

## Responses to Consultation Paper PSR CP14/1 – A new regulatory framework for payment systems in the UK

### Respondents - A to B

<b>Respondent (<i>non-confidential responses</i>)</b>
ACI Worldwide
Age UK
Al Rayan Bank PLC
Allpay LTD
American Express
Association for Interactive Media and Entertainment
Association of British Credit Unions Limited
Association of Corporate Treasurers
Association of Foreign Banks
Association of Independent Risk & Fraud Advisors
Association of UK Payment Institutions
ATM Industry Association
Bacs Payments Schemes Ltd
Bank of England
Bank of New York Mellon
Barclays Bank
BDO LLP
Belfast Bankers Clearing Company Ltd
Bottomline Technologies
British Retail Consortium
Building Societies Association

ACI WORLDWIDE

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## **Question in relation to our proposed regulatory approach (see Supporting Paper 1: The PSR and UK payments industry for more details)**

**SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.**

At this time ACI has no issue with the PSR's approach. However, we would like to highlight that we have found our membership of the Payments Councils business and technical forums extremely useful and would like to continue to contribute to the strategy setting for the UK utilising our business and technical expertise. In particular we can offer global insights to the Payments Strategy Forum.

## **Questions in relation to our proposed approach to payments industry strategy (see Supporting Paper 2: Payments industry strategy and areas for collaboration for more details)**

**SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper**

Firstly ACI would like to make the PSR aware that we are Associate Members of the UK Payments Council and value the input we receive from the Business and Technology forums as this helps us in discussions with customers, prospects and the US and APAC regions of ACI. ACI has also participated in the C&CCC's Cheque User Forum.

We feel the Vendor community is currently overlooked in contributing to the development of payments systems in the UK and believe the PSR are right in having a wider reaching Payments Strategy Forum with sub-groups defining key areas. ACI have significant experience delivering solutions that could help the UK, such as G3, SEPA, etc, and we believe vendors should be more included in the setting of UK payments strategy to utilise this experience. SEPA is a good example where vendors were specifically excluded by the EPC as they were protecting their member banks interests and not being proactive.

Global Vendors like ACI can also provide the benefit of input from our United States and APAC regions into strategy setting, fully utilising their experience of items relevant to the UK economy e.g. the implementation of fixed interchange rates by the Central Bank of Australia.

There is still a need for collaboration not only between the banks on projects like CASS and PayM (both of which should have further phases developed collaboratively to keep pace with market developments) but also between the Financial Services Companies and the Vendor Community. ACI has finite development resource and we need the input from customers, prospects and the Regulator to ensure we can adhere to the deadlines set for collaborative projects.

As a provider of solutions to Retailers as well as Financial Institutions, it is ACI's view that the input of these organisations to the Strategy Forum would be beneficial.

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European developments also need to be fed into the Strategy Forum as we have concerns that developments for the issuers of the euro may not always be in the best interests of the UK Payments market. ACI refer the PSR to the analysis of Interchange caps by the UK Cards Association that should feed into setting UK strategy and not merely adopting the specific European legislation. There is also a paper by the respected US economist David S Evans which is critical of how the amounts of the interchange caps have been set and their proposed implementation.

It is ACI's view that the area of consumer awareness and education needs to be improved. Although it could be argued that individual suppliers should market their own products, in earlier eras of change – e.g. the 1980s – the Access adverts could be credited with educating a nation to shift away from cash. The communications package used during the migration to Chip and Pin was extremely powerful and significantly increased consumer awareness. The recent utilisation of messages on the tube to prevent the wrong contactless card being used indicates now is a good time for public information ads that serve to educate and reassure a largely disinterested UK public, especially as the move to mobile progresses. Hopefully this will be considered by the Payments Strategy Forum.

### **2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.**

**SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.**

Please see our answer to SP2-Q1 regarding Vendor and Retailer involvement in the Payments Strategy Forum, the need to assess the benefits to the UK of adopting European legislation without customization to the UK market and the need for improved communications with end users of payment systems.

**SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?**

ACI is content with the model as an initial set up of the Payments Strategy Forum. However, it needs to be flexible enough to make changes as required and we would suggest a checkpoint on the model after say 3 meetings to review whether the approach needs tweaking or a major change in the structure is required.

**SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.**

Please see our comments above regarding the implementation of European legislation in the UK market

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Supporting Paper 3: Ownership, governance and control of payment systems for more details)**

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**SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.**

Yes ACI supports your proposed direction as this will assist smaller financial institutions in the UK.

**SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?**

ACI agree the high level view of costs and benefits. We cannot supply any data in this area.

**SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.**

This seems reasonable to ACI and should assist the development of the UK market

**SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.**

ACI agree there is no need to issue directions at this time in relation to the other types of conflict of interest identified by stakeholders. However, this needs to be kept under review with an agreed checkpoint at an agreed stage.

**SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?**

This seems reasonable to ACI.

**SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.**

This seems reasonable to ACI. Can you confirm where these minutes will be published. Will they be freely available to the Vendor community.

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**SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?**

This seems reasonable to ACI. Can you confirm where these minutes will be published at some stage.

**SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.**

As we indicated above ACI would like to make the PSR aware that we are Associate Members of the UK Payments Council and value the input we receive from the Business and Technology forums as this helps us in discussions with customers, prospects and the US and APAC regions of ACI. The situation of the Payments Council as part of the UK payments market therefore needs to be clarified by the PSR as soon as is possible so ACI can assess how we can gain the information we receive from these forums via any new format. In particular, ACI pays a fee to attend the Payments Council meetings annually and would expect a refund should it be closed in the middle of the year.

### **Questions in relation to our proposed approach to access to payment systems (see Supporting Paper 4: Access to payment systems for more details)**

**SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.**

ACI agrees with the preferred option to the alternative. As we indicated in the note we sent prior to our discussion on 13 January we believe there is a role for a Software as a Service (SAAS) model for smaller organisations to access the UK Faster Payments System.

**SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.**

This seems reasonable as a first pass. We are interested to see if this is eventually expanded to include the 3 party payment schemes like American Express.

**SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reason**

This seems reasonable

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**SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?**

As indicated above, ACI believes a SaaS model may apply to the UK Faster Payments system and we will discuss this with the PSR on 13 January.

**SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.**

ACI has no comment on this question as it is not a sponsoring or sponsored bank .

**SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

ACI cannot comment until the features of the Information Hub are clear for us to consider. However, we believe this is preferable to a prescriptive approach at this time.

**SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

ACI is a software vendor and we can only comment on this from discussion with prospects and customers who have told us the functionality available from Sponsor banks varies substantially.

**SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

ACI would have an interest in promoting greater direct access to the UK Faster Payments System via its Universal Payments Hub solution either directly or through a Software as a Service (SaaS) solution. We therefore do not see the need for a more prescriptive approach at this time.

**SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?**

ACI cannot provide data on the costs of indirect access.

**Question in relation to our proposed approach in relation to interchange fees (see Supporting Paper 5: Interchange fees for more details)**

**SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?**

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We identified earlier in our reply above our concerns regarding European legislation on Interchange caps on the UK market and believe the implementation of this is a key area for the PSR. We refer you to the analysis of this by the UK Cards Association and also the work of Professor David Evans in the US who has been extremely critical of the European proposals, stating they have no basis in economic theory.

ACI have seen reductions in interchange to be ineffective in some of our other markets e.g. Australia and as we also have a retailer customer base we will be interested to see how much of the reduction of interchange cost to this community is actually passed to the consumer and the changes to systems that will be required to facilitate this. In particular the PSR need to devise a methodology for measuring this impact.

In theory the incentive for retailers to innovate and experiment with alternative payment acceptance methods is the reasonably high potential reduction in overall merchant service charges if interchange fees could be avoided. This kind of incentive has been harnessed by US-based retailers and manifested in the form of MCX, although this situation has been complicated by the launch of Apple Pay in that market. But the lack of a credible network effect seems so far to have negated any similar incentive in the UK.

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Supporting Paper 6: Regulatory tools for more details)**

**SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.**

ACI accept the principles on Relations with regulators, Compliance and Financial Prudence

**SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.**

ACI agrees this should apply to all participants.

**SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial Prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.**

ACI agrees the proposed approach.

**SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users'**



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interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

As a software vendor ACI cannot comment on this

**SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?**

As a software vendor ACI cannot comment on this

**SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.**

As a software vendor ACI cannot comment on this

**SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.**

As a software vendor ACI cannot comment on this

**SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.**

As a software vendor ACI cannot comment on this

**SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.**

ACI supports dispute resolution procedures in all payment methods.

**SP6-Q10: Do you agree with our proposed approach for our Super-complaints Guidance? If you disagree with our proposed approach, please give your reasons.**

ACI supports the need for Super-complaints Guidance.

**SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.**

As a software vendor ACI cannot comment on this

**SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g.**

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**should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?**

As a software vendor ACI cannot comment on this

**SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?**

As a software vendor ACI cannot comment on this

**SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.**

As a software vendor ACI cannot comment on this

**AGE UK**

# Payment Systems Regulation: Call for Inputs

Ref:

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## **About this consultation**

The Financial Services (Banking Reform) Act 2013 requires the Financial Conduct Authority (FCA) to establish a new regulator for payment systems in the UK. This new regulator, currently referred to as the Payment Systems Regulator or PSR was incorporated as a subsidiary of the FCA in April 2014 and will be fully operational in April 2015. The Payments Systems Regulator is now consulting on its assessment of the challenges facing the payments industry and the PSR's proposed regulatory framework.

This follows a number of other related consultations to which Age UK has responded. Previous responses can be found [here](#).

## **About Age UK**

Age UK is a charity and a social enterprise driven by the needs and aspirations of people in late life. Our vision is for a world where everyone can love later life.

We are a registered charity in the United Kingdom, formed in April 2010 as the new force combining Help the Aged and Age Concern. We have almost 120 years of combined history to draw on, bringing together talents, services and solutions to enrich the lives of people in later life.

Age UK provides information and advice to over 5 million people each year, runs public and parliamentary campaigns, provides training, and funds research exclusively focused on later life. We support and assist a network of around 170 local Age UKs throughout England; the Age UK family also includes Age Scotland, Age Cymru and Age NI. We run just over 450 Age UK charity shops throughout the UK and also offer a range of commercial products tailored to older people.

Age UK also advocates for older consumers. Particular areas of focus in financial services in the recent past have been payment systems (including work on the future of cheques); access to banking more generally (for example accessibility of telephone and online options, treatment of powers of attorney); equalities (for example calling for blanket age limits in lending to be replaced with appropriate use of underwriting).

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## Key points and recommendations

- The regulatory approach should make explicit the importance of understanding consumer behavior and need, in particular through research to be conducted by the PSR and Operators
- The regulatory approach should set out what measures or other methods the PSR will use to ensure that payment systems are operating in the interests of service users, including vulnerable consumers
- We support the proposed approach to setting up the Payments Strategy Forum
- In order to ensure that it understands the needs of end users, the Payments Strategy Forum will need to (i) have access to detailed research; and (ii) establish a clear understanding of what consumers should be able to expect from payment services
- Similarly, obligations on Operators to ensure appropriate representation do not go far enough. Operators should be actively seeking to ensure that consumer needs are met, including through building their own capacity to understand consumer needs, rather than simply responding to issues raised by consumer groups.

### 1. Introduction and general comments

We are pleased to respond to this consultation on the proposed regulatory framework for UK payments. Although the PSR is a new body with new objectives and strong new powers many of the challenges facing the sector have been with us some time.

Payment systems are essential services. They are effectively the only medium through which consumers can access utilities and essential services such as gas, electricity and water – and most people also use them to undertake the most basic of everyday tasks such as grocery shopping. Almost without exception, everyone needs access to payment systems in order to be able to participate in society at the most elementary level. Payment systems also form an essential part of community infrastructure, particularly in rural areas where older people may be heavily reliant on small local businesses.

Older people constitute a rapidly increasing proportion of the population. Today over 14 million people in the UK are aged 60 or over, with this number expected to pass the 20 million mark in the next 20 years<sup>i</sup>. In fact, the percentage of the total population who are over 60 is predicted to rise from 22% at present to almost 30% in the next 20 years<sup>ii</sup>. Yet Age UK research in 2011 found that payment systems were not working well for many older people<sup>iii</sup>. New developments that make it harder to obtain wages and benefits in cash – including modernisation of their payment systems by DWP, HMRC and the private sector and changes to delivery of social care as part of the personalisation agenda – increase the reliance of consumers, particularly older people, on payment systems. Unless their needs are taken into account, a lack of access to non-cash based payments for this increasingly large segment of the population will further increase their exclusion from

society. It is also important to note that issues experienced by older consumers are often also found among other marginalised groups, such as those living with disabilities or on a low income.

Age UK provided a full response to previous consultations on UK payments which may be relevant, our response to the most recent consultation on the establishment of the PSR can be found [here](#).

In this consultation we focus on how the PSR and Operators can make sure they understand the needs of different groups of consumers and how the PSR can ensure that its proposed framework delivers its objectives in the interests of service users.

**SP1-Q1:**

**Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.**

We broadly agree with what is included in the regulatory approach, however suggest some additions. In order to ensure that each of the PSR's objectives are met it will be necessary to understand how service users, including end users are experiencing payment services. We believe this will require: (i) ongoing detailed research covering a range of different consumer types; (ii) a concept of what payment systems operating in the interests of consumers look like.

The Payments Council currently conducts details research on use of payments and has recently recognized the need to expand its standard research to ensure that the needs of some commonly excluded groups are included. The PSR should ensure that this or equivalent research is continued and that the PSR has full access to it. It will also be important to enable the proposed Payments Strategy Forum to ensure that payments strategy develops in the interests of consumers. Therefore we see a strong argument for the PSR taking a lead role in the research – as even if individual Strategy Forum members have conducted research much of it may be considered commercially sensitive and therefore discussion will be limited if there is not public information available to inform debate. Ideally it would also be made accessible as widely as possible so that consumer groups and others could use it. We would be happy to discuss this in more detail.

Given the importance of understanding consumer experience it would be helpful if it was included in the regulatory approach.

In the context of payment systems we see innovation as often being driven by opportunities presented by technological change, rather than by consumer need. Efficiency gains should benefit both operators and consumers. Our understanding of innovation in the interests of consumers would be changes, whether technology enabled or not, that improved consumer experience of payments, including cost. It will be important for the PSR to understand how innovation is working for the full range of consumers, not just those for who are fully engaged with latest technology and who are enthusiastic early

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adopters. For example there are some long-standing barriers to convenient, safe and affordable access to payments, such as limited options for delegated payments. It may be that the answer to these is within a new payments technology or it may be that existing technology permits a solution (such as second cards on current accounts) but that it has not been developed yet. If innovation is occurring in the interests of consumers we would expect to see it addressing some of the longstanding barriers and responding to consumer need, rather than simply to technological opportunities. We would also expect the PSR and the Payments Strategy Forum to be keeping a holistic view of how well innovation is working for consumers which recognizes that new approaches can include barriers as well as improvements. For example if access to payments continues to move to online and mobile channels significant groups of consumers will be excluded. This does not mean that online options should not be developed, but that a range of options should continue to be available.

**SP2-Q1:**

**Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.**

We support the proposed approach at this time, with a review in due course to ensure that it is working as intended.

We have seen that the payments industry is capable of collaboration, but that this most often appears to occur when there is some clear external pressure e.g. direction from government or regulation. We consider there is scope for further collaboration without breaching competition law. For example in communication to consumers, further research on consumer behavior and needs and setting common standards so that consumers can more easily understand what they can expect from core payment systems and how to use them. Some of this collaboration may go beyond pure payments and require coordination with other groups e.g. consumers will be receiving multiple messages some specifically about payments, some about their banking more generally, from consumer groups, regulators, industry bodies and individual institutions as well as other media.

**SP2-Q2:**

**Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.**

We broadly support the proposals for the design of the Payments Strategy Forum. However based on our experience of participating in the Payments Council User Forum over a number of years we consider that stakeholder representation through consultation with consumer groups is not enough on its own to ensure that the needs of consumers are met. The importance of meeting the needs of end users is clear, especially given the

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place of service users in all three of the PSR's objectives. Industry and regulators therefore need to do more than consult periodically with consumer representatives. This is not simply because of capacity issues within consumer groups, but also because we observe that regulators and firms will often want to verify research carried out by consumer groups with their own work. Therefore firms and regulators must own the issue themselves. It should not be acceptable to wait until a consumer group has raised an issue, the Payments Strategy Forum should be in a position to proactively consider what changes consumers need. This means ensuring that they have the internal capacity to research and consider consumer needs. Some financial institutions and regulators have started to increase the resource and expertise they have in areas of consumer research and in particular understanding the needs of vulnerable consumers and we would like to see this becoming the norm. As discussed in response to previous questions, this will require both ongoing research from the PSR and research from the payment service providers.

The Payments Strategy Forum terms of reference should make clear that the Forum will look at systems holistically and not focus solely on the parts which are changing. The tendency to date seems to have been a push for change before the implications for the full range of consumers have been fully understood, for example the cheque withdrawal programme, current voices pushing for cashless society, and a focus on innovation based around digital and mobile devices. This is contrasted by the lack of attention paid to improving existing services even where gaps have been documented, for example a lack of safe ways to delegate payments effectively.

Representation of end users, especially vulnerable consumers, will also be improved if the terms of reference of the Forum and continued steer from the PSR are explicit in the need to base the strategy on consumer need. It would help if, over time, the PSR and the Forum considered and published a more detailed view of what consumers should be able to expect from payments systems. Because of the essential nature of payment systems this should include a particular focus on the needs of vulnerable consumers.

**SP3-Q1:**

**Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.**

As noted in response to earlier questions, we consider that a wider culture change is required to ensure that the needs of all consumers are understood. We know from recent work by the FCA and others that consumer demand is often weak in financial services and therefore does not always discipline providers adequately. Providers therefore need to make more effort to understand the actual behaviours and needs of different consumer groups.

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Further, it is simply not practical for the limited number of consumer groups to make meaningful representations individually to the many Operators and Payment Service Providers in the market.

## **Annex 1 – Relevant extracts from previous consultation response**

This annex contains part of our response from a previous consultation which is particularly relevant to the above questions. We have slightly amended the wording to provide more clarity on ideas around vulnerable consumers.

### **A. Understanding the interests of service users**

Historically it has been difficult for consumer organisations to achieve adequate representation given the imbalance of power between consumers and the industry and within existing governance structures.. Experience of working within payments and in seeking to provide consumer insight to the FCA suggests that consumer organisations alone will rarely be able to provide the evidence required by the regulator either to determine its plans or to take action on a particular issue. Further, consultation exercises will tend to receive a much greater response from a range of industry players, some of whom may be particular types of service users, than from consumer groups. This means that:

- the PSR will need to undertake or commission its own independent research to understand the needs of service users and:
- the PSR will need to build links with and capacity within relevant service user organisations.

We believe that the PSR will need to be proactive in this area and focus on holding the industry to account in the interests of service users. The need for this has been demonstrated by past failings to take into account the needs of consumers, or even seek to understand their views. The tendency seems to have been a push for change before the implications for consumers have been fully understood, for example the cheque withdrawal programme, current voices pushing for cashless society, and a focus on innovation based around digital and mobile devices. This is contrasted by the lack of attention paid to improving existing services even where gaps have been documented, for example a lack of safe ways to delegate payments effectively. Progress in these areas has tended to require significant input from consumer groups and at times Government before industry responds. Further, we continue to see considerable PR activity around new payment systems and the role of technology which do not take into account the needs of older consumers or provide any more general context.

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The mechanism for the new regulator's engagement with consumers therefore needs to be carefully thought through, both in terms of the formal structure it takes and getting the right kind of people around the table. We would favour either replicating – or expanding the remit of - the FCA's consumer panel as a means of achieving this.

Success in understanding the needs of service users will also require an appropriate culture within the PSR. We recommend that the PSR learns from the experiences of the FCA and where possible considers using resources developed in the Consumer and Market Intelligence team to help promote positive culture within the FCA.

## **B. Vulnerable service users**

Because payment services are an essential service and in the light of recent experiences we would also argue that, over and above the need for consumer engagement, there should be a specific focus on how payment systems work for vulnerable consumers. A “vulnerable consumer” can be defined in various ways depending on the regulator but commonly includes those who are of pensionable age and disabled people. Our understanding of who may be vulnerable is still developing and this is another area where the PSR may benefit from sharing expertise being developed within the FCA. For example we would argue against stereotyping all older people as vulnerable which is incorrect and can enshrine discrimination. Rather we strongly believe that suppliers of products and services can all render any of us unnecessarily vulnerable because of the policies and procedures they employ. Older people and other groups may be disproportionately affected by these policies and procedures partly because they are often excluded from their design. This is particularly the case in a sector such as financial services that is already intrinsically complex and where, for example, technological innovations designed without the needs of older people in mind leave them with no viable alternative to access money.

It is important that vulnerable service users and other marginalized groups are covered by the work of the PSR. These users are especially likely to experience a failure of competition and therefore need the intervention of an economic regulator to ensure that services promote and take account of their needs. The Payments Council has recently started some good work on understanding the needs of the older old and those living with disabilities and on delegated payments, however this has occurred following significant pressure from Government and consumer groups. We would therefore be concerned if this type of work was left as a corporate social responsibility ‘extra’ to the industry; it should instead be central to achievement of the Service User objective.

## **C. Older people and payment services**

Age UK has found that payment services do not meet the needs of many older people.<sup>iv</sup> Common issues include challenges in safely and securely delegating payments and difficulties communicating with their payment service providers. Difficulties using PINs and feeling compelled to accept new systems that they do not feel confident using or cannot use without assistance are also reported to us. Some of our main concerns at this time,

however, are around the future payments landscape. The vision expressed among many payments professionals does not appear to take into account the needs of a significant section of the public.

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<sup>i</sup> Age UK Later Life Factsheet February 2014

<sup>ii</sup> Age UK Later Life Factsheet February 2014

<sup>iii</sup> The Way We Pay: payment systems and financial inclusion, Age UK 2011

<sup>iv</sup> The Way We Pay: payment systems and financial inclusion, Age UK 2011

Al Rayan Bank PLC

# Al Rayan Bank PLC

**PSR CP14/1 - Al Rayan Bank PLC (formerly Islamic Bank of Britain PLC) response:**

Following on from the Bank's inputs into last year's PSR 'Call for Input' request and PSR Questionnaire surveys (x2 - Access to interbank payment systems and Access to card payment systems) administered by Accenture on behalf of PSR) we are pleased to advise that the vast majority of the proposed actions as set out in the questions within the consultation paper CP14/1 align with our hopes for the regulation of the Payments Industry within the UK.

In particular the following areas we have further input that may be of value in the Payment Systems Regulator's considerations in the run up to the preparation of the final Policy Statements (due March 2015) and rules live implementations from April 2015 and thereafter.

**SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.**

This element of transparency we strongly encourage as we believe it will ensure Indirect PSP (agency banks) and alike institutions will get a much clearer opportunity to compare and shop around for services and that will lead to good healthy market competition but more importantly and better informed marketplace.

In particular from point C (see below) of 'General direction 3 (Access): sponsor banks' we believe will set out clearly the objective basis on which applications will be assessed and remove the current uncertainty surrounding the existing process, whereby agency banks get turned down by sponsor banks when looking for alternative suppliers for their agency banking needs, on varying grounds some of which maybe/are less than clear.

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

- a. the sponsor bank's 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.*

**SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

We believe a more prescriptive approach requiring a base set of information may be more practical in that one set of research/ garnering activities upfront for the typical requirements of a common shared information HUB database available to the industry under closely monitored timelines may deliver the required outcomes more efficiently and coherently and just as importantly ensure it's kept up to date.

**SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

We consider an element of PSR intervention through a prescriptive approach may well help set the required ground rules and prevent common positions 'code of conduct' only beneficial to the sponsor banks at the expense of the end service users and Indirect PSPs.

**SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

Yes in that to open up the market we would rather have options as an indirect PSP to select varying direct and indirect 'technical access' solution for the routing of payments traffic for processing/clearing and at the same time retain one settlement sponsor bank who has the Direct Access whilst the bank retains it's Indirect PSP access status, if it so wishes having assessed the commercials. This is the step change that will help make the payments systems landscape access and durability much more robust and innovative in delivery and nature.

Finally we welcome the PSRs intentions in the following respect "we have begun Pre-Launch scoping work in preparation for the full launch of our market review into the supply of Indirect Access, which will formally commence by April 2015."

# ALLPAY LTD



**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Type your answer here

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Type your answer here

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Type your answer here

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

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**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Type your answer here

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach,

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please give your reasons.

Type your answer here

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Type your answer here

## **Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees for more details*)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

### **Adverse impact on vulnerable sections of society**

The nature of the changes, primarily the Visa Debit fee moving from a "pence per transaction rate" to a "percentage of the value of the transaction" discriminates against vulnerable members of UK society and is likely to increase financial exclusion. A specific example is the payment of household bills (e.g. rent, council tax) by social housing tenants. The merchants – Registered Social Landlords, which are private, non-profit making organisations and local and central government (sectors with a volume of some 450m annual payment transactions) – now find that accepting debit cards for these payments is prohibitively expensive, even in comparison to accepting cash payments. This at a time when there is a big drive from government, housing associations and third sector organisations to increase the take up and use of mainstream bank accounts and modern payment methods by those currently financially excluded.

allpay is a bill payment specialist, which itself handles £5bn a year on behalf of more than 750 public sector clients, offering cash, debit/credit card and direct debit payment solutions. On the card acceptance side, allpay has seen a marked increase in tenants preferring to pay bills by debit/credit card, and reduced preference for cash payments. However, the changes to interchange will significantly increase the costs to the merchant of their card-based transactions as the average transaction value (ATV) is c£190 and rising, well above the UK overall ATV of around £48.

It should be noted that the social housing sector is going through wide ranging welfare reforms being driven by Central Government, where instead of landlords receiving rent directly from government for tenants on full housing benefit, individuals will now be responsible for paying the landlords directly, further increasing landlords' transaction costs.

