

Direct Debit Facilities Management: Switching Providers

Our decision on changes to the Direct Debit rules relating to the switching of Facilities Management providers

December 2017



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1 Overview

This is the Payment Systems Regulator's (PSR's) decision to make use of our powers under section 54 (Directions) of the Financial Services (Banking Reform) Act 2013 (FSBRA) to require the operator of the Bacs payment system Direct Debit (DD) scheme to develop a PSR-approved plan in relation to changes to the scheme rules relating to customers seeking to change their DD Facilities Management service provider and to direct it in relation to that change.

In this statement we respond to the submissions we received to our consultation paper CP17/1, *Direct Debit Facilities Management: switching providers* (August 2017), and we set out our policy decisions for the issues we consulted on.

Summary

- 1.1** The Direct Debit (DD) scheme is part of the Bacs payment system. We have decided to give a direction to the operator of the Bacs payment system to ensure that the DD scheme addresses effectively concerns about potential impediments to switching DD 'facilities management' (FM) service providers. The purpose of our direction is to ensure that FM service providers that wish to do so can use the Bacs 'bulk change process' to help clients who wish to switch to another provider.
- 1.2** This statement sets out our decisions on a number of provisional conclusions and proposals that we consulted on with industry stakeholders during a six week period in August – September 2017. Our paper CP17/1¹ described concerns that, under the current DD rules, the bulk change process can only proceed with the consent of the outgoing FM provider. This effectively allows outgoing FM providers to increase the costs and disruption associated with switching, should they seek to do so, by refusing to use the bulk change process to assist a switch. Our paper consulted on:
- our provisional conclusions and proposed solution to the concerns raised to us by one FM provider², about the ability of outgoing FM providers to increase the switching costs of, and disruption to, incoming FM providers, customers of FM providers ('FM clients') who want to change their provider, and the DD payers who are the underlying customers of FM clients
 - implementation options for our proposed solution

In CP17/1 we proposed to use our powers under section 55 (System rules) of the Financial Services (Banking Reform) Act 2013 (FSBRA) to place a specific requirement on the operator of the Direct Debit scheme, Bacs Payment Schemes Limited (BPSL)³, to change the DD rules to achieve a

1 CP17/1, *Direct Debit Facilities Management: Switching providers* (August 2017): www.psr.org.uk/psr-publications/consultations/CP-17-1-Direct-Debit-Facilities-Management-Switching

2 The concerns were raised by GoCardless Ltd in its letter to us dated 30 March 2017. This letter was published as Annex 3 to our consultation paper CP17/1: www.psr.org.uk/sites/default/files/media/PDF/PSR-CP17-1-DD-Annex-3.pdf

3 For the avoidance of doubt, references to BPSL in this document apply equally to its intended successor organisation as Bacs operator, which is currently using the working title of 'New Payment System Operator (NPSO)'.

specified purpose. The purpose of the rule change would be to require existing FM providers, acting in the course of business, to use the bulk change process (to assist a customer wishing to change its FM provider) unless certain exceptions applied.

- 1.3** During our consultation BPSL advised us it was fully committed to supporting a vibrant FM sector for those customers who wish to utilise it. BPSL said it was already in contact with FM providers regarding an alternative approach to the one we had proposed, as a means of addressing the switching concerns in what it considers to be a more effective way. The BPSL alternative approach is based on it:
- a. amending the definition of 'FM provider' in the Direct Debit rules
 - b. introducing a rule requiring commercial FM providers to become accredited by BPSL under a new accreditation scheme
 - c. including within the new accreditation scheme a requirement for FM providers to support customers who want to change provider, by using the Bacs bulk change process unless certain exemptions apply
- 1.4** We note that BPSL has already completed parts 'a' and 'b', which are enablers for the introduction of part 'c', and that these changes come into effect on 1 January 2018. Specifically, in November 2017, it wrote to FM providers stating that:
- it will make changes to the Bacs Service User's Guide and Rules to the Direct Debit Scheme (SUGR), to change the definition of 'commercial Facilities Management'
 - commercial FM providers are to be required to be accredited by BPSL as a condition of providing FM services

- 1.5** Given that BPSL has already taken steps to change the Direct Debit rules we have decided not to use our rules change powers under section 55 of FSBRA, but instead to use our section 54 powers to give BPSL specific directions. In our directions we will require BPSL to set out its plans for FM provider accreditation to us in detail, and provide a mechanism for the PSR to approve those plans. The PSR will then be in a position to monitor those plans and ensure they are progressed in an appropriate timescale. We discuss this further in paragraphs 1.12 to 1.14.

Overview of responses to our consultation

- 1.6** We received a total of twelve responses to our consultation paper CP17/1 (see Annex 1 for a list of the respondents). Seven came from FM providers, three from sponsor banks, one from an FM client and one from the Direct Debit operator, BPSL.
- 1.7** The majority of responses supported our first provisional conclusion that the current ability of existing FM providers to affect the switching costs of other providers and clients is not appropriate. One FM provider did not agree with our first provisional conclusion, saying that it had not experienced any issues with the current process.
- 1.8** Similarly, the majority of responses also supported our second provisional conclusion that a voluntary approach is unlikely to address concerns, and that a rule change to make use of the Bacs bulk change process mandatory (provided certain conditions are met) is a proportionate and effective approach. There were no objections to the principle of seeking to address concerns by way of a rule change.
- 1.9** Our third provisional conclusion was that we should specifically require BPSL to change the DD rules to require existing FM providers to use the bulk change process unless certain exceptions apply. Again this conclusion was supported by the majority of respondents. Only one FM provider (the same one we refer to in paragraph 1.7) did not agree; and one sponsor bank was cautious, suggesting it may be difficult to design and operate a relevant rule change.

