

The PSR and UK payments industry



November 2014

This Supporting Paper supports the PSR's Consultation Paper '*A new regulatory framework for payment systems in the UK*'. It specifically outlines the structure of the payment systems industry, the legal and regulatory context in which we will operate and our approach to regulating payment systems.

As with all of our proposals in this consultation, they have been designed to further our objectives of promoting competition, innovation and the interests of service-users. This Supporting Paper is designed for those stakeholders who want a more detailed understanding of our proposed approach.

We are asking for comments on this Consultation Paper by 5pm, Monday, 12 January 2015.

You can send your comments and responses to our consultation questions by email to PSRconsultations@psr.org.uk.

You can also respond in writing to the address below (although we ask all respondents to also provide electronic Word and PDF versions of their response).

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

We will publish all non-confidential responses to our Consultation Paper along with our final Policy Statement.

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 make sure to fill in the cover sheet accordingly, and to identify those specific items which they claim to be commercially confidential by **highlighting them in yellow**.

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

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A.

Introduction

- 1.1 This Supporting Paper provides information about the Payment Systems Regulator (PSR), our objectives, functions, duties and powers. It also contains details of the payments industry as a whole, providing context and explanation for the other parts of this Consultation Paper.
- 1.2 This Supporting Paper is divided into five parts, and four Annexes:
- **Part A:** this introduction.
 - **Part B:** industry structure, including information about the PSR, the payment systems we will regulate, industry bodies and control of payment systems.
 - **Part C:** our objectives and the regulatory and other principles we must consider.
 - **Part D:** our legislative and regulatory framework, including our regulatory and competition law powers, the role of other authorities and how we expect to work with them.
 - **Part E:** our proposed regulatory approach.
- and
- **Annex 1:** Our Consultation Principles.
 - **Annex 2:** Equality Impact Assessment.
 - **Annex 3:** Relevant legal provisions.
 - **Annex 4:** Sources of evidence.
- 1.3 Expressions and acronyms we use are defined as appropriate in this Supporting Paper and in our *Glossary*. Where expressions are capitalised in the text (e.g. Operator), a more detailed definition is included in our *Glossary*, which is included as *Annex 1* to our Consultation Paper.

B.

Industry structure

1.4 In this part we set out our understanding of various aspects of the payments industry. This part covers:

- the Payment Systems Regulator
- payment systems
- the entities we will regulate
- types of payment system we will regulate
- industry bodies
- ownership and control of payment systems

The Payment Systems Regulator

1.5 The PSR was incorporated as a subsidiary of the Financial Conduct Authority (FCA) on 1 April 2014. It was created under the Financial Services (Banking Reform) Act 2013 (FSBRA), following the Treasury's consultation 'Opening up UK payments' in March 2013.¹ We will become fully operational on 1 April 2015.

1.6 As a regulator we have objectives, functions, duties and powers:

- Our **objectives** are the aims that parliament intends us to focus on.
- Our **functions** are the activities we will be doing day-to-day to advance our objectives, such as issuing directions and giving guidance.
- Our **duties** are the things we are required to do under statute – for example, to *"have regard to the importance of maintaining the stability of, and confidence in, the UK financial system"*.²
- Our **powers** are the tools we can use to advance our objectives.

¹ Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221903/consult_opening_up_uk_payments.pdf

² Section 49 FSBRA.

Payment systems

- 1.7 Payment systems enable the transfer of funds. For our purposes they do not include systems for settling securities or those operated by recognised clearing houses or arrangements for the physical movement of cash.
- 1.8 The services provided by these payment systems are offered to various types of users:
- **individuals**, e.g. depositing a cheque, making a mobile payment, withdrawing cash
 - **Payment Service Providers** (PSPs), e.g. banks providing payment services to their customers to enable the transfer of funds
 - **other organisations**, e.g. corporates that need to pay staff and transact with other businesses including suppliers, or Government, which is the largest user of the payment systems by volume – the Department for Work and Pensions, for example, makes welfare payments and pays state pensions
- 1.9 For more information on the users of services provided by payment systems see **Part C**, paragraphs 1.47-1.50 below on our service-user objective.

The entities we will regulate

- 1.10 We will regulate payment systems that have been designated by the Treasury. We can use our regulatory powers in relation to designated payment systems. On 14 October 2014, the Treasury published its consultation '*Designation of payment systems for regulation by the Payment Systems Regulator*'³ in which it proposed designating the following payment systems:
- Bacs
 - C&CC
 - CHAPS
 - FPS
 - LINK
 - MasterCard
 - NICC
 - Visa

Within each payment system designated by the Treasury, we will regulate the payment system operators (Operators – see paragraphs 1.14 and 1.15), the Infrastructure Providers and the PSPs that participate in the payment systems.

- 1.11 Operators are the companies that manage or operate each payment system, e.g. CHAPS Co is the Operator for the CHAPS payment system. The Operators are responsible for defining their 'rulebook' including the Access Requirements, namely the rules (including criteria), terms or conditions (including fees and charges), policies or procedures governing access to or participation in a regulated payment system. An Operator also manages the system's infrastructure, which is often outsourced.

³ Available at <https://www.gov.uk/government/consultations/designation-of-payment-systems-for-regulation-by-the-payment-systems-regulator/>

- 1.12 An Infrastructure Provider provides or controls any part of the infrastructure used for the purposes of operating a payment system. For example, VocaLink provides the Central Infrastructure for Bacs, FPS and LINK.
- 1.13 A PSP, in relation to a payment system, means any person who provides services to persons who are not participants in the system for the purposes of enabling the transfer of funds using the payment system. This includes Direct PSPs and Indirect PSPs (see our *Glossary* for definitions). For example, banks and building societies provide payment services to individuals. Some PSPs with Direct Access to payment systems provide Indirect Access to other PSPs (they are referred to in this Consultation Paper as ‘Sponsor Banks’ – see our *Glossary*).

Types of payment systems we will regulate

Interbank payment systems

- 1.14 **Interbank payment systems** were developed to enable payments to be made between customers of different banks and building societies. Each interbank system being considered for designation by the Treasury⁴ supports different kinds of payment services:
- **Bacs** is the interbank payment system that processes payments through two principal electronic payment schemes: Direct Debit and Bacs Direct Credit. **BPSL** (Bacs Payment Schemes Ltd) is the Operator of the Bacs payment system.⁵
 - **C&CC (Cheque & Credit Clearing)** is the interbank payment system in England, Scotland and Wales that processes cheques and other paper instruments. **C&CCCL** (Cheque and Credit Clearing Company Ltd) is the Operator of the C&CC payment system.⁶
 - **CHAPS** is the UK’s real-time, high-value sterling interbank payment system, where payments are settled over the Bank of England’s (the Bank’s) Real Time Gross Settlement (RTGS) system, which provides continuous (real-time) settlement of funds transfers individually on an order-by-order basis. CHAPS processes both wholesale (e.g. transactions on behalf of the Treasury as a monetary authority) and retail payments (e.g. house purchases). **CHAPS Co** (CHAPS Clearing Company Ltd) is the Operator of the CHAPS payment system.⁷
 - **FPS (Faster Payments Service)** is the interbank payment system that provides near real-time payments as well as Standing Orders. Virtually all internet and telephone banking payments in the UK are now processed via FPS. It is also used by PSPs to process other services, such as Paym, which uses mobile phone numbers (instead of sort codes and account numbers) to enable person-to-person payments to be made. **FPSL** (Faster Payments Scheme Ltd) is the Operator of the FPS payment system.⁸
 - **LINK** is the interbank payment system that enables end-users to take cash out of their bank accounts (amongst other activities) using the network of ATMs in the UK. **LINK Scheme** is the Operator of the LINK payment system.⁹
 - **NICC (Northern Ireland Cheque Clearing)** is the interbank payment system in Northern Ireland that processes cheques and other paper instruments. **BBCCCL** (Belfast Bankers’ Clearing Company Ltd) is the Operator of the NICC payment system.¹⁰

⁴ See paragraph 1.10 above.

