

Consultation Paper

CP16/2

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# Proposed changes to the reporting requirements for General Directions 2, 3 and 4



We are asking for comments on this consultation paper by 5pm on 6 May 2016.

You can send your comments and responses to our consultation questions by emailing us at [PSRconsultations@psr.org.uk](mailto:PSRconsultations@psr.org.uk)

If you email us, we would be grateful if you could provide your response in a Word document (rather than, or in addition to, providing your response as a PDF).

You may respond in writing to the address below (although we ask for respondents to provide their responses electronically wherever possible).

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

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

We will not regard a standard confidentiality statement in an email message as a request for nondisclosure. Stakeholders who wish to claim commercial confidentiality over specific items in their response should identify those specific items which they claim to be commercially confidential.

We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you in handling such a request. Any decision we make not to disclose a response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website: <http://www.psr.org.uk>

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# Proposed changes to the reporting requirements for General Directions 2, 3 and 4

This consultation paper explains our proposed changes to the reporting requirements for operator reports in compliance with our general directions on direct access (General Directions 2 and 3) and governance (General Direction 4). It also sets out our reasons why the requirements are compatible with our general duties under the Financial Services (Banking Reform) Act 2014 ('FSBRA')<sup>1</sup>. Our initial view is that these changes are minor, but will reduce the regulatory burden on operators and will not impose cost on operators or others.

We propose to:

- combine reporting processes for the access and governance directions for those operators affected by both
- move the annual reporting deadline for general directions 2 and 3 from 31 July to 31 October (covering the year to 30 September)
- provide for a general direction on a transitional provision TP3 to ensure appropriate coverage of the period from 1 July 2015 to 30 September 2015

The first reports under the new submission date would be due by 31 October 2016. The drafts of the proposed changes are set out in at the end of this paper. **The consultation period closes at 5.00pm on 2 May 2016.**

## Background

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### *Our access and governance reporting obligations*

1.1 In March 2015, following consultation, we published our policy statement *PSR PS 15/1: A new regulatory framework for payment systems in the UK*<sup>2</sup>. As part of that, we introduced a number of general directions<sup>3</sup>, which included directions to operators in respect of:

- access to payment systems
- governance of payment systems

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<sup>1</sup> Section 49 FSBRA

<sup>2</sup> <https://www.psr.org.uk/psr-publications/policy-statements/policy-statement-151>

<sup>3</sup> Under section 54 FSBRA, <https://www.psr.org.uk/psr-general-directions>

## Access directions<sup>4</sup>

### *General Direction 2 (Access) (GD2)*

- 1.2 This direction applies to payment system operators who are not already subject to the access requirements of the Payment Services Regulations 2009 (referred to in the general directions as 'PSR 2009'). This currently applies to Bacs, CHAPS, Cheque and Credit (C&C), and Faster Payments (FPS).

Paragraph 2.1 of GD2 requires these operators to have objective, risk-based and publicly disclosed access requirements which permit fair and open access to the regulated payment system.

GDS2 also includes a reporting requirement in paragraph 2.4:

A report on compliance with the obligation in Direction 2.1 must be provided to the Payment Systems Regulator by 31 July covering the 12-month period to 30 June in each year.

GD2 came into effect on 30 June 2015.

### *General Direction 3 (Access) (GD3)*

- 1.3 This direction applied to the operators of LINK, VISA and MasterCard. These operators are subject to Part 8 of the Payment Services Regulations 2009, which requires that their access requirements should, among other things, be objective, proportionate and non-discriminatory.

Paragraph 3.1 of GD3 requires these operators to publicly disclose their access requirements. GD3 also includes a reporting requirement in paragraph 3.4:

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

GD3 came into effect on 30 June 2015.

## Governance direction

### *General Direction 4 (Governance) (GD4)*

- 1.4 This direction relates to the governance of the operators of Bacs, CHAPS, C&C, Faster Payments and LINK<sup>5</sup>. Paragraph 4.1 of GD4 requires each of these operators to ensure that there is appropriate representation of the interests of service-users in the operator's governing body's decision-making processes.

