

Consumer protection
in interbank payments

Stakeholder submissions
to our call for views
CP21/4

October 2021

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Names of individuals and information that may indirectly identify individuals have been redacted.

Aside from the non-confidential responses listed above, we received one additional submission. We carefully analysed this along with the other submissions, but concluded that it did not contain any information that is relevant to, or responds to, our call for views. This submission has therefore not been included.

Association of Independent Risk & Fraud Advisors

APP Scam DRAFT CODE - consultation

15 November 2018

Name of the originator	The Association of Independent Risk and Fraud Advisors – AIRFA (www.airfa.net)
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Contact Details		The directors Association of Independent Risk and Fraud Advisors (AIRFA)
These comments are OK for publication		

The following details (i.e. before responding to the specific questions), are provided to cover the broad principles that flavour the answers to the questions posed.

Framing the wider Problem

- It is rather unclear what the paper refers to when it talks about “things going wrong”. In some places this is due to fraud, and other places it is consumer disputes or a party not adhering to the rules, or is it?
- In the context of consumers having an understanding of the risks of the various payment systems, this seems like a poor assumption, as most consumers have no concept of the systems used when arranging a payment. They ask their PSP to move money from ‘point a to point b’. With cheques all but dead, the average consumer has no idea on the difference between standing orders (BACS) and Direct Debits, and no concept of one being a push payment and one being a protected guaranteed pull-payment. Equally consumers have no idea of the difference between the various routings that a payment can take. Rather consumers typically expect their PSP to do the right thing and reimburse the consumer for any actual losses

We should be very clear on what problems we are addressing here: whether frauds/scams and / or consumer disputes. The paper seems to muddle these throughout and uses examples of one to justify another.

The key to addressing most frauds and scams is, and always has been to “follow the money”. A structured risk management approach should always be taken to deconstruct the processes and to prevent the fraud. A good structure for any infrastructural analysis is to consider PREVENTION, DETECTION, INVESTIGATION and CORRECTION aspects of the problem and to address them all.

Whilst much good work has been done in the interest of the customer and in addressing some of the interfaces and ‘victim support’ aspects of the APP scams and to address some of the education issues: the underlying problems and the way to address and prevent these frauds from happening in the future has not been undertaken.

This will allow for the continuing rise in the losses and a continuing cost to the UK payments system and to the competitiveness and the innovation that is possible in the UK.

Addressing the fraud, in a banking risk management professional way, and with a focus on stopping these frauds and holding the fraudster and/or error-making party liable must be a priority.

The lack of this approach has led for some rather poor thinking to evolve in the absence of a structured approach to 'finding the money', most notably to:

- Incomplete and wanting solutions that will not remove fraud but drive it into the gaps in the processes that are left (e.g. in the POC programme towards collection accounts, towards common spelling errors and towards situations where the fraudsters exploit and use the gaps left; and yet adding processes and costs that will make the payment system very costly for all users.
- Proposing to levy the cost of fraud upon ALL users of the systems rather than upon the perpetrators and upon the failing payment organisations.
- A lack of thinking on the use of advance technology that is available in the market and imposing the use thereof upon all.

Receiving Banks / PSPs

There seems to have evolved a culture of resorting to excuses / defences by the payment receiving banks/organisation: i.e., those that have failed in the duties of care and enable fraudsters to hide behind a stance of 'DATA / CUSTOMER protection' issues rather than exposing the fraudsters and their own culpability. This is much more the case with the preponderance and proliferation of the volume of new entrants in the market of 'receiving' funds (without doing their legally required due diligence).

Too many organisations operate in this 'space' – i.e. accepting and converting scam/fraudulent funds without the understanding or knowledge of what they are doing and not having the concerns that could be sharper if they also had the liability for the losses that they help cause.

We MUST NOT CONFUSE the genuine mis-redirection of funds (which is generally easily reversed and corrected) with the fraudulent mis-direction - as this position is routinely quoted as the rationale for project initiation.

The common factor in APP scams is that the receiving bank/organisation has received funds to an account for a fraudster and is then quickly 'paid away' these proceeds of crime to another party and somehow assisted in the distant party / cash withdrawal etc. Historically, this will often happen through several accounts and with foreign banks etc., but increasingly now is processed through transient payment facilities set-up with limited due-diligence. In all cases the receiving bank/organisation cannot recover and return the fraudulently paid away funds, because they have subsequently paid these away.

Consumer Protections

If what is proposed here is, and it is not clear, a new architecture for protecting consumer rights between a consumer purchasing and an individual or business that is selling; and for a PSP to be responsible for the certification / a surety and/or to guarantee the seller; then this is potentially a good move. But it needs to be clearly understood where this is needed and who and where will payment for this come from. Invariably, the consumer will pay.

The problem with this is that the vast majority of people that use payments, do not need additional protections and know exactly what they are doing in paying £x to Y.

It is worth also mentioning that:

PSR – Response from AIRFA.net

1. PISPs have a unique place in the payments ecosystem governed by PSD2 legislations and an uncertain requirement on their requirements to offer protections rather than being a simple gateway into the PSPs, who have the controls and protections in place for the 'whole relationship'.
2. The proposal here has significant opportunity to add friction to EVERY transaction in the payment system and not just the 'at risk' transactions. This will add a massive cost with the friction to all transactions and people's time rendering the UK systems less competitive, slower and more cumbersome.
3. We would have liked to have seen some of these things costed, as this would have put things into context.
4. The thinking here seems to be rather provisional and not particularly advanced or unbundled.

Specific Answers

	Questions	Comments / Reasoning
1	Do you agree that there are insufficient consumer protections for interbank retail payments?	These are opinion-based questions to a non-representative sample audience. The large majority of people make payments without any difficulty, without any need for protections (or with significant protections in place today – such as DIRECT DEBITS and recurring payment guarantees).
2	To what extent do you agree that currently the industry does not provide and consumers do not demand appropriate levels of protection?	The paper does not seem to have any strong clear proposed direction, costs or benefits or a clear idea on how many people need more protection and/or from what. It would be useful to have sight of where the problems are and what the problems are, how many, and how much. We should separate-out issues of fraud from consumer disputes and identify where the problems are and how recourse is achieved today and how it could be achieved in the future.
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)?	Changing liability structure and consumer rights only hides the underlying problem and adds costs to the payment systems instead of solving the problems and addressing the real losses. This is what makes systems more costly (to the consumer), and less competitive and deters innovation - to all people in the ecosystem and to the UK Plc payments architecture as a whole.
4	Do you foresee any difficulties with providing the same protection for on-us payments as those that use an interbank system?	We do not see the point of the question; or how this would apply. Such situations would allow for in-bank settlement of a dispute and for the on-us bank to establish fault across its organisation, to recover money from the payee and identify (quietly maybe) where it went wrong. Accordingly, it is less likely for anyone to benefit and/or wish to pay costs for anything in an on-us scenario.
5	Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?	No. There is no-one in the financial transaction that is involved in the sale of goods/services, and no-one that can or will be able to assess the seller to underwrite their transaction as there is in the case of PULL payments and the systems within PULL-PAYMENT infrastructures.
6	To what extent should payment protection be introduced for retail purchases with the liability for refunding the consumer	PSD2 (PISP legislation) takes the PISP out-of-scope. So this does not apply. Making the sellers' PSPs liable changes the whole infrastructure of the role of bankers. This would be a very brave move: and would be interesting. But we imagine that this is NOT what you propose here. This would start to introduce some PULL payment elements into the set-up, that would start to add protections.

	Questions	Comments / Reasoning
	imposed on either sellers or the seller's PSP or PISP?	<p>It would also massively restrict access to banking facilities to most new businesses who would rely upon the backing of their PSP to be able to transact.</p> <p>With regard to the points made in s4.15 and s4.16 – this would be interesting. However, we suspect that somehow you are seeking the idealism of consumer protections without a cost to the consumer. And without addressing the underlying problems. Equally, the paper/consultation mixes consumer confidence, with fraud, with consumer disputes, which are all different things.</p> <p>NB – Most people have ultimate confidence in the payment system. The vast majority know who they are paying and what they are paying to whom, against valid invoices: and they also understand the risks and know how to address the vendor upon dissatisfaction with the product/service supplied. These people and businesses do not then want to pay significant fees for a solution that they do not need, do not want; only to address the problems of a small minority; and all at the same time to address a problem that should not exist if it were properly addressed rather than treating it as a consumer protection issue alone.</p> <p>If this is an issue for us (UK Plc to address a consumer protection and disputes management system, then this would / should require a major and 'game-changing' new consumer protection legal framework and architecture with a new distribution of costs, to provide a guarantee and disputes process for the minority of payments where such protections might be needed. If this is the case, then this should be extracted from discussions of fraud and abuse and treated separately.</p>
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)?	No comment.
8	Should any new payment protection arrangements be extended to recurring and variable recurring payments? Why (not)?	<p>Payment protections for DIRECT DEBIT are in place already. These involve PULL payments, and ergo require the protections that are afforded to the consumer.</p> <p>With recurring transactions based around standing-orders, these types of payments receive protections today and can often be reversed, but not always.</p>
9	To what extent do you think payment protection for	<p>Standing-orders are PUSH payments, so are more akin to cash payments: i.e. affording the consumer the same protections as they get when cash is used. Equally, often DIRECT DEBIT schemes are offered as an alternative in many such situations that then</p>

	Questions	Comments / Reasoning
	recurring and variable recurring payments should be extended beyond the last payment?	provide a stronger consumer guarantee and STRONG assessment of the capabilities of the originators (and payment by them too) in order to 'underwrite the consumer protection'.
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?	Do not agree with the proposal.
11	To what extent are you currently able to identify different types of payments?	These questions are all very speculative and dependent upon opinions. The value of the answers will be limited.
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)?	Our answers: 11) Great extent 12) No – not enough detail 13) Yes – of course.
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?	It is the consumer that is the link to the payee. The payer bank has no / limited knowledge about the payee. There are too many payees and too much confidential data (GDPR) to have payee details known by all parties. The issue is NOT about the payee name as the issue will be about the type, quality, value, and legality of the product sold rather than about the payee 'name'.
15	Do you think the identity of the payer and payee should be used to determine which	It is worth noting that as payee names get associated with bank account details increased fraud types appear.

	Questions	Comments / Reasoning
	payments are covered under payment protection? Why (not)?	It is also worth noting that there are over 40 combinations of how people write "J Sainsbury Plc" – starting with spaces, dots and changes in spelling / abbreviations: whence a fraudster can easily add their own variations.
16	To what extent would a consumer protection governance process be beneficial for interbank payments?	It appears that the thinking here is based upon the parallel of the card payments sector RATHER THAN THE CASH PAYMENT ECONOMY. Disputes relating to purchases, as issues with the "sale of goods/services" and not inherent within the means by which payments are made. It is hard to see how or why liability for products and services should fall to and be underwritten by the organisations that support the transaction through providing the payments means, and/or the secure replacement of cash as the default means of payment.
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)?	There are inherent protections within the card payments systems that arise from the CCA (1974) protections, but mainly from the card payments systems. These arise because: <ul style="list-style-type: none"> a) the retailers PAY a fee into the system that cover for the chargeback / fraud losses – see the PSR acquirer review – ongoing and due for publication in 2021 b) Because international rules and the financial costs and service providers are controlled by, and paid for within the fees (above) by Mastercard and Visa.
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?	Unfortunately, with interbank payments, the paying banks have no relationship with the retailers that will receive the funds, and there is no party in the process that underwrites or is required to underwrite the retailers involved. This type of structure would need to be created in order to impose protections and liabilities of this nature. Of course, this would/could be extended to the consumers for CASH PAYMENTS too: as the cash payments are akin to these interbank payments.
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?	It appears that the thinking here is based upon the parallel of the card payments sector RATHER THAN THE CASH PAYMENT ECONOMY. Disputes relating to purchases, as issues with the "sale of goods/services" and not inherent within the means by which payments are made. It is hard to see how or why liability for products and services should fall to and be underwritten by the organisations that support the transaction through providing the payments means, and/or the secure