⁵ For more information, see: <http://www.bacs.co.uk/Bacs/Corporate/Pages/default.aspx>

⁶ For more information, see: <http://www.chequeandcredit.co.uk/>

⁷ For more information, see: <http://www.chapsco.co.uk/>

⁸ For more information, see: <http://www.fasterpayments.org.uk/>

⁹ VocaLink is the Infrastructure Provider for the LINK payment system. See also *Supporting Paper 3: Ownership, governance and control of payment systems* for further details on LINK, or LINK Scheme’s website: <http://www.link.co.uk/Pages/Home.aspx>

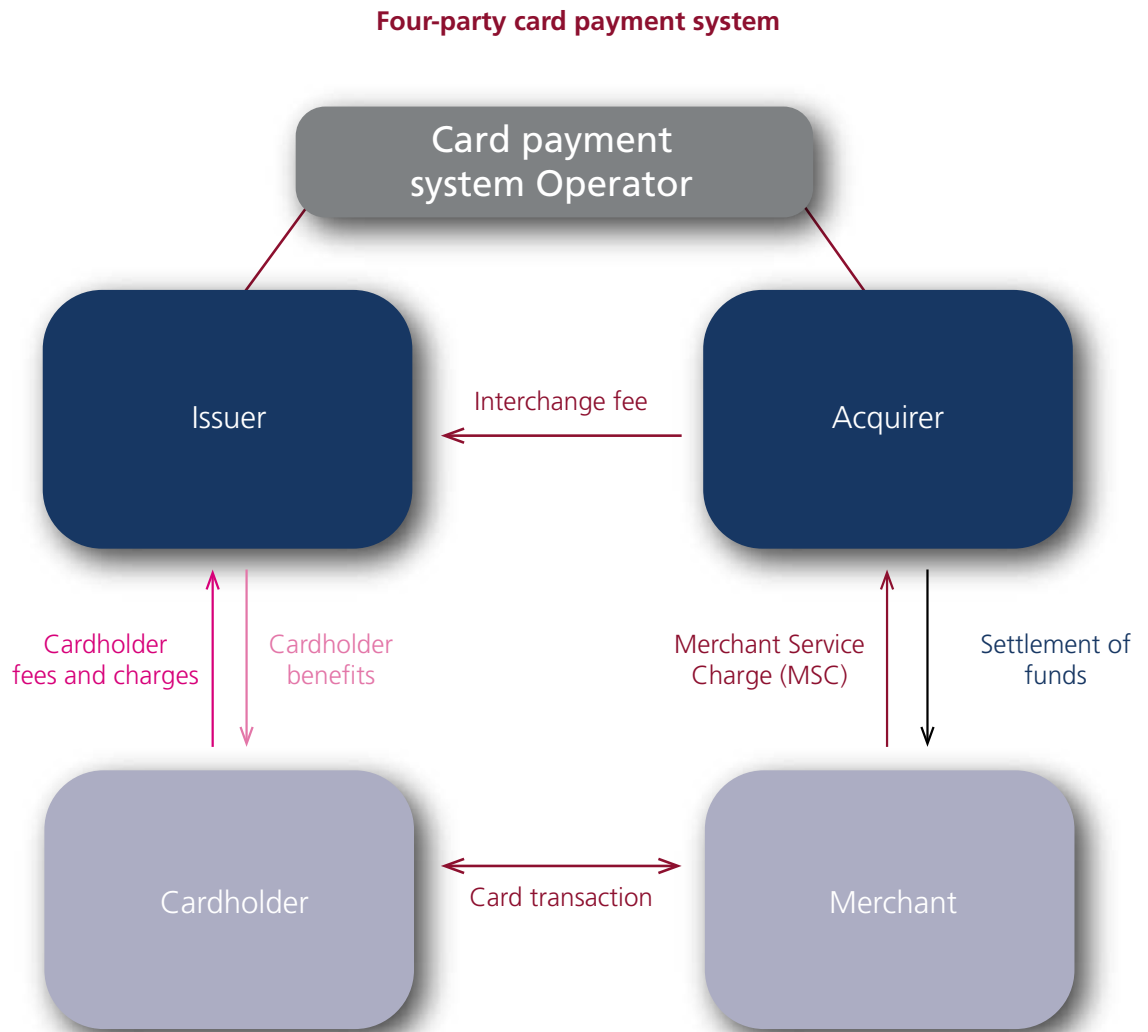
¹⁰ For more information, see http://www.paymentscouncil.org.uk/who_do_we_work_with/payments_schemes/bbcc/

Card payment systems¹¹

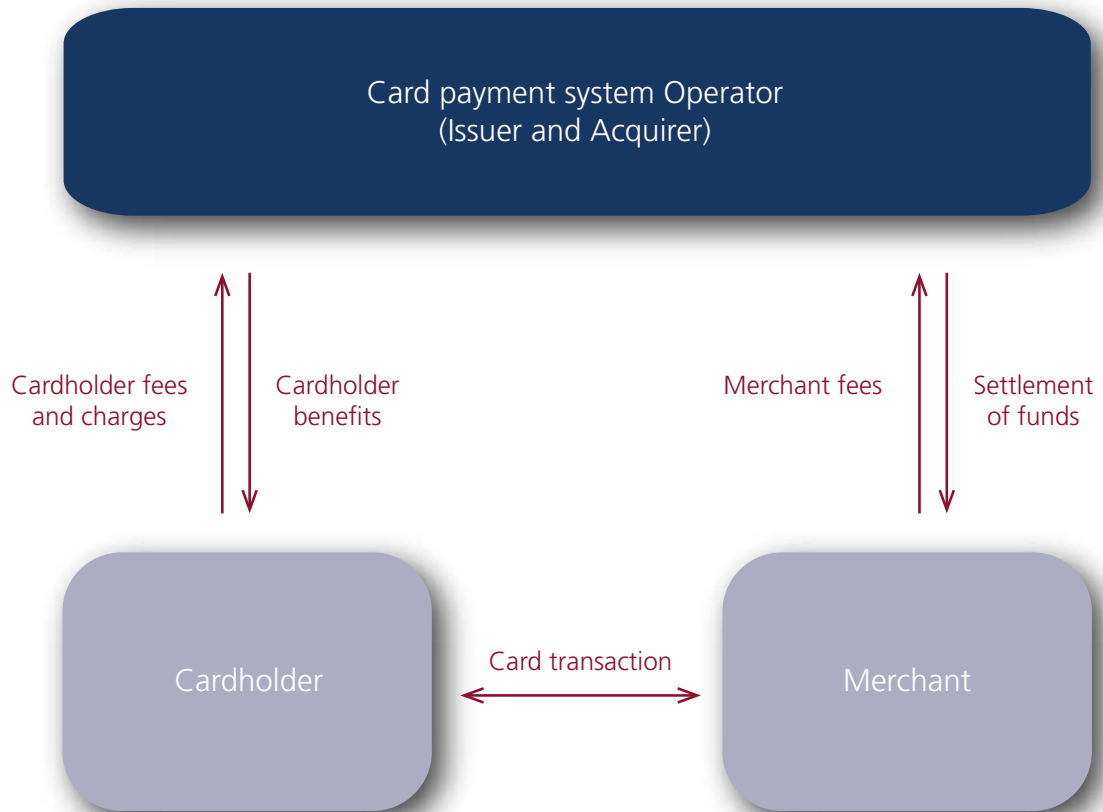
- 1.15 The card payment systems the Treasury is considering designating are:
- **MasterCard**, which is operated by MasterCard Inc.
 - **Visa**, which is operated collectively by Visa Europe and Visa UK Limited.
- 1.16 Card payment systems enable individuals and organisations to make payments by cards by providing a network which joins up:
- **cardholders** – who use the cards as a way to make payments
 - **issuers** – which make payment cards available to cardholders
 - **merchants** – which are the retailers or service providers that accept card payments from cardholders
 - **acquirers** – which process card payments on behalf of merchants
- 1.17 Our powers extend over the participants in any card payment system that is designated by Treasury (see paragraph 1.10 above). This will include the issuers and acquirers. Cardholders and merchants are service-users, as they use services provided by payment systems.
- 1.18 Card systems in the UK operate as either ‘four-party’, ‘open’ systems (often referred to by industry as ‘schemes’) – e.g. MasterCard and Visa – or ‘three-party’, ‘closed’ systems – e.g. American Express. In both types of card system, there is a cardholder and a merchant. In a ‘four-party’ card system, the issuer and the acquirer are separate entities, whereas in a ‘three-party’ card system, the issuer and acquirer are the same. See **Figure SP1-1** which provides a diagrammatical representation of three and four party card payment systems.

¹¹ For information on our approach to interchange fees, see *Supporting Paper 5: Interchange fees*

Figure SP1-1: A diagrammatical representation of three and four-party card payment systems.



Three-party card payment system



- 1.19 The vast majority of UK credit card and debit card transactions are made through the MasterCard and Visa payment systems, although other alternatives exist (e.g. American Express). Historically, the MasterCard and Visa systems were owned by their members (which were all banks) and were effectively members' associations. More recently, the card payment systems are moving towards more commercial structures with shareholders: for example, MasterCard is listed on the New York Stock Exchange.

