will have a particular effect on one group of individuals over another, or be detrimental to any protected characteristic.

6. We consider that they will further the interests of service-users of services provided by payment systems, in line with our statutory objectives.

7. We consider that our policies and measures do not give rise to discrimination and are of low impact to the equality agenda.

8. We note that we did not receive any comments from respondents to our Consultation Paper on any adverse equality impacts they believed could arise as a result of our proposed policies and measures.