

# Rules of Payments Council Limited



DRIVING CHANGE IN UK PAYMENTS

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## PART ONE: OBJECTS

### 1. Overview

Payments Council Limited ("**Payments Council**") is the new body which sets strategic direction for the UK payments industry. Membership of the Payments Council is open to all payment service providers in the UK. It is governed by a Board of senior figures from the payments industry, and independent non-executives, with an independent, non-voting Chairman.

### 2. Objects

The Payments Council's objects are:

- (a) to lead the future development of co-operative payment services in the UK in order to ensure that the payment system as a whole meets the needs of payment service providers, users and the wider economy, including through:
  - (i) facilitating competition, development and innovation within the payments sector; and
  - (ii) the identification and sponsorship of innovative solutions, including, where appropriate, new clearing schemes, to meet the current and future needs of consumers, businesses and other users promptly and efficiently.
- (b) to ensure that the payment system is open, accountable and transparent and that:
  - (i) any restrictions on access to payment schemes are fair, reasonable and non-discriminatory;
  - (ii) the governance of payment schemes is transparent and open to public scrutiny; and
  - (iii) any proposals for material innovation and major changes in the conduct of payment schemes are subject to rigorous and transparent evaluation, weighing up the costs and benefits to the banking industry and to society as a whole.
- (c) to ensure the operational efficiency, effectiveness and integrity of payment services in the UK, through a primary focus on issues which cross schemes.

## PART TWO: MEMBERSHIP

### 3. Eligibility Criteria for Members

3.1 The Payments Council has Eligibility Criteria which are open and objective. To be eligible to become and remain a Full Member, a person must:

- (a) be a Payment Service Provider; and
- (b) have Qualifying Payment Transactions.

3.2 Any other person can be an Associate Member.

3.3 The Bank of England shall be a Full Member as of right.

3.4 Each Member (other than the Bank of England) must continue to comply with the Eligibility Criteria for so long as it is a Member.

3.5 Any amendments to the Eligibility Criteria shall be determined by decision of the Board, in accordance with the Articles, other than in circumstances where the Board has received legal or other appropriate independent advice that a change is necessary to ensure compliance with law or any requirement of a Regulatory Authority, in which case such amendment will not require ratification by a decision of the Board.

3.6 The Payments Council shall keep an up to date list of all its Members, both Full Members and Associate Members, which shall be posted on the Website and be accessible to all. A hard copy of the up to date list of Members shall be kept by the Company Secretary.

### 4. Becoming a Member

4.1 Any person wishing to become a Member (a "**Prospective Member**") may submit an application, in a form agreed by the Board from time to time, in writing to the Admissions Officer (or such other individual as may be appointed by the Board for this purpose from time to time) providing that it agrees to comply with the appeals and disputes processes under Rules 9, 10 and 11 and providing that in doing so it agrees to comply with Rule 3. Any application must set out sufficient detail for the Payments Council to satisfy itself of the Prospective Member's compliance, and its ability to continue to comply, with the Eligibility Criteria.

4.2 The Admissions Officer may consult with the Board and with the Members with regard to an application by a Prospective Member, but shall have sole discretion as to whether to approve such an application.

4.3 The Admissions Officer may also seek the opinion of such independent persons as he thinks fit, to assist him in the application of the Eligibility Criteria. If the applicant is based outside the European Community or the European Economic Area, the Admissions Officer may, in his discretion, require the applicant to provide a legal opinion covering such matters as he reasonably considers appropriate in relation to the applicant and its application to become a Member.

4.4 If the Admissions Officer is satisfied that the Prospective Member complies, and can be expected to continue to comply, with the Eligibility Criteria, he shall accept the application.

- 4.5 The Admissions Officer shall notify the Prospective Member in writing of his decision (and, if applicable, the reasons for imposing any conditions upon, or for refusing Membership) within 3 months from receipt of the application. Such a decision shall be a "**Relevant Decision**".
- 4.6 If a Prospective Member is refused Membership or disagrees with any additional conditions of Membership imposed on it at the discretion of the Admissions Officer or the Board, it shall be entitled to appeal against that Relevant Decision by using the process set out in Rule 10 (an "**Appeal**") and/or the process described in Rule 11 (a "**Dispute**"), but, for the avoidance of doubt, such a Prospective Member shall not be admitted to Membership until such Appeal or Dispute has been resolved.
- 4.7 Any Member may object to the Relevant Decision of the Admissions Officer by informing the Payments Council of its objection in writing within 10 Business Days after receiving the notice described in Rule 4.5.
- 4.8 Any Member that disagrees with the decision to admit a Prospective Member and notifies the Payments Council under Rule 4.7 may appeal against the Relevant Decision to admit the Prospective Member by using the appeals process described in Rule 10. The Prospective Member shall not be admitted to Membership until any such Appeal has been resolved. Any Prospective Member or Member who disagrees with the finding of the Appeals Committee under Rule 10 may initiate a Dispute under Rule 11.

## 5. **Rights and benefits of Membership**

- 5.1 Full Members shall have the following rights:
- (a) to appoint Industry Directors as described in Rule 15;
  - (b) to attend, speak and vote at general meetings of the Payments Council;
  - (c) to be consulted and to receive information relating to such matters regarding the activities of the Payments Council and the UK payment system as the Board may from time to time determine;
  - (d) to propose innovations for consideration by the Board;
  - (e) to participate in the evaluation of potential innovations;
  - (f) to participate in new Payment Systems if the membership criteria for such new Payment Systems and other requirements for participation are met by the Full Members;
  - (g) to participate in other voluntary groups, including Payment Interest Groups, set up under the auspices of the Payments Council, provided that the Full Member contributes appropriately to such voluntary groups, including towards their costs; and
  - (h) to receive such other rights and benefits as the Board may from time to time prescribe.
- 5.2 Associate Members shall have the following rights:
- (a) to attend but not to vote or (save with the consent of the Chairman) to speak at general meetings of the Payments Council;

- (b) to be consulted and receive information relating to such matters regarding the activities of the Payments Council and the UK payment system as the Board may from time to time determine;
- (c) to participate in the evaluation of potential innovations;
- (d) to participate in the User Forums set up under the auspices of the Payments Council;
- (e) to participate in other voluntary groups, including Payment Interest Groups, set up under the auspices of the Payments Council, provided that the Associate Member contributes appropriately to such voluntary groups, including towards their costs; and
- (f) to receive such other rights and benefits as the Board may from time to time prescribe.

5.3 The Payments Council shall supply each Member with copies of reports and other information as it thinks fit, through any electronic means it deems appropriate which may include through a Member-dedicated area of the Website, except that the Payments Council will not provide any Member with information which constitutes a business secret to any other Member.

## 6. Duties of Membership

6.1 Each Full Member agrees to be bound by these Rules and every Decision, unless it has been granted a Waiver under Rule 12.

6.2 Each Full Member agrees and acknowledges that it accepts responsibilities and liabilities under these Rules, as between itself and the Payments Council, and as between itself and the other Full Members, as principal and not as agent of any other party.

6.3 Each Full Member undertakes to the Payments Council to notify the Company Secretary immediately if that Full Member believes that a Membership Event of Default has occurred in relation to it or if that Full Member believes that it no longer satisfies any one or more of the Eligibility Criteria.

6.4 Each Member agrees to participate in any Consultation which affects it. In the event that the Member does not wish to respond in full or in part to a Consultation, that Member agrees unequivocally to support the Board Response to the Consultation and any subsequent Decision.

6.5 Each Member agrees to treat as confidential any information which comes into its possession as a result of being a Member except to the extent:

- (a) such information is already in the public domain other than as a result of a breach of these Rules; or
- (b) it is compelled to disclose that information by law or by the rules or requirements of any applicable Regulatory Authority or stock exchange.

6.6 Nothing in these Rules shall preclude disclosure of information by the Bank of England or any of its officers or employees:

- (a) to the Financial Services Authority or any other governmental or competent regulatory authority, whether in the UK or elsewhere;

- (b) for the purposes of any criminal investigation whatever which is being or may be carried out, or of any criminal proceedings whatever which may have been or may be initiated, in either case whether in the UK or elsewhere; or
- (c) for the purpose of enabling or assisting the Bank of England to discharge its functions as a monetary authority.

6.7 Each Member agrees and acknowledges that the Payments Council may from time to time co-operate (by the sharing of information or otherwise) with a Regulatory Authority and each Member shall waive any obligation of confidence owed by the Payments Council to it, whether express or arising in law or equity, in respect of such co-operation.

6.8 Each Member agrees to comply with the provisions of the Data Protection Act 1998 with respect to any personal data obtained from or shared with the Payments Council or any other Member.

6.9 Each Member agrees to contribute in the manners and proportions decided by the Board from time to time to the costs, liabilities and expenses incurred by the Payments Council which a Member is specifically required to be responsible for under Rule 7.

6.10 Each Member shall notify the Payments Council immediately on becoming aware of any change in law or regulation applicable to it that may materially affect its relationship with the Payments Council.

6.11 Each Member shall inform the Payments Council before giving notice to terminate any membership agreement it has in place with a Contracted Payment Scheme and consult with the Payments Council regarding its reasons for the termination.

6.12 Each Member shall co-operate with other Members in the resolution of any problems, which may arise as a result of its relationship with the Payments Council.

6.13 Each Member shall appoint a senior member of its organisation to be the relationship manager and point of communication and liaison between the Member and the Payments Council.

6.14 Each Member agrees to provide the Payments Council with any relevant information reasonably requested by the Payments Council, subject to any conflicting duties of confidentiality which may exist.

## 7. **Membership Fees**

7.1 To finance its work, the Payments Council charges fees to all its Members ("**Membership Fees**"), paid half yearly, which will provide most of the funding needed to carry out its objectives.

7.2 In addition, the Payments Council may charge application fees so as to recover some of the costs it incurs in processing certain applications under these Rules. The Payments Council does not charge fees to Contracted Payment Schemes.

7.3 The Board will set a budget for each Financial Year, taking account of its planned activities (both regular and special) and the projected costs involved in running the Payments Council. This budget will not include any costs associated with any self-funded interest groups

which may be established by some of the Members under the Payments Council's auspices.

