

Pay.UK's Application for Exemptions from Obligations under PSR Specific Directions 2 and 3

Final Decision

Introduction

1. Pay.UK is the operator (for the purposes of Part 5 of the Financial Services (Banking Reform) Act 2013) of the payments systems known as Bacs and the Faster Payments Scheme (FPS).
2. As such, it is required under the Payment Systems Regulator's [Specific Direction 2](#) (SD2), paragraph 2.1, to take such action as is necessary to ensure that any central infrastructure contract in place on or after 2 December 2023 for Bacs has been procured competitively (using the steps for procurement set out in the Direction).
3. [Specific Direction 3](#) (SD3) imposes similar obligations on Pay.UK in respect of FPS with a relevant date of 30 June 2023.
4. Further, by paragraph 2.3 of SD2 and SD3, the central infrastructure services in place on those dates must allow for ISO 20022 messaging.
5. Those dates are later than the original dates in SD2 and SD3 which were 2 December 2020 and 1 July 2020 respectively. The extension of time from 2020 to 2023 was granted by PSR following application to it by the operator of [Bacs](#) and [FPS](#). Those applications were made under Section 4 of SD2 and SD3 which allow an extension of time because of the implementation of the New Payments Architecture (NPA).
6. Pay.UK now seeks an exemption, for the build and initial run phase of the NPA contract, from Pay.UK's duty to comply with the obligations of paragraphs 2.1 and 2.2 of each of SD2 and SD3 to competitively procure the central infrastructure for Bacs and FPS, respectively ('the Application'). These paragraphs of SD2 and SD3 require that:
 - a. there must be a competitive procurement

- b. the procurement must include the steps specified at paragraph 2.2 of each Specific Direction, including the development and execution of a transparent and objective process to shortlist potential providers for the competitive tender
7. Pay UK's Application is made on the grounds of exceptional circumstances. Section 5 of each Specific Direction allows for an application on these grounds and makes provision about the PSR determining such applications. Paragraph 5.2 of each Specific Direction provides that the PSR may reject an application on exceptional circumstances grounds or approve it in whole, or in part, and may make such approval subject to compliance with any conditions.
8. Pay.UK states that the exceptional circumstances that justify the application are 'the disruption, and potential for future disruption, to the NPA Programme¹ caused by the Covid-19 situation and its uncertain future impact.'²
9. The PSR has considered whether those are exceptional circumstances which are sufficient to justify the exemptions sought by Pay.UK, namely exemption from the obligations to hold a competitive procurement imposed by SD2 and SD3. In doing so, we have taken into account all relevant evidence and circumstances. That includes that:
 - a. the COVID-19 pandemic is a challenging time for all organisations in the payment industry, including Pay.UK, and beyond. As Pay.UK is aware, the PSR has taken a proactive approach to ensuring that payment systems continue to work for everyone and markets continue to function well. Where appropriate, this has included the PSR making adjustments to our work and requirements to reflect the impact on firms that we regulate and other stakeholders, for example extending the deadline for our Call for Inputs on competition in the NPA (Competition Call for Inputs)³
 - b. the Specific Directions require that competitive procurements are conducted by the specified dates but neither Specific Direction requires a particular outcome to the competitive procurement, for example that a supplier other than the incumbent supplier wins the contract
 - c. Pay.UK is under no obligation to select a bidder which does not satisfy the technical, operational, financial, and resilience criteria it has established
 - d. prior to the COVID-19 pandemic, Pay.UK had been seeking to address a number of challenges to the successful delivery of the procurement as summarised in paragraphs 83 to 86 of the Application. These challenges include Pay.UK's increasing awareness, and concern about: (1) overall programme time and cost, (2) transition risk, and (3) the importance of securing participant commitment. The Application notes that 'taking on the delivery of the PSF vision, and seeking to meet the two SDs over the same period has led to significant management and leadership stretch' for Pay.UK.⁴ Pay.UK's concerns have been informed by the Berkeley Partnership Report, issued in August 2019. Its findings were shared with the PSR and Bank of England and Pay.UK commenced work to implement its recommendations.