Industry bodies

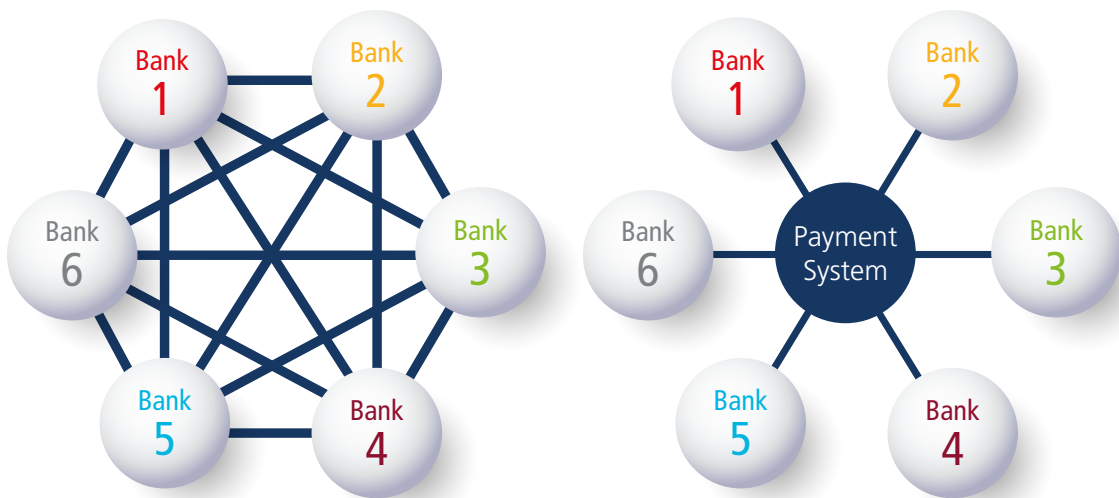
- 1.20 **Industry bodies** represent the interests of their members and sometimes work with them on collaborative initiatives. We will not regulate the industry bodies themselves, but we may regulate some of their members. For example:

- **The Payments Council** has a membership comprised of PSPs (such as banks and building societies), organisations with a commercial interest in payments, and end-users. It works closely with several of the interbank payment systems. It often coordinates cross-industry projects and provides information to its members and the general public. It also engages with the Treasury and the institutions of the European Union on payment-related developments in European legislation. For more information on the future role of the Payments Council, please see *Supporting Paper 2: Payments industry strategy and areas for collaboration*.
- **The UK Cards Association** is the trade association for the cards industry in the UK. Its membership includes major credit, debit and charge card issuers and acquirers.

Ownership and control of payment systems

- 1.21 Interbank payment systems are usually arranged on a multilateral basis, with a number of PSPs contracting with the Operator. PSPs collaborate to set up these payment systems. This collaboration facilitates the flow of payments between the different PSPs that participate in the payment systems. An alternative would be bilateral arrangements, where each PSP contracts bilaterally with a large number of other PSPs. Multilateral and bilateral arrangements are illustrated in the figure below. Multilateral arrangements can reduce the barriers to entry for new PSPs as they may only need to reach agreement with the payment system Operator, rather than with each and every participant.

Figure SP1-2: Bilateral and multilateral arrangements



- 1.22 As set out above, participants in a payment system include the Operator of the payment system, Infrastructure Providers and the PSPs that use the payment system and its services. In some instances, the Operator and Infrastructure Provider are integrated into a single entity. The Payment Systems Task Force between 2004 and 2006 considered the benefits of separation of Operators and Infrastructure Providers, after which some Operators were separated from their Infrastructure Providers.
- 1.23 Where there is separation between the Operator and Infrastructure Providers of a payment system (as is the case with Bacs, CHAPS and FPS), the Operator controls a set of rules. These rules include Access Requirements which are the rules (including criteria), terms or conditions (including fees and charges), policies or procedures governing access to or participation in a payment system. The Operator also makes arrangements for the provision of the infrastructure needed to operate the system. There is usually a governing board and a small executive, which manages the rules and arrangements with their Infrastructure Provider(s).
- 1.24 In the case of cheque clearing, C&CCCL controls the set of rules, but the major cheque processing contracts are held by the Direct PSPs rather than by the Operator.
- 1.25 BBCCL controls the set of rules and has oversight over cheque clearing in Northern Ireland.
- 1.26 The LINK Scheme, which operates LINK (see paragraph 1.14), has no corporate form.¹² Assets, such as the LINK brand and intellectual property rights, are owned by Vocalink. The LINK Scheme is member-governed by its Network Members Council (NMC), which includes all of the PSPs that participate in the LINK payment system, and LINK has indicated to us that the

¹² It is an unincorporated association and therefore has no shareholders. Instead of a board of directors, its governing body is the Network Members Council (NMC).

NMC sets the participation rules in the LINK payment system. VocaLink enters into contractual arrangements on behalf of the LINK Scheme, and is the Infrastructure Provider for the LINK payment system.

- 1.27 MasterCard and Visa both have rules that are set at an international level, but a subset of rules and products are specific to the UK.
- 1.28 In the UK, PSPs that have Direct Access to the interbank payment systems (excluding LINK) also have an interest in (either shareholdings or guarantees) the companies that manage and operate these payment systems i.e. the Interbank Operators. Some of these same PSPs also have shareholdings in Visa Europe and/or in VocaLink, the provider of the Central Infrastructure for Bacs, FPS and LINK. For example, Barclays, HSBC, Lloyds Banking Group, Royal Bank of Scotland Group, Santander and the Cooperative Bank have interests across all of the main Interbank Operators, Visa and VocaLink. The **Figure SP1-3** below illustrates our understanding of these ownership arrangements.

Figure SP1-3: Table illustrating that certain PSPs have interests across several of the regulated payment systems and/or VocaLink

	BPSL	C&CCCL	Chaps Co	FPSL	Visa UK & Europe	VocaLink Holdings Limited
Barclays	✓	✓	✓	✓	✓	✓
HSBC	✓	✓	✓	✓	✓	✓
Lloyds Banking Group	✓	✓	✓	✓	✓	✓
Royal Bank of Scotland Group	✓	✓	✓	✓	✓	✓
Santander UK	✓	✓	✓	✓	✓	✓
Co-op Bank	✓	✓	✓	✓	✓	✓
Clydesdale Bank	✓	✓	✓	✓		✓
Nationwide	✓	✓		✓	✓	✓
Citibank	✓		✓	✓	✓	
Virgin Money	✓					✓

Note: Other entities have interests in each of these operators. The above list shows those entities with an interest across several regulated payment systems and/or VocaLink.

- 1.29 Where a PSP has an interest (either a shareholding or guarantee) in an Operator, this may entitle it to nominate a director to the board of the Operator depending on the specific Operator's governance arrangements. This means that Direct PSPs can potentially influence decision-making relating to the operation of the payment system through the directors they appoint to the Operator's board.
- 1.30 By contrast, neither Indirect PSPs nor service-users are entitled to nominate directors and therefore do not have the same influence over board-level decision making for the payment systems.

- 1.31 Our understanding of the Visa structure is as follows. Visa UK is owned by Visa Europe members in the UK. As part of the governance arrangements, Visa Europe is entitled to appoint up to three directors to the Visa UK Board. The rest of the Visa UK Board consists of directors appointed by or elected from among Visa UK members and two independent directors, including the chair, neither of whom has a veto. The Visa UK board has delegated authority from Visa Europe to develop and operate the Visa UK business, including setting certain domestic rules. For our purposes, we consider the Operator of the Visa payment system to collectively be both Visa UK and Visa Europe (which may set rules that impact the Visa UK payment system).
- 1.32 Our understanding of the MasterCard structure is as follows. MasterCard Inc. is a public listed company in the USA. PSPs that participate in the MasterCard payment system are granted licences and have no role in the management or operation of the payment system. MasterCard has several UK subsidiaries. For our purposes, we consider the Operator of the MasterCard payment system to be MasterCard Inc.
- 1.33 In *Supporting Paper 2: Payments industry strategy and areas for collaboration*, we discuss how there may need to be collaboration to develop payment systems or provide new and innovative services to service-users.
- 1.34 In *Supporting Paper 3: Ownership, governance and control of payment systems*, we include additional information and analysis on how the different Operators are governed. See also the Accenture Governance Report, an Annex to Supporting Paper 3.

C. Our objectives

- 1.35 Our objectives drive the activities we undertake and how we prioritise our work. We must, so far as reasonably possible, act in a way that advances one or more of our objectives when discharging our general functions in relation to payment systems. Our three objectives are:
- the competition objective
 - the innovation objective
 - the service-user objective
- 1.36 We will work with other regulators and competition authorities within and outside of the United Kingdom whenever this helps us to further our objectives.
- 1.37 All of our objectives are focused on the interests of service-users, namely those who use, or are likely to use, services provided by payment systems.

The competition objective

- 1.38 Our competition objective is to promote effective competition in the market for payment systems, and the markets for services provided by payment systems, in the interests of service-users (see also s.50 FSBRA).
- 1.39 FSBRA stipulates that promoting effective competition includes promoting effective competition between different:
- Operators
 - PSPs
 - Infrastructure Providers
- 1.40 We will promote effective competition where it is in the interests of service-users.
- 1.41 Our aim is to develop and protect competitive markets and outcomes as a whole, rather than to protect individual competitors.
- 1.42 We will consider where collaboration can enhance competition in the interests of service-users. For example, collaboration between PSPs at the Operator level may be justified where it facilitates competition between PSPs at the service level, and may therefore be in the interests of service-users. A recent example of collaboration between PSPs is the development and launch of FPS.

The innovation objective

- 1.43 Our innovation objective is to promote the development of, and innovation in, payment systems in the interests of service-users, and with a view to improving the quality, efficiency and economy of payment systems (see s.50(1) FSBRA). This includes promoting the development of, and innovation in, infrastructure to be used for operating payment systems.¹³
- 1.44 We will promote innovation where it is in the interests of service-users.
- 1.45 We see our role as contributing to the creation of the conditions in which innovation thrives. This includes promoting payments innovations, which may come from providers outside the payments industry or internationally, and addressing barriers to innovation to the extent possible, where consistent with our objectives and Administrative Priority Framework (see **Part D** of *Supporting Paper 6: Regulatory tools* and its *Annex 2*).
- 1.46 In most cases, competition drives innovation, and payment system participants can often innovate individually. However, we recognise that PSPs sometimes need to collaborate to develop innovations; the collaborative work that led to Paym is one recent example.