7.4 The Board will then allocate the budgeted costs as between the different categories of Members, and as between the Members in each category, so as:

- (a) to achieve an appropriate and fair balance between them; and
- (b) not to present an undue financial cost associated with joining the Payments Council as a Member.

7.5 The Board shall record in writing its rationale for the allocation of Membership Fees annually and such record shall be available to Members upon request. The Board may change the methodology for allocating and setting Membership Fees at its discretion.

7.6 The Payments Council's budgeted costs, and thus Membership Fees, will be allocated and charged to Full Members by reference to their respective percentage Shares of the UK Payment Volumes and using the following bands:

Percentage Share of UK Payment Volumes	Membership Fee
More than 5%	Variable, but total proportion of the budget fixed
More than 3% and less than or equal to 5%	Fixed
More than 1% and less than or equal to 3%	Fixed
More than 0.1% and less than or equal to 1%	Fixed
0.1% or less	Fixed

7.7 As a result:

- (a) The Board will, each Financial Year, agree the proportion of the budget to be paid, in total, by those Full Members with more than 5% of the UK Payment Volumes. Of the agreed total to be paid by Full Members within this top band, each Full Member will pay Membership Fees in proportion to that Member's share of the Top Band UK Payment Volumes;
- (b) Full Members with 5% or less of the UK Payment Volumes will pay Membership Fees in equal amounts which differ as between the bands (and not within each band); and
- (c) Associate Members will pay fixed Membership Fees as determined by the Board in its discretion.
- (d) No one Full Member will pay fees of more than 24.99% of the total fees payable by all the Full Members in any one Financial Year

7.8 If, for whatever reason, the Payments Council requires further funding from its Members during any Financial Year, it may charge supplemental Membership Fees to all its Members, payable on such notice and terms as the Board may determine, provided that in allocating such supplemental Membership Fees the Board shall follow the principles set out above.

- 7.9 If there is a surplus of funding from Membership Fees over budgeted costs at the end of any Financial Year, that surplus will be carried forward into the next Financial Year and either applied to reduce the Payments Council's funding requirements for the next Financial Year, or applied to build up reserves, and not repaid to Members.
- 7.10 The Board will determine the exact amounts payable as Membership Fees by each Full Member in advance of the relevant Financial Year using data provided by each of the Contracted Payment Schemes calculated on the most recent whole year's figures. From this data, it will calculate the UK Payment Volumes and each Member's Share of the UK Payment Volumes based on and in accordance with Appendix 3.
- 7.11 The Board will:
- (a) upon request, provide to each Full Member, its detailed calculations for that Full Member (including for each Contracted Payment Scheme); and
  - (b) make available to all Full Members, its aggregate calculations for the UK Payment Volumes and the identity and aggregate percentage Share of the UK Payment Volumes of each Full Member.
- 7.12 A Full Member may self-certify that it falls within the lowest band, i.e. that its Share of the UK Payment Volumes is less than 0.1%.
- 7.13 No adjustments will be made to reflect events subsequent to the end of the calendar year for which the data is provided by the Contracted Payment Schemes.
- 7.14 The Payments Council will send an invoice to each Member for its annual Membership Fees as soon as reasonably practicable after the Board has made the relevant determinations and in any event at least one month before the beginning of the relevant Financial Year.
- 7.15 If a Member is admitted part-way through a Financial Year, the Board may at its discretion require payment of a proportionate part only of the annual Membership Fees which would otherwise be payable or waive payment of any Membership Fee for that Financial Year.
- 7.16 If a Member leaves the Payments Council, whether upon resignation, suspension or expulsion, it will not be entitled to a refund of all or any part of the Membership Fees properly due and payable by that Member. Furthermore, the Board may determine that such Member should pay any direct costs that the Payments Council has reasonably incurred in connection with such resignation, suspension or expulsion.
- 7.17 Invoices for Membership Fees will be payable on no less than one month's notice.
- 7.18 Membership Fees and other charges payable by Members under these Rules are stated exclusive of VAT which (if applicable) shall be paid in addition.
- 8. Ceasing to be a Member**
- Resignation of a Member*
- 8.1 Any Member may resign as a Member by giving not less than 6 months' written notice (or such shorter notice as the Board may agree) to the Payments Council delivered to the

Admissions Officer at the registered office of the Payments Council.

8.2 On receiving a resignation notice ("**Resignation Notice**"), the Admissions Officer shall acknowledge receipt of the Resignation Notice to the Member who has given it , as soon as reasonably practicable.

8.3 The date on which a resignation by a Member takes effect shall be the "**Resignation Date**".

8.4 Once the Admissions Officer has received a Resignation Notice, the resigning Member shall only be entitled to revoke such Resignation Notice with the prior written approval of the Payments Council.

8.5 Notwithstanding any resignation, a resigning Member shall continue to remain liable for all its obligations as a Member under these Rules which accrued prior to the Resignation Date, including the payment of any fees payable by it to the Payments Council.

8.6 A resigning Member will, at the reasonable discretion of the Board, be liable for any direct costs reasonably incurred by the Payments Council arising from the resignation of the Member.

#### *Suspension and Expulsion of a Member*

8.7 The Board shall act on any decision taken under the Articles to suspend or exclude a Member with immediate effect (or with effect from such time and date as the Board may specify) as provided for in the Articles, or as a result of a breach of these Rules. Such decision shall be a "**Member Exclusion Decision**".

#### *Continuing obligations*

8.8 Where a Member is suspended or excluded by a resolution of the Board under Rule 8.7, such excluded or suspended Member shall remain fully liable for the due performance of all its obligations under these Rules incurred prior to the effective date of its exclusion from the Payments Council, being the date determined by the Board in its absolute discretion.

8.9 Without limiting the generality of Rule 8.8 above, an excluded or suspended Member shall pay:

- (a) the Membership Fees in relation to the Payments Council's Financial Year in which it is excluded;
- (b) its full share of all other costs, fees and expenses that the Payments Council has approved for such Financial Year; and
- (c) any other costs, fees and expenses arising from the exclusion or suspension of the Member as reasonably determined by the Board in its discretion,
- (d) and shall not be entitled to repayment of any part of any subscription or levy previously paid by it.

#### *Challenge of an excluded Member*

8.10 The Payments Council will prepare a Report in accordance with Rule 9.5 in the event

that a Member Exclusion Decision is made with respect to any Member. Any Member which has a Member Exclusion Decision made with respect to it may challenge that decision using the appeals process described in Rule 10 or by notifying the Payments Council that a Dispute has arisen regarding that decision and initiating an expert determination or arbitration procedure in accordance with Rule 11, but such processes shall only commence after the Member has been suspended or excluded.

## 9. Disciplinary Process

9.1 Any Member may notify the Payments Council, or the Payments Council may consider that a Member may have breached these Rules (a "**Potential Disciplinary Issue**").

9.2 If any Member notifies the Payments Council of a Potential Disciplinary Issue (a "**Notifying Party**") with a view to the Payments Council investigating such alleged breach, the Notifying Party shall provide the Payments Council with any supporting information it has.

9.3 If the Payments Council decides or is notified that the Member may have breached these Rules it shall notify the chairman of the Disciplinary Committee and the Member of the substance of the Potential Disciplinary Issue within five Business Days after making such a decision or receiving such a notification.

9.4 Following a notification to the chairman of the Disciplinary Committee under Rule 9.3, the Disciplinary Committee shall:

- (a) invite the Member to make written and/or oral submissions to the Disciplinary Committee within ten Business Days after receiving such invitation;
- (b) investigate the Potential Disciplinary Issue and compile a written report (the "**Report**") containing a decision as to whether the Member has breached these Rules within twenty Business Days after issuing the invitation made under Rule 9.4(a) unless the Disciplinary Committee has extended this period; and
- (c) circulate the Report as soon as it is finalised to the Board.

9.5 Where a Member Exclusion Decision has been made, the Disciplinary Committee shall prepare a Report containing a decision as to whether the Member Exclusion Decision should be upheld, and circulate the Report as soon as it is finalised to the Board.

9.6 The Member shall co-operate in the preparation of the Report if asked to do so by the Payments Council.

9.7 If the Disciplinary Committee's Report finds that the Member has breached these Rules, this shall be a "**Disciplinary Decision**", and the transgressor may appeal against the finding under the appeals process described in Rule 10 below.

## 10. Appeals Process

10.1 Any Appeal against a Relevant Decision, a Disciplinary Decision or a Member Exclusion Decision (an "**Appeal**") may at the request of any party to the Relevant Decision, Disciplinary Decision or Member Exclusion Decision (the "**Appellant**") be referred to a committee of the Board constituted for that purpose (the "**Appeals Committee**"), provided that such a referral is made within ten Business Days of the Relevant Decision, Disciplinary Decision

or Member Exclusion Decision being notified to that party. The Appeals Committee shall comprise all of the Directors, other than those who sat on any Disciplinary Committee whose decision is the subject of the Appeal.

10.2 The Appeals Committee will consider all previous submissions made and may ask the Appellant or any other person to make further submissions.

10.3 The Appeals Committee will decide whether to confirm or overrule the Relevant Decision, Disciplinary Decision or Member Exclusion Decision within ten Business Days after the referral was made under Rule 10.1 and shall notify the Appellant and the Board of its decision immediately.

10.4 The Appellant may at any stage before the Appeals Committee makes its decision to withdraw the Appeal by notice to the Payments Council.

## 11. Disputes Process

11.1 Any party to an Appeal, who is dissatisfied with a finding of the Appeals Committee under Rule 10, may initiate the disputes process described in this Rule 11.

11.2 If the Member is dissatisfied with a decision taken by the Board to suspend or exclude it then it may initiate the disputes process described in this Rule 11.

11.3 A Dispute may be initiated by the Member or Prospective Member serving notice of a Dispute, specifying in reasonable detail the nature of the Dispute, on the Payments Council, and on any other parties to the Dispute, if applicable.

11.4 The Member or Prospective Member must initiate a Dispute within ten Business Days of being advised of the determination of the Appeals Committee in relation to the Relevant Decision, Disciplinary Decision or Member Exclusion Decision being notified to the Member or Prospective Member, as applicable.

