

Consultation paper

CP18/1

Review of PSR Directions made in 2015

Directions on access, governance and
participants' relationships with the PSR
(General Directions 1 to 6 and Specific Direction 1)

March 2018



We are asking for comments on this consultation paper by 5pm on **Friday 8 June 2018**.

You can send your comments and responses to our consultation questions by emailing us at **directionsreview@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
Directions review consultation team
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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 non-disclosure.

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:
www.psr.org.uk/psr-publications/consultations/review-PSR-directions-March-2018

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1 At a glance summary

Introduction

- 1.1** In 2015, as part of establishing our initial regulatory framework, we adopted six General Directions (GDs) and one Specific Direction (SD) under our Financial Services (Banking Reform) Act 2013 (FSBRA) powers. These Directions were intended to improve access to, and the governance of, payment systems in the UK.
- 1.2** We are reviewing these Directions so they remain relevant and proportionate, reflecting market realities, changes to legislation and potential future developments. This consultation seeks views to inform our decisions on whether, and if so how, to change these Directions.

Access Directions: GD2, GD3 and SD1

- 1.3** These three Directions relate to access to interbank and card payment systems.
- 1.4** **GD2** requires operators to have objective, risk-based and publicly disclosed access requirements which permit fair and open access. We propose to align this requirement as closely as possible with the substantive access test used in the Payment Services Regulations 2017 (PSRs 2017). We want to keep the existing requirement for access requirements to be publicly disclosed.
- 1.5** We will revoke **GD3** and replace it with a Direction under the PSRs 2017, which puts in place arrangements for monitoring compliance with Regulation 103. We propose to base the new Direction closely on the current GD3.
- 1.6** **SD1** requires the large sponsor banks to publish information on their sponsor bank services and indirect access offerings. We are considering whether to revise the scope of SD1 and whether to broaden its application to other indirect access providers.

Governance Directions: GD4, GD5 and GD6

- 1.7** These three Directions relate to the governance of interbank payment systems.
- 1.8** **GD4** and **GD6** relate to arrangements for service-user representation and transparency of decision-making. We are considering revising these Directions, to ensure they are delivering and incentivising good outcomes for service-users. We are considering whether to adopt an overarching principle setting out the outcomes we expect operators to deliver.
- 1.9** **GD5** addresses a particular conflict of interest we identified (regarding operators and central infrastructure providers). We are considering whether to revoke GD5 on the basis that wider corporate governance controls are likely to address our concerns.

Compliance reporting obligations

- 1.10** We are considering revising our compliance reporting obligations for **GD2**, **GD3** and **GD4**, to ensure these obligations are as effective as possible and targeted to minimise regulatory costs.

Participants' relationships with the PSR: GD1

- 1.11** **GD1** sets out how we expect regulated participants to have an open and cooperative relationship with us and disclose relevant information to us. We want to review how effectively it is operating. Because it does not encompass other payment systems we regulate under EU payments legislation, we are considering whether to put in place similar obligations using our other powers.

2 Overview

In 2015, under our section 54 FSBRA power, we adopted seven formal Directions: six General Directions and one Specific Direction. These Directions were intended to improve access to and the governance of payment systems in the UK

There have been various market and legislative changes since then, including change driven by our work and that we set out for the Payment Strategy Forum

We have also gained experience in applying and enforcing our Directions and in monitoring compliance

We are reviewing our Directions so they remain relevant and proportionate, reflecting market realities and expected and potential future developments

This consultation seeks views to inform our decisions on whether, and if so how, to take forward changes to the Directions

We might decide to **retain** a Direction as it stands, **revise** it, or **revoke** it. Where we decide to revise a direction, the changes might be refinements or, where we have reconsidered our regulatory approach, more substantial changes

Our current thinking on each Direction is set out in the following chapters and we invite stakeholders' views. Any changes to our Directions will be evidence-based and informed by responses to this consultation

We expect to consult later in the year on specific wording of any revised Directions, based on the outcomes of this review

Introduction

- 2.1** In March 2015, we published our policy statement PS15/1, *A new regulatory framework for payment systems in the UK*.¹ In it we announced seven Directions that we had made under section 54 of the Financial Services (Banking Reform) Act 2013 (FSBRA). There were six General Directions (GDs) and one Specific Direction (SD), which came into effect between April and September 2015.
- 2.2** Our Directions focused on:
- improving service-user representation in payment system operators' decision-making structures, improving transparency of decision-making through publication of minutes, and avoiding conflicts of interest where directors of operators were also directors of central infrastructure providers (the 'governance package': GDs 4, 5 and 6)
 - opening up direct access to payment systems by ensuring that their access criteria were objective and risk-based (or otherwise in line with EU law on payment system access) and that information on access options, including indirect access services, was publicly available (the 'access package': GDs 2 and 3, and SD1)
 - ensuring that regulated participants dealt with us in an open and cooperative way and disclosed relevant information to us (GD1)

¹ <https://www.psr.org.uk/psr-publications/policy-statements/policy-statement-151>

- 2.3** We have seen real benefits flow from the Directions we made in 2015 and we do not think we need to revise our approach radically. For instance, since we imposed our access Directions on interbank payment system operators in 2015, we have seen the following developments:
- The time it takes to onboard to the payment systems has reduced.
 - The costs that payment service providers (PSPs) incur to onboard to the payment systems have reduced from a range of £2.5 million to £4 million at the time of preparing our first access and governance report in December 2015 to a range of £1.2 million to £2.5 million last year.²
 - Direct participation in the UK payment systems has increased significantly with 2016 and 2017 being record years in terms of new joiners to the payment systems.
- 2.4** However, we want to ensure that our Directions remain relevant and proportionate, and tailor our requirements to reflect current circumstances and expected and potential future developments. Accordingly, in 2017 we began reviewing GDs 1 to 6 and SD1.
- 2.5** In reviewing these Directions, we have taken account of our experience of applying and enforcing them in practice.³ We have also reflected on market and legislative changes since we adopted the Directions. Much of this change has been driven by our own work and the work we set out for the Payments Strategy Forum, such as the new entry of indirect access providers (IAPs), our remedies following our review of the infrastructure market, and the creation of the New Payment System Operator (NPSO). Other relevant changes include the coming into force of the revised EU Payment Services Directive (PSD2), and the Bank of England taking over delivery of the high value payment system CHAPS.
- 2.6** We also have greater experience of the effectiveness and value of the annual process where operators report to us on their compliance with GDs 2, 3 and 4.
- 2.7** This review does not encompass the introduction of FSBRA Directions on new matters. Our focus is on ensuring the effectiveness of the existing package of Directions adopted in 2015.
- 2.8** Where our Directions (and any future revised form of them) apply to the operators of the Bacs, FPS and C&CC payment systems, they will apply to the NPSO once it takes over as the operator of those systems.
- 2.9** This consultation sets out our thinking on what changes to our Directions might be appropriate. We want stakeholders' input to inform our decisions on whether to take forward changes to these Directions and, if so, how to do it.
- 2.10** Any changes to the consolidated text of the GDs⁴ or the text of SD1⁵ will be subject to separate consultation later in the year, taking into account input from stakeholders including responses to this consultation.

2 As part of our work to develop our most recent access and governance report (published on 6 March 2018) we have seen further evidence that some of the new access models have the potential to reduce costs further:
www.psr.org.uk/psr-publications/news-announcements/access-and-governance-report-March-2018

3 Including our enforcement experience in connection with the failure by the operator of C&CC to publish certain of its board minutes as required under GD6. This case resulted in us issuing a public censure against that operator in August 2017. See:
www.psr.org.uk/how-psr-regulates/decision-making-committees-decision-notice-c-and-ccc

4 www.psr.org.uk/psr-general-directions

5 www.psr.org.uk/psr-specific-direction-1

The Directions we made in 2015

Direction	Summary of requirement(s)	
GD1	Participants' relationships with the PSR	Sets out how we expect regulated participants to have an open and cooperative relationship with us and disclose relevant information to us
GD2	Direct access	Requires the operators of Bacs, CHAPS, C&CC and FPS to: <ul style="list-style-type: none"> • have objective, risk-based and publicly disclosed access requirements which permit fair and open access • notify us of updates and changes to their access requirements • report to us on compliance with GD2
GD3	Direct access	Requires the operators of LINK, Mastercard and Visa to: <ul style="list-style-type: none"> • publicly disclose their access requirements • notify us of updates and changes to these requirements • report to us on compliance with Regulation 97 of the Payment Services Regulations 2009
GD4	Governance (service-user representation)	Requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to ensure appropriate representation of service-users' interests in the decision-making processes of their governing bodies, and to report to us on compliance with GD4
GD5	Governance (conflict of interest)	Requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to take all reasonable steps to ensure that none of their directors are also directors of a central infrastructure provider to their system
GD6	Governance (publication of minutes)	Requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to publish the minutes of their governing bodies
SD1	Indirect access (sponsor bank information)	Requires Barclays, HSBC, Lloyds and RBS to publish information on their sponsor bank services and indirect access offerings

Review of our Directions

2.11 In Chapters 3, 4, 5 and 6 we set out where our review has led us so far, including our current thinking on whether any changes are necessary or appropriate for each Direction. Where we have a preference for one option over others we explain our reasons.

2.12 The table below summarises our current thinking in our review so far:

Direction	Current thinking and preferences	See chapter
GD1	We want to review how effectively GD1 is operating, including how easy it is for regulated participants to understand what is expected of them. We may decide to revise GD1, informed by responses to this consultation. Also, because GD1 does not encompass those persons we regulate under EU legislation but not FSBRA, we may decide to adopt similar obligations to GD1 using our other powers.	6
GD2	We propose to refine our approach to GD2 and align the access requirement on operators (to have objective, risk-based and publicly disclosed access requirements which permit fair and open access) with the substantive access test used in the Payment Services Regulations 2017 (PSRs 2017). We may also refine our approach to the contents of the compliance reports we require.	3 and 5
GD3	We will revoke GD3 and replace it with a General Direction under Regulation 125 of the PSRs 2017, which puts in place arrangements for monitoring compliance with Regulation 103 of the PSRs 2017. We consider that the new PSRs 2017 Direction should be based closely on our existing GD3. However, we may refine our approach to the contents of the compliance report we require.	3 and 5
GD4	We want to revisit our regulatory approach to GD4 (and GD6) to ensure it is delivering good outcomes for service-users, including representation in and transparency of decision-making. Any decisions we take will be informed by responses to this consultation. We may decide to combine GD4 and GD6 into a single consolidated governance Direction. We are also reflecting on our approach to compliance reporting.	4 and 5
GD5	We consider that GD5 could be removed on the basis that wider corporate governance controls are likely to adequately address our concerns.	4
GD6	We want to revisit our regulatory approach to GD6 (and GD4) to ensure it is delivering good outcomes for service-users, including representation in and transparency of decision-making. Any decisions we take will be informed by responses to this consultation. We may decide to combine GD4 and GD6 into a single consolidated governance Direction.	4
SD1	We want to revisit our approach to this sponsor bank information Direction to ensure it is delivering good outcomes for indirect PSPs, and reflects the changing market for indirect access services. Any decisions we take will be informed by responses to this consultation.	3

- 2.13** We now want stakeholders' views to inform our review. We want to hear whether you agree or disagree with our current thinking. If you think another option is better than one we have put forward, please tell us why. Or if you think there are other options we have not explored, please let us know. We welcome suggestions on how the content, text, structure or format of our Directions might be improved.
- 2.14** We are interested in stakeholders' experience of our Directions to date, and in concrete examples where possible. Our thinking has been informed by our own experience of the Directions in practice, including that summarised in our most recent access and governance report (published in March 2018).⁶
- 2.15** We are interested in perspectives from all industry participants and users of payment systems and the services they provide. We encourage service-users at all levels of the supply chain to provide their views in response to this consultation. We also intend to hold a number of sessions to discuss our current thinking and explore your views as part of our consultation process. If you would like to take part in one of these sessions, please contact us at **directionsreview@psr.org.uk**.
- 2.16** Your input will help us come to a firm view on whether, and if so how, to take forward any changes to our Directions.

Background to the review

- 2.17** We publish an annual report on access and governance in payment systems, which includes the state of compliance with our relevant Directions. In the second of these reports, published in March 2017,⁷ we committed to reviewing GDs 2, 3 and 4 and SD1. We said:

'We continually review the effectiveness of our directions through ongoing engagement with stakeholders and through operators' compliance reports. We consider that we may need to review the following directions in 2017: General Directions 2, 3 and 4 and the Sponsor Bank Information Direction. There are diverse reasons for this review:

- The second EU Payment Services directive (PSD2) is expected to be implemented into UK law in January 2018 by way of the Payment Services Regulations 2017. PSD2 is a maximum harmonisation directive and may require us to amend our directions on access (General Directions 2 and 3).
- Our General Direction 4 requires operators to ensure appropriate representation of service-users' interests in their governing body's decision-making processes. Through our ongoing monitoring of the effectiveness of this requirement, we have identified that we may need to consider whether this direction is working as well as it could. We expect to consult on whether amendment to the direction would better achieve our aim of ensuring service-users are able to influence operators' decision-making that affects them and their needs.
- We expect to revisit our Sponsor Bank Information Direction to ensure it is enabling IPSPs to assess their options and to reach the correct contacts within IAPs.'

⁶ www.psr.org.uk/psr-publications/news-announcements/access-and-governance-report-March-2018

⁷ www.psr.org.uk/psr-publications/news-announcements/access-and-governance-report-March-2017

- 2.18** As well as reviewing GDs 2, 3 and 4 and SD1, we have also decided to include the other three Directions adopted in 2015 within the scope of the review:
- GD6 is closely related to GD4 and bears on operators' governance and good outcomes for service-users.
 - GD5 merits review given recent developments, including those following our market review of central infrastructure provision.
 - GD1 is a significant Direction in our regulatory approach that applies to all of our regulated participants, and we want to see whether it could be made clearer or otherwise improved.

Aims of the review

- 2.19** With this review, and through this consultation, we want to ensure that our regulation of participants in payment systems (today and in the future):
- advances our statutory objectives and duties – including promoting competition, innovation and the interests of service-users – by delivering the outcomes we want
 - is relevant, proportionate, targeted and reflects the principles of better regulation
 - reflects market realities and the wider legislative context
 - is capable of being effectively monitored and enforced by us

Options we are considering

- 2.20** Following this consultation, we will take one of three broad actions for each Direction:
- **retain** the Direction in its present form, because it is achieving what it was intended to do and does not need to be revised
 - **revise** the Direction to better achieve what it was intended to do – this might be because we have:
 - **refined** our regulatory approach by modifying the Direction, improving the drafting, or amending or adding guidance alongside the Direction, or
 - **revisited** our regulatory approach and identified additional or alternative ways to deliver the underlying policy outcomes
 - **revoke** the Direction because the policy rationale behind it has been achieved or is being delivered through other means, or because circumstances have changed in a way that allows us to step back from intervening directly

Application of our Directions in respect of CHAPS

- 2.21** Under section 42 of FSBRA, the Bank of England (the Bank) is not to be regarded as a participant of any kind in any payment system. In November 2017, the Bank commenced the direct delivery of the CHAPS payment system, meaning that the Bank is now the operator of CHAPS as well as being responsible for the Real Time Gross Settlement (RTGS) infrastructure which CHAPS uses.
- 2.22** Given the move to direct delivery, our General Directions 1 to 6 have no legal effect on the operator of the CHAPS payment system (the Bank). (SD1 is not addressed at operators.)