	Questions	Comments / Reasoning
21	How, if at all, would your response change if retail purchases through interbank payment systems were to increase?	<p>replacement of cash as the default means of payment.</p> <p>Customer protections are through sales of goods and trading standards regulations and enforcement.</p>
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?	<p>Seems like a considerable amount of bureaucracy, largely following the same route as the APP SCAM development. The strong focus should be upon:</p> <ul style="list-style-type: none"> a) Identifying the errant parties, and routings b) Following the money flows c) Understanding where the problems lie 'post mortem' d) Making the errant parties pay.
24	Who do you think is best placed to enforce interbank consumer protection claims against both payment initiators and payment service providers?	<p>Where there is a fraud/scam, the loss will result in the gain of a fraudster along a chain of payments until the money goes to that fraudster. The fraudster is the guilty party and must either be traceable from their bank details, or the fraudster's bank held liable for not knowing who and where the fraudster is.</p>
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?	<p>This is where money flow analysis should be an essential tool developed by/for the members of any payment system. Then using this in all investigations to assign bespoke liability and traceable compensation.</p> <p>Let's cure the system, rather than creating a system of liability that does not reflect 'fault'.</p>
26	Do you agree with our assessment of the likely costs and benefits?	<p>No. There are no costs or benefits shown here.</p> <p>This shows a list of guesses on outcomes and strongly led with expect / may / thinking /</p>

	Questions	Comments / Reasoning
27	Which costs and benefits do you think are likely to be the most significant and why?	could / should / unlikely, etc. This follows the same route of guesswork that started with the APP scam consultation and where the assumptions made at the time have not come to fruition.
28	Who do you think would and should bear the cost of additional consumer protection and/or governance?	<p>This is just a list of aspiration, that needs to be supported with real figures and a sound understanding of real outcomes, against which measurement of outcomes can be made.</p> <p>The biggest costs are likely to fall upon the large number of consumers and businesses that are likely to be faced with increased friction to get things done, and for IT system changes and projects that will take effort away from making systems, processes and products to help consumers and drive UK Plc innovation and competition.</p>
29	To what extent would consumer protection measures introduce significant costs to your business or the need to change service contracts with your customers?	<p>Who should bear the costs?</p> <p>What costs (£££) and what benefits to whom???</p> <p>We need to understand the basic details first and have qualitative data to make such judgements.</p>

Barclays

Consumer protection in interbank payments: Call for Views

Submission by Barclays

Barclays is a universal consumer and wholesale bank with global reach, offering products and services across personal, corporate and investment banking, credit cards and wealth management. With over 330 years of history and expertise in banking, Barclays operates in over 40 countries and employs approximately 85,000 people. Barclays moves, lends, invests and protects money for customers and clients worldwide.

We welcome the opportunity to respond to the Payment System Regulator's Call for Views on consumer protection in interbank payments.

Executive Summary

We welcome the Payment System Regulator's (PSR) leadership concerning consumer¹ protections by publishing this Call for Views. We are aware that there are multiple organisations looking into interbank consumer protections and we are supportive of their various efforts being aligned to maximise impact and avoid potential duplication.

A holistic view

The UK's payments market is a global leader, with high levels of innovation and competition leading to a substantial variety of services being offered to consumers and businesses. However, with such a dynamic market, there is a need for regulators to continually consider whether consumers are being served appropriately.

As an overarching comment, we note that the PSR's Call for Views focuses on addressing a number of questions pertaining to specific elements of the payments market. Whilst we agree that these questions require careful consideration, we would also encourage the PSR to look at potential risks to the payments market from a holistic perspective.

As an example, in our response to the Woolard Review, we noted that there are currently eight different options available to consumers for how to pay on the JD Sports payment page, all demonstrating varying degrees of protections, implications and regulatory oversight, but which are not necessarily clear or known by consumers. While we welcome specific steps being taken to address elements of this – some of which are contained within this Call for Views, including the Financial Conduct Authority's (FCA) decision that Buy Now Pay Later products should be brought within the scope of regulation – we encourage the PSR to consider the broader landscape, both from a risk and opportunity perspective.

The financial sector is evolving, with new players and business models entering the market that are transforming how consumers access services and engage with providers. This transformation provides significant benefits, however, regulators should remain mindful of ensuring that the sector's high level of consumer protections remain consistent across all participants.

¹ Referring to both consumers and businesses throughout.

The importance of transparency and education

We strongly endorse the need for higher levels of transparency within the payments market and the need to increase consumers' awareness of their protections given the increasing diversity of payment types.

Transparency is a critical foundation for any market, and we believe should be prioritised in any regulatory interventions from the PSR and its counterparts. Ensuring that consumers have a full understanding of the benefits and risks associated with different payment methods means that they can take an informed decision. With this transparency ingrained, it can be assumed that consumers will choose to use the payment methods that maximise their particular interests, creating further pressure on the market to raise standards and deliver further benefits in order to compete for usage.

Whilst there is a range of information available about payment methods today, we believe that there are considerable improvements that could be made in order to move towards a fully transparent market state. As an example, we believe that considerable benefit would be delivered by embedding information about protections within consumers' payment journeys (where applicable) across all participants. This would cover Payment Initiation Service Providers (PISP), gateway providers, acquirers and Account Servicing Payment Service Providers (ASPSPs).

The provision of information about the level of protection within the payment process provided in a standardised format would increase awareness and therefore drive a market-led response to develop consumer protection frameworks.

Broader considerations

Should the PSR consider that regulatory intervention is required, we believe that the PSR should consult further with different options for how consumer protections could be implemented. Further detail would allow the industry to respond more accurately concerning the operational and commercial implications of the protections being considered. There could be significant implications for commercial models or liability of different entities depending on how consumer protections could be implemented. This would require a greater level of industry input.

As the PSR is focusing on improving consumer protections, we would encourage it to consider how payment innovation could be affecting other consumer outcomes, notably in respect to vulnerability. One of the primary means by which financial institutions support vulnerable consumers is by enabling independence or control over their own finances through providing tools or products that can block or limit transactions. These tools require a high quality of data, and in particular, merchant category data. Faster Payments, unlike Debit Card or Credit Card payments, do not provide merchant category data. Should there be a continuation in the trend towards Faster Payments, the effectiveness of financial analysis and blocking tools for vulnerable consumers would become increasingly ineffective. We recognise that the industry is considering the issue and we are supportive of any initiatives which would seek to support the continued effectiveness of vulnerability-linked self-control tools.

APP Scams

We welcome the PSR's recent focus on exploring greater protections for consumers using payment systems, via the Calls for Views on Consumer Protections and Authorised Push Payment (APP) scams.

With respect to the latter, we set out our position in detail in the dedicated response, but we would like to take the opportunity to reiterate that there is an urgent need for the key provisions of the CRM Code to be made mandatory, either through legislation or regulation. Further, we believe that a comprehensive response – bringing together all relevant policy makers and regulators, and applying to all relevant sectors – is needed if the enablers of scams are to be targeted, and the total volume of scams reduced. Finally, we note our strong support for the Online Harms Bill being amended to include economic crime.

Consultation Questions

Why additional protection may be needed

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

We note that different payment methods provide consumers and businesses with different benefits while presenting different risks. As a general point, we believe that this is to be expected and welcomed in a competitive marketplace; different payment methods are not directly analogous and fulfil different requirements, so should be expected to differ in some aspects.

However, we do believe that consumer protections may present a problem where the interbank retail payment is used for a purchase, in circumstances where traditionally a credit or debit card would be used². As acknowledged in the PSR's Call for Views, there is already consumer protection legislation which provides consumer rights, with the ability for consumers to go to small claims court or to the Financial Ombudsman Service. The inequality of protection between payments for the same purpose, in this context between card payment protection and an alternative payment method, leads to the need to consider whether there should be additional protections for payments used for purchase.

In the event of a supplier dispute or merchant insolvency, consumers using the Faster Payments Service (FPS) to make a purchase would not be protected, as opposed to when using a card. There is, additionally, no system similar to interchange which would support the cost required for protections. We recognise, however, that FPS was built with bank-to-bank transactions in mind and it is not primarily used by consumers to make payments to merchants for goods and services. As it is anticipated that FPS will increasingly be used for consumer-to-merchant payments over the medium-term, we welcome PSR's Call for Views and encourage the PSR to continue to monitor the market.

We anticipate that the use of FPS to make payments which would otherwise be made by cards will increase as a result of the adoption of Payment Initiative Service (PIS) payments. For payments currently made using FPS, whether instructed by a consumer to their bank directly or through a PISP, there are no protections similar to Section 75 for credit card payments or to chargeback protection for debit cards. While we recognise that PIS payments can be used for a variety of reasons where protections may not be required, there is a high likelihood that consumers may not use payments for

² And as set out in further detail in our response to HM Treasury's Payment Landscape Review. Barclays responses to consultations can be found at our Public Policy Engagement website: <https://home.barclays/society/esg-resource-hub/reporting-and-disclosures/public-policy-engagement/>

the benefits they offer, and will be unaware that they do not benefit from the same protections offered by the card payment framework, nor that they could ultimately lose out financially if something ‘goes wrong’³.

On the basis of limited available research, it appears that publicly accessible information on consumer protections is lacking. Neither of the online public information services most commonly used in PayUK’s research or by Which?⁴ and MoneyAdviceService⁵, mentions payments where chargeback and Section 75 protections are not provided, other than in respect of PayPal. Barclays believes that there is a need for clear, impartial consumer advice related to consumer protections to help the public make informed choices about protections afforded by different products or payment services. We have, in other consultation responses, called for the Money and Pensions Service to play a more active role given its money guidance and consumer protection remit.

In recognition of the need to enable new payment methods and providers to compete, we therefore believe that an appropriate next step would be for the PSR to focus on enabling greater transparency and consumer education regarding different payment methods. This would enable consumers to make informed choices regarding how they wish to make a payment, in recognition of the different benefits and risks. We believe this strikes the right balance between minimising potential consumer detriment whilst enabling innovation and competition.

We believe the most effective means to drive awareness of different consumer protections is to embed information about protections within the consumers’ payment journeys (where applicable) across all participants. This would cover Payment Initiation Service Providers (PISP), gateway providers, acquirers and Account Servicing Payment Service Providers (ASPSPs). The provision of such information in a standardised format regarding the level of protection within the payment process would increase awareness and therefore drive a market-led response to develop consumer protection frameworks.

Such an approach would assist consumers in making an informed decision as to which payment method is most appropriate for them and as a result encourage providers to have regard for consumer protections, leading to new propositions which could address this concern. We believe that an educated consumer base making informed choices would drive the market to develop its own consumer protection framework, as was the case with the debit card chargeback framework. Providers, currently, are not mandated to provide details onscreen concerning the level of protection they offer, with the Open Banking customer experience guidelines only being enforceable on the CMA9 banks, while other ASPSPs and Third Party Providers (TPP) are not mandated to adhere to them. We believe that a higher level of transparency with consumers would result in greater

³ As has been shown in PayUK’s research into consumers’ understanding of the extent to which they are protected, they are aware of the key features of the payments they use but not necessarily the protection each payment offers. More importantly, this research also identified that those who are the least financially confident, and therefore more vulnerable, are the least likely to understand the different levels of protection on offer. Our vulnerability teams have noted that the increasing complexity of the payments market is of particular concern for vulnerable consumers as there is already a limited understanding of the differences in forms of payments, be that direct debit, standing orders or otherwise.

⁴ Which?’s public information concerning Section 75 protections can be found here:
<https://www.which.co.uk/consumer-rights/regulation/section-75-of-the-consumer-credit-act-aZCUb9i8Kwfa#payments-through-paypal>

⁵ MoneyAdviceService’s public information concerning credit and debit card protection can be found here:
<https://www.moneyadvice.org.uk/en/articles/how-youre-protected-when-you-pay-by-card>

demands for protections, and therefore, a more competitive market with greater degrees of protection.

Furthermore, as we are recommending a more considered approach, we recognise that the PSR should remain attuned to the developments in the market concerning consumer protection. Should appropriate protections not develop, then we believe there should be regulatory intervention, or indeed a legislative response to create even consumer protections across interbank retail payments where the payment is used for purchase.

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

We disagree with the notion put forward in the PSR's Call for Views that the market is unlikely to provide enough protection for consumers on its own. Chargeback, for instance, was a market-driven solution, and we believe that interbank payments will, with the appropriate level of consumer education and transparency, also develop stronger consumer protections.

Nonetheless, as stated in our previous response, we do not believe that there is an appropriate level of available public information concerning the inconsistent level of consumer protections offered in the interbank retail payments market where those payments are used for a purchase, when compared to the protections offered when using a card. Consumers are unlikely to demand appropriate levels of protection if they are unaware of the fact that there are different levels of consumer protection on offer depending on what payment type they are using. As consumers use a variety of payment methods, it is increasingly unreasonable to expect that consumers will develop an understanding and awareness of what protections are on offer without proactive education and communication.