- 1.10** With regard to implementation and effectiveness, there were differing views and suggestions. The main themes that arose were around implementation timing, stipulation of service levels, rules enforcement, and the challenges of implementing an accreditation-based approach.

Overview of our decision

- 1.11** Following our consultation and taking into account the submissions we received and the relevant considerations, we confirm our three provisional conclusions as our final conclusions. We welcome BPSL's initiatives and note the alternative approach it has been pursuing to address the problems we consulted on (see paragraph 1.3). To support this we have therefore decided to exercise our powers under section 54 (Directions) of FSBRA to give a direction to the operator of the Bacs payment system. We have decided not to use our section 55 (System rules) powers given that BPSL has already taken steps to make a relevant rule change with effect from 1 January 2018.
- 1.12** We are of the view that in using our powers in this way we will have regulatory oversight of the development and implementation of BPSL's alternative approach. We note that BPSL has had previous opportunities to address the concerns⁴, so by using our powers at this time we will now provide certainty to stakeholders that the concerns will be remedied appropriately, and will also assist BPSL in obtaining the support it needs in order to implement measures in a timely and effective manner.
- 1.13** Our direction will require the operator:
- to ensure that commercial FM service providers that wish to do so can use the Bacs bulk change process to help clients who wish to switch to/from another provider
 - to submit for our approval a plan and timetable to achieve that outcome through the alternative approach
- 1.14** With regard to implementation, we have decided not to prescribe the detailed approach to be used by the Direct Debit operator. Therefore the operator of the DD scheme will be free to implement an alternative approach provided it can clearly demonstrate to us that it will effectively address the concerns in an acceptable timeframe. Nevertheless, the detailed design of the new accreditation scheme will be crucial to ensuring that the concerns are effectively addressed. At the time of writing we do not consider that the information provided to us regarding the accreditation scheme gives us sufficient certainty to assure us that it will effectively address the concerns in a timely manner.
- 1.15** We discuss our decision and reasoning in more detail in Chapter 4.

⁴ We originally wrote to BPSL on 26 July 2016 to ask it to consider an appropriate solution to the concerns raised by GoCardless Ltd.

2 Introduction

Background

- 2.1** Direct Debit (DD) is one of the most widely used and recognised payment methods in the UK. In 2016 organisations collected over 4 billion individual payments using DD, an increase of 4.9% on the previous year. DD is widely used by organisations such as companies, charities, local councils and government departments, to collect money from their paying customers or donors. Almost 90% of UK adults have at least one DD arrangement in place.
- 2.2** Any organisation that wants to use DD to collect money from payers must be approved, or 'sponsored', as a Bacs service user. In the rules relating to DD, these organisations are specifically defined as 'service users' (see box below). The sponsor must be a payment service provider (PSP) who is a Bacs member, which currently only includes banks and building societies.⁵
- 2.3** Some organisations do not want to be a Bacs service user, or are unable to be. This could be for a variety of reasons – for example, they may be small or newly formed entities, without a sufficient trading track record or financial standing to get a sponsor.
- 2.4** These organisations may instead be able to use a DD Facilities Management service provider (an FM provider). This can enable the organisation as an FM client to offer DD as a payment option to its own paying customers. The FM provider will be responsible for some or all of the following:
- Corresponding with the payer.
 - Receiving completed Direct Debit Instructions (DDIs) and forwarding details to the payer's bank or building society (the paying bank).
 - Complying with the Direct Debit rules including handling any refund requests.
 - Management of returned, amended and cancelled DDIs.
 - Management of files and collection of Direct Debits on the due dates, including reconciliation of processed, rejected and returned items.

The terms 'service user' and 'service-user'

In the rules relating to the DD scheme, the term 'service user' has a narrower definition than the more general 'service-user' term in FSBRA. In the Bacs rules relating to the DD scheme, the term service user is 'A company, group of companies, charity etc. that is sponsored to use one or more Bacs services. A service user may also be referred to as a payee. (See also Originator)'.

In FSBRA, service-users are those who use, or are likely to use, services provided by payment systems. The FSBRA definition of service-users therefore includes both Bacs 'service users' and FM clients, for example.

⁵ Only PSPs that are members of BPSL are able to sponsor service users. PSPs who are non-members may enter into an arrangement with a member, allowing them to introduce customers to that member for sponsoring purposes.

- 2.5 The FM provider collects funds from the bank accounts of its FM client's customers (payers) using DD. After the FM provider has received the funds, it forwards the proceeds (less any agreed deductions) to its FM client. An overview of this process was contained in CP17/1 (Annex 1, Part 2).

