

Consumer protection in interbank payments

Call for views

February 2021

We welcome your input on this call for views. If you would like to provide comments, please send these to us by **5pm on 8 April 2021**.

You can email your comments to **interbankconsumerprotection@psr.org.uk** or write to us at:

Consumer protection project team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential.

We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website:

<https://psr.org.uk/publications/consultations/cp21-4-consumer-protection-in-interbank-payments-call-for-views/>

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1 Executive summary

We want your views on interbank consumer protection

- 1.1** We want to make sure consumers get enough protection when they make a payment from one bank account to another using interbank payment systems, particularly the Faster Payments Service (Faster Payments).¹ Your views will help us assess which payments should be protected, how that protection is best provided, and who should protect them.
- 1.2** Our goal is to ensure the payments industry continues to improve their services for those who make payments using the current interbank systems. Multiple organisations are already looking into interbank consumer protection, including the Treasury, the Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA), the Open Banking Implementation Entity (OBIE), Pay.UK, and UK Finance. Our call for views builds on their work and intends to collect insights from the different initiatives to help steer the debate.

Why we want your views

- 1.3** Since the introduction of Faster Payments in 2008, the number of transactions it processes has continued to grow. We expect this growth to persist and for innovations in interbank payment systems to continue to improve opportunities for retail payments over Faster Payments. If people are going to use interbank payments for increasingly varied purposes, adequate safeguards need to be in place that manage what happens when something goes wrong with a payment – and existing protections and liabilities may not be sufficient. For that reason, we are considering possible risks and gaps under the current interbank systems and what may be needed to support the processing of retail payments at scale.
- 1.4** Depending on which payment system they use, consumers may find they have more limited options when something goes wrong with their purchase. Protections are different depending on whether they use a debit card, a credit card, or Faster Payments.

¹ Faster Payments lets people send payments of up to £250,000 to, or from, almost all consumer current accounts in the UK with very fast clearing times. It can be used for a variety of purposes, including sending money to a friend, paying rent, or making a purchase.

Table 1: Consumer protection options across different payment methods

	Credit Card	Debit Card	Faster Payments
Retailer protection (the protection that is provided by the retailer, such as a returns and exchanges policy)	Optional (Whether retailers provide protection is up to the discretion of each retailer)	Optional	Optional
Payment protection (the protection that is available through the use of a particular payment system)	Chargeback (A rule card-issuing banks subscribe to that lets you ask your card provider to reverse a disputed transaction on your card)	Chargeback	No official protection (Although individual service providers may offer some form of protection, there is no protection that applies system-wide)
Legal protection (the protection that is provided by law)	Consumer Credit Act 1974 (S.75 holds the credit card company jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader for purchases between £100 and £300,000)	Payment Services Regulations 2017 (These regulations set out conduct requirements, including disclosure and a right for consumers to be refunded in the event of unauthorised transactions and a liability framework for payment actors)	Payment Services Regulations 2017 (These regulations set out conduct requirements, including disclosure and a right for consumers to be refunded in the event of unauthorised transactions as well as the liability of PSPs and PISPs for unauthorised or wrongly executed payments)
	General consumer legislation which allows you to bring a disputed payment to the small claims court (for example, Consumer Rights Act 2015, Consumer Contracts Regulations)	General consumer legislation	General consumer legislation

1.5 Complaints about errors covered by the Payment Services Regulations 2017 (PSRs 2017) can be brought to the Financial Ombudsman. Consumers could, in these cases, also rely on a PSP's complaints resolution procedure where the Ombudsman scheme is unavailable. This provides protection for payments that are fraudulent, unauthorised or wrongly executed by the PSP or PISP involved. These options are not available for consumers if the problem stems from unsatisfactory purchases of goods and services. While they can rely on the legal protection provided by the Consumer Rights Act 2015 to make a claim in the small claims court, this may not always be the most effective way for them to remedy the consequences of something going wrong with their payment. We think the market is unlikely to improve the current level of protection for consumers on its own due to a number of market features. These include:

- misaligned incentives of payment providers
- payment initiation service providers (PISPs) not being direct or indirect members of payment schemes
- consumers taking less care when making payments if they have payment protection (for example, moral hazard)
- difficulties in identifying different use cases and payee types

1.6 There is a strong likelihood that many consumers underestimate the risks of something going wrong with their purchases, and do not choose the payment method based on the degree of protection it offers. General consumer awareness of protection is low, meaning they may not know what protection is offered in different circumstances and only realise they are not adequately protected after making a payment.

1.7 Because we expect retail payments via Faster Payments to continue to grow, and use cases to evolve and become more varied, we are considering how we can ensure that adequate levels of consumer protection are provided for these payments.

1.8 We want to see consumer protection measures that benefit consumers by making it easier to make a claim when something goes wrong, and make it clear to businesses where liabilities lie. This will help us to fulfil our objective to take into account and promote the interests of those who use the interbank systems to make payments. Consumers and businesses should feel confident using interbank payments, including for retail payments. Greater confidence will also support our competition and innovation objectives as it may help increase the competitive potential of Faster Payments.

1.9 We are considering whether there should be further rules or arrangements around liability on purchases to ensure that consumers can easily be refunded when something goes wrong with their purchase. We are also considering how these cases could be identified.

1.10 Regardless of the level of protection offered, for that protection to be effective, consumers need to understand where protection is available and, if so, how to use it. This includes knowing who they should approach when something goes wrong. Any additional process is likely to need a level of governance. Ways of ensuring effective governance and adequate protections in all circumstances include, for example:

- embedding formal provisions in the payment system rules
- including consumer protection under a new payment governance system
- creating a voluntary industry-led process

1.11 Improving the effectiveness of consumer protection in interbank payment systems is likely to generate direct costs. We will assess the proportionality of any action we propose against the expected benefits they bring.

Next steps

1.12 This call for views will remain open for eight weeks and will close at 5pm on 8 April 2021.

1.13 The input gathered by this call for views will help us assess the best action we can take to support the development of effective protection measures, including regulatory steps. We are particularly interested in hearing opinions on whether some of the ideas as set out in Chapters 4 and 5 could form the basis of further PSR work. We plan to set out our proposed next steps later in the year.

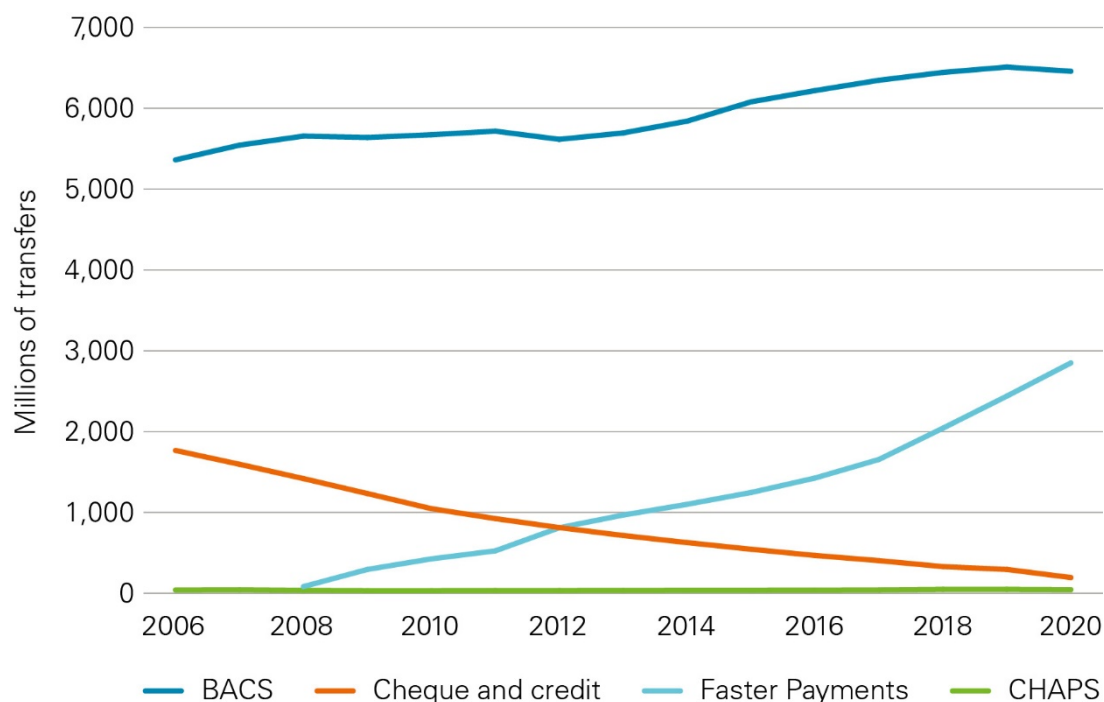
2 The purpose of this document

Faster Payments is increasingly used for a variety of purposes, including retail payments. Interbank payments being used in this way is likely to continue to grow in the coming years, including from propositions developed in Open Banking. We want to see payment systems develop and innovate in ways that work well for everyone that uses them and are therefore asking for views as to whether there is adequate consumer protection, or if more needs to be done to ensure that consumers and businesses are confident when making an interbank payment that they will not be disproportionately harmed if something goes wrong.

Why consumer protection?

- 2.1** The UK is home to a progressive payments sector. In recent years, consumer behaviour has shifted considerably, and demand for real-time payments with instant transfer of funds has grown significantly. The UK led the field with the launch of Faster Payments in May 2008, which lets people send payments of up to £250,000² to, or from, almost all consumer current accounts in the UK with very fast clearing times. It can be used for a variety of purposes, including sending money to a friend, paying rent, or making a purchase.
- 2.2** Faster Payments has continued to grow over its 12-year existence (see Figure 1), coinciding with a boom in online and mobile banking. We expect this growth to persist. Until now, people have not used it extensively to buy goods and services, even though it is possible. New developments – including propositions developed through open banking – could change all that.

