

DRAFT – Payments Strategy Forum Phase 2 Terms of Reference

Preamble

- The Payment Systems Regulator (PSR) has a duty to promote the development of, and innovation in payment systems in the interests of those who use, or are likely to use, the services provided by those payment systems (service-users).¹
- In 2015 the PSR established the Payments Strategy Forum (the Forum) to provide coordination where collective action can promote innovation or downstream competition in the interests of service-users.
- The Forum did this by leading a process to identify, prioritise, and develop strategic initiatives where industry can work together to deliver innovation for the benefit of those who use services provided by payment systems.
- This is distinct from unilateral innovation, which is an important source of competitive advantage, market dynamics, and competition generally. In order to preserve incentives for participants to keep innovating for the benefit of service-users, the Forum sought to avoid activities in those innovation spaces which are best left to individual firms.
- The Forum has delivered a Strategy² outlining a set of collaborative proposals to meet user needs (“Phase 1”).
- The PSR has agreed that the Forum should continue and take ownership the first phase of design and implementation in 2017.

¹ Service Users are defined under Financial Services (Banking Reform) Act 2013 as those who use, or are likely to use, services provided by payment systems and is not limited to a specific group of users. Service users will include - banks who use payment services provided by other institutions; businesses ; retailers; charities; government and consumers

² <https://www.paymentsforum.uk/final-strategy>

Principles

- The Forum subscribes to the following principles:
 - a) Puts the interest of service-users at the center of its deliberations.
 - b) Engages with and considers the wider views of relevant stakeholders at all key stages of its discussions, in particular through the Payments Community.
 - c) Seeks to reach consensus on what desirable outcomes look like for service-users, based on available evidence.
 - d) Refines its proposals such that the net benefits are positive (as indicated by appropriate cost benefit analyses that consider the advantages and disadvantages of proposals). It is important to recognise the benefits arising from innovation are often particularly hard to quantify, but the nevertheless potentially very important.

Scope, activities, and deliverables

- The Forum is tasked with progressing the necessary implementation activities in 2017 as set out in the final Strategy, including:
- **New Payments Architecture (NPA)**
 - **By July 2017**, the Forum will design and document its draft NPA “blueprint” for public consultation. This will include:
 - i. detailed user requirements and rules for Request to Pay, Assurance Data, and Enhanced Data.
 - ii. results from designed / scripted pilot and transitional arrangements design.
 - iii. a detailed implementation plan and Cost Benefit Analysis.
 - iv. development of a funding / charging model that provides the right incentives.

- **By end 2017**, the Forum will finalise its design work and implementation planning and handover to the New Payment Systems Operator (NPSO). This will include addressing feedback from the public consultation and additional work on API development and standards definition.
- In designing the “Blueprint” and its implementation plan, the Forum will take into account all relevant industry initiatives, including the PSR market review into the ownership and competitiveness of infrastructure provision; the Bank of England’s strategic review of RTGS; the CMA’s open banking remedies and the implementation of PSD2.
- **Financial Crime Solutions**
 - **By July 2017**, The Forum will deliver on the following solutions:
 - i. **Guidelines for Identity Verification, Authentication and Risk Assessment.** The Forum will move implementation forwards initially, and will seek to confirm ownership and proceed with a handover to the appropriate entity.
 - ii. **Payment Transaction Data Sharing & Data Analytics.** The Forum will manage the delivery for this solution, including high-level design and delivery/procurement approach, and will propose an industry self-regulating body to be responsible for completing the design / specification and leading the delivery phase.
 - iii. **Financial Crime Intelligence Sharing.** The Forum will hand over the solution to an appropriate industry body. This will involve collaborating with existing bodies (e.g. Joint Fraud Taskforce, Financial Fraud Action UK and the Joint Money Laundering Intelligence Taskforce) to agree handover by 01st July 2017.
 - iv. **Trusted KYC Data Sharing.** The Forum will undertake additional analysis to confirm viability including potential delivery by the competitive market.