- 2.23** CHAPS remains a FSBRA-designated payment system, and so our Directions applying to participants other than the Bank still apply. GD1 applies to all participants in regulated payment systems, including PSPs, so the CHAPS system is still relevant for GD1. SD1 applies to four named sponsor banks, who must publish information about their indirect access services for CHAPS and other systems.
- 2.24** Since our General Directions address 'participants' as defined in FSBRA, which cannot include the Bank (s.42 FSBRA), our Directions as made remain accurate. However, as part of this review we will update the guidance for our General Directions to reflect direct delivery by removing references to the CHAPS system where necessary.

How to respond and next steps

- 2.25** If you wish to respond to this consultation paper, please send us your answers to our questions and any other comments by 5pm on Friday 8 June 2018.
- 2.26** You may answer as many or as few questions as you wish, depending on your particular areas of interest.
- 2.27** You can email us at directionsreview@psr.org.uk or write to us at the following address:
- Payment Systems Regulator
Directions review consultation team
25 The North Colonnade
Canary Wharf
London
E14 5HS
- 2.28** The changes, if any, that we ultimately decide to make will depend on the outcomes of our review, informed by the responses to this consultation.
- 2.29** We will issue a policy statement in due course summarising responses to this consultation and our views. Any changes to the Directions will be subject to separate consultation on the proposed revised text of the Directions later in 2018.

The structure of this paper

- 2.30** This remainder of this paper is structured as follows.
- **Chapter 3** addresses the 2015 Directions that relate to **access**: GD2 and GD3 on direct access, and SD1 on indirect access.
 - **Chapter 4** addresses the 2015 Directions that relate to **governance**: GD4 and GD6 (which we deal with together because they raise similar issues) and GD5.
 - **Chapter 5** addresses the **compliance reporting obligations** across GD2, GD3 and GD4.
 - **Chapter 6** addresses participants' relationships with the PSR (GD1).
 - **Chapter 7** addresses two other issues relevant to this review: whether there are other areas for improvement of the Directions, and the UK's withdrawal from the EU.
 - **Chapter 8** addresses various matters we must have regard to in this review, including our statutory objectives and duties, our regulatory principles and the intended benefits and anticipated costs of our proposed changes.

3 Access Directions

This chapter covers GD2 and GD3 (on direct access to payment systems) and SD1 (on indirect access).

GD2 and GD3

GD2 and GD3 are of direct relevance to the operators of interbank and card payment systems, and to PSPs who participate, or wish to participate, in those systems.

For GD2, we propose to refine our approach and align the access requirement on operators (to have objective, risk-based and publicly disclosed access requirements which permit fair and open access) as closely as possible with the substantive access test used in the Payment Services Regulations 2017 (PSRs 2017). We want to keep the existing requirement for access requirements to be publicly disclosed.

GD3 covers operators of payment systems who are also bound by EU law on payment system access, which was recently revised. We will revoke GD3 and replace it with a Direction under the Payment Services Regulations 2017 (PSRs 2017), which puts in place arrangements for monitoring compliance with the new provision (Regulation 103). We consider that our new PSRs 2017 Direction should be based closely on our existing GD3.

We seek views on both these proposals.

SD1

SD1 is of direct relevance to Indirect Access Providers (IAPs) and to PSPs who have indirect access, or are seeking indirect access, to interbank payment systems.

SD1 requires four IAPs – the large sponsor banks – to publish information on their sponsor bank services and indirect access offerings.

We invite comments on whether, and if so how, SD1 should be revised to ensure it is delivering good outcomes for indirect PSPs and reflects the changing market for indirect access services.

Direct Access: General Directions 2 and 3

Overview of GD2 and GD3

- 3.1 In PS15/1 we explained the elements that went into GD2 and GD3.
- 3.2 We introduced a requirement that payment system operators that were not bound by EU law on payment system access would have to have objective, risk-based and publicly disclosed access requirements which permit fair and open access. This was embedded in GD2.
- 3.3 For those payment system operators that were bound by EU law on payment system access, we required them to publicly disclose their access requirements. This was embedded in GD3.
- 3.4 We also introduced a requirement for both sets of operators to notify us of updates and changes to their access requirements, and to report to us annually on their compliance with GD2 or with applicable EU law.

Background to GD2

3.5 With GD2, which came into effect on 30 June 2015, we require the operators of Bacs, CHAPS, C&CC and FPS to:

- have objective, risk-based and publicly disclosed access requirements which permit fair and open access (for ease, we refer to this as the 'Access Rule' below, consistent with the terminology used in PS15/1)
- notify us of updates and changes to their access requirements
- report to us on their compliance with GD2

3.6 We modified GD2 in 2016 to change the date for operators to submit their reports.⁸

3.7 In PS15/1, we explained our position on the wording of the Access Rule.⁹ One respondent to our 2014 consultation paper, CP14/1¹⁰, said they would prefer wording based on Regulation 97 of the Payment Services Regulations 2009 (PSRs 2009). We stated that we saw no material substantive difference between Regulation 97 and our Access Rule, which was based on Principle 18 of the CPSS-IOSCO¹¹ Principles for Financial Market Infrastructures.

Review of GD2

3.8 Since 2015, we have gained practical experience of applying GD2. We have also developed draft guidance on our approach to handling applications under sections 56 and 57 of FSBRA, which give us powers to:

- grant PSPs access to certain regulated payment systems (section 56)
- vary the terms of agreements for access to those systems (section 57)

3.9 In 2016 we consulted on that draft guidance.¹² We noted that the wording of our proposed test for handling applications differed from the Access Rule in GD2, and that we would consider whether to bring GD2 into line with that test.

3.10 Most respondents to that consultation agreed with the approach we outlined. However, some raised specific concerns or sought additional clarity on some aspects – including how our proposed test will align with compliance obligations under the PSRs 2017, and how it relates to, or differs from, GD2.

3.11 We propose to align our GD2 Access Rule with the substantive test set out in Regulation 103 of the PSRs 2017. This will better facilitate consistency of approach across the range of our access work in the context of:

- direct and indirect access requirements on regulated participants in respect of all relevant payment systems
- our compliance and enforcement activity in respect of GD2 and the PSRs 2017

3.12 Even if no material difference between tests is intended, we recognise that using alternative wording can introduce complexity and uncertainty – and potentially increased cost – for regulated participants.

⁸ We changed the deadline for submission of reports from 31 July each year to 31 October each year. This change took effect on 31 May 2016. See: www.psr.org.uk/psr-publications/news-announcements/changes-to-general-directions-2-3-and-4

⁹ See paragraph 4.13 of PS15/1.

¹⁰ www.psr.org.uk/psr-publications/consultations/consultation-paper-141

¹¹ The Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO). The CPSS is now the Committee on Payments and Market Infrastructures (CPMI).

¹² www.psr.org.uk/psr-publications/consultations/PSR-CP164-draft-guidance

- 3.13** We propose to revise GD2.1 by adopting a substantive access test that reflects, as closely as possible, the language of Regulation 103 of the PSRs 2017. In summary, this requires operators to have access requirements that are objective, proportionate and non-discriminatory, and that do not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks such as settlement risk, operational risk or business risk, or to protect the financial and operational stability of the payment system.
- 3.14** We propose to retain the GD2.1 and GD2.2 provisions that access requirements be publicly disclosed. The closer we stick to the structure and language of Regulation 103, the more likely it is that the publication requirement will need to be set out separately as a standalone provision within a revised GD2. This would be similar to the approach we already adopt in respect of GD3 (see GD3.1 and 3.2).
- 3.15** We propose to retain the requirements set out in GD2.3 for operators to notify us of updates and changes to their access requirements.
- 3.16** GD2.4 sets out the requirements for the reports operators must give us on their compliance with the Access Rule. We propose amendments to our General Direction compliance reporting obligations as a whole (including GD2.4) in Chapter 5.

Options for GD2

Retain	<p>We do not think that retaining GD2 unamended is the best option, for the reasons set out above.</p> <p>We propose to retain the substantive requirements of GD2, but we see benefits in ensuring consistency across access policies in different contexts.</p>
Revise	<p>We propose to refine our approach to GD2. We think that aligning the Access Rule in GD2 with the substantive access test used in the context of the PSRs 2017 is appropriate, for the reasons set out above.</p> <p>There are a number of ways that GD2 could be revised, depending on how closely we mirror the text of Regulation 103 of the PSRs 2017. To accommodate the obligation for operators to publish their access requirements, we can either adopt the Regulation 103 language with necessary modification, or use a standalone provision requiring operators to publicly disclose their access criteria.</p> <p>We are also looking at whether or not to refine our approach to the contents of compliance reports under GD2 (see Chapter 5).</p>
Revoke	<p>We have not identified any reason to revoke GD2.</p>

Question on GD2

Question 1: Do you agree with our proposed approach to GD2? If you disagree with our proposed approach, please give your reasons.

Background to GD3

- 3.17** GD3 came into effect on 30 June 2015. It requires the operators of LINK, Mastercard and Visa¹³ to publicly disclose their access requirements, and to report to us on compliance with Regulation 97 of the PSRs 2009.
- 3.18** We modified GD3 in 2016 to change the date for operators to submit their reports.¹⁴

Review of GD3

- 3.19** Since 2015, EU law regarding access to payment systems has changed. GD3 requires the relevant payment systems to report to us annually on how their access requirements comply with the obligations in Regulation 97 of the PSRs 2009. As the PSRs 2009 have been replaced by the PSRs 2017, we need to revise GD3 accordingly. The equivalent access obligation is now set out in Regulation 103 of the PSRs 2017.
- 3.20** Moreover, the advent of the PSRs 2017 has introduced two significant changes from the previous position under the PSRs 2009:

- First, the PSRs 2017 give us new functions and powers. We must:
 - monitor and enforce compliance with the PSRs 2017 (Regulation 124(3))
 - have arrangements in place so people can complain to us about non-compliance (Regulation 133(1))

We can also issue directions to require or prohibit specified actions (under Regulation 125), in order to obtain information about compliance, or to remedy or prevent compliance failures. This differs from the PSRs 2009 regime, where we had a power to investigate suspected non-compliance (as opposed to duties to monitor and enforce compliance), and could only issue directions as a remedy where we had decided that there had been non-compliance.

- Second, Regulation 103 of the PSRs 2017 applies to a broader class of payment systems than Regulation 97 of the PSRs 2009.¹⁵ The earlier Regulation did not apply to three-party card systems with licensees, but the new Regulation does.

The seven payment systems currently operating in the UK and covered by Regulation 103 are:

- American Express (Amex)
- Diners Club International (DCI)
- JCB International (JCBI)
- LINK
- Mastercard
- UnionPay International (UPI)
- Visa Europe¹⁶

¹³ These are payment systems that were designated by the Treasury under section 43 of FSBRA and that Part 8 of the PSRs 2009 applied to.

¹⁴ See footnote 8.

¹⁵ It applies to payment systems that are not designated under the Settlement Finality Directive (SFD), which include interbank systems, four-party card systems and three-party card systems with licensees.

¹⁶ In deciding which systems should be subject to the Payment Card Interchange Fee Regulations 2015, we reviewed the business models of all the card payment systems operating in the UK. This review allowed us to identify all four-party systems and three-

- 3.21** As a result of these changes, we consider that we should put PSRs 2017 monitoring and compliance arrangements in place using our PSRs 2017 powers rather than our FSBRA powers.
- 3.22** As part of our consultation on our draft approach to monitoring and enforcing PSD2, we consulted on whether we should replace our GD3 with a new Direction under the PSRs 2017. Following the consultation, we published a joint policy statement with the FCA, in which we confirmed that we would make this change.¹⁷ We said that we would undertake a piece of work to revoke GD3 and introduce a new Direction under the PSRs 2017. That piece of work is now part of this wider review of all our 2015 Directions.
- 3.23** In our guidance on our approach to monitoring and enforcing PSD2,¹⁸ published in September 2017, we stated at paragraph 2.27:
- ‘Part 10 of the PSRs 2017 sets out our powers in relation to ensuring compliance with the requirements of those Regulations. To assist us in monitoring compliance with the access provisions contained in Regulation 103, we will issue a direction under our PSRs 2017 powers requiring relevant systems to provide us with a compliance report on an annual basis. This will include, for example, a self-assessment by the operator on its compliance with the requirements of Regulation 103, details of all expressions of interest by PSPs in potentially securing access to its payment system in the relevant period and the outcome of such expressions of interest. We will engage with the payment system operators as to the detailed content, timing and arrangements for submission of initial compliance reports.’
- 3.24** We consider that the current substantive requirements of GD3 can be mirrored in a PSRs 2017 Direction, since those requirements are likely to advance the purposes for which we can give Directions under Regulation 125. They will help us obtain information about compliance, and remedy or prevent compliance failures.
- 3.25** We therefore consider that a new PSRs 2017 Direction should be based closely on the existing FSBRA GD3. However, we are reviewing our General Direction compliance reporting obligations as a whole, and we discuss possible changes to reporting requirements in Chapter 5 of this consultation paper.
- 3.26** In addition to compliance reporting, we also propose to retain the requirement set out in GD3.3 for operators to notify us of updates and changes to their access requirements.
- 3.27** We also propose to retain the requirements set out in GD3.1 and 3.2 for operators to publicly disclose their access requirements. We appreciate that this will be a new requirement for the four card system operators covered by Regulation 103 who are not already bound by GD3 (Amex, DCI, JCBI and UPI). Also, given the nature of their businesses, and the particular licensee arrangements in their systems, the publication of access requirements might mean different things for each scheme. This is particularly the case if their business model is in transition. For example, we note that Amex publicly announced in January 2018 that it will no longer be operating a licensing business within the EU and no new licences will be issued.¹⁹ During this consultation, we will engage with these four card system operators to understand the implications for them of a requirement to publicly disclose their access requirements.
- 3.28** We will plan for the revocation of GD3 as a General Direction under FSBRA. We would not do so until we are ready to issue a General Direction under Regulation 125 of the PSRs 2017. We propose that at the date any General Direction made under Regulation 125 comes into effect, we will revoke the existing FSBRA GD3 with immediate effect. We currently plan to consult on the draft wording of our proposed Regulation 125 Direction at the same time as we consult on drafts of any revised FSBRA Directions.

party systems with licensees. We concluded that DCI, JCB, Mastercard, UPI and Visa Europe are four-party systems, and Amex is a three-party system with licensees.

