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The Payment Services Agenda 2020/21 – The PSR's Annual Plan

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In the midst of the COVID-19 crisis the U.K. Payment Systems Regulator (“PSR”) has published its Annual Plan and Budget for 2020/21.

The continuity of provision of the payment services and the underlying payments infrastructure has been a key priority for the Government and regulators. However, important initiatives are underway which market participants should not lose sight of in the context of the eventual return to business as usual operation.

Fostering competition, lowering barriers to entry and facilitating new entrants to the U.K. payments market are all key themes that run through the PSR's programme of work. We summarise the key issues for payments business as identified in the PSR's Annual Plan.

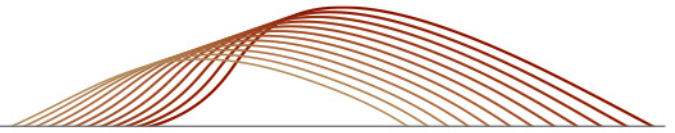
New U.K. Payments Architecture

The payments industry is in the process of creating a new central infrastructure service for retail payments (covering inter-bank clearing and settlement services). This New Payments Architecture (“NPA”) is being developed by Pay.UK and is intended to replace the existing retail inter-bank payment systems (Bacs, Faster Payments, Cheque, and Credit).

It promises to overhaul the infrastructure currently used to support some of the U.K.'s major payment systems. One of the primary aims of the project is to upgrade the clearing and settlement system to provide for real-time and bulk payments on a single platform. The NPA project emerged from a strategy paper published in November 2016 by the Payment Strategy Forum, and the plans were endorsed by the PSR.

The U.K.'s existing payments architecture is currently directly accessible to only a small number of banks and non-bank financial institutions, but the intention is to catalyse innovation by merging the ‘core’ functions into a single operation and allowing greater freedom to ‘plug in’ at either end of the payments flow. This echoes the policy behind the EU's second Payments Services Directive (“PSD2”).

The NPA will be a key focus for the PSR over the coming year and the PSR states in its Annual Plan that it will be continuing its assurance work on the NPA programme. In relation to this, the PSR states in its Annual Plan that its work will include further stakeholder engagement around competition and innovation issues that the PSR raised in its Call for Input (*CP20/2 Competition and Innovation in the U.K.'s New Payments Architecture*). In light of the COVID-19 crisis, the PSR has extended the deadline for responding to this Call for Input to give additional time for stakeholders to respond.



The PSR states that in the 2020/21 period it will also carry out a consultation in its regulatory approach to the NPA, which will be informed by its consultation.

The PSR's regulatory brief is to focus on competition and innovation in the payment industry. It is, therefore, very closely focused on competition law issues in the NPA where the provider of the new central infrastructure may gain a first mover and other competitive advantages over other industry participants.

The PSR has identified both vertical and horizontal competition issues:

1. The provider of the central infrastructure might have a first mover advantage given its role in developing that infrastructure. The danger is that it will use this to gain a competitive advantage, for example, by creating higher barriers to entry for potential competitors, access to competitors' information, influence over the costs of access, and timeliness of access. A further area of concern is the manner in which overlay services are provided. Overlay services in this context over ancillary or end-user services. Clearly, the provider of the central infrastructure services will potentially have an advantage where they are building the central infrastructure.
2. Horizontal competition issues could arise where the provider has an interest in a rival/different payment system. This could create a conflict of interest.
3. The PSR has also raised the monopolistic nature of NPA/CIS provision.

Access to Cash

The PSR states that it will take steps to protect the reasonable geographic coverage of free-to-use ATMs and support other ways of accessing cash. While more and more people are making digital payments, people have not stopped using cash. Therefore, the PSR wants to ensure everyone is able to make payments in a manner, which works for them.

In early 2018, LINK made a public commitment to maintain the existing geographic spread of free-to-use ATMs.

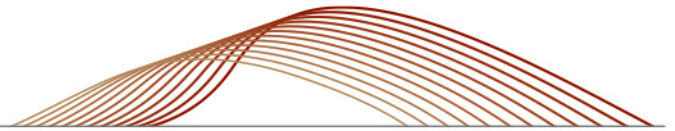
In the short-term, it will continue to monitor LINK's development and adoption of appropriate policies to maintain a broad geographic spread of free-to-use ATMs and will also support non-ATM developments such as access to cashback services. In the longer term, the PSR intends to consider the role the LINK Interchange Fee plays in supporting long-term models for access to cash services.

Card Acquiring Market Review

The PSR is conducting a market review into card acquiring. The Final Terms of Reference for this were published in January 2019 in PSR MR18/1.2.

The fees acquirers charge to merchants form a substantial part of the review. The Interchange Fee Regulation capped the level of interchange fees but any savings from this were not necessarily passed on to merchants through reductions in the merchant service charge. The review is also looking at the fees charged by schemes to acquirers.