The service-user objective

- 1.47 Our service-user objective is to ensure that payment systems are operated and developed in a way that takes account of, and promotes, the interests of service-users (see s.52 FSBRA).
- 1.48 Service-users are key to us, as our two other objectives – competition and innovation – are also aimed at advancing the interests of service-users.
- 1.49 Service-users include three broad groups:
- **Individuals:** from those who embrace new technology to those who continue to rely on paper-based payment methods.
 - **PSPs:** Direct and Indirect PSPs in payment systems, such as banks, building societies, credit unions, ATM deployers, Electronic Money Institutions (EMIs), and Payment Institutions (PIs) (see our Glossary for definitions).
 - **Other organisations:** businesses – from large corporates to sole traders, charities and Government departments that make and receive payments (e.g. the Department for Work and Pensions).
- 1.50 In addition, there are groups that are focused on service-users' interests, including:
- **Representative organisations:** such as charities, consumer groups and trade bodies.
 - **Suppliers to service-users:** such as innovator tech companies, service bureaux, outsourcing firms and other third-party service providers e.g. providers of payment system-related software and hardware.

Proposed Objectives Guidance

- 1.51 For more information about our objectives, see our *Draft Objectives Guidance*, which is included in *Annex 1* to *Supporting Paper 6: Regulatory tools*.

¹³ s.51(2) FSBRA.

Regulatory and other principles we must consider

- 1.52 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 in its capacity as a monetary authority. We will work closely with the other authorities in the financial services sector – the Bank, the FCA and the Prudential Regulation Authority (PRA) – to ensure that our measures do not inadvertently cut across policies being driven or delivered by these authorities and that we do not exceed our mandate.
- 1.53 Our work is also informed by regulatory principles that we must have regard to:¹⁴
- the need to use our resources in the most efficient and economic way
 - the principle of proportionality when exercising our general functions, meaning that any burden or restriction which we impose should be proportionate to the benefits, in general terms, which are expected to result from the imposition of that burden or restriction
 - the desirability of sustainable growth in the UK economy in the medium and/or long term
 - the general principle that those who use services provided by payment systems should take responsibility for their decisions
 - the responsibilities of the senior management of regulated participants to comply with the requirements we set
 - a recognition that the businesses we regulate differ in nature and their objectives, which should, where appropriate, be reflected in how we exercise our functions
 - the desirability, where appropriate, of us publishing information or requiring information to be published to contribute to the advancement of our objectives, and
 - the principle that we should exercise our functions as transparently as possible
- 1.54 We will also be mindful, as appropriate, of the five high-level ‘better regulation’ principles.¹⁵ 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, consistent, and targeted only at cases where action is needed.¹⁶ We will be mindful of these principles when we set directions or requirements, or give guidance, or when we secure compliance with or enforce such requirements.
- 1.55 The Regulators’ Code sets out additional requirements, as set out below. We will be mindful of it when we determine any general policy or principles relating to the exercise of our regulatory functions, or when we set standards or give general guidance in relation to those functions. The Regulators’ Code is not applicable to rule-making or to the conduct of individual cases. The Regulators’ Code principles state that regulators should:
- carry out their activities in a way that supports those they regulate to comply and grow
 - provide simple and straightforward ways to engage with those they regulate and hear their views
 - base their regulatory activities on risk
 - share information with each other about compliance and risk

¹⁴ s.53 FSBRA.

¹⁵ See the Legislative and Regulatory Reform Act 2006 (LRA) principles around the exercise of regulatory functions at <http://www.legislation.gov.uk/ukpga/2006/51/contents>, and the 6 April 2014 Regulators’ Code at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf.

¹⁶ s.21 LRA.

- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- ensure that their approach to their regulatory activities is transparent

1.56 We are unlikely to be minded to follow the 'better regulation' principles or the Regulators' Code if we conclude that the principle in question is either not relevant or is outweighed by another relevant consideration.

D.

Our legislative and regulatory framework

1.57 This **Part D** on legislative and regulatory framework covers:

- Our general functions and regulatory powers under FSBRA.
- How and when we will consult.
- Our enforcement and investigation powers.
- Our regulatory powers under EU law.
- Use of concurrent competition powers.
- Considering the use of our powers under the Competition Act 1998.
- Bank of England oversight of payment systems.
- How we will work with other authorities.

Our general functions and regulatory powers under FSBRA

1.58 Our general functions relating to payment systems are to give general directions, generally-imposed requirements and guidance, and to determine the general policy and principles by reference to which we perform our particular functions.

1.59 We have a range of powers over designated payment systems to support our functions. We can:

- require or prohibit a specific action or set standards
- require Operators to establish or change rules of payment systems, require them to notify us of changes, or require that Operators secure our approval before making rule changes
- require the Operator of a regulated payment system or a PSP with Direct Access to grant access to that payment system
- change the fees, charges, terms and conditions, or terms of access that Operators or PSPs impose on their end-users
- require the disposal of an interest in the Operator of a regulated payment system
- provide guidance

How and when we will consult

- 1.60 We must consult on any proposed general directions or generally-imposed requirements (as to changes in the rules of a regulated payment system) unless we consider that the delay involved would be prejudicial to service-users.¹⁷ We must take into account any representations made during the consultation period before we publish our final direction or requirement.
- 1.61 We have drafted PSR Consultation Principles, which set out how we intend to carry out consultation exercises. See *Annex 1* to this Supporting Paper. We have also set out clearly the legal provisions relied upon or referenced in our consultation (see *Annex 3* of this Supporting Paper), as well as the main sources of evidence we have relied upon in our consultation (see *Annex 4* of this Supporting Paper). Finally, we have included an Equality Impact Assessment with respect to our proposals in *Annex 2* of this Supporting Paper.
- 1.62 We will also consult our Statutory Panel on our general policies and practices (for more information, see the Consultation Paper), and we must consult the Bank, PRA and FCA before imposing a general direction or generally-applicable requirement.

Our enforcement and investigation powers

- 1.63 We have a range of enforcement, information gathering and investigation powers to help us further our objectives. Our processes are discussed in more detail in *Supporting Paper 6: Regulatory tools*, this section therefore gives a very high level overview of our processes and powers.
- 1.64 We can:
- require information or documents to be provided to us
 - require an Operator, Infrastructure Provider or PSP, or appoint a skilled person, to provide a report on any matter relating to their participation in a regulated payment system
 - investigate a compliance failure or the nature, conduct or state of the business of an Operator, Infrastructure Provider or PSP of a regulated payment system, or appoint someone else to do so
 - appoint an investigator, who can require someone who has relevant information to attend an interview, or to produce information or documents
- 1.65 A compliance failure occurs when a participant in a regulated payment system does not comply with any of the following:
- One of our directions under s.54 FSBRA
 - One of our requirements regarding system rules under s.55 FSBRA
 - One of our requirements granting Direct or Indirect Access to a relevant payment system under s.56 FSBRA
- 1.66 We can use our enforcement processes to investigate a compliance failure, to publish a finding that there has been a compliance failure, to impose a penalty, and to seek a court injunction where appropriate.
- 1.67 We can also issue directions to order specific remedial action to be taken, where appropriate.

¹⁷ s.104(10)FSBRA.

Our regulatory powers under EU law

- 1.68 We expect to be the competent authority for Article 28 of the European Payment Services Directive (2007/64/EC) (PSD), which provides the legal foundation for the creation of an EU-wide single payments market. The PSD has been implemented into UK law by the Payment Services Regulations 2009¹⁸ (PSRs 2009). Part 8 of the PSRs 2009 implements Article 28 PSD. Under the PSRs 2009, we will oversee the requirement that the rules and conditions that require Direct Access to the payment systems within scope of Part 8 must be objective, proportionate and non-discriminatory.
- 1.69 In terms of enabling Direct Access to regulated payment systems, we have two regulatory tools available. Which tool we can utilise depends on the legal status of the system, as set out in the **Figure SP1-4** below.
- For LINK, MasterCard and Visa, those powers are in Part 8 PSRs 2009.¹⁹
 - For all other FSBRA-designated systems, we can enable Direct Access using our regulatory powers under s.54-57 FSBRA.

Figure SP1-4: Regulated payment systems and our access-related regulatory powers

Systems we expect to be designated under FSBRA	All other powers under FSBRA apply	Regulatory powers available for enabling Direct Access
Bacs	✓	Sections 54-57 FSBRA
C&CC	✓	Sections 54-57 FSBRA
CHAPS	✓	Sections 54-57 FSBRA
FPS	✓	Sections 54-57 FSBRA
LINK	✓	Article 28 PSD / Part 8 PSRs 2009
MasterCard	✓	Article 28 PSD / Part 8 PSRs 2009
NICC	✓	Sections 54-57 FSBRA
Visa	✓	Article 28 PSD / Part 8 PSRs 2009

Use of our concurrent competition powers

- 1.70 The Competition and Markets Authority (CMA) is the lead competition authority in the UK, but we will also have competition powers (concurrent competition powers). This means that we can act where we see anti-competitive practices concerning participation in payment systems. Unlike our regulatory powers, our competition powers are not limited just to participants in payment systems that have been designated by the Treasury.
- 1.71 We can conduct investigations using our concurrent **Competition Act 1998 (CA98) powers** in relation to suspected anti-competitive agreements, decisions of associations of undertakings and concerted practices, or the suspected abuse of a dominant position.²⁰ These are referred to as the two CA98 'prohibitions'.