- v. **Enhancement of Sanctions Data Quality.** The Forum will engage with HM Treasury and the Office of Financial Sanctions Implementation (OFSI) to understand how best to take forward this solution.
 - vi. **Customer Awareness & Education.** The Forum will identify the appropriate industry body to take forward the solution. The working group will engage with potential candidates such as the Joint Fraud Taskforce and the new Financial Services Trade Association.
 - vii. **Indirect Access Liability Models:** The Forum will liaise with stakeholders to understand concerns with the current Joint Money Laundering Steering Group (JMLSG) guidance, clarifying specific concerns for consideration by the JMLSG, and subsequent approval of any changes needed by FCA and HM Treasury.
- **Monitoring the implementation of solutions progressed by other entities.**
 - This includes identifying whether progress is happening in a timely way and considering whether to recommend any intervention to address concerns if implementation is not progressing effectively.
 - **Public consultation**
 - The Forum will consult on its work at an appropriate point in mid-2017.

Working structures

- The Forum will establish a working structure to progress the detailed work required to meet its scope, activities and deliverables. It is expected that industry will provide resources and where necessary fund this structure.
- To ensure alignment with relevant initiatives, the Forum will ensure that relevant organisations are properly represented within its working structures. This will include representatives from the Payment System Operators (PSOs), the Bank of England's RTGS review project team and API Implementation Entity.

- The Forum will agree the working structure's terms of references. These should include clear scope, objectives and a timetable in advance of these starting to meet.
- The Forum Chair will agree the chairs and workstream leads. Members could include individuals who are not current Forum members. The PSR, and other regulators, may choose to attend as observers.
- It will be the role of the Chairs:
 - To appoint, with support from the Forum secretariat, the members of their working group, some of who are expected to be selected from the wider Payments Community.
 - To ensure their agreed scope, objectives and timeframes are being met.
 - To initiate the individual workstreams or editorial teams.
 - To report back to the Forum.
- In line with competition law, where the work of the Forum and its working structures involves cooperation between firms who would otherwise compete, stringent measures should be applied to ensure that such cooperation delivers substantial progress and real benefits for service-users. The Forum will also work to ensure that such cooperation is the only way those benefits can be realistically achieved.

A. Constitution of the Forum

The Forum Chair

- The Forum will have a Chair who is independent of payments industry interests. They will be appointed by and accountable to the PSR.
- The Chair is responsible for leadership of the Forum and ensuring its effectiveness in all aspects of its role.

The Forum and the Payments Community³

- The Forum, a focused group of senior individuals, will own the first phase of implementing the Strategy. It will have around 20 members in senior positions, with the ability to shape and make decisions on strategy and/ or policy, within their organisations and/ or their sector more broadly.
- Each member will demonstrate a track record of performance in similar roles and commitment to delivering good outcomes for the benefit of service-users. Forum members will not represent specific constituencies of stakeholders or organisations but they should be aware of the general viewpoint of their sector where such a consensus can be identified.
- The Forum will work with the Payments Community', which remains open to all interested stakeholders. It will allow the Forum to continuously engage and consult with a broader range of interested stakeholders as the Forum progresses its work.

³ The PSR established the Payments Community to influence the work programme of the Forum. Participation is open to everyone. The Community includes people and organisations with an interest in payment systems and services, who have indicated that they would like to contribute to shaping the Forum's work

Membership and appointments

- The Chair and the PSR will jointly manage the selection process for Forum members. The Chair and the PSR may introduce succession planning for the Forum membership at an appropriate time. A full list of Members can be found in Annex 2.
- Members who are no longer able to participate in the Forum's discussions may withdraw and be replaced. This process would be managed jointly by the Chair and the PSR.
- The Chair, in consultation with the PSR, may also consider and decide on applications for membership received on an ad hoc basis and may admit an additional member where the views of a relevant category of participant or stakeholder are not properly reflected in discussions of the existing membership, or where the new member would bring required expertise.
- To ensure independence, members should register their interests and any potential conflicts with the Chair as soon as they become aware of them.