2 Organisations offering Faster Payments can set their own limits depending on how the payment is sent (for example, over the phone, through internet banking) and the type of account their customer is sending from (for example, personal current account, business current account). Transaction limits for the directly connected organisations (and their subsidiaries) can be found here: <https://www.fasterpayments.org.uk/transaction-limits>.

Figure 1: Volume of interbank payments 2006–2020

Source: Pay.UK

- 2.3** Open banking lets people share their payment account information with third-party providers. This, in turn, allows the providers to develop new products and services that could help consumers and businesses get a better deal.³ Among these innovations are the services of PISPs. PISPs use Faster Payments to initiate payments from a user's bank account. They make transactions on the consumer's behalf while providing nearly instant payment to the merchant, potentially reducing the costs associated with accepting payments. We think incentives like this could continue to improve opportunities for retail payments over interbank payments, and especially over Faster Payments.

³ In 2016, The Competition & Markets Authority (CMA) published a report on the UK's retail banking market. It found that older, larger banks do not have to compete hard enough for customers' business, and smaller and newer banks find it difficult to grow and access the market. To tackle these problems, the CMA proposed a number of remedies. One of the key measures, aimed to benefit personal and small business customers, included requiring banks to implement Open Banking by early 2018. To help with this, the CMA set up the OBIE (CMA, *Retail banking market investigation – Final Report* (February 2016): <https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk#final-report>).

2.4 While we welcome the innovation this brings, we need to ensure that interests of users form a key pillar of any payment system's improvements. That also means making sure that those payments continue to be reliable and secure. If people are going to use interbank payment systems for increasingly varied purposes, adequate safeguards need to be in place that manage what happens when something goes wrong with a payment. Card payments are protected at the card scheme level or by law.⁴ In comparison, not every interbank payment is protected in the same way⁵ and, at present, there is no agreed process for claiming the protection that is available.

2.5 That is why we are asking for views to help us assess the best way to ensure consumers are adequately protected when making payments through interbank systems. This includes assessing whether consumers are protected when there is:

- a fault in the service provided by a PSP or a PISP
- a fault with goods or services purchased
- a mistake with the payment due to an error caused by the payer
- a fraudulent act that causes consumers harm

Our vision for consumer protection

2.6 We want consumers and businesses to feel confident making and receiving payments, regardless of the payment system they use. Our main objective is to ensure that consumers and businesses are not disproportionately harmed when something goes wrong with their payments.

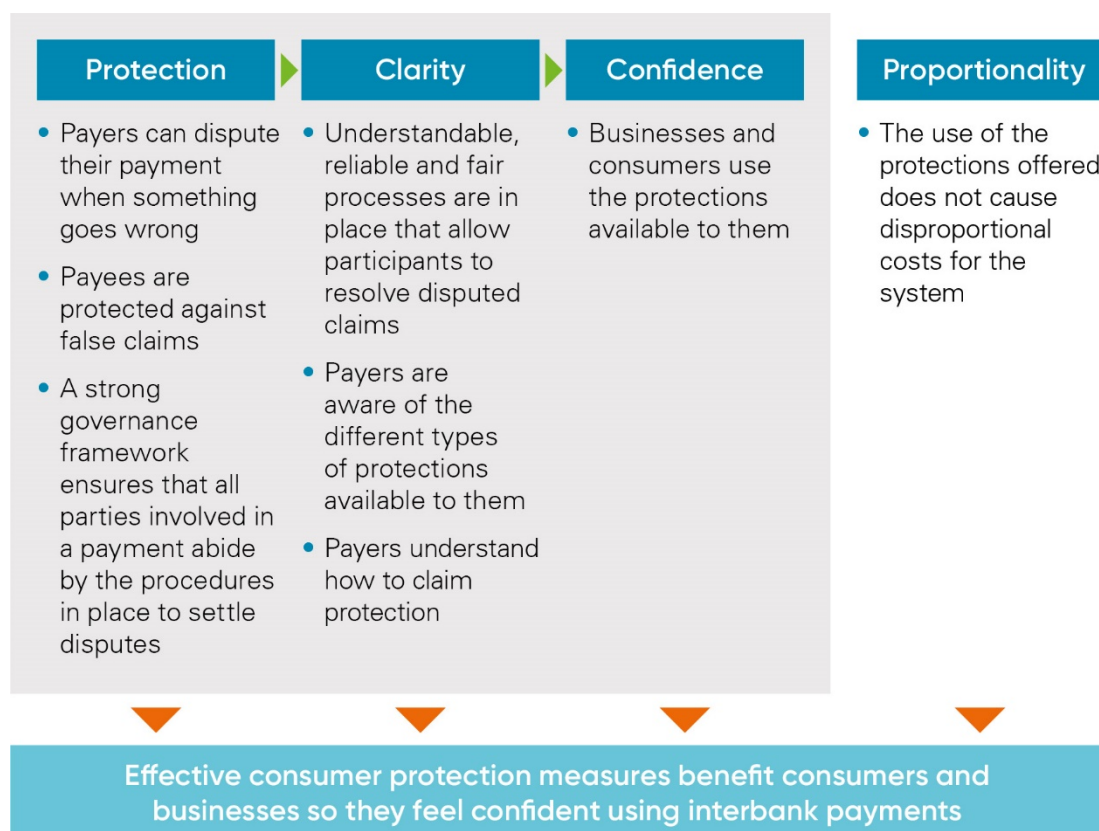
2.7 For that reason, we want to encourage payment systems to develop and innovate in ways that benefit their users. As part of that development, we want to see measures that protect consumers by making it easier for them to make a claim when something goes wrong, and benefit businesses by providing them with certainty about what happens when a payment is disputed.

4 For purchases made using a debit card, protection is provided by the Chargeback scheme. For purchases made using a credit card, protection is provided by s.75 of the Consumer Credit Act.

5 The current protection in interbank payments is explained in more detail in Chapter 4.

2.8 Achieving this overall aim will require a number of different outcomes (see Figure 2).

Figure 2: PSR vision for consumer protection



Source: PSR

2.9 We realise enhanced confidence in interbank payments may also help increase the competitive potential of these systems against other more traditional retail payment methods (for example, card payments). We are, however, aware that consumer protection by itself will not be sufficient and that other measures are likely to be necessary to enable greater competition between retail payment methods. For that reason, we will not focus in detail on promoting competition through this call for views.

2.10 We also recognise that requiring additional consumer protection measures to be in place would have a cost attached. Before we decide to act, we will consider whether these costs are proportionate compared to the expected benefits.⁶ As part of our analysis, we will assess who should and who is most likely to end up bearing the costs, especially considering the predominantly free-if-in-credit banking model in the UK, and how this affects the incentives of payment providers.

⁶ We have started mapping the likely costs and benefits arising from any enhanced consumer protection measures or governance in Chapter 6.

Why us?

- 2.11** Various organisations are already looking into the question of consumer protection for interbank payments. In July 2020, the Treasury issued a Call for Evidence for its Payments Landscape Review.⁷ As part of this, it asked if additional rules are needed to protect consumers using Faster Payments. Additionally, the CMA, in its notice of approval of changes to the agreed timetable and project plan of its retail banking market investigation order 2017⁸, has asked the OBIE and us to recommend options for addressing consumer protection for PISP payments.
- 2.12** Across the payments industry, various businesses have also initiated research into the effectiveness of interbank consumer protection. This includes the working group on consumer protection co-chaired by Pay.UK and UK Finance, which recently published a summary report⁹ providing insights into the current payments and consumer protection landscape.
- 2.13** Our call for views builds on their work. As the UK's economic regulator for payment systems, we are ideally placed to steer the debate and ensure that any insights gathered by different organisations ultimately lead to actions that work for everyone involved in interbank payments. We want your views on what we, or the payments industry, can do to protect people making and receiving interbank payments – giving everyone greater choice to make payments in ways that work for them.
- 2.14** Our goal is to ensure the payments industry continues to improve its services for those who use the current interbank systems, and especially Faster Payments. We are inviting views on which interbank transactions should be protected, how that protection is best provided, and who should protect them.
- 2.15** We are not including the New Payments Architecture (NPA), which we expect will replace some of these systems in the future. This is because consumers' payment habits and preferences will continue to evolve, even before the NPA becomes operational. We will, nevertheless, take the transition to the NPA into account to ensure any actions we might propose in 2021 are proportionate.
- 2.16** Although protection against financial fraud – including protection against authorised push payment (APP) scams – is a crucial part of consumer protection, we do not look at it in detail in this call for views. Our aim here is to understand how consumers might be harmed by a lack of adequate consumer protection in interbank payment systems. Because we know that consumers are harmed by APP scams, a separate call for views (published alongside this one) is assessing what is needed to further embed and improve the existing solutions for such fraud cases.¹⁰

7 HM Treasury, *Payments Landscape Review: Call for Evidence* (July 2020):

<https://www.gov.uk/government/consultations/payments-landscape-review-call-for-evidence>

8 Competition & Markets Authority, *Notice of proposed changes to the Open Banking roadmap*, (May 2020):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885537/Notice_of_proposed_changes_to_the_open_banking_roadmap_-_web_publication_-_cma.gov.uk_-_May_2020_-_pdf

9 Pay.UK, *Consumer protections in payments summary paper* (November 2020):

<https://www.wearepay.uk/consumer-protections-in-payments-summary-paper/>

10 <https://psr.org.uk/publications/consultations/cp21-3-authorised-push-payment-scams-call-for-views/>

Next steps

- 2.17** The feedback we receive will help us assess any action we could take to support the development of effective protection measures, including regulatory steps. We are particularly interested in opinions on whether some of the ideas in this paper could form the basis of further PSR work. We plan to set out our proposed next steps later in the year.
- 2.18** We are keen to hear from all interested parties, including, but not limited to:
- people and businesses using payment systems (including representative bodies)
 - PSPs and PISPs (current and prospective)
 - payments industry representative bodies
 - interbank payment system operators (national and international)
- 2.19** This call for views will remain open for eight weeks and will close at 5pm on 8 April 2021. We will publish a summary of responses.
- 2.20** The remainder of this document is set out as follows:
- **Chapter 3** outlines why we think more protection of interbank payments is needed.
 - **Chapter 4** sets out the different possible uses of interbank payments and which of those may need additional protection.
 - **Chapter 5** sets out what we think may be required for consumers to claim protection for payments made using interbank systems.
 - **Chapter 6** outlines what we will take into account before suggesting any possible actions.
 - **Chapter 7** relists the questions we ask in this call for views and outlines the next steps.