Consumers will have different reasons for choosing a certain form of payment, and therefore, differing expectations on the level of protection they should receive. For lower value payments, consumers are less concerned about the protection and remedies available to them. However, as the value of a payment increases or becomes more significant to the consumer, protections will be of greater concern. Consumers may also have expectations about the level to which they are protected, based solely on their view of the institution or organisation through which they are transacting. Barclays, for example, receives a high level of complaints from consumers concerning reimbursements for payments to which, in many instances, they are not entitled.

We expect that demand for consumer protection will increase with greater use of FPS as a method of spending for purchases, and as inconsistency in the level of protection offered by different payment mechanisms becomes better understood. We believe that this will lead to the development of those protections in the market. This is already the case with some PISP propositions, as well as other interbank retail payment methods used for purchases, like PayPal and Pay By Bank App.

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)?

We believe that a higher level of transparency and communication concerning consumer protections would result in greater demand by consumers for increased protection levels. There is existing guidance that a TPP should communicate protections. However, as Open Banking customer experience guidance is not enforceable across all market participants, there is limited information available concerning the differing levels of protection on offer. A higher level of transparency would increase consumer awareness and therefore drive the market towards offering comparative protections to chargeback.

We believe that the industry, regulators and trusted independent public bodies, such as the Money and Pensions Service, working together to increase consumer awareness would reduce the size of harm and reduce the need for intervention.

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?

As mentioned in previous responses, we do not believe that changes are required immediately and further education and awareness should be prioritised. If a change is introduced, we would require further information concerning the consumer protections that would be implemented in order to provide a more accurate view on what the operational impacts of the protections would be. Should higher levels of consumer awareness concerning their protection not lead to a market-led development of protections, then we believe the PSR should focus on the inequality of protections offered to determine if intervention is required. Focusing on the inequality of protections offered, while recognising commercial models underpinning different payment types, could allow for more targeted intervention without the need for scheme rule changes.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

We believe that there could be a case for consumer protections, however, as mentioned in our response to previous questions, we believe there should be greater clarity and transparency provided to consumers concerning their rights and actions that can be taken.

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?

As per our previous response, we believe the PSR should look to increase transparency across the market concerning protections first. Nonetheless, should protection be introduced, we believe it is the inequality of protections offered instead of the method of making the payment that is relevant. Focusing on the inequality of protections offered, while recognising commercial models underpinning different payment types, could allow for more targeted intervention without the need for scheme rule changes.

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)?

The PSR's Call for Views omits a detailed consideration of the commercial or economic model that would underpin the implementation of consumer protections. Implementing consumer protections would be a cost on behalf of the entity or entities that would be liable for providing those protections; this would result in consequences for the commercial model of those entities that would in turn impact merchants and consumers. Processing models, pricing models, risk appetite and current propositions would be affected by consumer protections being brought into force. A response that focuses on a change to scheme rules would additionally create enforceability and barrier to entry issues. We believe that there needs to be further detail concerning different measures that could be implemented with consideration of the commercial implications of each respective form of consumer protection. Any response by the PSR, or a legislative response by Her Majesty's Treasury (HMT), would need to consider these commercial implications in further consultation with the industry.

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

As in our response to question 6, we believe protections should come into effect only if there is an existing model in the market providing those protections. As recurring payments are similar to either Direct Debits (where some protection is offered) or continuous payment authorities on cards (where different payment protections are offered) then protections should be extended to recurring and variable recurring payments (VRP). It is likely that Sweeping will be mandated on the CMA9 in the coming months, and implemented shortly thereafter. As highlighted by the industry in the course of the relevant consultations, these new payment methods will carry significant consumer protection risks. For example, with such payments being controlled externally, there is a risk that other key payments may not be paid due to potential faults within that service. One such example could be a consumer who goes into their unarranged overdraft and is charged interest of £25. If a consumer arranges a Sweep to move money into a savings account, on the day that £100 is swept, the consumer also pays their annual car insurance and, as a result of the Sweep, the consumer goes into their unarranged overdraft and are charged a fee of £25. Another example, is the potential risk that a PISP could Sweep amounts that exceed the reasonable expectation of the consumer due to broadly drafted or unclear consent parameters.

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

Please see our response to questions 6 and 8. In order to provide clarity to firms, a defined end-point would be preferred to ensure that the risk exposure and liability are correctly calculated and rolled off where appropriate.

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?

As in our responses to questions 6, 8 and 9, we believe that protections should remain consistent. Any threshold should match the card thresholds already offered.

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

As mentioned in previous responses, we do not believe that changes are required immediately and further education and awareness should be prioritised. If a change is introduced, we would require further information concerning the consumer protections that would be implemented in order to provide a more accurate view on what the operational impacts of the protections would be.

A wider issue concerning the inability of financial institutions to identify merchant information is the negative impact a reduction in the quality of payment data can have on vulnerability-linked financial controls. As a priority for the industry and the FCA, providing self-control tools that enable vulnerable consumers to manage their finances more easily is a crucial feature in how financial institutions can provide support. Many of the current gambling card controls which exist in the financial service sector focus on debit card transactions. These self-management card control tools support problematic gamblers in gaining control of their spending. There is a recognised shift in activity in this area with many gambling operators encouraging deposits via other payment methods. FPS payments do not provide merchant category data unlike card payments, where merchant category data is enforced through fines or sanctions. The reduction in quality of data relating to FPS is of concern to the financial services industry, as a substantial proportion of our vulnerability-linked consumer protections utilise data via payment authorisations. If a consumer chooses to block gambling transactions, for instance, we would be unable to determine whether a payment is through a gambling merchant if we were not provided with payment authorisation data. We have introduced gambling controls, which would become less effective should FPS become more widely used. Of more concern is that there has been evidence of gambling merchants circumventing banking blocks by utilising FPS payments or e-wallets in their payments.

An additional support tool that Barclays provides is a financial coach that provides analysis and segmentation of spending. This product, additionally, requires merchant category data to segment how a consumer is spending. Being able to provide a vulnerable consumer with oversight of their spending is of high importance as it allows spending to be aggregated for them in one place. The benefit of this is self-explanatory; an individual who is financially vulnerable, an individual who is a problematic gambler or an individual who's bipolar disorder can result in uncontrolled spending, an aggregated overview of their spending is a tool of notable importance. The effectiveness of this analysis and aggregation is dependent on merchant category data being provided to financial institutions, and therefore the increase of payments types that do not provide merchant information could reduce the quality of products designed for vulnerable consumers. There is a need for both the industry and regulators to consider how the increasing role of FPS and e-wallets could impact the ability of financial institutions to provide controls and how the quality of data provided can remain of a higher quality through the sector. Changes would be required to the Open Banking's standards to support the identification of use case or service in requests received from the PISP.

VRPs are being implemented in the absence of Confirmation of Payee and CRM Code becoming live. This would mean that VRP payments, as with FPS, would result in us being blind to the beneficiary account details or the nature of the payment, thus impacting our ability to protect consumers against fraud or allow them to effectively use their vulnerability-linked controls.

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)?

A combination of use cases and transaction values could, if implemented without a high level of clarity and consumer education, serve to confuse consumers and weaken an overall proposition. Nonetheless, we would need to undertake further internal analysis should this be considered and understand, in theory, why a combination would be taken forward.

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 relationship between sellers and their PSPs could be affected if the protection is offered on a use-case basis. A PSP will likely offer a merchant the means to allow consumers to use a non-card payment for purchase, and the merchant may be incentivised to offer this option due to it potentially costing less than a card payment. Assuming that the PSR's consumer education is effective, a payment method would only be used if it offers the right protections, and therefore a PSP may need to use some of the income it generates through its agreement with the merchants to fund these protections. This could result in consumer protections being demanded by merchants as well as consumers to ensure that the payment option is utilised.

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

Open Banking payments do not currently include a Confirmation of Payee check, however, this is on the roadmap. A Confirmation of Payee-style check would be required to identify the payee, which would require changes to internal processes. Identification of the payee is dependent on the channel through which clients are initiating the payment. For the outbound entity, there are channels which will ask for confirmation of the entity that the client is looking to pay, alongside Confirmation of Payee, which will confirm the entity or confirm the originators understanding of the entity that they are paying. There are other channels, however, as mentioned above, where files of payments are submitted and no such validation is possible.

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)?

The identity of the payer and payee is not always known and it could be difficult to communicate in a clear manner. There could be an option for B2B transactions to be excluded, but these would have

to be identified and segregated in an effective manner. This would require scheme changes and other changes in internal processes for PSPs.

How consumers might claim protection

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

We believe that existing BAU processes are sufficient to manage consumer complaints as this will ensure that disputes across all payment types (credit, debit, FPS) are all processed in the same manner. Any governance structure to deal with dispute resolution would need further thought concerning a ruleset that all market participants are signed up to with appropriate levels of enforcement. Should a governance process be required, there would be a need for a trusted independent body with oversight of the process in a similar way that Visa and MasterCard act as arbitrators for traditional card 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)?

A standardised process with a high degree of transparency and clarity for consumers is crucial to ensure that protections are effectively utilised and that consumers are not discouraged from seeking redress. Any process that is obfuscated by unclear processes would result in protections being, practically, ineffective. As shown within PayUK's research concerning awareness of consumer protections, word of mouth and the experiences of others is important for consumers who are not financially confident. However, a regime that is unclear or difficult to understand is less likely to be used by those lacking such confidence.

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?

As stated throughout our responses to this Call for Views, we believe that a consumer awareness-based response should be considered first, as a trial, to allow consumer protections naturally to develop within a growing market. As demonstrated within PayUK's research concerning perceptions of consumer protections, consumers require both of awareness and confidence to utilise different payment types and make use of the various protections on offer. If there were a greater degree of transparency across the market, notably on trusted independent money advisory websites and at the point of sale, then we predict that there would be a greater demand by the consumer for even protections across the market. Should protections fail to materialise, alongside a greater incidence of payment disputes, then regulatory or legislative intervention could be considered.

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

As with our previous responses, we believe that the entities facilitating the payment, the industry and the regulators should all be transparent concerning the different levels of protection offered by all payment types. An educated consumer should be informed by all participants to ensure sufficient levels of awareness, which equally, should guarantee that consumers have considered the level of risk they are willing to countenance when undertaking a payment. There is existing guidance that a TPP should communicate protections, however, as Open Banking customer experience guidance is unenforced, there is limited information available concerning the differing levels of protection on offer.

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

We believe, and have experience of, consumers turning to their bank to resolve consumer disputes. As stated within the PSR's Call for Views, the consumer, in most cases, would go to their PSP. This is likely due to the consumer expecting a level of protection from more traditional institutions and therefore assuming that either their bank or card would provide cover. We provide guidance to our front line workers to point consumers to the appropriate payment providers due to consumers choosing to come to their banks as their first port of call. Further education concerning different payment types and the protection they offer would increase awareness of where consumers should go for protection.

Additionally, while consumers may choose to go to the retailer first concerning their protections, banks are often viewed as a fall-back option. During the Coronavirus pandemic, consumers who experienced travel cancellations due to company insolvency found that the travel industry's consumer protection schemes were insufficient to cover their cancellation fees, and therefore, consumers were directly pointed to banks to provide chargeback cover. In this instance, banks faced the reputational risk of refusing a consumer's request for redress despite not being liable and there being limited to no information concerning the protections that consumers were offered in the public domain. The consumer protection on offer was insufficient, opaque and consumers were unaware of it. This example is especially pertinent in the context of this Call for Views as it demonstrates, that even when consumer protections are in place, they have to be hand-in-hand with transparency, sufficient capacity or commercial models to support protections and clarity concerning liability.

21. How, if at all, would your response change if retail purchases through interbank payments systems were to increase?

Our response would not significantly change, however, there would be some impact on resourcing and costs that would need to be considered.

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

We believe there should be further guidance, or a requirement, provided to banks, PISPs, gateway providers and acquirers on the messaging and communication to be included as part of the consumer payments journey. Communication that is embedded into the consumer journey at the point of sale, providing a disclaimer or communication concerning protections, would likely have the greatest effect on increasing the public's knowledge base concerning protections in the market. This messaging could be standardised across industry, and agreed with the regulators to ensure that the messaging is consistent. An alternative could be that TPPs are mandated and monitored to provide standard guidance so the consumer is fully informed. There is existing guidance that a TPP should communicate protections, however, as Open Banking customer experience guidance is unenforced, there is limited information available concerning the differing levels of protection on offer.

We believe that the industry, regulators and trusted independent public bodies, such as the Money and Pensions Service, working together to increase consumer awareness would reduce the size of harm and reduce the need for intervention.

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?