11.5 If the Member or Prospective Member agrees with the Payments Council that the Dispute is of a technical nature, the parties may jointly decide to refer the matter to an expert, for determination. If the parties are unable to agree on the identity of the expert within fifteen Business Days after the date of deciding that the Dispute should be determined by an expert, or if the person appointed is unable or unwilling to act, the expert shall be appointed by the Managing Director for the time being of the British Bankers' Association on the application of either party. If the parties do not agree the Dispute is suitable for expert determination within twenty Business Days after the Relevant Decision, Disciplinary Decision or Member Exclusion Decision or ruling of the Appeals Committee is made, then it shall be determined using the procedure described in Rules 11.6 and 11.7.

11.6 Any expert under Rule 11.5 shall act on the following basis:

- (a) the expert shall act as an expert and not as an arbitrator;
- (b) the expert's determination shall be final and binding on the parties;
- (c) the expert shall decide the procedure to be followed in the determination and shall be requested to make his determination in writing within twenty Business Days after his appointment or as soon as practicable after that;

- (d) any amount payable by one party to the other party as a result of the expert's determination shall be due and payable within five Business Days after the expert's determination has been notified to the parties;
- (e) the expert may, if he thinks fit, award interest at the rate of one per cent per annum above the repo rate of the Bank of England for the time being in force on any amount which is determined to be payable to the other party from such date as he shall determine;
- (f) the expert shall determine how and by whom the costs of the determination, including the fees and costs of the expert, are to be paid and, until the determination is given, the parties shall pay the costs in equal shares, and reallocate those payments in accordance with the expert's determination.

11.7 Any Dispute that cannot be settled by expert determination under Rules 11.5 and 11.6 shall be settled by arbitration. Such arbitration shall be finally settled within a reasonable time by a panel of three independent arbitrators, appointed by the City Disputes Panel. The seat of the proceedings shall be London and they shall be conducted in the English language. The arbitration rules of the City Disputes Panel shall be applied.

11.8 This Rule 11 is without prejudice to the right of any party to a Dispute to seek interim relief against the other party (such as an injunction) through the English courts to protect its rights and interests, or to enforce the obligations of another party.

## 12. **Waivers**

12.1 The following may apply for and be granted a Waiver:

- (a) Contracted Payment Schemes; and
- (b) Company Scheme Members and Non-Company Scheme Members (together "**Scheme Members**").

12.2 Notwithstanding the provisions of Rule 12.1 above, any Full Member who has the right to appoint an Industry Director in its own right may not, under any circumstances, apply for or be granted a Waiver in its own right. Notwithstanding such prohibition, any such Full Member may apply for a Waiver for and on behalf of any Scheme Indirect Clearer for which it acts as sponsor.

12.3 Where a Scheme Indirect Clearer has been granted a Waiver by the Payments Council, its sponsoring Full Member shall not be treated as being in breach of the applicable Decision if and to the extent that a Waiver has been granted by the Payments Council, and for so long as such Waiver continues in effect, to a Scheme Indirect Clearer, provided that the Full Member shall have complied in all other respects with its obligations under these Rules or that Decision.

12.4 During a Consultation, any Contracted Payment Scheme or Scheme Member (each, a "**Waiver Applicant**") who forms the view that it will not be able to comply with the provisions of a prospective Decision, may inform the Waiver Committee and any Applicable Scheme, verbally or in writing, of its intention to apply for a Waiver upon a prospective Decision becoming a formal Decision.

- 12.5 A Waiver Applicant may apply for a Waiver from the date of a Decision. The Board or the Waiver Committee may, in their discretion, set a date by which all Waiver Applications regarding a particular Decision must be received.
- 12.6 Each Waiver Application shall be in writing and shall set out information concerning the circumstances of the Waiver Applicant, including the grounds on which the Waiver Applicant is applying for the Waiver, how long the Waiver Applicant wishes the Waiver to be granted for, what actions the Waiver Applicant is taking to enable it to comply with the provisions of the Decision, and any other information as may be required from time to time.
- 12.7 The Payments Council may, in its discretion, charge a fee to a Waiver Applicant with respect to the Waiver Application. Any such fee shall be at cost and shall not be in an amount which would result in a profit being generated for the benefit of the Payments Council.
- 12.8 If a Contracted Payment Scheme wishes to apply for a Waiver, the following process shall apply:
- (a) the Contracted Payment Scheme shall submit its Waiver Application to the Waiver Committee;
  - (b) the Waiver Committee shall adjudicate upon the Waiver Application and shall hear and take into account any representations by third parties with respect to the Waiver Application, after such time the Waiver Committee shall announce its decision as to whether the Waiver is granted or the Waiver Application rejected;
  - (c) the Waiver Committee shall have 60 Business Days from receipt of the Waiver Application in which to deliver its decision;
  - (d) the decision of the Waiver Committee with respect of the Waiver Application shall be final.
- 12.9 If a Scheme Member wishes to apply for a Waiver, the following process shall apply:
- (a) the Scheme Member shall submit its Waiver Application to each Contracted Payment Scheme affected by the Decision of which it is a member (the "**Applicable Scheme**");
  - (b) the Applicable Scheme(s) shall adjudicate upon the Waiver Application and shall hear and take into account any representations by third parties, after such time the Applicable Scheme(s) shall announce its decision as to whether the Waiver Application should be approved or rejected;
  - (c) the Applicable Scheme(s) shall have 60 Business Days from receipt of the Waiver Application to deliver its decision;
  - (d) if the Waiver Application is approved, the Waiver Application shall be delivered by the Applicable Scheme(s) to the Waiver Committee for endorsement;
  - (e) if the Waiver Committee endorses the approval of the Applicable Scheme(s) the Waiver shall be granted. If the Waiver Committee rejects the approval of the Applicable Scheme(s) the Waiver Application shall be rejected and any such decision of the Waiver Committee shall be final;

- (f) if the Applicable Scheme(s) rejects the Waiver Application, the Scheme Member shall have the right to appeal to the Waiver Committee. The Waiver Committee shall adjudicate upon the Waiver Application and shall hear and take into account any representations by any interested parties, including the Scheme Member and the Applicable Scheme(s). If, on such appeal, the Waiver Committee finds in favour of the Scheme Member, the Waiver shall be granted. If not, the Waiver Application shall be rejected. Any decision of the Waiver Committee on such appeal shall be final;
- (g) as stated in Rule 12.9(a) above, if a Decision affects a number of Contracted Payment Schemes then the Scheme Member shall submit its Waiver Application to each Applicable Scheme for approval or rejection. If each Applicable Scheme reaches a different decision as to whether the Waiver Application should be approved or rejected, the Waiver Committee shall undertake final adjudication of the Waiver Application and determine whether the Waiver should be granted or the Waiver Application rejected. Any decision of the Waiver Committee shall be final and shall be binding on each Applicable Scheme and the Scheme Member.

12.10 If the Waiver Committee grants a Waiver, it shall set out in writing the form of Waiver being granted. There shall be four kinds of Waiver available to the Waiver Committee, as follows:

- (a) Full Waiver - a Waiver from complying with all the provisions of a Decision;
- (b) Conditional Waiver – a Waiver from complying with all the provision of a Decision subject to certain conditions, as determined by the Waiver Committee, in its discretion;
- (c) Modified Waiver – a Waiver from complying with certain provisions of a Decision as determined by the Waiver Committee, in its discretion;
- (d) Fixed Term Waiver - a Full, Conditional or Modified Waiver which is granted for a fixed period of time as determined by the Waiver Committee, in its discretion.

12.11 The Waiver Committee will not normally grant a Full Waiver to Contracted Payment Schemes.

12.12 The Payments Council shall ensure that the Waiver Application process is open and transparent in accordance with the Objectives. Each Waiver Application shall be published on the Website, together with the minutes of all hearings or appeals relating to the Waiver Application and any reasons of the Waiver Committee for granting the Waiver or rejecting the Waiver Application. The details of the Waiver Application process shall not be published if to do so would adversely affect any confidentiality obligations or rights of the Waiver Applicant, the Applicable Scheme(s), the Waiver Committee, the Payments Council or any other third party.

12.13 In the event that a Waiver Applicant that has been granted a Waiver (a "**Waived Body**") decides that it is able to comply with the provisions of the relevant Decision, it shall notify the Waiver Committee in writing and the Waiver Committee may withdraw the grant of the Waiver. Once the Waiver has been withdrawn in this way, all the provisions of the Decision shall apply to the Contracted Payment Scheme or Scheme Member as applicable.

12.14 Each Waived Body owes continuing obligations to the Payments Council with respect of the relevant Waiver. Each Waived Body has a duty to inform the Waiver Committee of any change in its circumstances which it believes may affect its waived status.

- 12.15 The Waiver Committee may vary or revoke a Waiver at its discretion. If the Waiver Committee revokes a Waiver it shall state its reasons for doing so, verbally or in writing, and shall hear and take into account any representations from the Waived Body against such revocation.
- 12.16 The Board may delegate any or all of its powers, authorities and discretions in relation to the Waivers process as it thinks fit to the Waiver Committee in accordance with the Articles. The Waiver Committee will, taking account of its terms of reference, include an appropriate balance of Independent Directors (one of whom will act as chairman) and Industry Directors.
- 12.17 The Board may develop, adopt and maintain a written policy setting out the principles which it or the Waiver Committee should follow when considering whether or not to grant Waivers and such policy shall be available to all potential Waiver Applicants upon request.

### **Comply or Explain - Board Decisions**

- 12.18 The Board shall have the discretion to require such explanations (as described in Rule 12.19 and 12.20 below) to ensure compliance by any Full Member with Board Decisions (or any aspect thereof) from any Member(s) who:
- (a) Has not complied with a Decision of the Board (such compliance to be determined at the sole discretion of the Board) irrespective of whether or not that Member is eligible to apply for a Waiver; or
  - (b) Are a Waived Body (been granted a Waiver pursuant to Rule 12) but the Waiver has been subsequently revoked; or
  - (c) Has had a Waiver Application refused pursuant to any part of Rule 12;

In each of the above circumstances the Board shall have sole discretion in determining whether or not a Member is complying or otherwise with any Decision.