GD4 also includes the following reporting requirement:

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<sup>4</sup> Interpretation of terms in this document and general directions is governed by the general direction on general provisions regarding the interpretation, definitions used and application of general directions and general requirements on participation in regulated payment systems.

<sup>5</sup> GD4 does not apply to MasterCard or VISA.

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

GD4 came into effect on 30 September 2015.

## Combining the operator compliance reports

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- 1.5 We had previously decided to require separate compliance reports for GD2/3 and GD4 respectively so that operators covered by GD4 had enough time to implement measures around the service-user representation elements of governance before submitting their GD4 reports. However, now that the first reports have been submitted, there is no particular reason to maintain separate reports for the two directions. Indeed, submitting a single report on their progress against our access and governance directions could be less onerous for operators and may reduce the regulatory burden on them. Some have told us they would prefer a single deadline, but we would welcome any further views in this regard.
- 1.6 When we evaluated the operators' first compliance reports in 2015, it became clear that there could be benefits in combining the access and governance reports into a single report (for those operators required to comply with both).
- 1.7 There are clear crossovers in the work operators need to do to comply with our access and governance directions. For example, GD2 requires operators to tell us about their engagement with service-users on the operation and effectiveness of their access requirements, whilst GD4 requires operators to engage with service-users on how their interests are represented on the operators' boards. While there is clearly a need to consider distinct access or governance issues separately, operators may discuss them with their stakeholders in one forum.
- 1.8 Because of these overlaps and potential efficiencies, our provisional view is that it would be simpler and less onerous for the operators to produce a single report on their compliance with our directions. And, when we evaluate operators' responses, it would be simpler for us to produce a single report on their progress in access and governance.
- 1.9 For these reasons, we propose to combine the two reports into a single access and governance report.

**Q1: Do you agree that the PSR should introduce a single compliance report under General Directions 2, 3 and 4? Please explain the reasons for your answer.**

## Proposed dates for the operators' compliance reports

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- 1.10 Our first report on operators' progress following our access and governance directions was published in December 2015. We propose to align the date for the compliance reports for GD2 and 3 with that for GD4. To allow the operators enough time to make progress on the issues we highlighted in our report, we propose to move the deadline for

the combined compliance reports to 31 October. This date would also not interfere with financial year-end activity and is outside major holiday periods.

- 1.11 We have considered alternative dates and other regulatory requirements on operators in respect of reporting. In particular, under Part 5 of the Banking Act 2009, the Bank of England (the Bank) regulates several of the payment systems covered by GD2, 3 and 4 (CHAPS, Bacs, FPS and VISA). The operators of these systems are required to submit self-assessments to the Bank each year, showing how they meet international standards set out in the Principles for Financial Market Infrastructures (PFMIs), as set by CPMI-IOSCO<sup>6</sup>.
- 1.12 Following the first compliance reports the operators gave us in July 2015, and further conversations with the operators and the Bank, we do not consider there are significant benefits in aligning our reporting deadline with the operators' self-assessments for the Bank. This is because the two reports differ both in substance and approach. Hence we propose to move the deadline for the combined compliance reports to 31 October.

**Q2: Do you agree that the PSR should set the deadline for the combined compliance report required under General Directions 2, 3 and 4 to be the 31 October? Please explain the reasons for your answer.**

- 1.13 We propose that this revision should take place in 2016. This will mean the first combined access and governance report under the PSR's general directions will be due on **31 October 2016. In order to ensure appropriate coverage for the initial period from July 2015 to October 2015, we are also proposing a general direction on a transitional provision TP3 (TP3) in order to extend the first year of reporting on GD2 and GD3.**

## Cost-benefit analysis

- 1.14 Under FSBRA, any generally applicable requirement we propose to impose must be generally accompanied by a cost-benefit analysis of that requirement<sup>7</sup>. However, this does not apply when the following conditions are satisfied: either the requirement will not lead to an increase in cost, or when any increase of cost is of minimal significance<sup>8</sup>. We consider the proposals in this consultation should result in decreased costs for the affected operators, and will reduce their regulatory burden. Because of this, we consider that a cost-benefit analysis is not required in this instance.