As set out in our responses throughout the Call for Views, we believe that industry transparency and consumer awareness should be prioritised and therefore we do not believe that the three options to ensure an effective governance process should be implemented before a market-led approach has been trialled. If a change is introduced, we would require further information concerning the consumer protections that would be implemented in order to provide a more accurate view on what the operational impacts of the protections would be.

The payment system rule option, which would only ensure that direct participants follow the rule, would not capture all of those participating or facilitating payments. Before considering a solution based on either a payment rule, a payment governance system or an industry-led protection, transparency of protection levels should be trialled to determine its effectiveness first.

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

As stated throughout our response, we do not believe that regulatory intervention is required at this stage, and if consumer protections are considered necessary in the future, then a further Consultation Paper or Call for Views should outline different measures which we would be able to comment on in detail.

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?

As stated throughout our response, we do not currently believe that regulatory or legislative intervention is required before industry transparency is trialled. Nonetheless, should consumer protections not develop, we recognise that legislation could be required in the future. Chargeback represents the clearest and most commonly known consumer protection within the UK and we believe that industry protections should be equivalent to this protection.

What to take into account before suggesting any action?

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

We agree with the PSR's assessment of the likely costs and benefits. Nonetheless, we would suggest that many of the benefits associated with enhancing consumer protections would also be achieved through increasing consumer awareness. As stated in the benefits section, an increase in confidence, which is driven by consumer awareness, may ultimately contribute to greater use of interbank systems, which in turn, would lead to greater competition between payment systems, lower costs, higher quality and greater choice for consumers.

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

Operational costs, and ultimately dispute volumes, would likely increase alongside an increase in payment volumes.

Within the PSR's cost descriptions, the PSR assumes that consumer behaviour change would not occur, should protections be put in place, due to the expectation that consumers would not be aware of the protections that would be implemented. The PSR should emphasise consumer awareness within its strategy to improve consumer protections, even if regulatory intervention is considered necessary. Consumer awareness and confidence in using different payments types is important, with or without protections being in place, and should remain an integral element of the PSR's communications.

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

As mentioned in previous responses, we do not believe that changes are required immediately and further education and awareness should be prioritised. If a change is introduced, we would require further information concerning the consumer protections that would be implemented in order to provide a more accurate view on what the operational impacts of the protections would be. Should higher levels of consumer awareness concerning their protection not lead to a market-led development of protections, then we believe the PSR should focus on the inequality of protections offered to determine if intervention is required. Focusing on the inequality of protections offered, while recognising commercial models underpinning different payment types, could allow for more targeted intervention without the need for scheme rule changes.

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

The degree of impact to our business would depend on the measures put in place. It is likely there would be an impact on our operating and service models.

British Retail Consortium



BRC response to PSR call for views on consumer protection in interbank payments

April 2021

1 Introduction

- 1.1 The British Retail Consortium (BRC) is the trade association for the retail industry with a membership accounting for half of all UK retail by turnover. Our diverse industry spans large multiples, independents, high street and out of town retailers, from online to bricks and mortar, selling goods across all sectors to increasingly discerning consumers.
- 1.2 All BRC members have an interest in the payment system as end users, in fact retailers are one of the most significant end user groups, processing more than 50 million transactions per day and around £394 billion per year for products & services sold in store, online & over the phone. A priority for the BRC has therefore been to ensure an innovative, transparent and competitive payments market for all retail end users and their customers.
- 1.3 Today, insofar as retail is concerned, payments are almost exclusively made involve those for cash and for cards. We are yet to see just how much the pandemic has shifted retail payments for the long-term towards cards but, prior to the pandemic, card payments constituted approximately 80% of retail purchases by value, or almost two thirds by volume.
- 1.4 The dominance of cards in UK retail payments is a long-standing concern for the retail industry given that the cost of processing card transactions remains very high. Debit cards are around four times as expensive as cash to process, whilst credit cards are more than three times as expensive to process than debit cards. Interbank payments, whether Faster Payments or open banking PIS solutions, are currently of negligible impact on retail payments.
- 1.5 Given the lack of competition or cost-effective payment channels available to merchants, the retail industry supports the Government and PSR objective to enhance competition and innovation in UK payment systems through the development of interbank payments, including open banking Payment Initiation Services (PIS).
- 1.6 The BRC welcome this call for views from PSR as an important first step in delivering an enhanced consumer protection regime for interbank payments. If Government, regulatory and industry objectives of enhancing competition among UK payment channels is to be met then alternative interbank payment channels, whether Faster Payments or open banking PIS solutions, must be fostered to reach a critical mass. Without an adequate consumer protection regime in place for interbank payments, mass adoption by UK consumers and businesses remains unlikely.

2 Developing an Appropriate Consumer Protection Regime

- 2.1 **The Right Balance:** The BRC, as will be the case for most stakeholders responding to this call for views, believe it is important to ensure that the right balance is struck between an interbank consumer protection regime strong enough to inspire consumer confidence and trust on the one



hand and, on the other hand, avoiding an expensive scheme that removes any cost incentive for payment end-users to adopt it – essentially destroying the prospects for growth and development of interbank payments.

- 2.2 **Selective Use Cases:** The PSR have set out in Chapter 4 of the call for views examples of various use cases for interbank payments. The BRC suggest that in developing a consumer protection regime for interbank payments that the PSR focus on the higher risk use cases, where the current lack of protections has greatest potential for consumer harm.
- 2.3 **Lower Risk Payments:** The majority of UK retail payments could be characterised as low risk based on payment value – the average transaction value (ATV) of any given retail transaction stood at £24.08 in 2019 (2018: £23.06) according to the 2020 BRC Payments Survey. In addition, the retail industry is highly competitive and responsive to the demands of its customers, with most disputes resolved swiftly and amicably between the retailer and the customer without the need for third party intervention.
- 2.4 **Higher Risk Payments:** We would argue that higher risk use cases for interbank payments rarely involve retail payments at all, but instead relate to goods or services provided by sellers that offer customers no other payment option except cash – and therefore no protection, for example builders, plumbers, or other contractors. These transactions will often pose a greater risk given the value of the purchase and the reliability of the seller.
- 2.5 **Maintaining Competitive Advantage:** There are clearly insufficient consumer protections in place for interbank payments today, and so the introduction of a targeted regime is necessary to protect consumers from harm in those use cases where the risk is greatest. However, the introduction of a consumer protection regime that extends to even typically low value, low risk retail transactions would result in a more expensive regime and adversely impact the merchants' incentive to adopt it. If the same consumer protections, and associated costs, are to be replicated for interbank payments as exist for payment cards then any competitive advantage that interbank payments would have over card payments will be lost.

3 Integrated Legal & Payment Protection

- 3.1 **Targeted Solution Possible:** In targeting higher risk payments, the BRC believe that a significant enhancement to consumer protection is achievable for interbank payments without the need for extensive additional measures or a large and costly scheme.
- 3.2 **Payment Protection:** The PSR have provided a table in Chapter 1 of the call for evidence covering "consumer protection options across different payment methods" which we believe identifies the crucial flaw in interbank consumer protections – the lack of any official "payment protection." Chargebacks are, for credit and debit cards, arguably the most important tool of consumer protection available to the end user. An interbank payment on the other hand, despite its properties of being a traceable electronic transaction facilitated by regulated payment institutions, provides the end user with no payment protection whatsoever.



- 3.3 **Legal Protection:** The lack of any payment protection for interbank payments leaves consumers with only two courses of action in the event of a dispute – to arrive at a resolution with the payee or take legal action. Whilst legal action may often be considered complex, risky and time-consuming, HM Courts & Tribunals Service’s Money Claim Online (MCOL) facility is a relatively convenient way of making a money claim on the internet through a simple court process. A small claim can take as little as 6 weeks, whilst the limited costs involved should deter spurious claims, encourage the payee to come to a resolution, or can be reclaimed by successful claimants. These small claims processes are arguably no longer or more complex than the chargeback process for card payments yet, unlike card payments, the cost of administering this dispute resolution scheme is not built into payment provision.
- 3.4 **Integration Needed:** A key failing in consumer protection for interbank payments is that a payer may well take legal action against a payee in the event that a dispute cannot be resolved, and win, yet still not see the return of their money because there is today no relationship at all between legal and payment protection. The PSR should therefore introduce a mandate on payment service providers to reverse an interbank payment on receipt of a court judgement in the payer’s favour, and appropriate mechanisms should be mandated by payment service providers to facilitate this process as swiftly and frictionlessly as possible for the payer – ideally an automated process.
- 3.5 **Dispute Mechanism:** Whereas HM Courts & Tribunals Service’s Money Claim Online facility may provide interbank payment end users with an adequate dispute mechanism, the PSR could use its powers to ensure that (an) appropriate interbank payment service provider(s) create an effective, adequately integrated, user-friendly process on the payment side of the equation. The process to reverse an interbank payment could be administered by the customers bank, by Faster Payments or, in the case of open banking payments, through PISPs as appropriate.

4 Need for an Open Banking (PIS) Trustmark

- 4.1 For the average consumer, open banking is still an unknown retail payment proposition. To facilitate mass adoption of PIS, the BRC regard it as essential that a Trustmark is created for licensed PIS providers – a common brand denoting mandatory commonalities in the customer journey, user experience and, most importantly, consumer protections. A Trustmark would be a crucial factor for establishing consumer trust and understanding of PIS as a payment channel.
- 4.2 Without a Trustmark there is a major risk that PIS is scuppered by atomisation of around 55 providers registered with the Financial Conduct Authority (FCA) as well as some merchants considering white-labelled solutions. With so much “noise” by a proliferation of new payment brands it is plausible and likely that confused consumers cease listening altogether and instead stick with what they already know, ultimately undermining the objective of open banking.
- 4.3 The development of a Trustmark should be prioritised and a clear timeline for its implementation established, alongside the development of a consumer protection regime for open banking.

For further information



Cross-Government

Consumer Protection in Interbank Payments Questions

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:

This response includes the view of Government Banking and its key customers including HMRC and DWP.

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? –

We agree that there is insufficient consumer protection for interbank retail payments particularly when compared to other payment methods such as cards. Consumers that are aware and concerned about protection for their payments will opt for other more expensive payment methods to secure that, increasing the cost of transactions for Government. Others unfortunately are not able to make an informed choice as they either don't know or don't understand the different levels of protections afforded (or not) by the different payment methods.

Additional protection is needed to increase confidence in interbank payments as it will encourage greater use of this payment method. In addition to cost there are other advantages for HMRC and other Government customers such as encouraging the use of PISPs which in turn will increase straight through processing and improve efficiency.

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

HMRC have carried out a small amount of user research for PISP payments and this does not suggest a high customer demand for additional protection. They expect the payers will have confidence that they are using the correct details as they are pre-populated on behalf of the payee giving little/no opportunity for error or fraud. FCA regulation also provides comfort.

The lack of consumer demand more generally could be simply that they are not aware of the protections that are/are not available to them and so are unlikely to ask for them.

Interbank payments in retail environments and through PISPs are relatively new concepts so there is concern that customers may not fully understand what protection is available to them and continue with what they are used to. If interbank payment errors increase it is likely that demand for protection will also increase as it is often not until a loss is incurred that the issue is considered.

With the implementation of Confirmation of Payee, the industry is providing some protection against error and fraud, but this does require the payer to react appropriately to the messages provided by their PSP.

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)?

Once Confirmation of Payee is used by all PSPs the incidence of consumers accidentally paying to the wrong payee via interbank payment methods will decrease reducing the need for protection for this issue. This does not help reduce the need for protection to cover elements such as damaged goods or intercepted payments etc.

Consumer confidence will increase as more people use the payment types successfully. As with contactless payments, consumers will only risk small values until they have confidence that the processes work.

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?

Protection for on-us payments can only be provided by the individual PSPs but this risks the protection offered being different by individual PSPs. Consumers would expect a consistent approach so the offering for on-us payments should be aligned to the wider protection provided to interbank payments.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

If protection would increase consumer confidence in interbank payments for retail environments, we would support it as it will encourage consumers to see interbank payments as their first-choice payment option and increase the use when paying Government including via PISP arrangements such as those in place for HMRC.

We would however need to see that providing protection gives value for money i.e. if it would have an adverse impact on the processes and costs of Government organisations like HMRC, would there be sufficient benefit to warrant this?

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?

The retailer should bear the costs where there are issues with goods e.g. where they have provided faulty goods or goods have not arrived but the PISP and/or PSP should be part of the process of applying the protection in the same way as the merchant acquirers are for card refunds.

Where there is a PISP involved in the payment process, consumers must fully understand and consciously accept the associated terms including how these interact with interbank payments and associated liability.