1 The PSR takes 'NPA programme' to refer to the Pay.UK led programme of work to bring into effect the NPA. It includes, but is broader than, the securing by Pay.UK of a supplier to provide central infrastructure services for the NPA.

2 Paragraph 21 of the Application.

3 The PSR sets out updates on COVID-19 related issues on its website, <https://www.psr.org.uk/psr-publications/news-announcements/covid-19-updates-from-the-PSR>. The Competition Call for Inputs can be accessed at: <https://www.psr.org.uk/publications/consultations/cp20-2-call-for-input-competition-and-innovation-in-the-uk-s-new-payments-architecture/>.

4 Paragraph 84 of the Application.

10. We sent Pay.UK a Minded-To Decision on the Application on 19th October 2020, inviting comments. Pay.UK sent its comments on 17th November 2020. Those comments have been considered and taken account of.⁵ This Final Decision is substantially the same as the Minded-To decision.

Final Decision

11. In considering Pay.UK's Application, we have taken account of section 5.2 of SD2 and SD3 which permits the PSR to reject an exceptional circumstances application or approve it in whole or part. We may make approval subject to compliance with conditions. The PSR rejects the Application in relation both to SD2 and SD3. Whilst we recognise that the COVID-19 pandemic has had some impact to date and will continue to have an impact on the NPA programme, the exceptional circumstances relied on by Pay.UK are not sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS.
12. Although rejecting the exemptions that Pay.UK has requested, we acknowledge that Pay.UK has raised issues of concern and importance to the successful delivery of the NPA. We plan to take account of these issues in a separate exercise, which will begin with a consultation that will consider matters such as the scope and timing of the procurement of the NPA core services. We expect to launch the consultation next month. We cannot prejudge the outcome of our consultation process but, given the issues to be considered, potential outcomes include changing or lifting obligations imposed by SD2 and/or SD3.
13. The remainder of this decision is set out as follows:
 - a. We describe the exceptional circumstances that Pay.UK relies on.
 - b. We set out the framework used to assess the application.
 - c. We summarise the arguments of Pay.UK as to how these circumstances justify the need for an exemption.
 - d. We assess whether the exceptional circumstances identified by Pay.UK are sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS.
 - e. We give our conclusion, as also set out in more detail above at paragraph 11.

What are the exceptional circumstances that Pay.UK relies on?

14. Pay.UK summarises the exceptional circumstances justifying its Application for exemptions in paragraphs 19 to 25 of section 1, and explains these exceptional circumstances in further detail in section 4.

⁵ The covering letter to this Decision sets out our consideration of those comments. The covering letter is not being published.

15. Pay.UK argues that there are multiple layers of risks that it faces in delivering the NPA in the current climate, and the 'totality of these risks put the current delivery approach outside of our risk appetite',⁶ and that 'Covid-19 is an exceptional circumstance that reduces the likelihood of a successful delivery of the NPA Programme should we move ahead with the existing competitive procurement approach'.⁷
16. Pay.UK argues that these risks comprise: (1) baseline risks associated with the NPA transition; (2) additional risks associated with the existing delivery approach; and (3) the impact of COVID-19. Pay.UK notes that COVID-19 'not only adds new risks, but also exacerbates the first two layers of risk'.⁸
17. Pay.UK argues that it is concerned about these risks 'for a broad range of reasons including the operational resilience of live payment systems, overall time and cost of the programme, and the potential for service users (and ultimately the real economy) to miss out on the significant benefits that are attached to the NPA'.⁹
18. In paragraph 21 of the Application, Pay.UK states (emphasis in the original):