3 Why more protection is needed

As things stand, if a consumer uses Faster Payments to make a purchase, they may find that they only have limited options if something goes wrong with their purchase. We think the existing protections and liabilities may not always appropriately protect consumers when they make interbank payments. There are several reasons why payment providers, on their own, are unlikely to improve the level of protection offered. These include:

- misaligned incentives of payment providers
- PISPs not being direct or indirect members of payment schemes
- consumers taking less care when making payments if they have payment protection (for example, moral hazard)
- difficulties in identifying different use cases and payee types

At the same time, consumers are unlikely to demand the level of protection they require. Although the use of interbank payments for retail transactions is currently low, we expect them to grow and use cases to evolve and become more varied. We are considering how we can ensure that adequate levels of consumer protection are provided for these payments.

How interbank payments are used in the UK

3.1 At the time of the PSR's creation in 2015, each interbank payment system was broadly used for a specific, well-defined purpose:

- Bacs was used for high-volume payments between consumers and businesses. Examples include salary payments, and direct debits for utility bills or similar recurring payments.
- CHAPS was used for high-value payments, mostly between businesses. CHAPS was sometimes used by consumers, most often for house purchases.
- Faster Payments was used for recurring payments set up by consumers via standing order, and for one-off low-value, low-risk payments, such as those between consumers.

3.2 These categorisations are no longer as reliable as they were in 2015. Innovations in interbank systems could lead to a greater variety of payment types being processed by these systems, including the increased use of Faster Payments for retail purchases.

- 3.3** Yet, as things stand, consumers may find they only have limited remedies available to them when something goes wrong with their purchase.¹¹ In some cases, the retailer may offer protection. Failing that, consumers can rely on the legal protection provided by the Consumer Rights Act 2015 to make a claim in the small claims court.
- 3.4** This may not always be the most effective way for consumers to remedy the consequences of something going wrong with their payment. Currently, consumers cannot claim payment protection from their PSP or PISP when using interbank payments for retail purchases. We think the existing protections and liabilities do not always give consumers an appropriate level of protection when they make interbank payments.

Why the industry is unlikely to provide enough protection

- 3.5** The market is, however, unlikely to provide enough protection for consumers on its own due to a number of market features, including problems with incentives, the ability to identify retail payments, and consumers taking less care when making payments if they have payment protection (for example, moral hazard).

Incentives and conflicts of interest

- 3.6** First, unlike issuers in card payments, PSPs do not earn revenue when initiating a payment in Faster Payments. This means the additional cost related to providing more consumer protection for these payments isn't directly balanced with additional revenue. The incentive to provide an appropriate level of consumer protection for retail payments, therefore, is not as significant for interbank payments as it is for card payments.
- 3.7** Second, even where a PSP (or a PISP) wants to provide effective protection, it will require the cooperation between the PSPs of both the payer and the payee at the very least. These are unlikely to have an interest in coordinating with each other, because by doing so the payee's PSP may actively be assisting the payer's PSP, a competitor, and its customers. At the same time, they could potentially harm their commercial relationship with their own customer, the merchant.
- 3.8** Third, PSPs and PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection. PSPs and PISPs that provide protection promote end-user trust in the whole interbank system and not just the services they provide.

11 Further information about the current protections is provided in Chapter 4.

3.9 Card payments schemes have rules for parties involved in the payment, with sanctions (for example, imposing fines) for those not adhering to the rules.¹² This is likely to solve the coordination and conflicts of interest problems between participants. We considered whether the centralised schemes in interbank payments could perform a similar function. We have identified two potential problems:

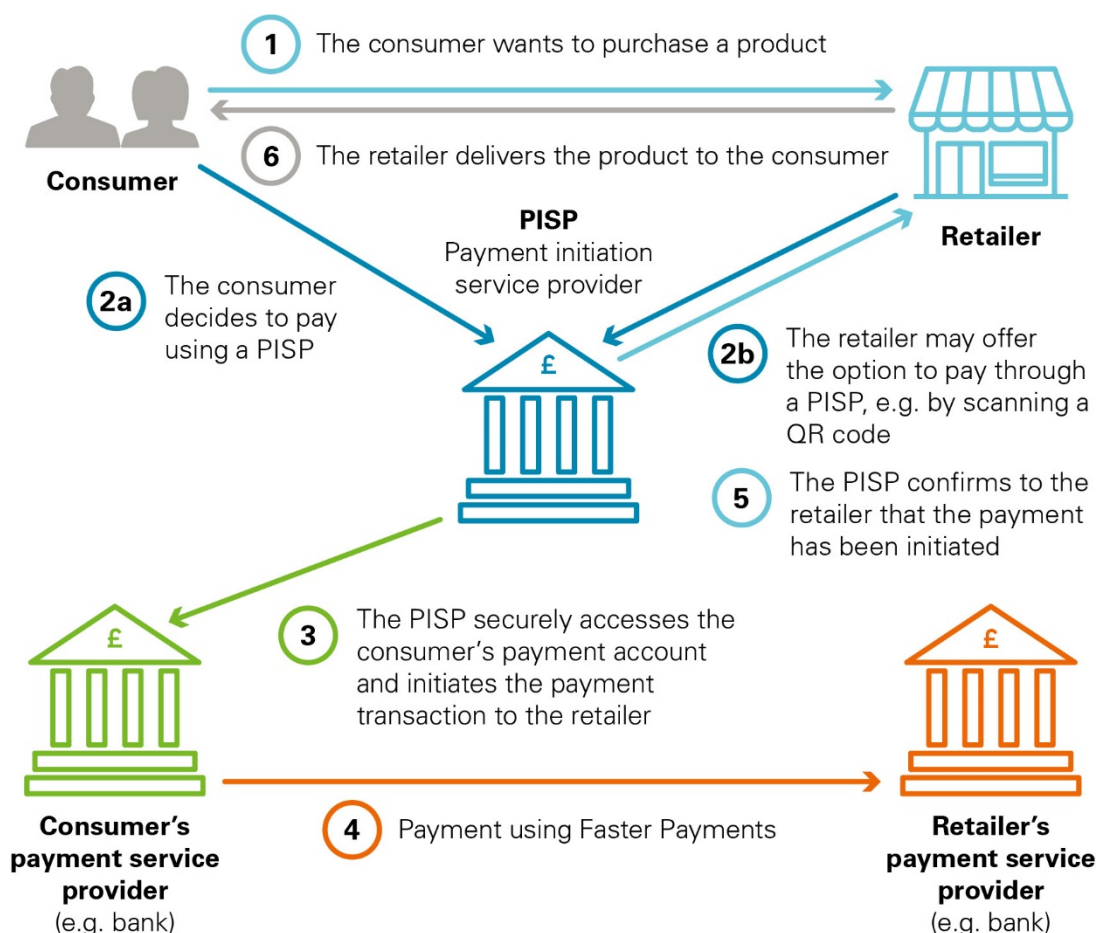
- Interbank payment system rules are not binding on PISPs, as they are not direct participants in Faster Payments.
- The interbank payment system does not give its operator the power to fine participants when rules are not followed. It could decide to withdraw access to the system but is unlikely to do so, as the effectiveness of the system depends on the participation of all its participants.

3.10 It is, therefore, unlikely that interbank payment systems currently have the ability to solve the coordination issues outlined above. We cannot definitively know this due to the low levels of retail interbank payments. Our view is, however, supported by the difficulties experienced in response to APP scams and the development of Confirmation of Payee. Both required coordination by payment providers and ultimately resulted in our intervention.¹³

3.11 Payments initiated by a PISP require additional coordination. PISPs may interact with both the payer and the payee, as they have ability to initiate a payment from a payer's account and contract with a payee to ensure it is paid. This suggests they may have the incentives and ability to provide some coordination. A PISP would, however, need to coordinate with both the payer's and payee's PSPs. Although the PISP may have a contractual relationship with the payee, it does not have any formal relationship with the payee's PSP. For similar reasons to those outlined in paragraph 3.7, the payee's PSP may lack the incentives to coordinate.

¹² This is driven – at least partly – by the need to comply with section 75 of the Consumer Credit Act 2015.

¹³ For more info, see <https://www.psr.org.uk/psr-focus/app-scams>

Figure 3: Making a payment using a PISPs

Source: PSR, based on a diagram by Banco de Portugal

Further challenges to providing consumer protection

- 3.12** There are other challenges to providing effective consumer protection.
- 3.13** First, PSPs may not currently have the technological capabilities required to identify different use cases or payee types in Faster Payments. We discuss these issues in more detail in Chapter 4.
- 3.14** Second, offering consumer protection could mean consumers take less care when making payments (for example, moral hazard).¹⁴ This would lead to higher costs for PSPs in the provision of consumer protection as they face a higher probability of claims due to more loss events than without consumer protection. In insurance markets, individuals face some cost (for example, through an excess) to ensure they take appropriate care.¹⁵

¹⁴ There are some circumstances where consumers could not manipulate the probability of harm (for example, if an airline goes into administration). We also do not consider that consumers would be able to manipulate the size of any loss, except through fraudulent behaviour by the consumer.