## Compatibility with our general duties<sup>9</sup> and other considerations

- 1.15 In addition to an explanation of our the purpose of the proposed requirement, FSBRA also requires us to give an explanation of our reasons for believing that imposing the requirements set out are compatible with our general duties<sup>10</sup>. A single compliance report will allow operators to better coordinate the work they undertake to comply with our

<sup>6</sup> The Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO). These principles were published in April 2012: [www.bis.org/cpmi/publ/d101a.pdf](http://www.bis.org/cpmi/publ/d101a.pdf).

<sup>7</sup> Subsection 104(3)(a)

<sup>8</sup> Subsection 104(11)

<sup>9</sup> Section 49

<sup>10</sup> Section 104(3)(c)

directions. This will further advance our objectives and enhance the effectiveness of our directions.

- 1.16 FSBRA also requires that we have regard to certain other matters when we are discharging general functions, such as giving general directions<sup>11</sup>. In this respect, we do not consider that these proposed changes will affect the stability of, or confidence in, the UK financial system, nor do we consider that it will affect the performance of functions by the Bank of England in its capacity as a monetary authority. In relation to our regulatory principles<sup>12</sup>, we consider that these proposals will help us use our resources in the most efficient and economic way and the need to ensure that burdens imposed on participants are proportionate to the benefits.

### **Who does this consultation affect?**

- 1.17 This consultation will affect those payment system operators subject to the reporting requirements of our General Directions 2, 3 and 4. This includes Bacs, CHAPS, C&C, FPS, LINK, MasterCard and VISA.

### **Is this of interest to consumers?**

- 1.18 This consultation paper contains no material directly relevant to retail financial services consumers or consumer groups.

### **What do you need to do next?**

- 1.19 Please consider our proposals and send us your comments on the questions in this consultation paper by 5pm on 6 May 2016.

Email us at [PSRConsultations@psr.org.uk](mailto:PSRConsultations@psr.org.uk), or write to us at:

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25 The North Colonnade  
Canary Wharf  
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<sup>11</sup> Section 49(3)  
<sup>12</sup> Section 53

## Revised PSR General Directions

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Deletions and insertions from and to the original directions are marked accordingly.

### General Direction 2 (Access)

- 2.4 A report on compliance with the obligation in Direction 2.1 must be provided to the Payment Systems Regulator by ~~31 July~~ **31 October**, covering the 12-month period to ~~30 June~~ **30 September** in each year. This report must include at least the following:
- a. a self-assessment by the operator on compliance of its access requirements with the obligation in Direction 2.1 throughout the relevant 12-month period
  - b. details of all occasions in the relevant 12-month period when an expression of interest in potentially securing direct access or direct technical access has been made and details of the operator's response to, and outcome of, such expression of interest
  - c. details of all occasions in the relevant 12-month period when an enquiry or objection regarding potential changes to the access requirements has been made to the operator and details of the operator's response to, and outcome of, such enquiry or objection
  - d. details of all occasions in the relevant 12-month period when the operator has engaged with, and considered, the views of payment service providers and other interested parties on the operation and effectiveness of its access requirements
  - e. details of any anticipated operator review, or engagement with payment service providers and other interested parties, that the operator plans to take over the following 12-month period in relation to its access requirements, and
  - f. details of any anticipated future developments that the operator considers may require or justify material updates or changes to its access requirements.
- 2.5 This direction comes into effect on ~~30 June 2015~~ **31 May 2016**