¹⁸ SI 2009/209

¹⁹ The access rules under the PSRs 2009 do not apply to systems designated under the Settlement Finality Directive or three-party card systems (e.g. American Express).

²⁰ Under Chapters I and II, CA98.

- 1.72 We can also conduct market studies in the payments sector using our **Enterprise Act 2002 (EA02) powers** and, where we identify features that might prevent, restrict or distort competition, we can make a reference to the CMA to carry out a detailed market investigation.²¹
- 1.73 We will also enter into a Memorandum of Understanding with the CMA, which will set out how we intend to work together on competition matters.

Considering the use of our powers under the Competition Act 1998

- 1.74 We must consider whether it would be more appropriate to use our powers under the CA98 before using certain of our FSBRA powers. This duty does not arise in all circumstances. Where we intend to exercise our power to give a general direction²² or to issue a generally-imposed requirement,²³ we are not obliged to consider whether it would be more appropriate to proceed under the CA98.
- 1.75 Where we decide that it is more appropriate to use our regulatory powers under FSBRA rather than our CA98 powers, we will give our reasons for this. We will take account of the evidence in our possession and our Administrative Priority Framework (see *Annex 2 to Supporting Paper 6: Regulatory tools*).
- 1.76 We are unlikely to proceed under CA98 unless we have clear evidence that it would be the appropriate course to take. The legal threshold for starting an investigation is that there must be reasonable grounds to suspect an infringement of either of the Chapter I or II prohibitions, as set out in CA98.²⁴
- 1.77 Starting a CA98 investigation or using CA98 powers will not preclude us from later deciding to take action using our regulatory powers under FSBRA.
- 1.78 When deciding whether to use our CA98 or our regulatory powers, we will also consider our Administrative Priority Framework. See **Part D** of *Supporting Paper 6: Regulatory tools* and its *Annex 2* for more details.

Bank of England oversight of payment systems

- 1.79 The Bank performs a variety of roles in relation to payment systems. It is a settlement service provider, provider of infrastructure, security trustee, Direct PSP of some payment systems, and a resolution authority.²⁵ The Bank of England is not to be regarded as a participant of any kind in any payment system in accordance with s.42(8) FSBRA.
- 1.80 In addition, it has an important oversight role in relation to payment systems. The Bank:
- oversees payment systems that have been 'recognised' by the Treasury under the Banking Act 2009 to protect and enhance financial stability. The systems we expect to regulate that have been recognised are Bacs, CHAPS and FPS
 - determines whether to approve applications for a payment system to be 'designated' under the European Directive on Settlement Finality in Payment and Securities Settlement Systems (Directive 98/26/EC) (SFD). The systems we expect to regulate that are designated under

²¹ Under Part 4 EA02.

²² Under s.54 of FSBRA.

²³ Under s.55 of FSRBA.

²⁴ See s.25 of the CA98.

²⁵ For more information about the Bank, see: <http://www.bankofengland.co.uk/Pages/home.aspx>

SFD are CHAPS, Bacs, FPS and C&CC. Designated systems benefit from certain protections from the normal operation of insolvency law

How we will work with other authorities

- 1.81 We are aware that PSPs must comply with a broad range of EU and UK legislation, as well as international regulation, and we are mindful of the challenges this brings. We will work with other authorities to ensure that our activities are consistent with, and not duplicative of, theirs.
- 1.82 We will work with:
- other authorities in the financial sector (e.g. the FCA, the Bank, the PRA and the Treasury) and internationally where appropriate
 - competition authorities such as the CMA, the FCA and the European Commission
 - other authorities, including other sectoral regulators (e.g. Ofcom on issues to do with mobile payment services).

Working with authorities in the financial sector

- 1.83 We set out our functions and powers at the beginning of **Part D** of this Supporting Paper. As explained in paragraphs 1.79 to 1.80, the Bank is responsible for overseeing some of the payment systems we expect to regulate. The FCA and the PRA supervise PSPs that participate in the payment systems we will be regulating.
- 1.84 We will cooperate with the Bank, the FCA and the PRA in areas where we have complementary powers, including:
- sharing views on risks and priorities for Operators, Infrastructure Providers and PSPs
 - thematic work, such as on barriers to entry
 - consultation before making policy or giving directions that could affect the objectives of one or more of the other authorities
 - coordinating requests for information and sharing confidential information where helpful and permitted
 - early discussion, where possible, of any investigations, or use of enforcement powers or sanctions
- 1.85 We will engage with the Bank on issues including its settlement account policy linked to Operators' Access Requirements, its responsibility for banknotes in the context of ATMs, and our common interest in promoting world class payments infrastructure.
- 1.86 The Bank attends the ECB's Payment and Settlement Systems Committee, as well as the Bank for International Settlements' Committee on Payments and Market Infrastructure (CPMI) (which until September 2013, was known as the Committee on Payment and Settlement Systems, or CPSS).
- 1.87 CPMI and the International Organization of Securities Commissions (IOSCO) are responsible for the Principles for Financial Market Infrastructures - the international standards for payment, clearing and settlement systems, known as the CPSS-IOSCO Principles, published in April 2012. Several of the CPSS-IOSCO Principles (e.g. those on governance, access, efficiency and transparency) set standards that are directly relevant to our objectives.²⁶ Although the

²⁶ See the CPSS-IOSCO Principles at <http://www.bis.org/cpmi/publ/d101a.pdf>

CPSS-IOSCO Principles are not binding, some of the Operators we will regulate must already have regard to them, as they have been adopted as principles by the Bank under section 188 of the Banking Act 2009 for those payment systems recognised by the Bank (i.e. Bacs, CHAPS and FPS).

- 1.88 We are entering into a Memorandum of Understanding with the FCA, the Bank and the PRA, which will set out how we intend to work together.
- 1.89 The Treasury designates payment systems for regulation by the PSR. It must also give consent in circumstances where we are proposing to use our power to require disposal of an interest in a payment system. We will liaise with the Treasury about developments in UK and EU law concerning payment systems.

Working with competition authorities

- 1.90 We have concurrent competition powers, and will act alongside the CMA and the FCA (which also has its own competition powers).
- 1.91 We will set out guidance (to be published in due course) regarding how we will interact with other competition authorities on competition enforcement cases.
- 1.92 We are participating in the UK Competition Network and the UK Regulators Network – sharing best practice, identifying trends and issues and deciding on which authority is best placed to act. We are supporting the CMA in its roles in the European Competition Network and the International Competition Network.

Working with other authorities

- 1.93 We will work with other sectoral regulators, to ensure that we take a consistent approach, and share experience and best practice, including in regulatory law. We will work closely with them on areas of mutual interest – for example, we have worked with Ofcom on a joint study concerning non-bank innovations in payments.²⁷
- 1.94 We will also consider how we should work with authorities engaged in Anti-Money Laundering (AML) activities (the package of initiatives and regulations directed at preventing money laundering, including the Money Laundering Regulations 2007) and preventing the financing of terrorism activities.

²⁷ See Ofcom/PSR Joint Study, an Annex to *Supporting Paper 2: Payments industry strategy and areas for collaboration*.

E.

Our proposed regulatory approach

Our regulatory approach

- 1.95 We will apply our powers in a proportionate and appropriate way, by focusing our regulatory action on issues we have identified or that stakeholders have raised with us, taking into account our objectives, duties and regulatory principles and our proposed Administrative Priority Framework.²⁸
- 1.96 We expect a ‘no surprises’ culture. We expect industry participants to engage meaningfully with us, and to keep us informed of anticipated developments before they are implemented. This includes expecting industry participants to cooperate with us by responding fully, accurately and promptly to any information requests we issue.
- 1.97 We will describe the outcomes we want and the time frames and deadlines for achieving them. While in some instances we will stipulate how these outcomes should be achieved, generally speaking we will expect industry to develop solutions and to decide how to implement them (see for example *Supporting Paper 2: Payments industry strategy and areas for collaboration*). To support this, we will issue directions and requirements on focused areas of concern, and we will issue guidance and set priorities where possible and appropriate.
- 1.98 We will closely monitor progress and ensure that our measures remain fit for purpose in light of changes in the industry, law and regulation. We will take action if we see that:
- the solutions proposed by industry do not take into account the criteria or measures we have set, or do not satisfactorily address our concerns
 - industry or individual participants are not implementing directions effectively or on time, or are acting in a way which could pre-empt or run counter to our directions
 - progress against the priorities we have set for industry is too slow
 - the outcomes we set are not being delivered
- 1.99 The action we might take in these circumstances could include:
- using our concurrent competition powers
 - carrying out reviews of relevant markets or keeping those markets under review
 - launching own-initiative investigations where we have concerns, or following complaints

²⁸ See **Part D** of *Supporting Paper 6: Regulatory tools*.