¹⁷ www.fca.org.uk/publication/policy/ps17-19.pdf

¹⁸ www.psr.org.uk/psr-publications/policy-statements/Payment-Services-Regs-2017-our-final-approach

¹⁹ *Statement on the Revised Payment Services Directive (PSD2) in the European Union* (12 January 2018): <http://about.americanexpress.com/news/statements.aspx>

Options for GD3

<p>Retain</p>	<p>Retaining GD3 unamended is not a feasible option.</p> <p>GD3 refers to previous legislation which has been superseded by the PSRs 2017, so we need to update it.</p> <p>Furthermore, because GD3 (made under FSBRA) only applies to FSBRA-designated payment systems, it doesn't cover all the payment systems that Regulation 103 does.</p> <p>However, we propose to retain the substantive requirements currently set out in GD3.</p>
<p>Revise</p>	<p>We do not propose to revise the substantive requirements currently set out in GD3.</p> <p>Instead, we want to make sure that those requirements apply to the operators of all relevant payment systems, and help us to monitor and enforce compliance with Regulation 103.</p> <p>However, we are looking at whether or not to refine our approach to the contents of compliance reports (see Chapter 5).</p>
<p>Revoke</p>	<p>We will revoke GD3 and replace it with a General Direction made under Regulation 125 of the PSRs 2017 that puts in place arrangements for monitoring compliance with Regulation 103.</p>

Question on GD3

Question 2: Do you agree with our proposed approach to GD3, including in respect of the four payment card systems not covered by GD3 today? If you disagree with our proposed approach, please give your reasons.

Indirect Access: Specific Direction 1

Background to SD1

- 3.29** SD1 came into effect on 30 June 2015. It requires four named sponsor banks (Barclays, HSBC, Lloyds and RBS²⁰) to publish clear and up-to-date information on their sponsor bank services that allow access to Bacs, CHAPS, C&CC, FPS and LINK.
- 3.30** Each sponsor bank is required to publish at least:
- its corporate name, its major office address, and contact details of an appropriate person for its sponsor bank services
 - a description of the sponsor bank services it offers, including the payment systems it offers sponsored access to
 - details of any eligibility criteria that it may require indirect PSPs to satisfy to obtain sponsor bank services
- 3.31** We require sponsor banks to publish this information on their websites and to share it with us.
- 3.32** In PS15/1 we explained why we were adopting SD1, which we called the Sponsor Bank Information Direction. We expected that the information from the sponsor banks would help PSPs seeking indirect access make an informed decision about their options.
- 3.33** We also explained why each element of SD1 was needed:
- **Contact details:** Interested parties would be able to contact sponsor banks to get information on their services, or start discussions about using them.
 - **A description of sponsor bank services:** Interested parties would be able to evaluate services and compare offerings from different banks more easily.
 - **Information on sponsor banks' eligibility criteria:** Interested parties would be able to understand how a sponsor bank would evaluate their applications for indirect access services, and whether indirect PSPs would have to meet specific criteria to qualify for a particular service.
- 3.34** We set out our minimum expectations for compliance with SD1 in PS15/1, and in the guidance alongside SD1. However, we encouraged the relevant sponsor banks to provide further information if it would help indirect PSPs assess their sponsor services.

²⁰ Barclays, HSBC, Lloyds and RBS were identified as the four primary providers of indirect access services and the only providers, at the time, whose services included the provision of a unique sort code. Some indirect PSPs need a unique sort code in order to provide their intended payment services to their customers.

Review of SD1

Issues currently within the scope of SD1

- 3.35** Since we put SD1 in place, we have gained considerably more experience of the operation of the market for indirect access services, including through our:
- indirect access market review, during which we met a wide range of stakeholders including indirect access providers (IAPs) and indirect PSPs, as well as conducting a survey of indirect PSPs
 - handling of certain applications for new or varied indirect access under sections 56 or 57 of FSBRA
 - monitoring of SD1 compliance and our annual access and governance reporting
 - ongoing engagement with PSPs who accessed or sought access to payment systems indirectly, and smaller business users of payment systems (this engagement includes regional events we have held)
- 3.36** In our March 2017 access and governance report²¹, we noted that IAPs had improved their engagement with PSPs and made their information more transparent – with benefits for indirect PSPs. However, we have also had feedback that some IAPs are not providing good enough information – it does not allow prospective indirect PSPs to effectively assess their options or reach the correct contacts at the IAPs. In our survey of indirect PSPs, we asked if they were aware of the information that the four main IAPs had published about their indirect access services. Of the 38 respondents, only 14 (37%) knew about this information.
- 3.37** We are considering whether we should revise SD1 to better ensure that sponsor banks publicise their information adequately. Our guidance on SD1 sets out our minimum requirements for publication (the sponsor banks must provide ‘at least...a copy of such information in a prominent, easily accessible position on any relevant website operated or controlled by each [sponsor bank]’). We are considering whether to require other types of publication to help potential indirect PSPs access this information.
- 3.38** It is worth noting, however, that industry has developed a hub with information on indirect access services (www.accesstopaymentssystem.co.uk). This has links to the four main sponsor banks’ web pages on indirect access services. This facility is very welcome and, as we noted in PS15/1, usefully complements SD1 by making the required information easier to access and compare.
- 3.39** Our position in PS15/1 was that we saw no reason, at that time, for us to have direct involvement in the development of the information hub. We still consider that industry is best placed to handle the ongoing development or improvement of the information hub. However, it is somewhat surprising that despite the hub, and the links it contains to the sponsor bank web pages, there was such low awareness amongst indirect PSPs of the information published by the four main indirect access providers. We wish to understand more about the reasons for this and what, if any, actions IAPs or other parties²² might take to increase awareness, including other means or channels of publicising this information. We welcome stakeholders’ views and want to explore this point further during this review, including understanding the consequences of the current low awareness.

²¹ www.psr.org.uk/psr-publications/news-announcements/access-and-governance-report-March-2017

²² For example, we note that the operator of FPS publishes information on sponsor bank services on its own website. See: www.fasterpayments.org.uk/direct-participants-offering-sponsorship-services

Issues currently outside the scope of SD1

- 3.40** There may be issues beyond the current scope of SD1. Our interactions with indirect access seekers have given us information about how well the market for indirect access services is functioning. As we noted in this year's access and governance report (published in March 2018), there may still be a number of issues with the way in which some IAPs deal with prospective indirect PSPs.
- 3.41** We want to know whether there are issues affecting prospective indirect PSPs, such as problems with:
- the time that IAPs take to give their decision to a PSP seeking indirect access
 - the clarity of IAPs' communication with PSPs on the status and progress of their applications, including:
 - whether the IAP is treating the request as an informal approach or a formal application for services
 - who within the bank is considering the request and deciding upon it
- 3.42** We want stakeholders' views on the extent of these problems and whether and, if so, how they might be addressed. For example, we are considering whether to revise SD1 to capture more of the 'pre-contractual' stage than it currently does.
- 3.43** As it stands, we designed SD1 to focus on the first stage where the 'invitation' is made by sponsor banks to potential indirect access seekers. It covers the kinds of basic information sponsor banks are required to publish to help PSPs weigh up their options and make their initial approach or request to the sponsor bank.
- 3.44** By contrast, the voluntary Code of Conduct for IAPs²³ covers the contractual stage and sets out standards of best practice for key elements of the commercial arrangements between IAPs and indirect PSPs. The beneficiaries under the Code of Conduct are indirect PSPs that have agreements for indirect access services in place.
- 3.45** We are reviewing the kinds of information that the indirect access seeker has access to regarding the stage falling between the initial approach and the contractual agreement.
- 3.46** Following the initial approach stage, there will be a stage where an IAP privately considers whether to accept the request (and make a contractual offer of indirect access services)²⁴ or reject it (conditionally or unconditionally). In making its decision, the IAP will be bound by the applicable substantive access provisions of Regulations 104 and 105 of the PSRs 2017.²⁵ In summary:
- Regulation 104 imposes certain requirements and prohibitions on the way in which direct participants in payment systems designated under the Settlement Finality Directive (SFD) who are existing IAPs treat requests for indirect access, including that such requests be treated in an objective, proportionate and non-discriminatory manner
 - Regulation 105 deals with PSPs' access to payment account services and requires, amongst other things, that credit institutions must grant PSPs access to payment account services on an objective, proportionate and non-discriminatory basis

²³ www.accesstopaymentssystem.co.uk/code-of-conduct

²⁴ There may also then be subsequent negotiation before any contract for indirect access services is entered into.

²⁵ We are responsible for monitoring and enforcing compliance with the access provisions of the PSRs 2017, including Regulations 104 and 105, and have set out guidance on our approach to this. For more detail on these Regulations, please see the text of the PSRs 2017: www.legislation.gov.uk/ukxi/2017/752/contents/made; and *The PSR's approach to monitoring and enforcing the revised Payment Services Directive (PSD2)* (September 2017): www.psr.org.uk/psr-publications/policy-statements/Payment-Services-Regs-2017-our-final-approach

- 3.47** Those Regulations also impose requirements which apply when an IAP has decided to reject a request for indirect access services. The Regulations require that an IAP that has decided not to grant indirect access (or decided to withdraw access) must provide full reasons to the indirect PSP²⁶, and that a credit institution that has decided not to grant access to payment account services (or decided to withdraw access) must notify the FCA of the reasons for the refusal (or withdrawal).²⁷
- 3.48** Provisionally, we think there may be merit in revising SD1 to ensure that IAPs give potential indirect PSPs the kinds of information they need after they have made their initial approach but before the IAP has made its decision. This is an important part of the flow of information that allows indirect PSPs to make informed decisions about their indirect access options, evaluate and compare offerings between providers, and choose the best provider for them. The process of comparing and selecting sponsor banks does not finish at the point the PSP approaches one of them.
- 3.49** Accordingly, we want to hear stakeholders' views on potentially widening the scope of SD1. A revised SD1 might include additional requirements on sponsor banks to:
- notify indirect access seekers about such things as the status and progress of their application, and when the sponsor bank will make its decision
 - publish more information on elements such as indicative timescales for handling indirect access requests, and who the relevant decision-maker(s) are within the organisation
- 3.50** We have also received information suggesting that there may have been instances where IAPs have rejected requests but not made it clear whether the decisions were absolute or conditional (i.e. the IAP might reverse the decision if the access seeker meets certain conditions in the future). Again, greater clarity from the IAP would make it easier for PSPs to assess their access options and make an informed choice.
- 3.51** However, we note that the PSRs 2017 are now in force. Under Regulation 104(3) of the PSRs 2017, any IAP that rejects a PSP's request for indirect access services must give the PSP its full reasons.²⁸ Where this involves setting out what conditions the PSP failed to meet, it should allow the access seeker to understand whether they could get access in the future by meeting those conditions.
- 3.52** We also note that, under Regulation 105(1)(b), a credit institution must provide PSPs that enquire about access to payment account services with the criteria that the credit institution applies when considering requests for such access. We have already published guidance²⁹ that, as a minimum, we would expect the information provided to the potential applicant to cover all areas against which the credit institution will assess the applicant and its business. For example, this could include setting out for the potential applicant:
- information about the payment account services that the credit institution offers
 - any exclusions or minimum eligibility requirements that must be met, or
 - the information and evidence the credit institution will require from the potential applicant in support of the application in order to make a decision on whether or not to provide payment account services
- 3.53** With these points in mind, we do not intend to address further the issues set out in paragraph 3.50 through our review of SD1. We consider that these issues are covered by the PSRs 2017. If stakeholders disagree, they should let us know and explain their reasons (we ask a specific question below on whether SD1 should be widened to include additional requirements on sponsor banks (Question 4)).

26 Regulation 104.

27 Regulation 105.

28 See paragraphs 2.55 to 2.59 ('Providing reasons where access is refused, varied or terminated') of the approach document referred to in footnote 25.

29 See paragraphs 3.13 to 3.19 ('Providing criteria to potential applicants') of the approach document referred to in footnote 25.

Sponsor banks addressed by SD1

- 3.54** SD1 is addressed to the four banks who were, at the time of PS15/1, the four primary providers of indirect access services.
- 3.55** Since then, new indirect access providers have entered the market. For example, ClearBank is now providing indirect access services and is a direct participant in all the interbank payment systems encompassed by SD1, and Starling Bank launched its own indirect access offering in May 2017. More information on these developments can be found in our March 2018 access and governance report.³⁰
- 3.56** The advent of new IAPs raises the question of whether the application of SD1 is too narrow, and whether it should now encompass the new providers.
- 3.57** If SD1 remains a Specific Direction and we wanted to bring a new IAP within scope, we would amend SD1.1 by adding the name of the new sponsor bank(s) (SD1.1 requires each of the four sponsor banks currently addressed to take the specific actions set out in SD1.2 to SD1.4). We would need to revise SD1 in this way each time we wanted to capture a new sponsor bank.
- 3.58** Another option would be to revoke SD1 and to remake it as a General Direction addressing all banks falling within a defined class of sponsor banks. This would avoid the need to revise SD1 each time a sponsor bank entered the market. However, we are conscious that we may not want this regulatory requirement to apply to new entrants (or apply to them in the same way it does to established sponsor banks) from the first point they offer indirect access services to a customer. There may need to be some threshold (possibly based on time since establishment or scale of business) or a way of defining the relevant class of sponsor banks. This introduces complexity in the drafting and interpretation of the Direction, compared to a Specific Direction where regulated persons and third parties know exactly who the Direction applies to. We want to know stakeholders' views on this issue, including whether an appropriate threshold should be included in a new General Direction or considered when making decisions on the addresses of the Specific Direction, and how we could do this.
- 3.59** In addition to the entry of new IAPs into the market, we recognise that the 'ring-fencing' regime will enter into force on 1 January 2019. This will require a number of UK banks to ring-fence the core banking services³¹ that they provide to individuals and small and medium-sized enterprises. This means the banks must legally separate these services from their wholesale and investment banking services.³² We discuss the implications of ring-fencing for payments and access to payment systems in our March 2018 access and governance report. However, ring-fencing is relevant to SD1 because we may need to change it to address different legal persons, depending on which bank provides the relevant indirect access services after the creation of the new ring-fenced entities. Again, this would affect SD1.1. A General Direction that addressed sponsor banks in general would automatically capture all legal persons falling within the defined class, and so would not need to be changed.
- 3.60** We want stakeholders' views on whether SD1's scope should be broader than the four sponsor banks it currently names and, if so, how best to deliver this in a Direction that is clear for all concerned. We want to make sure that SD1 (or its General Direction equivalent) captures the right entities at the right time, taking into account competition in the market for indirect access services and the characteristics of different IAPs (both established providers and more recent entrants). We provisionally think there are merits to having a General Direction with a sufficiently clear threshold built into the definition of the class of participant addressed by the measure.