B. Functioning of the Forum

- It is expected that appointed members will be present at all meetings of the Forum.
- The Chair will endeavor to achieve consensus between Forum members on priorities and recommendations under discussion. Dissenting opinions will be reflected in the minutes of the meeting.
- Where co-Chairs may disagree on matters of policy or strategic direction the Chair will be responsible for reaching a decision.
- Progress towards reaching consensus will be supported by evaluating options using robust evidence and cost benefit analysis.
- The Forum has no powers to direct its members or the wider sector to undertake any action.

The role of the PSR and other authorities

- The PSR will attend all Forum meetings and actively support the Chair where guidance is required in relation to its objectives.
- The Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority will observe meetings and provide guidance to the Chair in relation to their objectives, in consultation with the PSR.
- Other Authorities may attend Forum meetings where appropriate to provide relevant input into discussions.

Meetings

- It is expected that the Forum will have at least six meetings in 2017, and there may be a number of additional stakeholder engagements or events. Additional Forum meetings may take place if members believe these are required in order to achieve their objectives.
- Minutes and a summary of meeting outputs suitable for publication through relevant channels will be approved by Forum members after each meeting.

Secretariat

- The Chair will be supported by a secretariat provided by the PSR.
- The secretariat will be responsible for supporting the Forum, its meetings and related events. All Forum-related communications between Members outside of meetings will be exchanged through the Secretariat.
- Staff providing secretariat support will remain solely accountable to the PSR in the performance of their duties.

Agenda

- The agenda will be circulated in advance of Forum meetings. Forum members, the PSR and relevant authorities may suggest forward agenda items to the Chair via the secretariat.

Funding and Resource

- The Forum is expected to fund itself through industry contributions and will be responsible for identifying and securing the necessary resource to meet its scope, activities and deliverables.
- Forum members and the wider industry are expected to provide dedicated technical expertise to the Forum's working mechanisms.
- The PSR will provide Secretariat support to the Forum and the Chair.

Transparency

- All Forum meeting papers will be published on its website.
- Stakeholders with an interest in the Forum's work and who do not participate in the Forum itself will be encouraged to engage through the Forum working groups or the Payments Community.

Information sharing

- The Forum Members may need to share sensitive information with each other from time to time and the PSR or the Forum may issue guidance to working groups on such exchanges for competition law purposes.
- Guidance on information sharing taking place between Forum members can be found in annex 1 below.

ANNEX 1 - Guidance on Information sharing and The Payments Strategy Forum

Introduction

The purpose of this note is to provide guidance to the Payments Strategy Forum (“the Forum”) in respect of competition law and in the sharing of sensitive information between competitors and potential competitors.

The objective of the Forum is to identify, prioritise and deliver strategies to coordinate and drive collaboration where this is necessary to promote innovation in payment systems for the benefit of users. Such coordination necessarily involves sharing of information, sometimes between competitors in various parts of the payments industry.

The PSR is duty-bound to promote competition and is charged with enforcing competition law in relation to payment systems. The responsibility for ensuring the lawfulness of any exchange of such sensitive information between competitors rests solely with the undertakings concerned and their representatives.

Information sharing and competition law

The sharing of certain information can be damaging to the process of competition by enabling competitors to substitute coordination for competition. In certain circumstances, such information exchanges may infringe either UK or EU competition law⁴. Such infringements can lead to financial penalties⁵.

Information exchange is unlawful if it establishes a concerted practice between competitors. A concerted practice refers to a form of coordination where practical cooperation between undertakings is knowingly substituted for the risks of competition.

⁴ The Chapter I prohibition under the UK Competition Act 1998 , prohibits:-

“Agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom.”

Article 101 also prohibits similar arrangements where they affect trade between EU member states.