### General Direction 3 (Access)

- 3.4 An operator of a regulated payment system which is a PSR 2009 payment system must provide a report on compliance of its access requirements with the obligation contained in regulation 97 of the PSR 2009 to the Payment Systems Regulator by ~~31 July~~ **31 October**, covering the 12-month period to ~~30 June~~ **30 September** in each year. This report must include at least the following:
- a. a self-assessment by the operator on compliance of its access requirements with the obligation contained in regulation 97 of the PSR 2009 throughout the relevant 12-month period
  - b. details of all occasions in the relevant 12-month period when an expression of interest in potentially securing direct access or direct technical access has been made and details of the operator's response to, and outcome of, such expression of interest
  - c. details of all occasions in the relevant 12-month period when an enquiry or objection regarding potential changes to the access requirements has been made and details of the operator's response to, and outcome of, such enquiry or objection
  - d. details of all occasions in the relevant 12-month period in which the operator has engaged with, and considered, the views of payment service providers and other interested parties on the operation and effectiveness of its access requirements
  - e. details of any anticipated operator review, or engagement with payment service providers and other interested parties, that the operator plans to take over the following 12-month period in relation to its access requirements, and
  - f. details of any anticipated future developments that the operator considers may require or justify material updates or changes to its access requirements.
- 3.5 This direction comes into effect on ~~30 June 2015~~ **31 May 2016**.

## General Direction 4 (Governance)

- 4.2 A report on compliance with the obligation in Direction 4.1 must be provided to the Payment Systems Regulator by 31 October, covering the 12-month period to 30 September in each year. This report must include at least the following:
- a. a self-assessment by the operator on compliance with the obligation in Direction 4.1 throughout the relevant 12-month period
  - b. details of all occasions in the relevant 12-month period when the operator has engaged with, and considered, the views of service-users (including indirect payment service providers) and other interested parties on the effectiveness of the representation of the interests of service-users in its decision-making processes of its governing body, and
  - c. details of any anticipated review, or engagement with service-users (including indirect payment service providers) and other interested parties, that the operator plans to take over the following 12-month period in the representation of the interests of service-users in its decision-making processes of its governing body.

The operator may combine the report on compliance with the obligation in Direction 4.1 with the report on compliance with the obligation in Direction 2.1 or Direction 3.1, in a single report.

- 4.3 This direction comes into effect on ~~30 September 2015~~ 31 May 2016.

### General direction on transitional provision TP3

For reports due in 2016, the following transitional provisions apply:

- a. the report due under General Direction 2 (Access) on 31 October 2016 from non-PSR 2009 payment system operators should cover the period from 1 July 2015 to 30 September 2016 and
- b. the report due under General Direction 3 (Access) on 31 October 2016 from PSR 2009 payment system operators should cover the period from 1 July 2015 to 30 September 2016.

## Glossary

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<b>access requirements</b>	The rules (including criteria), terms or conditions (including fees and charges), policies and procedures governing access to, or participation in, a regulated payment system.
<b>card payment system (or payment card scheme in IFR)</b>	A regulated payment system that enables a holder of a payment card to effect a payment.
<b>direct access</b>	Access to a regulated payment system to enable a payment service provider to provide services for the purposes of enabling the transfer of funds using the regulated payment system, as a result of arrangements made between that payment service provider and the operator (and other participants, as applicable). See also s.42(6) FSBRA.
<b>direct payment service provider (also referred to as 'direct member' of a regulated payment system or 'direct PSP')</b>	A payment service provider with direct access to a regulated payment system.
<b>direct technical access</b>	A direct connection by a payment service provider or another third party with the central infrastructure used by a regulated payment system.
<b>governing body</b>	The board of directors, committee of management, or other body entitled to take management decisions, as set out in the memorandum and articles of association or equivalent constitutional document.
<b>indirect access</b>	Access to a regulated payment system through a contractual arrangement with a direct payment service provider to enable it to provide services (for the purposes of enabling the transfer of funds using that regulated payment system) to persons who are not participants in the system.
<b>indirect payment service provider (or 'indirect PSP')</b>	A payment service provider that has indirect access.
<b>operator (payment system operator)</b>	In relation to a payment system, any person with responsibility under a payment system for managing or operating it; and any reference to the operation of a payment system includes a reference to its management.
<b>PSRs 2009</b>	The Payment Services Regulations 2009 (SI 2009/209), as amended from time to time.
<b>regulated payment system</b>	Any payment systems designated by the Treasury in accordance with s.43 FSBRA. As of the date of publication, this included Bacs, C&C, CHAPS, FPS, LINK, NICC, MasterCard and

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	Visa.
<b>service user (payment service user)</b>	A natural or legal person making use of a payment service in the capacity of either payer or payee, or both

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PUB REF: CP16/2

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