¹⁵ There will be a balancing judgement on the need to ensure consumers to take appropriate care and ensuring consumers receive adequate protection and do not pay a high cost for protection.

3.15 Third, PSPs may also expect that merchants who choose to use Faster Payments may be doing so due to the lower costs of accepting payments. This could, in part, be due to less stringent checks on merchants in Faster Payments compared to card schemes.¹⁶ If PSPs are unable to scrutinise payees in a similar way to card schemes, they may be unwilling to provide adequate consumer protection for interbank payments.

3.16 There is also potentially a wider coordination issue between consumers and payees. Consumers may choose a payment method that balances security with other factors, such as convenience or rewards. Businesses, on the other hand, will choose to accept a menu of payment methods that balance their costs of accepting payments (which may be affected by the level of consumer protection) with the need to offer payment options that customers can and want to use, in order to maximise sales. These decisions together may mean consumers get less protection than is needed.

Consumers do not always consider protection, but do expect it

3.17 Trust is a crucial element in the operation of effective payments. Users need to have confidence the payment they have made is being received by the right person or organisation, while those receiving the payment need to be able to access their funds.¹⁷ If something goes wrong, users should either be aware of the consequences, or should be protected. Yet, consumers using interbank systems to make payments are unlikely to demand the level of protection they require.

3.18 Our recent research has found differences in the level of importance people place on protection for their payments¹⁸ (see Figure 4):

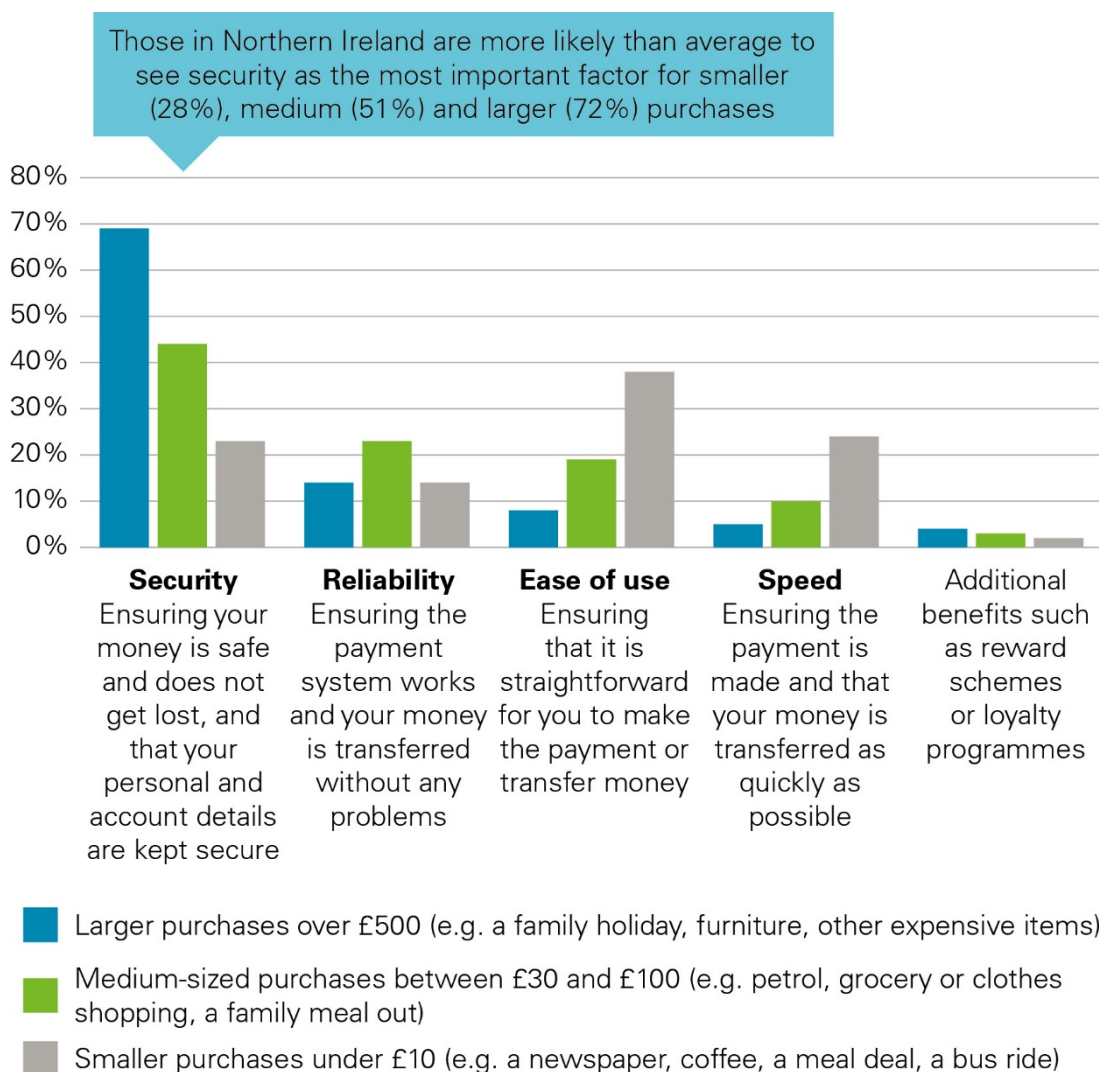
- Consumers regard security as particularly important when making larger purchases.
- Consumers are more likely to cite speed and ease as important for smaller purchases (under £10).
- Security is also the main priority for medium-sized purchases. Qualitatively, however, convenience and ease were also considered to be important.
- Those aged under 35 are significantly more likely to prioritise speed in making smaller payments. Those aged over 45 are significantly more likely to prioritise security for both smaller and medium-sized payments.¹⁹

¹⁶ Not all merchants have a business current account. See paragraph 4.27 for the potential implications.

¹⁷ See <https://www.bankofengland.co.uk/knowledgebank/why-does-money-depend-on-trust>.

¹⁸ Findings are similar to those found by Mintel. See Mintel, *Retail Payment Options – UK* (February 2020), pages 49–50: <https://reports.mintel.com/display/987846/>

¹⁹ PSR consumer research (2020): <https://psr.org.uk/publications/general/britain-thinks-payment-systems-regulator-consumer-research-2020/>

Figure 4: Most important factors when making a payment

Source: Consumer Research, PSR (2020)

Notes: (1) Base: All respondents (n=2,465)

(2) Responses to question Q4 'When making a payment, what factors are important to you?'

- 3.19** Further research commissioned by Pay.UK also found that convenience and ease were cited as the main motivations when selecting a payment method and that protection may be more relevant for some transactions.²⁰ People do not expect payment protection²¹ for the majority of their purchases as they feel most aren't risky.²² Protection is considered most relevant for:
- high-value purchases
 - situations where consumers have a lower trust in sellers
 - purchases where consumers receive their goods or services after they pay, such as travel and online purchases²³
- 3.20** Consumers do not always seem to be aware of the payment method they are using and, therefore, the protections offered by it.²⁴ Yet, consumers may expect a seamless refund to be possible when they purchase goods and services.²⁵
- 3.21** Overall, low awareness of protections available to consumers is present regardless of whether they are aware of the payment method they are using. Only 56% of the public say they have a good understanding of their rights when making payments.²⁶ The same is true for protections in other payment schemes, including the debit card chargeback scheme.²⁷ This is reflected in:
- low confidence in claiming protections
 - the lack of prompts for consumers to make claims
 - perceived difficulties in the claim process, including the speed of the process for vulnerable and financially constrained consumers

Problems with consumer demand for protection

- 3.22** People want payments to be protected, especially for higher-value transactions or where they perceive a higher possibility of something going wrong. We see three problems which mean that consumers are unlikely to demand the level of protection they require.

20 Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 6: <https://www.wearepay.uk/exploring-perceptions-of-consumer-protections-in-payments/>

21 Payment protection refers to the protection that is available through the use of a particular payment system.

22 Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 14.

23 Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 11.

24 Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 9 and 11.

25 Pay.UK, Consumer Protections in Payments, Summary Paper (November 2020), page 14.

26 PSR consumer research (2020): <https://psr.org.uk/publications/general/britain-thinks-payment-systems-regulator-consumer-research-2020/>

27 Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 15.

- 3.23** First, consumers underestimate their own risk of being harmed. While some are more security conscious for higher-value payments²⁸, wider research supports our concerns that consumers tend to overestimate their own abilities and knowledge. This can lead them to make riskier decisions (such as choosing payment methods which offer less protection).^{29,30} We also know that people do not consider the majority of their payments to be risky.³¹ If people underestimate the probability of facing a loss, or the size of that loss, they are less likely to demand consumer protection.
- 3.24** An example of this is consumers' attitude to fraud prevention. In abstract, consumers believe there is a strong degree of individual responsibility to protect themselves against fraud, with few expecting banks to reimburse victims of APP scams. In practice, however, consumers who have experienced fraud are often more sympathetic to other victims.³²
- 3.25** Second, while security is important for some transactions, consumers do not always choose their payment method with security in mind.³³ They are far more likely to demand protection after the transaction has already taken place and something has gone wrong.
- 3.26** Third, consumers do not always understand the degree of protection offered, and have low confidence in making claims, even where protections are established (see paragraphs 3.19 and 3.20). For consumers to make informed decisions about which payment method to use, they need to be able to:
- access information about the payment method, and understand the amount of protection offered for each type
 - assess the differences between payment methods, and compare the relative levels of protection
 - choose the right payment method for them, and access relevant protections when needed (for example, knowing who to claim protections from and having a process that works for them)
- 3.27** We explore consumer awareness in more detail in Chapter 5.