'It is this totality of risks, added to and exacerbated by Covid-19, that has led Pay.UK to make this application. **As such, the exceptional circumstance that justifies this application is the disruption, and potential for future disruption, to the NPA Programme caused by the Covid-19 situation and its uncertain future impact.** Given the unforeseen nature of the Covid-19 pandemic, the totality of risks faced by Pay.UK and the payments industry in delivering the NPA Programme were not, and could not have been, fully understood at the time of the Infrastructure Market Review (IMR) remedies.'
19. Pay.UK argues that COVID-19 is 'an exceptional circumstance that has exacerbated the totality of risk faced by Pay.UK', both by exacerbating existing risks and creating new risks.¹⁰

Assessment framework

20. Our assessment of Pay.UK's Application must necessarily focus on the impacts of the exceptional circumstances (as put forward by Pay.UK) on the obligations under SD2 and SD3 to hold a competition for the central infrastructure.
21. Accordingly, our assessment framework comprises four elements:
 - a. Understanding the nexus between the disruptive impacts caused by COVID-19 and the requirements to hold a competition for the central infrastructure under SD2 and SD3.
 - b. Classifying the various COVID-19 disruptions Pay.UK has identified into those which could arise irrespective of delivery approach for the central infrastructure and those which could incrementally be affected by the chosen delivery approach.

6 Paragraph 19 of the Application.

7 Paragraph 33 of the Application.

8 Paragraph 19 of the Application.

9 Paragraph 20 of the Application.

10 Paragraphs 22 and 24 of the Application.

- c. Assessing whether, and the extent to which, the COVID-19 impacts relied on by Pay.UK as exceptional circumstances have a differential effect on the competitive procurement required under each of the Specific Directions as compared with the option of a direct appointment of the incumbent supplier.
- d. Taking our considerations on (a) to (c) into account, whether in all the circumstances there are exceptional circumstances that are sufficient to justify approving the exemptions sought.

Nexus between COVID-19 disruption and competitive procurement

22. In support of its Application for exemptions, Pay.UK's focus in the arguments it makes (and the material it provides in support of those arguments) is not principally on how the disruption of COVID-19 might impact on the specific requirements under SD2 and SD3 to hold a competitive procurement. Rather, it focuses on;
- the disruption which might manifest under possible outcomes of the competitive procurement, or
 - how the disruption will affect the wider NPA programme.

COVID-19 disruption under different outcomes of the competitive procurement

23. The focus on the disruption and risks attached to possible outcomes of the competitive procurement – such as where a new supplier is appointed – means the arguments put forward by Pay.UK do not sufficiently reflect that Pay.UK has the ability to determine the parameters it wishes to see bidders compete on during the competitive process, and is able to select a bidder that best satisfies the criteria it establishes.¹¹
24. Pay.UK is under no regulatory obligation to appoint a bidder that does not satisfy the technical, operational, financial, and resilience criteria it establishes. As such, and consistent with standard practice, we would expect that Pay.UK would invite bidders to outline how they could minimise various delivery risks they have identified, and to then assess the bids it receives in the context of its regulatory obligations, including, in particular, the need to ensure payment systems remain resilient, and promote competition and innovation.

COVID-19 disruptions to the NPA programme

25. The Application makes reference to the COVID-19 risks and impacts on the 'totality of risks' to the NPA programme.¹² Our focus, however, in considering whether to approve the Application, is on whether the exceptional circumstances put forward by Pay.UK are sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS. We therefore have concentrated on risks and impacts to the extent they are relevant to that issue as opposed to the wider NPA programme.

11 SD2 and SD3 are not prescriptive about specific rules or criteria that Pay.UK must apply in designing and conducting the competition for the central infrastructure. The only requirements are that a procurement strategy is developed, service-users are consulted, fair and transparent process is adopted, and that the tender is based on transparently objective and justifiable criteria. This means that Pay.UK has wide discretion to establish criteria that reflect its risk appetite on various operational, financial and commercial and resilience dimensions.