Our view is that, while a stated key driver of Interchange changes has been to generally reduce the costs of processing card transactions and to make card payments more attractive, in the social housing and local authority markets this will have precisely the opposite effect, and right at a point in time when card transactions are set to grow considerably. As well as being unfair, this stifles innovation – for example allpay has recently won the Best Mobile Application Award at the Emerging Payments Awards 2014 for its app enabling our clients' customers to pay their bills with a debit or credit card on their smart phone – as without the growing demand for card payments investment in innovations in that space would not be viable.

In addition, a high proportion of these transactions are classed as non-secure transactions - such as telephone payments, which is a crucial channel for sections of society who are also

more likely to be digitally excluded - so attract the higher rates. Our understanding is that one of the factors which underpin the difference in interchange costs is “risk cost”. However, a simple division into “secure” and “non-secure” by transaction channel does not take into account the nature of the payment – social housing rent has a completely different (and lower) risk profile than, for example, buying high-tech consumer goods, yet interchange does not reflect this – in effect leading to cross-subsidy by the less risky merchant.

We believe that the regulator should ensure that, where Payment system infrastructure costs are shared by a means such as interchange, that the mechanism should avoid discriminating unfairly against certain types of consumer or merchant, applying appropriate rigour to the underlying analysis, segmentation and research to achieve that.

Type your answer here

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Type your answer here

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users’ interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you

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agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Type your answer here

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you

disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Type your answer here

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Type your answer here

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here



AMERICAN EXPRESS

**AMERICAN EXPRESS**



**AMERICAN EXPRESS' RESPONSE TO THE PAYMENT SYSTEMS REGULATOR'S CONSULTATION PAPER ON A NEW REGULATORY FRAMEWORK FOR PAYMENT SYSTEMS IN THE UK**

14 January 2015

**A. INTRODUCTION**

American Express welcomes the opportunity to respond to the Payment Systems Regulator's ("PSR") Consultation Paper on a New Regulatory Framework for Payment Systems in the UK ("Consultation").

American Express fully supports the PSR's objectives to promote effective competition and innovation in payment systems and ensure that payment systems operate in a way that considers and promotes the interests of service-users.

In general, American Express appreciates that the PSR's proposed regulatory framework is designed to enable it to realize its objectives. As the framework develops, American Express would encourage the PSR to pursue its approach consistent with existing competition law principles, given much case law and legal analysis already exists for many of the areas identified for action.

American Express has a few suggestions and clarifications, which are dealt with in more detail under each relevant question heading below:

- The PSR and UK payments industry: HM Treasury ("HMT") has correctly identified that American Express does not meet the designation criteria for regulation by the PSR, as we set out in more detail below. American Express also provides a few clarifications in relation to its business model. [X CONFIDENTIAL].
- Payments industry strategy and areas for collaboration: Before the Payments Strategy Forum is established, we would welcome clarification of a number of areas, such as: how the composition of the Forum will be decided; how the Forum will be funded; what the decision-making process will look like; and how the agreed strategic objectives will be implemented. Establishing appropriate parameters will ensure fair and equal representation of different stakeholders' interests.
- Ownership, governance and control of payment systems: The PSR's concerns regarding the ownership, governance and control of payment systems are not applicable to single corporate group entities, such as American Express [X CONFIDENTIAL].
- Regulatory tools: American Express suggests clear, detailed and practical guidelines are provided setting out how industry participants are expected to comply with the PSR's proposed "no surprises" obligation. American Express further considers that in order to ensure a desired degree of consistency of regulatory approach and greater efficiency for regulators and participants alike, it is key that clarity is provided on the relationship between the different

regulators, identifying potential areas of overlap and considering the process for resolving any such issues. Finally, American Express considers that there should be an upper limit on the level of penalty that can be imposed by the PSR, in line with the approach taken in relation to other regulators that are entrusted with competition law powers. Moreover, the short timing that the PSR sets out for the payment of fines is likely to cause difficulties for most companies to comply with. American Express suggests changing the timing for the payment of fines to between 60 and 90 days.

Finally, American Express sets out some concluding remarks on the long term success of payment systems regulation.

American Express hopes that its views will further inform and assist in shaping the PSR's approach to regulation, and looks forward to an on-going dialogue with the PSR.

[REDACTED CONFIDENTIAL].

## **B. AMERICAN EXPRESS' RESPONSE TO THE PSR'S QUESTIONS**

### **1. The PSR and UK payments industry**

**SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.**

In this section, American Express provides a few observations regarding the PSR's proposed regulatory approach. American Express further welcomes indications from HMT that American Express should not be designated for regulation by the PSR, given that American Express does not meet the criteria for designation. [REDACTED CONFIDENTIAL].

#### **1.1 The overarching proposed regulatory approach**

In its Supporting Paper 1 (The PSR and UK payments industry), the PSR provides more detail on its proposed regulatory approach. American Express welcomes the overarching proposed regulatory approach and principles. It believes that most elements of the proposed regulatory approach will help to foster innovation within a competitive environment and ensure the promotion of service-users' interests.

American Express is pleased to note that the PSR recognizes that businesses differ in nature and their objectives, which should, where appropriate, be reflected in how it exercises its functions.<sup>1</sup> [REDACTED CONFIDENTIAL].

In addition, American Express supports the PSR's intention to work with other authorities in the financial sector, competition authorities and other authorities, including other sectoral regulators,<sup>2</sup> to ensure that its activities are consistent with, and not duplicative of, theirs.

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<sup>1</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 1 (The PSR and UK payments industry), November 2014, p. 17.

Finally, American Express notes that there may be difficulties in achieving the proposed “no surprises” culture in which industry participants engage meaningfully with the PSR and keep the PSR informed of anticipated developments before they are implemented.<sup>3</sup> Some developments are commercially sensitive until launch and companies working on these developments are often bound by Non-Disclosure Agreements (“NDAs”). Clear, detailed and practical guidelines are needed setting out when industry participants should approach the PSR, how industry participants bound by NDAs could comply with the “no surprises” obligation without breaching any applicable NDAs and whether the PSR will be subject to confidentiality obligations when industry participants share commercially sensitive information.

### **1.2 HMT has correctly indicated that American Express should not be designated for regulation by the PSR**

In its Supporting Paper 1 (The PSR and UK payments industry), the PSR provides information about the industry structure, including information about the entities that the PSR will regulate as they have been designated by HMT.<sup>4</sup> HMT has indicated that small three party, proprietary payment networks such as American Express should not be designated for regulation by the PSR and that American Express should be treated similarly to other three party, proprietary schemes such as Diners and JCB in this respect.<sup>5</sup> American Express fully supports HMT’s recommendation.

**American Express does not meet the criteria for designation.** It is clear that American Express should not be designated for regulation by the PSR as American Express does not fulfill the designation criteria set out in section 44 of the Financial Services (Banking Reform) Act 2013 (“Banking Act”).

**Any deficiencies in the design of the system, or any disruption of its operation, would not have serious consequences for those who use, or are likely to use, the services provided by the system.** If any disruption to the American Express network arose, both sets of customers - cardholders and merchants - have alternative payment options and therefore would not experience any serious consequences. [X CONFIDENTIAL].

**Criteria for designation.** American Express notes that in making a designation assessment, the following criteria must be taken into account: the number and value of the transactions that the system presently processes or is likely to process in the future; the nature of the transactions that the system presently processes or is likely to process in the future; whether those transactions or their equivalent could be handled by other payment systems; and the relationship between the system and other payment systems. American Express sets out its analysis in relation to these questions in more detail below.

- **Limited number/value of transactions processed by American Express.** American Express is a small player in the UK card payments sector.<sup>6</sup> [X CONFIDENTIAL].

<sup>2</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 1 (The PSR and UK payments industry), November 2014, pp. 23-24.

<sup>3</sup> See: PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 1 (The PSR and UK payments industry), November 2014, p. 25.

<sup>4</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 1 (The PSR and UK payments industry), November 2014, p. 7.

<sup>5</sup> HMT, Consultation on designation of payment systems for regulation by the Payment Systems Regulator, October 2014, section 4.

<sup>6</sup> Note that the European Commission has recognized that American Express is a small player in the EU card payment sector: “the EU payment card markets overall are dominated by the two major international four-party payment card schemes, Visa and MasterCard”, with shares of “41.6% (Visa) and 48.9% (MasterCard) [...]” [while] “other international payment card schemes were far

- *Nature of transactions processed by American Express.* American Express cards are used for a wide range of retail payments, including in store, online, mobile and mail order payments. [X CONFIDENTIAL].
- *Whether American Express transactions could be handled by others.* American Express is a choice for both merchants and cardholders. [X CONFIDENTIAL].
- *Relationship between American Express and other payment systems.* Due to its three party proprietary business model and its payment institution (*i.e.*, non-bank) status, the extent of American Express' relationship with other UK payment systems is limited to circumstances where it has a relationship as a customer. [X CONFIDENTIAL].

**Conclusion.** For the abovementioned reasons, HMT correctly concluded not to designate small three party proprietary payment networks such as American Express for regulation by the PSR.

[X CONFIDENTIAL].

## **2. Payments industry strategy and areas for collaboration**

**SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.**

**SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum?**

**In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.**

**SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?**

**SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.**

The Payments Council has played an important role in setting strategy for the industry and has engaged constructively with American Express. American Express also welcomes the establishment of a new multi-stakeholder strategy setting Forum, one which represents a variety of interests and business models, from both the supply and demand side. [X CONFIDENTIAL].

American Express notes that there are a number of areas that need clarification, such as how the composition of the Forum will be decided so that it is inclusive but not unwieldy. American Express

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*behind the two market leaders: the following American Express had a mere 1.6% share, while Diners stood at 0.3%".* European Commission, Impact Assessment of the proposed Payment Services Directive and Interchange Fees Regulation, 24 June 2013, pp. 99-100.

believes that a broad and equal representation of stakeholders will help drive innovation in the industry. [X CONFIDENTIAL].

There are other areas that need clarification as well. For example: (i) how will the Forum be funded; (ii) what will the decision-making process look like – will all stakeholders have equal voting rights; (iii) how will agreed strategic objectives be implemented; *etc.*? American Express suggests that the PSR issues guidelines around these areas before establishing the Forum. American Express believes that the European Central Bank's establishment of the Euro Retail Payments Board ("ERPB") may offer a useful model for the PSR in setting up a functional multi-stakeholder strategy setting Forum. American Express represents the European Payment Institutions Federation at the ERPB and would be happy to meet with the PSR to discuss how the ERPB functions in practice.

Finally, American Express hopes that the Forum could consider the following themes:

- Innovation in payment methods, particularly in m- and e-payments;
- Growth of non-banks in providing payments and payments systems;
- The move to contactless NFC and other developments which are disintermediating the payment space and challenging the status quo;
- Fraud risk and identity management; and
- Better integration of global standard to promote card standardization and global interoperability to resolve fragmentation.

### **3. Ownership, governance and control of payment systems**

**SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.**

**SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?**

**SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.**

**SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.**

**SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of**

that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

At the outset, American Express notes that it has interpreted references in the PSR's Consultation to "Card Operators" not to include American Express or other proprietary card payment schemes that HMT is proposing to exclude from designation. [X CONFIDENTIAL].

In this section, American Express confirms that the PSR's concerns about the ownership and control of payment systems do not apply to American Express. [X CONFIDENTIAL].

**Governance and conflicts of interest.** In its Supporting Paper 3 (Ownership, governance and control of payment systems), the PSR explains that "[c]onflicts of interest arise where the concerns or aims of two different parties have the potential to be incompatible".<sup>7</sup> The PSR further identifies a number of areas of concern, namely "[s]ituations where the same individual is (or could be) appointed simultaneously as a director of an Interbank Operator as well as of a Central Infrastructure Provider to that payment system [...] situations where directors appointed by PSPs to the boards of Operators make decisions where the interest of their employer and of the Operator are not aligned [...] situations where reporting lines are not clear for senior staff of Operators [...] situations where the same individual is appointed simultaneously to the boards of multiple Operators, who each have different interests".<sup>8</sup>

Under no circumstance do the PSR's concerns apply to American Express as there is no concept of licensee "membership" in the American Express network, and the decision whether and to whom to license American Express' assets (most importantly, the intellectual property in the American Express brand) is taken solely at the discretion of American Express, without any direct or indirect involvement by any licensee. Furthermore, licensees play no role in the management of American Express and are not represented, directly or indirectly, in any governance bodies of American Express. American Express is a fully, publicly traded company, and no shares or decision-making roles are reserved for any licensees. In short, the scheme does not involve any kind of association of competing undertakings. Each licensee's relationship is solely with American Express and carried out strictly at arm's length. [X CONFIDENTIAL].

<sup>7</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 3 (Ownership, governance and control of payment systems), November 2014, p. 25.

<sup>8</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 3 (Ownership, governance and control of payment systems), November 2014, p. 25.



Moreover, the governance of American Express is already extensively regulated and complies with governance requirements imposed on payment institutions by the FCA and the European Central Bank (“ECB”). In the UK, American Express’ issuing and acquiring subsidiaries are limited companies regulated as payment institutions by the FCA. The ECB oversees American Express’ scheme activities across the Eurosystem.

**Interests of service-users.** In its Supporting Paper 3 (Ownership, governance and control of payment systems), the PSR mentions that “[u]nder current governance arrangements (for both interbank and card payment systems), the views and interests of some stakeholders are not adequately considered or addressed by the Operators and their boards when decisions or discussions relating to the operation or development of the payment system take place”.<sup>9</sup>

American Express ensures the interests of all its customers are properly considered. This engagement is essential for American Express to deliver on its aspiration to be the world’s most respected service brand. [X CONFIDENTIAL].

American Express finally notes that it is already heavily regulated by other authorities, such as the FCA. These authorities prescribe certain rules about how American Express should treat its customers when carrying out regulated consumer credit activities, e.g., American Express has to comply with fundamental obligations under the FCA’s regulatory system like paying “[d]ue regard to the interests of its customers and treat[ing] them fairly”.<sup>10</sup>

**Conclusion.** The PSR’s proposed regulatory approach to address its concerns about the ownership and control of payment systems is not applicable in the context of American Express [X CONFIDENTIAL]

#### 4. Access to payment systems

**SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?**

<sup>9</sup> PSR, Consultation paper on a new regulatory framework for payment systems in the UK, Supporting Paper 3 (Ownership, governance and control of payment systems), November 2014, p. 14.

<sup>10</sup> FCA Handbook, PRIN 2.1 The Principles, Principle 6, Customers’ interests.



**SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.**

**SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?**

#### **4.1 Open access requirements and American Express**

As discussed above (section 1.2), HMT has indicated it considers American Express does not meet the criteria set out in section 44 of the Banking Act and is therefore not currently proposing to designate American Express (or other three party proprietary card payment schemes operating in the UK) for regulation by the PSR. Therefore, it is American Express' understanding that the PSR's Access and Reporting Rules would not apply to American Express. [⌘ CONFIDENTIAL].

#### **5. Interchange fees**

**SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?**

[⌘ CONFIDENTIAL].

#### **6. Regulatory tools**

**SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.**

**SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.**

**SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed**

approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

American Express generally agrees with and welcomes the PSR's proposed approach to regulatory tools, subject to the observations set out below.

## **6.1 Disclosure requirement**

The disclosure requirement contained in Principle 1 has the potential to be unduly onerous, as it requires participants to “disclose to the PSR appropriately anything relating to the participant of which the PSR would reasonable expect notice”. Whilst American Express is dedicated to engaging meaningfully with all regulators, as mentioned in section 1.1 above, there may be difficulties in keeping the PSR informed of certain matters, such as anticipated developments before their implementation. Some developments are commercially sensitive until launch and companies working on these developments are often bound by NDAs. Clear, detailed and sensible guidelines are needed around when the industry participants should approach the PSR, how industry participants bound by NDAs could comply with the PSR’s “no surprises” obligation and/or Principle 1 without breaching the NDA and whether the PSR will be subject to confidentiality obligations when industry participants share commercially sensitive information.

## **6.2 Relationship between the PSR and other regulators**

As the PSR is aware, financial institutions interact with a number of regulators, both in the UK and at EU level. In order to ensure a desired degree of consistency of regulatory approach and more efficiency for regulators and participants alike, it is key that clarity be obtained over the relationship that is to operate between the different regulators, identifying potential areas of overlap and considering the process for resolving any such issues. American Express notes the PSR’s recent engagement with other UK regulators (e.g., Bank of England, Competition and Markets Authority (“CMA”), Office of Communications (“Ofcom”)). American Express would encourage the PSR to carry on this exercise both in the UK and at EU level, and to publish guidance relating to how it intends to manage such relationships.

## **6.3 Fines**

American Express is of the view that there should be an upper limit on the level of penalty that can be imposed by the PSR, in line with the approach taken in relation to other regulators that are entrusted with competition law powers. A cap of 10%, applicable as against all participants regardless of particular category, would be consistent with this (e.g., CMA, European Commission, etc.).

[X CONFIDENTIAL].

Finally, the PSR proposes that penalties be paid within 14 calendar days. This short timing is likely to cause difficulties for most companies to comply with. Such timing would also be inconsistent with standard practice from other regulators, for instance the CMA (whose predecessor the OFT typically required payment within two months of the date of an infringement decision)<sup>11</sup> and the European Commission (which requires payment within three months of notification of an infringement decision).<sup>12</sup>

<sup>11</sup> See, e.g., Office of Fair Trading, Infringement of Chapter I of the CA98 and Article 101 of the TFEU by *Royal Bank of Scotland Group plc and Barclays Bank plc*, 20 January 2011, para. 395 (decision dated 20 January 2011, payment due by 25 March 2011): [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared\\_of/ca-and-cartels/CE8950\\_08\\_dec.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/ca-and-cartels/CE8950_08_dec.pdf); Office of Fair Trading, Abuse of a dominant position by *Reckitt Benckiser Healthcare (UK) Limited and Reckitt Benckiser Group plc*, 12 April 2011, para. 8.64 (decision dated 12 April 2011, payment due by 14 June 2011): [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared\\_of/ca-and-cartels/rb-decision.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/ca-and-cartels/rb-decision.pdf) and Office of Fair Trading, Distribution of *Mercedes-Benz* commercial vehicles (vans), Decision 1, 27 March 2013, para. VII.52 (decision dated 27 March 2013, payment due by 31 May 2013): [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared\\_of/ca-and-cartels/Mercedes-Benz1.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/ca-and-cartels/Mercedes-Benz1.pdf).

<sup>12</sup> See, e.g., European Commission, COMP/E-1/38.069 *Copper Plumbing Tubes*, 3 September 2004, p. 208: [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/38069/38069\\_121\\_4.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/38069/38069_121_4.pdf); European Commission, COMP/39181 *Candle*

American Express would therefore recommend that the PSR change its requirement for the payment of fines to between 60 and 90 days.

### C. CONCLUSION

In summary, American Express fully supports the PSR's main objectives to promote effective competition and innovation in payment systems and ensure that payment systems operate in a way that considers and promotes the interests of service-users. American Express appreciates that the PSR's proposed regulatory framework is designed to enable it to realize its objectives, subject to the concerns and recommendations set out in the sections above.

American Express has also provided a few clarifications in relation to its business model [✂ CONFIDENTIAL].

The lines between traditional card schemes and other payment options, as well as the different categories of service providers, are rapidly blurring as innovation proceeds. When considering the evolving payments landscape, it is important for the PSR not to be constrained by traditional definitions of what a "card payment" or "payment scheme" is for the purposes of designing regulation; it is equally perilous to establish regulation that, by virtue of drawing an arbitrary scope in a rapidly evolving sector, could pick and choose winners and losers without allowing market forces and customer choice to drive competition and change. Regulation should not limit this consumer choice by forcing the market to adopt a particular technology or business model; ultimately it should be the consumer who decides.

The PSR should therefore ensure its future actions do nothing to diminish or distort competition at this pivotal time when the payments sector is undergoing such tectonic changes. The UK payments industry must be given the opportunity to respond to rapidly evolving consumer demand, and to position itself in such a way that is flexible, nimble and easily adaptable to the changing landscape. Competition, consumer choice and consumer demand should be the key drivers of innovation. Regulatory intervention that is too extensive risks stifling the UK industry at a critical time in its evolution and putting it at a disadvantage as against players located in other European and global jurisdictions.

American Express hopes that its views will further inform and assist in shaping the PSR's approach to regulation, and looks forward to an on-going dialogue with the PSR.

\* \* \*

Name of respondent:	[✂ CONFIDENTIAL]
Contact details/job title:	[✂ CONFIDENTIAL]
Representing (self or organisation/s):	American Express Services Europe Limited
Email:	[✂ CONFIDENTIAL]

*Waxes*, 1 October 2008, p. 177: [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39181/39181\\_1908\\_8.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39181/39181_1908_8.pdf) and European Commission, AT.39792 *Steel Abrasives*, 2 April 2014, p. 26: [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39792/39792\\_2352\\_3.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39792/39792_2352_3.pdf). In all cases, payment was required within three months of notification of the decision.

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# ASSOCIATION FOR INTERACTIVE MEDIA AND ENTERTAINMENT

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## **About AIME ( [www.aimelink.org](http://www.aimelink.org) )**

AIME is the UK based trade organisation representing the commercial interests of member companies involved in the interactive media and entertainment Industry - where consumers interact or engage with services across converged media platforms, and pay for those services or content using a variety of micropayment technologies.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain, which is generally supported by Premium Rate (PRS) billing facilities and other forms of micropayments, and our membership, represents in excess of £650m annual revenue throughput.

AIME currently comprises 84 companies split into five categories, although there is some overlap inside individual Member businesses.

- Fixed Line Networks, Fixed facilitators and merchants
- Broadcasters
- Mobile Networks, Mobile facilitators and merchants
- Professional support companies
- Micropayment entities

### **Member Input**

AIME welcomes the opportunity to respond to the Payment Systems Regulator (PSR) Consultation on "A new regulatory framework for payment systems in the UK".

For many consultations, AIME provides comprehensive input after having received responses from all sections of the value chain, including both small and large market entities. In such cases, responses are collected utilising;

- Online Survey
- One-to-one discussions
- Workshop
- Written responses

Not all Members respond directly to consultations, and not all Members contribute to AIME's respond to consultations. However, experience and surveys have found that Members often rely on AIME to reflect their opinions with a consolidated response.

In the case of this consultation, given staff and time limitations, specific Member input was not sought; however, we remain confident that this response broadly reflects the views of our Membership.

## General Comments

AIME welcomes the creation of the Payment Systems Regulator (PSR) and feels that an independent and focussed economic regulator is required for the payment systems market. AIME is in agreement with the vision and the three statutory objectives of the PSR. We note that the AIME Membership almost exclusively represents service-users, and we feel that the interests of our Members will benefit from this new regulatory framework.

The Interactive Media and Entertainment industry is one of the most innovative sectors, often on the cutting edge of technology. Being based on virtual rather than physical products, this sector is well positioned to export UK products and service, and indeed does so. Yet, this same industry utilises few of the main interbank payment systems (either directly or indirectly) that are the subject of this regulation.

As a group, Members feel that the existing interbank payment systems may, in certain circumstances, be unfit for the purpose of facilitating online purchases involving micropayments. Anecdotal responses from a subset of Members revealed the following impressions:

1. UK banks providing indirect access to credit card processing facilities are reported as being inflexible, uninterested and slow to embrace new business models. A number of members report that as a result, they use German (or other European) clearing banks for credit card processing, as they appear to be more interested in supporting this innovative sector.
2. We note that Section A1.42 of the joint OFCOM/PSR study of "Innovation in UK consumer electronic payments" recognised that other European countries (in particular France, Germany, and Sweden) can be more innovative when it comes to the use of payment systems.
3. Existing processes are becoming outdated and inflexible. One Member reported that chargeback requests from their bank are not sent electronically, but transactions are printed out and posted with chargeback requests through Royal Mail. This increases costs, and is prone to errors.
4. This space is regulated by multiple regulatory bodies resulting in differential regulation of payment mechanics that can lead to a lack of technical neutrality and create business uncertainty resulting in reluctance to invest in UK micro-payment innovation.
5. As a result, we encourage the Payment Systems Regulator to focus on encouraging innovation and fostering an environment of collaboration across competitors for the benefit of end users and UK industries.



**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Yes. Many members felt that the past approach to payment systems in the UK may not be geared towards innovation in a globally competing environment.

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Yes, we support Option 1. Almost exclusively AIME Members represent service-users, whose interests have not been considered under the previous approach, possibly to the detriment of innovation and competition.

Having reviewed the joint OFCOM/PSR study of "Innovation in UK consumer electronic payments" we note (in Section 1.3) an emphasis on major players in the value-chain (banks, card networks, mobile network operators, and handset manufacturers). Although likely unintentional, AIME feels that this emphasis is counter-productive. Traditionally cutting edge innovation starts with small players which then disrupt established major players or technologies. Although the views of established major players should be considered, the Forum must also incorporate the views of those likely to create disruptive industries. Organisations such as AIME are well positioned to represent the views of innovative elements.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We note that Supporting Paper 2 never mentioned SMEs (small to medium sized enterprises) and yet in the UK there are 5.2 million SMEs employing 25.2 million people with a combined turnover of £3,500 billion.

While AIME supports the formation and design of the Payments Strategy Forum, we feel it is critical that the views of SMEs are embraced and represented explicitly and that perhaps the views of the Interactive Media and Entertainment sector itself in particular should be represented as this sector disproportionately drives digital services innovation and disruption.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

AIME supports the indicative model but notes the comment in Supporting Paper 2, Paragraph 2.110 that “Strategic priorities of the Operators should inform the Forum’s strategic objective ...”. While this assertion is true, it should not be used to sideline the views of industry participants – especially service-users and should not itself stifle innovation.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

AIME acknowledges the infrastructure-related matters listed in Paragraph 2.113 but note that there is little obviously disruptive innovation.