28 See paragraph 3.17 and 3.18.

29 See, for example, Behavioural Insight Team, *Applying behavioural insights to regulated markets*, (2016), page 24: <http://38r8om2xjhhl25mw24492dir.wpengine.netdna-cdn.com/wp-content/uploads/2016/06/Applying-behavioural-insights-to-regulated-markets-Final0.pdf>

30 This may also be caused by present-bias, where consumers focus on immediate benefits of a choice and pay insufficient attention to longer-term costs and consequences. This can lead consumers to misjudge their needs in ways they later regret and suffer from the effects.

31 See paragraph 3.18.

32 PSR consumer research (2020): <https://psr.org.uk/publications/general/britain-thinks-payment-systems-regulator-consumer-research-2020/>

33 See paragraph 3.18.

Inadequacy of consumer side solutions

- 3.28** We are concerned that the evolution and growth in use of interbank payments may lead to potential risks of consumer harm. In some situations, these risks could be prevented by actions from the consumer.
- 3.29** Payment protection doesn't exist in isolation: consumers also look towards other forms of protection, such as retailer protections, before they expect to fall back on payment protections.³⁴ Preventative measures that change consumer behaviour and stop issues arising in the first place are the most effective way of saving costs for both the victims and their PSPs or PISPs, who currently face the cost of investigating errors.
- 3.30** Not all errors can be prevented and there are still cases where consumers may not be able to rely on protections provided by the retailer. This could include times when a payee goes out of business after the consumer has made payment, but before the consumer has received their goods or services.
- 3.31** Consumers could receive additional information to help them understand the differences in protection between payment methods. Consumers would need to be able to process and act on the relative risks between payment methods for this to be effective. Even with additional information, the absolute risk of something going wrong could, however, still be misunderstood.³⁵
- 3.32** Our research shows that empowering consumers to mitigate problems themselves is unlikely to ensure consumers are properly protected when they make payments. In insurance markets such as for home and motor insurance, there is a mandatory requirement for consumers to insure themselves.^{36,37} Consumer knowledge needs to be supplemented by protection provided by the industry.

The need for more comprehensive measures

- 3.33** The current level of protection for consumers using interbank payments to make purchases is likely to be lower than desirable in some circumstances, but protection is only needed if consumers would be harmed without it.

34 Pay.UK, Consumer Protections in Payments, Summary Paper (November 2020), pages 10 and 15; and Pay.UK, Exploring perceptions of consumer protections in payments, Excerpts from primary research (January 2021), page 11.

35 We also considered that consumers could take out insurance that protects them for specific purchases. However, there are some well-documented problems in these markets. See for example, Competition Commission, *Market investigation into payment protection insurance – Final Report*, (2009): https://webarchive.nationalarchives.gov.uk/20140403003432/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542.pdf, and Competition Commission, *The Supply of Extended Warranties in the UK* (2003): https://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/rep_pub/reports/2003/485xwars.htm

36 A report for the European Commission found that for a number of consumers, their motives for purchasing insurance is because it is mandatory. See European Commission, *Study on consumers' decision-making in insurance services: A behavioural economics perspective* (2017), page 86-87: https://ec.europa.eu/info/publications/study-consumers-decision-making-insurance-services-behavioural-economics-perspective_en

37 Third-party motor insurance is mandatory in the UK. Buildings insurance is a condition of a mortgage, making it mandatory for many home owners. The reasons for making insurance mandatory for these purposes is likely due to the externalities imposed on other road users or the mortgage company in case of loss.

- 3.34** Although the use of interbank payments for retail transactions is currently low, we expect them to grow (albeit more slowly than if there were protections in place) and, given that the existing legal protection provided by the PSRs 2017 do not always apply for these payments³⁸, for the potential for harm to increase as a result. A greater variety of payment providers (including PISPs) offering payment services could lead to an overly complex value chain.
- 3.35** Failure to ensure effective consumer protection in some circumstances could lead to significant costs for consumers when seeking or failing to make claims when things go wrong. It may also prevent some consumers using interbank payments for retail purposes, or lead to consumers losing confidence in interbank payments, both for current purposes and as an alternative to card payments. This may harm the competitive potential of interbank payment systems.³⁹
- 3.36** To fulfil our objectives to support competition, promote innovation and take into account and promote the interests of services users including consumers, we must assess how adequate levels of consumer protection for all interbank payments are best provided.
- 3.37** Solutions such as more preventative measures or additional information for consumers are unlikely to be sufficient. There may need to be some changes at a system level to ensure proper liability and an effective governance framework with sufficient ability to enforce. In the next two chapters, we set out our initial thinking on a number of possible ways to ensure effective consumer protection for interbank payments. This includes considering where additional protection may be required (Chapter 4) and which processes need to be in place to enable consumers to claim protection (Chapter 5).
- 3.38** Putting in place effective consumer protection measures should not lead to disproportionate costs or burden for a system, its participants or those that use the service provided by the system. We will assess the impact of any proposals we make to ensure that any costs incurred are proportionate to the expected benefits. This is considered further in Chapter 6.

Question 1: Do you agree that there are insufficient consumer protections for interbank retail payments?

Question 2: To what extent do you agree that currently the industry does not provide and consumers do not demand appropriate levels of protection?

Question 3: Will there be any changes to consumer or industry behaviour that would reduce the size of harm without the need for intervention? Why (not)?

38 If a payment is correctly authorised and executed, and not fraudulent, but still unsatisfactory due to a fault with the service or goods purchased, the protections offered by the PSRs 2017 do not apply.

39 Harm to interbank payments as a whole is more likely if the provider of payment services is seen to be the scheme – such as Faster Payments, rather than PISP.

4 Which payments might need additional protection?

At the moment, liability is mostly determined by legal protections which can be enforced by legal action in the small claims court. This might not always be the most effective method for consumers. We are considering whether there should be additional liability on retail payments. This liability could be on the seller, the seller's PSP, or any PISP involved. We are also considering how to identify those payments that need additional protection.

- 4.1** In Chapter 3, we saw that innovations in interbank systems could lead to a greater variety of payment types being processed by these systems, including the increased use of Faster Payments for retail purchases. We set out the reasons why we think additional consumer protection may be needed. To determine which types of payment might need additional protection, we need to first understand which protections are currently offered – and whether they protect consumers adequately.

Current protections

- 4.2** For any payment made on the interbank systems, a number of things can occur that mean the payment isn't executed as intended. Table 2 outlines the current legal and payments protection available for each these.

Table 2: Current protection offered for interbank payments

Why the payment went wrong					
		Error made by PSP/PISP	Error made by payer	Error with goods or service	Error due to fraud ⁴⁰
Legal protection ⁴¹	FPS	PSRs 2017	PSRs 2017	Consumer legislation (for example, Consumer Rights Act 2015, Consumer Contracts Regulations)	PSRs 2017
	Bacs	PSRs 2017	PSRs 2017	Consumer legislation	PSRs 2017
Payment protection	FPS	Not available	Confirmation of Payee, Credit Payment Recovery	Not available	Confirmation of Payee, Contingent Reimbursement Model
	Bacs	Direct Debit Guarantee	Credit Payment Recovery	Not available	Direct Debit Guarantee

4.3 At the moment, who is liable is predominately determined by legal protections. These liabilities can be enforced by legal action in the small claims court (or any alternative dispute mechanism agreed between parties). We see these protections as the minimum standard for protection, but need to consider whether going to court or reaching out to the Financial Ombudsman⁴² is the most effective way for consumers to remedy the consequences of something going wrong with their payment.

4.4 Complaints about errors covered by the PSRs 2017 – which set out the extent of, and limitations on, the liability of PSPs and PISPs for the execution of payment transactions – can additionally be brought to the Financial Ombudsman.⁴³ Consumers could, in these cases, also rely on a PSP's complaints resolution procedure where the ombudsman scheme is unavailable.⁴⁴ These options are not available for consumers faced with errors with the goods or service they purchased.

40 In this section, we cover losses caused by fraud that harms consumers.

41 Although not enshrined in law, the FCA also expects all its regulated entities to adhere to its 'treating customer fairly' principle. More information can be found here: <https://www.fca.org.uk/firms/fair-treatment-customers>

42 See paragraph 4.4.

43 Section 226(6) of the Financial Services and Markets Act 2000.

44 Regulation 101.

- 4.5** Because we know that consumers don't always consider protection when making a payment and we expect Faster Payments to continue to grow in the future (including for retail payments), we think that, in circumstances that are currently only covered by general consumer legislation, introducing additional payment protection may be needed. This is particularly the case for errors related to payments for goods and services. We discuss these in paragraphs 4.11 to 4.19.
- 4.6** Alongside protection for specific cases, we recognise that – regardless of whether additional protection is offered – governance and processes may also be needed. We address this in Chapter 5.

Which interbank payments may need additional protection?

- 4.7** In order to examine which interbank payments may need additional payment protection, we need to understand what interbank systems could be used for – now and in the future.
- 4.8** Our thinking is based on a set of cases that we understand interbank payment systems could be used for. These are set out in Table 3. Each of the use cases are further broken down into examples. These examples are illustrative and not an exhaustive list of payment purposes.