12 Paragraph 196 of the Application suggests that the entire programme may be at risk as a result of COVID-19: 'It is Pay.UK's view that the pandemic's impact on costs, resultant budget constraints and aggregate risk profiles means that there is a material risk that participants might not be able to underwrite the totality of risk now faced by the programme.' See also paragraphs 3, 13, 16 and 17 of the Application Executive Summary and paragraphs 19, 21, 24, 25, 85, 134, 192, 195, 196 and 212 of the main submission.

Identification and classification of COVID-19 disruptions

26. For the purposes of our assessment we have categorised the various arguments presented by Pay.UK into different types of COVID-19 induced disruption. This is to support our consideration of the risks and impacts to the extent they are relevant to whether the exceptional circumstances put forward by Pay.UK are sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS.
27. Three categories of disruption can be identified:
- a. **Base-level COVID-19 disruptions** which affect the entire NPA Programme, irrespective of the supplier of the infrastructure and how that infrastructure is procured
 - b. **Incremental COVID-19 disruptions to the transition to the NPA** which affect the transition from the existing Bacs and FPS infrastructure to the new NPA infrastructure, irrespective of the supplier of that infrastructure
 - c. **Incremental COVID-19 disruptions to the delivery approach** which capture the incremental disruptive effects of COVID-19 associated with a change from the current infrastructure supplier (Vocalink) to a new central infrastructure supplier that *could be* appointed as one of the outcomes of the competitive procurement

Relationship between impact of COVID-19 and the options for securing a supplier of central infrastructure services

28. The COVID-19 impacts relied on by Pay.UK in its Application are only relevant to whether the exceptional circumstances put forward by Pay.UK are sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS, to the extent they have a differential effect on the competitive procurement required under each of the Specific Directions as compared with Pay.UK's proposed approach of awarding the contract without competitive tender to the incumbent supplier.
29. In the context of Pay.UK's Application, the base-level risks apply, and that transition to the new NPA infrastructure will happen, irrespective of whether a competitive procurement for the central infrastructure is adopted or not. Given this, we have concentrated on the impacts of incremental COVID-19 disruptions on the delivery approach so far as relevant to the competitive procurement required under each Direction. That then informs our conclusion on whether those impacts (individually or in aggregate) are sufficient to justify the exemptions sought under the exceptional circumstances provision of each Direction. In particular we have considered the five impacts set out in section 4C of the Application.

30. We note that Annex 2 of the Application, which provides Pay.UK's risk assessment, refers to COVID-19 related NPA Programme Base Risks which will arise irrespective of whether a competitive procurement or a direct appointment for the central infrastructure is used.¹³ We also note that COVID-19 is referred to as a Risk Cause in risks arising under scenario 1 ('New 3rd Party supplier')¹⁴. Pay.UK has not shown how these risks are incrementally, or differentially, exacerbated or reduced depending on whether there is a competitive procurement or direct appointment.

Arguments presented by Pay.UK in support of its application

Summary of the five impacts

31. Section 4C of Pay.UK's Application sets out five impacts of COVID-19 on NPA programme delivery in support of Pay.UK's Application that the disruption, or future disruption, to the NPA programme caused by COVID-19 constitutes exceptional circumstances justifying the exemptions sought:
- Participant costs and aggregate risk profiles (Participant Cost and Aggregate Risk Impact).
 - Interaction with other payment industry initiatives (Payment Initiatives Impact).
 - Readiness of end users (End-user Readiness Impact).
 - Increased operational and delivery risk (Operational and Delivery Risk Impact)
 - Managing the risk of delay (Delay Impact).
32. In the following paragraphs, we set out Pay.UK's Application in relation to each of these impacts with our assessment of each one, and make an assessment of impacts in aggregate.