- 12.19 The Board may require a Full Member to provide a full explanation in writing with reasons why a Decision has not been complied with, and full details of that Full Members intended compliance with the relevant Decision with a proposed timetable (**‘Full Written Explanation’**). The Full Written Explanation must be signed by a Senior Representative of that Full Member.
- 12.20 The Board may circulate the Full Written Explanation to Full Members, the Chairman of Payments Council and the Independent Directors for information if deemed appropriate. In addition the Full Members, the Chairman of Payments Council, and the Independent Directors may request the attendance of a Senior Representative of the Full Member in question at a meeting of the Board (with such attendance fully noted in the Minutes) to provide a full explanation with reasons why a Decision has not been complied with, and full details of that Full Members intended compliance with the relevant Decision with a proposed timetable (**‘Full Oral Explanation’**).
- 12.21 The above provisions 12.18 to 12.20 will not be applied to any Member who can demonstrate that it has submitted any Waiver Application but this Waiver Application has not been determined.

### **PART THREE: BOARD**

### 13. Objectives of the Board

13.1 The Board has three main roles, which are consistent with the Objectives, as follows:

- (a) to provide strategic vision for the future development of co-operative payment services in the UK;
- (b) to ensure that the overall payment system is open and accountable; and
- (c) to take responsibility for the operational efficiency, effectiveness and integrity of payment services in the UK, through a primary focus on issues that cross Payment Systems (subject always to the Bank of England's oversight role and the allocation of responsibility for payment integrity agreed with each Contracted Payment Scheme).

13.2 The Board shall have overall responsibility for the integrity of the UK payment system, including issues to do with fraud and risk management.

### 14. Strategic and Corporate Plan

14.1 The Board shall develop and maintain the Strategic and Corporate Plan, in consultation with stakeholders. One of the key functions of the Strategic and Corporate Plan is that it shall inform the "National Payments Plan". The Strategic and Corporate Plan shall cover those activities which need to be addressed collaboratively by participants in the payment sector, and it will enable participants to compete effectively in the market. The Strategic and Corporate Plan shall articulate the following:

- (a) the Board's vision for the payments industry over the medium to long term;
- (b) demonstrate how such a vision meets the needs of stakeholders;
- (c) set out a programme for delivering the vision; and
- (d) how the Payment Council's workplans and budget shall be derived from the Strategic and Corporate Plan. It is also intended that the Strategic and Corporate Plan shall inform the planning process of others.

14.2 The Board shall determine the Strategic and Corporate Plan and supporting plans and objectives in consultation with key stakeholders, including Contracted Payment Schemes, User Forums and Payment Interest Groups, and shall consult publicly where appropriate.

14.3 The Board shall look to promote innovation and change in the payments sector where these will deliver demonstrable and proportionate benefits to stakeholders. The Strategic and Corporate Plan shall be a key document in identifying areas for change.

14.4 The Board shall put in place a process for keeping the Strategic and Corporate Plan refreshed and updated, which shall include the following stages:

- (a) initial consultation with stakeholders to identify areas of desired change in the industry and suggestions for innovation (including input from User Forums);
- (b) evaluation of cost/benefit case;

- (c) Strategic and Corporate Plan articulates agreed vision for future direction and identifies the deliverables required to achieve the vision;
- (d) Board prioritises deliverables where necessary to ration scarce resources;
- (e) Board passes resolutions to bind Members and Contracted Payment Schemes to play their part in achieving the deliverables, including consequences of non-compliance;
- (f) Board sets measurable industry objectives;
- (g) Board monitors progress in achieving the deliverables and objectives and takes any appropriate corrective action; and
- (h) Strategic and Corporate Plan is maintained to record progress to date and to ensure that it remains responsive to any changes in the external environment and the needs of Payment System users and Payment Service Providers.

## 15. The Board

15.1 The Board is accountable to the Members.

15.2 The Directors shall look to the Objectives and the objectives of the Board in fulfilling their duties as Directors.

15.3 The Board will initially comprise of sixteen Directors.

15.4 There will be one Chairman who will be independent and non-voting.

15.5 There will be four Independent Directors appointed in accordance with the Articles.

15.6 There will be eleven Industry Directors appointed by Full Members in accordance with the Articles. The number of Industry Directors will be split as follows:

- (a) five Industry Directors appointed to the Board by those Full Members with over 5% of UK Payment Volumes, as such Full Members have Board representation as of right;
- (b) three Industry Directors appointed to the Board by the constituency of Full Members who have between 1% and 5% of UK Payment Volumes; and
- (c) three Industry Directors appointed to the Board by the constituency of Full Members who have less than 1% of UK Payment Volumes.

15.7 Full Members with over 5% of UK Payment Volumes shall have the right to appoint a senior individual from its organisation to be an Industry Director. If the Industry Director leaves mid-term, the relevant organisation shall be required to find a replacement for the remaining term.

15.8 If the number of Full Members with more than 5% of UK Payment Volumes changes, there shall be an automatic review of the Board and the cost allocations for the budget.

15.9 Full Members with 5% or less of UK Payment Volumes shall have the following rights:

- (a) to appoint senior individuals put forward by the Full Members from their organisation to be an Industry Director. If a Director leaves mid-term then a replacement volunteer (who need not necessarily be from the same organisation) shall be sought to fulfil the remaining term and the constituents shall determine how any such by-election shall be conducted;
- (b) to vote within their constituency as to who the Industry Directors should be. If there are more nominations than there are seats, the constituents shall decide between them how the election process should operate (if different from that set out below);
- (c) only Full Members with 5% or less of UK Payment Volumes may vote to appoint such Industry Directors.

Industry Directors from this category, where they are representatives of a wider group of Full Members, must be aware of the views (where relevant) of the other organisations in their constituency and they will be expected to participate in the processes which will be used to collect the views of the other Full Members in their constituency. They shall be expected to convey the views of the other Full Members in their constituency, as appropriate, alongside the views of their own organisations and to provide feedback to their constituency following Board meetings, as part of an ongoing dialogue between them.

- 15.10 Industry Directors shall be appointed for a 3-year term which may be extended by decision of the Board.
- 15.11 All Directors shall, at all times, act in the best interests of the Payments Council.
- 15.12 The Board shall only pass new resolutions which affect the wider Membership following Consultation. The Board should aim to decide by consensus where possible, but should not depend on consensus to make a decision.
- 15.13 The Board shall undertake an annual evaluation of its performance, its committees and the Directors. The Chairman shall act on the results of such performance evaluation.
- 15.14 No individual may be appointed as an Industry Director if such appointment would result in there being more than one individual on the Board who is employed or engaged by the same Full Member or any other member of the same corporate group.
- 15.15 All Industry Directors must be of sufficient standing within their organisation to be able to commit that organisation to a Decision. On appointment, all Industry Directors will be given a written statement of their Directors' responsibilities.

## 16. **Appointment of Industry Directors from constituencies**

- 16.1 The Chairman (or some other person appointed for the purpose by the Board) will have overall responsibility for the conduct of such elections.
- 16.2 Every member of the relevant constituency group will have the right to propose a candidate (who need not necessarily be a member of that organisation but must be drawn from one of the organisations within the constituency group) to be a Director. All notifications from constituency members who wish to stand should be sent to the Chairman or other person appointed for the purpose to be received within timescales agreed by the Board.

16.3 Each constituency may determine its own process for the election of its Board representatives. Such process may be changed by the constituency at its discretion. The process and any subsequent changes to it must be recorded in writing and delivered to the Board for its information before the process for any election begins. The Board is not required to ratify and may not amend such process.

16.4 Once the election process has taken place and the constituency representatives have been elected, the constituency shall inform the Board of the names of the chosen representatives and request the ratification of the Board of their appointment as Industry Directors.

## 17. **Appointment of the Independent Directors**

17.1 The Board will set up an Appointments Committee comprising four Directors, two of whom are Industry Directors and two of whom are Independent Directors, chaired by an Independent Director who has a casting vote.

17.2 Before making an appointment, the Appointments Committee may:

- (a) appoint a headhunter;
- (b) ask organisations with relevant experience for suggestions;
- (c) advertise; or
- (d) consult other Directors.
- (e) The Appointments Committee may decide upon its own procedures for making appointments but these must stand up to objective justification.

17.3 When making an appointment, the Appointments Committee shall be expected to appoint the best candidate to take forward the role and objectives of the Payments Council. The Appointments Committee shall also have regard to the need for Independent Directors as a whole to bring a variety of perspectives to the Board and for them not to come from identical backgrounds and with similar experience.

17.4 Independent Directors shall be appointed for a 3-year term which may be extended by decision of the Appointments Committee. Independent Directors may only serve a maximum of two 3-year terms.

17.5 A separate sub-committee of the Board will set the remuneration of the Independent Directors.

17.6 Upon appointment, the Independent Directors shall be given a written statement of their duties and responsibilities. The Independent Directors may enlist the resources of the Payments Council to assist them in fulfilling their duties and responsibilities.

## 18. **Role of the Independent Directors**

18.1 The four Independent Directors are full members of the Board and are entitled to speak and vote on any issue.

18.2 The Independent Directors shall act in the best interests of the payments sector as a

whole and not any sectional interest or different objective, or as representatives of a particular view point, and shall act in line with the Objectives.

18.3 The role of the Independent Directors includes:

- (a) to bring their experience to bear in the evaluation of papers and proposals;
- (b) to broaden the perspective of the Payments Council;
- (c) to ensure the Board reflects different perspectives; and
- (d) to take a particular interest in any advisory panels which will be set up as part of the Consultation process.

18.4 The Independent Directors are entitled to have their views attributed in the published minutes of Board meetings.

18.5 No resolution of the Board shall be passed if all the four Independent Directors vote together to block the resolution.

## 19. Board committees

19.1 The Board may establish such committees as it thinks fit from time to time, whether standing or ad hoc, including an Appointments Committee, a Disciplinary Committee, an Appeals Committee and a Waivers Committee.

19.2 Each committee of the Board must be constituted and follow procedures as set out in accordance with the Articles.

## 20. Board protocols

20.1 The Board has adopted and will maintain and observe policies covering the following areas:

- (a) conflicts of interest policy;
- (b) role of observers;
- (c) confidentiality policy; and
- (d) competition compliance.

