

# PROCURING PAYMENTS INFRASTRUCTURE

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## The PSR's mandatory requirements for Bacs, FPS and LINK

The Payment Systems Regulator (**PSR**) has been consulting on its proposal that Bacs, Faster Payments Service (**FPS**) and LINK must competitively procure their central infrastructure services. It sees the procurement remedy as critical to improving competition for infrastructure and has identified a number of alternative providers elsewhere in Europe which are keen to participate in competitive tenders (some via joint ventures and consortia).

## The expertise you need

We are uniquely placed to assist with these competitive procurements, with pre-eminent practices in both payments and procurement law. Both teams have regular experience of working together, which they showcased recently when advising a bidder on its participation in HMRC's procurement of merchant acquiring services.

The PSR wants to see competitive procurements undertaken by December 2018, June 2018 and April 2019 for Bacs, FPS and LINK respectively. It has set out the key elements of the procurement process an operator will need to run in future, including developing a procurement strategy, conducting service-user consultation and applying transparency and objectivity when engaging with, shortlisting and awarding to potential bidders.

These are all principles which we routinely apply when advising on public sector procurement processes. Those rules impose detailed requirements on public bodies to conduct fair and transparent tender procedures which treat all bidders equally. They also require contracts to be awarded on the basis of objective pre-disclosed criteria. Our experience of advising procurers and bidders in this context (in both a contentious and non-contentious capacity) will be directly relevant as operators seek to develop processes which comply with the PSR's draft directions - and bidders seek to understand them.

## Who we work for

Chambers ranks us as Tier 1 for both payments and procurement work.

Our payments team regularly advises banks, merchant acquirers, card issuers, retailers, mobile network operators and others. In the context of wholesale payments, we have recently acted for:

- ▶ a major international bank in connection with third party payment initiation services;
- ▶ major banks and international retailers in connection with SEPA payments; and
- ▶ challenger banks in relation to indirect scheme access through managed services with clearing banks.

Our procurement team is acting most of UK's flagship procurement projects, including:

- ▶ the Houses of Parliament restoration and renewal programme for the Palace of Westminster;
- ▶ the West Midlands and West Coast rail franchise competitions; and
- ▶ a procurement procedure worth in excess of £200m, being run by a regulated network operator

We also have detailed experience of dealing with UK competition authorities, including the PSR and CMA. Our competition team is acting on the CMA's retail banking market investigation and has advised on a number of PSR market studies to-date.

*Leading firm in the payments arena*

CHAMBERS & PARTNERS, PAYMENTS LAW - BAND 1

*First-rate advice*

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William leads the AG Payments Team. He has worked extensively with issuers, acquirers and technology providers in the payments sector and has been involved in many of the key payments transactions in the UK and worldwide in the last ten years. William has advised on many of the most recent innovations in the payments sector including: Apple Pay, Samsung Pay and the use of "wearable" payment devices. He has advised on the strategic structuring of Issuer arrangements with payments technology providers and has been involved in the two major affinity/loyalty card transactions in the UK in the last three years. He is recognised in the Chambers Legal Guide.



**Al Mangan**  
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Al specialises in the impact of competition law on the payments industry. He has completed two senior secondments to a major UK bank and is currently advising on the CMA's retail banking market investigation (including the implications of open banking). Al advised a number of UK and international PSPs on the impact of the new interchange regulation. He also regularly assists on PSR related matters and has worked with several merchants on the impact of the new surcharging rules under PSD2. Al has broad experience in physical cash and coin, including processing, CIT and ATMs.



**Amy Gatenby**  
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Amy specialises in all aspects of EU and UK public procurement law and regularly advises both public sector clients and bidders on a wide variety of non-contentious and contentious procurement matters. She advises on the full procurement process from pre-market engagement, choice of procedure, drafting contract notices, designing effective evaluation models, drafting award decision notices and contract modifications. Amy routinely advises clients on high profile, high value, and complex procurement procedures. Amy is co-editor of the Government Procurement Review and is an active member of the Procurement Lawyers' Association.

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