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)?

If sellers or their PSPs are held liable for losses, we would expect this to be a consideration for the PSPs in deciding whether to provide banking services to retailers. This could prevent businesses, in particular those with little or no trading history, from opening accounts. If the PSPs were liable, sellers could see service or transaction costs increase as PSPs seek to pass (transparently or otherwise) some or all of the potential costs to the seller.

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

HMRC believe this would increase consumer confidence in interbank payments including those undertaken via PISPs and increase uptake but they would not want to see any adverse impact on HMRC as the payee, their PISP or PSP. As for other questions value for money must be considered. As there would be less risk to harm for the consumers in this type of payment if the costs outweigh any benefits it would not be a preferred option.

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

All payment protection should have a time limit so whether it is a recurring, variable recurring or an individual payment the same rules should apply.

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 threshold value could reduce the numbers of claims but could disadvantage some consumers, particularly those on low incomes who cannot afford to lose even small values.

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

Government Banking customers identify different types of payments from the reports provided by our PSPs as this information is required for other purposes.

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)?

As for question 10 consideration of use case and transaction value to determine which payments will be protected risks disadvantaging vulnerable customers and those on low incomes.

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)?

We have no evidence on which to base a response to this 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?

This varies across Government as it is dependent on the payment being made. Where an invoice is provided it should be possible to determine if the payee is an individual or a business but not necessarily the type of organisation. Trading names also make it difficult to determine the status of the payee.

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)?

No, as this increases the risk of discriminating against individual payers/payee. Protection should be at a level equivalent to or above what is provided for card payments.

Questions related to how consumers might claim protection

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

Governing protection via standard rules and processes would ensure all claims are dealt with in a uniform way and increase confidence for consumers. Checking for compliance with those rules/processes will need to be undertaken regularly, or the same issues will arise as with the CRM in that organisations will interpret the rules differently.

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)?

We would recommend standardised processes to avoid confusion or discrimination against any particular groups of customers. To minimise costs and improve efficiency we would like interbank payments to be chosen rather than card payments and having equal consumer protection will help achieve that.

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?

Consumer awareness of both the protection available to them and how to claim if something goes wrong would be a positive step for customers as it should help to remove confusion and simplify the process for all. The use of a trust mark would help to increase customer confidence but some education of what a trust mark is and what it means may also be needed. As with question 16, activities would be needed to evidence compliance with the rules to obtain and maintain the accreditation of a trust mark or it would quickly lose its value.

While promoting awareness will empower the consumer, it could also make them less inclined to consider their responsibilities for making payments correctly which would not be appropriate.

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

Engagement with consumers would give the best answer to this question, but our view is that PSP's / PISP providers are best placed to ensure consumers understand the protections they can utilise. They have easy access to communication channels with their customers and would also be one of the first points of contact if a payment is taken incorrectly.

Businesses / retailers accepting payments should also promote protection available to their customers when communicating acceptable payment methods.

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

We believe that most consumers would contact their PSP in the first instance for retail payments in the same way as they contact their card provider. However, we find that where payments are made to Government consumers and businesses tend to contact the relevant Department in the first instance before approaching their bank.

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

Our response would not change if interbank payments increase. We still feel that it would depend on the reason for the payment as outlined above.

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?

Government's customers currently contact the relevant teams e.g. HMRC, DWP's debt management s via a variety of channels e.g. phone, email, post for help with payment queries. We check our systems for information to resolve the issue and will reach out to our PSP for support including where details are needed from the customer's PSP.

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?

It would be beneficial if an end to end solution could be developed to offer a resolution process for all service providers. This would help to remove confusion around available protection and increase consumer confidence. It would be beneficial if participation was mandatory as this would prevent differences in levels of protection. Increased consistency should in turn increase customer confidence.

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

The payment system operators providing interbank payment facilities would be best placed to enforce interbank consumer protection but will need some form of regulatory oversight.

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?

Legislative or regulatory intervention is essential to ensure consistency in the process and ensure the same standards are in place across the industry.

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?

We agree with the areas outlined but have concerns that the costs will outweigh the benefits.

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

Regulatory costs, claim costs, and investigation costs are likely to be the highest costs because they will involve IT and staff costs.

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

We consider the PSP/PISP would and should bear the cost of additional consumer protection and/or governance but are aware that this is likely to be passed on to consumers through higher fees. It is important that the consumers are clear when they would be liable e.g. if they have ignored warnings that the name of the account being paid is incorrect, to avoid the mis-assumption that the PSP will cover all losses.

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

It is difficult to measure potential additional costs associated with consumer protection for Government but know that if we will need to create new processes or change existing ones, particularly where IT change is involved, the costs are likely to be significant.

Electronic Money Association



Electronic Money Association

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Consumer Protection Policy Team
Payment Systems Regulator
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15 April 2021

Dear

Re: EMA response to PSR CP21/4 - Consumer protection in interbank payments: call for views

We welcome the opportunity to comment on these issues of great significance to the UK payments system as well as participants and users.

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

EMA response

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

We do not think that the case has been made that there are insufficient protections for interbank retail payments. We would also welcome clarification from the PSR regarding what is meant by the term “consumer protections”. In the interests of completeness, we have addressed both statutory consumer protections, as well as redress mechanisms in the paragraphs that follow.

Existing consumer protections include:

- (i) consumer protection legislation;
- (ii) statutory redress mechanisms such as the small claims track and Money Claim Online; and
- (iii) government-funded bodies providing free advice to consumers such as Citizens Advice.

The PSR Call for Evidence does not appear to assess why these existing consumer protections are insufficient to remedy the issue identified by the PSR (i. e. consumers incurring loss from unsatisfactory purchase of goods and services). In order for stakeholders to make an informed decision regarding the measures proposed by the PSR, a full assessment should first be conducted of these existing protections. If they are considered insufficient, their shortcomings should be set out in detail along with supporting data. This will provide a more informed basis from which to consider policy options regarding any further necessary measures for consumer protection in interbank payments.

Please see below for a high-level assessment of existing consumer protections, which are already fairly comprehensive:

(i) Existing consumer protection legislation

Please note the following consumer protections from existing UK law:

- The consumer may cancel a distance or off-premises contract at any time in the cancellation period (within the first 14 days of entering into the contract) without giving any reason, and without incurring any liability unless a narrow exception applies.¹ [regulation 29(1); Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013]

¹ Exceptions are: (a) *regulation 34(3) (where enhanced delivery chosen by consumer);*

(b) *regulation 34(9) (where value of goods diminished by consumer handling);*

(c) *regulation 35(5) (where goods returned by consumer);*

(d) *regulation 36(4) (where consumer requests early supply of service)*

- The consumer is afforded the following statutory warranties:
 - o Goods to be of satisfactory quality [section 9; Consumer Rights Act 2015]
 - o Goods to be fit for a particular purpose [section 10; Consumer Rights Act 2015]
 - o Goods to be as described [section 11; Consumer Rights Act 2015]
 - o Goods to match a sample [section 13; Consumer Rights Act 2015]
 - o Goods to match a model seen or examined [section 14; Consumer Rights Act 2015]
 - o Installation as part of conformity of the goods with the contract [section 15; Consumer Rights Act 2015]
- The consumer has the following remedies in cases where the trader breaches these statutory warranties:
 - o Right to reject (including a refund without undue delay) [section 20; Consumer Rights Act 2015]
 - o Right to repair or replacement [section 23; Consumer Rights Act 2015]
 - o Right to price reduction [section 24; Consumer Rights Act 2015]

There are significant protections afforded to a consumer in the form of statutory warranties and remedies (including reimbursement) as set out above. If a trader breaches a statutory warranty and does not offer the consumer a remedy (i.e. the trader does not comply with law), this is not within the ambit of the PSP; PSPs are not regulators or law enforcement.

(ii) Existing statutory redress mechanisms

Small claims track

The small claims track is a statutory redress mechanism specifically designed to allow consumers to bring small claims against defendants (such as traders).

Practice direction 26 provides a description of the small claims track:

8.1 (1) (a) The small claims track is intended to provide a proportionate procedure by which most straightforward claims with a financial value of not more than £10,000 can be decided, without the need for substantial pre-hearing preparation and the formalities of a traditional trial, and without incurring large legal costs. (Rule 26.6 provides for a lower financial value in certain types of case.)

(b) The procedure laid down in Part 27 for the preparation of the case and the conduct of the hearing are designed to make it possible for a litigant to conduct his own case without legal representation if he wishes.

(c) Cases generally suitable for the small claims track will include consumer disputes, accident claims, disputes about the ownership of goods and most disputes between a landlord and tenant other than opposed claims under Part 56, disputed claims for

possession under Part 55 and demotion claims whether in the alternative to possession claims or under Part 65.

(d) A case involving a disputed allegation of dishonesty will not usually be suitable for the small claims track.

(2) The court may allocate to the small claims track a claim, the value of which is above the limits mentioned in rule 26.6(2). The court will not normally allow more than one day for the hearing of such a claim.

As set out in the Practice Direction above, the small claims track:

- (i) is intended for small value, straightforward claims;
- (ii) does not involve substantial pre-hearing preparation and formalities of a trial;
- (iii) does not lead to the consumer-claimant incurring large legal costs;
- (iv) is specifically designed for the consumer-claimant to represent themselves;
- (v) is generally suitable for consumer disputes.

Please note rules and procedures applicable in the small claims track are designed to be less formal and therefore make it easier for consumer-claimants to represent themselves. Civil Procedure Rule 27.2 provides the parts of the Civil Procedure Rules that do not apply to small claims:

27.2 Extent to which other Parts apply:

(1) The following Parts of these Rules do not apply to small claims –

(a) Part 25 (interim remedies) except as it relates to interim injunctions;

(b) Part 31 (disclosure and inspection);

(c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);

(d) Part 33 (miscellaneous rules about evidence);

(e) Part 35 (experts and assessors) except rules 35.1 (duty to restrict expert evidence), 35.3 (experts – overriding duty to the court), 35.7 (court's power to direct that evidence is to be given by single joint expert) and 35.8 (instructions to a single joint expert);

(f) Subject to paragraph (3), Part 18 (further information);

(g) Part 36 (offers to settle); and

(h) Part 39 (hearings) except rule 39.2 (general rule– hearing to be in public) and rule 39.8 (communications with the court).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.

(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

CPR 27.2 sets out the exceptions that apply to the small claims track. These exceptions make it significantly easier for a consumer to represent themselves. We have highlighted two main examples above; part 31 (disclosure) and part 32 (evidence).

For part 31 (disclosure), this means that consumer-claimants are not subject to the usual procedure for the preparation of a case (i.e. disclosing documents). It is therefore generally quicker and cheaper to bring a claim on the small claims track as there is no need for substantial pre-hearing preparation and the formalities of a traditional trial.

For part 32 (evidence), this means a consumer-claimant in the small claims track may present their claim without being restricted by the rules of evidence. This makes it significantly easier for consumers to present the facts of their case and set out the relevant evidence (e.g. a copy of their contract with a trader) without being concerned whether evidence is admissible.

These exceptions make it straightforward for a consumer to bring a claim in the small claims track; they do not need any legal training and the process is not comparable with standard litigation.

Money Claim Online

There is an even simpler option for consumers to access redress against traders. As an alternative to issuing proceedings in County Court, small claims for specified sums can be issued at Money Claim Online. This enables users to pay court fees by credit or debit card and then monitor the progress of their claim online. The court fees are set at a level commensurate with the value of the claim, and can help to prevent the lodging of spurious claims. Documents generated can be printed off and also stored electronically. Defendants are also able to respond online.

This is a straightforward process; consumers may view the Money Claim Online user guide published by HM Courts and Tribunals Service available [here](#).

(iii) Government-funded consumer support

Citizens Advice

Citizens Advice, a charity whose work is financed by the UK government, offers extensive consumer protection advice, including how to access the small claims track / Money Claim Online². Consumers who have sustained loss from an unsatisfactory purchase of goods or services can access advice and assistance to bring a claim against a trader from Citizens Advice.

It is unclear from the Call for Evidence why existing consumer protection for consumers in the UK i.e. the small claims track, is not considered sufficient; this is a statutory redress

² <https://www.citizensadvice.org.uk/law-and-courts/legal-system/small-claims/making-a-small-claim/>

mechanism specifically designed for the problem for which the PSR has launched a Call for Evidence.

Further, the Call for Evidence does not substantively refer to the small claims track, and does not mention Money Claim Online or Citizens Advice. This information should form a fundamental part of any consideration of whether the current protections available to consumers are adequate; it is unclear why it has been omitted from the Call for Evidence. Prior to implementing any measures, the PSR should assess the efficacy of the small claims track and Money Claim Online.