- using our powers to gather further information
- imposing general or specific directions and issuing guidance to ensure our outcomes are delivered and concerns are addressed²⁹
- imposing sanctions for non-compliance with our regulatory requirements, in accordance with our Powers & Procedures Guidance³⁰ and Penalties Guidance.³¹

1.100 We consider that our regulatory approach strikes the right balance between being prescriptive and enabling industry to deliver market-led solutions.

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

²⁹ We note that where this is appropriate, we will look to issue our directions in the form of general legally-binding principles, rather than issuing prescriptive rules. This is consistent with our general regulatory approach of adopting rules which are proportionate and appropriate to the specific situations we are seeking to address.

³⁰ See **Part E** of *Supporting Paper 6: Regulatory tools*.

³¹ See **Part H** of *Supporting Paper 6: Regulatory tools*.

Annex 1:
Our Consultation Principles

Our Consultation Principles

We will consult participants in regulated payment systems and service-users on the extent to which our general policies and practices are consistent with our general duties under section 49 Financial Services (Banking Reform) Act 2013 (FSBRA), and on how our payment systems objectives may best be achieved.

Section 53(h) FSBRA sets out the general principle that we should exercise our functions as transparently as possible.¹

With this in mind, we are publishing the following principles that we will follow for each public written consultation. If we are not able to follow one of these principles, we will explain why.

Principles

We have a statutory duty to consult publicly if we are proposing changes to our general directions or requirements. We will be clear about who we are consulting, why, on which questions and for how long.

We will always look for stakeholder feedback on our proposals. This may take place before or after a discussion paper or a consultation paper has been published, depending on timings, and through informal discussions and open workshops where appropriate.

We will work closely with other regulators. When we propose to impose generally applicable requirements or directions, we must consult the Bank of England, the FCA and the PRA, according to section 104 FSBRA.

We will typically consult for between four and twelve weeks depending on the potential impact of our proposals.

Our consultation papers will be accompanied by:

- an explanation of the purpose of the proposed requirements
- an evidence-based explanation of our reasons for believing that imposing the proposed requirements are compatible with our objectives and duties under sections 49 to 53 FSBRA
- an analysis of the costs and benefits that could arise if the proposed requirements are imposed
- a notice that any representations about the proposed requirements must be made to us within a specified time, and how to make those representations, and

¹ We are also mindful, as appropriate, of the five high-level principles set out in the Legislative and Regulatory Reform Act 2006 (LRRRA) around the exercise of regulatory functions, and the 6 April 2014 Regulators' Code.

- supporting papers with more detail, analysis and proposals, where necessary or appropriate.

Before imposing a proposed requirement in a final policy statement, we will consider any representations made to us within the specified time. Where representations are made to us after the submission deadline, we will try to take them into account, but may be unable to do so because of timing constraints. This is why we will be clear about the date by which representations should be submitted to us.

In our final policy statements, we will give reasons for our decisions. We will give a general account of the feedback submitted to us and our response to it, and we will explain how it helped shape our decisions. If the requirements or directions that we impose are significantly different from our proposals, we will set out the differences and a cost benefit analysis of those differences.

We will typically publish all feedback, subject to confidentiality requirements.

**Annex 2:
Equality Impact Assessment**

Equality Impact Assessment

Our statutory objectives are to promote competition and innovation, and to ensure that payment systems work in the interests of existing and likely future service-users.

In this Consultation Paper we consult on various policy proposals which are intended to advance our objectives and propose possible regulatory directions and guidance we may issue. 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.

To give due regard to these considerations, we have carried out an Equality Impact Assessment to examine whether these proposed policies and measures would have an adverse impact on equality, and to ensure that we represent the interests of all service-users equally.

Our proposed measures are set out below:

Our policy proposals

<p>1. Industry strategy (Supporting Paper 2)</p>	<p>We will take control of the strategy development and setting process to enable the UK to have world class payment systems. We will set up a new Payments Strategy Forum with broad representation of industry and service-users</p> <p>We will launch a market review into the competitiveness of infrastructure provision under different possible future infrastructure models and ownership structures, commencing by April 2015</p>
<p>2. Ownership, governance and control of payment systems (Supporting Paper 3)</p>	<p>We will open up governance and control of payment systems by involving additional players in more transparent decision making:</p> <ul style="list-style-type: none"> • all Operators will be required to ensure service-users are appropriately represented in decision-making • conflicts of interest will need to be addressed so that individuals are not simultaneously a director of an Interbank Operator and of a Central Infrastructure Provider to the same payment system • all Operators will be required to publish board minutes and votes <p>Operators will be required to report to us on compliance with our service-user direction annually</p>
<p>3. Direct access to payment systems (Supporting Paper 4)</p>	<p>Operators (of Bacs, C&CC, CHAPS and FPS) must have objective, risk-based, and publicly disclosed Access Requirements, which permit fair and open access</p> <p>Link, MasterCard and Visa, which are already subject to an access rule under Article 28 of the European Payment Services Directive, must publicly disclose their Access Requirements</p> <p>All Operators must report to us on compliance annually with the relevant access rule applicable to them annually</p>
<p>4. Indirect access to interbank systems (Supporting Paper 4)</p>	<p>Sponsor Banks must publish information on the sponsor services they offer (including access criteria and processes)</p> <p>Industry will develop a PSR-approved Code of Conduct</p> <p>We will launch a market review into Indirect Access, commencing by April 2015</p>
<p>5. Interchange fees (Supporting Paper 5)</p>	<p>We will engage with relevant authorities on the proposed EU Interchange Regulation. If implementation is delayed we will consider taking action in the UK</p>
<p>6. Regulatory tools (Supporting Paper 6)</p>	<p>We will introduce principles on our expectations of industry behaviour. Industry will work with us on a 'no surprises' basis, discussing significant developments with us in advance and on an ongoing basis</p> <p>We will issue Powers and Processes Guidance setting out our enforcement and complaints procedures, Guidance on our statutory Objectives, Penalties Guidance and our Administrative Priority Framework</p>

Note: NICC is exempted from our access and governance directions because of the limited scope of its activities.

Our proposed measures are intended to promote competition, innovation and the interests of service-users. As a result, we do not expect that they will have a particular effect on one group of individuals over another, or be detrimental to any protected characteristic.

We consider that they will further the interests of service-users of services provided by payment systems, in line with our statutory objectives.

Having conducted an Equality Impact Assessment, we consider that our proposals 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 as a result of these proposals.

Annex 3: Relevant legal provisions

Relevant legal provisions

This document provides links to and, in some cases, excerpts from, the key legal provisions referred to in this Consultation Paper and its Supporting Papers. It is provided as a quick reference tool for readers. Only the official text of the legislation is binding.

The selection is not intended to be an exhaustive list of the legal provisions relevant to our work.

Financial Services (Banking Reform) Act 2013, c.33

Part 5

Regulation of Payment Systems

40 The Payment Systems Regulator

<http://www.legislation.gov.uk/ukpga/2013/33/section/40/enacted>

41 Meaning of “payment system”

<http://www.legislation.gov.uk/ukpga/2013/33/section/41/enacted>

42 Participants in payment systems etc

<http://www.legislation.gov.uk/ukpga/2013/33/section/42/enacted>

43 Designation orders

<http://www.legislation.gov.uk/ukpga/2013/33/section/43/enacted>

44 Designation criteria

<http://www.legislation.gov.uk/ukpga/2013/33/section/44/enacted>

49 Regulator’s general duties in relation to payment systems

<http://www.legislation.gov.uk/ukpga/2013/33/section/49/enacted>

50 The competition objective

<http://www.legislation.gov.uk/ukpga/2013/33/section/50/enacted>

51 The innovation objective

<http://www.legislation.gov.uk/ukpga/2013/33/section/51/enacted>

52 The service-user objective

<http://www.legislation.gov.uk/ukpga/2013/33/section/52/enacted>

53 Regulatory principles

<http://www.legislation.gov.uk/ukpga/2013/33/section/53/enacted>

54 Directions

<http://www.legislation.gov.uk/ukpga/2013/33/section/54/enacted>

- 55 System rules**
<http://www.legislation.gov.uk/ukpga/2013/33/section/55/enacted>
- 56 Power to require granting of access to payment systems**
<http://www.legislation.gov.uk/ukpga/2013/33/section/56/enacted>
- 57 Variation of agreements relating to payment systems**
<http://www.legislation.gov.uk/ukpga/2013/33/section/57/enacted>
- 58 Power to require disposal of interest in payment system**
<http://www.legislation.gov.uk/ukpga/2013/33/section/58/enacted>
- 59 The Regulator’s functions under Part 4 of the Enterprise Act 2002**
<http://www.legislation.gov.uk/ukpga/2013/33/section/59/enacted>
- 60 Restrictions on exercise of functions under Part 4 of the Enterprise Act 2002**
<http://www.legislation.gov.uk/ukpga/2013/33/section/60/enacted>
- 61 The Regulator’s functions under the Competition Act 1998**
<http://www.legislation.gov.uk/ukpga/2013/33/section/61/enacted>
- 62 Duty to consider exercise of powers under Competition Act 1998**
<http://www.legislation.gov.uk/ukpga/2013/33/section/62/enacted>
- 64 Function of keeping markets under review**
<http://www.legislation.gov.uk/ukpga/2013/33/section/64/enacted>
- 65 Exclusion of general duties**
<http://www.legislation.gov.uk/ukpga/2013/33/section/65/enacted>
- 66 Concurrent competition powers: supplementary provision**
<http://www.legislation.gov.uk/ukpga/2013/33/section/66/enacted>
- 68 Complaints by representative bodies**
<http://www.legislation.gov.uk/ukpga/2013/33/section/68/enacted>
- 69 Response by Regulator**
<http://www.legislation.gov.uk/ukpga/2013/33/section/69/enacted>
- 70 Complaints: guidance**
<http://www.legislation.gov.uk/ukpga/2013/33/section/70/enacted>
- 71 Meaning of “compliance failure”**
<http://www.legislation.gov.uk/ukpga/2013/33/section/71/enacted>
- 72 Publication of compliance failures etc**
<http://www.legislation.gov.uk/ukpga/2013/33/section/72/enacted>
- 73 Penalties**
<http://www.legislation.gov.uk/ukpga/2013/33/section/73/enacted>
- 74 Warning notices**
<http://www.legislation.gov.uk/ukpga/2013/33/section/74/enacted>
- 75 Injunctions**
<http://www.legislation.gov.uk/ukpga/2013/33/section/75/enacted>