Table 3: Interbank payment use cases now and in the future

Use case	Example	System
Transferring money between own accounts	Rebalancing accounts between different banks	Faster Payments
	Rebalancing accounts: on-us	N/A
	Savings and investment accounts, Pensions	Faster Payments, Bacs
Transferring money to someone else: business to consumer	Salaries and wages	Bacs
	Benefits	Faster Payments, Bacs
	Customer refunds	Faster Payments
Transferring money to someone else: consumer to consumer	Splitting bills, reimbursements, Monetary presents	Faster Payments
Transferring money to someone else: consumer to business	Charity donations (one-off and recurring)	Faster Payments, Bacs
	Tax, fines	Faster Payments

Use case	Example	System
Paying for goods and services: One-off	Payment pre-receipt of goods and services (for example, e-commerce, travel, furniture, weddings, tuition)	Faster Payments
	Payment while receiving goods and services (for example, physical retail, currency exchange)	Faster Payments
	Payment post-receipt of goods and services (for example, invoice, tradesperson, tuition)	Faster Payments
Paying for goods and services: recurring	Rent	Faster Payments
	Mortgages and loans	Faster Payments, Bacs
	Subscriptions (fixed payment)	Faster Payments
	Utility bills (variable payment)	Faster Payments, Bacs
Paying for goods and services: High value	House, Car	Faster Payments, Bacs, CHAPS

On-us payments may be made for any use case

- 4.9** Payments do not always need to be processed by a central payment system. If both payer and payee have accounts at the same organisation, the payment can be processed without clearing or settlement. These are referred to as on-us payments. We have assumed that any agreed method of dealing with a specific type of payment will apply to on-us payments as well as interbank payments.

Question 4: Do you foresee any difficulties with providing the same protection for on-us payments as those that use an interbank system?

Which types of payment should be covered by payment protection?

- 4.10** As outlined in paragraph 4.4, at the moment, consumers would rely on general consumer protection legislation when something goes wrong with an interbank payment for goods and services. We would like feedback on extending payment protection to these payments.

Paying for goods and services: one-off

- 4.11** Payments in this category can be characterised as retail payments. They take place when a consumer provides money in return for goods or services. The majority of retail payments are seen as non-risky (see paragraph 3.18). They may be initiated by the payer through their PSP, or by a PISP that the payer has instructed. In some circumstances, however, consumers do not receive the goods or services that they

purchased or receive faulty goods or services. This also includes situations where a consumer has paid for goods or services and before they are delivered the seller goes out of business. Under current interbank arrangements, there is no payment protection available to consumers if their purchase is unsatisfactory.

- 4.12** The Consumer Rights Act 2015 establishes contractual rights between buyers and sellers when making purchases. Claims under these provisions are the only recourse available to consumers if, for example, they pay for their purchase with cash. We would like to consider whether adding payment protection would make interbank systems a more attractive option for purchase transactions. We would like your views on this, and on who should bear the liability. We do not intend to address situations where the payment is sent in error, as this is covered by the liability framework in the Payment Services Regulations 2017 (PSRs 2017).
- 4.13** For this category of payment, there may not always be a clear distinction between fraud cases and purchases from a legitimate business that turn out to be unsatisfactory. We do not intend to address situations where there is clear intent to defraud the consumer (APP Scams) in this call for views. A separate call for views (published alongside this one) is assessing what is needed to further embed and improve the existing solutions for such fraud cases.⁴⁵
- 4.14** Consumers expect to be able to reclaim funds from a business in the event of an unsatisfactory purchase and usually have limited knowledge about the consequences of using one payment system rather than another.⁴⁶ We do not think it is effective to rely heavily on consumers to inform themselves of the degree of protection they will get from different retailers, PSPs or PISPs. All may offer optional protection as part of their service – but without standard agreements and processes in place when things go wrong, the different levels of protection offered may cause confusion. This could also lead to consumers losing confidence in using interbank payments for further retail purchases.
- 4.15** We would like your feedback on the potential effectiveness of providing new or additional liability arrangements within the payment system. This could place the responsibility for ensuring consumers do not lose money over unsatisfactory purchases on the seller, the seller's PSP, or any PISP involved. We think that such a change, for specific cases, may tackle possible consumer harm and increase consumer confidence in interbank payments.
- 4.16** In payment systems designed specifically to support retail purchases, such as card networks, some obligations fall on the businesses' PSP. PSPs assess the risk of extending payment acceptance services to a business when it joins the system, and this has continued implications for their relationship. We would welcome feedback on how any additional interbank systems' liability framework may affect the relationship between businesses and their PSPs.

⁴⁵ <https://psr.org.uk/publications/consultations/cp21-3-authorised-push-payment-scams-call-for-views/>

⁴⁶ See paragraphs 3.19 and 3.20.

- Question 5:** Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?
- Question 6:** To what extent should payment protection be introduced for retail purchases with the liability for refunding the consumer imposed on either sellers or the seller's PSP or PISP?
- Question 7:** Would changing the liability framework so that sellers or their PSPs are liable for loss lead to a change in commercial relationship between sellers and their PSPs? Why (not)?

Paying for goods and services: recurring

- 4.17** Recurring payments from consumers to businesses might be made for a number of reasons: for example, to pay subscriptions, rent, or mortgages. The nature of recurring payments means that the services are generally provided on a continuing basis. This may mean that disputes are more complicated and arise over a longer period.
- 4.18** In 2019, consumers made 5.3 billion recurring payments, worth a total of £585 billion. The majority of those (76%) were made by Direct Debit.^{47,48} Other recurring payments are made by standing order, via Faster Payments. In 2019, standing orders accounted for just over 9% of recurring payments made by consumers. Consumers will soon also be able to instruct PISPs to initiate variable recurring payments.⁴⁹
- 4.19** Recurring payments have different levels of protections, and disputes can be complex. Although consumers may ask their PSP to stop executing a recurring payment at any time, we consider additional liability arrangements may be needed for recurring payments over Faster Payments (similar to our suggestion for one-off purchases).^{50,51} Because errors may only arise after a recurring payment was set up, we consider limiting any changes to the last payment of the series. We think this may tackle some consumer harm, but do not have evidence that it effectively tackles consumer losses. We would like to receive feedback on that point as well as our suggested change to the liability arrangements.

47 UK Finance, *UK Payments Markets 2020 Report* (June 2020), page 25.

48 Direct Debit, which uses the Bacs system, allows consumers to agree that a business is entitled to pull money from their account. Frequency, date and amount of the debit may all be agreed before the payment is taken. Direct Debit offers payment protection in the form of a guarantee scheme which allows consumers to be refunded in the event of incorrect or unauthorised payments. Currently, the guarantee scheme does not offer protection for errors with goods and services.

49 Variable Recurring Payments (VRPs) are an open banking solution which allow customers to safely connect authorised payments providers to their bank account so that they can make recurring payments on the customer's behalf, which vary in value. More information is available here: <https://www.openbanking.org.uk/about-us/latest-news/obie-launches-variable-recurring-payments-and-sweeping-consultation/>

50 See paragraphs 4.11 to 4.16.

51 As Direct Debit payments via BACS already offer payment protection via the Direct Debit Guarantee, we do not think it is appropriate to change the liability arrangements for these payments. More information on the Direct Debit Guarantee can be found here: <https://www.directdebit.co.uk/DirectDebitExplained/pages/directdebitguarantee.aspx>.

Question 8: Should any new payment protection arrangements be extended to recurring and variable recurring payments? Why (not)?

Question 9: To what extent do you think payment protection for recurring and variable recurring payments should be extended beyond the last payment?

Ways to identify payments that need protection

4.20 The UK's interbank payment systems do not currently allow payers to identify easily the purpose of a past payment, or whether they are made to a business or a consumer. We have set out some alternative options below. We invite feedback on the potential effectiveness and the feasibility of these options.

High-value payments

4.21 As we set out in Chapter 3, consumers are less concerned about protection for smaller payments. We have considered whether a form of payment protection could be made for all payments above a threshold amount without identifying the use case.

4.22 This approach may not take into account that smaller payments can be critically important; this might not serve the needs of the more financially vulnerable. Any protection should be financially inclusive.

4.23 We are also concerned that guaranteeing consumer-to-consumer payment protection over a threshold may lead to additional requirements – such as increased scrutiny – for account holders, and a slowdown of inbound payment clearance above the threshold. It could also increase the risk of consumers fraudulently claiming protection.

Question 10: To what extent do you think a threshold value should be used to determine which payments are covered under payment protection, and – if you agree a threshold should be used – what do you think that threshold should be?

A combination of value and use case

4.24 We know that not all payments pose the same level of risk and therefore may not need the same protection. We are considering whether it would be appropriate to apply additional protection based on a combination of use case and transaction value – for example, pre-paid purchases over a certain threshold.

4.25 This might address some of the issues with applying a blanket threshold amount for all payments. It would be less likely to reduce the service to consumers receiving payments and would introduce fewer incentives for fraud into the payment system. It would, however, still exclude lower-value payments and not take into account that consumers evaluate risk in different ways. This option would not address the concerns raised in paragraph 4.22. It would also need to include a way to identify the purpose of a payment.

Question 11: To what extent are you currently able to identify different types of payments?

Question 12: Do you think a combination of use case and transaction value should be used to determine which payments are covered under payment protection? Why (not)?

Question 13: Do you think the relationship between sellers and their PSPs might be affected if protection is offered on a use-case basis? Why (not)?

The identity of the payer and payee

4.26 Payment protection could be based on the identity of the payer and the payee. For example, it could be introduced for any payment made from a consumer to a business.

4.27 Applying protection based on the payee's account type may lead to an understanding that business accounts are for 'official' sellers. This could lead to a perception that business account holders are accredited sellers. We also know that some payments from consumers to businesses are not purchases (for example, charity donations). Applying payment protection for these may not always be appropriate. PSPs might also need to review the terms under which they offer business accounts.

4.28 We would like your views on the viability of this approach, and whether the current interbank systems allow PSPs to identify whether a payee is a business, organisation or consumer.

Question 14: To what extent are you currently able to identify the different types of payee, including whether the payee is a business, organisation or a consumer?

Question 15: Do you think the identity of the payer and payee should be used to determine which payments are covered under payment protection? Why (not)?