Switching to an alternative Facilities Management service provider

- 2.6 An FM client (typically a small or medium enterprise) will have a customer base, many of whom may already have provided a DDI⁶ and are paying by DD. Each DDI is actually made to the FM provider.
- 2.7 If an FM client wishes to switch to an alternative FM provider, it effectively has two options⁷:
- a. It can contact all of its customers (payers) and ask each one to provide a new DDI in favour of the new FM provider.
 - b. It can ask the existing (outgoing) FM provider and the new FM provider to cooperate to transfer existing DDIs to the new FM provider. This transfer would be carried out using the Bacs **bulk change process**, which includes a step that notifies paying banks that the DDIs and responsibilities for DDs have switched to the new FM provider.
- 2.8 FM clients tend to prefer using option 'b'. This is the approach recommended by both BPSL and sponsor banks as, according to BPSL, the alternative (option 'a') of contacting each payer and asking them to provide a brand new DDI is slow, costly and likely to be the most disruptive to stakeholders'.⁸
- 2.9 We received information suggesting the current Direct Debit rules may be deficient, in that they allow existing FM providers to raise significant cost barriers to FM clients who want to switch to an alternative FM provider. This is very likely to harm:
- competition in the markets for services provided by payment systems
 - the interests of those who use, or are likely to use, services provided by payment systems
- We were asked to consider whether the Direct Debit rules on Facilities Management (FM) services should be changed, specifically concerning the options and processes for FM clients who want to switch to a new FM provider.
- 2.10 The specific concern raised to us was that, under the current DD rules, the bulk change process can only proceed with the consent of the outgoing FM provider. This effectively allows an outgoing FM provider the ability to increase the costs and disruption associated with switching by refusing to use the bulk change process to assist a switch.
- 2.11 The information we received, together with other evidence we collected (including our own online survey of FM providers and the evidence gathered by BPSL's own consultation on this subject) prompted us to publish our consultation CP17/1 in August 2017.

⁶ Direct Debit Instructions are also commonly referred to as Direct Debit 'mandates'.

⁷ *The Little Bacs Guide to Switching Facilities Management Provider*, pages 4 to 5:
https://www.bacs.co.uk/documentlibrary/little_bacs_guide_to_switching_fm_providers.pdf

⁸ Ibid.

2.12 In our consultation CP17/1, we consulted on potential solutions to the concerns raised and the implementation options for our proposed solution. The questions put in the consultation are set out in Annex 2. In particular, we reached three provisional conclusions:

- a. The current ability of existing FM providers to affect the switching costs of other providers and clients is not appropriate (we refer to this as our **first provisional conclusion**).
- b. A voluntary approach is unlikely to address the concerns – so a rule change to make the bulk change process compulsory for FM providers (when an FM client wants to switch), provided that certain conditions are met, appears to be a proportionate and effective approach to address the concerns (we refer to this as our **second provisional conclusion**).
- c. A sensible approach is for the PSR to specifically require BPSL to change the DD rules to achieve a specified purpose. This would be to require existing FM providers, acting in the course of business, to use the bulk change process unless certain exceptions apply (we refer to this as our **third provisional conclusion**).

3

Summary of submissions and our response

3.1 In this section we:

- summarise the main points raised by respondents
- clarify a number of issues that were raised during the consultation

3.2 Stakeholders were generally supportive of our provisional conclusions. A considerable number of respondents acknowledged that at the moment an FM client's incumbent FM provider may be able to raise significant barriers if that FM client wants to switch to an alternative FM provider. Views were mixed regarding the implementation approach for a rule change.

3.3 In the remainder of this Chapter we summarise the responses that we have received to each of the questions in CP17/1.

Question 1: What objective justifications would an existing FM provider have to refuse to use the Bacs bulk change process to switch some or all its business to an alternative FM provider?

3.4 Seven of the nine respondents to this question said that they saw no objective justifications for refusing to use the bulk change process, other than the potential need for a client to serve out or resolve any contractual notice period or obligations it had agreed with its existing provider.⁹

3.5 One FM provider mentioned some additional reasons why an existing FM provider might refuse the bulk change process request, including unsettled DD indemnity claims, suspicion the FM client business may be fraudulent, or that the FM client had entered administration or liquidation. Two FM providers also mentioned that they should be able to recover their costs associated with supporting the bulk change process.

3.6 One sponsor bank said it did not consider that contractual reasons, such as non-payment of fees or serving of a notice period, are a fully justifiable reason to prevent the free movement of FM clients to other providers. It expected that contracts between FM providers and their FM clients would be likely to contain other avenues and remedies for them to pursue their rights.

⁹ Some respondents made clear they saw no objective justifications on the assumption that the incoming FM provider and sponsor bank were willing to take on the new business and complete the bulk change deed to take on the liability of pre-existing Direct Debit collections.

- 3.7** One sponsor bank detailed some potential technical circumstances where use of the bulk change process may not be possible or economical:
- Where the DDI is used for multiple underlying products/services provided by the FM client to a payer, and where not all of these products/services are being moved to the new FM provider. In this instance a new DDI would be required.
 - Where the Bacs Service User Number (SUN) used for DD collections is not enabled for using the Automated Direct Debit Instruction Service (AUDDIS), and therefore cannot participate in a bulk change.
 - Where the volume of DDIs for the FM client would make a bulk change uneconomical, or where obtaining new DDIs from payers would involve considerably less effort.

- 3.8** We expect the Direct Debit operator to take these views into account when considering what might constitute reasonable exceptions from a requirement to use the bulk change process. As we set out in our consultation paper CP17/1 our view is that commercial disputes should be resolved contractually between the FM client and its current FM provider, and should not hold up a switching process for future service provision.

Question 2: Do you agree with our first provisional conclusion? What are the reasons for your answer?

- 3.9** The majority of the respondents agreed with our first provisional conclusion that the current ability of existing FM providers to affect the switching costs of other providers and clients is not appropriate.
- 3.10** We received conflicting opinions on the costs associated with using the bulk change process. One provider noted that there is a cost involved in using the bulk change process, so it should be chargeable like other Bacs services. A different respondent advocated that there is no legitimate reason for any FM provider to make an additional charge to effect a switch, as the costs involved are limited.
- 3.11** One submission added the following comments on this question:
- A mandatory timescale should be put in place that favours the FM client's interests.
 - FM providers must confirm that all data captured and held as part of their FM responsibilities must be transferred to the FM client at their request.
 - A customer's DDI should not be allowed to be made to a specific FM provider where their related purchase/subscription contract is with the FM client.
- 3.12** One respondent highlighted the fact that users (i.e. FM clients) are prevented from accessing potentially more effective services, so they may not receive value for money for a given service. The current situation also has an adverse effect on innovation as providers who can affect switching costs are not incentivised to improve their offering to maintain clients, and newer providers who may wish to enter the market are faced with barriers to attracting clients.
- 3.13** A different respondent considered that it would be fair for any disputes to be resolved contractually between the FM client and its current FM provider, but these should not be allowed to hold up a switching process for future service provision.
- 3.14** A sponsor bank cautioned in their response that any proposed Bacs rule change or procedural changes must not be disadvantageous to the wider Bacs service user community.
- 3.15** Some respondents said they are not aware of a broad concern with FM providers and any future solution should therefore be proportionate to the issues and concerns.