The payment services industry needs to develop forms of end user identification and authorisation that is more suited to the micropayments industries that provides for end user spontaneity without recitation of long sequences of numbers and is more suited to small screen environments in use by digital consumers. Current methods are cumbersome and error prone and are also unfriendly towards consumers with specific disabilities.

Modern technology should be brought to bear to make both identification and authorisation easier for users, while at the same time retaining essential security.

### **Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems for more details*)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

AIME believes that service-user involvement needs to increase dramatically with innovation driven by future capabilities rather than short term return on investment. Governance and ownership changes may play a part in supporting this model, but we caution against

increasing regulatory burden or insecurity that could act against innovation drivers.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Please see our answer to SP3-Q1

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP3-Q1

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP3-Q1

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Please see our answer to SP3-Q1

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP3-Q1

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Please see our answer to SP3-Q1

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP3-Q1

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems for more details*)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

While we believe that there are significant issues currently with gaining (indirect) access to payment systems and would welcome improvement, at this time AIME does not have strong views in this area.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP4-Q1

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP4-Q1

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Please see our answer to SP4-Q1

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

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Please see our answer to SP4-Q1

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP4-Q1

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP4-Q1

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP4-Q1

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Please see our answer to SP4-Q1

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees for more details*)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

AIME does not have strong views in this area at this time.

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools for more details*)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our

proposed approach, please give your reasons.

While the tools should empower the regulatory model, it is important to understand that one of the drivers of the PSR is to create an environment for innovation in payment systems to be realised which would require careful exercise of these powers where business practices are demonstrably suppressing innovation and collaboration. A regulator can also aid innovation and collaboration by assisting entities to overcome the fears of the application of Competition Law.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Please see our answer to SP6-Q1

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Please see our answer to SP6-Q1

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Please see our answer to SP6-Q1

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Please see our answer to SP6-Q1

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority

Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Please see our answer to SP6-Q1

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Please see our answer to SP6-Q1

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Please see our answer to SP6-Q1

ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED

# ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED



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

9 January 2015

Dear PSR,

### **A new regulatory framework for payment systems in the UK**

We appreciate the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the main trade association for credit unions in England, Scotland and Wales. Out of the 338 credit unions which choose to be a member of a trade association, 69% choose to be a member of ABCUL.

Credit unions are not-for-profit, financial co-operatives owned and controlled by their members. They provide safe savings and affordable loans. Some credit unions offer more sophisticated products such as current accounts, ISAs and mortgages.

At 31 December 2013, credit unions in Great Britain were providing financial services to 1,122,461 people, including 126,217 junior savers. The sector held more than £1.1 billion in assets with more than £676 million out on loan to members and £949 million in deposits.<sup>1</sup>

Credit unions work to provide inclusive financial services has been valued by successive Governments. Credit unions' participation in the Growth Fund from 2006 – 2011 saw over 400,000 affordable loans made with funding from the Financial Inclusion Fund. Loans made under the fund saved recipients between £119 million and £135 million in interest payments that otherwise would have been made to high-cost lenders. The DWP has contracted ABCUL to lead a consortium of credit unions under the Credit Union Expansion Project, which will invest up to £38 million in the sector and aims to make significant steps towards sustainability.

### **Response to the consultation**

In general we are very supportive of the new framework for regulating UK payment systems. We are firmly of the view that if credit unions are to fulfil their internationally-proven potential then they will need to provide a wider and more convenient and accessible range of payment services and payment facilitation linked to loans and savings products. Online and mobile service delivery channels rely on straight-through automated processing and if credit unions are to attract an

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<sup>1</sup> Figures from unaudited quarterly returns provided to the Prudential Regulation Authority

# ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED

economically and demographically diverse membership base, as their sustainable development dictates, they must remain competitive. Online and mobile services are crucial in this and central to this is access to payment systems. Indeed, even more rudimentary savings and loans services rely heavily on effective access to payment systems if they are to be delivered efficiently and cost-effectively.

The current structure of payment systems, however, in terms of its ownership, governance, policy-making, access requirements and revenue models does not lend itself to open access for small payment providers such as credit unions and therefore puts credit unions at a distinct competitive disadvantage vis-a-vis the major high street banks and credit institutions. The many overlapping and interlinked questions of conflict of interest and barriers to competition are well developed in the consultation document and supporting documents.

We therefore strongly welcome the measures which are proposed to address the concerns that the Government and various commissions and reports have rightly identified as a barrier to a competitive, diverse and ultimately safe and secure financial system. In general we agree that the proposed framework will represent a significant improvement on arrangements which are in place currently and should lead to more favourable conditions for credit unions to develop and thrive.

We are keen to play an active role in the development and evolution of the PSR's framework and we are particularly keen to play a role in the proposed Forum for the development of Payments Strategy. We have submitted applications to be involved in this Forum and we hope that the PSR will closely consider the case for credit unions to be involved. Credit unions are well-supported by Government as part of a solution both to the proliferation of high-cost, alternative credit and as much-needed competition in financial services. It would be in keeping with other measures that government has taken to support the sector to facilitate our participation in the formulation of payments strategy.

We give thoughts below on each of the proposed interventions under the new framework. Once again, however, we reiterate our support for the general thrust of the proposals.

## Creation of a PSR-led Strategy Forum

We strongly support the proposed role for the PSR in leading strategy and innovation in UK payments through a new PSR-led strategy forum. We agree with the analysis of the PSR's documents which identifies potential barriers to innovation and strategy development from the structures of the Payments Council and other industry bodies. We also agree that this option strikes the right balance between PSR improving strategy setting and industry being adequately consulted and involved in strategy development.

Furthermore we strongly support the involvement of service-users and smaller Payment Services Providers (PSPs) in the strategy Forum. As above we cite above, we would be very keen to participate in the Forum and have separately made applications to be. We think it is vital that the service-user and PSP interests are represented and therefore we would encourage the PSR to ensure that the Forum's activity is conducted as openly and transparently as possible with regular consultation and published minutes from meetings.

# ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED

## Market review into ownership of, and competition in, payments infrastructure

We strongly support the need for a market review and look forward to its commencement. Once more, we hope it is conducted in such a way as to encourage participation and involvement from all market participants with a stake in infrastructure development.

## Wider programme of infrastructure-relation work

We welcome the initiation of this wider programme of work and monitoring of infrastructure-related issues. This will ensure that the PSR is well informed as to market dynamics and makes policy based on the most relevant and up to date developments.

## Direction to ensure appropriate representation of service-user interests

We are broadly in agreement with the proposed approach to improving the representation of service-users and Indirect access PSPs in the governance of Interbank and Card Operators. We agree in principle that it is preferable to allow schemes to devise their own means and mechanisms for engagement with service-users and not to prescribe too heavily in the first instance how this might be conducted. We also support the proposed detailed reporting requirements which will require operators to report on the effectiveness of their mechanisms and the number and level of engagement with service-users.

However, we are also concerned to see that a route is provided for service-users who are not satisfied with the level of engagement provided by these mechanisms to raise these concerns with the PSR and seek redress.

It is vital to ensure that the interests of small payment providers are properly accounted for in order to address potential for conflicts of interest where large providers can take decisions which are to the detriment of small providers with whom they compete. This is as much about redressing perceptions and increasing transparency as it is about genuine inappropriate use of influence.

We agree that this is a proportionate response and that the costs implied are justified by the benefits that will be provided. We would urge the PSR to keep the direction under review, however, and be prepared to intervene more actively where persistent failures to appropriately engage service-users is evident.

## Direction blocking individuals from simultaneous directorships in operators and infrastructure providers

Once again we are in broad agreement with the proposal to mitigate conflicts of interest by preventing directors to take positions in both operators and infrastructure providers. We also support the proposed review of conflict of interest mechanisms.

We are deeply concerned about the problems of conflicts of interest in the ownership and governance of payment systems. While we would not seek to suggest that there are not legitimate interests that require institutions to be represented at various points in the payments systems and infrastructure there is great scope in the current situation for conflicts of interest to

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arise. This is likely to work to the distinct disadvantage of small PSPs like credit unions who have no position in the governance of systems and operators.

While we agree with the proposed direction in principle, we are also of the view that it may not go far enough since while individuals may well be different, the corporate interests of those bodies which own and control the payment systems are in conflict with those of some PSP service-users and therefore while the individuals concerned may chance the overriding conflict may remain. As such we urge the PSR to keep this matter under close review and to be prepared to move further, including to consider divestment where appropriate.

## Direction to publish board minutes

We agree with this proposal and support its intention. This will be a positive step in advancing transparency and providing for the independent scrutiny of decisions in order to ensure conflict of interest measures, for instance, are being delivered effectively. We would also suggest that further measures to increase transparency should be considered over time if, following review, the proposals to publish board minutes are found not to be as effective as hoped.

## Direct Access “Access Rule”

We support the proposal for a new Access Rule for direct access to payment systems. We agree that it strikes the right balance at this stage in clarifying access requirements for prospective direct participants. We also agree that a principles-based rule is an appropriate approach initially. We are encouraged by the proposed compliance reporting requirements.

We would like to further suggest that the PSR conducts a review of access requirements to ensure that the access requirements devised under the access rule are truly fair, open and – crucially – necessary. We are concerned that certain requirements – such as being a credit institution – are not strictly required provided the participant can demonstrate sufficient capacity to successfully transact with the payment scheme.

Where failures to implement justifiable access rules are evident, we would like to see the PSR take more prescriptive action as to the content of the access rule and its implementation. Of course, this is implied by the proposed regime but we suggest it should be made clearer.

## Direction on sponsor bank publication of access information

We support this proposal. The provision of clear and detailed information on sponsor bank requirements and processes is a critical element in widening access to sponsor bank facilities. Credit unions have found difficulty in the past in establishing such relationships due to a lack of relevant information. Furthermore we agree that the proposed industry Information Hub is a positive development which should be encouraged and aligned with the direction on sponsor bank access information.

## PSR-approved Code of Conduct

We support this measure which should redress the imbalances in power relationships between sponsor banks and indirect PSPs. Currently indirect PSPs are at a distinct disadvantage in a number of ways as a result of the fact that sponsor banks hold such a strong position in the market

# ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED

and indirect PSPs have such high levels of dependence for their business models on maintaining effective access. We think the Code of Conduct should be developed on the basis of wide consultation and discussion across the sector.

It is important to make clear at this stage that measures in the Indirect Access arena must be sensitive to the cost implications of extra requirements upon sponsor banks since the market for agency banking arrangements is shrinking and measures which further constrain supply would be a negative outcome for consumers.

## Development of Technical Access solutions

We are strongly in favour of commitments to support and bolster Technical Access solutions provided by third parties. Credit unions are currently working to develop collaborative technical access solutions for the sector to address issues of scale while maintaining local autonomy and independence which is central to the credit union identity and difference. These solutions will play a critical role in supporting challenger PSPs to gain access to payment systems more effectively and to play a greater role in providing competition and diversity and we welcome the commitment to explore and require Operators to engage with Technical Access providers.

## Indirect Access market review

We support the need for a market review and would like to be involved and consulted in this. We look forward to its commencement.

## Regulatory tools

We are in broad agreement with the PSR's intended use of its regulatory tools in pursuit of its statutory objectives. We have no detailed comments to make at this stage.

We look forward to working with the PSR as its regime beds in and the approach develops. We would be very happy to provide further information or answer any questions in relation to our submission or credit unions' access to payment systems.

ASSOCIATION OF CORPORATE TREASURERS

# ASSOCIATION OF CORPORATE TREASURERS



LEADING TREASURY  
PROFESSIONALS

## The Association of Corporate Treasurers

Comments in response to  
***A new regulatory framework for payment systems  
in the UK, PSR CP14/1***  
**Payment Systems Regulator,**  
November 2014

January 2015

### The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website [www.treasurers.org](http://www.treasurers.org).

Contact details are also at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

### General

The ACT welcomes the opportunity to comment on this matter.

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## ASSOCIATION OF CORPORATE TREASURERS

The ACT welcomes the establishment of the new Payments Systems Regulator and its three statutory objectives (covering competition; development and innovation; operation in the interests of service-users). We note that for each of these three objectives a core element is the interests of service-users. The ACT sees this strong focus on end users as very helpful for corporate users.

The old Payments Council has generally done a good job at bringing payments industry participants together where collaboration is needed, but perhaps the pace of progress and new developments has been a little slow. The time is now ripe for a new PSR who has more powers and who is expected to intervene more forcefully.

By and large the ACT regards the UK payments systems as working well. Over the past decade or so transaction costs have fallen; payment methods have proliferated; speed of cleared payment has improved dramatically; payments have successfully and generally moved from resource intensive and insecure methods (cheque and cash) to rapid and secure electronic means (direct debit/credit, and internet banking). But the key questions remain could the systems be working even better, providing better quality of service, more variations and flexibility, better reliability, and more cost effectively?

We note that the PSR has concerns which include the ownership structure, pace of innovation and access to payment systems. We share these concerns to the extent that even if the current systems are not broken there is a danger that some of the issues identified in the consultation papers could be holding back the service offered to end users. However we do recognise that sometimes improvements and new systems are made available in the retail user space which the retail users are themselves very slow to embrace. For the large scale corporate service-users changes to their customer IT systems can be costly while for smaller retailers in particular it may not be economically efficient to take up new payment methods.

The consultation flags the vertical ownership structure of the payments industry and that “the incentive for an individual PSP to support collective innovation via an Operator may be weak, since their competitors are also likely to benefit from any such innovation. Some argue that the slow pace of innovation stems from the ownership structure of interbank payment systems.”

For the ACT this is the key point. It may be that the current structures are not causing an immediate problem but inherently they do have the potential to create problems. For this reason the preventative actions and general intentions of the PSR are good. The action plan for the moment seems proportionate, but can be reviewed over time to determine if it is too light or unnecessarily onerous on the industry.

Ensuring that conditions are such as to allow and promote competition lies behind many of the PSR objectives. We observe that the Energy industry has proven that competition does not necessarily mean consumer satisfaction, lower costs, or certainty of supply. This might imply that from time to time the PSR will need to intervene somewhat in the style of Ofwat, acting as super customer.

For companies the key attribute of a good payments system is reliability and this is recognised by the existing banks and Operators. Service users may feel less confident about the reliability of a new entrant or of a new service. This does imply that the benefits of competition and innovation could in practice prove more difficult than expected to bring to fruition.





## ASSOCIATION OF CORPORATE TREASURERS

Furthermore for end-users the service provided by the bank they use for payments is perhaps the biggest determinant of how they view payments. In theory this part of the payments system is a fully competitive market, but in reality the complicated logistics for companies wishing to change banks means that competition is muted. It will be important to foster competition, and to deliver reliability, at the level of the bank / customer interface as well as further up the payments infrastructure.

For the future development of payments industry strategy the PSR is proposing a Payments Strategy Forum with the PSR taking an active part in this. We welcome this Forum and its intention to have the interests of end users very much at the forefront. Do bear in mind that service users are a diverse group. Within reason payment processes need to be inclusive and their introduction and management not biased towards any class of service-user.

The idea that the PSR will embark on specific market reviews is also welcomed, including the first one to review ownership of and competition in the provision of infrastructure. Occasional in depth reviews will be a useful tool. We note that your consultation paper makes very little mention of the central infrastructure providers, despite the fact that the ownership of some infrastructures creates the potential for conflicts of interest similar to the situation for operators. We have no evidence of any problems but on the face of it the ownership in particular of Vocalink by a group of major banks could be disadvantageous for end users. Therefore your market review of infrastructures is timely.

### Response to specific questions

#### **Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Overall the ACT supports your approach. In particular we see the use of in depth market reviews as a powerful tool to examine specific areas that are in some way not working in the best possible way. The concept of using the PSR powers in a proportionate way is important too, since as the general comments at the start of our response implied the UK payments systems are not fundamentally broken, but rather are generally working well.

#### **Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

The ACT supports your proposal to go for option 1 and the formation of a new Payments Strategy Forum, and in particular that the PSR will take an active role on this.



## ASSOCIATION OF CORPORATE TREASURERS

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**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We welcome the intention to involve service users, but since service users are a very diverse group it may be necessary from time to time to engage in specific outreach beyond the Forum members themselves.

The payment providers are a small group of entities for whom payments is a profit earning business. On the other hand for corporates payments are simply one small element in an overall business that makes its profits through its main operations. There is less incentive for corporates to take an active part in driving payments strategy. Care will be needed to ensure that the service user involvement in the Forum is truly representative.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

No comment

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

No comment

### **Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems for more details*)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

The ACT comments from the point of view of corporate users of payment systems, so therefore we welcome the intention for a strong focus on service-users. This will not be easy or straightforward for Operators to achieve, but through the raft of measures proposed and the repeated mention of and (where possible) the involvement of service-users we do hope that the culture across the whole industry will move in this direction.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?



## ASSOCIATION OF CORPORATE TREASURERS

By and large we agree with your benefits and costs for Operators to achieve greater representation of the interests of service users, however you may be under-estimating the logistical difficulty of gathering users' feedback. Users are a diverse group with differing degrees of interest in how payments work. Those with the time and inclination to take an active role in providing feedback to Operators may well not be typical of the wider universe of users.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We are not aware of any actual cases of detriment from this sort of conflict, but from the point of view of good practice we support your proposed direction.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Your proposal not to issue directions on other possible conflicts seems proportionate. The fact that conflicts and standards of behaviour are high on the agendas of financial institutions at the moment should be sufficient.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

In general terms we agree with your assessment of benefits and costs of avoiding this sort of conflict of interest.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Theoretically the proposal for publishing board minutes looks helpful in delivering transparency but we do wonder if this is proportionate and indeed effective. This is going to lead to some very brief and guarded board meetings with the real management taking place outside of board meetings. Rather than full board minutes might it be sufficient for a synopsis of key decision to be published with a statement as to how service user interests or public interest matters were considered?



## ASSOCIATION OF CORPORATE TREASURERS

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The Supporting Paper 3 states that "Publication of minutes means that PSPs and other service-users become more aware of the decisions that are taken by Operators' boards and the basis on which these decisions are made, this may lead them to have greater certainty regarding future developments in payment systems." That statement may well be true for PSPs but we very much doubt if many end-users are sufficiently involved in the developments planned by Operators to review minutes as a matter of routine. Their interface would rather tend to be with their banks or other payment providers and the manner in which those interfaces are working.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree.

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

From the end user perspective it is difficult to comment on the detail of any access requirements that a PSP has to fulfil with the Operators. However we would agree that open and fair access must in principle be built into the systems.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

From the end user perspective it is difficult to comment on the detail of any reporting rule that the PSR may devise to ensure that the Operators are applying their access rules appropriately. However we would agree that the PSR should have the means to monitor Operators.

## ASSOCIATION OF CORPORATE TREASURERS

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

No comment

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

No comment

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

No comment

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

No comment



**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees for more details*)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

Since there are various European initiatives on interchange fees in train at the moment we are content with the PSR approach which we summarise as a wait and watch approach but with the possibility of taking appropriate action if the IFR is delayed.

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools for more details*)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

The ACT is responding from the point of view of corporate end-users of payment systems. It is good that the PSR intends to hold the industry to account and therefore must have suitable regulatory tools. Others will be in a better position to comment on the detail of such tools and principles. We do not comment on the remaining questions in SP6.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

No comment

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

No comment

## ASSOCIATION OF CORPORATE TREASURERS

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

No comment

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

No comment

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

No comment

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

No comment

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

No comment

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

No comment

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

No comment



## ASSOCIATION OF CORPORATE TREASURERS

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

No comment

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

No comment

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

No comment

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

No comment





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## The Association of Corporate Treasurers

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Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/manifesto>.

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*The Association of Corporate Treasurers, established by Royal Charter*



ASSOCIATION OF FOREIGN BANKS

# ASSOCIATION OF FOREIGN BANKS

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry for more details*)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed regulatory approach.

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration for more details*)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree with your proposed approach (Option 1) enabling wider representation from the industry.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The membership of the Forum should be comprised of representatives from Direct, Indirect, Agency, Challenger institutions and infrastructure providers, reflecting all types of organisations which provide payment services, thus ensuring a level playing field for all stakeholders.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Consideration needs to be given to the level of influence major players currently have and how this can be moderated in the future.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

1. There needs to be a consultation of the requirements for contractual terms and conditions which enable agency and challenger institutions, as well as other

providers to join the payment schemes to ensure that competition is not restricted by external influences. These external influences, e.g. bank account terms and conditions can restrict the ability of a small player to join a particular payment scheme.

2. There needs to exist technical compatibility with SEPA payments (credit transfers and direct debits) and coordination with the governance structures of the Eurosystem; more specifically, the Euro Retail Payments Board (ERPB), which in 2013 replaced the SEPA Council, was set up by the ECB to help foster the development of an integrated, innovative and competitive market for retail payments in euro in the European Union. For those foreign banks which are registered in a Eurozone Member State (especially Branches) and are supervised by the ECB since November 2014, this issue will become more important in the immediate future.

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems for more details*)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We agree with the proposals.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the proposals; however, we do not have any data to quantify the impact of the proposals.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We agree with the objective of this proposed direction. However, we feel that further consideration should be given to its effectiveness.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the objective of this proposed direction. However, we feel that further consideration should be given to its effectiveness. We do not have any data to quantify the impact of the proposals.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed regulatory approach.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the proposed approach. We do not have any data to quantify the impact of the proposals.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

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**Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems for more details*)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

There must be a consistent set of rules for access establishing minimum criteria and clearly identifying the costs involved. We do not have any data to quantify the impact of the proposals.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

The AFB agrees with the proposed approach and our members feel this is a very important point. Whilst systems development and improvements are important, it is the contractual issues which are highest on the list of priorities, especially as there are currently barriers to entry which result in agency and other financial institutions being unable to have access.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

An information hub would be a useful development and a code of conduct would be a logical consequence from a Payments systems contract. The conduct would establish clear standards and procedures.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We have no objection to these proposals providing that the governance of the PSR is clear. However, it may difficult to agree on a sponsor bank code of conduct in view of the level of competition which exists.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

It is key that sponsor banks and infrastructure providers develop consistent access solutions, which do not restrict indirect members switching sponsor bank. This was a significant issue when CHAPs was first introduced to the market.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

The costs and benefits need to be clearly identified. We do not have any data to quantify the impact of the proposals.

### **Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

We are not aware of any matters.



**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach, as the AFB believes that it is essential that standards are at very least maintained if not improved.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

We agree that there must be a consistent approach that applies to all participants.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

We agree with this proposed approach.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

The integrity of the current payments infrastructure must not be compromised in any way. Whilst our objective is to open up access to the payments infrastructure, we do not support any reduction in standards in any way, and new entrants, whilst enjoying the same access rights as the existing major players, must adhere rigorously to the same principles and standards.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further

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inform our analysis of the likely impact of our proposed directions?

We agree with the cost benefit analysis; however, we do not have any data to further inform the consultation's analysis.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants

organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

The AFB does not have a comment in respect of this question.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

The AFB does not have a comment in respect of this question.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

The AFB does not have a comment in respect of this question.

# ASSOCIATION OF INDEPENDENT RISK AND FRAUD ADVISORS

About AIRFA:	<p>Details about AIRFA can be found at <a href="http://www.airfa.net">www.airfa.net</a></p> <p>AIRFA is a membership organisation, whose members have come together to give its clients better access to independent specialists in financial services, retail, payment systems, government, and regulatory bodies where risk and fraud management expertise is sought.</p> <p>Our members are payments industry professionals who understand and identify your business risks, develop corrective strategies, or to plan, implement and remove risks from organisations.</p> <p>AIRFA members are independent. Our members are senior level consultants and practitioners who work almost entirely within risk and fraud management, compliance or similar disciplines to provide businesses with high-end strategic guidance, but also with detailed operational level direction. Mitigating or removing problems and implementing 'final' solutions are key parts of any project.</p>
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**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**This is not a binary-choice question. Yes, the general approach is agreed, i.e. with a “lighter-touch” approach to engagement, with the constant threat of a more heavy-handed interference and leadership, combined with enforcement.**

**However, there are a number of aspects inherent in the approach that should be revisited; these include:**

- a) The exclusion of 3-party model payment schemes such as American Express, Discover/Diners, China Union Pay, JCB.**
- b) The exclusion of the Northern Ireland payment body(ies) and institutions.**
- c) The need for greater clarity on who exactly is covered by PSR jurisdiction, specifically third party service providers. Innovators, etc.**

**It appears illogical that these organisations should be excluded**

from the general oversight, irrespective of whether they are or are not a target for concern today or viewed as part of the broader solution in the future. By default they logically appear and are referenced directly/indirectly in the documentation and presentations and appear to have been excluded only because there have not been the same level of complaints / issues (from them or against them) or they are deemed to be of insufficient size or voice today.

It is also worth noting that a number of service providers are enabled through card scheme rules to issue and acquire card products in the UK without having a full banking presence in the UK. The concept of cross-border issuing and more importantly acquiring across Europe, including into and out of the UK, means that there are typically non-UK financial institutions, operating in the UK through consumer and merchant end-users. These organisations, headquartered elsewhere in Europe or further afield, need to be considered in terms of initially recognising they exist, that they introduce a degree of healthy competition as well as complexity and are subject to the same considerations outlined across the PSR documentation.

There is also considerable evidence that the PSR appears to be taking significant and disproportionate heed of the complaints and concerns of a small number of new and start-up banking organisations, and wording the document overall to accommodate the concerns raised of these organisations. They consist of a very, very small part of the market, who are clearly emotionally driven by the desire to obtain 'free and/or subsidised access' to anything and everything that they can get and have seemingly used the PSR as their mouthpiece.

These *challenger* organisations are important to the overall evolution of payment and financial services in the UK, breaking the *status quo* and driving choice, convenience and benefits for end-users. However, whilst there may be valid concerns on barriers to entry, this must be countered with the investment in building and maintaining such infrastructures to date.

In addition, a significant tone of the documentation appears to be couched in a way that draws excessive and inappropriate parallels between payments and utilities.