76 Appeals: general

<http://www.legislation.gov.uk/ukpga/2013/33/section/76/enacted>

77 Appeals to Competition Appeal Tribunal

<http://www.legislation.gov.uk/ukpga/2013/33/section/77/enacted>

78 Appeals in relation to penalties

<http://www.legislation.gov.uk/ukpga/2013/33/section/78/enacted>

79 Appeals to Competition and Markets Authority

<http://www.legislation.gov.uk/ukpga/2013/33/section/79/enacted>

80 Enforcement of requirement to dispose of interest in payment system

<http://www.legislation.gov.uk/ukpga/2013/33/section/80/enacted>

81 Power to obtain information or documents

<http://www.legislation.gov.uk/ukpga/2013/33/section/81/enacted>

96 Guidance

<http://www.legislation.gov.uk/ukpga/2013/33/section/96/enacted>

98 Duty of regulators to ensure co-ordinated exercise of functions

<http://www.legislation.gov.uk/ukpga/2013/33/section/98/enacted>

103 Regulator's general duty to consult

<http://www.legislation.gov.uk/ukpga/2013/33/section/103/enacted>

104 Consultation in relation to generally applicable requirements

<http://www.legislation.gov.uk/ukpga/2013/33/section/104/enacted>

Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC

Article 28

Access to payment systems

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007L0064&from=EN> (p. 20)

Payment Services Regulations 2009/209**Part 8*****Access to Payment Systems*****96 Application of Part 8**

<http://www.legislation.gov.uk/uksi/2009/209/regulation/96/made>

97 Prohibition on restrictive rules on access to payment systems

<http://www.legislation.gov.uk/uksi/2009/209/regulation/97/made>

Enterprise Act 2002, c.40 (as amended)
Part 4 – Market Studies and Market Investigations
Chapter 1 Market Studies and Market Investigation References
131 Power of CMA to make references (as at 27 October 2014)

- (1) The CMA may, subject to subsection (4), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (2) For the purposes of this Part any reference to a feature of a market in the United Kingdom for goods or services shall be construed as a reference to—
 - (a) the structure of the market concerned or any aspect of that structure;
 - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
 - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- (2A) In a case where the feature or each of the features concerned falls within subsection (2) (b) or (c), a reference under subsection (1) may be made in relation to more than one market in the United Kingdom for goods or services.
- (3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.
- (4) No reference shall be made under this section if—
 - (a) the making of the reference is prevented by section 156(A1) or (1); or
 - (b) a reference has been made under section 132 or 140A(6) in relation to the same matter but has not been finally determined.
- (5) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 183(3) to (6).
- (6) In this Part—

“cross-market reference” means a reference under this section which falls within subsection (2A) or a reference under section 132 which falls within subsection (3A) of that section (and see section 140A);

“market in the United Kingdom” includes—

 - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and
 - (b) any market which operates only in a part of the United Kingdom;

“market investigation reference” means a reference under this section or section 132 or 140A(6);

“ordinary reference” means a reference under this section or section 132 which is not a cross-market reference (and see section 140A);

and references to a market for goods or services include references to a market for goods and services.

Competition Act 1998, c.41

Part I – Competition

Chapter I Agreements

2. Agreements etc. preventing, restricting or distorting competition (as at 27 October 2014)

- (1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—
 - (a) may affect trade within the United Kingdom, and
 - (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) Subsection (1) applies, in particular, to agreements, decisions or practices which—
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).
- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

9. Exempt agreements (as at 27 October 2014)

- (1) An agreement is exempt from the Chapter I prohibition if it—
 - (a) contributes to—
 - (i) improving production or distribution, or
 - (ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; and
 - (b) does not—
 - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- (2) In any proceedings in which it is alleged that the Chapter I prohibition is being or has been infringed by an agreement, any undertaking or association of undertakings claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.

18. Abuse of dominant position (as at 27 October 2014)

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
 - (a) directly, or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—

“dominant position” means a dominant position within the United Kingdom; and

“the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

Treaty on the Functioning of the European Union**2012/C 326/01****Article 101**

(ex Article 81 TEC)

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>

(p. 42)

Article 102

(ex Article 82 TEC)

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>

(p. 43)

**Committee on payment and settlement systems
Technical Committee of the International Organization of Securities
Commissions
Principles for financial market infrastructures
April 2012***(In this Consultation Paper and Supporting Papers "CPSS-IOSCO Principles")*<http://www.bis.org/cpmi/publ/d101a.pdf>

Principle 2: Governance (p. 32)

Principle 15: General business risk (p. 94)

Principle 18: Access and participation requirements (p. 107)

Principle 23: Disclosure of rules, key procedures, and market data (p. 127)

Annex 4: Sources of evidence

Sources of evidence

Introduction

We have noted throughout our Consultation Paper and Supporting Papers where and how we have relied on evidence and how it has shaped our thinking. We have set out that evidence in a manner which does not reveal commercially confidential information provided to us.

This document lists the main evidence we have relied upon, although the list is for convenience only and is not intended to be exhaustive.

List of respondents to the March 2014 Call for Inputs

We requested feedback from stakeholders on a range of issues in our *Payment Systems Regulator: Call for Inputs* (5 March 2014).

See <http://www.fca.org.uk/your-fca/documents/payment-systems-regulation-call-for-inputs>.

The respondents to our Call for Inputs were:

- Abaci Payments Ltd
- ACI Worldwide
- Advanced Payment Solutions Ltd
- Age UK
- AIB Group (UK) plc
- American Express
- Association of British Credit Unions (ABCUL)
- Association of Foreign Banks
- Association of Independent Risk & Fraud Advisors (AIRFA)
- ATMIA (ATM Industry Association Europe)
- Bacs Payment Schemes Limited (Bacs)
- Bank of England
- Barclays Bank PLC
- Belfast Bankers' Clearing Company Limited (BBCCL)
- Birdback Limited
- BNY Mellon
- British Bankers' Association
- British Retail Consortium
- Building Societies Association

- CAF Bank Limited
- Capita Asset Services
- Cardtronics UK
- CHAPS Clearing Company Ltd (CHAPS Co)
- Cheque & Credit Clearing Company (C&CCC)
- Clydesdale Bank PLC
- CMS Payments Intelligence
- Computer Sciences Corporation (CSC)
- Co-operative Bank
- Ardohr Limited (trading as CreDec)
- Cumberland Building Society
- Department for Work and Pensions
- Earthport
- Edgar, Dunn & Company
- Electronic Money Association
- Emerging Payments Association
- Faster Payments Scheme Limited (FPSL)
- Financial Services Consumer Panel
- First Data Europe Limited
- Rt Hon Frank Field (MP) DL, Member of Parliament for Birkenhead
- Handelsbanken
- HSBC
- IBOS Association
- Institute of Chartered Secretaries and Administrators Registrars' Group
- Intelligent Processing Solutions Limited (iPSL)
- Islamic Bank of Britain PLC
- J.P. Morgan Chase Bank NA
- LINK Scheme
- Lloyds Banking Group
- Maclay Murray & Spens LLP
- MasterCard Worldwide
- Mobile Broadband Group (MBG)
- Monitise
- Nationwide Building Society
- NewFinance
- Orwell Group
- Payments Council
- PayPal
- PayPoint Plc
- Peter Mair
- Petrol Retailers Association
- Prepaid International Forum
- Raphael & Sons PLC (Raphaels Bank)
- Realex Payments & Realex Financial Services Limited
- Royal Bank of Scotland
- Santander UK plc
- SWIFT

- techUK
- Tesco Bank
- Transpact.com
- Turkish Bank (UK) LTD
- Tasmor
- UK Cards Association
- UK Money Transmitters Association (UKMTA)
- Vendorcom Limited
- Virgin Money
- Visa Europe
- VocaLink
- Western Union Business Solutions
- Wonga Group
- WorldPay (UK) Ltd
- Yorkshire Building Society
- YourCash Europe

We are publishing the non-confidential versions of the responses from the stakeholders listed above on our website.