- 3.16** Finally, one stakeholder disagreed with our conclusion on the grounds that – in its experience – the bulk change process and Bacs rules operate correctly.
- 3.17** Having considered the responses and high level of support we are confirming our first provisional conclusion. We expect the DD operator to consider matters such as processing timescales, service levels and minimum data standards as part of its future development plans for the new accreditation scheme for FM providers.

Question 3: Do you agree with our second provisional conclusion? What are the reasons for your answer?

- 3.18** The majority of the respondents agreed with our second provisional conclusion; that in light of the potential effect on competition, innovation and service-users (as defined in our FSBRA objectives – see page 4), a voluntary approach is unlikely to address our concerns. Instead a rule change would be a more proportionate and effective approach to address the concerns.
- 3.19** Only one FM provider disagreed with our conclusion, as it considered that the current process works well. It also objected to making a change that it considered will not have any operational effect.
- 3.20** Stakeholders noted that a voluntary approach would not be significantly different to the existing arrangements.
- 3.21** One FM provider noted that for the rule to be effective, additional requirements should be placed for DDIs to be capable of using AUDDIS.
- 3.22** Two sponsor banks noted that a BPSL rule will need to be drafted and implemented very carefully. The introduction of a rule change has the potential of distorting BPSL's relationship with the FM market and other sectors. It is essential that any unintended consequences are avoided, both for the FM sector and more widely. There also needs to be clarity about how compliance will be enforced.
- 3.23** One sponsor bank argued that while a voluntary approach is unlikely to address our concerns and a rule change may be more appropriate, alternatives to bulk change should be allowable (such as obtaining new mandates). The same respondent highlighted that our proposals would at times put BPSL and sponsor banks in a difficult position. This is because a rule that would potentially apply only to some FM providers but with exceptions for others would be difficult to enforce. The stakeholder said that such an approach would require the sponsor or the scheme operator to judge whether the rule or exception applied in any case of dispute.
- 3.24** We note that sponsoring banks are obliged to adhere to the requirements of the Bacs Operational Code of Conduct (which are enforceable by a formal BPSL governance process). BPSL has advised us that a new section has been drafted for insertion into the 2018 Code of Conduct, specifically to require sponsoring banks to provide effective supervision of FM providers.
- 3.25** In reflection of the comments and support shown by the majority of respondents we are confirming our second provisional conclusion. We expect the DD operator to give consideration to matters regarding use of AUDDIS. We agree that alternatives to using the bulk change process (such as obtaining new DDIs) should remain available to FM clients should they prefer to use them.

Question 4: In particular, do you think that imposition of a rule to achieve such a purpose would unfairly reallocate liability in any way (given the bulk change deed)?

- 3.26** The majority of stakeholders did not consider that the imposition of such a rule would unfairly reallocate liability in any way. One FM provider asked, however, what would happen if a sponsor bank refuses to agree to a request to use the bulk change process (to support the transfer of new FM client business).

- 3.27** Other submissions noted that the bulk change deed would pass the liability to the incoming provider and take it away from the existing provider. Therefore, unless the new provider and its sponsor bank are uncomfortable with that level of liability, the rule change would favour the outgoing provider in terms of liability transfer and so would not be unfair.
- 3.28** Using the bulk change process means that the new FM provider becomes liable for any indemnity claims relating to historic DD collections by the old FM provider. Sponsor banks did not believe that a rule change would result in an unfair reallocation of liability. However, one bank pointed out that this would not hold true if the new FM provider was obliged to use the bulk change process for every FM client that wanted to switch. The new FM provider would need to consider the benefits of the bulk change process against the cost of inheriting the liability for all DDs previously submitted. Two sponsor banks suggested it is important to maintain the current procedures for the sponsor bank of the new FM provider to approve the bulk change, as the sponsor would become liable for indemnity claims if the new FM provider was in default.
- 3.29** We note that, when the bulk change process is used, the sponsor bank of the new FM provider underwrites the new FM provider's liability in respect of all existing Direct Debits. We see no reason presently to require the incoming FM provider's sponsor bank to agree the bulk change deed (i.e. the sponsor bank would retain discretion in this matter – see paragraph 3.28). However, we would expect their commercial interests to be broadly aligned with the incoming FM provider.

Question 5: Do you agree with our third provisional conclusion, and that the specified purpose of the proposed rule is appropriate? Please give your reasons.

- 3.30** The majority of the respondents agreed with our third provisional conclusion that it is sensible for us to specifically require BPSL to change the DD rules to achieve a specified purpose. The purpose of that rule would be to require existing FM providers, acting in the course of business, to use the bulk change process unless certain exceptions apply. Two FM providers disagreed with the imposition of this rule, claiming that the market currently works well.
- 3.31** We are confirming our third provisional conclusion, which was also widely supported by respondents. However we note that BPSL is already introducing a rule requiring commercial FM providers to become accredited under a new accreditation scheme. The detailed design of the new accreditation scheme will be crucial to ensuring that the concerns are effectively addressed. We deal with how we will ensure this in Chapter 4.