Lastly, and most importantly, in making payments and in creating a payments infrastructure, it is critical that this is done within a risk acceptance, governance and security framework. Whenever anything in Banking/finance/payments is developed or performed

**without risk management consideration at its core, mistakes are made, true benefits not realised and losses incurred. It is the belief of the members of the AIRFA organisation that this was seen when banks were run by accountants and salesmen and decisions made on mergers based upon government intervention. Throughout other comments in other questions, this will be highlighted as will the importance of:**

- **Making risk management core to decision-making and direction taken**
- **Ensuring that risks are identified, addressed, mitigated or owned**
- **Ensuring that we (UK Plc) are ready for large-scale losses and greater abuse from new organisations that are permitted greater access – without the strict governance that is afforded in the systems today that are governed by the banks.**
- **Making sure that the various regulators governing the rules and direction are ready and equipped to engage, the requirements of the Money Laundering Regulations in particular.**

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**It is very clear from PSR documentation and from discussions around the industry that the Payments Council has deemed to have failed in its delivery on a number of occasions – either operational projects, key decisioning or a viable strategic vision. Either way its actions, motivations and ability to deliver in a complex, evolving, competitive and regulated market, have been undermined and questioned. This clearly questions the ability for the industry to self-regulate.**

**Accordingly, it is fully recognised and supported that there must be another and new approach, as Option 2 has proven not to be viable and must be replaced. We agree that there is no advantage in defining a replacement to the Payments Council. Whatever the**

**reasons are for the failure to have delivered a strategy do not really matter, but they are likely to have related to the “comfortable environment” of the Council, plus the levels or roles of the individuals appointed to the Payments Council, and/or their ability to drive change through a more transparent and appropriate operationally focussed ‘committee’ structure; with or without the benefit of a CEO that could drive and sponsor change within a remit to do so.**

**Often, the means to evoking change is better served with a ‘fresh start’.**

**To have the PSR itself driving forward and setting payments strategy would equally be inappropriate, so the driving forward of a new independent but monitored body to do this would seem appropriate, realistic and beneficial. We have not seen any evidence within the debates or discussions from/with PSR members that indicate any significant core payments history or experience that would allow this to be successful.**

**It seems appropriate for a Payments Strategy Forum to be created, subject to its definition and remit, with the close scrutiny and administrative support of the PSR itself.**

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Type your answer here

**The primary challenge for the new Forum is representation, how can it and how can it be seen to be representing ALL vested and interested stakeholders, and to do so both fairly and proportionately. To be too large a group would inevitably hamper the Forum’s effectiveness and quality delivery. To be too small could be seen as not listening to all stakeholders.**

**Constitution of the Forum must include consideration of independent consultants and trusted business advisors who are not employed by one of the many constituents who are impacted by the decisions and actions of the Forum.**

**Chairing of the Forum will play a critical role and must be and be seen to be totally independent of all bodies represented, including the PSR/FCA.**



**Care will also need to be taken to ensure that such a Forum is not led and directed by the 'loud' needs of any individual or small group of interested parties – i.e. from a statistically insignificant interest group such as the 'new banks' who have appeared amazingly successful in their influence upon the PSR agenda today.**

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Type your answer here

**No further answer provided for this question.**

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

Type your answer here

**We would like to see the following items added to the list of potential agenda items for consideration by the Payment System Forum:**

- **ID services and authentication for payments/financial services (and linked to non-payments)**
- **Cash displacement**
- **Cheque displacement**

**It is important to recognise that the payment systems bear few parallels with the core infrastructure contained in utilities markets where there are historically fixed infrastructure based around former HMG state-owned or sponsored infrastructure.**

**Many of the payment systems today involve very little physical architecture and are based on shared agreements based around data standards, that have often grown from a market need or to compete with 'then' existing infrastructures.**

**It may be preferable as a strategy to allow and encourage innovation and competition to encourage interested parties to establish competitive (and reduced cost) networks rather than to 'flog' the existing infrastructures. One could view the current situation as existing because the major complainants that have driven this current PSR initiative have not had the vision or necessary communication/experience in payments to evolve innovative and competitive infrastructures.**

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Absolute transparency, fairness, openness and appropriateness are critical to the success of the decision making process at Board-level as it relates to these Interbank bodies and Card Operators.**

**However, caution should be exercised to ensure that the treatment of interests of others in decision-making is not disproportionate (i.e. 90% of budgets/time/resources cannot be spent on 0.1% of the market constituents in a commercial environment).**

**In addition, given that many card payment-systems infrastructures are international, care must be taken to ensure that UK Plc interests are favoured internationally rather than harmed with excessive regulation and controls.**

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

**We directionally support the intended benefits and anticipated costs outlined; albeit that these have only been presented in an ad-hoc manner and not in a commercial form. We would hope that someone has, and can produce greater detail on costs and benefits in due course, and would have liked to have seen this here.**

**We would not expect to see all stakeholders claiming the need to appoint new 'senior' roles to service the needs of the PSR and the Payment Strategy Forum, though such representation requires appropriate gravitas and knowledge.**

**Comparison can however, be drawn to the retailer community in particular, and others more generally, regarding the appointment of a new Chief Security Officer (CSO) position as the fall-out of numerous data breaches and the failings of many to adequately**

**secure data, systems and processes. We would question the cost figures used at Footnote 24 as they appear understated and therefore there is a need to re-clarify these figures.**

**We would also question whether strategy can be developed in this way. AIRFA members are generally employed to evolve direction and strategy in order to avert problems and sizeable losses that have ensued, and would generally not consider NED positions due to the minimal fees that these attract, greater organisational politics and slower rate of decisions and change than where 'there is a rabid fire to douse'.**

**It does not surprise us that these organisations, manned by organisational stalwarts who have 'a day job to do' and staffed and managed by 'organisational people' rather than 'right side of brain' strategists with appropriate remuneration have struggled to evolve.**

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Though we agree with the spirit of the requirements outlined, this initially needs clarity – i.e. to enforce the Operators to abide by such rules. This will remove the situation of "didn't think it applied to us".**

**Further to previous comments on the Payments Council and other bodies/Operators, there is clearly *justified* concern about independence, conflict of interests, appropriateness and descisioning of benefits for the masses versus my organisation or brand (or myself).**

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed.**

**It is recognised that organisations should be performing their own verification of any potential or actual conflict of interests and**

**escalate accordingly.**

**As mentioned previously, we do not agree that NICC is excluded from PSR oversight. We applaud the PSR consideration of a balanced approach to enforcement, with the threat of PSR action being as potent as actually being applied.**

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

**Agree, though this area requires further consideration in light of actual action by stakeholders. The figures need to be collated into proper business cases too.**

**Stakeholders themselves should be in a better position to highlight perceived benefits and anticipated costs. We believe that the challenges of 'conflicts of interest' are overstated in many cases and are largely imagined or perceived rather than real.**

**Both are critical to address in order to manage and maintain the credibility of the entire payment system and its individual components.**

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**The problems here are not clear and there must be a better way of addressing this issue. Accordingly, in principle, this must not be agreed with by any party as it would and should require changes to the Companies Act; and should / would lead to UK Plc becoming uncompetitive globally if the principles were adopted more widely.**

**It seems from this that the regulator wants to interfere at this level with the internal corporate governance of individual bodies? Does this mean that the PSR have identified a major issue in this respect at one or more organisation? If this is the case (and it is not clear from the documentation why or how this is proposed), then there**

**must be other solutions to address the issues involved. Maybe this is a suggestion from a non-member or a competitor – or a disgruntled member / potential member to gain an insight?**

**These are NOT public bodies.**

**Board meeting minutes are corporate things and not generally for publication outside the board and outside shareholders (and then only by exception).**

**It is noted that Payments Council, by example, publishes its agendas and meeting minutes. The website clearly states:**

“One of the key objectives of the Payments Council is transparency, and to meet this objective the agendas and minutes of all Payments Council Board meetings are published on this page.”

**Based on previous PSR negative comments and observations this means little if one considers the concerns on ‘conflict of interests’, and concerns about poor or little real decisioning.**

**The Payments Council is not a government regulator, body or publically accountable committee. Accordingly, if visibility is required (within discrete areas of interest), the board meeting must legally and commercially remain confidential corporate events. Any reportable items must be required to be reported OUTSIDE board minutes – even if there is a requirement for the board to endorse such documents.**

**This suggests that minutes are an accurate reflection of what was discussed and agreed, by whom and who said what. This fundamentally questions the general role and responsibility of directors – appointed, independent or otherwise, not just in financial services.**

- **Perhaps the Institute of Directors should be asked to comment?**
- **Perhaps global regulations on governance need to be challenged?**
- **Perhaps the PSR should look to appoint its own independent directors on key bodies (who would then also share legally a required corporate confidentiality and requirement to act on and behalf of the corporate organisation)?**

**As can be seen from the Payments Council minutes, that if one states that an item is for confidential discussion, then no one will know.**

**In contrast to the above arguments, we agree that key conversations, decisions for or against the need for documented details etc. should to reflect director decisions.**

**Summary: Meeting minutes are not Public materials, needing to be available only to those that need to see them.**

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Type your answer here

**These are NOT publically accountable bodies and minutes should not be published – removing competitiveness and the ability for boards to make commercially sensitive decisions would be wrong and illegal.**

**We agree that the incremental costs of publishing minutes is small, but this is not the main issue.**

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**We fully agree with the approach in relation to the reserved matters at the Payments Council.**

**These should be devolved back to the Payment Bodies involved, and if required, the payment bodies should appoint sub-committees of independent directors and/or sub-committees and working groups to deal with such matters as detailed in the list of reserved issues.**

**If we work on the premise that the Payments Council has not been performing in the way that it should have been performing, then removing such oversight functions would be a part of an essential process of disenfranchising the organisation.**

**If such a plan is in place for the organisation, and seen as a requirement for the PSR in order to unburden the industry from a constraining aspect for the sector, then this should be done much more aggressively and quickly with a lower level of concern for the**

**consequences.**

**Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**We will address Qs SP4- Q1 to Q3 together here**

**WE BELIEVE THAT THIS IS A CRITICAL ISSUE OF GREAT IMPORTANCE, and should be address carefully by the PSR.**

**The approach here on this issue of Access is worrying. It is of concern for the following reasons:**

- 1. PAYMENTS RISKS – It is crucial in any aspect of banking that risk management is maintained as the driver. With payments there are settlement risks, counter-party risks, disputes, error management, reversals/rejects and reversals, currency risks, capital markets risks and exposures, etc. These must all be considered and accommodated in arranging payments. For instance, what limits should any payment system impose upon the paying organisations in any single day related to their capital adequacy, margins and exposures and are these things being considered and managed. With payments systems operated by a small number of larger banks, these issues are easier to understand and manage. With a broader church of payers taking primary risk there will need to be a continual assessment of the exposures and risks for every organisation as the underwriting banks will no longer carry the risks for sponsored organisations with primary access to payment systems. The risk assessments and management will need to pass away from banks who provide the payment system guarantees, backed by bank security that the banks may wish to take from time to time, or accept the risks associated with the payments from a balance-sheet acceptance of the risks. Who will accept the risks if the banks are no longer 'owning the management and monitoring of sponsored organisations'? Does this become a new, boarder function for the Bank or the payment body (and or the PSR) itself? Risk is also something that can be and is 'priced' into**



**the fee structures. A risky, undercapitalised business should be expected to both pay more and be limited on its exposure and ability to destroy and/or bring a payment system into disrepute.**

- 2. REGULATORY RISKS – organisations entering payments markets directly will need to accept and accommodate the risk management within their own organisations themselves. These risks will include the need to make sure that they have their own AML controls over customer identification, transaction screening and pattern analysis and re-assessment of the risks – fraud, settlement or otherwise, etc. Many of the new organisations from your footnotes, have complained to the PSR of the onerous nature of these regulatory processes that would seemingly have been imposed upon them by the banks that they have wished to sponsor them as payments organisations. This naivety alone is worrying as again this risk must be recognised, quantified, accepted and accommodated by the PSPs themselves and someone else in the infrastructure that the PSR is proposing must accept the risks. As above, is this possibly the BoE, the PSP and/or the PSR itself?**
- 3. APPLICANTS INVOLVED. From the number of complaints to the PSR about the onerous nature of the applications for access to payment systems, this shows:**
  - a. That the organisations do not understand the exposures, risks and regulations required / involved.**
  - b. That the voices of these organisations are probably louder than they should be given the sizes of the risks and the market.**
  - c. That they consist of start-up, innovative organisations that may not really understand risk or banking (or payments) and do not know how to mitigate losses / risks within payments and over-simplify the problems.**
  - d. That the PSR has accepted the complaints as valid without an assessment of the risks.**
  - e. That these organisations are better at lobbying than the principal payment member banks.**

**That said, we agree that access requirements should be transparent, therefore published and available to those that need to know.**



Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**See answer to SP4-Q1.**

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**See answer to SP4-Q1**

**What about maintaining ultimate EU ownership of these organisations?**

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

**No further answer provided for this question. We would like to see better justification of the comment re "small incremental costs".**

**Great care needs to be taken with these issues as the understanding, depth of consideration and consultation narrative is inadequate. The whole issue of exposures and risk management is poorly addressed in all PSR briefing documentation. It is often something that is lacking in payments today as the industry has been watered down by "bankers" without professional qualifications – especially those seen running and managing 'new' payments organisations.**

**Payments risk management is poorly understood and addressed today and increasingly so. Our members see the consequences of this in the work that they carry out across European payment organisations.**

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agree with the proposed direction requiring Sponsor Banks to publish certain information. However, we must be careful not drive**

**the market into a transactional based competitive arena without any consideration of transactional and organisational risks, governance and controls.**

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**This is already taking place, as noted in SP4 (Page 50). The requirements are not yet clear, but it is assumed that the PSR will actively engage. It is not clear what success looks like here. What would it do, be planned to do, achieve, for whom and by when?**

**We must be careful also to include in the requirements, details that should be share that will measure exposures and risks and highlight / encourage increasingly stronger corporate governance and observance of fundamental legal requirements to carry out appropriate customer and organisational due diligence along with capital adequacy measurements to validate exposure and risk limits.**

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**We feel that setting a Code of Conduct is appropriate and should have been in place already by Sponsor Banks. It minimises the level of interference by PSR, but countered by the constant threat of greater PSR engagement and enforcement.**

**Any code of conduct must also include audit / enforcement requirements and systems to identify failings before they become catastrophic and/or lead to bank / payment organisation failures.**

**Codes of conduct must have due consideration of risk management issues and processes.**

**There are too many organisations that have failed due to over-trading with inadequate capital adequacy / capital cover.**

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by

industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**It sounds sensible to consider the development of effective technical solutions that provide viable options for alternative access options.**

**To commence by April 2015, to be concluded by when?**

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Type your answer here

**No further answer provided for this question, though further qualification of the 'modest' benefits and anticipated costs is sought.**

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

Type your answer here

**The PSR needs to be clear on its political as well as economic position on interchange. Overriding decisions are being taken elsewhere, PSR can simply watch.**

**The PSR should also be considering the following:**

- a) Acquirer processing costs and additional fees that now make up a significant portion of the merchant MSC and additional charges**
- b) Merchants pass on the interchange reduction to the end-consumer?**
- c) Merchant abuse of surcharging, admin fees, convenience fees, etc.**
- d) Interchange as a means of incentivising innovation and best practices in card-based payments.**

**The PSR must also be mindful of the European and global positions on these issues.**

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**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agree with the three principles outlined in SP6 on Page 8 – relations, compliance and financial prudence. However, it is significantly about the application of these principles and whether they can be monitored and enforced with the devolvement of the responsibilities to so many more organisations who will often have no core knowledge or understanding of what needs to be done to manage and adopt these principles.**

**It is important that these are supported with a true understanding of the issues/risks and exposures, proper governance, clear audit and enforcement by all parties.**

**From reviewing and seeing many businesses operating under e-money licenses today - both in the UK and across Europe through passported licenses from and into the UK; we have little confidence in the implementation of and enforcement of proper principles such as these and the controls set up to govern them. It is common for devolved management of such payments systems to be undertaken by almost anybody, and certainly by people who do not have core payments / banking / risk management skills; who will readily take risks without understanding the risks, but also making commercial decisions that risk everything without any controls or observance or principles – in order to make fast-money.**

**The current control environment may have significant 'holes' and major detractors, but it does prohibit these issues arising and these types of mistakes being made.**

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

**Agree, but the PSR needs to provide clarity on which participants.**

**This should also be read in conjunction with the answer in SP6-Q1**

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Type your answer here

**Agree.**

**This should also be read in conjunction with the answer in SP6-Q1**

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Type your answer here

**Agree with the additional inclusion of all additional PSR principles, as outlined in SP6 Page 13.**

**This whole area reads very uncomfortably – even though it makes sense in isolation, it seems as though it is not understood fully; nor does it appear to fit in with the rest of the documents or indeed how it will be applied or enforced by the PSR and within the new 'open' market that is proposed. This whole area is likely to be forgotten or disregarded by many, unless there are closer linkages and a more fundamental 'joined up' approach for it. It is important.**

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

**We noted the comments on anticipated benefits and the observation that costs will be relatively small, however these will require further clarification based on organisational feedback. It is assumed that Operators, Providers and other impacted stakeholders are operating within these principles already.**

**It is important not to under-budget for risk management / control and governance, which are the greatest challenges for the PSR with this industry as these issues exist much less significantly here than in the utility businesses that have previously been regulated using a similar economic regulation approach.**

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported.**

**But the whole area is all getting a bit fuzzy and theoretical / disjointed from the wider process.**

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported.**

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported.**

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported.**

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported in general and as a principle, but great care needs to be taken with balance and proportionality.**

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported. However, as in other compliance issues reported in the media recently, e.g. LIBOR, exchange rate issues, etc., there must be a concern that the banks treat fines as the 'cost of doing business'. Fines are accounted for but management practices not changed. Unlimited fines should focus attention. Restrictions applied to business operations would also focus management attention. Visa and MasterCard compliance examples refer.**

**Proportionality must again reign, and enforcement must not be simply dealt with through fines, but often (as will be the case) by enforcing organisations who do not accommodate risk-thinking into their models and pricing to be removed for direct access arrangements etc.**

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Type your answer here

**Fines will increase the costs of money transmission to customers. See also answer to SP6-Q11 above.**

**Prevention is always preferable with system-entry controls and risk / exposure review prior to entry to systems. This will no longer be administered by banks, so a complete oversight, risk-management, initial due-diligence, regular review, audit of skills and process environment must evolve and be 'owned' by the regulator – at a time when the regulator removes all of these oversight functions from the sponsoring banks and organisations.**

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Type your answer here

**Tiered fines schedule for persistent offenders or delays in addressing non-compliance, leading to unlimited fines being applied.**

**Unlimited (and growing) will focus the minds of people.**

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**Agreed and supported – again with the caveat that it is the approach that is supported and agreed with and not the execution for which we have hesitant confidence in its application or understanding of this whole area. There is a major issue with the devolution of risk management to organisations that are severely less regulated, less capitalised, and with less qualified management that have limited entry level requirements or qualifications.**



# ASSOCIATION OF UK PAYMENT INSTITUTIONS

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Overall, we agree with the regulatory approach as set out in the consultation paper.

We particularly support any initiatives PSR can take to support competition in payments arena.

Competition largely works well for direct customers of member banks but it breaks down at the boundaries, in areas where banks choose not to offer services; such as remote communities and ethnic communities, for example.

True competition between banks and API's (for example) is difficult in an environment where, over recent years, banks have withdrawn accounts from many APIs, particularly those API's which deal in cash based money remittance type services. The final and largest UK banking provider exited the market in September 2013, leaving 150 API's without a bank account. We believe that only between 15/20 API's dealing in remittance services now have their own money transfer bank accounts and it is the smaller, community based money transfer companies which have lost accounts.

This means that consumers are losing out, and are paying disproportionately large fees as a result of the loss of competition. On many sending corridors, there is now a choice between only two, large international providers and an oligopoly is created. This point has reiterated by the ODI report (April 2014), which says that remittance fees to countries in Sub-Saharan Africa are at a level of 12%, when the World Bank target is 5%.

The issue of the high cost of fees has recently been highlighted in Parliament by Tessa Jowell and her campaign ([www.stophetransfertax.com](http://www.stophetransfertax.com)). We note that in the debate in December, the minister explicitly mentioned that the PSR had a role to play in tackling the problem of lack of competition (and so higher than necessary prices).

Issues of pricing in the money remittance is not insignificant, since the UK government estimates that £15 billion is sent annually in money remittances.

A few large payment companies are doing very well commercially out of the decision of the banks to stop providing bank accounts to the many smaller (often corridor specific) API firms who want them and can no longer access them. In our view, the issue of access to bank accounts cannot be detached from the issue of broadening access to payment systems and should be a key issue for the regulator to address.

Whilst undoubtedly individual banks have the right to make such decisions, if market or regulatory forces act such that all banks withdraw services, those API firms become financially excluded – despite having invested in technology and training to reduce their risk, and without any specific contraventions identified. Their employees jobs are at risk; and their clients are left with less and, in some cases, no choice. The risk-based approach recommended by FATF (AML/CTF measures and Financial Inclusion: FATF Guidance 2013) isn't working in practice, because the end-to-end business process requires all actors in a transactional chain to cooperate, and if all actors in any one role choose not to, the chain breaks down.

We recommend that the end-to-end model for any payments service, including each of clearing, settlement, and compliance in turn, be reviewed to ascertain whether there are any bottlenecks which might inhibit competition.

### **Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We strongly support the setting up of a PSF. The PI sector found itself effectively excluded from the Payments Council previously, and had no way to raise issues around either direct or indirect access to payment systems.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We obviously hope there will be a place on the PSF to represent the collective voice of PI's. We also believe there will be value in establishing a subsidiary mechanism to ensure that feedback from Payment systems users is included in the discussion.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

No comments

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

No comments

### **Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our**

**Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems for more details)**

Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Agree

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Agree. We believe that the present payments infra-structure makes it far too easy for potential conflicts of interest to arise.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Agree – let us see how new arrangements bed down.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree. We believe that the present payments infra-structure makes it far too easy for potential conflicts of interest to arise.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Absolutely agree.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Agree

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access

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Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agree. Disclosure of access requirements for all schemes is fundamental. In particular, there needs to be recognition that AML compliance in a risk based environment is a problem both for PSP's seeking access and for Operators. It is important that the PSR should bring to the table other MLR regulators (potentially HMRC and FCA) so that a common approach is understood amongst all stakeholders.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agreed

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons

Agreed. Same considerations as SP4-Q3 above.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Development of an industry led Sponsor bank code of conduct is permissible now, but a more prescriptive approach may be necessary.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Development of an industry led Technical access solutions is permissible now, but a more prescriptive approach may be necessary.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

The regulator might like to consider a new industry utility which would act as an entry point for appropriate regulated entities (e.g. APIs), giving them access on equal functional terms (timing of transactions etc) and reachability as direct members. Cost of establishing and operating such model to be determined and thus options for its funding need to be defined. Of course, the issue of access to the payment systems cannot be detached from the more fundamental issue as how regulated API's can be provided with cost effective banking services (e.g. bank accounts) in an environment where commercial banking providers are withdrawing from providing these services to many API's. In the absence of alternatives, is it possible for the regulator to explore whether the Bank of England might be in a position to provide banking services to API's?

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees for more details*)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

No comment

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools for more details*)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Agreed

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Agreed – but as noted above in SP4 –Q3, differing approaches to AML compliance (and different regulators for API's and banks) continuous to make this a problematic area to achieve a commonly understood approach.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Agree.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users’ interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Agree

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agree

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Agree

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Agree

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

Agree

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**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Agree

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Agree

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Agree

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

When setting penalties, it is appropriate to consider the income generated from funds transferred through the relevant system, rather than the funds themselves which may, for an API, effectively represent client funds rather than funds belonging to the API directly.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Agree

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Agree

ATM INDUSTRY ASSOCIATION

# ATM INDUSTRY ASSOCIATION



## **Response by the ATM Industry Association to the Payment Systems Regulator Consultation paper 'A new regulatory framework for payment systems in the UK'**

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

The ATMIA supports the proposed regulatory approach. However, we are concerned about the costs of regulation, especially where they may be so high as to discourage entrants/encourage exits from our industry. If any payment scheme is weakened in this way, regulation will not necessarily be in the interests of the payments industry or the UK public.

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.

The ATMIA fully supports the creation of a Payments Strategy Forum and strongly opposes maintaining the Payments Council's strategy setting role. As has been noted frequently by the Government, by the PSR and by many payment sector participants, the Payments Council has not, ultimately, served the broad public interest.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Given the importance of the Forum in ensuring that the Regulator is able to receive input from the full range of market participants, its design will be crucial. We believe that the Forum should be as open and inclusive as possible. Any organisation with a role in the payment system should, with reasonable safeguards, be able to join the forum. The ATMIA will certainly see it as vital to participate.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

At present the PSR envisages the current operators continuing their role, but this means that for many participants there would be no real change and they would remain outside the industry's key

## ATM INDUSTRY ASSOCIATION

structures and continue to be relatively powerless. We would suggest that the Forum should be fully inclusive but should meet and work in appropriate sub-groups. The large retail banks could be in one sub-group, for instance, whilst the Independent ATM Deployers, would be in another. A sub-group for the representative bodies such as the ATMIA, the BBA, The UK Cards Association, etc. should be created to make representation comprehensive. The PSR staff would then be able to draw on the thinking and conclusions of the various subgroups together to ensure that all the constituent parts of the sector are adequately represented.

**SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.**

As banks either close or reconfigure their branches, so the role of technology and ATM-like devices will grow in importance to the public. We know that there is a wide diversity of views in the large banks on this. Some view ATMs as mere cash dispensers, which are costly to deploy and maintain and distribute a payment means that they also view as costly to distribute and manage. Others see the ATM as a potential delivery point for a wide range of financial and other services, as in many other countries. LINK, whilst playing an outstanding role in many ways is, like many of the payment system operators, dominated by some large retail banks – some of which may have mixed feelings about this part of the country's financial services infrastructure. Any discussion of the future of the ATM infrastructure needs to be far more inclusive and pro-competitive than was the case in the past.

**SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of Service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.**

The ATMIA remains concerned that the direction given in this area is not sufficiently robust and that, there is unlikely to be a materially significant change of the scale required and in a reasonable time frame. There is a significant danger that only lip-service will be paid to proper representation in the decision-making process. Previous experience has not been encouraging. Visa for instance has simply refused to respond to requests for meetings to discuss specific issues of concern to ATMIA members. This in part is why the ATMIA supports a stronger role for the Forum in directing both Interbank and card schemes.

**SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?**

As noted above, we believe that this direction is not sufficiently robust. As an example of how the needs of some participants are ignored by others, we highlight the issue of electronic cheque processing. Of the 68,000 ATMs in the UK, the majority are now provided by Independent ATM Deployers (IADs). Many industry participants agree that a process should commence to agree the rules and financial arrangements that will make it possible for the public to deposit cheques in any

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enabled LINK ATM, irrespective of who the cheque issuer and the ATM operator are. This is a service that would be particularly useful to people where access to bank branches or an ATM belonging to their particular bank is difficult. Despite a considerable degree of support for such a process, it has not been possible to initiate it.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

The ATMIA supports this proposed separation of interests.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

The ATMIA would like the principles established for Interbank Operators to extend across the sector.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Yes, the ATMIA supports this view.

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

The ATMIA supports this direction, but we believe that the necessary staff resources will need to be allocated to ensure effective scrutiny of the minutes and votes. We also believe that views expressed in minutes should be attributed.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The ATMIA note that LINK has been designated by HM Treasury and understands that LINK will be separated from VocaLink. This separation needs to take place in a timely manner. The ATMIA believes that the minutes of LINK meetings need to be published.

In addition, the ATMIA urge the PSR to review the LINK voting structure of which it can be argued currently makes innovation on ATMs more difficult..

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SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Yes, the ATMIA agrees with this approach.

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

The ATMIA is primarily concerned with access to LINK, Visa and MasterCard schemes.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, the ATMIA supports this proposal. We remain, however, concerned that this Rule may not be robust enough to drive change on the scale that the ATMIA believes is necessary.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes, the ATMIA supports this proposal. We remain concerned, however, that this proposal may not be robust enough to drive change on the scale that the ATMIA believes is necessary in these three organisations.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes, the ATMIA agrees with the analysis set out in this section.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Yes, the ATMIA supports this direction.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

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The ATMIA welcomes the development of an Information Hub but would welcome a commitment by the PSR to review the Hub, its content and whether or not it has achieved the objectives no later than 18 months from now. If the Hub has not achieved its objectives then the PSR should intervene directly to address these failures.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

The ATMIA supports the creation of a Code of Conduct but urges the PSR to both set a deadline and a date for a review of the Code's effectiveness. There are very few Sponsors available who provide membership access to schemes. Of particular concern to the ATMIA and its members are sponsors for ATM operation under Visa, MasterCard and LINK. In the case, for example, of LINK, there are technical access providers (known as Certified Service Bureaus) but no membership sponsors.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

The ATMIA supports the development by the industry of technical access solutions but urges the PSR to both set a deadline and a date for a review of progress. If the issues have not been resolved the PSR should intervene.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

The ATMIA agrees with the costs and benefits identified and set out in the paper. Indirect Access to LINK is required and would be a positive development in increasing competition in the ATM market.

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

We would urge the PSR to recognise that the EU's MIF Regulation applies only to Point of Sale Interchange. It does not apply to ATM Interchange. There are however a number of important challenges relating to ATM Interchange that will need to be addressed by the PSR in the near future. The ATM Interchange formula needs to be made public and a reasonable level of profit agreed within that formula.

The ATM Interchange rate also needs to become more dynamic. At present there is up to 2 year time-lag between changes in the market and when those are reflected in the Interchange rate. This is particularly damaging to smaller or newer entrants who may not have the resources to tide them over until the new ATM Interchange is in place.

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The most important of these is the way in which ATM Interchange is set. At present an accountancy firm is appointed by LINK to calculate a rate on the basis of a methodology agreed by LINK members and cost data submitted by members of LINK. One of the most significant costs to ATM operators is cash and this is not subject to cost analysis; instead certain assumptions are made about the likely cost. The cost figures that are submitted are not subject to any meaningful audit. The resulting interchange figure is then calculated and submitted to the Network Member Council of LINK for approval. The actual figure however is LINK-confidential and participants are forbidden from disclosing it to the outside world. This approach fails on a number of levels. For example, there is a significant risk of misreporting of costs, given that participants know there is no audit of their submissions. Also, it is quite obviously impossible for potential market entrants to prepare a business plan if the most important piece of information i.e. their potential income stream is unknown and unknowable.

We would also argue that the current approach to ATM Interchange setting fails in that there is no profit element built into the formula. This is an obvious disincentive for potential market entrants and also means that the ATM estates of many banks are marginal in terms of viability – and for the Independent ATM Deployers the situation is even more difficult as they cannot cross-subsidise from other parts of their businesses.

We would also argue that appropriate ATM Interchange rates or service fees should be agreed for a range of services, such as electronic cheque deposit or bill payment, so that incentives to provide these services are created.

Given the growing importance of the ATM as a replacement for the old fashioned bank branch, this is becoming of ever greater importance to the general public and the country's economy.

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Yes, the ATMIA agrees.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Yes, the ATMIA agrees.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial Prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

The ATMIA agrees with this proposed approach.



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SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

In an environment where infrastructure providers are encouraged to compete, it will be important that they operate under a common and uniform set of rules. We are particularly eager for the governance provisions to ensure open and equitable access and that the interests of all participants are protected. The ATMIA would therefore welcome the extension of all the proposed Principles to all the designated bodies.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes, the ATMIA agrees.

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach, but as noted above requests that the scrutiny function of the PSR is adequately resourced.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach but suggest that given the nature and structure of the payments systems, participants may need to complain to the PSR in private and in confidence. Room in the regulation should be made for such complaints.

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SP6-Q10: Do you agree with our proposed approach for our Super-complaints Guidance? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Yes, the ATMIA believes that for profit and not-for-profit entities should be treated differently and those facts should be taken into account.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Penalties should relate directly to gains and losses brought about by particular actions.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

The ATMIA agrees with the proposed approach.

January 2015

BACS PAYMENTS SCHEMES LTD

# BACS PAYMENTS SCHEMES LTD

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Hannah Nixon  
Managing Director  
Payment Systems Regulator  
25 The North Colonnade  
London, E14 5HS

9 January 2015

Ref: PSR14/1

Dear Hannah

**AUTUMN 2014 PSR CONSULTATION PAPER – A NEW REGULATORY FRAMEWORK FOR PAYMENT SYSTEMS IN THE UK (CP14/1)**

Bacs Payment Schemes Limited (Bacs) is pleased to respond to the above consultation. Founded in 1968 Bacs is a not-for-profit, membership based body and is owned by sixteen of the leading banks and building societies in the UK, Europe and US. Bacs is responsible for the schemes behind the clearing and settlement of automated payments in the UK including Direct Debit and Direct Credit and has been maintaining the integrity of payment related services for over 45 years.

The Government acknowledges that the Bacs payment system is of critical national importance to the UK financial system and has confirmed that it meets the recognition criteria set out in the Banking Act 2009. Bacs is, therefore, regarded as a FMI, recognised as systemically important by HM Treasury and is overseen by the Bank of England.

We note that HM Treasury had designated Bacs under the provisions of the Financial Services (Banking Reform) Act 2013 and understand that the result of such a designation decision makes Bacs a regulated payment system, falling under the powers of the new Payment Systems Regulator.

As one of the Operators falling within the PSR's regulator responsibility we believe that active engagement with the PSR is critical to achieving an effective and efficient regulatory approach. We have therefore provided a comprehensive response to the consultation questions.

In addition we are seeking to engage actively with the PSR particularly in the context of our company strategy. We support the PSRs proposal to establish a Payments Strategy Forum and look forward to actively working with this body to ensure that our company continues to play a full and active part in the evolving payments industry, ensuring that we deliver cost effective payments services for all stakeholders in the UK.

Yours sincerely

Michael Chambers  
Managing Director

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry for more details*)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Bacs Payment Schemes Limited ('Bacs') supports the proposed regulatory approach described in the Payment Systems Regulator's (PSR's) Consultation Paper and Supporting Papers. We recognise that the UK government is committed to developing an effective regulatory regime for the payments systems that makes the industry responsive to the needs of service users, promotes innovation, enables effective competition, and is cost effective. We support these objectives and are committed to working with the PSR to help the industry achieve these goals.

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration for more details*)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Bacs believes that Option 1 is the most appropriate approach to strategy formulation of the three choices described. We believe that this is the most appropriate option since it gives Bacs and the other schemes responsibility for their own strategy while providing a mechanism to collaborate where most appropriate to meeting the wider needs of society. Within the proposed model Bacs acknowledges the authority of the PSR to set direction for the industry and propose specific areas for action. Bacs recognises that its company strategy and development plans must take account of such direction so that it is able to demonstrate how the company will continue to fulfil its industry role effectively.

Bacs has considerable experience of stakeholder engagement, most recently through the Electronic Payments Affiliates Group, research projects and strategy development and would be pleased to work with the PSR to make the Forum effective and successful. We would welcome an early opportunity to engage with the PSR on strategy development.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Given the central role envisaged by the PSR for the scheme operators Bacs believes that they should have direct representation on the Forum. It would also be appropriate for

Bacs to have direct representation on any Forum working groups that are directly concerned with the schemes and services it operates. Bacs is keen to work with the PSR to help it achieve the most effective outcomes for users and believes this can best be achieved through early, active involvement in strategy formulation, drawing on our extensive experience of payment scheme development and operation.

We understand that the PSR intends to provide the secretariat function for the Forum, and to engage a broad range of stakeholders in the Forum. This raises two areas of discussion. First the end to end payments value chain contains around 30 stakeholder groups, many with a variety of different representative organisations. Marshalling views from such a disparate group is a very demanding task. If this is a task the PSR anticipates being part of its secretariat function has it fully considered the resource requirements to support the activity? If not, who and where does the PSR expect the stakeholder management to be undertaken?

Bacs has successfully used the Affiliates group to engage with three key stakeholder groups, namely agency banks; large corporate direct submitters; and software and business service providers. There is sufficient commonality of interest for these groups to usefully engage in a common forum. Conversely invitations to consumer and small business groups to participate in the Affiliates have to date been unsuccessful in achieving active participation. We believe that this is primarily because of the lack of perceived need from these groups for direct engagement with Bacs and its products. Consequently Bacs continues to engage with such groups as and when relevant. Strengthening engagement with stakeholders is central to the company's strategy, building upon the experience with the Affiliates group. For example we are seeking to engage with credit unions to understand their needs and issues in accessing our payment services.

In the light of this experience the PSR may wish to consider an approach where the Forum has different mechanisms to meet different needs of strategy formulation. By making the Forum flexible and issue driven we believe that it is more likely to engender effective engagement from the most appropriate mix of stakeholders. Having a clear work plan and objectives linked to a medium term consultation agenda will help to achieve this aim, and so make the Forum more effective.

We believe that there is an opportunity for Bacs to use its strategy and associated stakeholder engagement activities to inform the work of the Strategy Forum, and to be informed by its activities.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

Based upon our experience of stakeholder engagement in industry change the Forum could be a place where concepts are tested rather than being developed. The strategy formulation process in our experience involves considerable research of various sorts, including bilateral discussions with key stakeholder, before concepts are sufficiently well formed to be usefully discussed in a body such as the Forum. This raises the question as to where such research might be undertaken and how it could be funded. For example Bacs has a broad strategy development work plan including research commissioned from a variety of bodies including universities, consultancies and market research agencies. We would be happy to collaborate with the PSR so that these activities might be effectively aligned so as to generate greatest value at the societal level.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the

Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

There are a number of infrastructure related themes being pursued across the industry, such as cyber security, account number portability and richer data. We believe that the Strategy Forum provides an opportunity to draw these themes together and prioritise appropriately.

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We fully support this development. We have introduced independent directors onto our Board with the specific intention of representing the wider public interest within Board based on an independent, informed view of the wider stakeholder needs for our payment schemes. As part of our strategy we are revisiting representation at a number of levels, including looking at ways to strengthen direct service user representation. We regularly consider the skills and experience of directors to ensure that there is an effective mix of customer and product knowledge as well as process and operational experience on the Board.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Bacs agrees with the framework of costs and benefits described in the consultation.

Bacs operates the Electronic Payments Affiliates Group which meets four times a year. It has a budget provision of around £60k pa to support this activity. As of December 2014 there were 57 affiliates with quarterly meetings of the Group typically attended by 35-40 people.

Because of the breadth and complexity of its service user community Bacs already conducts a market research programme to understand their needs and behaviour. It is anticipated that this work will continue, potentially at a higher level in the light of both the developments identified within the Bacs company strategy and the requirements of the new regulatory regime.

In addition to these costs Bacs and the other operators will now be required to fund the PSR which will represent a significant increase in central costs. Our own central costs will also necessarily be higher as we support the PSR's activities through effective relationship management which will be additional to our current activities. Based upon experience with



our existing regulators, notably the Bank of England and PRA, regular and active engagement leads to the most effective outcome for both parties. As a not for profit company Bacs will be obliged to pass these costs on to its members.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We fully support this proposal and already have a clause (41 a) in the Company Articles of Association that precludes a director holding directorships with any supplier of significant services to Bacs.

Consequently we consider Bacs is already compliant with the direction stated in section 3.1.4.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

Bacs will transfer the employment of its Managing Director and Executive team from UKPA to Bacs in early 2015. In addition the Bacs Board has approved plans to transfer the employment status of all staff to Bacs during 2015.

In relation to other types of identified conflicts of interest the contract between Bacs and the Payments Council was mutually terminated in December 2014, removing any quasi regulatory control by the Payments Council over Bacs.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Bacs agrees with the identified benefits.

Bacs already meets this requirement so no incremental cost will be involved.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give



your reasons.

Bacs agrees with the proposed direction and believe that such openness is appropriate.

Bacs already publishes its minutes (redacted as necessary) to its Affiliates group. We propose to publish the complete set of 2014 Board minutes, appropriately redacted, on our website before April 2015 and will add minutes, incorporating future intended agenda items, for subsequent Board meetings in a timely manner.

In complying with this proposed direction it is important that an operator ensures that Board minutes do not become so anodyne that they serve little purpose in engaging wider stakeholders. Additionally it is important to note that much of our Board's decision making is achieved through consensus, therefore not requiring recourse to voting. We are concerned with the Para 3.177 requirements for the level of detail required for every Board decision is potentially unnecessarily onerous without contributing effectively to the requirements for transparent decision making. We would welcome the opportunity to discuss practical steps to meet the PSR's requirements effectively.

It will be important to establish an appropriate redaction policy consistent with Para 3.178. Bacs would be happy to work with the PSR to establish an appropriate policy that would meet the PSR's objectives whilst recognising the competition and prudential risk considerations necessarily applied to some Board discussions.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Bacs does not believe that there will be an incremental cost associated with this requirement.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree with the PSR's view as expressed in its consultation document that the reserved matters are "incompatible with [the] new regulatory framework".

The contract between Bacs and the Payments Council was mutually terminated on 19<sup>th</sup> December 2014, removing any quasi regulatory control by the Payments Council over Bacs.

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC,

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CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree with this approach and confirm our commitment to comply with all appropriate aspects of the CPSS-IOSCO principles.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We are happy to comply with the proposed reporting rule. We would suggest that the PSR aligns its reporting requirements with those that Operators already work to in meeting their CPSS-IOSCO obligations.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Whilst we are not subject to this proposal we believe that it is appropriate for a consistent application of the PSRs.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Since Bacs already complies with the CPSS-IOSCO Principle 18 which forms the basis of the proposed Access Package we do not anticipate any material costs being incurred in meeting this requirement. However it is possible that future developments within the Bacs product strategy may significantly impact potential costs of compliance with the Access Package.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Whilst we are not subject to this proposal we believe that it is desirable for a vibrant and competitive market for the provision of agency banking services to operate within the UK.

Bacs is committed to providing open and direct access to its services for all those organisations that meet the necessary operational and prudential scheme requirements, and we continue to review our rules to ensure that they are open, transparent and proportionate.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

As noted above Bacs is committed to supporting all organisations wishing to gain access to our schemes that meet the scheme requirements. To this end we have published material to assist potential users and engage in discussions to support their access requirements.

We support the provision of information (potentially via a single portal) however believe that the interests of potential scheme users are best served through direct contact with the schemes at the earliest opportunity.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Whilst we are not directly affected by this proposal we believe that such an approach would be a useful mechanism to further encourage a vibrant and competitive market for indirect access to payment services. There would also be potential benefits to Bacs in the establishment of a common Sponsor Bank Code of Conduct that would allow us to align our product and service offerings more precisely to the needs of indirect participants.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree with the PSR's proposed approach.

The issue of technical access is a large and complex one. The payments value chain in respect of Bacs' schemes is complex and many potential solutions may be offered to achieve the wider PSR goals.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

We agree that there should be minimal impact on Bacs of the proposed direction.

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

Interchange is not a subject relevant to Bacs.

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

We believe that the three high level principles proposed are appropriate and proportionate. They align well with the existing regulatory environment in which we operate, specifically in their explicit reference to the CPSS-IOSCO principles that are central to our way of working.

We welcome the opportunity to work with the PSR in an open and cooperative way to ensure compliance with Principles 1 & 2. Our belief is that the primary focus for our engagement with the PSR will be around our strategic development plans for the schemes and managed services (such as CASS) we operate, access arrangements for users, and our wider stakeholder engagement to ensure that users have an appropriate and proper voice in our activities.

We believe that we already fulfil Principle 3 based on our compliance with the CPSS-IOSCO Principle 4.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

We agree with the proposed approach that compliance should apply to all participants.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

We agree with the proposed approach that financial prudence should apply to all operators and central infrastructure providers. Bacs already complies with this Principle under the CPSS-IOSCO principles and suggest that the PSR's approach should align with the existing supervision of Bacs by the Bank of England. We believe that it is appropriate that it covers Central Infrastructure Providers in addition to Operators given their role and significance to

Operators.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

We believe that there are potentially areas where additional principles might be adopted by the PSR, subject to further review and discussion. We also note that the current PSR Board is drawn from the FCA and would suggest that appropriate mechanisms are put in place to ensure clear differentiation between the roles of the two regulators. We believe that it is important that the focus of the PSR's activities is firmly on economic regulation in payments, clearly differentiated from the FCA's conduct regulation activities.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We consider that the benefits outlined represent a fair summary of likely benefits. We agree with the assessment that adherence to the compliance and fiscal prudence principles will have a minimal cost from Bacs' perspective. However there will inevitably be a significant cost in managing the relationship with the PSR generally, participating in its strategy formulation process, and ensuring we are meeting its overall requirements. In addition to that cost we note that the PSR also intends to recover its launch and operating costs from the Operators. In the case of Bacs we anticipate that meeting our contribution to the indicative ongoing operating costs of the PSR will increase our core scheme operating budget by approximately two thirds. This estimate is based on information provided in the FCA consultation paper CP14/26. As a not for profit company we will be obliged to raise these additional funds from our members.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We support the view that the proposed approach to objective guidance is appropriate.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach for administrative priority.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach to your powers & procedures. However we note that while Operators are required to respond to the PSR in 14 days, for example in Annex 3 paragraph 4.2, the PSR has 90 days to respond. We believe that greater symmetry between these response times would be appropriate given the resource level within the Operators to respond.

In Annex 3 paragraph 5.1 you outline a number of ways in which you may announce your intention to give direction or impose requirements. We believe that in such cases it will always be appropriate for you to communicate directly with the Operators affected by your proposals given the small number of organisations involved.

We also notice that, unlike specific directions or requirements, general directions or requirements are not appealable to the Competition Appeal Tribunal (CAT). We would ask for clarification as to why general directions or requirement cannot similarly be appealable to the CAT?

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach to dispute resolution.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach to super complaints guidance.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach to setting penalties.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

We do not believe that other measures should be taken into account. Since Bacs is a not for profit company limited by guarantee we would only be able to meet any penalties via a call to our direct participants. There is no obvious justification to link any penalties to the value of funds in a payment scheme. Our existing cost recovery method is based on volume of transactions processed, which is the primary driver of our operational costs. Basing any

penalties on the value of funds transferred through Bacs would place a significant financial risk on the company and its members, introducing a potential barrier to direct participation.

We would anticipate the issue of fines on scheme operators to be a subject of detailed consideration during the detailed design of the process for setting penalties. Bacs operates a number of managed services in addition to its schemes so consideration should be given to linking any penalties to the income from the service attracting that penalty. The PSR will no doubt wish to involve other regulators, notably the Prudential Regulation Authority (PRA), in finalising these arrangements.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

We believe that an appropriate and proportionate upper limit for penalties should be set. We would expect any level to be able to meet a proportionality test linked to customer or market detriment and the impact on the organisation being penalised. As noted in our response to Q12 above we would anticipate the PSR consulting with other regulators in finalising these arrangements.

As noted in our response to Q12 above Bacs is a not for profit company so can only fund penalties through a call to our direct participants. A potentially significant penalty regime may discourage potential new direct participants creating an unintended barrier to direct participation.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach to enforcement and enforceability of penalties. However we would note that our ability to meet penalties would be difficult if they are not proportionate. The PSR may wish to establish an upper limit on penalties so as to allow the company to meet fully its obligations under CPSS-IOSCO Principle 3 on financial prudence.

**BANK OF ENGLAND**



## PAYMENT SYSTEMS REGULATOR CONSULTATION PAPER – A NEW REGULATORY FRAMEWORK FOR PAYMENT SYSTEMS IN THE UK: BANK OF ENGLAND RESPONSE

### 1 Introduction

1.1 The Bank of England (the Bank) welcomes the Payment Systems Regulator's (PSR) consultation paper *A new regulatory framework for payment systems in the UK* (PSR CP14/1). In light of the importance of the design and smooth operation of payment systems to financial stability and the effective implementation of monetary policy - and the multiple roles that the Bank undertakes with regard to payment systems<sup>1</sup> – the purpose of this paper is to set out the Bank's position on the issues identified in the consultation paper. This builds on the Bank's response to the PSR's Call for Inputs that was published in 2014.<sup>2</sup>

1.2 When designing its policy proposals, the PSR is required under its legislative mandate to have regard to the importance of payment systems in relation to the Bank's role as monetary authority and to the importance of maintaining UK financial stability.<sup>3</sup> This will clearly necessitate close cooperation between the Bank and PSR, and the Bank has welcomed the opportunity to engage closely with the PSR in the build-up to the publication of its first consultation paper. The importance of ongoing cooperation between all the relevant Authorities will increase further as the PSR takes on its powers on 1 April 2015 and, to underpin this relationship, the Authorities will enter into a statutory Memorandum of Understanding by this date setting out how the Authorities intend to coordinate the exercise of their relevant functions.<sup>4</sup>

1.3 The optimal market structure of the UK payment systems is a subject of active and lively scrutiny and debate. From a financial stability perspective, UK payment systems have historically demonstrated a high degree of stability and reliability and the Bank considers that financial stability is not, at this point, a primary driver for major changes to the industry (see Box 1). Nevertheless, as set out in the Bank's response to the PSR's Call for Inputs, the Bank recognises that the PSR needs to consider structural change in order to determine the best way to advance its objectives to promote competition, innovation and the broader interests of service users. While change could present opportunities to further enhance financial stability, and the Bank's response to the PSR's Call for Inputs highlighted areas where opportunities may arise, it could also present risk. Section two of this paper therefore sets out four key criteria against which, in the Bank's view, potential changes can be assessed from a financial stability perspective. The Bank recognises that some proposed changes could involve trade-offs between these criteria and the Bank stands ready to support the PSR and other stakeholders in assessing proposals against these criteria.

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<sup>1</sup> The Bank's relevant functions with regard to payment systems include being the supervisor of systemically important inter-bank payment systems, provider of settlement services and operator of real-time gross settlement infrastructure, resolution authority, participant in some payment systems and supervisor of banks and building societies (the latter is exercised through the Prudential Regulation Authority)

<sup>2</sup> See <http://www.fca.org.uk/your-fca/psr/non-confidential-responses-to-the-March-2015-PSR-call-for-inputs>

<sup>3</sup> This is required by the Financial Services (Banking Reform) Act 2013

<sup>4</sup> The relevant Authorities identified in legislation are the Bank, Financial Conduct Authority, Prudential Regulation Authority and PSR

### Box 1: Performance of the current industry structure

UK payment systems have historically exhibited a good degree of stability and reliability as demonstrated, for example, by the stable operation of UK payment systems throughout the financial crisis and in data on the systems' operational availability (table 1).

The Bank has a statutory responsibility to supervise payment systems that are recognised by HM Treasury as systemically important to the UK financial system. The Bank performs this role with a view to protecting and enhancing UK financial stability and will continue to supervise the UK's recognised payment system operators to achieve this objective.

Table 1: Operational availability for supervised payment systems (provisional data)

Operational Availability			
System	2012	2013	2014
Bacs	100%	99.8%	99.99%
CHAPS	100%	100%	99.65%
FPS	100%	100%	100%

1.4 The Bank recognises there is also ongoing debate about the types of institution that can become members of payment systems. Some of this debate revolves around whether it is necessary for members of payment systems to have a settlement account at the Bank. Section three therefore outlines the Bank's position on whether payment system members require settlement accounts.

### Box 2: The Bank's role as RTGS provider

The Bank's role as settlement agent – providing the ultimate, risk-free means of discharging payment obligations between parties in 'central bank money' – emerged in the mid-19<sup>th</sup> century with the provision of settlement accounts for the banking sector. Since 1996, these accounts have been held within the Bank's Real Time Gross Settlement (RTGS) system, which provides for real-time posting with finality and irrevocability of debit and credit entries to participants' accounts.