If the small claims track / Money Claim Online are not found to provide effective redress for consumers, we would welcome further analysis by the PSR regarding the limitations of this statutory redress mechanism. This will then provide a more informed basis on which the PSR and stakeholders can work together to develop a solution. One option to consider would be proposing reform of the small claims track / Money Claim Online to the Ministry of Justice, or a specific small claims track for e-commerce disputes, perhaps under a different name/brand in order to give consumers more confidence in pursuing a claim through this avenue.

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

Please note that Payment service providers (“PSPs”) are authorised and in the business of providing payment services; which are set out in part 1, schedule 1 of the Payment Services Regulations 2017 (UK). The role of a PSP is to provide these payment services to the payment service user. In the case of interbank payments, the PSP’s role and purpose is to facilitate the transfer of funds from their customer’s (payer’s) account to a payee’s account. This is the primary purpose of their role – it is not to provide an insurance policy with respect to every payment made by the payment service user. It would be excessive and disproportional to levy liability on PSPs for loss arising from consumer dissatisfaction with a purchase, as the loss is not causally linked (whether factually or legally) to the PSP’s provision of payment services.

In addition, PSPs are subject to a comprehensive regulatory regime that ensures that the payment services they offer are secure and guaranteed, that AML, fraud and IT security risk is managed, and that data is protected. These requirements include the safeguarding of funds, the holding of capital to provide a buffer against financial loss, the protection of customer data, the guarantee that a payment instruction by the user will be correctly applied, and a variety of other consumer rights.

Paragraph 3.8 states: *PSPs and PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection.* It is unclear on what basis this assertion - that PSPs and PISPs offer less consumer protection than desirable – is made. We would welcome clarification regarding the desired level of protection. Permitting that a PSP complies with all applicable legal obligations, we consider that they have offered an appropriate level of consumer protection.

To a large extent, consumers do demand the level of protection they deem appropriate by choosing a payment service provider that offers such protection i.e. by voting with their feet. Some payment service providers and payment methods do provide higher levels of protection than others, and this is advertised as part of their product offering. Offering consumer protection (in addition to mandatory protections) to payment service users is a value-add; a strategy that PSPs – and the card schemes - use to compete within the market for payment services. Competition within the market for payment services ensures PSPs must offer what consumers demand, or face reduced customers and therefore reduced revenue. Consumers (and merchants) are free to choose which payment method to use. These market forces keep the cost of such protections competitive and ultimately manageable from the PSP's perspective, whilst providing the consumer with the protection they demand.

Please note that the protection mandated by section 75 of the Consumer Credit Act 1974 (UK) applicable to lines of credit was introduced in response to consumer harm suffered as a result of the consumer's exposure to a line of credit for a trader's breach of statutory warranties (i.e. if goods were faulty or did not arrive in the first instance). The policy decision was taken that consumers should not be required to continue to pay off a debt for a faulty or non-existent good or service. The legislative intent of section 75 was well evidenced at the time, and the impacted industry participants were better able to recover the cost of this additional protection. There does not appear to be a similar level of evidence for the appropriate consumer protection for interbank transfers in this Call for Evidence, so it is difficult to agree with the assertion that consumers have insufficient protections. The impact of any increase in cost is felt much more by PSPs that offer payments as service, as they do not benefit from the cross-subsidisation afforded by entities offering credit, and it is much harder for them to absorb the cost of shared liability with the merchant.

Please further note the background to chargebacks. A 'chargeback' for card payments was designed by the card schemes as a process to support dispute resolution between scheme participants where a cardholder raises a complaint about a particular transaction. The chargeback mechanism was not initially created with the intent of protecting consumers; but this became a consequence in jurisdictions where consumer protection laws could be supported by the feature. As a result, chargebacks have become an important element in addressing card fraud by enabling card issuers to recover fraud losses from acquirers/merchants. Faster Payments in the UK currently experiences a much lower fraud rate, so the evidence base for a similar type of mechanism for interbank payments is less convincing.

It is difficult to reconcile the various positions put forward in the Call for Evidence paper. On the one hand, the PSP has successfully executed a payment transaction in accordance with the payment service user's instructions (i.e. the PSP has provided the payment service to an appropriate standard and completely discharged their obligations under their contract with their customer, the payment service user.) Separately, it is then proposed that the PSP is held responsible for a trader's breach of statutory warranties (i.e. providing faulty goods or services). These two positions are irreconcilable. The conduct of the trader is not within the PSP's control; it would therefore be unreasonable to hold the PSP liable for such conduct.

Paragraph 3.32 states 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.*”

However, it is important to acknowledge that policy decisions to mandate insurance in the UK have their origins in clear and substantive evidence of far-reaching legal and/or societal issues, manifested in the absence of that insurance. The policy objective is usually to reduce the risk related to undertaking an activity sufficiently enough to make it viable e.g. driving a car, or taking on an employee. This has been achieved primarily by mandating insurance cover for liability against third party claims. For example:

- The mandatory part of motor insurance is third party liability (TPL) cover, as it allows victims of road accidents to claim against the insurer of the perpetrator. Individuals are not required to purchase insurance to cover loss to themselves or their own property;
- Home insurance is not mandatory, but individuals who have purchased a property with a mortgage will usually be required by the lender to purchase buildings insurance in order to protect the lender against loss;
- Employers’ liability insurance is mandatory in the UK as it protects employees from a loss due to work-related activities, and employers by extension from the cost of settling any claims.

The equivalent application to the issue raised in the PSR’s Call for Evidence would be to require merchants to purchase insurance to cover the cost of customer claims due to the merchant’s negligence or any other reason the goods or services are deemed unsatisfactory by the customer.

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)?

The “size of harm” set out in the Call for Evidence does not appear to be quantified in any way, so it is difficult to provide any indication as to whether such harm could be “reduced” through consumer or industry behaviour. There does not appear to be any data underpinning the assumptions set out in the Call for Evidence, nor is there an indication of what constitutes this “size of harm”. There does not appear to be any data indicating how many consumers suffer (non-APP fraud-related) loss, specifically arising from a lack of protection in relation to purchases of goods or services when using interbank methods, nor the value of such loss.

Given the PSR’s objective of promoting the development of and innovation in payment systems we understand the concern about the potential for mass migration towards interbank payments for goods and services. However, we consider that the proposal to shift liability from the merchant to the PSP could very likely increase the overall cost of Faster Payments such that new PISP payment propositions may no longer be economically viable, thereby

undermining the PSR's wider objective of promoting effective competition in the markets for payment systems and services

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

Any consumer protections provided for interbank payments should also apply to on-us payments. However we do not think that there is sufficient evidence – either that the existing consumer protections are insufficient, or that there is a harm that must be addressed - to justify the need for any additional protections for interbank payments at this stage, thus there is no need for additional protection for on-us payments.

Question 5: Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

No, we do not consider that there is any substantive evidence to indicate that payment protection (in addition to that already set out under Q1, and provided by legislation levied in PSPs e.g. safeguarding of funds, IT security measures, prudential requirements etc.) is needed for use cases related to paying purchase transactions or any other use cases. The volume of transactions over the interbank payment rails that involve purchases for goods or services is currently low, and shifting liability for consumer loss arising from unsatisfactory purchase of goods and services is hugely disproportionate in relation to the expected, or assumed, “harm” set out in the Call for Evidence.

Paragraph 3.15 of the Call for Evidence includes an assumption that “*merchants who choose to use Faster Payments may be doing so due to the lower costs of accepting payments, which could, in part, be due to less stringent checks on merchants in Faster Payments compared to card schemes*”.

Please note that all regulated PSPs, including PISPs, as financial institutions falling within the scope of PSD2, are subject to anti-money laundering (AML) legislation set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR). This includes the conducting of customer due diligence where (i) there is a ‘business relationship’ with a customer or (ii) where the obligated entity ‘carries out’ an ‘occasional transaction’ (defined as being a transfer of funds of EUR 1,000 in value or amounting to an aggregate of EUR 15,000 if combined with other related transactions).

- A ‘business relationship’ is defined at regulation 4 of the MLR as ‘a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration.’ This is defined broadly and is likely to capture customer relationships for both PIS and AIS providers.
- ‘Carrying out an occasional transaction’ could conceivably include a payment initiation operation, if this amounts to the ‘carrying out’ of a transaction.

Customer due diligence requirements for business customers include the following:

- *Identification of the customer and verification of their identity;*
- *Assessment of, and where appropriate, obtain information on, the purpose and intended nature of the business relationship or occasional transaction;*
- *Obtain and verify the name of the body corporate; its company number or other registration number, the address of its registered office, and if different, its principal place of business;*
- *Reasonable measures to determine and verify—*
 - *the law to which the body corporate is subject, and its constitution (whether set out in its articles of association or other governing documents);*
 - *the full names of the board of directors (or if there is no board, the members of the equivalent management body) and the senior persons responsible for the operations of the body corporate.*
- *Identification and verification of any beneficial owner(s);*
- *Where the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.*

In addition to onboarding requirements, Article 27 (9) part b of the MLRs provides that PSPs must monitor transactions for unusual activity, as this triggers the application of enhanced due diligence measures:

[...] in determining when it is appropriate to take customer due diligence measures in relation to existing customers, a relevant person must take into account, among other things—

(a) any indication that the identity of the customer, or of the customer's beneficial owner, has changed;

(b) any transactions which are not reasonably consistent with the relevant person's knowledge of the customer;

(c) any change in the purpose or intended nature of the relevant person's relationship with the customer;

(d) any other matter which might affect the relevant person's assessment of the money laundering or terrorist financing risk in relation to the customer. [Regulations 27(9)]

Article 33(1)f of the MLRs also similarly obliges PSPs to monitor transactions for unusual activity:

3(f)in any case where—

(i)a transaction is complex or unusually large,

(ii)there is an unusual pattern of transactions, or

(iii)the transaction or transactions have no apparent economic or legal purpose]

These requirements must be met by all regulated PSPs in order for the PSP to maintain their licenced status. If there are concerns about “less stringent checks” on merchants onboarded by PSPs – or PISPs in particular - this should be addressed to the FCA as supervisory authority for PISPs.

With respect to the use case “Paying for goods and services: one off”, one of the examples given in the table in paragraph 4.8 is “travel”. Please note that certain types of travel purchases such as purchases for flights and package holidays are protected by a statutory financial protection scheme (“ATOL”). We therefore consider the use of “travel” as an example for this use case should be qualified to give stakeholders complete information. The PSR should review this protection and consider its efficacy prior to considering measures levied on PSPs. An alternative option in this regard – which is already offered by a number of merchants – could be the purchase of insurance cover against loss.

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?

This question needs to be divided into two sections because it has two answers.

First, to what extent should liability for retail purchases fall to the seller? All loss arising from a retail purchase should be borne by the seller because the seller can affect the outcome of that retail purchase. Even in the case referenced in the Call for Evidence, where the retailer goes bankrupt before the goods are received by the consumer, it is difficult to see why liability should rest with the PSP. There is already a statutory procedure for such a situation. The consumer can register a claim as a creditor and their claim is dealt with by the receiver. Why should a PSP fulfil this role when there is already a statutory mechanism dealing with this specific situation? Consider the case of a PSP servicing a large merchant that experiences insolvency; the PSP would then be liable for all orders made to that merchant that have not been fulfilled. It is disproportional to levy such liability on a PSP. The PSR’s measure may also result in a rise in fraud as a consumer may be able to claim twice (i.e. once as a creditor in the course of insolvency proceedings and again against the PSP).

Second, to what extent should liability for retail purchases fall to the PSP or PISP? No liability arising from a retail purchase should be borne by the PSP or PISP because neither of these parties can affect the outcome of a retail purchase.

There is no legal basis to hold a PSP or PISP liable for loss arising from a retail purchase; all liability must be levied directly on the party causing the loss (i.e. the seller) and the

consumer should use the statutory redress mechanisms available to them (the small claims track and Money Claim Online) to obtain reimbursement.

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)?

Levying liability for retail purchases on a PSP would change the nature of commercial relationship between:

- The consumer and their PSP; and
- The seller and their PSP.

For consumers, their relationship with their PSP would change from strictly a payment service provider to, additionally, an insurer.

For sellers, their relationship with their PSP would change from the PSP merely providing an account to a relationship with similar characteristics and risks associated with merchant acquiring. For example, a seller's PSP may require the seller to establish a reserve account with collateral funds to reduce the risk the PSP will not be able to recover the reimbursement amount from the seller.