³⁰ www.psr.org.uk/psr-publications/consultations/review-PSR-directions-March-2018

³¹ These are defined in section 142C of the Financial Services and Markets Act 2000 (FSMA) and comprise services that are considered so important that their uninterrupted provision must be protected by the ring-fence.

³² Part IXB of FSMA.

Options for SD1

Retain	Retaining SD1 as it stands is an option, but we want to look again at whether it is working as well as it could and capturing all the right IAPs, for the reasons set out above.
Revise	<p>We invite comments on whether SD1 should be revised, and how we could do it. Informed by responses to this consultation, we might decide to revise SD1 in one or more of the following ways.</p> <p>If we consider that more is needed to raise awareness of the information sponsor banks already publish, we might decide to revise SD1.</p> <p>If we consider that sponsor banks should publish more or different kinds of information, or provide it to indirect access seekers, we might decide to revise SD1.</p> <p>We also want to make sure that SD1 captures all the right IAPs, at the right time, and will consider whether its scope should be broader than the four sponsor banks it currently addresses.</p>
Revoke	We have not identified any reason to revoke SD1 (unless we were to revoke it and replace it with a General Direction).

Questions on SD1

- Question 3:** Do you think that more needs to be done to increase awareness of the information sponsor banks are required to publish under SD1? If so, do you think that the PSR should take action, including by possibly revising SD1?
- Question 4:** Do you think that the scope of SD1 should be widened to include additional requirements on sponsor banks (such as those set out in paragraph 3.49)?
- Question 5:** Do you have any comments on how best we ensure that SD1 addresses all the right IAPs, at the right time? In particular, please comment on whether you think SD1, which currently addresses Barclays, HSBC, Lloyds and RBS, should be amended to address new entrant IAPs or replaced with a General Direction applying to a defined class of IAPs.

4 Governance Directions

This chapter covers GD4, GD5 and GD6, which relate to interbank payment systems and arrangements for service-user representation, avoiding certain conflicts of interest and transparency of decision-making.

GD4 and GD6

GD4 and GD6 are of direct relevance to the operators of interbank payment systems and to PSPs who participate, or wish to participate, in those systems. These Directions are also of relevance to end-users, including consumers and SMEs.

Both Directions relate to interbank payment system operators' governance arrangements and were put in place to help ensure that these systems work in the interests of those who use them.

We want to revisit our approach to the Directions, informed by responses to this consultation, to ensure they are delivering and incentivising good outcomes for service-users. To achieve this, there may be benefits from combining GD4 and GD6 into a single consolidated governance Direction.

We are also exploring the option of adopting an over-arching principle setting out the outcomes we expect operators to deliver, and we welcome stakeholders' views on such an approach.

GD5

GD5 is of direct relevance to the operators of interbank payment systems, and to infrastructure providers to those systems.

GD5 addresses a particular conflict of interest we identified. It requires that operators take all reasonable steps to ensure that none of their directors are also directors of a central infrastructure provider to that system.

We propose to revoke GD5 on the basis that wider corporate governance controls are likely to address our concerns adequately. We seek views on this proposal.

General Directions 4 and 6

Background to GD4 and GD6

- 4.1 GD4 came into effect on 30 September 2015. It requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to ensure that service-users' interests are appropriately represented in their governing bodies' decision-making processes. It also requires the operators to report to us annually on their compliance with this Direction.
- 4.2 We modified GD4 in 2016 to make it clear that an operator can combine its report on compliance with GD4 with its report on compliance with GD2 or GD3 (as applicable).
- 4.3 GD6 came into effect on 30 April 2015. It requires the same operators covered by GD4 to publish the minutes of their governing bodies, and sets out what those published minutes must contain.

- 4.4** We deal with GD4 and GD6 together because they share closely related aims and purposes. We explained the rationale for these two Directions in PS15/1. We put them in place because of an overriding aim to ensure that payment systems work in the interests of those who use them:
- GD4 addresses the need for governance processes to give service-users a meaningful opportunity to influence decisions that affect them and their needs
 - GD6 aims to increase transparency about decision-making so that service-users are better able to:
 - assess whether operators are appropriately considering their interests when taking decisions
 - understand the reasons for decisions that affect them

Review of GD4 and GD6

- 4.5** Given that both Directions deal with aspects of how service-user interests are taken into account, we are considering whether to combine the subject matter of GD4 and GD6 into a single revised governance Direction. Since 2015, we have also learned more about how well the governance of payment systems is working in the interests of service-users, and want to reflect this learning in any revision of these Directions.
- 4.6** In our March 2017 access and governance report, we said that we might need to review GD4:
- ‘Through our ongoing monitoring of the effectiveness of this requirement, we have identified that we may need to consider whether this direction is working as well as it could. We expect to consult on whether amendment to the direction would better achieve our aim of ensuring service-users are able to influence operators’ decision-making that affects them and their needs.’
- 4.7** In this review, we want to explore whether requiring compliance with the existing GD4 and GD6 is sufficient to achieve our aim. Our thinking is informed by our most recent access and governance report (published in March 2018).
- 4.8** In that report, we note that in 2017 operators:
- continued to engage with service-users on aspects of their existing service offerings
 - engaged with the work of the Payments Strategy Forum, which included a user-needs work stream
 - carried out research and surveys of particular groups of users to understand their needs better
- 4.9** However, in that report we also questioned how well operators are taking account of service-users’ needs, interests and views in their decision-making, and whether they could do more to promote a culture of being oriented toward and responsive to their service-users.
- 4.10** We also want to revisit GD6 to ask whether publishing the governing bodies’ minutes (typically of board meetings) has been effective in improving transparency as we envisaged in PS15/1. Published board minutes might be more or less effective in communicating how operators have taken service-users’ views into account, depending on factors including:
- the context and particular circumstances of the decision in hand
 - the content, structure, level of detail and presentation of the minutes (including the use of redactions to protect commercial confidentiality, candid debate and the financial stability or integrity of the payment system)
 - a service-user’s ability to access and assess the information the minutes contain

- 4.11 We want stakeholders' views on whether there are different requirements which could further promote our aim of increasing transparency in the interests of service-users.

Operators' decision-making

- 4.12 We want operators to have arrangements in place to ensure that the payment system is operated and developed in the interests of service-users. We want operators to engage with service-users and consider their interests and views appropriately through every stage of the decision-making process. Their governance structures should support these aims, and decisions should clearly articulate the impact on service-users and whether and how their interests are promoted by the decision.
- 4.13 Decisions by an operator about whether, and if so how, to change or develop an aspect of the payment system or the payment services it supports (for example, by amending the system rules or developing a new functionality) usually arise in one of two ways: either the operator initiates and leads a programme of work (for example, it might publish an annual plan or a consultation in which potential developments are discussed), or the operator responds directly to request or demand from service-users (whether individually or collectively through a forum, council or other grouping of participants).
- 4.14 In both cases, if an operator follows these principles, it should take account of service-users' interests and views before, during and after making the decision:
- **Before** the decision is made, it considers the likely impact on service-users (positive or negative), and seeks service-users' input (for example, by inviting service-users to respond to a consultation, by setting up structured bilateral engagement, or by conducting customer research) or receives it (for example, the service-user requests a change)
 - **During** the decision-making process, it logs and analyses service-users' interests and views, and the impacts on service-users, and makes sure it takes them into account appropriately (and may ask for further input to inform the decision)
 - **After** the decision is made, it feeds the outcome and the reasons for it back to service users, including an explanation of how their interests and views were taken into account
- 4.15 The decision-making process described above might involve gathering input to inform questions of prioritisation and allocation of resources – for example, where there are a number of initiatives that the operator and its service-users are keen to progress.
- 4.16 We consider that our existing GD4 and GD6 are important and helpful measures to address service-user representation and transparency. However, we question whether they are working as well as they could be. They may be necessary measures, but they may not be sufficient to deliver the good outcomes for service-users that we want to see.
- 4.17 GD4 focuses on decision-making processes, and GD6 on the publication of minutes. This focus was by design, since we wanted to ensure that operators put appropriate governance *structures* in place. However, the reasons why we wanted to see such governance structures are largely absent from the Directions themselves (although we explained them in CP14/1 and PS15/1). They look at means not at outcomes.

4.18 We want to explore whether we should adopt a fresh approach to the construction of GD4 and GD6. This would start from the essential principles which we adopted these Directions for in 2015. We want to see payment systems operated and developed in the interests of their service-users – including, for example, by ensuring:

- that operators are thinking about service-users’ needs and interests and incorporating these into their decision-making processes
- that service-users can present their views and experiences, and explain their needs, to the operator
- that this shapes and informs operators’ ultimate decisions
- that operators appropriately communicate and explain to service-users how their needs, interests and views have been taken into account

4.19 If we move to a more principle-based approach to GD4 and GD6, a useful starting point might be Principle 2, Key Consideration 7 of the CPSS-IOSCO³³ Principles for Financial Market Infrastructures. This states:

‘The board should ensure that the FMI’s design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.’

We want stakeholders’ views on whether Principle 2, Key Consideration 7 would be an appropriate starting point if we decide to develop a high-level principle for a revised GD4/GD6.

4.20 A consolidated governance Direction which sets out a high-level principle need not be prescriptive about specific ways to engage with service-users or to make decision-making transparent. We think there could be significant benefits in allowing each operator to develop its own mechanisms. Where certain mechanisms are particularly effective, this would make it easier for other system operators to adopt them if they wanted to.

4.21 An alternative approach would be to retain the requirements of GD4 and GD6 in some form as specific but non-exhaustive requirements, sitting under the headline principle setting out the outcomes we want to see. We are interested in stakeholders’ views on these different approaches, and any indications of the impacts (both positive and negative) that might result from such changes.

4.22 Adopting a high-level principle that reflects the importance of understanding service-users’ needs, engaging with them and being transparent in decision-making affecting them would be consistent with the expectation we have set for the New Payment System Operator (NPSO) to be focused on service-user needs throughout its work and decision-making. We recognise that the current implementation phase is an opportunity for the NPSO to ‘design in’ a service-user oriented approach, and to develop governance structures that support engagement with service-users and appropriate consideration of their interests. We note that, as part of this, the NPSO has committed to setting up two user councils – one for participants and one for end users. If set up and run effectively, these councils could play a role in helping the NPSO to deliver these service-user outcomes.

³³ See footnote 11.

Other improvements to GD4 and GD6

- 4.23** As well as the changes proposed above, we consider that there might be other improvements we can make to the drafting of the particular requirements set out in GD4 and GD6.
- 4.24** In GD6, we consider that we can remove the requirement for there to be a statement from all independent directors explaining how they have exercised their discretion in relation to 'public interest matters'.³⁴ We no longer expect independent directors to have an explicit veto or discretion reserved for public interest reasons. The composition of the operator's board should ensure independence, and it should take decisions in line with the purpose and strategic objectives of the operator and the system. In this respect, we note the Bank of England's Code of Practice for recognised payment systems relating to the governance of operators.³⁵ This includes provisions regarding governance arrangements and the composition of the board. It was published in June 2017 and comes into force in June 2018.
- 4.25** We also want stakeholders' views on whether the existing requirements of GD4 and GD6 are clear and easy to understand and apply. If they are not, we welcome feedback on where we could potentially clarify or simplify them.
- 4.26** We propose amendments to our General Direction compliance reporting obligations as a whole (including GD4.2) in Chapter 5.

Consolidation of GD4 and GD6

- 4.27** For the reasons set out above, we consider that GD4 and GD6 have closely related policy aims and both relate to stages in the decision-making cycle of payment system operators. In reviewing these Directions, we think our aim should be to produce a single consolidated governance Direction covering the subject matter of both GD4 and GD6. We want to hear stakeholders' views on this proposal.

³⁴ At the same time, our General Direction on General Provisions 5 (GP5) can be revised to remove the definition of 'public interest matters' contained there. GP5 is one of five General Directions on General Provisions which came into force on 30 April 2015. They set out general provisions regarding the application of our General Directions on participants in regulated payment systems. GP5 defines words or expressions used in our General Directions.

³⁵ www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision. See also paragraph 4.33 of this document.

Options for GD4 and GD6

<p>Retain</p>	<p>Retaining GD4 and GD6 without significant amendment is an option.</p> <p>However, even if we retain GD4 and GD6 broadly as they are today, we think that it might be better to combine them into a single consolidated governance Direction. We think this would help stakeholders, including operators, to see that GD4 and GD6 support the same aims and should be read, understood and applied in conjunction with each other.</p>
<p>Revise</p>	<p>We are considering whether to revise our approach to GD4 and GD6, informed by responses to this consultation, for the reasons set out above.</p> <p>We are giving thought to consolidating GD4 and GD6 and adopting an over-arching principle setting out the outcomes we want to see. This would include operators understanding and taking account of the needs of their service-users, engaging with them throughout the decision-making process, and being transparent about how decisions affecting them have been taken.</p> <p>If we adopted such an approach, we might repurpose the existing subject matter of GD4 and GD6 as specific but non-exhaustive requirements sitting under the over-arching principle.</p> <p>There might be other revisions we could make that could clarify or simplify GD4 and GD6.</p> <p>We are also looking at whether or not to revise our approach to compliance reporting under GD4 (see Chapter 5).</p>
<p>Revoke</p>	<p>We have not identified any reason to revoke GD4 or GD6 (unless we were to revoke them and replace them with a single consolidated governance Direction).</p>

Questions on GD4 and GD6

Question 6: Do you have any comments on our suggestion of consolidating GD4 and GD6 under an over-arching principle setting out the outcomes we expect operators to deliver? In particular, please comment on what impacts, if any, you would expect such a change to have. In your answer, you may want to comment on:

- whether we should avoid being prescriptive about the mechanisms that operators might put in place, or whether we should retain the requirements of GD4 and GD6 as specific but non-exhaustive requirements that sit under the over-arching principle
- whether Principle 2, Key Consideration 7 of the CPSS-IOSCO Principles for Financial Market Infrastructures appears to be an appropriate starting point for developing an over-arching principle for GD4/GD6 purposes

Question 7: Do you have any comments on how well GD6 promotes the aim of increasing operators' transparency in the interests of their service-users? Do you think GD6 could be revised or improved to better promote this aim?

Question 8: Are the existing requirements of GD4 and GD6 clear and easy to understand? (And, if you are a payment system operator, do you also find the existing requirements easy to apply?) If not, do you have any suggestions for improvements to GD4 and GD6?