Using RTGS, the Bank currently acts as settlement agent for the Bacs, CHAPS, Cheque and Credit Clearing, FPS, LINK and Visa Europe payment systems.

The Bank's role as provider of interbank settlement services across its balance sheet gives rise to a broader interest in the structure of UK payment systems given the use of the RTGS infrastructure.

1.5 The Bank stands ready to work closely with the PSR as it reviews responses to its consultation paper and determines next steps. The Bank's more detailed views on appropriate approaches to implementing some of the initiatives contained in the consultation paper are summarised in section four.

## 2 The Bank's criteria for assessing structural change

2.1 The UK payments industry is undergoing a period of significant change. The formation of the PSR as an independent economic regulator has changed the regulatory framework in the UK and a number of other developments are currently ongoing which could lead to significant changes to UK payment systems. The PSR is seeking to foster industry-wide collaboration to support effective strategy setting through creating the Payments Strategy Forum and the Bank looks forward to participating actively in that forum.

2.2 More generally, the Bank intends to participate actively in the debate on the future of the UK payment systems landscape to ensure that its objectives, especially with respect to financial stability, are given due consideration. To this end, set out below are four criteria against which, in the Bank's view, potential changes can be assessed from a financial stability perspective. These criteria offer guidance to help interested parties identify opportunities to advance financial stability as part of their analysis. The extent to which specific change proposals risk, or offer opportunities to enhance, financial stability will of course depend on their detailed design and implementation. To that end, the Bank stands ready to work with the PSR, industry and other stakeholders from an early stage to help assess whether any proposed changes would help improve financial stability, have minimal impact or create risk the Bank may find unacceptable.

### ***Criterion one: changes should not lead to an unacceptable increase in settlement risk***

2.3 Settlement risk in payment systems is the risk that settlement will not take place as intended. This generally refers to the credit and liquidity risk faced by a payment system and/or its participants. Participants may face this risk with respect to the other participants in the system or with respect to the system's settlement agent. Determining how settlement risks are addressed will be key to assessing the merits of any reforms to the payments landscape; such reforms must not unacceptably increase settlement risk.

2.4 To mitigate the risk that the settlement agent defaults, the Bank requires that systemically important payment systems settle in central bank money – that is, using liabilities of the central bank to settle payment system obligations. The advantage of settlement in central bank money is that the risk of failure of the settlement agent (the central bank) is greatly reduced. This is because central banks have the lowest credit risk and are the source of liquidity with regard to their currency of issue. Reducing this risk enhances financial stability as payment system participants can have a greater degree of certainty that their payments will settle. However, this does not mean that the Bank requires all *participants* in systemically important payment systems to settle in central bank money; more details on this aspect can be found in section three below.

2.5 Settlement risk between payment system participants comprises the risk that a counterparty will not meet an obligation for full value, either when due (liquidity risk) or at any time thereafter (credit risk). The basis on which a payment system conducts settlement will have implications for the extent to which its participants face these risks. Payment systems can settle using one of two settlement methods: real time gross settlement or deferred net settlement (DNS). From a financial stability standpoint, the Bank prefers real time gross settlement for high-value payment systems because obligations are settled in such a way that removes interbank settlement risk. In DNS systems, participants may face settlement risks vis-à-vis each other given the financial exposures inherent in this settlement method. The Bank has recently worked with Bacs and FPS to design new default arrangements that will eliminate settlement risk in these systems (see Box 3).

### Box 3: Prefunding in Bacs and FPS

The operators of Bacs and FPS have developed new default arrangements which will see members prefund their outward payments in full, with cash held at the Bank of England. These arrangements, known as 'prefunding', will eliminate settlement risk for the members of both systems when implemented in 2015.

In these systems, members' credit and liquidity exposures are limited by capping the net debit position that each member can accumulate over a given settlement cycle. Under the new prefunding arrangements, members will lodge cash at the Bank of England to ensure that each member is able to settle their obligations at all times.

2.6 Credit, liquidity and operational risk may also exist between indirect participants and their sponsor banks. The risk arising from this 'tiered participation' is known as tiering risk, and is discussed further in section three and Box 4.

### Box 4: Tiering risk

Tiered participation in payment systems, whereby direct participants provide services that allow other institutions to access the system indirectly, can create risks to the financial system. These risks arise through three main channels, namely credit risk, liquidity risk and operational risk.

The Bank expects supervised payment systems to identify, monitor and manage any material risks arising from tiered participation.<sup>5</sup> Indirect participants responsible for a significant proportion of a system's transactions, or indirect participants whose volumes and values are large relative to the capacity of their sponsor bank, should be identified in order to manage tiering risk.

As part of its broader work to reduce systemic risk in the UK, the Bank has worked with the payments industry to identify indirect participants in CHAPS that are systemically important to the system. Direct participation in CHAPS has increased as a result of this initiative, as noted in the Bank's [2014 FMI Supervision Annual Report](#).<sup>6</sup>

### ***Criterion two: changes should maintain or enhance the robustness and resilience of UK payment systems***

2.7 Given their importance to the broader financial system, the Bank expects payment systems to display adequate levels of robustness and resilience. Any changes in the payments landscape must allow payment systems to continue to meet high standards of robustness and resilience to operational risks. Systems should ensure that measures are in place to minimise the likelihood of operational disruption, whilst establishing robust contingency arrangements so as to minimise service disruption in the event that such an incident occurs. Measures to address operational risk may cover technical reliability, back-up facilities and contingency plans, security measures and internal controls. In recent years, the Bank has put particular emphasis on the importance of addressing cyber risk. This will continue to be an important subset of operational risk for payment systems going forwards.

<sup>5</sup> As required by Principle 19 of the CPMI-IOSCO Principles for Financial Market Infrastructures (<http://www.bis.org/cpmi/publ/d101a.pdf>)

<sup>6</sup> <http://www.bankofengland.co.uk/publications/Documents/fmi/fmiap1403.pdf>

2.8 One option to reduce the financial stability impact of a disruption to a key payment system would be to improve the ability to redirect payments going through any one system to an alternative payment system. While there are a number of different payment systems in the UK, the current limited substitutability between them means that these potential resilience benefits of acting as a contingency for another system are not being realised. One barrier to substitutability is the current absence of standardised messaging formats among the payment systems. To the extent that wider structural change in payment systems may present an opportunity to improve substitutability, there is the potential for UK financial stability to be enhanced.

#### **Box 5: Benefits of simplification**

It could be argued that UK payment systems are unnecessarily complex, both in terms of their infrastructure and more broadly. All payments can be characterised across two dimensions: whether they are push (initiated by the payer) or pull (initiated by the payee); and whether they settle on a real-time or deferred net basis.

A more streamlined payment system structure could feasibly accommodate the UK's range of retail payment services, and moving towards such a structure may help address this complexity. Additional benefits may include a reduction in the overall cost of resilience, as having fewer systems would mean lower aggregate costs for back up and contingency planning. There may also be resolution benefits from reducing the number of systems affected by a member in difficulty, and liquidity benefits as participants could centrally pool liquid assets needed for settlement.

In the Bank's view, there may be merit in exploring whether substantial simplification could bring about long-term resilience benefits as well as improvements to efficiency, competition and innovation.

#### ***Criterion three: UK payment systems should facilitate the continuity of payment services in resolution***

2.9 The Bank is the UK's resolution authority for banks and building societies, central counterparties and certain investment firms. If a firm within the scope of the Bank's resolution regime should fail, the Bank aims to ensure that the adverse effects of that failure are minimised. This requires that "critical economic functions" are continued, including payments activity where interruption to these operations would have adverse systemic impact. It is important for any changes in the payments landscape to take this into account.

2.10 It is therefore essential that banks and building societies' arrangements for accessing payment systems remain intact in resolution. This applies both to banks that directly participate in a payment system and those that participate in them indirectly through an arrangement with a direct participant. The Bank is working closely with UK payment system operators and members to identify any practical issues that banks' interaction with payment systems could raise when seeking to resolve a member bank. As part of this work, the Bank will require the schemes to make any necessary changes to their membership agreements, rules, procedures and system functionality to remove any barriers identified. This is a necessary ingredient for the broader work on resolution planning underway with individual banks. For those that access payment systems indirectly through other banks, it is important that clear contractual provisions specify how this access will be maintained in times of stress.

2.11 The Bank is also undertaking work with the payment systems themselves to ensure that continuity of critical payment services can be maintained even in the event of a financial failure of the payment system operator.

**Criterion four: the Bank's ability to effectively supervise systemically important payment systems must be maintained**

2.12 Payment systems are a vital part of the economic and financial infrastructure. When designed and managed effectively, they are a key contributor of financial stability. However, if they are poorly designed or managed, they can present serious risk to financial stability both through their impacts on the banks that use them and by being a channel for the transmission of disturbances from one part of the financial system to another. This systemic risk makes the supervision of payment systems an integral part of the Bank's responsibility to protect and enhance UK financial stability.

2.13 It is important that payment systems are designed and operated in a way that manages risks to the financial system to an acceptable level. The Bank's supervision<sup>7</sup> seeks to ensure that payment system operators take into account the potential impact of their systems on financial stability. In the context of structural change, it will be important for any changes to facilitate the effective regulation of systemically important payment systems from a financial stability perspective.

2.14 The Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions' (IOSCO) *Principles for Financial Market Infrastructures* (PFMIs) provide an internationally-agreed foundation to the Bank's supervisory regime for payment systems and other Financial Market Infrastructures (FMIs). The PFMIs are a set of standards that seek to enhance the safety and efficiency of payment systems and other FMIs. The Principles provide guidance for addressing the risks faced by FMIs, setting out minimum requirements where appropriate to encourage the mitigation of specific risks. Following their publication in 2012, the Bank adopted the PFMIs as the basis for its supervision of payment systems in line with international best practice. To the extent that it may impact their operation and design, it will be important for any structural change not to limit the ability of systemically important payment systems to continue to have regard to the PFMIs.

**Box 6: The separation of scheme company and infrastructure provider**

The current organisation of Bacs and FPS involves scheme companies (Bacs Payment Schemes Ltd and Faster Payments Scheme Ltd) that set rules and requirements but outsource their infrastructure to third parties. This degree of separation does not exist in many of the other financial market infrastructures supervised by the Bank, such as the securities settlement system CREST, the foreign exchange settlement system CLS, and UK central counterparties. It is also unusual internationally. This model was introduced in 2003 when Bacs was split into two separate organisations in order to increase innovation and competition in the provision of infrastructure. It is not clear that this separation has achieved its intended outcomes.

As noted in the Bank's response to the PSR's Call for Inputs, this separation has had some drawbacks from a financial stability perspective. In particular, it has made it difficult for scheme companies to effectively challenge and monitor their commercial infrastructure provider, given the need to hold significant technical expertise. Moreover, separation can serve as an obstacle to information flows.

<sup>7</sup> See <http://www.bankofengland.co.uk/publications/Documents/news/2012/nr161.pdf>

### 3 Access to payment systems

3.1 The Bank's longstanding position remains that systemically important payment systems should conduct final settlement in central bank money. Consequently, the Bank is the settlement agent for the major sterling payment systems, and provides accounts to their members if they meet its eligibility criteria. However, as part of its supervisory framework, the Bank does not require all members of a payment system to settle their own obligations directly using their own settlement account at the Bank. Instead, the Bank is content for members that generate low-value interbank settlement obligations to conduct settlement through banks that do have a settlement account at the Bank. For some Payment Service Providers, settling through a direct participant bank may be more suitable than settling directly in a payment system. There are already examples of participants having direct access to a payment system but settling their interbank obligations via another participant's settlement account.

3.2 In its role as supervisor of systemically important payment systems, the Bank considers the extent of any risks arising from tiered participation and seeks to ensure that these are properly managed (see criterion one in section two). If a participant which accesses settlement indirectly accounts for a proportion of a system's transactions that is large enough to create financial stability risks, the Bank may ask that participant to settle directly. Similarly, if a participant accessing settlement indirectly has volumes/values of payments that are large relative to the size of their sponsor bank, the Bank may ask for a change in this arrangement.

3.3 The range of institutions which are eligible to apply for settlement accounts is defined to include banks, building societies, broker-dealers, CCPs and other systemically important financial market infrastructures. This is set out in the Bank's [Settlement Account Policy](#) which was last updated in November 2014 (to expand the perimeter to include broker-dealers and CCPs).<sup>8</sup>

3.4 The Bank notes the views stated in the PSR's paper '*Access to payment systems*' that direct access for non-bank payment service providers (PSPs), such as e-money issuers and payment institutions, would support increased competition in payment services.

3.5 The Bank wishes to work closely with the PSR on changes to improve direct and indirect access to payment systems. It supports the PSR's proposals for payment systems to introduce an 'access rule' to clarify the requirements for direct access, and asking payment systems to consider whether a settlement account at the Bank is a necessary requirement. It also supports the PSR's proposed actions to address participants' concerns on indirect access, for example by launching a market review in 2015. Outcomes from these actions will be an important input into the Bank's review of its policy for access to settlement accounts.

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<sup>8</sup> <http://www.bankofengland.co.uk/markets/Documents/paymentsystems/boesettlementaccounts.pdf>

**Box 7: The Bank's settlement account policy**

The Bank uses its balance sheet as part of its mission to maintain monetary and financial stability. For example, it provides facilities via its Sterling Monetary Framework to implement the MPC's decisions or provide liquidity insurance; provides accounts for eligible direct participants of payment systems for which it acts as settlement agent, including the provision of intraday liquidity; conducts the issuance of banknotes; and provides Emergency Liquidity Assistance.

In granting financial institutions access to its balance sheet, the Bank considers the policy drivers for monetary and financial stability, and seeks to maintain consistent access criteria across its balance sheet. The range of institutions which are eligible to apply for settlement accounts is selected carefully by the Bank, given the need for appropriate checks to protect the Bank from risk.

The Bank periodically reviews its policy as to which types of institution should be eligible to hold a settlement account.

**4 Detailed Bank views on implementation of the PSR's proposed initiatives**

4.1 The Bank welcomes the close cooperation already in place with the PSR and the ongoing commitment to work together to ensure that the Authorities' respective objectives can be achieved. To facilitate the detailed development and implementation of the PSR's proposals, the Bank is providing the detailed comments attached at Annex A.



## Annex A: Detailed Bank views on implementation of PSR's proposed policy initiatives

Topic	PSR proposals	Bank view
<b>1) Industry strategy</b>	(a) We will take control of the strategy development and setting process to enable the UK to have world class payment systems – we will set up a new Payments Strategy Forum (PSF) with broad representation of industry and service-users	<p>(a) The Bank welcomes the PSR taking forward the role of leading the strategic development process for payment systems. The Bank wants to ensure that strategic change takes into account, and gives appropriate weight to, the financial stability implications and operational challenges of change. To this end, <b>the Bank is publishing four criteria against which any proposals for change should be assessed to determine their financial stability impact. The Bank stands ready to work with the PSR, industry and other stakeholders to undertake these financial stability assessments.</b></p> <p><b>The Bank looks forward to playing an active role in the Payments Strategy Forum.</b></p>
	(b) We will launch a market review into the ownership and competitiveness of infrastructure provision commencing by April 2015	<p>(b) The market review into infrastructure provision could potentially have a material impact on future developments in payment systems. In particular, this is likely to be the route that considers key issues such as the ownership and structure of payment systems. This work is therefore likely to have clear financial stability implications.</p> <p>Given the above, <b>the Bank expects to work closely with the PSR throughout the market review into the ownership and competitiveness of infrastructure provision</b>, including through undertaking some joint work on topics of mutual interest. The Bank is also offering its expertise to assist and inform the ongoing review.</p>
<b>2) Ownership, governance and control of payment systems</b>	(a) We will open up governance and control of payment systems by involving additional players in more transparent decision making: <ul style="list-style-type: none"> <li>• all Operators will be required to ensure service-users are appropriately represented in decision-making</li> <li>• conflicts of interest will need to be</li> </ul>	<p>(a) <b>The Bank supports the proposed governance requirement that is consistent with PFMI 2, which requires an FMI to have clear and transparent governance arrangements.</b> Nevertheless the Bank, as payment systems supervisor, will need to ensure that opening up governance and decision-making in payments systems to a broader range of stakeholders does not lead to less importance being attached to financial stability issues.</p> <p><b>The Bank supports the PSR's recommendation for payment system operators to publish their Board minutes and votes, but recognises the risk that publication has</b></p>

	<p>addressed so that individuals are not simultaneously a director of an Interbank Operator and of a Central Infrastructure Provider to the same payment system</p> <ul style="list-style-type: none"> <li>all Operators will be required to publish board minutes and votes</li> </ul>	<p><b>the potential to inhibit full and open discussion and challenge at Boards. The Bank expects to work closely with the PSR to ensure that this requirement is implemented in a manner that mitigates this risk.</b></p>
	<p>(b) Operators will be required to report to us on compliance with our service-user direction annually</p>	<p><b>(b) The Bank is working closely with the PSR to coordinate regulatory reporting to both regulators</b> where schemes are asked to report similar information to both the Bank and PSR.</p>
<p><b>3) Direct access to payment systems</b></p>	<p>(a) Operators (of Bacs, C&amp;CC, CHAPS and FPS) must have objective, risk-based, and publicly disclosed Access Requirements, which permit fair and open access. LINK, MasterCard and Visa, which are already subject to an access rule under Article 28 of the European Payment Services Directive, must publicly disclose their Access Requirements</p>	<p><b>(a) The Bank supports the proposed requirement that is consistent with PFMI 18 which requires an FMI to have objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access.</b> The Bank expects to work closely with the PSR when assessing schemes' compliance with this principle to ensure that an appropriate balance is struck between the need for the schemes to protect themselves from risks that could impact financial stability, such as operational risks, and the need to permit wider access.</p>
	<p>(b) All Operators must report to us on compliance with the relevant access rule applicable to them annually.</p>	<p><b>(b) The Bank is working closely with the PSR to coordinate regulatory reporting to both regulators</b> where schemes are asked to report similar information to both the Bank and PSR.</p>
<p><b>4) Indirect access to interbank systems</b></p>	<p>(a) Sponsor Banks must publish information on the sponsor services they offer (including access criteria and processes)</p>	<p>(a) No comments.</p>
	<p>(b) Industry will develop a PSR-approved Code of Conduct</p>	<p><b>(b) The Bank will review the Code of Conduct and work with the PSR to ensure it strikes an appropriate balance between promoting access and financial stability</b></p>

		<p><b>considerations on topics such as continuity of access to payment services in resolution.</b></p>
	<p>(c) We will launch a market review into Indirect Access, commencing by April 2015</p>	<p>(c) The market review into indirect access could potentially have a material impact on future developments in payment systems. This work therefore may have financial stability implications.</p> <p><b>The Bank expects to work closely with the PSR throughout the market review into indirect access</b>, including through undertaking joint work on topics of mutual interest. The Bank is also offering its expertise to assist and inform the review, for example to assess any potential financial stability risks from increased indirect access or new technological solutions.</p>
<b>5) Interchange fees</b>	<p>(a) We will engage with relevant authorities on the proposed EU Interchange Regulation. If implementation is delayed we will consider taking action in the UK</p>	<p>(a) No comments.</p>
<b>6) Regulatory tools</b>	<p>(a) We will introduce Principles on our expectations of industry behaviour. Industry will work with us on a 'no surprises' basis, discussing significant developments with us in advance and on an ongoing basis.</p>	<p>(a) The Bank will consider how the PSR's principles fit with its own work as supervisor of payments systems, particularly if the PSR considers additional principles on areas like management and control of schemes.</p>
	<p>(b) We will issue Powers and Processes Guidance setting out our enforcement and complaints procedures, Guidance on our statutory Objectives, Penalties Guidance and our Administrative Priority Framework</p>	<p>(b) <b>The Bank will work closely with the PSR in considering the impacts of exercising both authorities' regulatory tools on their respective objectives generally and payments systems and regulated firms more specifically.</b></p> <p>As the Bank is not to be regarded as a participant in any payment system, <b>the Bank is excluded from the PSR's remit</b> and is therefore, for example, exempt from PSR penalties</p>

levied against payment systems of which the Bank is a member.

BANK OF NEW YORK MELLON

# BANK OF NEW YORK MELLON

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

BNY Mellon welcomes the PSR and a new regulatory approach. We have some comments on aspects of the approach which we have set out below.

- We note the PSR favours a risk based approach; however we believe there could be more recognition that some types of payment service provider, for example payment institutions, may present greater risks to the integrity and stability of a payments system.
- We believe that, when determining whether it is reasonable and proportionate to impose additional regulation, the nature of the intended direct beneficiary of the proposed regulation should be taken into account as it is less justifiable to impose significant additional costs and regulatory burdens on the industry where the direct beneficiary of the regulation is another financial institution rather than the consumer or end user. We would like to highlight to the PSR that the consultation paper appears to take a consumer orientated approach to supporting the rights of users who are not consumers, e.g. financial institutions which are indirect members. It is difficult to see the ultimate benefit to the consumers with this particular approach.
- We think that the scope of regulation relating to sponsor banks should be clarified.
  - We understand from attending the PSR round table meeting for Direct Members on 17<sup>th</sup> December 2014 and from the evidence given by Hannah Nixon, as Managing Director of the PSR, to the House of Commons Treasury Select Committee on 26<sup>th</sup> November 2014, that sponsor banks are intended to be the direct payment service providers (PSPs) who provide indirect access to payment systems for other financial institutions through providing a sort code to those institutions (also known as agency banking).
  - This is in contrast to correspondent banking where the direct PSP provides clearing services for institutional customers through the provision of bank accounts for those institutional customers and where the institutional customer is not provided with a sort code or access to the payment system.
  - The definition of sponsor bank in the Consultation Paper refers to a PSP that provides indirect access to a payment system and indirect access is in turn defined by reference to a contractual arrangement to provide services for the purpose of enabling the transfer of funds using a regulated payment system to persons who are not participants in the system.
  - As such, the definitions do not distinguish between corresponding banking and agency banking and cover both types of activity. We therefore propose that the definitions are amended so that it is clear that only agency banking is being covered.
- We also suggest that the definition of payment service provider is aligned with the Payment Services Directive. We feel that consistency of definitions is very

important for the industry as it provides certainty and transparency. We request that the PSR considers the definitions that other regulators or payment schemes use so that we can ensure that these are aligned and have consistent use across the industry.

## **Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach in Option 1 and would welcome participation in the Payments Strategy Forum. We would like to address the gap that the Payments Council may leave behind as an information provider for the industry; we believe this gap should be filled by a council or association to continue the provision of this information.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

We would suggest the creation of a Payments Strategy Steering Committee in addition to the Payment Strategy Forum. The Steering Committee should be formed with representation from a wide base including indirect participants and sponsor banks, etc. The working groups will link into the Steering Committee to represent a broader community. We feel this would allow a wider representation, while still allowing the Payment Strategy Forum to be efficient, effective and make decisions. We believe proportionate representation is important, as market participants may have different roles with different payment systems.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

We have no comments on this, other than to ensure a wide and proportionate representation is included. We suggest that any representative is voted onto the Forum, and we believe that having a maximum term (for example, of 2 years), would be beneficial to enable a fair and equitable rotation of the role, thus ensuring the views of a wide service user base are represented.

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**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

We consider that the current environment of operating two low value payment schemes in the UK to be sub-optimal. We encourage the Payments Strategy Forum to consider how the UK could move to a model of one high value and one low value payment scheme, thereby reducing costs associated with membership and operation of the payment schemes.

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**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree and are supportive of this approach.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We agree.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We have no comments.



**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with this direction.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

We agree that a transparent approach would be beneficial for the Payments Industry. However, we would propose the issuance of a press release with a summary of high level decisions as an alternative method of ensuring transparency. We are conscious that the publication of minutes in their entirety may have an inhibiting effect on board meetings. Setting out the number of votes cast by Executive Directives separately to Non-Executive Directors may achieve the transparency sought in this proposal. If minutes should be published it is important that Operators have a clear and sufficiently broad basis for making redactions as the confidentiality, system integrity and stability concerns that may arise from disclosure should not be underestimated.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the costs and benefits identified. The PSR should also consider the additional costs of the legal reviews that may be required to check whether redactions are necessary.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree that a review is needed and the industry should have input into the shape and role that the Payments Council or other body performs. We would also like to address the gap that the Payments Council may leave behind (if it was demised) as an information provider for the industry. We believe this gap should be filled by a council or association to continue the provision of this information.

## Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems for more details*)

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree with the preferred option. We believe publically disclosed access requirements would be beneficial to the Payments Industry and a risk based approach the most equitable. However we believe there could be more recognition that some types of payment service provider may present greater risks to the integrity and stability of a payments system such as payment institutions. We would also ask the PSR to consider the adverse impact of introducing less stringent access requirements on the market, particularly in terms of stability and integrity of the financial system, and encourage the PSR not to proceed too far down this route.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We are supportive of enhanced competition and innovation, but also emphasise the importance of stability, as referred to in our response to SP4-Q1.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

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We agree with the proposed approach. We believe, however, that the publication of certain information on (i) the website of the Sponsor Bank and (ii) within an Information Hub, would be a duplication of efforts and not necessary. We would suggest proceeding with only one of these methods of information provision.

In addition we would appreciate clarity around what is required in order to make a decision to discontinue supply to a client in a "reasonable fashion" and to provide "reasonable assistance" in the context of paragraph 4.242. Commercial organisations would need to retain the ability to decide with whom they do business in practice. We are also concerned that compelling Sponsor Banks to provide their services for longer than commercially desirable may lead to issues with Customer Due Diligence requirements. This requirement does not seem to align with the direction taken by the FCA/PRA to date.

We suggest that the PSR implements information requirements on a tiered time scale, with larger banks compliant in advance of smaller market participants due to resources required to implement the change. The code of conduct is expected to be available in September and we feel this would seem like an appropriate time scale for full implementation.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach. We believe, however, that the publication of certain information on (i) the website of the sponsor bank and (ii) within an Information Hub, would be a duplication of efforts and not necessary. We also believe this could add confusion as to which is the best source of information. We would therefore suggest proceeding with only one of these methods of information provision.