20.2 These and certain other materials relevant to the conduct and proceedings of Board meetings are available upon request to the Chief Executive and have been provided to each member of the Board as part of a "Director's Pack".

## **PART FOUR: OPERATIONS**

### **21. Executive**

21.1 The Board shall appoint a Chief Executive of the Payments Council in accordance with the Articles. The Chief Executive shall be responsible for any such tasks as may be determined by the Board and assigned to him/her from time to time.

21.2 The Company Secretary shall be responsible for any such tasks as may be determined by the Board and assigned to him/her from time to time.

### **22. Promoting openness and transparency**

22.1 The Payments Council's conduct and its decision-taking processes are intended to be highly transparent. This will be achieved by a variety of mechanisms, including:

- (a) publication of Board minutes, including a record of how each Director has voted;
- (b) publication of an annual review of Board and Payments Council activities, including a specific report from the Independent Directors;
- (c) Consultation, supported by cost benefit analyses where appropriate;
- (d) workshops and seminars on key topics; and
- (e) the Website which will be designed to share and disseminate information and promote understanding of payments to end customers.

22.2 Nothing in Rule 22.1 shall create any additional obligations on any Member or the Payments Council, to act in a way which would cause either to breach any duties of confidentiality or security owed by it to any third party.

### **23. User Forums**

23.1 The Board will encourage and support the establishment of an appropriate, complimentary set of User Forums. The purpose of such User Forums should be to consider, discuss and offer advice to the Board on proposals presented to the Board.

23.2 The User Forums are funded by the Payments Council and may be subject to the direction of the Board.

23.3 No Full Member may be a member of a User Forum, and no User Forum member may be employed, either in an executive or non-executive capacity, by a Payment Service Provider. The Board will determine who should be approached to be a member of a User Forum.

23.4 Each User Forum will be chaired by an Independent Director. The chairman of a User Forum will be responsible for communicating the views of the User Forum to the Board, but may express his/her personal views in debate at Board level.

23.5 Each User Forum should have at least two meetings per year, but may meet more frequently if the members of the User Forum feel in their discretion that it is necessary to do so.

Each User Forum may use such services of the Payments Council as it may reasonably require for these purposes.

23.6 The User Forums must report to the Board following each of its meetings, including those of any of its sub-committees. The method of such reporting shall be at the discretion of the Board.

23.7 Each User Forum shall decide the agenda for each User Forum meeting and may request any papers it feels are necessary from the Board or the Contracted Payment Schemes, subject to any duties of confidentiality owed by the Board or the Contracted Payments Schemes to any Member or any other third party.

23.8 Each User Forum may set up sub-committees.

## 24. **Services**

24.1 The Payments Council may engage the services of any service company it deems appropriate, including the services of UK Payments, a service company which offers a variety of services to a number of organisations. This may include the services of UK Payments staff, who have particular and unique expertise and experience in the payments industry, legal and secretariat services and premises.

24.2 The arrangements for the provision of such services by UK Payments to the Payments Council shall be recorded in writing and include appropriate safeguards for the management of their respective duties of confidentiality and any conflicts of interest.

## 25. **Accounts and audit**

The Payments Council shall appoint an external auditor to undertake the annual audit of its accounts, and shall comply with the provisions of the Companies Act 1985 with respect to its accounts and any audit requirements.

## 26. **Relationship with stakeholders**

The Payments Council will seek to establish strategic relationships with, amongst others:

- (a) key industry bodies and trade associations;
- (b) Payment Systems which do not become Contracted Payment Schemes, such as MasterCard and Visa;
- (c) other stakeholder groups, such as interest and consumer groups; and
- (d) providers of infrastructure and technology services to the payments industry,
- (e) all in furtherance of the Objectives.

## 27. **Relationship with Contracted Payment Schemes**

27.1 The Payments Council is committed to working together with each of the Contracted Payment Schemes listed in Schedule 2 for the benefit of the UK payments industry and for their

own mutual benefit: it is primarily by and through them that Decisions will be implemented.

27.2 Accordingly, the Payments Council will seek to establish and maintain a co-operative and effective working relationship with each of the Contracted Payment Schemes.

27.3 Notwithstanding this, the Payments Council has entered into a contract or (in the case of unincorporated schemes) other formal arrangement with each of them, so as to set out their respective rights and duties towards each other. These include provisions which give the Payments Council power to issue sanctions against a Contracted Payment Scheme for non-co-operation and non-compliance with Decisions.

## 28. **Payment Interest Groups**

28.1 Members may set up a Payment Interest Group to discuss collaborative and non-competitive payment issues where they have a mutual interest. The purpose of any Payment Interest Group should be:

- (a) to form an effective working relationship with the Payments Council so that the input of each Payment Interest Group can inform the Strategic and Corporate Plan and the Payments Council's activities generally; and
- (b) to ensure that the Payments Council's vision of the future direction of payments can be reflected in the work of the Payment Interest Groups.

28.2 There is no obligation on Members to set up Payment Interest Groups, and any Payment Interest Groups that are set up shall be independent of the Payments Council and not subject to any direction of the Board. Accordingly:

- (a) each Payment Interest Group may determine its own terms of reference;
- (b) there is no requirement for a Director to be involved with a Payment Interest Group; and
- (c) there is no obligation on Payment Interest Groups to report to the Board although they may do so in their discretion, but, where appropriate, the views of the Payment Interest Group should be conveyed (whether through an Industry Director or the Chief Executive or otherwise) to the Board.

28.3 Each Payment Interest Group will appoint a spokesperson who will be the point of contact between the Payment Interest Group and the Company.

28.4 Payments Interest Groups will not be funded by the Payments Council and must be funded by the Members who make up each Payment Interest Group or as they may otherwise determine.

28.5 Each Payment Interest Group will determine when and at what frequency it meets and may engage the services of any service company it deems appropriate for these purposes, including the services of UK Payments.

## 29. **Payments Council sub-groups**

29.1 The Board may set up Payments Council sub-groups for the purpose of agreeing policy issues which may affect the Payments Council and its Members. Any such sub-group shall not be construed as being a committee of the Board.

- 29.2 The Payments Council sub-groups will be funded by the Payments Council and may be subject to the direction of the Board.
- 29.3 Each sub-group will determine when and at what frequency it meets and may engage the services of any service company it deems appropriate for these purposes, including the services of UK Payments.

## PART FIVE: CONSULTATION

### 30. Objectives of Consultation

The objectives of the Payments Council's Consultation process are as follows:

- (a) **Quality of decisions:** to improve the quality of decisions made affecting the UK payments industry for the benefit of Members and other stakeholders.
- (b) **Robust process:** to offer a high quality, clear Consultation process that is easy to use and elicits thorough responses to effect progress in the UK payments industry.
- (c) **Inclusivity:** to involve Members and any other interested stakeholders at each stage of the Consultation process to ensure that they have the opportunity to influence any decisions flowing from the Consultation.
- (d) **Openness and transparency:** to ensure a clear, publicly available and user friendly Consultation process.

### 31. Subjects for Consultation

31.1 The Board shall decide, in its discretion, what matters it wishes to propose as Initiatives for Consultation. Initiatives shall include the following:

- (a) proposals for innovation;
- (b) proposals to create new payment systems, to wind down payment systems or potential payment system mergers;
- (c) any significant policy statements such as updates to the "National Payments Plan".

31.2 When the Board announces a Consultation, it shall stipulate whether the Initiative is a "significant" (being one which is likely to involve a comprehensive cost benefit analysis as part of the Consultation process) or an "ordinary" Initiative. Whether an Initiative is categorised as "significant" or "ordinary" shall be at the discretion of the Board.

### 32. Consultation Process: Phase One

32.1 If the Board, in its discretion, believes there is a subject which should be considered through Consultation, it shall announce an Initiative. When an Initiative is announced it shall be communicated to the Members and made available on the Website.

32.2 Following the announcement of the Initiative, the Payments Council shall arrange and attend a series of informal meetings with Members, and with any other key stakeholders which may be affected by the proposals of the Initiative, including the Contracted Payment Schemes and User Forums.

32.3 Once these informal meetings have taken place, the Board will have received sufficient feedback to ascertain whether the Initiative should proceed to Phase Two, the Consultation phase. If the informal feedback is positive the Board may, in its discretion, decide to proceed to Phase Two. If the informal feedback is largely negative, or on consideration the Initiative appears to be unworkable or disproportionate, the Board may decide in its discretion to

dismiss the Initiative and proceed no further.

33. **Consultation Process: Phase Two**

33.1 The Payments Council shall prepare a Consultation document ("**Consultation Document**"), and the Board shall prepare and issue a press release to announce the Consultation.

33.2 The Consultation Document shall be in a form agreed by the Board from time to time but shall contain the following:

- (a) a comprehensive description of the Initiative, including a preliminary impact assessment;
- (b) a list of questions to which the Board would like responses;
- (c) a clear timetable by which responses should be received;
- (d) if the Initiative has been classed by the Board as a "significant" initiative, an explanation that a comprehensive cost benefit analysis may be undertaken at the end of the Consultation before any decision is made regarding the implementation of the Initiative.

33.3 The Consultation Document shall be published on the Website. The Payments Council shall send a copy of the Consultation Document to any of its Members or other stakeholders who the Board believes, in its discretion, have a direct interest in the Initiative, requesting their views.

33.4 Once the timetable for responses stipulated in the Consultation Document has lapsed, the responses shall be consolidated and presented to the Board. The Board will then take the following actions which will depend on the nature of the Company Initiative:

- (a) if the Initiative is a "significant" initiative and the response to the Consultation indicates that the Initiative merits further consideration, the Board shall progress to the cost benefit analysis stage, the process for which is set out in Appendix 4 to these Rules. Once the cost benefit analysis is complete, the Board shall prepare its response in accordance with Rule 33.5 below;
- (b) if the Initiative is an "ordinary" initiative, the Board shall prepare its response in accordance with Rule 33.5 below.