General Direction 5

Background to GD5

- 4.28** GD5 came into effect on 30 April 2015. It requires the operators of Bacs, CHAPS, C&CC, FPS and LINK to take all reasonable steps to ensure that none of their directors are also directors of a central infrastructure provider to their system.
- 4.29** We explained the rationale for this direction in PS15/1. Our view was that a conflict of interest may arise if a director simultaneously sat on the board of an operator and its central infrastructure provider. The director could have access to information compromising the integrity of the operator's tendering processes, which the central infrastructure provider might participate in.
- 4.30** At the time we did not consider it appropriate to issue further Directions to address other perceived or potential conflicts of interest (such as where directors appointed by PSPs may put their PSP employer's interests above the operator's, or where directors are appointed to the boards of multiple operators).
- 4.31** Accordingly, GD5 was unique in addressing conflicts of interest, and covered only one (simultaneous directorship of an operator and its central infrastructure provider). We singled this out because we felt it stood in the way of new and innovative infrastructure providers having a fair opportunity to compete for contracts.

Review of GD5

- 4.32** Since 2015, there have been a number of key developments which, taken together, suggest that GD5 might have become superfluous. In the interests of ensuring that our regulation remains relevant, proportionate, targeted and reflective of market realities, we are considering whether to revoke GD5.
- 4.33** In considering this revocation, we note the following developments:
- **New ownership of Vocalink:** When we launched our market review of central infrastructure provision³⁶ in 2015, Bacs, FPS and LINK and their central infrastructure provider (Vocalink) were all owned by the same few banks. Since then Mastercard has acquired Vocalink, addressing the competition issues around ownership that we had identified (we had already proposed a remedy where the banks would divest their interest).
 - **Competitive procurement for infrastructure:** In July 2017, we published our final remedies for the issues we found during our infrastructure market review.³⁷ In one remedy we require the operators to run competitive procurements for future central infrastructure contracts. This is designed to make sure the process is fair, open and transparent. We introduced three Specific Directions applying this procurement remedy to the operators of Bacs, FPS and LINK: SDs 2, 3 and 4 respectively. They came into effect on 20 June 2017, and will remain in force unless we vary or revoke them.

In 2018 the New Payment System Operator (NPSO) will take over the operation of Bacs, FPS and the new Image Clearing System for cheques. The NPSO will be responsible for the competitive procurement of central infrastructure for the New Payments Architecture (NPA), which was the cornerstone of the Payments Strategy Forum's strategy for the industry. Under

³⁶ www.psr.org.uk/psr-focus/market-reviews

³⁷ www.psr.org.uk/psr-publications/market-reviews/Infrastructure-market-review-remedies-decision

our competitive procurement requirements, the NPSO must report to us every six months on the NPA procurement. We set out our full expectations for the NPSO's competitive procurement of central infrastructure in an open letter to the NPSO in January 2018.³⁸

- **The Bank of England operating CHAPS:** Under section 42 of FSBRA, the Bank of England (the Bank) is not to be regarded as a participant of any kind in any payment system. In November 2017, the Bank commenced the direct delivery of the CHAPS payment system, meaning that the Bank is now the operator of CHAPS as well as being responsible for the Real Time Gross Settlement (RTGS) infrastructure which CHAPS uses. This move to direct delivery was part of the Bank's Blueprint for a new RTGS service, which concluded:

'Direct delivery offers the opportunity to position the United Kingdom at the leading edge of global best practice in terms of technology, governance and risk management. It will allow the new RTGS service to be designed from the start in a fully holistic way. And it will ensure that end-to-end risk management can make use of the full set of tools and resources available to the Bank to identify, mitigate, and respond to risks as they emerge across the HVPS ecosystem as a whole, building on the important work already undertaken by CHAPS Co.'³⁹

Given the move to direct delivery, GD5 now has no legal effect as regards the operator of the CHAPS payment system (the Bank).⁴⁰

- **Recognised Payment Systems Code of Practice:** In June 2017, the Bank published its Recognised Payment Systems Code of Practice and supervisory statement relating to the governance of recognised payment system operators (RPSOs). The Code applies to RPSOs including (among others) Bacs Payment Schemes Ltd, Faster Payments Scheme Ltd and Link Scheme Ltd.⁴¹ The Code (at 6.1) requires an RPSO's board to have a policy and procedure to identify, address and manage conflicts of interest. The other requirements of the Code, and the expectations set out in the supervisory statement, are clear on the importance of board independence, board members' fiduciary duties, and the need for board members to act in the interests of the RPSO. The Code comes into force on 21 June 2018. The Bank has set out its expectation that RPSOs will assess their own compliance with the Code and ensure they meet its requirements by that date.

4.34 We stress that, while considering revoking GD5, we still want all potential conflicts of interest, including the one GD5 was intended to remove, to be appropriately identified, addressed and managed. However, GD5 looked narrowly at one specific conflict (simultaneous directorship of a system's operator and infrastructure provider); this was driven by circumstances and factors which were present in 2015 and prior to the developments set out above.

³⁸ www.psr.org.uk/psr-publications/news-announcements/PSR-open-letter-NPSO

³⁹ www.bankofengland.co.uk/news/2017/november/bank-of-england-commences-the-direct-delivery-of-the-chaps-service

⁴⁰ This is also true for General Directions 1, 2, 4 and 6. There is no issue with the existing wording of those four GDs and GD5, since they address 'participants' as defined in FSBRA, which cannot include the Bank (s.42 FSBRA). However, as part of this review, we will update the guidance for these GDs to reflect direct delivery by removing references to the CHAPS system where necessary. Note also that GD1 applies not just to operators but to all participants in regulated payment systems. So the CHAPS system is still relevant for GD1 as regards the PSPs participating in it.

⁴¹ The Code applies to the operators of those payment systems specified by order as recognised payment systems under section 184 of the Banking Act 2009, that are not operated by a recognised clearing house or a central securities depository.

4.35 We also note that there are wider corporate governance measures, including, but not limited to, the Bank's Code of Practice, that address how actual or potential conflicts are to be identified, addressed and managed. These measures have a wider scope than GD5, and encompass the conflict it deals with as well as all other kinds. Each of the following measures, which predate the adoption of GD5, is important in the context of corporate governance and conflict of interest handling:

- the CPSS-IOSCO⁴² Principles for Financial Market Infrastructures⁴³
- the Companies Act 2006, which includes a duty on directors to avoid conflicts of interest
- the UK Corporate Governance Code, published by the Financial Reporting Council

4.36 We expect that operators will identify, address and manage all conflicts of interest, including in relation to service providers and suppliers. However, given existing corporate governance requirements, we want stakeholders' views on whether we need a Direction that specifically addresses conflicts around infrastructure provision. If we revoke GD5, we would consider the case for introducing a new Direction in future if specific circumstances warranted it (as they did in 2014/15 when we proposed and issued GD5).

Options for GD5

Retain	Retaining GD5 is an option. However, in the interest of ensuring that our regulation remains relevant, proportionate, targeted and reflective of market realities, we are considering whether GD5 could be revoked.
Revise	We have not identified any reason to revise GD5.
Revoke	We consider that GD5 could be revoked on the basis that wider corporate governance controls are likely to address our concerns adequately.

Question on GD5

Question 9: Do you have any comments on our suggestion of revoking GD5?

⁴² See footnote 11.

⁴³ These Principles were adopted by the Bank as a published set of principles to which RPSOs are to have regard, pursuant to section 188 of the Banking Act 2009. That requirement continues to apply. The Principles also formed the basis for the Bank's Code of Practice.

5 Compliance reporting obligations

This chapter covers the arrangements we have in place for operators to report to us on their compliance with GD2 and GD3 (on direct access) and GD4 (on service-user representation).

Compliance reporting is of direct relevance to the operators of interbank and card payment systems.

We are considering revising our compliance reporting obligations for GD2, GD3 and GD4, to ensure that they are as targeted and effective as possible.

We welcome stakeholders' views on our compliance reporting arrangements.

Our thinking on compliance reporting for GD4 (on service-user representation) is likely to develop as our review of the substantive requirements of our governance Directions progresses.

Compliance reporting: General Directions 2, 3 and 4

Background to compliance reporting

- 5.1 A cross-cutting issue that we want to address is the effectiveness of existing arrangements for operators to report on their compliance with our Directions.⁴⁴
- 5.2 Our current approach in GDs 2, 3 and 4 has been to require operators to provide annual compliance reports, containing certain categories of information as a minimum.
- 5.3 This is not the only approach that can be taken to compliance reporting. Instead of requiring annual reporting, we could obtain information as and when necessary. For example, we could use our information-gathering powers under section 81 of FSBRA to require operators to give us information on compliance at any time. We might do so where we receive a complaint suggesting the relevant party has not complied with a regulatory requirement, or where we launch an investigation into suspected non-compliance on our own initiative.
- 5.4 Alternatively, we could require the operator to maintain records and retain compliance information, possibly in a given form, which they must share with us on request.

Review of compliance reporting

- 5.5 We are reviewing the obligations in GD2.4, GD3.4 and GD4.2 to ensure that we are clear about the status and purpose of the compliance reports, that they are genuinely valuable and support our ongoing access and governance work, and do not impose an unnecessary burden on the affected businesses.
- 5.6 In respect of GD3, where we will revoke the FSBRA General Direction and make a General Direction under our PSRs 2017 powers, any revised reporting requirement would be contained in that PSRs 2017 Direction. The reporting requirement would be in respect of compliance with Regulation 103 of the PSRs 2017.
- 5.7 In respect of GD2 and GD4, any revised reporting requirement would be in respect of the other requirements of those Directions.

⁴⁴ GDs 2 and GD3 (on direct access) and GD4 (on service-user representation). GD6 does not require compliance reporting, but it does require operators to furnish us with copies of their minutes and links to the website where these are published. There are no compliance reporting requirements for the other 2015 Directions under review.

GD2 and GD3

- 5.8** For GD2 and GD3, the annual access compliance reports are an important part of our monitoring and enforcement activity. Nevertheless, some of the content of these reports may be repetitive and of diminishing value where access arrangements over the year have remained unchanged compared with the previous report.
- 5.9** We also recognise that if there were access problems (and potential failures to comply with GDs 2 and 3) then we would expect to become aware of these through information from direct access-seekers, applications under section 56 of FSBRA, or complaints alleging a breach of regulatory requirements (for example, the PSRs 2017).
- 5.10** We think the most useful parts of the GD2 and GD3 compliance reports today are where they tell us about access-related developments (including, for example, changes in access requirements during the year). It is also very useful for compliance monitoring purposes for us to see the information on the approaches and requests that operators have received from direct access-seekers, and how they have responded. These two elements help us to build a valuable picture of the state of direct access in the UK, and compliance with applicable access requirements. We would not propose to remove these parts of our compliance reporting requirements.
- 5.11** Reporting on access arrangements where these have remained the same is of less value. However, we still see merit in asking operators to submit an annual attestation on whether or not they consider themselves to be compliant. This promotes accountability within the organisation.
- 5.12** We want stakeholders' views on whether and, if so, how we might refine the compliance reporting obligation – perhaps with a clearer focus on developments and changes in access arrangements, and how compliance has been assured given such changes. For example, the reports could include a summary of any new issues that have made compliance more challenging.⁴⁵ This could help us identify and focus on emerging access-related issues and common problems for operators and direct access-seekers.
- 5.13** We are also considering whether there are any other basic kinds of data that we might collect using compliance reports which would help us fulfil our monitoring functions or prepare our access and governance reports. We particularly welcome views from access seekers on whether there is any further industry-wide information we could collect and publish in this way that would promote competition, innovation and the interests of service-users.

GD4

- 5.14** In Chapter 4 we discussed ways we might develop GDs 4 and 6, perhaps as a single combined governance Direction. If we did this, we may also need to change the way we monitor compliance.
- 5.15** With GD4, we currently expect operators to give us their own assessment of how they have complied with our requirements on service-user representation. These compliance reporting requirements relate to the means of service-user representation. However, if we revise GD4 (and GD6) to include a high-level principle of service-user engagement and transparent decision-making, there may be better ways to monitor compliance than annual reporting.
- 5.16** For example, one approach would be requiring operators to keep complete and accurate records (for example, of service-users' requests or views, and the operators' responses) and to provide them to us on request. This approach would be bolstered by the fact that dissatisfied service-users always have the option to complain to us if they feel that operators are not taking their interests into account appropriately, or have not given them adequate reasons for a particular decision.

⁴⁵ We recognise that GD2.4(f) and GD3.4(f) require that the compliance report includes 'details of any anticipated future developments that the operator considers may require or justify material updates or changes to its access requirements', which touches on a related but different point.

- 5.17** We welcome stakeholders' views on these points to inform our thinking on whether, and if so how, we might require compliance reporting in respect of these matters. Our thinking on compliance reporting is likely to develop as our review of the substantive requirements of GD4 and GD6 progresses (again, informed by responses to this consultation). We want the reporting requirements to be as appropriate as possible to the governance requirements in our Directions.

Options for compliance reporting

Retain	<p>Retaining existing compliance reporting arrangements for GD2, GD3 and GD4 without significant amendment is an option.</p> <p>However, we are reviewing these arrangements to make sure that they are as targeted and effective as possible.</p>
Revise	<p>We might decide to revise our compliance reporting arrangements, informed by responses to this consultation.</p> <p>We are giving thought to refining the contents of GD2 and GD3 compliance reports, perhaps with a clearer focus on access-related developments and changes.</p> <p>Our approach to compliance reporting for GD4 is likely to develop as our review of GD4 and GD6 progresses, informed by responses to this consultation.</p>
Revoke	<p>We have not identified any reason to remove the requirements on operators to report to us on compliance with their substantive access obligations.</p> <p>As regards service-user engagement and transparent decision-making, there may be better ways for us to monitor compliance than annual reporting. One approach would be to require operators to keep records which we might subsequently request.</p>

Questions on compliance reporting

- Question 10:** Do you have any comments on our suggestions for compliance reporting in respect of GD2 and GD3?
- Question 11:** Do you have any comments on our suggestions for compliance reporting in respect of GD4?

6 Participants' relationships with the PSR

This chapter covers GD1, which sets out how we expect participants to have an open and cooperative relationship with us and disclose relevant information to us.

GD1 is of direct relevance to all participants (operators, infrastructure providers and PSPs) for all the payment systems we regulate under FSBRA.

This chapter is also of direct relevance for those payment card systems not regulated under FSBRA – as explained below.

We want to review how effectively GD1 is operating.

We want to understand stakeholders' experiences of applying GD1 and how clear and easy it is to understand.