This is a real risk for a PSP, which will be ultimately levied on the seller. Could a seller afford to establish two reserve accounts (i.e. one with their merchant acquirer and the other with their bank in which they hold their settlement account)?

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

For the reasons set out above, we do not think any new payment protection arrangements should be extended to recurring and variable recurring payments.

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

For the reasons set out above, we do not think any new payment protection arrangements should be extended to recurring and variable recurring payments.

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?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. We do not have any comment on a

threshold except that, if the PSR were to proceed with their proposals, such a threshold should be as high as possible in order to increase the proportionality of the response.

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

PSPs are 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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. We do not have any comment on a threshold except that it should be as high as possible.

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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage.

The number of merchants using interbank payments to accept payments is still extremely low; we therefore consider the PSR's proposal is disproportionate and unnecessary.

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?

Where both sending and receiving PSPs are participants in Confirmation of Payee, it should be possible to identify whether the payee is a business 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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage.

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

We do not think a consumer protection governance process would be beneficial for interbank payments in their current form. The proportion of interbank payments being used for

purchases of goods and services is still low. The setting up of a governance process to oversee consumer protections involving liability on PSPs sending payments would also require the setting up of additional scheme rules and infrastructure such as a dispute mechanism, a communication framework between parties, etc.

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)?

N/A

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?

We agree that promoting consumer awareness of the protections available to them will go a long way towards addressing this issue. We note that the PSR have not substantively addressed or considered any of the existing statutory redress mechanisms specifically set up for this purpose (i.e. the small claims track and Money Claim Online. (Please see our response to Q1)

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

Citizens Advice UK is a government-funded charity specifically set up to advise persons in the UK of their rights. This includes extensive advice on consumer protection including how to access such protections and redress. The PSR should consider what currently exists with respect to consumer protection, advice and redress before considering the need to levy liability on PSPs.

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?

The merchant, as this is the party liable for the goods or services and to whom the consumer has paid.

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

It would not change our response. The volume of interbank payments does not affect the fact that there is no legal basis upon which to attribute liability to a PSP for breach of consumer

warranties by a trader. The PSP is a third-party to the trader / consumer sale and therefore not liable for a breach by the trader.

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?

Consumers are directed to their bank or to the relevant merchant to resolve their dispute in the first instance.

Question 23. What do you think about the options outlined in paragraphs 5.18 to 5.27 [payment system rule, payment governance system or industry-led payment protection]? Are there any alternative options you think we should consider?

We consider any option (whether scheme rule, governance system or industry-led payment protection) that functions to hold PSPs liable for loss arising from consumers' unsatisfactory purchases of goods and services is disproportional and punitive. This is because PSPs are not responsible for this type of loss nor can they control when it arises.

We note the counterargument of section 75 rights set out in section 75 of the Consumer Credit Act 1974; this section functions to hold a consumer credit provider jointly and severally liable for breach of contract of misrepresentation by the trader for purchases between £100 and £30,000. If it is established that consumer credit providers can be held liable for this type of loss, why not PSPs? The difference is between each payment method (i.e. a line of credit versus an interbank transfer). When a customer pays a trader with a line of credit, the risk of loss is greater because the consumer is required to repay the credit line; whereas for interbank transfer, whilst the customer may sustain loss, they will not be burdened with repayments to the value of that loss. Accordingly, the risks associated with paying by credit are not present when the customer pays by interbank transfer and the same remedy (levying liability on PSPs) is not justified.

Finally, the alternative option is for the PSR to assess the existing statutory redress mechanisms available to consumers (the small claims track and Money Claim Online) and determine whether these mechanisms work effectively for consumers. After carrying out that assessment, and if the PSR finds there are aspects of these mechanisms that are not effective, the PSR should address their concerns and propose reform to the Ministry for Justice.

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

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. Any enforcement mechanism is bound to be very costly, and this will be passed down to PSP participants in the scheme, then to

indirect participants and eventually to consumers. The PISP use case will likely become unviable.

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?

Regulatory intervention could consider the introduction at a high level of some form of consumer protection for payments, but PSPs should be given freedom to meet this as they see fit, and any proposal would need to be evidenced-based as well as undergo a significant amount of scrutiny and cost-benefit analysis.

One potential solution might be to implement a procedure whereby a customer could obtain reimbursement from a PSP for loss arising from an unsatisfactory purchase of goods or services where the customer has first obtained a judgment from the small claims track. In other words, a procedure whereby the trader's PSP would accept a judgment as a basis to reimburse the customer from the trader's account. Please note there must be measures in place to ensure PSPs can rely on such judgments as a basis for effecting reimbursement, without risk of litigation from the trader.

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

We agree that the list of costs is correct; however, the costs themselves do not appear to have been quantified, nor have the benefits. It is therefore difficult to conclude that the benefits of such a shift in liability would outweigh the costs.

Indirect and non-participants in the scheme(s) will have no influence over the level of cost of any additional protections introduced and will therefore be at the behest of the direct scheme participants. Thus increasing the possible barriers to participating in the interbank schemes or accepting interbank payments.

What would be the economic effect on the market for payment services of increasing the cost of Faster Payments transactions? What would be the effect if card transactions and Faster Payments transactions were the same price? It may be the case that issuers start to apply a fee for FPS transactions, as is already the case in the EU with SEPA instant payments, for which banks will usually charge their customers a small fee. It is therefore unlikely that consumers would prefer to pay for a good or service using FPS rather than a card payment (which costs them nothing). Moreover, merchants are unlikely to move to increase FPS acceptance for consumer payments if the price to them is similar to card acceptance, given that the majority of merchants have already invested in physical and digital infrastructure to allow the acceptance of card payments, and given that the use of cards to make payments online is already much more developed and embedded into the UK purchasing culture.

As PISPs only provide their services in the context of credit transfers (and not card payments), they could be disproportionately affected, and the business case for merchant-initiated PISP transactions may disappear before it has had a chance to develop. Industry payment initiatives based on FPS have already failed due to the inability to recover cost let alone make a profit (e.g. Pingit)

The PSR must carry out a more thorough market analysis prior (and consider issues such as those set out above) prior to implementing any measures.

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

The cost of implementing a liability framework within the Faster Payments scheme is likely to add significant layers to the current scheme governance, infrastructure, and processes, and thus cost the industry overall.

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

The PSR and/or traders.

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?

With respect to changing service contracts with customers, customers are payment service users and enter into a framework contract with the PSP. The framework contract is a heavily regulated agreement and sets out significant information requirements pursuant to the Payment Services Regulations 2017 (UK). Please note that any changes to a framework contract must be provided to the payment service user at least two months prior to the changes coming into effect. Please further note that during the two-month notice period, the payment service user is afforded an immediate termination right at no charge if they disagree with the proposed amendments. This means any measure implemented by the PSR that requires a change to the framework contract puts PSPs at risk of losing customers who may use their immediate termination right to terminate the contract for other reasons, which would not have otherwise been available. The PSR must consider all aspects of any measures, including economic effects before proceeding.

Emerging Payments Association

Consumer Protection in Interbank Payments: Call for Views (CP21/4)

Payment Systems Regulator

Response from the Emerging Payments Association

Abstract

This paper sets out the Emerging Payment Association's response to the PSR Consumer Protection in Interbank Payments: Call for Views (CP21/4). It contains some general observations from a conceptual perspective and it expresses the EPA views about the potential discrepancies between two different concepts of consumer protection in relation to; "protection" where something goes wrong with the purchase; and "protection" where something goes wrong with the payment. In addition, we believe that some statements related to Open Banking payments might undermine the overall scope of trust and competition. Furthermore, we think that some conclusions made on the basis of the assumptions drawn by a Pay.UK research on Faster Payments tend to cast doubt on the validity of the very arguments the Paper tries to make.

April 2021

Introduction

The Emerging Payments Association (EPA) welcomes the opportunity to contribute to the paper Consumer Protection in Interbank Payments – Call for Views (CP21/4) (Paper) dated February 2021 and published by the Payment Systems Regulator (PSR). The response contained in this letter reflects views expressed by our members and industry experts recommended by them. As the EPA’s membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to represent the views of all members fully.

We are grateful to the EPA’s members and the experts they have recommended to us, who have contributed to this response. We hope it advances our collective efforts to ensure the UK’s payments industry continues to be progressive, world-leading and secure, and effective at serving the needs of everyone who pays and gets paid.

We are supportive of the PSR considering the right protection framework for consumer payments but are concerned by the confusion that might arise in the industry as a result of the Paper and the PSR consulting on matters that are within the competence of other regulators (such as the FCA or the Office of Fair Trading).

We are also concerned by those statements in the Paper around Open Banking payments that imply that such payments offer less protection than other interbank payments.

Given the views of our members on the Paper (as detailed below), we have not responded to each of the specific questions asked in the Paper. Rather, we have set out some general observations from a conceptual perspective. By way of a summary, our high-level thoughts are divided in four sections:

1. On the concept of “payment protection” as used in the Paper;
2. On the comparison between Faster Payments and the card schemes, as described in the Paper;
3. On some of the statements made on Open Banking;
4. Miscellaneous, with respect to certain other points discussed in the Paper.

Authors

We wish to thank members of the Project Regulator Team at the EPA for their valuable contributions to this document.

With special thanks to the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Section 1

Payment protection

The Paper centres its discussion around the perceived lack of “payment protection” in relation to Faster Payments. The Paper defines “payment protection” as “the protection that is available through the use of a particular payment system”.

However, we have the impression that the Paper uses the concept of ‘protection’ to refer to two different scopes of the same concept, such as a) the need of consumer protection when “something goes wrong with their payment”, and b) the perceived lack of consumer protection “if the problem stems from unsatisfactory purchases of goods and services”.

We believe that these two scopes of the concept of protection are not interchangeable and we would seek for a clarification from PSR on such broader interpretation. It is not entirely clear what such protection, as described in the Paper, is intended for. In some places, the Paper refers to the need for consumer protection when “something goes wrong with their payment”; in other places, it refers to the perceived lack of consumer protection “if the problem stems from unsatisfactory purchases of goods and services”. The Paper appears to use interchangeably these two concepts – protection where something goes wrong with the purchase, and protection where something goes wrong with the payment.

Further, our members’ approach is to consider these two scopes as separate concepts. To better clarify our views, we would use the following example: where there is something wrong with the purchase itself (e.g. the goods or services bought are defective), it would be purely a dispute between the consumer and the merchant regarding the quality of the goods or services bought. In other words, any consumer protection to be envisaged would essentially be protection for the “purchase”, rather than in relation to the payment made to acquire that particular purchase. Provided that the payment for that particular purchase has been processed properly, such “purchase protection” seems to be more in the sphere of regimes such as those relating to the sale of goods. Further, in such circumstance we are confused by the PSR intervention, because we understand this matter to fall outside the PSR’s remit.

We appreciate that the objectives of the PSR as provided for under the Financial Services (Banking Reform) Act 2013 (FSBR) are broad enough to cover consumer protection. With respect to its service-user objective (essentially, to take into account and promote the interests of those who use the interbank systems to make payments), the PSR’s Objective Guidance defines, rightly in our view, “service-user” of a payment system to include consumers.

However, such objectives and the inclusion of consumer in the term “service-user” should be understood in the context of the PSR’s overall duties which are to be exercised in relation to the relevant payment systems. Disputes purely concerning the sale of goods/services itself that is not otherwise connected, in any way, with any deficiency in the relevant payment system or in the processing of the payment for that sale, should not be capable of falling within scope.

The PSR itself says on its website that it does not deal with consumer-related issues and that its focus is -

- consumers can pay quickly when buying goods or services
- better ways of moving money around are introduced
- payment services compete for consumers’ business
- payment systems are safe, reliable and secure

(See <https://www.psr.org.uk/payment-systems/when-you-make-a-payment/>)

We believe that this is a succinct summary of the PSR's overall competence. We note the statement in the Paper that "Our main objective is to ensure that consumers and businesses are not disproportionately harmed when something goes wrong with their payments" and we are fully supportive of this objective. However, if the objectives could be interpreted in a way that would give the PSR competence over such consumer-merchant disputes, for example, in a few places the Paper seems to envisage even imposing the relevant liability on the "seller", then this would in our opinion be outside of the PSRs mandate under FSBRA.

The Paper itself notes that the Payment Services Regulations 2017 ("2017 Regulations") do not offer protection where the consumer made a purchase that turns out to be unsatisfactory, and that the Consumer Rights Act 2015 ("2015 Act") does not provide sufficient protection where something goes wrong with the consumer's payment. We would submit that this distinction is both correct and necessary, because the two statutory frameworks are for different purposes – the 2017 Regulations are concerned with regulating payment services (and the related consumer rights thereunder are rights provided to consumers vis-à-vis their payment service providers in relation to the payment services provided) whereas the 2015 Act focus on general consumer-related issues.