Question 6: What considerations should BPSL and the PSR take into account in the formulation of the rule change?

- 3.32** This is a summarised list of considerations that respondents submitted:
- The length and content of underlying contracts (between FM providers and FM clients).
 - Whether the FM client owes funds to the current FM provider.
 - The rule should not allow existing providers to use any loopholes to prevent customers from switching.
 - The ability of DDIs to be transferred via bulk change deed (for example, this is not possible with non-AUDDIS DDIs).
 - The date of the transfer should be agreed.
 - Implementation timeframes.
 - A requirement that the incumbent provider should provide the data in a secure and appropriate format in sufficient time for the switch to occur.

- The old FM provider remains 'at risk' for indemnity claims raised against Direct Debits collected by the old FM provider should the new FM provider default.
- Provision in the rule that if the FM client wishes, and is able, to become a Bacs service user in their own right, then the bulk change process can be utilised to move DDIs from the FM provider to the FM client once it becomes a Bacs service user.
- If there is considered to be more than one 'class' of FM provider then additional definitions may be needed to identify each 'class' separately (for example, commercial and non-commercial FM providers).
- There may also be additional operational/technical aspects to consider – such as how FM providers can be identified in the Bacs system (particularly if a rule were to apply to 'commercial' providers only); or how a new provider/sponsor bank can assess an FM client's indemnity claim performance before agreeing the transfer (as this acts as a guide to historic liability levels).

3.33 We expect the DD operator to take the above into account as it develops the detailed requirements of its accreditation scheme.

Question 7: Do you agree that any new rule should be applicable only to FM providers who are PSPs providing commercial FM services?

3.34 The majority of stakeholders agreed that any new rule should only apply to FM providers that are PSPs providing commercial services. Some stakeholders did not comment on this issue but none of them disagreed. Some mentioned the need for a clear definition and classification of commercial FM providers, to ensure that any potential competition issues are addressed. One suggested that the rule would be more effective if it was categorised based on the FM arrangement – for example, where the FM providers (incoming and outgoing) and the FM client are not part of the same legal entity or same organisation.

3.35 One stakeholder cautioned us to not define these PSPs too narrowly as it believed that not all Bacs bureaux or FM providers are authorised payments institutions. It also suggested we should include companies that provide bundled services, which might not strictly fall within the definition of 'commercial FM services'.

3.36 We agree that new requirements on FM providers regarding use of the bulk change process should only apply to commercial FM providers. We note that the Financial Conduct Authority's (FCA's) authorisation requirements depend on an individual PSP's activities, and so are determined on a case-by-case basis. PSPs should seek their own appropriate guidance based on their actual and intended activities.

Question 8: Do you agree with the proposed conditions a) to d) in paragraph 3.18 [of CP17/1] regarding when a new rule should apply?

3.37 All the submissions we received agreed with our proposed conditions of when the new rule should apply. One respondent took the view that the conditions already apply, so the rule would have no significant impact. The proposed conditions discussed in CP17/1 were:

- a. The FM client and its proposed new FM provider agree that use of the bulk change process is the preferred method to execute a transfer of some or all relevant DDIs.
- b. The new FM provider's sponsor bank agrees to support the request.
- c. Both the outgoing and new FM providers are registered in the Bacs system as AUDDIS users.
- d. No exceptions apply.

- 3.38** One sponsor bank noted that for the rule to work, both FM providers need to be able to use AUDDIS. It was suggested that BPSL could make the use of AUDDIS mandatory for FM providers.
- 3.39** One FM provider raised the question of what would happen if the FM client and new FM provider do not both agree that the bulk change process is the preferred option.
- 3.40** We expect the DD operator to have regard to the above proposed conditions when developing its detailed accreditation scheme requirements, including giving consideration to the suggestion of making AUDDIS mandatory for FM providers. Regarding 3.39, the bulk change process has implications for both the FM client and the new FM provider; therefore, our view is that the bulk change process should not be required in this scenario. Only when both of those parties agree to use the bulk change process does it become mandatory for the incumbent FM provider to support its use.

Question 9: Are there any other conditions you think should also apply? Please explain your justification for these.

- 3.41** Some FM providers provided suggestions for further conditions that should apply for the application of a new rule. A list of the suggested conditions and their justification (if provided) is below:
- Two FM providers suggested the FM client should have to fulfil any contractual obligations, including term, before it could request a bulk change process to switch to another provider (see also paragraph 3.44).
 - Two FM providers also suggested a need for clear timeframes and service level agreements. Currently, outgoing FM providers may delay signing and processing the bulk change deed and the actual bulk change process, which in turn has a negative impact on the switching client.
- 3.42** One sponsor bank suggested that BPSL should consider the impact of any FM provider operating as an 'indirect' service user (i.e. submitting DDs and/or DDIs via a Bacs bureau service provider). It suggested that BPSL should determine how many FM providers submit DDs directly and use AUDDIS, and how many submit either directly or indirectly without using AUDDIS. The stakeholder felt this would help in determining the effectiveness of the proposed rule.
- 3.43** We expect the DD operator to take the above into account as it develops the detailed requirements of its accreditation scheme.

Question 10: Do you consider each or any of the suggested exceptions discussed in paragraphs 3.19 and 3.20 [of CP17/1] to be valid grounds for an outgoing FM provider to withhold its consent to a bulk change process request to support one of its FM clients switching its business to another FM provider? Please provide justification for your views.