GD1 does not encompass those payment card systems we regulate under the Interchange Fee Regulation (IFR) or the access provisions of the revised Payment Services Directive (PSD2) but not FSBRA. We are considering whether we need to address this discrepancy by adopting similar obligations to GD1 using our other powers.

General Direction 1

Background to GD1

- 6.1** GD1 came into effect on 30 April 2015. It requires all participants in the eight payment systems we regulate under FSBRA (operators, infrastructure providers and PSPs) to deal with us in an open and cooperative way, and to disclose relevant information to us.
- 6.2** The precise scope of the information subject to the disclosure requirement is 'anything relating to the participant which could materially adversely impact on the advancement of the PSR's statutory objectives and duties'.
- 6.3** The words 'materially adversely impact' are not defined but we do explain in the guidance that:
- we expect participants to bring to our attention 'the most important information the [PSR] needs'
 - we rely on participants 'to exercise sound judgement in determining the developments or changes that could materially adversely impact on the advancement of the [PSR's] statutory objectives and duties'
 - participants should explain why they are communicating particular information to us and how it is relevant
 - we do not expect participants to notify us of 'the minutiae of running their businesses'
- 6.4** We explained the rationale for GD1 in PS15/1: it was intended to reinforce the expectation we set out in CP14/1 of a 'no surprises' culture, in which industry participants engaged meaningfully with us. We stated:

'For the PSR to be effective and proportionate, it needs the governing bodies of participants to take ownership of building an open and cooperative relationship with us, informing us in a timely way of issues that may significantly affect the advancement of our objectives, and that may require us to take action.'

- 6.5** A supplementary reason for adopting GD1 was to help ensure that the information we get from regulated participants is truthful, accurate, complete and not misleading. We noted in PS15/1 that GD1 would give us additional enforcement options if a participant gave us untruthful or misleading information.
- 6.6** GD1 and the cooperative and candid behaviour that it promotes are therefore relevant not only in the normal course of our dealings with regulated participants,⁴⁶ but also where we exercise our formal information-gathering or investigatory powers⁴⁷ or otherwise follow a formal process, such as enforcement action.⁴⁸

Review of GD1

- 6.7** Given the importance of GD1 and its significance to our work, we want to review how effectively it is operating. We want to see whether it is easy to understand for regulated participants so they know what we expect of them.
- 6.8** We also suspect that awareness of GD1 and its requirements might be better among operators and certain large PSPs than it is among infrastructure providers and smaller PSPs. If this is so, and if this is attributable to issues with the drafting of GD1 or the guidance alongside it, we want to know so we can make any necessary changes.
- 6.9** We want to understand stakeholders' experiences of applying GD1 to their own businesses and circumstances. For example, we want to know how complying with GD1 has changed regulated participants' behaviour and whether they have faced challenges in interpreting GD1. In particular, we want to know stakeholders' views on the requirement to tell us about us matters which could 'materially adversely impact on the advancement of the PSR's statutory objectives and duties' – specifically, whether they find this requirement clear and comprehensible, and how they interpret it. If participants in regulated payment systems have found challenges in interpreting this, we are also interested in understanding whether any additional guidance would be useful.
- 6.10** We settled on the current wording of GD1 in an attempt to focus the requirement on the kinds of information needed by the PSR to identify risks to the advancement of our objectives and duties and thus areas where regulatory action might be needed. We were responding to feedback on CP14/1 where respondents felt that there was a risk of 'over-notification', wasting the resources of participants and the PSR. However, we want to explore in this review, and through this consultation, whether our chosen wording is the best possible formulation of GD1.⁴⁹ We also want stakeholders' views on whether we should add to or amend our guidance on GD1, and how we should do it.

⁴⁶ For example, we regularly receive information from a regulated participant without having issued a notice under section 81 FSBRA requiring that information to be provided. We might receive information in response to an 'informal' request for information or the regulated participant might supply it on their own initiative. Participants may also routinely supply information, for example under annual reporting obligations such as we have in GD2, GD3 and GD4.

⁴⁷ Sections 81 to 90 of FSBRA.

⁴⁸ Guidance on GD1 states: 'Direction 1.1 is relevant to the Payment System Regulator's powers of information gathering and investigation and more generally its powers of regulatory intervention.'

⁴⁹ In this context, we note that the FCA has adopted a similar obligation to GD1. Firms regulated by the FCA must adhere to the *Principles for Business*, which are fundamental obligations, as set out in the FCA's Handbook. Principle 11 states: 'A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.' See: www.handbook.fca.org.uk/handbook/PRIN/2/1.html

The scope of GD1: our statutory objectives and duties

- 6.11** Both before and since the GD1 came into effect, we have taken on objectives, functions, duties and powers under a number of statutes (Acts) and statutory instruments (Regulations). We briefly recap below the various legislative frameworks – other than FSBRA – under which we perform a role.

The PSR as a concurrent regulator under competition law

Part 1 of the **Competition Act 1998** (CA98) and Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibit anti-competitive agreements and abuses of a dominant position. Under the concurrency provisions in FSBRA⁵⁰ we have had powers under CA98 in relation to agreements and conduct relating to participation in payment systems.⁵¹ The concept of ‘participation’ in payment systems is defined in section 42 FSBRA and includes the operation of the payment system and the provision of infrastructure and payment services. The powers relate to all payment systems falling within the definition in section 41 FSBRA, and not only to those systems that have been designated by the Treasury under section 43 FSBRA.⁵²

The concurrency provisions in FSBRA also give us powers under the **Enterprise Act 2002** (EA02) to carry out market studies, and to make market investigation references related to participation in payment systems to the Competition and Markets Authority (CMA) for detailed investigation.⁵³

The PSR as a competent authority for certain EU payments legislation

We are the main competent authority in the UK for the **Interchange Fee Regulation** (IFR).⁵⁴ The statutory instrument which designates the PSR as a competent authority and gives us our powers is the **Payment Card Interchange Fee Regulations 2015** (the PCIFRs). We are responsible for monitoring compliance with the IFR in the UK and for taking enforcement action where appropriate.⁵⁵

We are the competent authority in the UK for the alternative switching scheme provisions of the Payment Accounts Directive (PAD).⁵⁶ The UK transposed the PAD requirements into national law with the **Payment Accounts Regulations 2015** (the PARs). Part 3 of the PARs require PSPs to provide a switching service for payment accounts. One way in which PSPs can satisfy that requirement is by being a member of a designated alternative switching scheme. We are responsible for designating any alternative switching schemes, for ensuring that they continue to meet the requirements for designation, and for taking any enforcement action in this regard.⁵⁷

We are a competent authority in the UK for certain provisions of the revised **Payment Services Directive** (PSD2).⁵⁸ The UK transposed the PSD2 requirements into national law with the **Payment Services Regulations 2017** (the PSRs 2017). We are responsible for monitoring compliance with Regulation 61 (Information on ATM withdrawal charges) and Part 8 (Access to payment systems and bank accounts), containing Regulations 102 to 105, of the PSRs 2017 in the UK and for taking enforcement action where appropriate.⁵⁹ The PSR and the FCA are both competent authorities for Regulation 105.

50 Sections 59 to 67 FSBRA. Our concurrent competition powers may be exercised also be exercised by the CMA, whose powers extend to all sectors of the UK economy. Accordingly, in respect of payment systems, the CMA and the PSR have concurrent competition law functions and the PSR is a ‘concurrent regulator’.

51 We do not have powers to prosecute the criminal cartel offence in section 188 EA02.

52 See *Enforcement of the Competition Act 1998: A guide to the PSR’s powers and procedures* (CA98 Guidance): www.psr.org.uk/competition-act-1998-ca98-guidance

53 See *Market reviews, market studies and market investigation references: A guide to the PSR’s powers and procedures* (Markets Guidance): www.psr.org.uk/markets-guidance

54 Regulation (EU) 2015/751

55 See *Guidance on the PSR’s approach as a competent authority for the EU Interchange Fee Regulation* (October 2016): www.psr.org.uk/psr-publications/policy-statements/final-guidance-IFR-Phase-2

56 Directive (EU) 2014/92

57 See *Guidance on the PSR’s approach as a competent authority for designation of alternative switching schemes under the Payment Accounts Regulations 2015* (May 2016): www.psr.org.uk/psr-publications/policy-statements/final-guidance-PSR-approach-to-the-PARs

58 Directive (EU) 2015/2366

59 See *The PSR’s approach to monitoring and enforcing the revised Payment Services Directive (PSD2)* (September 2017): www.psr.org.uk/psr-publications/policy-statements/Payment-Services-Regs-2017-our-final-approach

- 6.12** The GD1 information disclosure obligation covers ‘anything relating to the participant which could materially adversely impact on the advancement of the PSR’s statutory objectives and duties’.
- 6.13** We add in our guidance alongside GD1 that these statutory objectives include those set out in FSBRA (sections 49 to 52) as well as any objectives or duties under any other legislation that we are designated a competent authority for.
- 6.14** We note that the scope of regulated persons under the IFR, PAD and PSD2 will differ from the scope of regulated participants in the FSBRA designated systems. The FSBRA regulated population might be narrower or broader, depending on the EU legislation concerned. This introduces differences between the regulated populations in terms of the duties of cooperation, candour, openness and truthfulness, and the information disclosure obligations, that we can rely on. GD1 lays down these duties and obligations for persons we regulate under both FSBRA and EU legislation, but of course it does not encompass those we regulate under EU legislation but not FSBRA.
- 6.15** As part of this review, we are considering what impact this discrepancy has and whether we need to address it. We note that we have the powers to make Directions (Specific or General) under the PCIFRs and the PSRs 2017. Accordingly, we are considering whether we could adopt a similar obligation to the one in GD1 covering ongoing cooperation and information disclosure, as far as we need it for the purposes of our monitoring and enforcement activity as a competent authority for the IFR and PSD2.⁶⁰ We welcome stakeholders’ views on such a use of our Direction powers under the PCIFRs and the PSRs 2017. This possibility is another reason why we want to gather views now on the effectiveness of our FSBRA GD1 in practice, so that we might use these learnings if we decide to develop similar Directions under the PCIFRs and the PSRs 2017.

Options for GD1

Retain	<p>Retaining GD1 without significant amendment is an option.</p> <p>However, we want to understand stakeholders’ experiences of applying GD1, and how clear and easy it is for them to understand.</p> <p>Also, we think there is a discrepancy in what we currently expect of persons we regulate under both FSBRA and EU legislation and those we only regulate under EU legislation.</p>
Revise	<p>We might decide to revise GD1, or add or amend guidance alongside it, informed by responses to this consultation.</p> <p>GD1 does not encompass those persons we regulate under EU legislation but not FSBRA. We may decide to address this discrepancy, by adopting a similar obligation to GD1 using our other powers. We welcome stakeholders’ views on this.</p>
Revoke	<p>We have not identified any reason to revoke GD1.</p>

⁶⁰ With PAD, the scope of our competency is limited to the designation of alternative switching schemes and ensuring that they continue to meet the requirements for designation. Our power to give Directions under the PSRs 2017 relates to requiring or prohibiting the taking of specified actions by the operator in the operation of the switching service and setting standards to be met in the operation of the switching service.

Questions on GD1

- Question 12:** Do you find the existing requirements of GD1 to be clear and easy to understand? (And, if you are a participant in a FSBRA regulated payment system operator, do you also find the existing requirements easy to apply?) If not, do you have any suggestions for improvements to GD1? As far as possible, please base your answer on your own experiences of interpreting and applying GD1 to date.
- Question 13:** Do you have any comments on our suggestion of replicating the substantive requirements of GD1 under General Directions issued under our PCIFRs and PSRs 2017 powers?

7 Other issues relevant to this review

We are interested in any other ways to improve GDs 1 to 6 and SD1 and the guidance on them.

As far as possible, we will take account of the UK's withdrawal from the EU as part of this review.

Other areas for improvement

- 7.1** In reviewing our Directions, as well as considering the issues discussed in Chapters 3 to 6, we are also interested more generally in the clarity and effectiveness of the Directions – both from the perspective of regulated participants seeking to comply with them, and from our own perspective as the body responsible for monitoring and enforcing compliance.
- 7.2** We are also interested in whether there are other ways stakeholders think we could improve the text of our Directions or the guidance alongside them. We invite stakeholders to provide views on the format and structure of the Directions and the guidance, and on how helpful they are for the reader.

Question on other areas for improvement

Question 14: Do you have any other comments on how we might improve the content, text, structure or format of one or more of General Directions 1 to 6 and Specific Direction 1, including the guidance on these Directions? Please give reasons for your suggested changes.

Withdrawal from the EU

- 7.3** As far as possible, we will take account of the UK's withdrawal from the EU as part of this review. We understand the importance of not changing our Directions too often. We will aim to minimise the chances of having to make further revisions following the UK's withdrawal from the EU. However, there may be matters that we cannot prejudge and where some further revision may be unavoidable.
- 7.4** In this context, we note the interplay between GD3 and EU payment services law (PSD2). We will revoke GD3 and remake it under our PSRs 2017 powers. The new Direction will refer to the access requirements set out in Regulation 103 of the PSRs 2017. As such, it will refer to a UK statutory instrument (as GD3 did previously).
- 7.5** None of our other General Directions currently refer to EU payment services law.
- 7.6** We note that the UK's withdrawal from the EU will have implications for some of our General Directions on General Provisions (GP1 to GP5), and the guidance alongside them. These came into force on 30 April 2015. They set out general provisions regarding the application of our General Directions on participants in regulated payment systems. We note that GP2 and GP3 relate to the interplay between our domestic FSBRA legislation and EU law.

8 Matters we must have regard to in this review

In this chapter we set out the various matters we must have regard to in this review as we consider changing the Directions we adopted in 2015.

We have not yet decided whether to make any changes or, if so, how to do it. If and when we consult on draft revised Directions, we will set out our position on the matters discussed below.

We set out here our current thinking on matters including:

- how our proposed changes are consistent with our objectives and duties
- how we have had regard to our regulatory principles when developing these proposals
- the intended benefits and anticipated costs of the proposed changes

CP14/1 and PS15/1: previous analysis and conclusions

- 8.1** In CP14/1 and PS15/1 we addressed all of the matters discussed in this chapter when proposing and deciding to adopt GDs 1 to 6 and SD1. For each Direction, we explained:
- how it was consistent with our objectives and duties
 - how we had regard to our regulatory principles when considering and developing it
 - our opinion on its expected benefits and costs
- 8.2** We also set out our approach to consultation on changes to the Directions in the future, and summarised our equality impact assessment.
- 8.3** In this consultation paper we have not repeated the analysis and conclusions we set out in CP14/1 and PS15/1 and the Supporting Papers or Annexes to those documents. All those documents are available on our website.⁶¹ However, in this chapter we summarise some of the key points in the context of our proposed changes to the Directions.