We do not believe a more prescriptive approach is required at this time.

We suggest that the PSR implements information requirements on a tiered time scale, with larger banks compliant in advance of smaller market participants due to resources required to implement the change. The code of conduct is expected to be available in September and we feel this would seem like an appropriate time scale for full implementation.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We agree a code of conduct may be beneficial. We do however have some concerns with regards to the detail required to be included. We do not think it is appropriate to include contract requirements in a code of conduct, as the contracts in question are entered into between financial institutions, and not between financial institutions and their end-user customers. Financial institutions and payment service providers would be expected to have the requisite knowledge and experience to determine contract and service level requirements for themselves.

We also seek further clarification regarding “communicate information on system outages and developments in a timely and easily accessible fashion”. We would recommend against implementing a requirement to require notifications for all and any systems outages as we feel that publically notifying low impact events may damage the reputation of the Payments Industry. We further believe a cascading of systems outages should be prescribed for those providing sponsor bank services.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We support this approach, and feel that technology companies and the industry are best placed to deliver appropriate technical solutions.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

We have no comments.

### **Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

We have no comments.

### **Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

We would recommend the PSR align their principles with those of the FCA.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

We have no comments.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

We have no comments.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

We have no comments.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We have no comments.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

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We have no comments.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We have no comments.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We recommend that the PSR aligns its approach to penalties with the FCA's approach as set out in its Handbook DEPP 6.5.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

We recommend that the PSR aligns its approach to penalties with the FCA's approach as set out in its Handbook DEPP 6.5.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

We recommend that the PSR aligns its approach to penalties with the FCA's approach as set out in its Handbook DEPP 6.5. With regard to the issue of whether fines should be limited or unlimited, we think that it would make sense for the PSR to align its approach to that taken

for payment services regulation and in particular under the Payment Services Regulations 2009 where fines are limited.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

We would recommend the PSR align their enforcement approach with the FCA.

BARCLAYS BANK

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18 March 2015

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

Dear Sir or Madam,

**Payment Systems Regulator - Consultation Paper PSR CP14/1 - a new regulatory framework for payment systems in the UK**

On behalf of Barclays Bank PLC and its relevant subsidiaries (Barclays) we welcome the opportunity to respond to this consultation on the proposed regulatory approach for the Payment Systems Regulator (the PSR). A summary of key points is provided below and a more detailed response appears at Appendix A.

As we highlighted in our "Call for Inputs" response back in April 2014, the payments market place is one that has seen considerable activity over recent years and the pace of change, from innovation, competition and other drivers, such as regulatory change, remains high. We are grateful that the PSR has taken note of our earlier comments and has incorporated these into its proposal.

We welcome the PSR's continued open approach in requesting feedback from stakeholders through this consultation. With this in mind, we have suggested ideas as to how the strategy forum could be constructed and operate. There are still a few areas where we would like to work with the PSR on further clarification – for example, clarification around how PSR will manage those European companies that passport into UK under cross border rules, and look forward to further engagement on these topics.

We appreciate that there are two market reviews planned in 2015, one of which concerns indirect access. We would ask the PSR to be mindful that the relationship between sponsors and the indirect agencies must remain commercially viable. We recognise that improvements have to be made to the UK payment infrastructure to ensure that it delivers "best in class" service for all customers and users and we look forward to working with the PSR to ensure that payment systems in the UK remain amongst the safest, most cost-effective and innovative payment systems in the world.

Yours sincerely

Steve Allen  
Head of Corporate Operations  
Barclays Bank plc

**Payment Systems Regulator (PSR) - Consultation Paper PSR CP14/1 – Responses to Questions**

**SP1: Question in relation to our proposed regulatory approach:**

SP1-Q1	Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.
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We agree with the general approach proposed by the PSR.

We believe that further clarity is required around how the PSR will regulate payment schemes to avoid duplication, in particular with the FCA’s and the CMA’s conduct powers.

We would also like further clarity around the level of engagement the PSR expects, particularly with regard to its general principles which require “participants to disclose to the Payment Services Regulator anything relating to the participant of which the Payments Services Regulator would reasonably expect notice”. It was noted at the industry event on the 9<sup>th</sup> December that firms would need to make “judgement calls” on whether an event was of sufficient scale and impact to warrant a notification to the PSR. The consultation papers suggest that a breach of the general principles would be treated as a compliance breach. We therefore believe that the industry would benefit from further guidance around what the PSR considers to be notifiable events. In our opinion, a notifiable event could be defined as an event of sufficient materiality, either in number of customers impacted, effect on the market, or financial impact. In addition, this could be an event that the press or consumer bodies would have sufficient interest in, and as a result the PSR would want to know to ensure that they are fully briefed in case of contact from a third party.

Finally, we believe that the proposed costs may be higher if the PSR is looking for real-time engagement, analysis and notification from firms, as this level of engagement will require increased resources.

**SP2: Questions in relation to our proposed approach to payments industry strategy (see Supporting Paper 2: Payments industry strategy and areas for collaboration for more details)**

SP2-Q1	Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council’s or a successor body’s role in setting industry strategy) or Option 3 (we develop high level priorities for the industry ourselves), as described in Supporting Paper 2: Payments industry strategy and areas for collaboration? If you disagree with our proposed approach, please give your reasons.
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Of the options considered in the Consultation Paper we favour Option 1.

SP2-Q2	Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.
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We agree it will be beneficial to have an effective Strategy Forum that is in a position to plan ahead on a considered basis and which will engage widely with relevant stakeholders.

The composition and Terms of Reference of the Strategy Forum will need careful consideration. We are nominating key SMEs with the relevant experience to join the upcoming working group sessions to help in these discussions

SP2-Q3	Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?
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We would like to take this opportunity to provide some comments on the Strategy Forum:

- We support the desire to have a wide range of interests represented on the Forum, though would caution that the Forum needs to be able to have constructive discussions in order to make decisions. If the group is too wide, there is potential for focus to drift.
- As the PSR recognise, it is important to ensure a careful balance of interests between the supply and demand perspectives, and between representatives with a deep understanding of the payments industry and those representing service users or the public interest. We are keen that the Forum comprises a suitably empowered senior level membership so that it can have truly meaningful discussions and come to clear conclusions about user benefit, funding and prioritisation.
  - For example, we would advocate a Forum comprised of Chief Executives (or one level removed) of a representative sample of PSPs; the Director General of the CBI, Policy Chairman of the Federation of Small Businesses, CEO of Citizens Advice and Which? on the demand side; the Scheme and Card CEOs on the supply side; and a Deputy Governor from the Bank of England to fulfil the financial stability imperative. The PSR could also consider the inclusion of a 'grandee' in an unrelated logistical field (e.g. a retired colonel or senior civil engineer) as they are likely to be skilled at solving complex, multifaceted problems.
  - Learning from previous OFT experience, we would be concerned if organisations on the Forum were focused on a single payments issue, rather than bringing a broader set of views to the table. To ensure their views are heard, 'single issue' groups could be invited to sit on relevant working groups, or present to the Forum on a regular or ad hoc basis.
  - The Bank of England, FCA and PRA all have a power of veto over decisions taken by the PSR so it will be vital to have their active engagement. We would like the Bank of England to have a seat at the Forum given its critical role in financial stability; and the PRA and FCA to attend as observers on a fairly regular basis.
- In terms of how the Forum might operate, we would suggest looking at elements of the Monetary Policy Committee as a potential template. For example, it might make sense to make the meetings one or two day affairs. In the first half, the Forum could receive updates on the state of the market, recent developments and new research, the international scene and relevant regulation, the state of the economy and the outlook for financial stability. In the second half, the Forum could debate proposals, initiate work on specific or thematic topics and review the progress made against previous recommendations.

- Once the initial agenda has been agreed, we would advocate moving from 6-12 weekly to six-monthly meetings to allow Forum members time to consult with their constituencies, undertake consumer testing (to ensure decisions are informed by user research), and deliver the changes required.
- We understand it is the PSR's intention for the Forum to set high level strategy and establish a series of working groups to explore specific issues in detail. We would expect the Forum to appoint its own members to lead relevant working groups, giving them the responsibility to report back to the Forum. This will ensure that there is always at least one member of the Forum who has close involvement in the issue in question and, crucially, must account for it. A related proposal might be to make two members jointly responsible - one from the supply side and one from the demand side to ensure balance, understanding and compromise.
- As part of consistent reporting back to the Forum, a short summary template should be submitted once each issue has been looked at. The purpose would be to require the routine articulation of: 1) how the proposal meets the PSR's objectives; 2) a summary of supporting evidence to ensure the proposal genuinely meets the needs of the user group they are intended to benefit, and highlighting any risks; and 3) a summary of the costs involved in bringing about the change required. The template could include a scoring system or RAG rating, to aid prioritisation. This is good practice in ensuring decisions are both well founded and well rounded.
- Members of the working group could be selected on the basis of suggestion from Forum members (e.g. organisation names put forward, for them to propose a relevant person to take part). If Forum members are sufficiently senior (as we recommend), they are likely to have a wide range of contacts to call upon and the authority to encourage engagement.
- As a general rule, we would expect the working groups to comprise a mixture of industry, user group, supply and demand representatives. Certain topics are undeniably technical, but the presence of 'users' is really important in building understanding and forcing technical experts to put their plans or objections in layman terms. To ensure progress is made, we would advocate that working groups are limited to c.10 people.
- Finally, we understand that the PSR intends to publish further detail around the role and membership of the expert Panel that acts as a sounding board for the PSR, and we welcome this level of transparency.

SP2-Q4	Q4: Are there any additional infrastructure related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes
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	are important to you.
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We hope that changes to the payment systems are proportionate as well as ambitious, recognising that many of the institutions that fund infrastructure changes in payments must also fund and deliver a range of mandatory change from regulators and Government at UK and EU level, as well as delivering innovative and competitive products of their own. As above, we advocate that the Forum spend some time at each meeting looking at the broader environment including recent developments (competitive, regulatory, economic etc.) so that decisions are taken in context.

**SP3: Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Supporting Paper 3: Ownership, governance and control of payment systems for more details)**

SP3-Q1	Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision making at board level? If you disagree with our proposed approach, please give your reasons.
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We support the proposed direction and agree it would be useful to formalise engagement with service users e.g. via User Forums and Consultation Papers. We believe it is more appropriate for the schemes to comment on this in the main.

SP3-Q2	Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?
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We agree but will leave the schemes to comment and provide additional information.

SP3-Q3	Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposed direction. We operate effective "Chinese walls" internally between Vocalink Board and the Interbank Scheme Company Boards.

SP3-Q4	Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal and have no further comments.

SP3-Q5	Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?
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We agree but will leave the schemes to comment and provide additional information.

SP3-Q6	Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.
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We agree with all of these proposals. The Payments Council Board has published its Board Agendas and Minutes on its public website since its inception and it helps with transparency of the decision making process e.g. for those without a Board seat.

SP3-Q7	Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?
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We generally agree, but will leave the schemes to comment and provide additional information.

SP3-Q8	Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposed approach. The process of terminating generic contracts and reserved matters with schemes is underway, and is managed by Payments Council and overseen by Bank of England.

**SP4: Questions in relation to our proposed approach to access to payment systems (see Supporting Paper 4: Access to payment systems for more details)**

SP4-Q1	Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS IOSCO Principles, should be applied to those pan GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.
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We agree with the general approach proposed by the PSR in their consultation paper, and we consider that the access document is well written and carefully considered. It would be useful to formalise engagement with service users.

We are also working closely with the Payments Council and other sponsor banks to help draft the "Code of Conduct for Sponsor Banks", which is due to be published in June 2015.

SP4-Q2	Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

SP4-Q3	Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

# BARCLAYS BANK

SP4-Q4	Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?
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We agree with the proposal.

SP4-Q5	Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.
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On Provision of Information we would welcome further detail on the level of detail, and the frequency, that will be required to be published.

SP4-Q6	Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

SP4-Q7	Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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We agree with the approach. However, we must be mindful not to make the requirements so burdensome that agency banking becomes unsupportable.

SP4-Q8	Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

SP4-Q9	Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?
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We would note that the market review will require significant engagement and resource.

## **SP5: Question in relation to our proposed approach in relation to interchange fees**

SP5-Q1	Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?
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As the PSR itself notes interchange fees have been the subject of sustained competition law scrutiny for many years by many authorities in Europe. We believe that Europe-wide legislation helps provide the level of regulatory certainty and level playing field that helps the market settle and plan for the future. We agree that it would be prudent for the PSR to delay consideration of taking action until the impact of the Regulation on the UK market is clear.



**SP6: Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes)**

SP6-Q1	Q1: Do you agree with our three proposed high level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal, although we would appreciate some further clarification around what type of information and what level of detail the PSR is expecting participants to notify.

SP6-Q2	Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.
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We agree with the proposal.

SP6-Q3	Q3: Do you agree with our proposed approach that our PSR Principle on Financial Prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.
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One of the key purposes of the proposed framework is looking to drive innovation, which requires funds and investment. We consider it likely that the schemes will look to the shareholders who have competing demands on limited investment funds. We would request that the PSR take that into account.

SP6-Q4	Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.
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We recognise that the FCA Regime is a licensing regime that also includes individual authorisations. However, the principles do not easily translate into a regime based on designated schemes, so we believe that further analysis is required to ensure that the Principles are able to be applied appropriately.

SP6-Q5	Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?
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We believe that costs may be higher than anticipated as payments affects various parts of firms, and any changes will affect multiple areas.

Depending on the level of interaction required by the PSR, there is likely to be additional costs resulting from notification requirements, forum attendance, etc.



SP6-Q6	Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.
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We note that there is no mention of customer advocacy (e.g. as measured by net promoter score – NPS) or satisfaction as criteria for assessing the effectiveness of competition. We think that these are key measures and should be considered.

SP6-Q7	Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

SP6-Q8	Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.
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We are looking for the regulator to be interactive with us, and we would like further detail around how this communication will be undertaken. We would also like a better understanding of how fees will be charged.

SP6-Q9	Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.
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We would welcome further detail around how this will work in practice.

SP6-Q10	Q10: Do you agree with our proposed approach for our Super Complaints Guidance? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal.

SP6-Q11	Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.
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We generally agree with the proposed approach, but are unclear what is meant by “payment activity” – we would welcome a chance to discuss definition/scope, to ensure that the industry is working to a standard definition. We would also ask the PSR to clarify their position around inclusion of previous breaches and events when assessing penalties, to ensure that they are appropriate in relation to payments. There are a number of key term definitions we believe need to be agreed on (e.g. the definition of “revenue” and “business activity” when setting penalties).

SP6-Q12	Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not for profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?
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We do not consider that the value of funds is a good metric. It bears no relation to the economic value of the activity to the scheme/payment services provider. It would also disproportionately affect a higher value scheme such as CHAPS.

SP6-Q13	Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?
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Given that the penalties of other competition regulators are capped, we would encourage the PSR to take a similar approach, where that cap should be related to the value of the activity in question. Further consideration on how that should be measured will be required. Generally, we would anticipate penalties to be based on proportionality of the event to help ensure that they do not adversely impact customers or the market. We would welcome further analysis.

SP6-Q14	Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.
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We agree with the proposal; however we would like clarity on the approach the PSR will take when assessing action that has been taken by other regulators, or has been taken historically, to ensure consistency in application.

We would like to see consistency in the approach between the PSR, FCA, BoE and PRA, and would advocate the establishment of a formal regulatory forum.

BDO LLP

**BDO LLP**

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry for more details*)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We welcome the emphasis that is now being placed on the economic regulation of an increasingly important part of UK financial services sector. Given that many of the key participants in the payment processing are also subject to FCA conduct regulation and the CMA is keen to encourage open access there will be concern from both the public and industry perspective that efforts may appear to be uncoordinated. We appreciate that you have already recognised this issue and begun to draft a Memorandum of Understanding between the three main regulators which will hopefully bring clarity to the scope and main responsibilities of each party to avoid duplication of effort for the regulators and unnecessary burden for the industry participants. However, in our view there is still a potential for grey areas and confusion unless all activities by the three regulators are seen to be coordinated.

We suggest that the PSR is careful in its assumptions about the payment systems market and in particular the relationship between the direct and indirect market participants. In our experience, the high pace of technological innovation means that the operating models and the ways the funds are transferred constantly evolve. Consequently, the PSR will need to maintain short communication lines with both participants and end-users representatives. In this way the PSR can gain the detailed understanding of the sector, it will need for appropriate and proportionate supervision.

We note that the PSR is due to commission a competition review that would conclude in two years but Sponsor Banks are currently under pressure to reduce their AML risk and may, in consequence, stop providing smaller players with access to the payments infrastructure. For example, BDO is seeing evidence that many indirect participants are on notice from their Sponsor Bank that their relationship is under review and they may lose their banking facilities. It should also be noted that some as Sponsor Banks compete directly with intermediaries by providing payment services directly to end-users, and therefore currently address the conflict of interests discussed in the PSR's proposals in accordance with FCA principles. Consequently, the payment services market could change fundamentally during the period of the proposed competition review.

PSR is proposing disclosure of market activity and it may wish to consider partial introduction of these requirements during this period. This could include, for example, details of the numbers of indirect participants supported by each sponsoring bank, volume of payments processed etc. This information could help regulators to see if there are sudden changes in the market, assess the impact on their objectives and, if appropriate, address underlying concerns in a timely manner. The PSR's suggested requirement for the payment system boards to publish minutes of their meetings is debatable in terms of transparency versus commercial sensitivity issues and this would take some time to resolve.

Furthermore, we note that one of the PSR's aims is to ensure effective competition whilst driving innovation within the industry through collaboration. Having worked with both Ofgem

and Ofcom it's difficult to appreciate how, if a Payment Strategy Forum is established, how it will avoid achieving one objective without it impacting the other. In other industries collaboration can be misconstrued as collusion therefore any governance structure will need to be robust, transparent and representative of all stakeholders.

### **Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree that the option 1 is the most feasible.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

### **Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We believe that representation of service –users at board level should be encouraged.

However, these proposals are similar to the client focussed emphasis of FCA Principles and the Treating Customers Fairly concept. Consequently given the potential scope of this direction, we do not recommend that this becomes mandatory without a significant transitional period and further discussion about what would be proportional and appropriate. An alternative may be to require all interbank and card operators to make sure that the service-users are represented appropriately by current Board members and, if not, to review Board director responsibilities.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Whilst there may be an incremental cost, if the PSR proposals are used to strengthen specific aspects of established financial institutions' TCF framework, the cost can be minimized whilst the consumer benefits maximised.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Conflicts of interest are an important topic for all FS institutions. However, to be effective, the way in which they are managed must meet both regulatory and public expectations without undermining the commercial model and/or industry discussion and innovation. This proposal does not make a distinction between executive and non executive directors and given the different nature of these two roles we recommend that this is considered and commented on. In addition in our view Interbank Operators' directors sitting on a Central Infrastructure Provider's Advisory Panel could contribute to innovation and therefore the possibility of them doing so without creating unmanageable conflicts of interest should be explored.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

See above.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our

proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

As far as we aware this would be a new requirement for FS regulated institutions. Therefore, we recommend that the PSR consider this issue jointly with the PRA and FCA. As noted by other commentators, this requirement may make board oversight less effective as some directors will not want controversial opinions to be on the public record.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems for more details*)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed

directions?

Type your answer here

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Yes we agree because transparency in bilateral agreements between the Sponsor Banks and their counter parties will increase competition in the sector.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Yes, it gives clarity to the industry and allows for the code of conduct to reflect the industry needs whilst approval power of the PSR will ensure that only the sensible rules are include in the final version of the code.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

No Comments

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

Type your answer here

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Yes. However, as many of the participants will also be PRA and/or FCA regulated, we recommend that the PSR state that they will rely on their compliance with relevant PRA/FCA principles and rules to demonstrate compliance with these PSR principles.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Type your answer here

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

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Type your answer here

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

BELFAST BANKERS' CLEARING COMPANY LTD

# BELFAST BANKERS' CLEARING COMPANY LTD

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We agree with the PSR's regulatory approach and in particular the high level draft principles and behaviour standards which can be tailored to suit small payment schemes like ourselves.

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We agree with Option 1 for the PSR to establish a Strategy Forum with wide representation. It offers the best opportunity to ensure consistency with the PSR objectives without necessitating further costs to the industry.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The Forum could make use of the stakeholder groups and contacts that the Payments Council has had in place over the past few years. This would ensure that key messages from stakeholder groups that have been received eg, on the development of the Payments Roadmap, are not lost.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

While it is desirable to have wide representation very large meeting groups are generally not that effective so it may be appropriate to create a number of representative smaller working groups to develop proposals and report to the Strategy Forum.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

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We have not identified any additional infrastructure-related themes that the Forum should consider.

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's proposals on Ownership, Governance & Control of Payment Systems we believe it is not appropriate to comment on the proposals. However, in general, we would agree in principle.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Given that BBCCL is excluded from the PSR's proposals on Ownership, Governance & Control of Payment Systems we believe it is not appropriate to comment on the associated costs and benefits. We do not have any data on this matter that might inform any further analysis.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

This question does not apply to BBCCL as there is no central infrastructure. However, in general, we would agree in principle.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Company law requires directors to act in the interest of the scheme company and all schemes will have procedures in place for dealing with conflicts of interest. As such we agree that there is no immediate need to issue directions at this time.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to

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that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

This question does not apply to BBCCL as there is no central infrastructure.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's proposals on Ownership, Governance & Control of Payment Systems we believe it is not appropriate to comment on the proposals.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Given that BBCCL is excluded from the PSR's proposals on Ownership, Governance & Control of Payment Systems we believe it is not appropriate to comment on the associated costs and benefits. We do not have any data on this matter that might inform any further analysis.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

This question is not applicable to BBCCL.

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems for more details*)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the proposals.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

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Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the proposals.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the proposals. You should note however that BBCCL does publish its access criteria on its website [www.bbccl.co.uk](http://www.bbccl.co.uk)

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the associated costs and benefits. We do not have any data on this matter that might inform any further analysis.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the proposals.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

While BBCCL will not be subject to the PSR's Access Rule we have provided all the relevant information on the company to the Payments Council, which is developing the Information Hub website. We believe this is a useful first step and that any requirement for a more prescriptive approach can be assessed in the light of experience.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Even though BBCCL is excluded from the PSR's Access Rule we would appreciate clarification from the PSR on whether our member banks would be subject to the Sponsor Bank Code of Conduct if they act as Agent for another bank to submit items to the Northern Ireland Clearing.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our



proposed approach, please give your reasons.

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the proposals.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Given that BBCCL is excluded from the PSR's Access Rule we believe it is not appropriate to comment on the associated costs and benefits. We do not have any data on this matter that might inform any further analysis.

### **Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

This question is not applicable to BBCCL.

### **Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

We agree that the PSR Principles form the basis of a good working relationship between the PSR and the industry.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

We agree that the PSR Principles on Relations with Regulators and Compliance should apply to all Participants.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for

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disagreeing, and explain which categories of participants you consider it should apply to and why.

We agree that the PSR Principles on Relations with Regulators and Compliance should apply to all Participants since the failure of an Infrastructure Provider could have enormous implications for associated payment schemes. It would be useful if the PSR could publish the full list of Infrastructure Providers that fall within its remit.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

All of the possible additional PSR Principles make sense and would be expected to already be in place in relevant payment schemes. As they are already requirements of existing FCA or CPSS / IOSCO Principles we would however question the need for them to be re-stated within the PSR remit.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We are in agreement with the anticipated benefits. With regard to the anticipated costs we believe that for a small, oversight scheme BBCCL's anticipated costs, despite being excluded from the Governance and Access Proposals, will be proportionally much higher than for other payment schemes given our existing low cost base.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with your proposed approach for Objectives Guidance.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We agree with your proposed approach for the Administrative Priority Framework.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

We agree with your proposed approach for the Powers & Procedures Guide.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

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We agree with your proposals for dispute resolution and applications procedures and the principle that PSR should only be approached after the parties have exhausted the available commercial and alternative dispute resolution processes available to them, including attempts at mediation.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with your approach for Super Complaints.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We agree with your approach to setting penalties as the PSR Principles offer adequate opportunities to identify and resolve potential issues before they reach the stage of penalties. We also agree that the penalties should be based on the seriousness of the compliance failure.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

We do not believe the value of funds being transferred through a particular payment scheme should have any relevance in determining the size of penalties. In 'not-for-profit' organisations it may be more appropriate to base penalties on the annual budgets of the payment schemes, adjusted for the seriousness of the compliance failure and any mitigating or aggravating features.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

In the case of BBCCL an upper limit of 10% on penalties would represent a very small sum, which may not reflect the seriousness of a particular compliance failure.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

We agree with your proposed approach with respect to the enforcement and enforceability of penalties.

**9 January 2015**

BOTTOMLINE TECHNOLOGIES LIMITED

# BOTTOMLINE TECHNOLOGIES LIMITED

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper* and *Supporting Paper 1: The PSR and UK payments industry* for more details)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

Agree

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper* and *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

Option 1 is our preference

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

Broad stakeholder representation must include those technology providers who enable corporates to connect in to payment systems. Bottomline provide solutions that enable 12,000 corporates to connect directly in to the Bacs service.

People who work at banks or scheme companies are experts at the mechanics of moving payment messages around, and the scheme rules – once they hit the processing engine – not necessarily how a company wants to use their payments – or their needs.

We have a direct conversational connection to the customer in the way that a bank or scheme company doesn't, as we are concerned with what the payment is for (Accounts Payable, Payroll, Direct Debit etc.) and the unique requirement of each of those payment types, not just the sum of money within it. We mustn't forget the corporates in our payment systems.