- 3.44** In general stakeholders did not agree that the potential exceptions discussed in paragraphs 3.19 to 3.20 of CP17/1 provide valid grounds for an outgoing FM provider to withhold its consent to a bulk change process request. Other potential exceptions suggested were:
- a. The outgoing FM provider having a contingent liability to its sponsor bank.
 - b. Where the DDIs to be transferred have been obtained for multiple purposes. For instance, where the FM provider is collecting money from a payer under a single DDI in relation to more than one product or service, and only one of the products or services is the subject of the intended switch.
 - c. Where there is an ongoing commercial dispute, payment arrears or other service-related issues between the FM client and its current FM provider.

- 3.45** One sponsor bank considered that (b) is a valid ground for an outgoing FM provider to withhold consent to a bulk change process request. The stakeholder suggested that these type of arrangements already exist (where an FM provider is collecting money from a payer under a single DDI in relation to more than one product or service), and it would be very challenging to separate the collection purposes under a single Bacs SUN. However it also said this practice should perhaps be barred in the rules for future DD set-ups.
- 3.46** A number of other stakeholders commented on (c) and agreed that commercial issues should be managed directly between FM providers and their clients. One sponsor bank also said that consideration should be given to ensure that scheme does not allow an FM client to switch too frequently between FM providers, leaving unresolved contractual issues at each switch.
- 3.47** Finally, one FM provider suggested that all the suggested exceptions provide valid grounds for the refusal of the use of the bulk change process. The stakeholder considered that clients may have benefited from lower charges or lower set up costs in exchange for setting a minimum contract or notice period. If the new rule affects these contracts then FM providers would be unable to offer these deals.
- 3.48** We expect the DD operator to consider what might be justifiable exceptions as it develops the detailed requirements of its accreditation scheme. However we expect these to be kept to a minimum so as to remove potential barriers to switching.

Question 11: Are there any other exceptions that should be applied to the rule? Please provide justification for your views.

- 3.49** The main exception highlighted by respondents related to the commercial contracts between FM providers and their customers. For example, if the two parties have agreed at the beginning of their contract that they will not use the bulk change process if the client wants to switch, then this rule should not apply.
- 3.50** Seven out of the eleven responses said that they did not think that there were any exceptions that should be applied to the rule. Three did not provide any comments on the question.
- 3.51** One sponsor bank suggested three additional exceptions:
- Evidence of reasonably suspected fraudulent activity.
 - The FM client being subject to credit action such as an application for administration.
 - A significant change to the product offered by the FM client that might result in a significant increase in DD indemnity claims.

Question 12: Do you have any comments or suggestions regarding the relative benefits and disadvantages regarding the two options: 'a' (no change) and 'b' (new Bacs participant category)? Which do you think is likely to be most effective, and why?

- 3.52** Responses to this question have not provided a clear preference on the implementation approach options. In general, sponsor banks agreed that an accreditation scheme would be the most effective way of remedying the situation. Two FM providers considered that the 'no change' option is the most appropriate. Three FM providers supported a rule change instead of an accreditation scheme. One FM provider did not comment. One FM provider supported option (b).
- 3.53** One FM provider suggested that the best option is neither option (a) nor option (b). Instead, a rule change would be the most appropriate action to ensure that all participants know what to expect.
- 3.54** Another FM provider highlighted the difficulty in comparing the two options without full proposals. However, it also noted that it felt comfortable with its sponsor bank enforcing the scheme rules so far.

- 3.55** A different FM provider considered that there are merits to creating a new Bacs accreditation scheme for the provision of FM services. It noted that, with either the current arrangements or a new accreditation scheme, BPSL will need to monitor the bulk change process and the new rule(s) governing it. BPSL already operates a similar process for compliance with its rules on documentation, actioning reports and other areas, as described in Chapter 8 of the current SUGR. Chapter 9 of the SUGR details that a service user can be terminated from the scheme, which would be the ultimate deterrent for an organisation which has built its business on being a FM provider.
- 3.56** The respondent considered that the existing accreditation process for Bacs bureaux is quite onerous, on a three yearly cycle. It establishes and then checks on processes and procedures, and would in the case of FM providers perhaps establish a baseline of standards, however according to this FM provider accreditation on its own could not ensure that issues with bulk transfers would not still occur.
- 3.57** The stakeholder considered that there is no need for a separate accreditation scheme, as the SUGR already provides sufficient ability to remove a service user from the scheme if the BPSL board reasonably believes that:
- Direct Debit operations are being carried out in a manner which constitutes an abuse of the scheme or affects the integrity of the scheme or are being carried out without due regard to the interest of payers
 - there is evidence that rules and procedures detailed in the SUGR are being deliberately ignored
- 3.58** In general, sponsor banks were in agreement that an alternative approach of adopting a new accreditation scheme for FM providers (which BPSL had already started consulting stakeholders on at the time of our CP17/1) would be the most effective way of remedying the situation.
- 3.59** One sponsor bank considered that option (b) is a more effective approach to implementing the rule change. It highlighted the similarities between the proposed option (b) process and the current accreditation process for Commercial Bacs Bureaux. It noted that, currently frequent inspections of the Bacs Bureaux ensure compliance with the Bacs scheme rules, and any future rule amendments, ensure all Bureaux are meeting the same standards and ensures customer payments are processed correctly and securely. This is an existing, efficient process that could be adopted and amended slightly for FM providers. The same sponsor bank commented on the low number of FM providers in existence today.
- 3.60** Another sponsor bank commented on the advantages of an accreditation scheme and that they did not consider that this approach would act as a barrier to there being a contractual relationship between BPSL and FM providers.
- 3.61** A third sponsor bank also agreed that option (b) is preferable. It considered that an accreditation scheme would provide more scope for an effective solution.
- 3.62** We note that BPSL has embarked on developing a new accreditation scheme which will involve the creation of a direct contractual link between a commercial FM provider and the DD operator.