⁶¹ See: www.psr.org.uk/psr-publications/consultations/consultation-paper-141; and www.psr.org.uk/psr-publications/policy-statements/policy-statement-151

8.4 If you would like to review our analysis and conclusions in CP14/1 and PS15/1 about the Directions as originally adopted, the following sections are of particular relevance:

Document	Section headed	Paragraphs	Relevant to Direction(s)
CP14/1 Consultation Paper (A new regulatory framework for payment systems in the UK)	<i>Our regulatory approach</i>	22 to 27	All
CP14/1.1 Supporting Paper 1 (The PSR and the UK payments industry)	<i>Regulatory and other principles we must consider</i>	1.52 to 1.56	All
	<i>How and when we will consult</i>	1.60 to 1.62	All
	<i>Annex 1: Our Consultation Principles</i>	Annex 1	All
	<i>Annex 2: Equality Impact Assessment</i>	Annex 2	All
CP14/1.3 Supporting Paper 3 (Ownership, governance and control of payment systems)	<i>Our proposal on the representation of the interests of service-users</i>	3.66 to 3.90	GD4
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	3.91 to 3.104	GD4
	<i>Our proposals to address potential conflicts of interest</i>	3.142 to 3.153	GD5
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	3.154 to 3.162	GD5
	<i>Our proposals on transparency and clarity</i>	3.175 to 3.187	GD6
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	3.188 to 3.198	GD6

Document	Section headed	Paragraphs	Relevant to Direction(s)
CP14/1.4 Supporting Paper 4 (Access to payment systems)	<i>Our proposals on Direct Access</i>	4.121 to 4.169	GD2 & GD3
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	4.170 to 4.190	GD2 & GD3
	<i>Our proposals on Indirect Access' – 'Proposed direction requiring the publication of information</i>	4.278 to 4.290	SD1
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	4.325 to 4.335	SD1
CP14/1.6 Supporting Paper 6 (Regulatory tools)	<i>Our proposed Principles</i>	6.13 to 6.16	GD1
	<i>Our proposed Principles are consistent with our objectives and duties</i>	6.21 to 6.23	GD1
	<i>What are the intended benefits of our proposals and related anticipated costs for industry?</i>	6.31 to 6.44	GD1

Document	Section headed	Paragraphs	Relevant to Direction(s)
PS15/1 Policy Statement <i>(A new regulatory framework for payment systems in the UK)</i>	<i>PSR Principles</i>	1.31 to 1.70	GD1
	<i>Representation of the interests of service-users</i>	3.1 to 3.17	GD4
	<i>Conflicts of interest</i>	3.18 to 3.27	GD5
	<i>Transparency</i>	3.28 to 3.46	GD6
	<i>Access Rule</i>	4.1 to 4.15	GD2
	<i>Reporting Rule</i>	4.16 to 4.31	GD2 & GD3
	<i>Information Direction</i>	5.1 to 5.55	SD1
PS15/1A Annexes to the Policy Statement	<i>Annex G: Statutory purposes and regulatory principles</i>	Annex G	All
	<i>Annex H: Equality Impact Assessment</i>	Annex H	All

Statutory purposes

- 8.5** This review of our Directions is consistent with our aims as the UK's independent economic regulator of payment systems, and as the competent authority for certain EU payments legislation in the UK.
- 8.6** Our package of Directions was designed to be a proportionate and effective means to further our statutory objectives to promote competition, innovation and the interests of service-users. One set of measures (GDs 2 and 3, and SD1) was directed at promoting effective competition in payment systems, by reducing barriers and other impediments to direct and indirect access to payment systems. A second set of measures (GDs 4, 5 and 6) was directed at improving the governance of interbank payment systems, thereby ensuring that payment systems are responsive to service-users' interests. We also made a General Direction covering how participants are to deal with us, and what they must disclose to us (GD1).
- 8.7** We developed this package of measures so that they would reinforce and complement one another. By encouraging new entry and expansion in payment systems, our measures directed at promoting effective competition were also intended to advance our innovation objective, as the range and nature of offerings to service-users expands over time. Our measures directed at governance were intended to increase the confidence of PSPs and service-users about how decisions are taken and how their interests and views are represented. This increased insight into decision-making was intended to encourage PSPs to make new investments confidently, expand their operations and be innovative.

- 8.8** In CP14/1 we committed to monitoring progress to ensure that our Directions remain fit for purpose in light of changes in the market, law and regulation.⁶²
- 8.9** We have seen real benefits flow from our Directions and we do not think we need to revise our approach radically. Our assessment of the effectiveness of our Directions has been informed by our experience of monitoring and enforcing them, and our annual process of access and governance reporting. As noted in our most recent report (published in March 2018), there have been demonstrable improvements related to direct and indirect access to payment systems: there is more choice of access options for PSPs, the time it takes to join a payment system continues to reduce, and operators have improved the way they engage with prospective PSPs. The areas for improvement we identify largely relate to IAPs' handling of indirect access requests and the clarity of their communication with indirect access seekers. We also note in that report that operators have continued to engage with service-users on aspects of their existing service offerings, and have carried out research and surveys of particular groups of users to understand their needs better. However, we also question how well operators are taking account of service-users' needs, interests and views in their decision-making, and whether they could do more to promote a culture where operators are focused on and responsive to their service-users.
- 8.10** With these points in mind, we consider that the changes proposed in this consultation paper will make our existing Directions more effective, and help to deliver the underlying policy aims we adopted them for in 2015.
- 8.11** In one instance, with GD5, we are considering whether circumstances have changed in a way that means we can step back from a specific intervention, and whether that Direction should therefore be revoked.
- 8.12** In connection with GD3 (which we will revoke and replace with a Direction made under Regulation 125 of the PSRs 2017), and GD1 (where we are considering whether to adopt similar obligations on regulated persons under our PSRs 2017 and PCIFRs powers), we continue to have regard to what is necessary and appropriate for the purposes of our monitoring and enforcement activity as a competent authority for PSD2 and the IFR.
- 8.13** In PS15/1 we explained that we had considered whether it would be more appropriate for us to proceed under the Competition Act 1998 (CA98), rather than making SD1 as we are required to do under section 62 FBSRA. We explained our conclusion that CA98 was not the appropriate legal instrument in that case, and that SD1 enabled us to take action which was focused on and proportionate to the issues we had identified. We will respect this duty to consider the exercise of our CA98 powers as regards any proposed changes to SD1.

Intended benefits and anticipated costs

- 8.14** We expect that our proposed changes to our 2015 Directions would help to advance our statutory objectives and functions, and be of benefit for those who use, or are likely to use, the services provided by payment systems. In our opinion, it is not reasonably practicable to produce a quantitative estimate of the costs or benefits of the proposed changes given the nature of those costs and benefits.
- 8.15** The three Directions where we propose the most substantive revisions, and where we might decide to expand incrementally the requirements or extend the application of the existing Direction, are GDs 4 and 6 and SD1. In respect of all other Directions, we propose to revoke the measure, or to make relatively minor changes which are not expected to change the costs materially for regulated participants.

⁶² See paragraph 27 of CP14/1.

GDs 1, 2, 3 and 5

- 8.16** Our proposed changes around GD1 largely relate to possible enhancements to regulatory clarity and predictability. The same is true for our proposed approaches to the access provisions in GD2 and GD3, where we also propose refinements to the contents of compliance reports we require.
- 8.17** We want to review how effectively GD1 is operating, including how easy it is for regulated participants to understand what is expected of them. This should promote the benefits of GD1 without materially increasing its cost. Indeed, greater clarity and predictability should reduce rather than increase the cost this requirement places on industry. GD1 encourages regulated participants to cooperate proactively with us, meaning that they may have an early warning of any problems or issues. This has the benefit that they may be able to agree and implement remedial actions at an early stage. It should also help us to make more effective use of our resources by giving greater confidence that participants are transparent in their dealings with us. It should bring benefits to regulatory effectiveness by reducing wasted time for us in dealing with misleading information or in identifying compliance failures.
- 8.18** We propose to align the substantive access requirements of GD2 closely with the requirements in Regulation 103 of the PSRs 2017. This should bring benefits for:
- operators, by making it easier to understand and meet our expectations
 - PSPs seeking access, who should be able to understand the access requirements in different contexts more easily – whether under FSBRA or the PSRs 2017

As a result, these changes also make it more likely that we will become aware of potential breaches of access requirements, with a consistent compliance framework applying across all operators.

- 8.19** There may be some limited familiarisation and compliance assurance costs for operators checking that their access arrangements comply with any revised form of GD2. For access seekers, we do not expect there to be significant familiarisation costs. We are proposing to revise the access requirements of GD2 to align with a form of words that embodies very similar requirements and which is already well known in the payments industry (given Regulation 103 of the PSRs 2017 and its predecessor, Regulation 97 of the PSRs 2009).
- 8.20** There will be new card system operators caught by our Direction under the PSRs 2017 replacing the existing GD3. However, we have statutory duties to monitor and enforce Regulation 103 of the PSRs 2017, which applies to all relevant card systems. The arrangements we will put in place under a PSRs 2017 Direction will be proportionate and in line with our statutory responsibilities under the PSRs 2017.
- 8.21** With GD5, we are considering whether circumstances have changed in a way that means we can step back from intervening directly, and whether we should therefore revoke that Direction. Any costs that GD5 imposes on regulated participants will cease upon revocation (for example, internal compliance monitoring costs). There will be simplification benefits for operators in terms of the corporate governance arrangements they are expected to know and adhere to. We consider that there will be no material reduction in benefits from no longer having GD5 in place. As explained in paragraphs 4.32 to 4.36, we consider that wider corporate governance controls are likely to address our concerns adequately.

GDs 4 and 6

- 8.22** The kinds of changes we are considering for GD4 and GD6 should help ensure that service-users' interests and perspectives are reflected in operators' decision-making, and that service-users are more aware of the basis on which decisions affecting them are made.
- 8.23** This should have a positive impact on competition in payments markets; help foster innovation as operators consider new or improved services; and improve the quality of services used – with the benefits of these improvements being passed on to end-users. PSPs should have greater certainty regarding future developments in payment systems, meaning that they are more willing to make investments (including in innovative new services).
- 8.24** The changes we propose are incremental ones, building on existing GD4 and GD6 requirements and the arrangements operators already have in place for compliance. Operators must already ensure the appropriate representation of the interests of service-users in their decision-making processes and publish their board minutes.
- 8.25** Our proposed approach to revising GD4 and GD6 would include an over-arching requirement focused on the outcomes operators are expected to deliver; this would not need to impose any material additional cost. Operators may need to review their decision-making processes against these expected outcomes, and ensure that they have the right connections between each stage of their decision-making (see paragraph 4.14 on what we expect before, during and after decision-making). They could use existing communication channels, such as their websites, to publish information on their decision-making. Incremental additional costs associated with the use of such existing channels would be limited. Where operators consider that they already have adequate arrangements for engaging with service-users, and for feeding back the reasons for decisions affecting them, any costs resulting from our proposed changes should be minimal.
- 8.26** We note also that existing considerations in the CPSS-IOSCO Principles for Financial Market Infrastructures refer to engagement with stakeholders (see Principle 2, Key Consideration 7 of those Principles).
- 8.27** Greater engagement with service-users may lead to higher costs for the service-users concerned. We note that service-users are not obliged to participate in this engagement. Therefore, if they consider that these costs are not worth incurring, we would not expect them to participate.
- 8.28** We are revisiting our compliance reporting requirements for GD4 to ensure that the costs to operators of providing these reports are proportionate to the benefits. Our thinking on compliance reporting for GD4 is likely to develop as our review of the substantive requirements of GD4 and GD6 progresses.
- 8.29** Any decisions that we take regarding GD4 and GD6 will be informed by responses to this consultation. Currently, we consider that any costs arising from our proposed changes would be outweighed by the benefits of enhanced service-user engagement and transparency of decision-making.

SD1

- 8.30** We are considering whether the application of SD1 should be extended beyond the four sponsor banks it currently names. We consider that our analysis and conclusions in respect of the benefits and costs of SD1 set out in CP14/1 and PS15/1 support the extension of SD1 to new entrant IAPs, and that there are obvious merits in regulatory consistency across all relevant providers. However, we recognise that there may be specific issues relevant to the consideration of costs and benefits if SD1 were to apply to new(er) entrants as well as established incumbents. We will take account of stakeholders' views on these points as we decide whether, and if so how, to extend the application of SD1 to more sponsor banks.
- 8.31** We are giving thought to potential changes to improve the effectiveness of SD1, and to increase awareness of the information that the four sponsor banks are currently required to publish. This should increase transparency about the indirect access options available to PSP, and make it easier

for PSPs to compare different forms of access. We do not anticipate that requiring additional means or channels of publicising this information will lead to a significant increase in costs for regulated participants. They may be able to use other existing channels and, given that the information already exists on sponsor banks' websites, it should be straightforward to reproduce this information elsewhere.

- 8.32** There might be more significant cost implications in requiring sponsor banks to provide more kinds of information on how they will handle indirect access requests. We consider that this would reduce the time and cost for indirect access seekers to gather this information from different providers. Moreover, we expect that if information on how the bank will consider the request, who will take the decision and when a decision will be made is made available upfront, the application process is likely to be more predictable and easy to navigate for access seekers. Sponsor banks will, by publishing this information, face incentives to follow the stated process or to explain to the access seeker why they are taking a different approach. This will again help the access seeker assess its options and take an informed decision. This should increase the competitive pressure on sponsor banks, as indirect access seekers are better able to effectively evaluate the respective merits of different IAPs – which should lead to price and/or quality benefits in the indirect access market and knock-on benefits in downstream markets.
- 8.33** We expect that most of the information discussed above will already exist within each bank, although it may not be captured or described in a form that could be published or given to indirect access seekers. Bringing this information together, gathering any additional information that is required to describe the application process, and making it meaningful for prospective customers will impose some additional costs on sponsor banks, although we do not consider this to be significant. Similarly, updating existing websites to provide this further information would impose costs of minimal significance. (We discuss above whether information might also be publicised more widely, through other existing channels.)
- 8.34** Any decisions that we take regarding SD1 will be informed by responses to this consultation. Currently, we consider that any costs arising from our proposed changes to SD1 would be outweighed by the benefits of delivering good outcomes for indirect PSPs and having regulatory consistency in the market for indirect access services.

Question on intended benefits and anticipated costs

Question 15: If you have not covered it already in your response(s) to other consultation questions, do you have any comments on our current thinking on the intended benefits and anticipated costs of the proposed changes to our 2015 Directions?