Stakeholder workshops

We have carried out a number of stakeholder workshops, during which feedback was provided orally by stakeholders.

- Regulatory Approach workshop on 28 May 2014 – 68 attendees
- Access workshop on 5 June 2014 – 66 attendees
- Infrastructure workshop on 16 June 2014 – 66 attendees
- Governance workshop on 11 July 2014 – 60 attendees
- Innovation workshop on 18 July – 122 attendees

The materials presented at these stakeholder workshops can be found on our website at www.fca.org.uk/about/payment-systems-regulator/engaging-with-you.

Information-gathering

During our information gathering, we held more than 175 stakeholder meetings. In some cases, we were accompanied by Accenture, whom we had commissioned to produce some reports for us.

Questionnaires

Accenture sent out the following PSR questionnaires on our behalf in July 2014 on access to payment systems:

- questionnaire on Access to Interbank Payment Systems (152 responses received)
- questionnaire on Access to Card Payment Systems (33 responses received)

These questionnaires are available on our website. We have analysed the responses to these questionnaires and have referenced this in *Supporting Paper 4: Access to payment systems*, where appropriate.

Accenture were also commissioned to lead a programme of engagement, jointly with the PSR, on governance and ownership of payment systems. Stakeholders from 23 organisations, representing Operators, PSPs and industry bodies, were interviewed. This culminated in the Accenture Governance Report listed below.

We have referenced evidence collected as part of this engagement in *Supporting Paper 3: Ownership, governance and control of payment systems*, where appropriate.

External reports

We have commissioned a number of external reports.

These reports are:

Reference	Description
Accenture Governance Report	A report on the governance of payment systems, commissioned by the PSR. The report by Accenture, 'A Review of Governance and Ownership of UK Payment Systems', is an Annex to <i>Supporting Paper 3: Ownership, governance and control of payment systems</i> .
Accenture Innovation Report	A report on innovation in payments, commissioned by the PSR. The report by Accenture, 'Review of the International Landscape of Innovation in Payments and Insights for UK Payments', is an Annex to <i>Supporting Paper 2: Payments industry strategy and areas for collaboration</i> .
KPMG Infrastructure Report	A report on payment systems infrastructure, commissioned by the PSR. The report by KPMG, 'UK Payments Infrastructure: Exploring Opportunities' is an Annex to <i>Supporting Paper 2: Payments industry strategy and areas for collaboration</i> .
London Economics Report on Competition and Collaboration	A report on competition and collaboration in payment systems, commissioned by the PSR. The report by London Economics, 'Competition and collaboration in UK payment systems', is an Annex to <i>Supporting Paper 2: Payments industry strategy and areas for collaboration</i> .
Ofcom/PSR Joint Study	A joint report by Ofcom and the PSR, 'Innovation in UK Consumer Electronic Payments', is an Annex to <i>Supporting Paper 2: Payments industry strategy and areas for collaboration</i> .

Reference	Description
RPI Paper on International Approaches	A paper commissioned by the PSR. The Paper by the Regulatory Policy Institute, 'Overview of the approach to strategy setting for payment systems in selected jurisdictions' is an Annex to Supporting Paper 2: Payments industry strategy and areas for collaboration.
RPI Regulatory Approach Report	A report on regulatory approach of different economic regulators commissioned by the PSR. The report by the Regulatory Policy Institute, 'Assessment of the Suitability of Different Regulatory Approaches to Economic Regulation that could be applied to Payment Systems' is an Annex to Supporting Paper 1: The PSR and UK payments industry.

Other documents

We have looked at a number of documents produced by a number of public authorities and external experts. This included:

- *Payment Clearing Systems, Review of Organisations, Membership and Control*, Denis Child, (1984)
- *Competition in UK Banking: A Report to the Chancellor of the Exchequer*, Don Cruickshank (March 2000)
http://webarchive.nationalarchives.gov.uk/20050301195359/http://hm-treasury.gov.uk/documents/financial_services/banking/bankreview/fin_bank_reviewfinal.cfm
- *Response by The Financial Services Authority to The Cruickshank Report on Competition in UK Banking*, Financial Services Authority (July 2000)
<http://www.betterregulation.com/external/Making%20policy%20in%20the%20FSA%20How%20to%20take%20account%20of%20competition.pdf>
- *UK payment systems: An OFT market study of clearing systems and review of plastic card networks*, Office of Fair Trading (May 2003)
<http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/OFTwork/publications/publication-categories/reports/financial/oft658>
- *Pre-Budget Report*, HM Treasury (December 2003)
<http://webarchive.nationalarchives.gov.uk/20070701080531/http://hm-treasury.gov.uk/media/D/1/PBR03completerep%5b1%5d.pdf>
- *BACS Access and Governance Working Group report: A report prepared for the Payment Systems Task Force by the Office of Fair Trading*, Office of Fair Trading (March 2006)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/shared_oft/reports/financial_products/oft836.pdf
- *LINK Access and Governance Working Group report*, Office of Fair Trading (April 2006)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/shared_oft/reports/financial_products/oft840.pdf
- *First annual progress report of the Payment Systems Task Force: A report prepared for the Payment Systems Task Force by the Office of Fair Trading*, Office of Fair Trading (May 2005)

http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/reports/financial_products/oft789a.pdf

- *Second annual progress report of the Payment Systems Task Force*, Office of Fair Trading (May 2006)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/reports/financial_products/oft849.pdf
- *Cheques Working Group Report*, Office of Fair Trading (November 2006)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/shared_oft/reports/financial_products/oft868.pdf
- *Final report of the Payment Systems Task Force*, Office of Fair Trading (February 2007)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/reports/financial_products/oft901.pdf
- *Review of the operations of the Payments Council A follow-up to the work of the Payment Systems Task Force*, Office of Fair Trading (March 2009)
http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/shared_oft/reports/financial_products/oft1071.pdf
- *Payment Systems Oversight Report 2008, Issue No.5*, Bank of England (April 2009)
<http://www.bankofengland.co.uk/publications/Documents/psor/psor2008.pdf>
- *The Bank of England's oversight of interbank payment systems under the Banking Act 2009*, Bank of England (September 2009)
<http://www.bankofengland.co.uk/publications/Documents/other/financialstability/oips/oips090928.pdf>
- *The Future of Cheques in the UK*, Payments Council (December 2009)
http://www.paymentscouncil.org.uk/files/payments_council/the_future_of_cheques_final_version.pdf
- *Payment Systems Oversight Report 2010*, Bank of England (March 2011)
<http://www.bankofengland.co.uk/publications/Documents/psor/psor2010.pdf>
- *United Kingdom: Observance by CHAPS of CPSS Core Principles for Systemically Important Payment Systems Detailed Assessment of Observance*, International Monetary Fund (July 2011)
<http://www.imf.org/external/pubs/ft/scr/2011/cr11237.pdf>
- *The future of cheques, Eighteenth Report of Session 2010–12, Volume 1: Report together with formal minutes, oral and written evidence*, House of Commons Treasury Committee (August 2011)
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1147/1147.pdf>
- *Independent Review of Governance and Performance of the Payments Council 2009-11*, Martin Cave (31 January 2012)
http://www.paymentscouncil.org.uk/files/payments_council/governancereview/governance_review-martin_cave_report-february2012.pdf
- *Payment Systems Oversight Report 2011*, Bank of England (April 2012)
<http://www.bankofengland.co.uk/publications/Documents/psor/psor2011.pdf>
- *Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissions: Principles for Financial Market Infrastructures*, Bank for International Settlements (April 2012) <http://www.bis.org/cpmi/publ/d101a.pdf>

- *Setting the strategy for UK payments*, HM Treasury (July 2012)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81567/setting_strategy_uk_payments190712.pdf
- *Opening up UK payments*, HM Treasury (March 2013)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221903/consult_opening_up_uk_payments.pdf
- *UK Payment systems - How regulation of UK payment systems could enhance competition and innovation*, Office of Fair Trading (July 2013)
<http://hb.betterregulation.com/external/UK%20Payment%20systems%20-%20How%20regulation%20of%20UK%20payment%20systems%20could%20enhance%20competition%20and%20innovation%20-%202013%20Jul%202013.pdf>
- *Financial Services (Banking Reform) Act 2013*
<http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted/data.htm>
- *The Bank of England's supervision of financial market infrastructures — Annual Report*, Bank of England (March 2014)
<http://www.bankofengland.co.uk/publications/Documents/fmi/fmiap1403.pdf>

Other information

We have also relied on publicly available information. This includes information from:

<http://www.bacs.co.uk>

<http://www.bankofengland.co.uk>

<https://www.bba.org.uk>

<http://www.bis.org/cpmi/publ/d101.htm>

<http://www.chapsco.co.uk>

<http://www.chequeandcredit.co.uk>

<http://www.fasterpayments.org.uk>

<https://www.gov.uk/government/consultations/opening-up-uk-payments>

<http://www.link.co.uk>

<http://www.mastercard.co.uk>

<http://www.paymentscouncil.org.uk>

<http://www.payyourway.org.uk/>

<http://www.theukcardsassociation.org.uk>

<http://www.ukpayments.org.uk/>

<https://www.visa.co.uk>

<http://www.vocalink.com/>

<http://webarchive.nationalarchives.gov.uk>

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