Question 13: Do you have any comments or suggestions regarding the best time to implement any changes?

- 3.63** In general, responses to this question seem to agree that the rule change should be implemented sooner rather than later. Two respondents suggested that the rule should take effect in January 2018, in line with the annual review of SUGR. Three other respondents suggested that the rule change should take place as soon as possible. Three stakeholders did not comment on the question. Only one suggested that the implementation should take time and be subject to effective prioritisation and sequencing in line with the high level of regulatory and mandatory payment related change in the industry (for example, the creation and work of the New Payment Systems Operator, the Payments Strategy Forum, and UK Finance). The respondent suggested that BPSL should consider this change as a long term overhaul and potentially look to implement it as part of the February 2019 Bacs rule changes.

4 Our decision

- 4.1** We have decided to make use of our powers under section 54 of FSBRA to require the operator of the Bacs payment system Direct Debit (DD) scheme to develop a PSR-approved plan to address the concerns we set out in our consultation paper CP17/1. We will also use our powers to direct it in relation to the changes.
- 4.2** Following our consultation and taking into account the submissions we received (and the relevant considerations), we conclude that:
- a. The current ability of existing FM providers to affect the switching costs of other providers and clients is not appropriate.
 - b. A voluntary approach is unlikely to address the concerns – so a rule change to make the bulk change process compulsory for FM providers (when an FM client wants to switch), provided that certain conditions are met, appears to be a proportionate and effective approach to address the concerns.
 - c. A sensible approach is for the PSR to specifically require BPSL to change the DD rules to achieve a specified purpose. This would be to require existing FM providers, acting in the course of business, to use the bulk change process unless certain exceptions apply.
- 4.3** With regard to implementation approach options we note that BPSL's favoured approach, of introducing an accreditation scheme for commercial FM providers, also creates a direct contractual linkage between the operator and the FM providers, in a similar way as the creation of a new participant class may have done. This will enable the operator to take direct action if an FM provider fails to comply with accreditation requirements, rather than rely on the FM provider's relevant sponsor bank being able and willing to enforce requirements.
- 4.4** In light of our consultation and a number of discussions with us, BPSL is making changes to the Bacs scheme rules. It will add a new rule into the Service User's Guide and Rules to the Direct Debit scheme with effect from 1 January 2018. This rule will require commercial FM providers to become accredited using a new, purposely created accreditation scheme, which will draw on knowledge and materials relating to BPSL's existing accreditation schemes. These include:
- a. Bacs Approved Bureaux Scheme (BABS), which covers approximately 770 organisations that submit transactions through Bacs on behalf of third parties (for example, payroll service providers). BPSL has inspectors who periodically review all bureaux 'to ensure they meet the standards set by the scheme'.
 - b. Bacs Accredited Aggregator Service, covering parties that provide PSPs with technical access enabling them to submit and receive payments to and from Bacs.
 - c. Bacs Approved Software Service (BASS), for suppliers and developers of software that enables Bacs users to connect to and use the Bacs services. BPSL assesses these products and services against a series of standards and criteria.

- 4.5** BPSL is currently designing the new accreditation scheme. However, it has told us that it anticipates the following features:
- The accreditation process will be initiated by a sponsor bank confirming with its FM provider customer that it provides FM services on a commercial basis to third party clients.
 - The commercial FM providers will be required to enter into a standard accreditation agreement with BPSL.
 - Under the standard accreditation, outgoing FM providers will agree to use the bulk change process if a customer (FM client) requests it in order to switch to an alternative provider (or to become a Bacs service user in its own right – see paragraph 3.32), as long as certain relevant conditions are met. We expect the relevant conditions and any exceptions that may apply to be no more than is necessary to facilitate an effective switching process.
 - The standard accreditation agreement will also include:
 - provisions covering the accreditation process
 - any accreditation fees payable
 - a dispute process that will provide for either the incoming FM provider or the FM client to challenge any failure to use the bulk change process
 - provisions for sanctions to be applied if an accredited party does not comply with the agreement
- 4.6** BPSL also suggested that an accreditation scheme approach could provide wider benefits for service-users (as defined in our FSBRA objectives – see page 4), in that it enables the development and introduction of new service level requirements and minimum data standards for accredited parties.
- 4.7** As discussed in paragraph 1.5, BPSL has already taken steps to change the Direct Debit rules to introduce a new requirement on commercial FM providers to become accredited, so we have decided not to use our rules change powers under section 55 of FSBRA. We welcome the initiatives that BPSL has been pursuing in order to address the problems we consulted on. However, at the time of writing we have not yet received sufficient assurance about BPSL's intended approach to be satisfied that it will be implemented in a timely manner to address the concerns we consulted on.
- 4.8** Therefore, following our consultation, we have decided to exercise our powers under section 54 (Directions) of FSBRA to issue a specific direction to the operator of the Direct Debit scheme. Our direction will require the operator to:
- ensure that FM service providers that wish to do so can use the Bacs bulk change process to help clients who wish to switch to/from another provider
 - submit for our approval a plan and timetable to achieve that outcome through the alternative approach
- 4.9** We are aware that the detailed design of the accreditation scheme will be crucial to ensuring that the concerns are effectively addressed. As noted in paragraph 1.13, BPSL has previously had opportunity to address the concerns. We therefore conclude that using our powers in the way set out will give stakeholders certainty that the concerns will be remedied, and will promote the timely and effective implementation of BPSL's alternative approach.
- 4.10** We have decided not to prescribe the detailed approach to be used. Therefore BPSL (and any successor operator of the Bacs payment system) will be free to implement the new accreditation scheme, provided it can clearly demonstrate to us that this approach will effectively address the

concerns in an acceptable timeframe. We consider that this approach is the least intrusive, given that BPSL has itself suggested that introducing a new accreditation scheme is the most appropriate remedy.