Participant Cost and Aggregate Risk Impact

Impact alleged by Pay.UK

33. Paragraphs 188 and 196 of the Application describe the claimed Participant Cost and Aggregate Risk Impact. Pay.UK argues that many participants will be facing new costs and additional risks as a result of the pandemic, and that as a result, it is expected that participants will be less willing or able to accept risk (and associated costs) around the NPA programme, including the transition risks associated with moving to a new supplier. This could mean fewer resources to:
- manage the ISO20022 change,
 - work with two suppliers helping to minimise the probability of incidents or respond to incidents,
 - manage communications, and
 - deal with the complexity of different transition states.

13 Annex 2 (slides 25 and 26) classify 'Covid pandemic risks' and 'Covid-19 financial risks' as being 'NPA Programme Base Risks'. Slide 8 of Annex 2 defines NPA Programme Base Risks to reflect 'the underlying risk profile of the programme irrespective of whether an application is made to the PSR, and the outcome of this application'.

14 Broadly, these risks relate to budget constraints, the ability to fund the NPA, decreased participant engagement, the ability of a new supplier to undertake adequate due diligence on incumbent platform and/or inhibit productive communication between suppliers. See Annex 2 (slides 33, 37, 41, 43, 45, 47).

34. In addition, Pay.UK submits that the 'testing, migration, and parallel running would take longer, meaning a prolonged period in which incidents could arise', and that the risks which already exist in the two-supplier scenario would face a higher likelihood of crystallisation.¹⁵
35. In support of these claims Pay.UK refers to the view of participants they have engaged with via the Strategic Participants Group (SPG) who say that their business plans have been fundamentally affected by the crisis; that they will need to focus on customer facing initiatives; and that the crisis will have a substantial influence on how participant change budgets are spent over the short to medium term. Pay.UK notes that while it is unable to quantify the industry-wide costs of change they have been told by SPG that they are 'orders of magnitude higher than those in the centre'.¹⁶

PSR assessment

36. Our assessment of whether this impact justifies the exemptions sought by Pay.UK is:
- a. *Keeping down costs*
- Pay.UK argues that 'If the Programme were to proceed in a way that required the transition to a new infrastructure provider, there is a risk that, due to the pandemic's impact on costs and therefore budget constraints, participants would not have sufficient resource to assign to sufficiently help manage the transition risks discussed in Parts A and B above', and that this impact could mean 'fewer resources available to manage the ISO20022 change'.¹⁷
 - The PSR is unpersuaded by these arguments. A major benefit of a competitive procurement is the potential to keep the costs that participants have to fund lower than they would otherwise be if the central infrastructure is directly procured. Pay.UK recognises that the incumbent has an incentive to raise prices if a competitive procurement process is not conducted,¹⁸ and that the competitive procurement process should result in a fair price being achieved.¹⁹ Such an approach is therefore, on the face of it, more (rather than less) consistent with a need for participants to better manage resources and budgets in the context of COVID-19. In addition, Pay.UK acknowledges that its 'negotiation position will be weaker' in the absence of competitive procurement and that its ability to mitigate some of the risks will also be weaker.²⁰

15 Paragraph 190 of the Application.

16 Paragraph 191 of the Application.

17 Paragraphs 189 and 190 of the Application.

18 Annex 1 paragraph 51: 'With a direct appointment (scenario A), the constraints imposed by competition, and the immediate threat of being replaced, would be lost. The incumbent has an incentive to raise prices beyond the level it would have offered in full [competitive] procurement, and the incumbent may, or may not, offer the best price overall.' See also paragraph 8: 'Hence the benefits of reducing the migration risk along with any loss of quality from direct appointment would need to be balanced against the potential for a higher price in a direct appointment compared to full procurement.'

19 Annex 1 paragraph 50: 'Where a competitive procurement process is used (scenarios B1 and B2), the procurement process should deliver an appropriate price... As explained above, competition with respect to central infrastructure services for payment systems is more focused on quality than price and therefore it is not the case that the supplier that offers the lowest price would necessarily be expected to win the procurement but a fair price would be expected.'

