

06 December 2023

**Final report by the Complaints Commissioner****Complaint number 202300240***The complaint*

1. On 22 June 2023, you asked me to review a complaint about the PSR.

*What the complaint is about*

2. The PSR set out its summary of your complaint in its letter to you dated 21 June 2023. It said that it understood your complaint was that you're unhappy with the way Specific Direction 16, which limits the length of initial terms for point-of-sale terminal contracts, has been conducted and implemented. It went on to set out six parts to your complaint being: In your complaint you state:
  - Part one - The premise of Specific Direction 16 is flawed.
  - Part two - The PSR refused to offer clarification on what is meant by 'exit fees.'
  - Part three – your firm did not have sufficient time to implement Specific Direction 16.
  - Part four - Conclusions were not supported by data.
  - Part five - Specific Direction 16 is having, and will continue to have, a negative effect on the market.
  - Part six - Contract terms will have negative effects in terms of the environmental impact.

*What the regulator decided*

3. The PSR set out that Parts one, three, four, five and six of your complaint are about how it came to give its Card Acquiring Market Review (CAMR) directions and how it came to decide on the requirements of those directions. The PSR

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went on to state that as those parts relate to how it has exercised its legislative functions those parts of your complaint are not considered under the Complaints Scheme. Therefore, they have been rejected under paragraph 4.1.d of the Complaints Scheme.

4. The PSR did not uphold Part two of your complaint as it found that the PSR did provide you with information on exit fees.
5. In its decision letter the PSR did note that it had not fully responded to part of your email dated 1 February 2023, where you asked the PSR under what authority it is permitted to regulate the price an independent business is able to charge for its services to their business customers. The PSR apologised for the omission in its response and provided an answer in the decision letter.

*Why you are unhappy with the regulator's decision*

6. In your complaint to my office you set out that the PSR have refused to consider five of the six specific complaints on the grounds you made to them because they are not considered under their Complaints Scheme. You questioned where is 'your voice if they can simply refuse to consider such matters?' (Element One)
7. In relation to the one aspect of your complaint that the PSR did consider (referred to as Part two in the PSR decision letter) you felt that what they had investigated merely replicates obfuscated and unclear directions that the complaint is about. (Element Two)
8. In order to remedy your complaint you have said that you would like there to be a reconsideration of the Directive in question or: at least a workable explanation of the exit fees provisions provided to you.
9. In a later email to my office you have set out that you need to add a further complaint about the PSR's conduct. You have set out that you have information about one of the 14 named acquirers in the Specific Direction 16, is flagrantly disregarding the regulations and that the PSR have failed to act to address the issue. (Element Three)

*Preliminary points (if any)*

10. Paragraph 3.1 of the Complaints Scheme sets out that the Scheme can deal with Complaints about the PSR functions under the Financial Services (Banking Reform) Act 2013 (FSBRA) except its legislative (i.e. rule making and guidance giving) functions. Paragraph 4.1.d then follows this up to specifically state that the PSR cannot investigate Complaints about any of its functions other than those set out in the Scheme (for example its legislative function).
11. Paragraph 9.2 of the Complaint Scheme sets out that if you refer a Complaint to the Complaints Commissioner before the PSR has had the opportunity to conduct or complete an investigation, the Complaints Commissioner will decide whether to allow the PSR to do this before the Complaints Commissioner conducts their own investigation. This also applies to a Complaint received by the Complaints Commissioner when they are investigating another complaint you have made.

*My analysis*

Element One

12. I appreciate that you have concerns about Specific Direction 16 and how it has been implemented and you have set out that the impact of Specific Direction 16 has already led to a 50% decline in your business and that of the partners you support.
13. I know it will disappoint you, but I agree with the PSR's decision to not investigate Parts one, three, four, five and six of your complaint to it as they all do relate to the PSR's legislative function and complaints about the legislative function are excluded under paragraph 4.1.d of the Complaint Scheme. As such I do not uphold your complaint about the PSR decision not to investigate these five parts of your complaint.

Element Two

14. In relation to Part two of the PSR decision letter, you felt that the PSR had still failed to address your question and had failed to provide the clarification you sought in relation to what was meant by exit fees. This does relate to the actions

of the PSR in its interaction with you and is therefore not excluded under the complaints scheme.

15. In your complaint to me you set out that you felt that the PSR's investigation of this complaint merely replicates obfuscated and unclear directions that the complaint is about. I have reviewed the PSR complaint file and the decision letter it sent to you. I consider that the decision letter accurately reflects the interactions between yourself and the PSR in relation to you seeking clarification on what is meant by exit fees. Having reviewed these interactions I am satisfied that the PSR did provide you with relevant information to assist you in your understanding of exit fees generally and tried to provide additional information when its first response left you with additional questions. In its decision letter the PSR did acknowledge that it had failed to address one point you had raised, being your question about the authority under which it is permitted to regulate the price an individual business is able to charge for its services to their business customers? The PSR used its decision letter to correct this omission of information and set out its answer to you.
16. In its interactions with you, the PSR has informed you that it is not able to review individual cases for compliance, as such the information provided to you to address your queries was addressed from a broad regulatory perspective rather than related to the specific issues you had raised. I appreciate that you do not think that the PSR has provided you with the information you were seeking and that its decision letter 'merely replicates obfuscated and unclear directions that the complaint is about'. I do not agree that this is the case however, I consider that if you still have further concerns and are seeking a more workable understanding of your queries, you should seek your own independent legal advice to assist with your ongoing concerns and explore what other avenues might be open to you.
17. As I have set out I am satisfied the PSR has responded to your queries and provided you with relevant information. Consequently, I agree with PSR's decision not to uphold this part of your complaint.

Element Three

18. You raised this element of your complaint after you made your initial complaint to my office. It appears to be a complaint that relates to the actions of an individual firm and the fact that the PSR has not taken any action against this firm. This complaint was not addressed in the PSR's decision letter and under 9.2 of the Complaints Scheme the PSR should be given the opportunity to investigate this point in the first instance. Consequently, I have not investigated this element of your complaint. If you would like the PSR to consider this element of your complaint you should direct the complaint to the PSR in the first instance, who can consider whether it is a complaint that can be considered under the Complaints Scheme.
19. Finally, I note that the remedy you were seeking for your complaint was to have the PSR re-work the directive in question. This is not a remedy that is available under the Complaints Scheme. As I have already set out above, complaints (including remedies sought) related to the PSR's legislative functions are excluded under the Complaint Scheme. I know that you feel frustrated that you seemingly have no voice if you cannot raise your concerns about legislative issues with the PSR. Whilst this and the five parts of your complaint are not matters for the Complaints Scheme, you may wish to express your views to your member of parliament in relation to amendments to the legislative provisions.

*My decision*

20. I have agreed with the position set out in the PSR's decision letter and consequently, I have not upheld Elements One and Two of your complaint, and I have not investigated Element Three as the PSR has not yet had the opportunity to consider this under the Complaints Scheme.
21. This is my final report about your complaint.

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Complaints Commissioner

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