- 4.11** In reaching our decision to exercise our FSBRA powers in relation to the system rule change, we considered our payment system objectives and relevant principles. In particular, we considered the impact on our competition objective (to promote effective competition in the market for services provided by payment systems); and our FSBRA service-user objective (to ensure that payment systems are operated and developed in a way that takes account of, and promotes, the interests of those who use, or are likely to use, services provided by payment systems).
- 4.12** With regard to our objectives, we considered the option of not using our powers and instead leaving BPSL to implement a solution voluntarily. We note that BPSL has made progress, by updating the Direct Debit rules to amend the definition of 'FM provider' and to introduce a rule requiring FM providers to become accredited under a new accreditation scheme. The changes take effect from 1 January 2018.
- 4.13** We also considered the following:
- a. Principles of Better Regulation in the Legislative and Regulatory Reform Act 2006, including proportionality and transparency, and the additional requirements of the Regulators' Code.
 - b. Equality and Diversity Implications: As part of our decision-making processes we assess the likely equality and diversity impacts and the rationale of our proposals to see if they raise any concerns as a result of any protected characteristic. This meets our public sector equality duty under the Equality Act 2010.
- 4.14** Finally, as we propose to exercise a power referred to in section 62(2) of FSBRA, we also considered whether it would be more appropriate to proceed under the Competition Act 1998. We consider that the issues we have identified and which affect competition can be most comprehensively, efficiently and expediently addressed by a change to the Bacs system rules.
- 4.15** On the basis of the information we have received, particularly from the consultation, we have decided that the current rules relating to bulk change:
- may harm competition
 - may prevent service-users from switching FM providers
 - are not in service-users' interests

Furthermore, we determined that a direction as described in this section would promote effective competition in the relevant market, and promote the interests of service-users in relation to FM provider services.

In these conclusions, 'service-users' has the meaning defined in FSBRA (see page 3).

- 4.16** Having made this decision, we will shortly consult with BPSL on the precise wording of our Specific Direction.

4.17 In outline, our Specific Direction will direct BPSL to:

- a. Ensure that incoming FM service providers that wish to do so can use the Bacs bulk change process to help clients who wish to switch to them from another provider.
- b. Within a specified timeframe, submit for our approval a plan containing:
 1. a timeline with milestones for the introduction of the system of accreditation, including the date by which it is effective
 2. a complete description of the system of accreditation including any agreements
- c. Ensure that the system of accreditation contains:
 1. a requirement to use the bulk change process
 2. a system of enforcement and sanctions
 3. a description of service levels applicable under the system of accreditation, including those covering data quality and the timing of any bulk change process steps

4.18 In the event that insufficient progress is being made or we consider that the proposed approach will not address the concerns, we may take further action. This may include enforcement action and/or further use of our FSBRA powers.

Annex 1

Respondents to our consultation

We received responses from the following:

Name	Classification
Eazipay Ltd	Facilities Management provider
FastPay Ltd	Facilities Management provider
GoCardless Ltd	Facilities Management provider
Legend Club Management Systems (UK) Ltd	Facilities Management provider
RSM2000 Ltd	Facilities Management provider
SmartDebit	Facilities Management provider
Harlands Group	Facilities Management provider
GnERGY Ltd	Facilities Management client
Lloyds Banking Group	Sponsor bank
HSBC	Sponsor bank
RBS	Sponsor bank
Bacs Payment Schemes Limited (BPSL)	Direct Debit scheme operator

Annex 2

Consultation questions from CP17/1

In our August consultation we asked for responses to the following questions (paragraph numbers refer to CP17/1):

- Question 1:** What objective justifications would an existing FM provider have to refuse to use the Bacs bulk change process to switch some or all its business to an alternative FM provider?
- Question 2:** Do you agree with our first provisional conclusion? What are the reasons for your answer?
- Question 3:** Do you agree with our second provisional conclusion? What are the reasons for your answer?
- Question 4:** In particular, do you think that imposition of a rule to achieve such a purpose would unfairly reallocate liability in any way (given the bulk change deed)?
- Question 5:** Do you agree with our third provisional conclusion, and that the specified purpose of the proposed rule is appropriate? Please give your reasons.
- Question 6:** What considerations should BPSL and the PSR take into account in the formulation of the rule change?
- Question 7:** Do you agree that any new rule should be applicable only to FM providers who are PSPs providing commercial FM services?
- Question 8:** Do you agree with the proposed conditions a) to d) in **paragraph 3.18 [of CP17/1]** regarding when a new rule should apply?
- Question 9:** Are there any other conditions you think should also apply? Please explain your justification for these.
- Question 10:** Do you consider each or any of the suggested exceptions discussed in **paragraphs 3.19 and 3.20 [of CP17/1]** to be valid grounds for an outgoing FM provider to withhold its consent to a bulk change process request to support one of its FM clients switching its business to another FM provider? Please provide justification for your views.
- Question 11:** Are there any other exceptions that should be applied to the rule? Please provide justification for your views.
- Question 12:** Do you have any comments or suggestions regarding the relative benefits and disadvantages regarding the two options: 'a' (no change) and 'b' (new Bacs participant category)? Which do you think is likely to be most effective, and why?
- Question 13:** Do you have any comments or suggestions regarding the best time to implement any changes?