⁵ Of up to 10% of annual turnover under the UK Competition Act 1998 and European competition law

Information exchanges may distort competition in at least three ways. They may allow companies to reach a common understanding as to future commercial behavior, they may provide the basis for monitoring any departure from a collusive arrangement or they may support market foreclosure activity against new entrants.

Under competition law it is for competing undertakings to ensure that any cooperation or information exchange is lawful.

Where it is likely that an information exchange may pose a problem but is nevertheless necessary for the effective working of the Forum, members will need to identify compliance risk, take legal advice and ensure that sufficient safeguards are in place *prior to sharing the information*.

Key Factors in assessing information exchanges⁶

The effect on competition resulting from information exchange depends on the characteristics of the market in which it takes place, the nature of the firms involved as well as on the type of information that is exchanged, which may modify the relevant market environment towards one liable to coordination. It is not therefore possible to be categorical about which information exchanges are unlawful. However, it is possible to identify aspects of information exchange and the context in which they occur as problematic and likely to infringe competition law.

For an information exchange to have restrictive effects on competition within the meaning of competition law, it must be likely to have an appreciable adverse impact on one (or more) of the parameters of competition such as price, output, product quality, product variety or innovation⁷. Firms can exchange information if that information is genuinely in the public domain⁸. Information is genuinely in the public domain, however, only if it has been published widely and the information is equally accessible to all competitors and customers. Similarly information which is historical, aggregated or anonymised will be generally acceptable.

⁶ This is a summary only and undertakings should make themselves aware of the relevant information and circumstances when an exchange becomes unlawful.

⁷ Generally therefore only information exchanges between competitors will be prohibited; however, in certain situations where third party intermediaries are used as a conduit for information exchange, other information exchanges can also be unlawful

⁸ However, Forum members should not assume that sharing information in the Forum, which has been previously published in some way, is automatically acceptable.

The types of information which would be inappropriate to share include prices and pricing policies, discounts and rebates and quotas or caps on production. The exchange of information may also lead to restrictions of competition where it is liable to enable undertakings to be aware of market strategies of their competitors.

The Work of the Forum and Information Sharing

In relation to the Forum, a particular issue that may arise might be the possible sharing of information which has a strategic quality. This need could arise in relation to the Forum assessing various innovative options and making recommendations. Given the risks that such information could be used to facilitate collusive activity, particular care will need to be taken by the undertakings concerned both in identifying the problem beforehand and effecting any exchange in a compliant manner.

The PSR expects and the law demands that undertakings will ensure that such exchanges are conducted lawfully by, for example, organising the aggregation or anonymisation of information.

If members have any doubts about their legal position in sharing the information proposed, then they should avoid sharing the relevant information until they have sought independent legal advice and they have taken steps to ensure that the exchange would be lawful.

ANNEX 2 – Full list of Forum Members as at December 16th 2016

Ruth Evans	Chair
Alan Smith	Post Office
Becky Clements	Metro Banks
Brendan Peilow	Cabinet Office
Carl Pheasey	Money Advice Service
Carlos Sanchez	Orwell Group
Faith Reynolds	Financial Services Consumer Panel
Hamish MacLeod	Mobile UK
James Emmett	HSBC Bank plc
Katherine Horrell	Centrica
Lisa Felton	Vodafone (<i>being replaced by Hamish MacLeod</i>)
Mark Lyonette	ABCUL
Marion King	Royal Bank of Scotland
Michael Maier	Fidor Bank AG
Mike Smith	Raphaels Bank
Neil Lover	Coventry Building Society
Otto Benz	Virgin Money
Paul Horlock	Nationwide
Philip McHugh	Barclaycard
Russell Saunders	Lloyds Banking Group
Ruth Wandhöfer	Citi Bank
Sian Williams	Toynbee Hall
Thaer Sabri	Electronic Money Association
Tom Ironside	British Retail Consortium