33.5 The Board shall issue its response (the "**Board Response**") to the Consultation as soon as reasonably practicable after all the responses to the Consultation have been received and presented to the Board. The Board Response shall be in the form agreed by the Board from time to time, but shall include the following information:

- (a) a comprehensive summary of the comments received as part of the Consultation;
- (b) the actions to be taken by the Board with respect to the Initiative and whether the Board will progress to a Decision or whether the Initiative will be dismissed and not progressed any further;
- (c) in the event that the Board decides to proceed in a manner that is at odds with the majority of the responses to the Consultation (i.e. to proceed to a Decision when the majority response to the Consultation is negative or to dismiss an Initiative when the

majority response to the Consultation is positive) the Board shall set out its reasons for taking such a decision.

**34. Consultation Process: Phase Three**

34.1 If the Board decides that the Initiative should be progressed and become a Decision as set out in Rule 33.5(b) above, the Board shall publish the following information:

- (a) the time and date of the Board meeting on which the Initiative shall be tabled for resolution of the Board to become a Decision;
- (b) the provisions of the proposed Decision; and
- (c) details of who the provisions of the proposed Decision shall apply to.

34.2 If a Decision is effected, the Payments Council shall, at the earliest possible opportunity, publish the details of the Decision on the Website and shall send such details to all Members and other stakeholders, including Contracted Payment Schemes and User Forums, who shall be required to comply with the provisions of the Decision or may otherwise be affected by the Decision.

## PART SIX: GENERAL

### 35. Definitions and interpretation

35.1 In these Rules, unless the context otherwise requires, the following definitions shall apply:

**"UK Payments"** means UK Payments Association Limited.

**"Act"** means the Companies Act 1985 and every other statute from time to time in force concerning companies and affecting the Payments Council.

**"Admissions Officer"** means the person (if any) appointed by the Board for assessing eligibility and applications for Membership and determining the Voting Rights of any Full Member in accordance with Article 2.4 (and if no such person has been appointed by the Board, all the rights, powers and duties given under these Rules to the Admissions Officer shall vest in the Board).

**"Appeal"** has the meaning given to it in Rule 10.1.

**"Appeals Committee"** has the meaning given to it in Rule 10.1.

**"Appellant"** has the meaning given to it in Rule 10.1.

**"Applicable Scheme"** has the meaning given to it in Rule 12.9(a).

**"Appointments Committee"** means a committee set up by the Board for the purpose of managing the appointment of Independent Directors as set out in Rule 17.

**"Articles"** means the Articles of Association of the Payments Council as amended or substituted from time to time.

**"Associate Member"** means a person who has been appointed an associate member of the Payments Council in accordance with Article 2 and which has no right to have its name entered on the Register (and **"Associate Membership"** shall be construed accordingly).

**"Bank of England"** means The Governor and Company of the Bank of England.

**"Board"** means the board of Directors of the Payments Council from time to time.

**"Board Response"** has the meaning given to it in Rule 33.5.

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open in London for the conduct of ordinary business.

**"Chairman"** means the chairman of the Payments Council from time to time.

**"Chief Executive"** means the chief executive of the Payments Council appointed in accordance with Article 7.

**"Company Secretary"** means the secretary of the Payments Council from time to time.

**"Company Scheme Member"** means a person who is a member of a Contracted Payment

Scheme and a Full Member.

**"Confidential Information"** means information (which is of its nature confidential) in any medium or format concerning the business, operations or customers of the Payments Council or the Members disclosed (either directly or indirectly) to the other party.

**"Consultation"** means any consultation undertaken by the Payments Council in accordance with Part Five of these Rules.

**"Consultation Document"** has the meaning given to it in Rule 33.1.

**"Contracted Payment Scheme"** means a Payment System which has entered into a contract or other formal arrangement with the Payments Council governing its relationship with the Payments Council and which is so designated by the Board from time to time, and at the date of adoption of these Rules includes each of the Payment Systems listed in Appendix 2.

**"Corporate Group"** means, in relation to a Member, that Member and all its subsidiary undertakings and/or parent undertakings (within the meaning of section 258 of the Act) and any subsidiary undertakings of its parent undertakings from time to time.

**"Decision"** means a decision taken by the Board.

**"Director"** means a director of the Payments Council from time to time.

**"Disciplinary Committee"** means a committee of the Board charged with the responsibility for investigating, reporting on and determining disciplinary issues as may be established by the Board from time to time in order to hear disciplinary issues brought under these Rules.

**"Disciplinary Decision"** has the meaning given to it in Rule 9.6.

**"Disclosing Party"** has the meaning given to it in Rule 40.

**"Dispute"** means any dispute between the parties arising under or in connection with these Rules.

**"Eligibility Criteria"** means the conditions specified in Rule 3 with which a Member or person who wishes to become and remain a Member must comply as a condition of Membership.

**"Financial Year"** means the financial year of the Payments Council for the purposes of section 223 of the Act.

**"FoIA"** means the Freedom of Information Act 2000.

**"Full Member"** means a person who has been appointed a full member of the Payments Council in accordance with Article 2 and whose name is entered on the Register (and **"Full Membership"** shall be construed accordingly).

**"Independent Directors"** means any Director who is not appointed by a Full Member or Members in accordance with the Articles.

**"Industry Director"** means a Director appointed by a Full Member or Members in accordance with the Articles.

**"Initiative"** means an initiative which is considered and driven by the Payments Council

pursuant to the Objectives and the Strategic and Corporate Plan.

**"Member"** means a Full Member or an Associate Member (and **"Membership"** shall be construed accordingly).

**"Member Exclusion Decision"** has the meaning given to it in Rule 8.7.

**"Membership Event of Default"** has the meaning given to it in the Articles.

**"Membership Fees"** has the meaning given to it in Rule 7.1.

**"Memorandum"** means the Memorandum of Association of the Payments Council as amended or substituted from time to time.

**"Non-Company Scheme Member"** means a person who is a member of a Contracted Payment Scheme but is not a Full Member.

**"Notifying Party"** has the meaning given to it in Rule 9.2.

**"Objectives"** means the objectives of the Payments Council, as set out in the Memorandum and the Rules, as amended or substituted from time to time.

**"Payment Interest Group"** means a group of Members set up for the purpose of discussing collaborative and non-competitive payment issues.

**"Payment Service Provider"** has the meaning given to it in Appendix 1.

**"Payment System"** means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions howsoever initiated or executed (and, as appropriate, includes closed or proprietary systems, sub-systems and technology systems used for such processing, clearing and settlement) which the Board, acting reasonably, considers to be, and designates from time to time as being, a constituent element of the payment system as a whole operating in the UK.

**"Payment System Member"** means a person which has entered into or which has acceded to, a Payment System Membership Agreement.

**"Payment System Membership Agreement"** means the agreement by which a person agrees to become or to remain, as the case may be, a member of the Payment System upon and subject to the terms of that agreement.

**"Payment System Rules"** means the procedures and rules for the time being in force in connection with a Payment System.

**"Potential Disciplinary Issue"** has the meaning given to it in Rule 9.1.

**"Prospective Member"** has the meaning given to it in Rule 4.1.

**"Public Authority Recipient"** has the meaning given to it in Rule 39.

**"Qualifying Payment Transactions"** means a transfer or withdrawal of funds as determined by the Board from time to time and set out in these Rules and Appendix 3 in particular.

"**Recipient**" has the meaning given to it in Rule 39.

"**Regulatory Authority**" means any governmental or regulatory body that has responsibility for regulating or overseeing all or any part of a Member's activities, including the Office of Fair Trading, the Competition Commission, the European Commission, HM Treasury, the Bank of England, HM Revenue and Customs and the Financial Services Authority.

"**Relevant Decision**" has the meaning given to it in Rule 4.5.

"**Report**" has the meaning given to it in Rule 9.4(b).

"**Resignation Notice**" has the meaning given to it in Rule 8.2.

"**Rules**" means these rules of the Payments Council as amended from time to time by resolution of the Board.

"**Sales Tax**" means any sales, purchase or turnover tax as may be applicable in any relevant jurisdiction, including value added tax chargeable under or pursuant to the Value Added Tax Act 1994 or the EC Sixth Directive (77/388/EEC).

"**Scheme Indirect Clearer**" means an institution who, where permitted by the rules of a Scheme, provides clearing services to third parties under the sponsorship of a Scheme Member.

"**Share of UK Payment Volumes**" means the number of Qualifying Payment Transactions executed in a fixed period or through a Full Member expressed as a percentage of the UK Payment Volumes in that fixed period, as determined by the Board in accordance with these Rules.

"**Strategic and Corporate Plan**" means the strategic and corporate plan of the Payments Council from time to time, developed, maintained, implemented and administered by the Board and designed to meet the Company's Objectives (and, as appropriate, includes any particular plans made thereunder, including any National Payments Plan).

"**Top Band Payment Volumes**" means the total number of Qualifying Payment Transactions executed in a fixed period by those Full Members with more than 5% of the UK Payment Volumes

"**Trade Marks**" has the meaning given to it in Rule 39.

"**UK Payment Volumes**" means the total number of Qualifying Payment Transactions executed in a fixed period, as determined by the Board in accordance with these Rules and Appendix 3 in particular.

"**User Forum**" means a forum for key groups of users of payment services, including heavy users, SMEs and consumers.

"**Waiver**" means a waiver from an Initiative applied for by an eligible Full Member or a Contracted Payment Scheme in accordance with Rule 12.

"**Waiver Applicant**" has the meaning as given to it in Rule 12.4.

"**Waiver Application**" means the application for a Waiver submitted by the Waiver Applicant.

**"Waiver Committee"** means a committee of the Board charged with the responsibility for receiving applications for and adjudicating on Waivers.

**"Website"** means the website of the Payments Council from time to time.

35.2 In these Rules, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a **"person"** includes any individual, firm, body corporate, association or partnership, or unincorporated association of persons (whether or not having a separate legal personality);
- (c) use of the words **"includes"** or **"including"** means without limitation and the use of these or similar words shall not limit the meaning of the general words; and
- (d) each reference to a document is a reference to that document as amended from time to time.

35.3 In these Rules, a reference to a statute or a statutory provision includes:

- (a) any subordinate legislation (as defined in section 21(1) Interpretation Act 1978) made under it;
- (b) any repealed statute or statutory provision which it re-enacts (with or without modification);
- (c) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (d) a reference to any regulations, guidelines or the like issued by any regulatory body having jurisdiction over the Payments Council or the Members shall be deemed to include any renewal, replacement or amendment thereof.