It is also unclear how the Payments Strategy Forum membership will be recruited.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

I don't think the needs of the corporate are considered within our payments infrastructure – this mustn't just be about the consumer. Consumers and business use payments in completely different ways – Credit Card payments, PAYM, etc. do not figure in the way companies make their payments. Corporates want different things from their payments: security, visibility, reconciliation, control, is key. The majority of these payments are scheduled, so speed of money in to the account is not the most important factor – more important is knowing that the payment has actually succeeded, or if it has failed, why.

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

Agree

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

Agree

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

Agree

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Agree

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

Agree

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

Agree

**Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB

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Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Agree

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.



Agree

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Agree

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

Not enough consideration is being made of changes that can be made to already available systems to allow indirect access – having a Bacs style ‘Bank Grade’ model for Faster Payments DCA, also providing a machine interface in to the ‘A’ Services Automation so banks can automate processes without needing ETS or STS.

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

Type your answer here

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you

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disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

Type your answer here

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

Type your answer here

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users’ interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Type your answer here

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Type your answer here

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures

Guide? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Type your answer here

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

Type your answer here

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

Type your answer here

BRITISH RETAIL CONSORTIUM

# BRITISH RETAIL CONSORTIUM

**Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry for more details*)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

The BRC supports the regulatory approach as outlined. We agree that it is crucial to maintain stability and confidence in the payments system, but at the same time the PSR strives for a proportionate approach that recognises diversity of the system.

It is important that the PSR should maintain transparency in its regulatory approach and decision-making and abide by the better regulation principles and the regulators code.

At an operational level, the PSR must guarantee close regulatory alignment with the FCA, CMA and Bank of England in order to provide a holistic approach to payment systems regulation. The most important aspect is that the PSR's economic regulatory role is clearly and effectively supported by strong supervision of conduct.

The BRC supports the general functions and regulatory powers as laid out under FSBRA, including enforcement and investigation powers and market studies. We also welcome a 'no surprises culture', and would look to the PSR to ensure it adopts the same approach for its action, especially as regards future strategy.

The BRC supports the suggested approach to monitor progress so that the PSR can be sufficiently flexible to remain fit for purpose and take action where necessary in a dynamic market. The BRC welcomes the PSR's constructive and comprehensive approach to industry engagement so far, in particular ensuring the interests of service users are recognised and reflected in decision-making.

It is noted that the designation of the card payment systems, MasterCard and VISA, is a key component that is essential to the effective implementation of the proposed regulatory approach. Without the main card schemes being included the impact of any regulatory approach will be minimal to retailers.

Of particular interest is the proposal to include the operators of the card payment schemes, their infrastructure providers as well as the card issuers and the acquirers. From BRC members' perspective the inclusion of all parties in the supply chain should ensure that retailers views as card handlers will have an avenue to be heard, which is important given that retailers are one of the largest service users of the payment infrastructure.

From a payment acceptor perspective it is important that all payment forms are included within the regulatory approach, especially as the development of future payment types, albeit with new names – not just cards, may use an existing or new infrastructure to handle transactions. Having automatic visibility of all the rules of engagement for the acceptance of different payment methods would be a significant benefit, especially if they adhered to a common set of acceptance standards.

The proposed regulatory approach needs to define realistic timeframes for any changes to operational and technical standards to ensure those changes and ultimately innovation can occur.

The PSR needs to be fully engaged with the early implementation of the PSD2 within the UK to ensure that any changes from the existing PSD are regulated in the appropriate manner.

**Questions in relation to our proposed approach to payments industry strategy (see Part D of our Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration for more details)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

The BRC agrees that Option 1 presents the best way forward to ensure effective industry wide strategy development, including setting, co-ordinating and planning of approach. To date, this broad approach has not existed in the payments system, with a narrow set of interests prevailing at the expense of marginalised service users.

The BRC welcomes the new Payments Strategy Forum as a channel to provide collaboration and lead innovation for the benefit of service users. We agree that it should focus on implementation of European payments regulation, integrity and security, be customer focused, promote common standards and look to deliver codes of best practice.

It is important that standards are created for the acceptance of all payment methods which are both practical and cost effective for all or selected sales and/or service channels. For example, whilst the UK Cards Association has endeavoured to define and maintain card acceptance for new ways of handling payments, these appear to have frequently been developed in isolation of consideration of the consumer or retailer experience and are practically very difficult to implement. However the establishment of those standards does give suppliers and retailers a good starting point for implementation of updated/new payment methods.

The BRC agrees that a more co-ordinated approach will help meet regulatory demands, rather than hinder or slow the process. The lack of genuine industry wide representation in payment systems strategy and policy has been well articulated by HM Treasury, Treasury Select Committee and others, It is vital that this Forum provides meaningful inclusion of all parties, so that the system works for all users. An independent chair will be important to ensure the agenda fully reflects all interests in discussion.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum?  
In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

The Forum should provide equal representation and voice for all participants in payment systems, ensuring inclusion of all service users.

Getting the right people with the right knowledge and authority to agree decisions will be important for the success of the Forum, as will the proposed commitment to meet every 6-12 weeks.

It appears that the work and analysis done by Forum Working Groups will be a key deliverable for the Forum to be successful, therefore the representation and format of those groups should have the same degree of transparency as the Forum.

There also remains a need for further clarity on the expected outcomes of the Forum's work and exactly how proposals will be taken forward.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

The BRC supports the approach to allow for industry-led solutions, but for the PSR to apply the proportionate measures where necessary to achieve positive outcomes. It is important that the Forum can reflect similarities and differences for different payment types and priorities.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

The Forum should remain open to new operators and providers going forward. Agenda items should be open to suggestion for all. There should be strong alignment with the strategic direction of other regulators.

The Forum should examine the system being fit for purpose and that appropriate back up and/or stand-in processes exist. Given the increasing number of bank systems and/or their technology partners that have had outages recently either due to volume of transactions or technical errors which have affected individual consumers and retailers surely the PSR would be best placed to propose the future minimum contingency, operational and technical standards required for organisations to be part of the overall payments infrastructure.

During the last 18 months retailers confidence in the robustness and resilience of existing banking infrastructure has significantly reduced to an all-time low, especially as they have to manage a disgruntled customer and lost sales. As the market moves to even more online and immediate payment methods there needs to be established minimum standards for the deployment of contingency arrangements for each party in the payment cycle.

The BRC also believes that any new payment types or products that use or build on infrastructure should be within scope of regulation and open to on-going scrutiny, compliance and enforcement.

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper* and *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

The BRC supports the proposals. To date, decision making is a closed loop and so outcomes frequently reflect limited interests, with negative impacts on the pace of innovation and service users. There is also no direct engagement between schemes and retailers, despite retailers being services users subject to scheme rules, technical requirements, interchange fees and costs of compliance and fines.

Control of the rule book is recognised in the PSR's analysis as being more influential than ownership. The BRC believes that as long as control of operations, access and development is restricted to a few operators there remains limited incentive for these operators to support any potential service disruption to the status quo, including any new or improved service that may threaten existing market dominance. Ultimately this is detrimental to service users and consumer choice.

The BRC would not suggest how operators should govern their own companies; rather the key test is improvement in service user outcomes. It is up to individual companies to implement their own solutions, the role of the PSR is to intervene when adequate actions and measures have not been taken, as judged by no change or deterioration in service user outcomes. It is therefore important that there the PSR maintains strong compliance reporting obligations, under on-going review. To ensure this approach works it is important to define a review timescale from the outset. Having a review date will ensure that all parties work together from the outset to determine the right Board level membership and discussion content together with ensuring that the operators initial Annual Report, stated as due on 30/9/2015, arrives on time and contains meaningful information.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The requirement for Operators to produce an annual report to the regulator is welcomed, but could the specific detail required be included within one of the existing returns rather than having yet another report to produce. Also it may be helpful to know if service users agree with what the Operators state.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

The BRC agrees with the principle that there should be transparency of overlapping interests, and clear accountability where they may be overlapping interests in decision making. There should be more effective service users understanding of changes to the rule book, with explanation and rationale, rather than hidden decisions and concealed interests. All sides of a commercial arrangement should have some basic transparency in that relationship.

The proposal that a Director of a Central Infrastructure Provider cannot be a Director of an InterBank Operator at the same time is welcomed as that could ensure less rubber stamping of proposed changes and/or amendments together with more robust discussions on the proposed change and their impact on individual service users. However it is unclear whether this separation is geared to a single payment type/service system or the entire payment infrastructure.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

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The BRC understand the proposed approach, but ideally these directions should also happen simultaneously to other changes.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

This proposal is welcomed.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Providing transparency of the basis and timing of decisions is an important requirement for BRC members, we agree that Board minutes should be published in a timely manner together with a record of votes cast as appropriate, however there should be careful consideration on individual naming. There are questions as to whether or not this type of approach supports constructive engagement.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We agree with the proposal.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

The BRC agrees with the proposed approach, but we also support a review after 1/4/15.

**Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper and Supporting Paper 4: Access to payment systems* for more details)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

The BRC agrees with the approach, access is a key priority and there should be focus on barriers to

access, including cost. It is important that new approaches to access result in improved consumer choice of services. There should be annual compliance to ensure access remains objective, risk based and open.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Yes. The reporting rule needs to ensure that the standard reporting requirements are simple to complete, easy to be evaluated and cost effective to deliver an annual compliance score for individual operators.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

The implementation of this proposal will be positive for BRC members and all other merchants, as the public availability of technical specifications for current and new payment methods and/or systems, standard contractual terms and fee levels has been a real market challenge. It would also be very useful for retailers to be provided with copies of what the accreditation standards are for access to specified payment schemes. Key for our members is to understand both the technical and financial implications and ideally to obtain that information from a public place.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

Yes. The likely consequence of this Access Package will be an increase in the overall number of PSPs within the market, as the terms of engagement for Access will be transparent. The final outcome should be increased choice for service users with added competition from more players.

By proposing the Reporting Rule it should ensure consistency of information assuming the returns are simple to complete with minimal overhead costs.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

The proposed level of detail will significantly help potential users of Sponsor Bank services to understand from a standard reporting format which services that specific provider could offer and who is the key contact for providing those services.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

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This is a welcomed as an idea, however there should be generic information available to all, rather than by industry sector, as this may result in unnecessary and unhelpful information asymmetries.

Any information contained on the hub needs to be in plain English, be accurate and be produced and available in a timely manner.

Whilst the Hub concept is a good idea, it does require a significant amount of collaboration between different parties and for those parties to disclose any information will require a clear implementation plan with agreed dates for delivery. Setting timescales for delivery is required or it may not happen.

Overall, the consolidation of existing information from a variety of providers to a single information port would be a very useful source of information.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

A Code of Conduct is a good concept but whilst it is just a 'Code' it may be difficult to implement in a timely manner that meets the PSR requirements. It is important that the code should apply to all designated payment schemes/systems to ensure that there is parity between them.

Of particular interest is the comment in 4.303 re outages and how they are communicated to service users which historically has been very poor and the BRC members believe requires a significant improvement of both the communication, management and processes required to manage those situations. Within the Code of Conduct, understanding which party is responsible for what would be a major step forward from the position today.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

Defining payment developments by industry sector is inappropriate as frequently one sector is learning from the other and any solution is for the market as a whole rather than a specific sector. The BRC agrees that this area should be kept under review, however for card payments making the UK Cards Association payment acceptance standards generally available to all Service Users whatever their size could be seen as a helpful step forward.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

It is important to ensure that the impact of designating both MasterCard and VISA is closely monitored by the PSR especially if there are any increased or modified fee structures that appear to retailers as a result of regulation. BRC members will be happy to provide information on any changes as they occur.

From members' perspective, it is important to designate MasterCard and VISA and all their payment

products under the same regime and with the same rigour as other payment methods.

The BRC welcomes the requirement for transparency and the publication of information on Sponsor Banks.

BRC members are happy whenever feasible to provide confidential additional information on an as requested basis on any payment method.

**Question in relation to our proposed approach in relation to interchange fees (see Part G of our Consultation Paper Supporting Paper 5: Interchange fees for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

BRC members welcome the historic and landmark European agreement to cap the anti-competitive cost of interchange fees. BRC members have long campaigned for a reduction in unjustifiably high card fees, which cost retailers over £1 billion a year, which would otherwise be invested in further improving the customer offer.

Retailers welcome the leadership of the UK Government in championing this crucial reform, which will provide more competition and innovation in the payments system for the benefit of businesses and consumers. It is now vital that the Payment Systems Regulator make this law in the UK without further delay.

HM Treasury and the PSR are currently discussing how to implement domestic debit fee caps. The European Regulation now gives the UK the choice of how to implement debit card fee caps: a 0.2% per transaction cap; a per transaction cap of 5 eurocents; a combination of a per transaction cap and flat fee (this fee cannot be higher than 0.2% of the average value of transactions).

The Government and PSR's decision on the nature of the debit cap is hugely significant to retailers. For UK retailers, it is crucial that alongside the 0.2% cap there should also be a maximum limit of a fixed pence per transaction. A percentage cap alone would actually act to increase the cost of processing debit cards transactions for over a third of UK retailers, contrary to the aim of the Regulation. The current average UK debit rate is 8 pence; therefore a 0.2% cap would increase cost for any transaction over £40. One-third of UK retailers have an Average Transaction Value over £40.

A weighted average approach would be the worst case scenario for merchants and consumers, as they lack transparency and allow high fees to continue, disadvantage small business, are unnecessarily complex and cumbersome and are contrary to the single market. This runs contrary to the principles driving the regulation.

Numerous other Member States are already moving forward with domestic interchange fee regulation: France, Spain, the Netherlands, Poland, Romania and Hungary have started or already taken action - as have the USA, Australia and Canada outside of Europe. With other Member States taking a proactive approach, there is urgency for the UK to do so as well. Failure to implement lower domestic fees is harming UK companies' ability to compete in Europe, by imposing higher costs on UK retailers. This is especially bad for small and independent businesses, undermining UK competitiveness, investment in jobs and the Government's Digital Economy agenda.

A reduction in fees would be good for consumers. The market in which we operate is highly

competitive. We compete on price and value every day and put our customers at the heart of everything we do. Any savings in a reduction in card interchange fees will create capital to enable a range of investments to be made such as, investing in new store designs; improving customer service propositions; extending the range of products available; investing in technology to improve the customer shopping experience (multichannel, mobile); expanding our commercial footprint through new stores; and crucially, enabling small businesses to compete more effectively.

It is crucial that the PSR follow the lead of other Member States, and ensure an absolute priority is given to the introduction of domestic interchange fee caps. It is critically important that the PSR does not delay implementation of caps. There should be a clear statement of proposed action, with measures taking effect from 1 April 2015. This should ensure that retailers of all sizes benefit from changes, recognising the weaker market position of smaller retailers.

The PSR has significant market intervention powers. These should be used to counter any instance of regulatory circumvention, for instance the introduction of new fees that appear without rationale or explanation. It is important that all products and card types remain in scope of regulation, to avoid new fees in unregulated areas, particularly new mobile payment channels. Overall, the PSR should support transparency of pricing, with no hidden charges and a standard simplified cost structure. A key challenge going forward for the PSR will be to ensure that price regulation encompasses all consumer and commercial cards through any sales channel, for both four and three party schemes and any visible interchange fee.

The PSR should also be mindful of how the overall Merchant Service Charge (MSC) for handling payments is affected by regulation. Acquirer fees and scheme fees are strongly connected, and it would be negative if the market moves to offset interchange fee regulation by impacting the MSC split. Currently, some acquirer fees are dependent upon their overall market share, which impacts scheme fees and the ability to compete. This may have negative impact on small businesses who have less opportunity to negotiate in the acquiring market.

It is also important the PSD2 is transposed into UK law as soon as possible, so that the PSR can exercise regulatory power across all aspects of payment systems as soon as possible and in a way that complements interchange fee regulation.

**Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

We agree with Principal 1 & 2. Principal 3 requires more detail on what the level of financial resources would be required, to ensure that they are appropriate for the service provided, otherwise there is the potential that the number of suppliers/operators will reduce due to the onerous financial restrictions imposed.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our

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proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

We agree that PSR Principles should apply to all, however the reference in 6.22 that industry participants are accountable to the PSR and indirectly to their service users for their behaviour could be challenging to the creation and need for robust, measurable and manageable service level agreements.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

In 6.19 to 6.20 the description on financial prudence is understood, but it does require more detail on what the level of financial resources would be required. The justification as to why just Operators and Central Infrastructure Providers are subject to these extra criteria has a limited explanation. For example, as written would independent card acquirers be subject to these financial criteria yet bank owned acquirers would not? If the answer is yes it would create an unfair playing field for the provision of those services to retailers.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

Important principles are:

1. Management & Control – moves risk management higher up the priority list with key players in the market.
2. Governance – based on recent retailer experiences this would help bring transparency to the fore.
3. Service-Users interests – as it stands they exist but should be a priority for outcomes of PSR effectiveness.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

We agree with the analysis.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or

are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

We agree with the approach, but timescales should be included within this.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

We agree with the approach.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

Assuming the rules of engagement for Service Users of designated payment schemes are publically available then the proposed approach is acceptable. Key for retailers is to be able to enter commercial negotiations on a transparent basis and then complain to the regulator if those contracts culminate in disputes which are deemed unresolvable by both parties.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed approach. It would be helpful to provide greater transparency over which organisations can currently raise a super-complaint, and how organisations may gain accreditation for this in the future.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We agree there should be a pre-defined formula for setting penalties.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Other factors should be considered such as the volume of payments processed as well as the revenues of the service company and the total value of funds transferred. Payment system costs are relatively low yet the impact of the values not being transferred in a timely manner on pre-agreed terms can be very negative to a business, for example impact on small business of varying settlement procedures.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

It appears difficult to define a fixed upper limit, the key principle is that the monthly % acts as a real

incentive to ensure a high level of service.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

The proposed approach is acceptable but any penalties should be payable as soon as possible. The changes proposed appear to have the option of a slow implementation period rather than stating this must happen within an agreed period. Given the value of payments handled is likely to be high, any non-compliance should be tackled quickly, remedies made within agreed timescales and penalties paid promptly.

The pass through of penalties to the weakest or smallest link in the chain is a concern and any pass through should only be as a result of that service user being responsible for the error incurred – there must be real justification for this action.

The enforcement regime appears relatively standard; the real test will be implementing enforcement action in a timelier manner to genuinely affect behaviour.



BUILDING SOCIETIES ASSOCIATION

# BUILDING SOCIETIES ASSOCIATION

## **PSR CP14/1: A new regulatory framework for payment systems in the UK**

### **Response by the BSA**

#### **Introduction**

The Building Societies Association (BSA) represents all 44 UK building societies. Building societies have total assets of over £330 billion and together with their subsidiaries, hold residential mortgages of over £240 billion, 19% of the total outstanding in the UK. They hold over £240 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for about 28% of all cash ISA balances. They employ approximately 39,000 full and part-time staff and operate through approximately 1,550 branches.

We are pleased to have the opportunity to respond to the Payment Systems Regulator (PSR) consultation paper *A new regulatory framework for payment systems in the UK*.

The BSA supports moves to open up the payments industry to improve access to payment systems and encourage greater competition and innovation. We are pleased to state that we support all of the PSR's proposals as set out in the consultation paper and the six supporting papers.

Building societies are indirect payment service providers which rely on agency agreements with sponsor banks (direct payment service providers) to be able to offer payment services to their members. We are therefore most interested in the proposals set out in Supporting Paper 4 on access to payment systems. We have previously raised concerns with HM Treasury and the PSR regarding the unlevel playing field between building societies and sponsor banks. These concerns include a lack of choice of sponsor banks, reliance on competitors for the provision of services, fees for indirect access, poor communication of important information by sponsor banks, the risk that sponsor banks may discontinue the supply of indirect access, and the contractual arrangements of agency agreements. We are pleased to see that the PSR acknowledges these concerns and has made proposals to try to address them. The BSA strongly supports all of the proposals in Supporting Paper 4, including the introduction of an information hub, the creation of a PSR-approved sponsor bank code of conduct and the proposed market review into the supply of indirect access. Ultimately though, the solution lies with making direct access to payment systems economically and technically viable for smaller payment service providers.

The BSA looks forward to working closely with the PSR on the implementation of these proposals.

#### **Question in relation to our proposed regulatory approach (see Part B of our *Consultation Paper and Supporting Paper 1: The PSR and UK payments industry for more details*)**

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**SP1-Q1:** Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed regulatory approach.

#### **Questions in relation to our proposed approach to payments industry strategy (see Part D of our *Consultation Paper and Supporting Paper 2: Payments industry strategy and areas for collaboration for more details*)**

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**SP2-Q1:** Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

The BSA agrees that Option 1 (setting up a Payments Strategy Forum) is the most appropriate option for setting future payment industry strategy. We recognise the good work that the Payments Council has done in this area over the years, but we share the PSR's concerns that the Payments Council cannot continue in its role unless there are significant changes to its governance and improvements to stakeholder representation. We are particularly concerned about the lack of representation of indirect payment service providers, such as building societies. We therefore do not support Option 2. We agree with the PSR that Option 3 is not an appropriate model for the UK to adopt.

**SP2-Q2:** Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

For the Payments Strategy Forum to be an improvement on existing strategy arrangements there must be adequate representation of indirect payment service providers, such as building societies. We would expect building societies and their industry representatives to be given the opportunity to attend and contribute to all relevant Forum meetings and working groups. Mechanisms also need to be established to prevent the dominant voices of the large sponsor banks drowning out the smaller participants. To this end, we believe it is important that the Forum has an equal number of direct and indirect payment services provider representatives.

**SP2-Q3:** Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

It is important to note that building societies, all of whom have headquarters outside of London, have fewer resources and staff to spare to attend London-based meetings than other stakeholders such as the large sponsor banks. In order to avoid bias towards large sponsor banks on the Forum, there must be an option for Forum attendees to participate remotely via telephone/video conference call or other remote working solutions.

**SP2-Q4:** Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

The BSA believes that the PSR has identified all of the significant infrastructure-related themes (as set out in 2.113 of SP 2).

**Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see Part E of our *Consultation Paper and Supporting Paper 3: Ownership, governance and control of payment systems* for more details)**

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**SP3-Q1:** Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users, particularly indirect payment service providers, at board level.

**SP3-Q2:** Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The BSA agrees with the costs and benefits identified.

**SP3-Q3:** Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed direction regarding Interbank Operator and Central Infrastructure Provider directors.

**SP3-Q4:** Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach.

**SP3-Q5:** Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The BSA agrees with the costs and benefits identified regarding the proposed direction on Interbank Operators and Central Infrastructure Provider directors.

**SP3-Q6:** Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed direction regarding minutes and believes that it will have a positive impact in terms of transparency and increasing competition, innovation and shaping service users' opinions.

**SP3-Q7:** Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

The BSA agrees with the costs and benefits identified regarding the proposed direction on publishing board minutes.

**SP3-Q8:** Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach.

### **Questions in relation to our proposed approach to access to payment systems (see Part F of our *Consultation Paper* and *Supporting Paper 4: Access to payment systems for more details*)**

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**SP4-Q1:** Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the PSR's preferred option.

**SP4-Q2:** Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposal to introduce a Reporting Rule on all relevant pan-GB Operators.

**SP4-Q3:** Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009.

**SP4-Q4:** Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

The BSA agrees with the costs and benefits identified for the access and reporting rules.

**SP4-Q5:** Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed direction requiring sponsor banks to publish descriptions of indirect access propositions, eligibility criteria for potential indirect payment service providers and appropriate contact details. This will be a good first step towards increasing the competitive pressures on sponsor banks and strengthening the bargaining position of indirect payment service providers.

**SP4-Q6:** Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach in relation to the development of an information hub. We agree that the information hub should encourage greater consistency in terminology, help payment service providers evaluate different access options and help indirect payment service providers negotiate with sponsor banks on indirect access.

**SP4-Q7:** Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach and strongly supports the creation of a sponsor bank code of conduct. We believe that this code will be key to addressing many of the concerns set out earlier in our response regarding the unlevel playing field between sponsor banks and indirect payment service providers. It is important that indirect payment service providers, such as building societies, are actively involved in the development of the code. We look to the PSR to ensure that there is sufficient indirect

payment service provider engagement in the drafting process.

**SP4-Q8:** Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach.

**SP4-Q9:** Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

The BSA agrees with the costs and benefits identified for the proposed direction on Indirect Access.

### **Question in relation to our proposed approach in relation to interchange fees (see Part G of our *Consultation Paper Supporting Paper 5: Interchange fees* for more details)**

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**SP5-Q1:** Are there other matters regarding interchange fees that you think we should consider at this stage?

No.

### **Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see Parts H and I of our *Consultation Paper Supporting Paper 6: Regulatory tools* for more details)**

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**SP6-Q1:** Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence.

**SP6-Q2:** Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

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The BSA agrees that PSR Principles with regulators and on Compliance should apply to all participants.

**SP6-Q3:** Do you agree with our proposed approach that our PSR Principle on Financial prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

The BSA agrees that the PSR Principles on Financial Prudence should apply to Operators and Central Infrastructure Providers.

**SP6-Q4:** Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for your response.

The BSA supports the principles and agrees that they should apply to the proposed participants.

**SP6-Q5:** Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

The BSA agrees with the benefits of the proposed high-level Principles. We also agree with the reasons given as to why the cost of complying with the proposed high-level Principles should not be significant.

**SP6-Q6:** Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach for the Objectives Guidance.

**SP6-Q7:** Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach for the Administrative Priority Framework.

**SP6-Q8:** Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.



The BSA agrees with the proposed approach for the Powers & Procedures Guide.

**SP6-Q9:** Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach for the dispute resolution and applications procedures.

**SP6-Q10:** Do you agree with our proposed approach for our Super-Complaints Guidance? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach for the Super-complaints Guidance.

**SP6-Q11:** Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach to setting penalties.

**SP6-Q12:** Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

The BSA believes that the PSR should explore other metrics when setting penalties (such as the one set out in the question) where this would be more appropriate for particular participants.

**SP6-Q13:** What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?

The BSA believes that an upper limit of 10% of annual revenues from the business activity directly associated with the compliance breach would be reasonable and appropriate.

**SP6-Q14:** Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

The BSA agrees with the proposed approach to the enforcement and enforceability of penalties.