20 Annex 1, paragraph 110: 'We recognise that our negotiation position will be weaker in the absence of procurement compared to with a procurement process and therefore our ability to mitigate some of the risks will also be weaker.'

b. *Greater value for money*

- Pay.UK acknowledges that 'Competition through a full [competitive] procurement process should deliver an appropriate quality standard. The quality outcome would take into account trade-offs between different aspects of quality as well as trade-offs between price and quality'.²¹ In this context, Pay.UK acknowledges that while the current provider (Vocalink) has 'the ability to deliver high quality, it may, or may not, offer the best quality outcome'.
- The PSR considers that a competitive procurement has the potential to result in an outcome where there is a high-level of quality for a given price offering – i.e. greater value for money as compared to an award of the contract without competitive procurement.

c. *Variety of approaches to risk and costs*

- Pay.UK recognises that it is unclear that direct appointment will achieve the best quality outcome. In Annex 1, Pay.UK states that:

'Direct appointment of Vocalink means that, by definition, Vocalink's detailed design and delivery approach would be used and this rules out alternative providers. It may be the case that were detailed design and delivery approaches to be compared through the RFP process, Vocalink would be found to be the best, but this is by no means certain and therefore direct appointment means that it is unclear whether the best quality outcome will be achieved.'²²

- The PSR agrees with Pay.UK's reservations regarding direct appointment. These reservations are the logical corollary of the ability of competitive procurement to provide the potential opportunity for different bidders to propose alternative ways of minimising the risks and associated costs of transitioning to the NPA in the context of the current complexities that have been caused by COVID-19. A competitive tender might require bidders to propose ways in which they would seek to smooth the transition and minimise the level and timing of industry-wide costs associated with the transition from the existing infrastructure to the new central infrastructure.

d. *Resources*

- Pay.UK claims that as a result of COVID-19 there will be fewer resources available to manage the ISO 2022 change, manage communications and deal with the complexity of different transition states.²³
- The PSR notes that Pay.UK has not explained if, and how, each of these impacts will differ as between a competitive procurement vis-à-vis the direct award of a contract without competitive procurement. In our view, the issue appears to apply irrespective of the procurement approach for the central infrastructure and to similar extent.

Although we acknowledge that while COVID-19 may have some impact on resources, that is not of itself sufficiently significant to approve the exemption that Pay.UK seeks (and nor is it in aggregate when taken with all other impacts, see below).

21 Annex 1, paragraph 46.

22 Annex 1, paragraphs 44 to 46.

23 Paragraph 190 of the Application.

e. *Length of time*

- Pay.UK claims that 'testing, migration, and parallel running would take longer' under the two-supplier scenario, and that the risks which already exist in the two-supplier scenario would face a higher likelihood of crystallisation.²⁴
- The PSR is not persuaded by this claim. It is based on a specific, two-supplier, outcome of the competitive procurement. The evidence does not demonstrate why testing and migration periods would be longer if a new supplier develops the central infrastructure. The length of testing and migration, and associated risks, is an element that could form part of the competitive procurement and on which bidders could seek to differentiate themselves and provide alternative proposals. Moreover, the claim that testing and migration would take longer under the two-supplier scenario appears, on the face of it, to be inconsistent with the claim at paragraph 197 of the application that a new supplier would involve a 'more rigid timetable and migration approach', in contrast to the more 'flexible' approach that would prevail if the existing infrastructure provider is directly appointed.

f. *Orders of magnitude argument:*

- Pay.UK's SPG has stated that industry-wide costs of change are 'orders of magnitude higher than those in the centre'.²⁵
- This argument does not appear directly relevant to the procurement approach adopted for the central infrastructure. The evidence does not demonstrate why such a statement about the relationship between central costs and industry-wide costs would not apply irrespective of whether the central infrastructure is competitively procured or directly procured. In our view, whether or not a competitive procurement is held may not make a difference, but if it did it could result in lower levels of industry cost.