35.4 The Appendices to these Rules form part of it.

35.5 If there is any conflict or inconsistency between these Rules and the Articles, the provisions of the Articles shall prevail and these Rules shall be deemed to be amended to the extent necessary to give effect to the Articles.

## 36. Triggers for amending these Rules

36.1 These Rules may be amended upon any of the following taking place:

- (a) a change to the numbers of Full Members within each category of Full Members, such categories being based on the percentage of UK Payment Volumes;
- (b) a decision of the Board;
- (c) a decision of the Full Members in a general meeting that the Rules should be amended.

36.2 Any Full Member may propose an amendment be made to these Rules by notifying

the Payments Council in writing of such a proposal. The Board shall consider any proposals for amendments to the Rules and shall determine, by passing a resolution which, if any, should be effected.

**37. Publication of the Rules**

37.1 The Rules will be published on the Website.

37.2 The Payments Council will prepare a quarterly report setting out any changes made to the Rules in that quarter. This quarterly report may be sent by e-mail to each Member and will be available on the Website. If the Board in its discretion believes that a change to the Rules is substantial, it may notify each Member of such change before the relevant quarterly report is published.

**38. Exemption from liability in damages**

Neither the Payments Council nor any person who is, or is acting as, a Member, officer, employee or agent of the Payments Council is to be liable in damages for anything done or omitted in the discharge or purported discharge, of its Objective provided that the act or omission is not shown to have been in bad faith.

**39. Use of the Company's brand**

To the extent any Member wishes to use the Payments Council's trade marks, trade names, symbols, devices or logos ("**Trade Marks**"), it shall:

- (a) first advise the Payments Council of the proposed usage in general terms; and
- (b) comply with any reasonable instructions and any conditions of use or any guidelines that the other party may notify to it from time to time regarding such use of its Trade Marks,

provided that the Member shall not do, or permit to be done, anything which brings the Trade Marks into disrepute, damages the goodwill and reputation attaching to any of them or which has or may have a detrimental effect on them.

**40. Confidentiality and the FoIA**

Where a recipient of Confidential Information ("**Recipient**") is a public authority under the FoIA ("**Public Authority Recipient**") and information which is Confidential Information is requested from that recipient under the FoIA, the Public Authority Recipient shall use all reasonable endeavours to consult with the party who has disclosed the Confidential Information ("**Disclosing Party**") and the Disclosing Party shall respond to any such consultation within the time specified by the Public Authority Recipient. The Public Authority Recipient shall give proper consideration to whether any information is exempt information (as specified in section 84 of the FoIA). The Public Authority Recipient shall notify the Disclosing Party before disclosing any information as a result of a FoIA request. The Disclosing Party accepts that the final decision as to whether to make a disclosure must be that of the Public Authority Recipient.

**41. Governing law and jurisdiction**

41.1 These Rules shall be governed by and construed in accordance with English law.

41.2 Subject to the disputes process set out in Rule 11, each Member and the Payments

Council irrevocably submits for all purposes in connection with these Rules to the exclusive jurisdiction of the courts of England.

**March 2007**

## Appendix 1

### Payment Service Provider

For the purpose of these Rules, "**Payment Service Provider**" means any natural or legal person or undertaking which falls within any of the following categories of payment service provider or such other category or categories as may be prescribed by the Board from time to time:

- (a) credit institutions within the meaning of Article 4(1)(a) of Directive 2006/48/EC;
- (b) electronic money institutions within the meaning of Article 1(3)(a) of Directive 2000/46/EC;
- (c) post office giro institutions which are entitled under national law to provide payment services;
- (d)
- (e) the European Central Bank and national central banks (including, without limitation, the Bank of England); or
- (f) Member States or their regional or local authorities when not acting in their capacity as public authorities,
- (g) any other provider of payment services, where payment services means:
  - (i) services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account;
  - (ii) services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account;
  - (iii) execution of payment transactions, including transfer of funds on a payment account with the user's payment service provider or with another payment service provider:
    - execution of direct debits, including one-off direct debits;
    - execution of payment transactions through a payment card or a similar device;
    - execution of credit transfers, including standing orders;
  - (iv) execution of payment transactions where the funds are covered by a credit line for a payment service user:
    - execution of direct debits, including one-off direct debits;
    - execution of payment transactions through a payment card or a similar device;
    - execution of credit transfers, including standing orders.

- (v) issuing of payment cards which allow the payment service user to transfer credited funds (debit cards) or funds covered by credit lines (credit cards);
- (vi) money remittance; and

(h)

and includes persons benefiting from the waiver in Article 8 of Directive 2000/46/EC.

## Appendix 2

### Contracted Payment Schemes

The following Payment Systems have been designated by the Board as "**Contracted Payment Schemes**", each having entered into a contract or other formal arrangement with the Payments Council governing its relationship with the Payments Council:

- BACS Payment Schemes Limited
- Belfast Bankers' Clearing Committee
- CHAPS Clearing Company Limited (CHAPS Sterling and CHAPS euro)
- Cheque & Credit Clearing Company Limited
- Cheque Guarantee Scheme
- LINK ATM Scheme

## Appendix 3

### UK Payment Volumes and Qualifying Payment Transactions

For the purpose of calculating payment volumes the following methodology will be used:

- UK Payment Volumes and market shares shall be determined by reference to the following transactions for each Full Member:
  - For those Contracted Payment Schemes of which it is a member, all payments or cash withdrawals including input, output, domestic and cross-border and agency transactions (being those transactions of any Scheme Indirect Clearer for which it acts as sponsor) other than those where the Scheme Indirect Clearer is also a Full Member (in which case such Qualifying Payment Transactions will be counted to the benefit of the Scheme Indirect Clearer and not the sponsoring Full Member);
  - For those Contracted Payment Schemes where it operates as a Scheme Indirect Clearer, all payments or cash withdrawals including input, output, domestic and cross-border;
  - Where it operates as a card issuer (e.g. Visa and MasterCard), all payments or cash withdrawals including input, output, domestic and cross-border;
  - Where it operates as a card acquirer only and in no other category listed here, all UK acquired transactions including those on cards issued overseas\*\*\* See Footnote;
  - Where it operates as a closed card scheme (e.g. Amex) all card issued payment and cash acquisition volumes including sterling and euro, domestic and cross-border but not card acquired volumes. Volumes for closed scheme cards issued under licence count for the licensor, not the licensee;
  - Where it operates as an e-money issuer, all sterling or euro transfers between e-money accounts where at least one of the payer or payee is UK-based, but not transactions to move funds into or out of e-money accounts. Each transaction is counted once
  - Where it provides remittance services as a principal, each transfer to or from a UK customer is included. Each transfer is counted once
- If the Payment Service Provider is not a Full Member then its volumes are not included.

This can be summarised as follows:

*Table 1: Qualifying Payment Transactions for members of Contracted Payment Schemes and Visa and MasterCard*

Schemes	Qualifying Payment Transactions
BBCC  Cheque & Credit Clearing Company	<ul style="list-style-type: none"> <li>• Cleared cheques and paper credits,</li> <li>• in-clearing and out-clearing,</li> <li>• sterling and euro,</li> <li>• agency volumes excluded for those Scheme</li> </ul>

	Indirect Clearers which are Full Members
BACS Payment Schemes Limited	<ul style="list-style-type: none"> <li>• Cleared debits and credits,</li> <li>• input and output,</li> <li>• sterling and euro,</li> <li>• agency volumes excluded for those Scheme Indirect Clearers which are Full Members</li> </ul>
CHAPS	<ul style="list-style-type: none"> <li>• Cleared credits</li> <li>• input and output</li> <li>• sterling and euro (including TARGET)</li> <li>• agency volumes excluded for those Scheme Indirect Clearers which are Full Members (volumes small and difficult to collect)</li> </ul>
Faster Payments	<ul style="list-style-type: none"> <li>• Volume of accepted Payments Input and Output</li> <li>• Indirect participants volumes excluded for those Scheme Indirect Clearers which are Full Members dependent on data being available from scheme.</li> </ul>
LINK ATM Scheme	<ul style="list-style-type: none"> <li>• Cash withdrawals</li> <li>• Acquired (Volumes by card issuer included under card issuers)</li> </ul>
Card issuers	<ul style="list-style-type: none"> <li>• Payments and cash withdrawals</li> <li>• UK issued cards, including use of issued cards overseas</li> <li>• sterling and euro</li> </ul>
Card Acquirers	<ul style="list-style-type: none"> <li>• ***See Footnote</li> </ul>

\*\*\* Footnote - If an organisation has only Card Acquiring Qualifying Payment Transactions (as required by the Eligibility Criteria in the Rules) then they would be eligible to join Payments Council in the constituency of Full Members who have less than 1% of UK Payments Volumes on an interim basis until the Board completes its governance review but no later than 12 Months after the Rule changes are effected.

*Table 2: Qualifying Payment Transactions of Scheme Indirect Clearers*

The table below sets out how Qualifying Payment Transactions will be calculated for Scheme Indirect Clearers who become Full Members in their own right. In such circumstances, the Qualifying Payment Transactions of the Scheme Indirect Clearer will be deducted from the Qualifying Payment Transactions of its sponsoring Full Member for the purposes of calculating the Qualifying Payment Transactions of the sponsoring Full Member, as set out in Table 1.

Agency in	Qualifying Payment Transactions
BACS Payment Schemes Limited	<ul style="list-style-type: none"> <li>• cleared debits and credits,</li> <li>• input and output,</li> <li>• sterling and euro</li> </ul>
Faster Payments	<ul style="list-style-type: none"> <li>• cleared debits and credits</li> <li>• input and output</li> <li>• sterling and euro</li> </ul>

*Other Payment Service Providers*

There are a number of other payment service providers in the UK market place, e.g. closed schemes such as American Express, PayPal and Click and Buy, and other types of payment service provider as may come within the remit of the proposed Payment Services Directive such as money transfer agencies and bill payment service providers.

For these service providers, the volume of payments should be the volume of sterling or euro transfers between originators and recipients of the service, where at least one of the originator and recipient is UK-based. Each transfer is counted once.