Financial stability

- 8.35** We must have regard to the importance of maintaining the stability of, and confidence in, the UK financial system, and to the importance of payment systems in relation to the performance of functions by the Bank of England (the Bank) as a monetary authority.⁶³
- 8.36** During this review of our Directions, we have had and will continue to have regard to how our proposed changes could impact on the Bank's functions and objectives and the stability of, and confidence in, the UK financial system.
- 8.37** If we decide to take forward changes to any of our Directions, we will work closely with the Bank to ensure that there are no adverse impacts on their financial stability oversight of payment systems under Part 5 of the Banking Act 2009.

⁶³ See section 49(3)(a) and (b) of FSBRA. These duties apply when we are discharging our general functions relating to payment systems under FSBRA, which includes the giving of General Directions under section 54.

Regulatory principles

8.38 During this review of our Directions, we have had and will continue to have regard to our regulatory principles.⁶⁴ We set out these principles in the table below, along with a summary of how we have taken, and will continue to take, account of them.

Regulatory principle	How we have had/will have regard to it
<p>The need to use our resources in the most efficient and economic way</p>	<p>We are reviewing our 2015 Directions to ensure that they remain effective. The changes proposed in this consultation paper are targeted at matters where we think changes will yield the greatest benefit in light of our objectives. Some of the proposed changes are relatively small refinements to existing measures. Others are proposed because we think that the work involved in revisiting a Direction is justified by the potential benefits that will flow in terms of effectively delivering the underlying policy outcomes. Some of these changes are being considered to promote greater consistency and clarity in light of legislative changes.</p> <p>Compliance monitoring and enforcement activity imposes resource costs. Where we think that a Direction is no longer needed, for example because circumstances have changed allowing us to step back from intervening directly, we propose to revoke the relevant measures.</p>

⁶⁴ See sections 49(3)(c) and 53 of FSBRA. We must have regard to these principles when we are discharging our general functions relating to payment systems under FSBRA, which includes the giving of General Directions under section 54. Similar regulatory principles apply when we are giving General Directions under the PCIFRs (see Regulation 3(4) of those Regulations) and when we are determining the general policy and principles by reference to which we perform particular functions under the PSRs 2017 (see Regulations 124(2) and 106(3) of those Regulations).

Regulatory principle	How we have had/will have regard to it
<p>The principle of proportionality when exercising our general functions, meaning that any burden or restriction we impose should be proportionate to the benefits, in general terms, which are expected to result from the imposition of that burden or restriction</p>	<p>We are reviewing our 2015 Directions to ensure that they remain relevant, targeted and proportionate. This review is not aimed at the introduction of FSBRA Directions on new matters or increasing the regulatory burden on participants.</p> <p>The arrangements we will put in place under a PSRs 2017 Direction (replacing GD3 when it is revoked) will be proportionate and in line with our responsibilities to monitor and enforce compliance with Regulation 103 of the PSRs 2017.</p> <p>We recognise that, regarding SD1, we are proposing to possibly extend the existing requirements on sponsor banks, and potentially bring more banks within the scope of the Direction. In developing our position on SD1 we will have regard to our regulatory principles, including this one on proportionality.</p> <p>In revisiting our regulatory approach to GD4 and GD6, we are giving thought to whether to adopt an over-arching principle setting out the outcomes operators are expected to deliver. This need not be prescriptive about the specific means by which service-user engagement and transparent decision-making are to be achieved. We also consider that any costs arising from our proposed changes to GD4 and GD6 will be proportionate to the benefits which can be expected to result from them in terms of enhanced service-user engagement and transparency of decision-making.</p> <p>We will revoke a measure if we decide that it is no longer necessary, as might be the case with GD5.</p> <p>We are looking again at our compliance reporting requirements to ensure that the reporting burden on operators is proportionate to the benefits of the reports and the value we derive from them.</p>
<p>The desirability of sustainable growth in the UK economy in the medium or long term</p>	<p>Our proposals in this consultation paper are designed to reinforce the effectiveness of the package of Directions we adopted in 2015. We developed that package in recognition of the critical importance of payment systems to the functioning of the UK economy, and intended it to encourage competition and innovation contributing to the sustainable growth of the UK economy over the medium to long term.</p>
<p>The general principle that those who use services provided by payment systems should take responsibility for their decisions</p>	<p>During this review, we have had and will continue to have regard to the principle that the users of payment systems and the services they provide should take responsibility for their decisions. For instance, the changes proposed to SD1 are aimed at ensuring that indirect access seekers have the information they need to make an informed decision about their access options.</p>

Regulatory principle	How we have had/will have regard to it
<p>The responsibilities of the senior management of regulated participants to comply with the requirements we set</p>	<p>In considering the changes proposed in this consultation paper we have had regard to the responsibilities of senior management subject to the existing requirements and any amended requirements.</p> <p>In proposing changes to GD4 (see paragraph 4.24) and the revocation of GD5, we have had regard to the wider obligations, from a corporate governance perspective, of the members of an operator’s board.</p> <p>In revisiting our regulatory approach to GD4 and GD6, we are giving thought to whether to adopt an over-arching principle setting out the outcomes operators are expected to deliver. This need not be prescriptive about specific means and could leave room for the senior management of each operator to devise their own arrangements for achieving the goal of service-user engagement and transparent decision-making.</p> <p>We recognise the importance of senior management being able to clearly understand regulatory requirements. As such, we want to review how easy it is for regulated participants to fully understand what is expected of them under GD1.</p>
<p>A recognition that the businesses we regulate differ in nature and their objectives, and that this should, where appropriate, be reflected in how we exercise our functions</p>	<p>As noted above, particularly around GD4 and GD6, we will consider whether we might allow for differences in the characteristics of regulated participants and be flexible about the means used to comply with our requirements.</p> <p>However, some of our proposed changes, for example around the contents of compliance reports, or the kinds of information sponsor banks are required to publish, relate to Directions where consistency across participants is part of the underlying policy objectives.</p>
<p>The desirability, where appropriate, of us publishing or requiring information to be published to contribute to the advancement of our objectives</p>	<p>In considering changes to compliance reporting requirements, we have in mind the utility of the information we require for our annual access and governance reports (as well as our monitoring and enforcement activity).</p> <p>Three of the Directions under review require operators and sponsor banks to publish specific information relating to access to payment systems. Such publication enables participants to be better able to assess and compare offerings from different providers of direct and indirect access.</p> <p>With GD4 and GD6, a central issue is the importance of information enabling service-users to have a meaningful opportunity to feed into operators’ decision-making processes, and to understand the reasons for decisions that affect them.</p>

Regulatory principle	How we have had/will have regard to it
The principle that we should exercise our functions as transparently as possible	<p>Any changes we make to our Directions will be informed by responses to this consultation paper and the other engagement we have with stakeholders as part of this review process.</p> <p>We will publish a policy statement in due course, summarising responses to this consultation and our views. Any changes to the Directions will be subject to separate consultation, examining the proposed revised text of the Directions, later in 2018.</p> <p>We also intend to publish the non-confidential responses to this consultation.</p>

8.39 Throughout this review, we will also be mindful, of the five high-level ‘better regulation’ principles.⁶⁵ These principles are largely consistent with our own regulatory principles, as they require regulatory activities to be carried out in a way that is transparent, accountable, proportionate and consistent, and targeted only at cases where action is needed.⁶⁶

Consultation approach

8.40 We must consult on any proposed changes to GDs 1 to 6 unless we consider that the delay involved would be prejudicial to service-users.⁶⁷ We must take into account any representations made during the consultation period before we publish our final revised GDs.

8.41 We are not obliged to consult publicly in the same way on changes to SD1, although we may do so.⁶⁸ In this review we have decided to treat our six GDs and SD1 the same by consulting publicly on proposed changes in the same way.

8.42 We have sought to follow the consultation principles we set out in CP14/1⁶⁹ by being clear about who we are consulting, why, on which questions, and for how long.

8.43 We are seeking stakeholder feedback on our proposals at an early stage of our review process. This consultation sets out our current thinking on what changes to our Directions might be appropriate. A draft of any revised Directions will be accompanied by an explanation of the purpose of the proposed revisions, and how we believe they are compatible with our duties. We will also provide a cost benefit analysis or, if we believe that these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, a statement and explanation of our opinion. In this chapter we have set out our current thinking on these matters in respect of the changes proposed in this consultation paper. We will take account of responses to this consultation and other stakeholder feedback as part of this review, including for the purposes of considering the likely costs, benefits and compatibility with our duties of the proposed changes.

⁶⁵ See the Legislative and Regulatory Reform Act 2006 (LRA) principles around the exercise of regulatory functions at www.legislation.gov.uk/ukpga/2006/51/contents, and the 6 April 2014 Regulators’ Code at www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

⁶⁶ Section 21 of LRA.

⁶⁷ See section 104 of FSBRA on consultation in respect of generally applicable requirements. The same duty to consult applies in respect of General Directions we might introduce under the PCIFRs (see Regulation 15(2) of those Regulations) or the PSRs 2017 (see Regulation 136(2) of those Regulations).

⁶⁸ See paragraphs 4.2 to 4.5 of our Powers and Procedures Guidance (PPG), available at: www.psr.org.uk/powers-and-procedures-guidance

⁶⁹ See Annex 1 to Supporting Paper 1 of CP14/1, available at: www.psr.org.uk/psr-cp-141-supporting-paper-1-psr-and-uk-payments-industry

- 8.44** We are consulting on this paper for 12 weeks, to take account of the scope and range of the Directions under review. If we decide to take forward changes to one or more of GDs 1 to 6 or SD1 and consult on drafts of those revised Directions, that consultation will be shorter. This is because we will already have had meaningful engagement with stakeholders on the relevant issues.⁷⁰ However, we would not expect the consultation period for any draft revised Directions to be shorter than four weeks.
- 8.45** Our engagement with stakeholders throughout this review is not limited to written responses to our consultation paper(s). We intend to gather views through stakeholder meetings and workshop sessions. We will continue to engage with our Statutory Panel as part of this review process, as we have done to date.
- 8.46** We will work closely with the other authorities in the financial services sector – the Bank, the FCA and the PRA – as part of this review, in line with our statutory duty to coordinate⁷¹ and our Memorandum of Understanding.⁷² We must consult each of them before making any changes to our six General Directions.⁷³ We will also follow the same approach for our one Specific Direction under review.

Equality Impact Assessment

- 8.47** In this consultation paper, we consult on various proposals for changes to the seven Directions we adopted in 2015. In doing this, we are legally required to have due regard to the need to:
- eliminate unlawful discrimination
 - eliminate harassment and victimisation
 - advance equality of opportunity
 - foster good relations between people who share protected characteristics and those who do not
- 8.48** To give due regard to these considerations, we have carried out an Equality Impact Assessment to examine whether our proposed changes would have an adverse impact on equality, and to ensure that we represent the interests of all service-users equally.
- 8.49** Our focus is on ensuring the effectiveness of the existing package of measures adopted in 2015, those measures being intended to promote competition, innovation and the interests of service-users. As a result, we do not expect that our proposed changes will have a particular effect on one group of individuals over another, or be detrimental to any protected characteristic.
- 8.50** We have proposed the changes discussed in this consultation paper with the interests of the users of the services provided by payment systems in mind.
- 8.51** Having conducted an Equality Impact Assessment, we consider that our proposed changes do not give rise to discrimination and are of low impact to the equality agenda. However, we would welcome any comments respondents may have on any equality issues they believe could arise if our proposed changes were to be taken forward.

70 See paragraph 5.4 of our PPG.

71 See section 98 of FSBRA.

72 See www.psr.org.uk/mou-between-psr-and-other-financial-regulators

73 See section 104(2) of FSBRA.

Annex

Consultation questions

Access Directions

Question on GD2

Question 1: Do you agree with our proposed approach to GD2? If you disagree with our proposed approach, please give your reasons.

Question on GD3

Question 2: Do you agree with our proposed approach to GD3, including in respect of the four payment card systems not covered by GD3 today? If you disagree with our proposed approach, please give your reasons.

Questions on SD1

Question 3: Do you think that more needs to be done to increase awareness of the information sponsor banks are required to publish under SD1? If so, do you think that the PSR should take action, including by possibly revising SD1?

Question 4: Do you think that the scope of SD1 should be widened to include additional requirements on sponsor banks (such as those set out in paragraph 3.49)?

Question 5: Do you have any comments on how best we ensure that SD1 addresses all the right IAPs, at the right time? In particular, please comment on whether you think SD1, which currently addresses Barclays, HSBC, Lloyds and RBS, should be amended to address new entrant IAPs or replaced with a General Direction applying to a defined class of IAPs.

Governance Directions

Questions on GD4 and GD6

Question 6: Do you have any comments on our suggestion of consolidating GD4 and GD6 under an over-arching principle setting out the outcomes we expect operators to deliver? In particular, please comment on what impacts, if any, you would expect such a change to have. In your answer, you may want to comment on:

- whether we should avoid being prescriptive about the mechanisms that operators might put in place, or whether we should retain the requirements of GD4 and GD6 as specific but non-exhaustive requirements that sit under the over-arching principle
- whether Principle 2, Key Consideration 7 of the CPSS-IOSCO Principles for Financial Market Infrastructures appears to be an appropriate starting point for developing an over-arching principle for GD4/GD6 purposes

Question 7: Do you have any comments on how well GD6 promotes the aim of increasing operators' transparency in the interests of their service-users? Do you think GD6 could be revised or improved to better promote this aim?

Question 8: Are the existing requirements of GD4 and GD6 clear and easy to understand? (And, if you are a payment system operator, do you also find the existing requirements easy to apply?) If not, do you have any suggestions for improvements to GD4 and GD6?

Question on GD5

Question 9: Do you have any comments on our suggestion of revoking GD5?

Compliance reporting obligations

Questions on compliance reporting

Question 10: Do you have any comments on our suggestions for compliance reporting in respect of GD2 and GD3?

Question 11: Do you have any comments on our suggestions for compliance reporting in respect of GD4?

Participants' relationships with the PSR

Questions on GD1

Question 12: Do you find the existing requirements of GD1 to be clear and easy to understand? (And, if you are a participant in a FSBRA regulated payment system operator, do you also find the existing requirements easy to apply?) If not, do you have any suggestions for improvements to GD1? As far as possible, please base your answer on your own experiences of interpreting and applying GD1 to date.

Question 13: Do you have any comments on our suggestion of replicating the substantive requirements of GD1 under General Directions issued under our PCIFRs and PSRs 2017 powers?

Other issues relevant to this review

Question on other areas for improvement

Question 14: Do you have any other comments on how we might improve the content, text, structure or format of one or more of General Directions 1 to 6 and Specific Direction 1, including the guidance on these Directions? Please give reasons for your suggested changes.

Matters we must have regard to in this review

Question on intended benefits and anticipated costs

Question 15: If you have not covered it already in your response(s) to other consultation questions, do you have any comments on our current thinking on the intended benefits and anticipated costs of the proposed changes to our 2015 Directions?