g. *COVID-19 impacts on end users*

- The arguments presented by Pay.UK's Application on the Participant Cost and Aggregate Risk Impact are on the COVID-19 impacts on *participant* resources and budgets.
- As the Application acknowledges, COVID-19 has already had significant economic effects,²⁶ and it is likely that these effects will be exacerbated the longer the pandemic continues. Given that the majority of the costs associated with the NPA programme are expected to be passed through to *end users*, it is even more important that costs are minimised and value for money achieved wherever possible. This includes minimising the costs of procuring the central infrastructure which, as Pay.UK acknowledges, is more likely through appointing a supplier through a competitive process vis-à-vis a direct appointment.²⁷

24 Paragraph 190 of the Application.

25 Paragraph 191 of the Application.

26 Application Executive Summary paragraphs 1, 16. Main submission paragraph 24.

27 Annex 1 notes that that the incumbent has an incentive to raise prices if a competitive procurement process is not conducted (paragraph 51), and that a 'fair price' will be expected through a competitive procurement (paragraph 50). Moreover, Pay.UK acknowledge that their ability to achieve value for money may be impaired in the absence of competitive procurement (paragraph 110).

Interaction with other payment industry initiatives (Payment Initiatives Impact)

Impact alleged by Pay.UK

37. Pay.UK claims that 'moving forward with the existing infrastructure provider, rather than a new supplier (and the more rigid timetable and migration approach this would involve) would likely make it much easier to be flexible, reducing risk for Pay.UK's interaction with RTGS renewal'.²⁸

PSR assessment

38. Our assessment of whether this impact justifies the exemptions sought by Pay.UK is:
- a. The Payment Initiatives Impact is entirely focussed on the risks associated with one possible specific *outcome* of the competitive process where a new supplier is appointed. The obligations of SD2 and SD3 are to hold a competitive procurement, only one outcome of which might involve moving forward with a new supplier.
 - b. A need to manage the interfaces between the legacy FPS and Bacs payment systems, the NPA and the RTGS arises irrespective of the approach used to procure the NPA central infrastructure.

Readiness of end users (End-user Readiness Impact)

Impact alleged by Pay.UK

39. Pay.UK claims that because a significant number of small businesses and corporates have been severely impacted by COVID-19, direct participants will need to focus on their immediate business and serving customer needs, and will be unlikely to have the capacity or budget available to devote to complex change. Pay.UK then goes on to assert that 'while direct participants will insulate end users as far as possible from change, the introduction of ISO 20022, needs to be as simple and low cost as possible and this may be made easier for end users through the re-use of existing infrastructure. Reducing the level of complexity for direct participants will enable them to focus more on end users'.²⁹

PSR assessment

40. Our assessment of whether this impact justifies the exemptions sought by Pay.UK is:
- a. The alleged impact is not relevant to an exemption from the requirements to competitively procure central infrastructure under SD2 and SD3.
 - b. Pay.UK's argument focuses on the ability of end users to manage complex change and seems to be based on assumptions that: (1) a new supplier is appointed as a result of the competitive procurement; and (2) that new supplier will involve more complex change.

28 Paragraph 197 of the Application.

29 Paragraph 198 of the Application.

- c. Pay.UK makes no link between the impacts that COVID-19 is having on end users and how the central infrastructure is procured. The Application does not show how reductions in complexity for direct participants (in a way which enables them to focus more on end users) is linked to the Application for an exemption from the requirements to competitively procure central infrastructure under SD2 and SD3.