5 How consumers might claim protection

Regardless of the level of protection offered, for that protection to be effective, consumers need to understand whether protection is available and, if so, how to use it.

Any process of delivering consumer protection is likely to require a level of governance. This is so there is a clear protection process in place that is agreed and understood by all parties involved in an interbank payment. There are a number of ways to ensure effective governance processes. These include, for example:

- embedding formal provisions in the payment system rules
 - including consumer protection in a new payment governance system
 - creating a voluntary industry-led payment protection process
-

What happens when a claim is made

- 5.1** In payment systems that have traditionally been used for purchases, such as card networks, payment protection is already well established. These payment systems have a centrally governed process for managing disputes and queries across the entire network. Governance provides a framework to ensure that parties supporting payment transactions can effectively communicate with each other. The benefits of this are most apparent when a transaction is disputed.
- 5.2** Governance also provides the consumer with clear guidelines about what to expect and do if something goes wrong. It ensures that consumers, sellers, PSPs, PISPs and payment systems are all guided by the same rules and aims to manage complexity through a pre-agreed process. This gives the consumer more trust in using the payment method.
- 5.3** We are exploring whether a governance framework for protection in interbank payments would provide a robust and consumer-friendly process which could support both the existing (such as PSPs) and new (such as PISPs) parties in the interbank value chain. This would mean consumers and businesses can transact with a clear understanding of which protections are offered and how disputes are managed.

Question 16: To what extent would a consumer protection governance process be beneficial for interbank payments?

Question 17: Would having a standardised process for claiming consumer protection make you more confident in using interbank systems or recommending them for retail purchases to your customers? Why (not)?

How protection can be delivered to the consumer

Awareness of the protection

- 5.4** An important part of providing consumer protection is ensuring the consumer understands the process. They need to know what protection is offered across the different payment systems, assess which payment system offers the best protection, and know who to approach to claim that protection when something goes wrong.
- 5.5** Preventing problems and promoting understanding of the available protections can always be improved. One approach is through marketing, either by PSPs or PISPs, or more general public awareness campaigns. We want your views on whether marketing is effective in helping consumers protect themselves.
- 5.6** Another way of promoting understanding could be a trust mark for interbank payments. PSPs, PISPs, retailers and other payment system users could use the trust mark as a statement of conformance with a set of identity, security and protection measures. The trust mark would also help increase consumer confidence in interbank payments.

Question 18: To what extent can promoting consumer awareness around the level of protection offered, including by the suggestions outlined in paragraphs 5.4 to 5.6, help empower consumers to make choices that protect them?

Question 19: Who do you think is best placed to ensure consumers understand the protections offered to them and why?

Ability to claim protection

- 5.7** There are two key prerequisites that ensure businesses and consumers can use the protections available to them. These are:
- a reliable and fair process which consumers can understand and use to claim protection
 - a strong governance framework which ensures that all parties involved in a payment abide by the procedures in place to settle disputes
- 5.8** The current interbank payments ecosystem does not have much additional support and governance to protect consumers and service providers.
- 5.9** In all the instances where legal or payment protection is available, the consumer has to ask the liable entity for help. In most cases this is their PSP. For payments related to errors with goods or services, general consumer protection legislation assigns the liability to the seller. When a dispute arises, the seller is liable to make things right and can do so by providing repairs, replacements or refunds. If they do not, the consumer currently has no formal ability to ask their PSP (or PISP) for help. Their only option is to make a claim through the small claims court and, partly due to the costs associated with this option, we are concerned it may be underutilised.

- 5.10** For payments made using open banking, the OBIE has a voluntary code setting out the best practice standards for dispute management. This includes an electronic system connecting the various parties involved in the payment. This system supports the communication and exchange of information about enquiries, complaints or disputes between account servicing payment service providers (ASPSPs) and third-party providers (TPPs), such as PISPs. As these standards remain voluntary, they cannot be enforced. We discuss the advantages and disadvantages of voluntary standards in more detail in paragraph 5.26.
- 5.11** We want to explore how the industry can give consumers a clear process for claiming protections. This would give people a better experience when they have problems, and could ultimately increase trust in the interbank payment systems. To understand what such a process could look like, we need to consider who consumers are likely to approach to claim protection.

Where do customers go to claim protection?

- 5.12** As interbank payments in today's environment are primarily used for non-retail payment transactions, we lack sufficient data to assess who consumers are likely to approach in a dispute. Our current theory is that they would first ask the seller to fix the problem; if that did not work, they would then contact their PSP. We base this on our research which suggests that consumers may expect a seamless refund to be possible when they purchase goods and services and would generally claim retailer protection before claiming payment protection.⁵² We would like to receive any evidence that supports or contradicts this theory.
- 5.13** As developments in open banking progress, we expect that PISPs and other parties in the value chain, such as PSPs, will want to manage disputes for their customers as a way to build trust and ultimately improve their commercial offering. We are looking for views on whether the consumer is likely to continue to engage with their PSP or the PISP that initiated their payment.

Question 20: Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?

Question 21: How, if at all, would your response change if retail purchases through interbank payment systems were to increase?

- 5.14** It is likely that there are multiple paths consumers would take to claim protection. Any process aiming to help consumers should take this into account, and should include a robust method for communicating with the various parties involved in a payment. Some protections already involve a level of communication, such as the Credit Payment Recovery and the legal protections offered by the PSRs 2017. We would like to hear your views on how effective this communication is.

Question 22: To what extent do the current communication channels you use allow you to effectively address consumer enquires and issues with other parties involved in a disputed interbank payment?

⁵² See paragraphs 3.19 and 3.20.

Governance options for effective consumer protection



5.15 Any process of delivering consumer protection is likely to require a level of governance. This is so there is a clear process that is documented, agreed and understood by all parties involved in an interbank payment. Governance also ensures that parties use the protection process to coordinate with one another when something goes wrong.

5.16 There are a number of ways to ensure effective governance processes. These include:

- embedding formal provisions in the payment system rules
- including consumer protection in a new payment governance system
- creating a voluntary industry-led payment protection process

5.17 We have briefly set out our thoughts on these options below. We would like to hear views on the feasibility of these options, and on any other ways that parties can effectively coordinate to resolve disputes.

Table 4: Options to ensure effective governance processes

	Payment system rule	Payment governance system	Industry-led payment protection
Benefits 	Rules are binding for direct participants of payment system	All service providers can be invited to join system Flexibility around who develops end-to-end protection solution	Solutions are applicable to all those that sign up to a standard Useful in codifying existing practices
Disadvantages 	Interbank payment system rules do not give its operator the power to impose fines Rules would not apply to indirect participants	Only service providers that join the system are bound by the rules May lead to different levels of protections offered by different service providers	Standards lack direct enforceability May lead to different levels of protections offered by different service providers

Payment system rule

- 5.18** Formal protection provisions in the payment system rules could require participants to adhere to specific requirements and processes when a dispute is raised. A benefit of this approach is that the payment system operator would ensure its direct participants follow these rules. To do this effectively, they should have the power to appropriately sanction those who do not. Yet, at the moment, the interbank payment system rules do not give its operator the power to impose fines on participants when rules are not followed.⁵³
- 5.19** A payment system rule would only affect the direct participants of the system, as operators do not have the power to enforce any rule on other system users. This is relevant for any governance framework that is introduced in Faster Payments because open banking will introduce new system users, such as PISPs, who are unlikely to be direct participants. Legislative changes might be needed to apply a rule to PISPs.
- 5.20** We want to hear views on how indirect participants would interpret protection provisions in interbank payment system rules and whether system rules are likely to create a suitable governance framework for all parties involved in an interbank payment.

Payment governance system

- 5.21** A governance system does not necessarily have to sit within the payment system rules to be effective. It can be developed outside the system rules but still within a framework designed to ensure that all users of the payment system have access to a process and redress solution. The recent introduction of Confirmation of Payee is an example of this approach.⁵⁴
- 5.22** A benefit of this approach is that all service providers (including PISPs) can be invited to join, without needing to be direct participants of a payment system. These rules may also provide an opportunity for consumer protection to be developed into an end-to-end solution under an existing organisation such as Pay.UK, or a new provider.
- 5.23** PSPs and PISPs could join a system developed outside of an existing system's rules, but without mandatory participation they may offer different levels of protection to consumers for similar payments. Making participation mandatory would require action from a regulator.
- 5.24** We would like your views on how an end-to-end payment governance system could be developed outside of payment system rules, and who would be best placed to develop it.

⁵³ See paragraph 3.9.

⁵⁴ <https://www.wearepay.uk/confirmation-of-payee/>

Industry-led payment protection

- 5.25** There are examples where a set of standards were agreed by industry without the need for a full end-to-end system, such as the current dispute resolution system offered by the OBIE. This has, in the past, typically happened when there was consensus on the need to address a situation that was causing harm. Such solutions are applicable to all who sign up to accept the standards, without a need for them to be direct participants to a payment system.
- 5.26** Industry agreed standards also help drive a common understanding among all participants and can be useful in codifying existing practice. There are limitations to this approach: these standards lack direct enforceability, placing the responsibility of implementing the standards solely on the signatories. This may result in a different level of protection being offered to consumers for similar payments based on the PSP or PISP they use – which could create more confusion about protection for interbank payments.
- 5.27** We would like views on how effective industry agreed standards would be in providing reliable consumer protection, and how consumers could be made aware that their payments are protected.

Question 23: What do you think about the options outlined in paragraphs 5.18 to 5.27? Are there any alternative options you think we should consider?

Question 24: Who do you think is best placed to enforce interbank consumer protection claims against both payment initiators and payment service providers?

Question 25: To what extent do you think legislative or regulatory intervention is required to introduce a process that allows consumers to raise an interbank payment dispute?