## Appendix 4

### Cost Benefit Analysis

#### 1. Introduction

Cost Benefit Analyses ("CBA"s) are widely used to assist Government and the private sector in evaluating proposed investment. They allow the anticipated costs and benefits of potential investment to be expressed in monetary terms and balanced against each other to provide an objective appraisal of the aggregate costs and benefits of undertaking a proposed initiative.

Although CBAs can be a powerful tool, it is important to appreciate that they have a number of inherent limitations. For example, not all costs and benefits can readily be reduced to monetary equivalents; the Initiative being evaluated may be subject to a considerable degree of risk and uncertainty that is hard or impossible to quantify; and the costs and benefits may be unequally distributed. In some respects a CBA is as much an art as a science.

Because of these limitations, the CBA is best viewed as a tool to assist the Board to reach a decision on whether or not to implement potential innovations. It will not, in and of itself, dictate the appropriate course of action.

A number of key ground rules for undertaking a CBA are summarised below.

The CBA should be comprehensive but proportionate.

- The CBA should aim to capture and express in monetary terms all significant costs and benefits.
- Particular care should be taken on the choice of discount rate and the assumed lifetime of the Initiative, as they are likely to have a critical impact on the outcome of the CBA.
- Full account should be taken of all material risks and uncertainties, e.g. the risk of failure of the Initiative, market failure or technical obsolescence.

Sensitivity analysis should be undertaken in order to test the vulnerability of the option against unavoidable future uncertainties.

#### 2. Preparatory stage

##### 2.1 *Submission of the proposal*

This is the trigger and effectively the first milestone.

All proposals will need to be accompanied by a standard proforma detailing, *inter alia*, an outline of the proposal, the problem or opportunity it addresses and the anticipated benefits that will result.

Some proposals will relate predominantly, or exclusively, to a specific Contracted Payment Scheme, whereas others will be of broader interest, affecting a number of different areas. In general, decision-making will be decentralised whenever possible. Staff from the relevant

Contracted Payment Scheme will undertake the validation of Contracted Payment Scheme-specific proposals, whereas staff of the Payments Council will undertake validation of industry-wide initiatives.

## 2.2 *Validation of the proposal*

Validation of the proposal falls into two parts: an initial validation of the problem/opportunity, followed by a subsequent validation of the proposed solution.

## 2.3 *Validation of the problem/opportunity*

It is necessary to validate the problem or opportunity set out in the proposal. This has three aspects:

- (a) **Scope and objectives:** the initial step is to ensure that the proposal, and particularly its scope, is set out clearly and unambiguously, in order to reduce the risk that different parties interpret it differently.
- (b) **Assessment of what, if anything, is already in the marketplace:** there is then a need to review whether the proposal addresses a real issue. It may be, for instance, that the perceived issue is based on a misconception, or that action is already being taken that will obviate the need for the suggested innovation.
- (c) **Stakeholder impact analysis:** it is also necessary to consider how the proposal is perceived by different sectors. For example, utilities may support a weakening of the consumer safeguards in the direct debit scheme, while consumer groups may be adamantly opposed to any dilution of the current level of protection. Various mechanisms will be used, where relevant, to help establish the views of the stakeholders.

The validation exercise should involve consultation with stakeholders.

The Consultation process at this and subsequent stages will be open, transparent and non-restrictive: any organisation that wishes to express an opinion on a proposed innovation will be able to do so. Parties who are likely to have an interest in the proposal will be approached directly. Additionally, the proposal will be posted on the Website, enabling any party that wishes to do so to make their views known. When the validation review has been completed, a further report will be made to the Board which will decide whether the proposal should be taken further.

## 2.4 *Validation of the proposed solution*

The next step is to ensure that the proposed innovation is the best way of tackling the problem/opportunity. There may be a simpler or more effective way of addressing the issue. The objective should be to select the best option for detailed evaluation. External stakeholders should be fully consulted.

Particular attention will be paid to the impact of the proposed solution on risk and/or financial stability. Any proposals that are likely to materially increase fraud or operational/financial risk, or to reduce financial stability, will be rejected. Where a proposal is rejected on these grounds, careful consideration will be given to identifying an alternative proposition that does not suffer from the same drawback.

Proposed solutions should be aligned with developments in Europe where relevant (particularly the payment schemes and legal framework supporting the Single Euro Payments Area), and, more generally, they should be fully congruent with international standards and developments.

## 2.5 *Next steps*

Following completion of the preparatory stage, a further report will be made to the Board which will decide what action to take.

A CBA will not always be needed. The arguments for or against a proposed innovation may be sufficiently compelling that the Board is able to reach a decision without the need for a CBA.

Conversely, if it is not possible to select a single option, it may be necessary to keep more than one option in play. It will be for the Board to decide which solution(s) to evaluate further.

## 3. **Analysis and evaluation of costs and benefits**

### 3.1 *Overview*

There will be two components to the CBA which will be clearly differentiated: an industry component and a society component.

The industry component of a CBA will establish the costs and benefits for the banking industry of undertaking the proposed innovation.

The society component of a CBA will establish a broader picture of the costs and benefits for society as a whole of the proposed innovation, and where possible, the split of costs and benefits between different sectors.

### 3.2 *Costs and benefits for the industry*

The aim of the industry element of the CBA is to establish the net cost-benefit for the banking sector of the proposed innovation.

#### (a) Costs

All relevant costs should be captured, including both capital and operational costs.

#### (b) Benefits

The analysis of the benefits is likely to be more problematic than that of costs.

In order to quantify the benefits to the industry, it may be necessary to make explicit assumptions about the charges that PSPs will levy on users of the service.

This may, in turn, require market research to be commissioned to establish users' "willingness to pay" for the new service (over and above any existing charges). This will provide information on the revenue associated with particular price points. It is important to recognise that it is highly unlikely that PSPs will be able to maximise the potential revenue that users would theoretically be prepared to pay (due to competitive pressures, imperfect information, limited ability to price discriminate and other factors).

Caution should be exercised in the way in which pricing assumptions are used in the

industry CBA. It will be imperative to ensure that the approach adopted is fully compliant with competition legislation.

### 3.3 *Costs and benefits for society as a whole*

#### (a) Costs

On the cost side, the society CBA will need to take full account of the costs incurred by users as well as by Payment Service Providers.

#### (b) Benefits

The aggregate benefits indicated by the market research will generally exceed the revenue assumptions in the industry business case, as some users will attribute a greater value to the benefit of the innovation than the market price that is levied.

There may also be a need to take account of less tangible benefits, such as increased financial stability.

### 3.4 *Removal of an existing Contracted Payment Scheme*

The methodology outlined above is primarily geared to establishing the costs and benefits of a new service. With some modifications, the same basic approach can also be used to estimate the costs and benefits of withdrawing an existing service. A clear-cut industry business case would be insufficient to justify withdrawal of a service; the society CBA for withdrawal would also need to be positive.

## 4. Implementation and funding – key considerations and decision points

The decision on whether to implement a proposed Initiative will be taken by the Board, after informed consideration of all relevant factors, in an open and transparent manner.

### 4.1 *Key considerations*

Key considerations for the Board should include:

- (a) **The size of the net cost-benefit:** the size of the return gives an indication of the level of confidence that a positive net return will be generated. A CBA with a small positive outturn may not be worth pursuing.
- (b) **The opportunity cost and resource constraints:** payments and IT expertise are scarce resources. Projects will be competing for the same scarce resources with individual projects designed to benefit customers and provide competitive edge and with mandatory projects that have to be undertaken for regulatory or other reasons. Additionally, a heavy emphasis on collective projects could reduce the scope for competitive action and innovation and potentially raise barriers to entry.
- (c) **Risks and uncertainties:** the risks and uncertainties may outweigh the prospective benefits. Where risks are known and calculable they can be reflected in the use of an appropriate risk-adjusted discount rate. Sensitivity analysis can also be used to assess the impact of risk and uncertainty on the commercial viability of the project.

- (d) **The distribution of costs and benefits:** the Board will take into account the breadth and depth of benefit of change so that it could for example, give greater weight to a proposal that benefits a broad cross-section of society than to one where the benefits predominantly accrue to a restricted sectoral group.

## 4.2 *Decision points*

There are three points in the process outlined above at which the Board will need to decide whether or not to agree to implement a proposed innovation.

### **The first two points arise during the preparatory phase:**

- After validation of the potential opportunity/threat
- After validation of the proposed solution

Following completion of the preparatory phase, the Board may decide that the case for the proposal is sufficiently compelling that it can be agreed without the need to embark on a full-blown CBA. Conversely, it may decide that the case is sufficiently weak that it can be rejected at this stage.

### **The third point arises at the end of the CBA**

If the overall CBA is negative then the proposal will be rejected. It will normally also be rejected if the CBA is at best marginal. However, there will be occasions when the society costs and benefits are positive, although the industry case is negative. In these circumstances, the society element will help to throw light on which sector(s) benefit from the innovation and facilitate an informed discussion on how the proposal might be funded. There will be no obligation, or presumption, that the banking sector should fund unprofitable ventures. However, the information provided by the society CBA on the size and distribution of benefits might well help to establish an agreed basis for funding.

Ultimately the Board will need to exercise its judgement and discretion in reaching a decision. It will take account of the CBA and all other relevant factors.

If there are resource constraints, the Board may need to take a view on the relative priority of different initiatives. It will be for the Board to decide the basis of prioritisation: for example, it may decide to give greater weight to proposals that enhance the integrity of the payments industry than to those that save costs. In any event, the rationale for its decision will be open and transparent and will be fully documented.

## 5. **Post-implementation review**

A procedure for post-implementation review will be put in place (PIR). This will look at all innovations after they have gone live, to see how closely the actual costs and benefits match up to those anticipated at the time of the original CBA, the reasons for any material discrepancies and the lessons that can be learned. PIRs will be undertaken by an independent party.

The scope and timing of the PIR will be agreed at the point at which it is decided to implement an innovation, and will vary depending on the innovation in question. In some cases it may be appropriate to undertake a PIR shortly after an innovation has gone live, while in others it may be more sensible to wait until some time later, in order that its impact can be properly assessed.