Increased operational and delivery risk (Operational and Delivery Risk Impact)

Impact alleged by Pay.UK

- 41. Pay.UK claims that COVID-19 creates a number of more practical challenges around the delivery of the NPA. As an example, Pay.UK submits that some of the activities that would normally be conducted in an RFP stage could be impacted by social distancing and travel restrictions (for example, due diligence is often undertaken at client delivery centres or datacentres, and client reference site visits are undertaken).³⁰

PSR assessment

- 42. Our assessment of whether this impact justifies the exemptions sought by Pay.UK is:
 - a. While we acknowledge that Pay.UK may need to make adjustments in its approach to certain aspects of the 'practical challenges', it has not demonstrated a sufficient impact on the obligations to competitively procure central infrastructure under SD2 and SD3 to justify an exemption from those obligations. In particular, Pay.UK has not done so in relation to the issue of social distancing and travel restrictions.
 - b. In relation to due diligence visits, we note that any due diligence and connected work conducted in respect to a direct appointment of the existing supplier would also involve practical challenges. Accordingly, these are not risks that are particular to competitive procurement.

Managing the risk of delay (Delay Impact)

Impact alleged by Pay.UK

- 43. The Delay Impact relates to the uncertainty created by COVID-19. Pay.UK claims that it is 'unable to identify when the impact of the crisis will be over, and therefore the option of simply delaying the current competitive procurement approach leads to an open-ended timeline for the NPA (and if we were to restart the procurement, further delay could be introduced in the event of a second wave of Covid-19)'.³¹
- 44. In addition, Pay.UK states that the potential for a second wave in the pandemic could also create significant difficulties for delivery, especially if a second wave were to hit after the current infrastructure provider had served notice on the current contracts and before a new supplier was fully on-boarded.³² In short, Pay.UK argues that managing delays and needing to re-plan on the back of unexpected events will be significantly more challenging if two suppliers are involved.

30 Annex 2, Slide 33 also refers to how the 'pandemic impacts of Covid-19 and the effects to ways of working prevent new supplier from being able to complete adequate due diligence on incumbent platform'.

31 Paragraph 200 of the Application.

32 Paragraph 201 of the Application.

PSR assessment

45. Our assessment of whether this impact justifies the exemptions sought by Pay.UK is:
- a. Given that the pandemic is already present – and its continuance can no longer reasonably be classified as unexpected – the PSR would expect Pay.UK to appropriately plan now for how it would manage situations such as the one it refers to, namely where the current infrastructure provider had served notice on the current contracts before a new supplier was fully on boarded. A failure by Pay.UK to plan for this potential future outcome does not constitute a basis for exempting Pay.UK now from a requirement to competitively procure the central infrastructure.
 - b. Pay.UK's argument about a possible gap in the handover between the existing and post-procurement supplier is based on a specific scenario where the *outcome* of the competitive procurement is that a new supplier is appointed, and that a second wave of COVID-19 arises at the time when the new supplier is being on-boarded. The obligations of SD2 and SD3 are to hold a competitive procurement, only one outcome of which might involve moving forward with a new supplier.

Overall assessment

46. We set out above our assessment of each of the five impacts put forward in Section 4C of Pay.UK's Application ('Impact of Covid-19 on NPA Programme Delivery'). In addition to considering the impacts individually, we considered whether to approve the exemptions that Pay.UK seeks on the basis of the impacts in aggregate. In our view, when considered in aggregate, the impact is not sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS.
47. We recognise that the COVID-19 pandemic has had some impact to date and will continue to have an impact on the NPA programme. We consider, however, that the exceptional circumstances relied on by Pay.UK (as set out, and supported, in the Application and annexes), in particular the five impacts assessed above, are not sufficient to justify approving the exemptions that Pay.UK seeks, namely from the obligation to competitively procure the central infrastructure for Bacs and FPS.

Conclusion

48. The PSR rejects Pay.UK's Application in relation both to SD2 and SD3, as explained at paragraph 11 of this decision, for the reasons explained above. We will, however, take account of the issues raised in Pay.UK's Application in our consultation process referred to in paragraph 12.



Chris Hemsley, Managing Director Payment
Systems Regulator Limited

27 January 2021