6 What we will take into account before suggesting any action

If we decide action may be required to ensure adequate levels of interbank consumer protection are in place, we will take into account its proportionality and have due regard to the issues set out in the Equality Act 2010.

Any new measures are likely to incur costs for payment providers. We will ensure the costs of any action we may propose are proportionate to the expected benefits of that action. We have started mapping the likely costs and benefits arising from any enhanced consumer protection measures or governance. We will continue to analyse possible costs and benefits and welcome your views at this stage.

Proportionality and other legal considerations

- 6.1** We will assess the overall proportionality of any action we decide to take to increase consumer protections for interbank payments, in line with our legal and regulatory obligations. This will take into account the effectiveness of our proposed course of action, including the benefits flowing from that as well as the associated costs. We outline the main costs and benefits below.
- 6.2** We will also ensure that we have due regard to the issues set out in the Equality Act 2010. For example, we will consider whether any proposed course of action may have an increased impact on a protected group, such as consumers who need protection for low-value payments, who may share protected characteristics such as age or disability.

Assessing the costs and benefits

- 6.3** Improving the effectiveness of consumer protection is likely to generate direct costs for PISPs, PSPs, payment systems operators and businesses.⁵⁵

⁵⁵ Direct costs arise directly from any action taken. Indirect costs arise due to changes in behaviours in response to any action taken.

- 6.4** In the absence of consumer protection measures, we still expect retail interbank payments to grow (albeit more slowly than if there were protections in place) and for the potential for harm to increase as a result. The costs of any measure, therefore, will need to be less than the benefits, including the proportion of projected harm that has been avoided. We also expect any measures will produce additional benefits in the form of even larger volumes of retail payments made over interbank systems and contribute to potentially greater competition between retail payment methods. We set out our initial thinking on the types of costs and benefits we expect will arise below.

Costs

- 6.5** We need to understand the costs related to any possible actions to assess whether they are proportionate. Enhancements of consumer protection are likely to cause some level of direct cost for all parties in the claims process. These include the payment system operator, PSPs, PISPs (where relevant), and businesses (payees). The costs can be broadly split into:

- upfront costs setting up new processes to receive, investigate and resolve claims and disputes
- potential upfront change costs associated with changing systems to identify different payment uses or payee types
- ongoing costs of running an enhanced consumer protection framework

- 6.6** There may also be indirect costs, such as:

- an increase in fraudulent claims (PSPs or PISPs will have to investigate these, and some may be successful)
- an increase in claims, if consumers become less careful when making payments⁵⁶
- additional direct costs causing PSPs to dissuade consumers from using Faster Payments for retail payments
- a reduction in payment system participants if PSPs or PISPs stop offering interbank payment services (or decide not to begin offering them)
- an increase in the costs for PSPs in scrutinising and monitoring payees, which in turn may lead to additional costs for all bank account holders

- 6.7** There may be further indirect costs if consumers pay for enhanced protection through charges per transactions, charges for bank accounts, or other ways PSPs recover their costs from consumers. The costs will depend on whether PSPs change their revenue earning structure for bank accounts. Any new charges could also impact how PSPs compete with one another.

⁵⁶ As awareness of protections is low, we do not expect a significant change to consumer behaviour.

Benefits

- 6.8** Any action that aims at enhancing consumer protection should lead to several direct benefits. We expect any new measures will make it easier for consumers to claim back their money when something goes wrong. This is likely to result in a higher proportion of consumers making claims when something goes wrong, as well as lower costs and quicker resolution for those consumers that would have made a claim regardless of the new measures. We also expect fewer payment errors as those with liabilities in the system will work hard to reduce their exposure costs.
- 6.9** We also anticipate some indirect benefits. A potentially significant benefit would be a boost to consumer confidence in using interbank payments systems for a variety of purposes. The increase in confidence may ultimately contribute to greater use of interbank systems, including for retail payments. This could, in turn, lead to greater competition between payment systems, lower costs, higher quality, and greater choice of payments. That said, we consider consumer protection as a necessary, albeit not a sufficient, condition to enable greater competition between retail payment methods. As noted in paragraph 2.9, we are not considering other measures that are likely to be necessary to enable Faster Payments to provide greater competition between retail payment methods in this call for views. As any benefits from greater competition are reliant on other measures, it is unlikely we can quantify or attribute these benefits. We will nevertheless consider how consumer protection contributes to a wider set of measures in promoting competition for retail payments between payment systems.
- 6.10** This is a brief overview of the likely costs and benefits arising from any enhanced consumer protection measures or governance. We will continue to analyse possible costs and benefits, but welcome your views at this stage.

Question 26: Do you agree with our assessment of the likely costs and benefits?

Question 27: Which costs and benefits do you think are likely to be the most significant and why?

Question 28: Who do you think would and should bear the cost of additional consumer protection and/or governance?

Question 29: To what extent would consumer protection measures introduce significant costs to your business or the need to change service contracts with your customers?

7 Questions and next steps

The questions we are asking

7.1 We would appreciate feedback on all the issues raised by this document. You can answer as many or as few of the questions as you wish. We are particularly interested in views and/or evidence in relation to the following questions:

Questions related to why we think additional protection may be needed

1. Do you agree that there are insufficient consumer protections for interbank retail payments?
2. To what extent do you agree that currently the industry does not provide and consumers do not demand appropriate levels of protection?
3. Will there be any changes to consumer or industry behaviour that would reduce the size of harm without the need for intervention? Why (not)?

Questions related to which payments might need additional protection

4. Do you foresee any difficulties with providing the same protection for on-us payments as those that use an interbank system?
5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?
6. To what extent should payment protection be introduced for retail purchases with the liability for refunding the consumer imposed on either sellers or the seller's PSP or PISP?
7. Would changing the liability framework so that sellers or their PSPs are liable for loss lead to a change in commercial relationship between sellers and their PSPs? Why (not)?
8. Should any new payment protection arrangements be extended to recurring and variable recurring payments? Why (not)?
9. To what extent do you think payment protection for recurring and variable recurring payments should be extended beyond the last payment?
10. To what extent do you think a threshold value should be used to determine which payments are covered under payment protection, and – if you agree a threshold should be used – what do you think that threshold should be?
11. To what extent are you currently able to identify different types of payments?
12. Do you think a combination of use case and transaction value should be used to determine which payments are covered under payment protection? Why (not)?
13. Do you think the relationship between sellers and their PSPs might be affected if protection is offered on a use-case basis? Why (not)?

14. To what extent are you currently able to identify the different types of payee, including whether the payee is a business, organisation or a consumer?
15. Do you think the identity of the payer and payee should be used to determine which payments are covered under payment protection? Why (not)?

Questions related to how consumers might claim protection

16. To what extent would a consumer protection governance process be beneficial for interbank payments?
17. Would having a standardised process for claiming consumer protection make you more confident in using interbank systems or recommending them for retail purchases to your customers? Why (not)?
18. To what extent can promoting consumer awareness around the level of protection offered, including by the suggestions outlined in paragraphs 5.4 to 5.6, help empower consumers to make choices that protect them?
19. Who do you think is best placed to ensure consumers understand the protections offered to them and why?
20. Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?
21. How, if at all, would your response change if retail purchases through interbank payment systems were to increase?
22. To what extent do the current communication channels you use allow you to effectively address consumer enquires and issues with other parties involved in a disputed interbank payment?
23. What do you think about the options outlined in paragraphs 5.18 to 5.27? Are there any alternative options you think we should consider?
24. Who do you think is best placed to enforce interbank consumer protection claims against both payment initiators and payment service providers?
25. To what extent do you think legislative or regulatory intervention is required to introduce a process that allows consumers to raise an interbank payment dispute?

Questions related to what we will take into account before suggesting any action

26. Do you agree with our assessment of the likely costs and benefits?
27. Which costs and benefits do you think are likely to be the most significant and why?
28. Who do you think would and should bear the cost of additional consumer protection and/or governance?
29. To what extent would consumer protection measures introduce significant costs to your business or the need to change service contracts with your customers?

7.2 We welcome all responses to the document, including less formal responses such as emails, bilateral or multilateral discussions on any issue arising from the paper.

Next steps

7.3 We welcome responses to this document by 5pm on 8 April 2021. While we have set this deadline, this should not prevent stakeholders from responding ahead of this date. Furthermore, stakeholders will have further opportunities to engage with us on this work, including at the time of our consultation on our draft policy statement. Please note that we generally seek to publish written responses (particularly more formal responses) in full or in part.

7.4 You can email your response to **interbankconsumerprotection@psr.org.uk** or write to us at the following address:

Consumer protection project team
Payment Systems Regulator
12 Endeavour Square
London
E20 1JN

7.5 As well as seeking written responses, in order to facilitate engagement with our work and our analysis and evidence gathering, we intend to discuss these issues with interested stakeholders.

7.6 Following our consultation and stakeholder engagement on this paper, we plan to publish non-confidential responses. This is particularly the case for more formal responses.

7.7 The stakeholder feedback we receive will help us assess which action we should undertake in order to support the development of effective consumer protection measures for interbank payments. We plan to set out our proposed next steps later in the year.

Disclosure of information

7.8 Generally, we seek to publish views or submissions in full or in part. This reflects our duty to have regard for our regulatory principles, which include those in relation to:

- publication in appropriate cases
- exercising our functions as transparently as possible

7.9 We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you wish to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential.

- 7.10** We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.
- 7.11** We take our data protection responsibilities seriously and will process any personal data that you provide to us in accordance with the Data Protection Act 2018, the General Data Protection Regulation and our PSR Data Privacy Policy. For more information on how and why we process your personal data, and your rights in respect of the personal data that you provide to us, please see our website privacy policy, available here: <https://www.psr.org.uk/privacy-notice>

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