The PSR is currently gathering evidence and information from a range of stakeholders. The PSR intends to publish its interim report for consultation in June 2020. After the publication of the interim report, the PSR plans to carry out a programme of stakeholder engagement—such as roundtable discussions.



Competition and Regulatory Enforcement Casework

The PSR has powers to take enforcement action in relation to contraventions of its directions and requirements given/imposed under:

- the Financial Services (Banking Reform) Act 2013 (“FSBRA”);
- the Interchange Fee Regulation (“IFR”);
- the Payment Services Regulations 2017;
- the Payment Account Regulations 2015; and
- in respect of competition law breaches under U.K. and European Competition Law.

The PSR is presently carrying on an investigation into alleged competition law contraventions under the U.K. Competition Act 1998. This was commenced in the 2017/18 period. The PSR states that this investigation is continuing.

The PSR is also carrying on seven regulatory investigations, all of which relate to breaches of the IFR. It expects these to be concluded in the 2020/21 period.

Treasury-led Reviews

Two major HM Treasury-led reviews are currently being conducted which have an impact on the payments industry. The PSR highlights its role in these initiatives.

The Payments Landscape Review was announced by former Chancellor, Philip Hammond, at his Mansion House Speech in June 2019. This was in the context of Brexit and the need for the U.K. to be able to continue to demonstrate its dynamism as a global financial services hub. The intention of the review is to ensure that the U.K.’s payments infrastructure and regulations keep pace with new payments models.

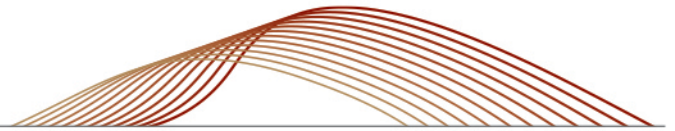
The Future Regulatory Framework Review is considering the overall approach to the regulation of the financial service sector and how this might need to evolve and adapt. The Treasury published its response to its call for evidence on regulatory co-operation in March 2020.

Various themes arose from this call for evidence. Key themes included the desire for there to be more coordination between public bodies to avoid unnecessary pressure points and to ensure the flow of regulatory activity (e.g., data requests, consultations, and new regulatory requirements) are manageable for firms. This also comprised a specific desire for regulatory to work with industry to exploit the opportunities offered by regulatory technology to make regulation and supervision more efficient for firms and regulators.

Revised Powers and Procedures Guidance

The PSR publishes guidance on its powers and procedures (the “PPG”). The PPG principally relates to the processes and procedures that the PSR will generally apply in relation to its regulatory functions under the FSBRA.

This was originally published in March 2015 before the PSR became operational and subsequently updated. In July 2019, the PSR consulted on a review of this Guidance. The Consultation closed on 31 October 2019 and the PSR states that it has been working through the responses with a view to finalising the Guidance in summer 2020.



There are two main reasons the PSR is updating the PPG. Firstly, the PSR's functions have increased significantly since the PPG was originally published. Both the PSR's jurisdiction and the scope of its work have changed substantially. For example, since 2015, the PSR has been given responsibility for monitoring and enforcing compliance with the Interchange Fee Regulation. The PSR is also now the U.K.'s competent authority to designate alternative switching schemes, under the EU Payment Accounts Directive 2014, and therefore, must ensure such schemes continue to meet the criteria set out under the Payment Account Regulations 2015. Secondly, the PSR has developed its procedures and processes since first publication and these should be reflected in the revised PPG.

Access to Payment Systems

The PSR confirms that access to payment systems and payment accounts is a "vital part" of their work. The PSR considers itself to have been successful in opening up access particularly to non-bank payment service providers. The PSR publishes an annual report on access to payment systems (Access and Governance Report on Payment Systems). It confirms that it will publish its next report on access to payment systems in June 2020.

The PSR also intends to consult on updated access guidance. This guidance covers access under Part 8 of the Payment Services Regulations (access to payment systems and access to payment accounts) and section 56 and 57 of the FSBRA (disputes where PSR apply for direct access to regulated payment systems). The guidance on the FSBRA and Payment Services Regulations are contained in separate documents. The PSR intends to publish a single composite guidance document.

The PSR state that improving access to payment systems and ensuring that regulated payment systems take account of users interests has been a priority since its launch in 2015. As a result of this, the PSR believes that more payment services providers have gained access to Bacs, CHAPS, and Faster Payments. This is borne out by the PSR's 2019 access report which noted that a record number of new participants had joined Faster Payments, Bacs, and CHAPS in 2018. This included a number of non-bank payment service providers. The PSR predicted that 2019 was projected to be another record year for participants joining faster payments.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings London lawyers:

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