Section 2

Comparison with card schemes

The Paper draws a comparison between Faster Payments and the card schemes. It seems to suggest that a mechanism similar to the chargeback regime under the card schemes should at least be considered for Faster Payments.

We suggest that this avenue is treated with caution given that such a comparison may not be meaningful and may also be capable of being misleading. Although the card schemes and Faster Payments are all "payment systems" subject to the PSR's supervision, our view is that their models are fundamentally different and adding a chargeback-like requirements into Faster Payments could have unintended costs and challenges for the industry.

Section 3

Open Banking Payments

As a champion of fintech and Open Banking we are concerned by the tone of the Paper when it refers to Open Banking payments.

In our view statements like the following undermine trust and confidence in PISP payments.

"Currently, consumers cannot claim payment protection from their PSP or PISP when using interbank payments for retail purchases."

"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."

PISP payments carry protections as mandated by Regulations 2017 and PISPs are actively building trust and confidence for this nascent ecosystem. However unintended these statements might be, they should have no place in a regulator's consultation as they are misleading and potentially undermine trust and competition which is exactly what the Paper is not seeking to do.

Section 4

Miscellaneous

The Paper appears to suggest that more consumer protection would promote the use of and confidence in Faster Payments, on the basis that consumers would choose their payment methods based on the degree of protection.

However, it then quotes a Pay.UK research which essentially states that consumers are not aware of the payment method they are using and, therefore, the protections offered by it. The research also states that the majority of consumers are not aware of the existence of Faster Payments. Such research conclusions seem to cast doubt on the validity of the very arguments the Paper tries to make.

To the extent of our knowledge on how Faster Payments and the other interbank payment systems work (from the consumers' perspective), consumers rarely get to choose to use Faster Payments or any other such payment system. Consumers simply e.g. makes a credit transfer and it is their PSPs that chooses which payment rail to use to move the funds.

As noted above, we agree and we think it is right, to have "service user" defined to include consumers. But this should be considered in the sense that consumers use payment services provided by their PSPs via the relevant payment system and that the PSR ought to take into account the interest of consumers in that context. However, it seems too much of an expansion of the scope for the term "service-user" if the interest of consumers is to be considered in isolation.

Conclusion

We consider consumer protection to be a very important subject in the payments regulatory framework and we believe the interest of consumers should and must be taken into account when designing/improving the relevant requirements. However, we would appreciate that any such protection would be analysed in the appropriate context. To this extent, we hope that the PSR will take our views into account, and will fully consider the conceptual issues outlined in this response before proceeding to design or implement any measures in this regard.

About the Emerging Payments Association

The Emerging Payments Association (EPA), established in 2008, sets out to make payments work for everyone. To achieve this, it runs a comprehensive programme of activities for members with guidance from an independent Advisory Board of 16 payments CEOs.

These activities include a programme of digital and (when possible) face-to-face events including an online annual conference and broadcast awards dinner, numerous briefings and webinars, CEO Round Tables, and networking and training activities. The EPA also runs six stakeholder working groups. More than 100 volunteers collaborate on the important challenges facing our industry today, such as financial inclusion, recovering from Covid-19, financial crime, regulation, access to banking and promoting the UK globally. The EPA also produces research papers and reports to shed light on the big issues of the day and works closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

The EPA has over 130 members that employ over 300,000 staff and process more than £7tn annually. Its members come from across the payments value chain including payments schemes, banks and issuers, merchant acquirers, PSPs, retailers, TPPs and more. These companies have come together to join our community, collaborate, and speak with a unified voice.

The EPA collaborates with its licensees at EPA EU and EPA Asia to create an interconnected global network of people passionate about making payments work for all.

See www.emergingpayments.org for more information. Contact [REDACTED] for assistance.

European Third-Party Providers Association

ETPPA feedback to the PSR call for views: Consumer protection in interbank payments

Brussels, 08-Apr-2021

The ETPPA welcomes the opportunity to respond to the PSR's consultation on consumer protection in interbank payments.

Executive summary

From the outset the ETPPA would like to recall that there are strong consumer protections required by the Payment Services Regulations for users of interbank payments and payment initiation services, which are equivalent, if not stronger than those required for users of cards. There are also strong consumer protections for making purchases using these methods in the form of the Consumer Rights Act.

The core question in the Call for Views is not whether these consumer protections are adequate. Rather, it is whether the additional buyer protections which the card schemes/ issuers have introduced voluntarily (chargebacks), or as part of lending (Consumer Credit Act), should be replicated in interbank/ PISP payments.

To avoid confusion among the public and marketplace about the safety of using interbank payments, and to avoid damaging the competitive viability of payment initiation services, we would ask the PSR to narrow the focus of further investigation to an analysis of whether regulatory intervention is needed to replicate card scheme buyer protection in interbank payments.

This narrow question will need extremely careful consideration. As we discuss, it is likely that replicating buyer protections available within dominant card schemes for PISPs, would render PISPs uncompetitive with card payments, and further entrench the dominance of the card schemes, contrary to the objectives of the Payment Services Regulations.

We believe the Financial Conduct Authority, as the competent authority for payment services under the Payment Services Regulations (and the supervisor for both banks and PISPs), should be more closely involved in any further investigation into buyer protection in interbank payments. The FCA has objectives to promote competition and consumer protection and so is well placed to advise on the appropriate balance in the context of interbank payments.

Questions related to why PSR think additional protection may be needed

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

No. We strongly disagree.

The PSRs provide strong legal protections for consumers using interbank payments, including via payment initiation service providers (PISPs):

- Each payment initiated, must be strongly authenticated by a customers bank (with two forms of banking credential)
- Whether you're using cards, banks transfers, or payment initiation services - if you're money is taken without your authorisation, the customer is entitled to a refund from their bank (see [FCA website](#))
- If you're using any of these payment methods and the payment does not reach the recipient you instructed the provider to pay, the customer is entitled to a refund from their bank

Where a consumer is not happy about an interbank payment (whether initiated directly or via a PISP), PSPs are required to provide well sign-posted, complaints procedures (see Chapter 11 of the FC's Payment Services [Approach Document](#)).

Further to this, a consumer can escalate a complaint about an interbank payment service (whether initiated directly or via a PISP) to the Financial Ombudsman, who can award compensation to a consumer.

In terms of **buyer protections**, which come into play once a consumer has **authorised** a payment to a merchant, consumers have strong **legal buyer protections** under the Consumer Rights Act 2015. Regardless of the payment method used, the protection entitles consumers to:

- Goods that are of satisfactory quality, as described, fit for purpose, and last a reasonable length of time
- return goods within 30 days and receive a full refund
- where a refund is not given payments can be disputed in the small claims court

In addition to these requirements, card issuers can offer *additional* buyer protections. Where the merchant refuses a refund, you can additionally ask your bank (the card issuer) for a refund, known as a 'chargeback'. Card schemes have been able to voluntarily introduce buyer protection in the form of chargeback because of their dominance and market power.

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

Just because card schemes have the ability to offer this additional, voluntary buyer protection to consumers, does not mean that there are *insufficient* consumer protections for interbank payments. The following table demonstrates the high degree of consumer protection offered by interbank payments (including those initiated by PISPs). Chargeback/ Section 75 is the only differentiator.

Protection	Credit Card	Debit card	Faster payments	Payment Initiation Service
Consumer protections				
Legal protection for <u>unauthorised transaction</u>	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer
Legal protections for wrongly executed transactions	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer If it is found to be PISPs fault, PISP must then refund bank
Security	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication	Strong customer authentication

Buyer protections				
Legal protections for authorised transactions where a customer does not receive goods or services satisfactorily	Consumer Rights Act: Customer entitled to a refund from merchant Consumer Credit Act 1974 - bank must refund customer	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant
Voluntary protections for authorised transactions where a customer does not receive goods or services satisfactorily	Chargeback	Chargeback	No industry wide voluntary scheme	No industry wide voluntary scheme

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

Industry provision of consumer protection

Requirements

We strongly disagree that the industry does not provide appropriate levels of protection. PSPs (including PISPs) must meet stringent requirements for consumer protection (as described above), in order to become and remain authorised. Where levels of consumer protection are deemed to be

lacking, the Financial Conduct Authority, which has a Consumer Protection Objective, will take supervisory or enforcement action against individual firms.

The FCA has recently bolstered its ability to supervise PSPs against consumer protections requirements (including PISPs) by extending its principles for business to payment and e-money firms (these principles already applied to banks). These principles include that PSPs must:

- observe proper standards of market conduct.
- pay due regard to the interests of its customers and treat them fairly.
- pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

Incentives

In addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, setting out the expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)

Evidence

No evidence has been presented by the PSR or other regulators of specific issues arising from the levels of consumer protection currently provided by PISPs.

Consumer demand for consumer protection

Consumer representatives (such as Which?) have long demanded that aspects of interbank payments that are open to fraud and scams be tightened up. The concerns raised by the Which? Super Complaint about authorised Push Payment Scams have been borne out with UK Finance [highlighting](#) that APP scams rose from £345m in 2018 to £456m in 2019. Rightly, this area of consumer harm has been addressed with initiatives such as Confirmation of Payee and the Contingent Reimbursement model. This generates that clearly, consumers (represented by organisations like Which?) do demand high levels of consumer protection. This is particularly the case in the UK which has been the first country in Europe to introduce initiatives to tackle APP fraud.

Moreover, PISPs are competing with the card schemes and issuers who are actively ensuring consumers are educated about the additional buyer protections they offer, increasing the demand for

this type of protection e.g. [Visa How You Pay Matters](#); [Barclaycard, Get Credit Confident, Protect your purchases](#)

The high degree of consumer protection demanded by UK consumers, and the highly competitive market for providing payment services in retail and e-commerce, strongly incentivises PISPs to ensure consumers trust the new payment methods they are introducing. This supports a market led approach to addressing any gaps in buyer protection, where those gaps are deemed to be preventing take-up of PIS (we discuss this further below).

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)?

As noted above, in addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, e.g. setting out expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)

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?

N/A

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

We do not understand this 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?

We strongly disagree with imposing liability for refunds for retail purchases onto PISPs.

To begin with, it should be noted that the vast majority of online merchants have well established refund and dispute resolution processes and procedures. Chargeback is a last resort option, where the customer has not been granted a refund by the merchant. We would like to see more evidence from the PSR about the proportion of purchases which actually do end-up being disputed, and which result in chargeback claims.

Chargeback is flawed and prone to fraud

According to the [British Retail Consortium](#), instances of fraudulent chargeback claims (aka friendly fraud) more than doubled between January and June 2020. [Chargeback911](#) estimates a staggering 73% of chargebacks being friendly fraud. This is because it is now easier to commit than ever before. Consumers are cloaked by anonymity when shopping online, and merchants aren't always present at the point of exchange to confirm if goods arrived safely. Imposing liability on PISPs would shoulder PISPs with the burden of investigating both genuine and fraudulent disputes, adding costs and barriers to entry for PISPs. Individual PISPs would not have the resources or economies of scale that card schemes and card issuers have to investigate this type of abuse.

Chargeback is available to card schemes because of their market dominance

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

PISPs could enact rules that ensure a merchant can no longer accept PIS payments where they fail to refund the PISP. However, a merchant could easily switch to another PISP, or back to accepting cards - they are not incentivised to accept any particular type of PISP, and there are currently over 70 PISPs in the UK (according to the FCA register). While it is unlikely that merchants would refuse to refund PISPs, they could negotiate more favourable refund thresholds with PISPs, than they can in card schemes. This would ultimately drive-up the costs of individual PISP transactions.

Imposing liability on PISPs is contrary to existing law (the PSRs)

The PSRs ensures that there are strong consumer protections for the correct execution of bank transfers, including where those bank transfers are initiated by PISPs. Consumers are entitled to a refund from their bank if something goes wrong with the payment. The PSRs do not impose liability for the successful sale of goods and services on the bank or the PIS. Imposing liability on PISPs would contradict the liability framework set out in the PSRs.

Imposing liability on PISPs would also contradict the policy intentions of the PSRs. The EU directive PSD2, which forms the basis of the PSRs in the UK, was revised in 2017 in part to address the dominance of the card schemes by supporting new types of payment providers into the market. By imposing liability on PISPs, the PSR will increase PIS transaction costs so that they are uncompetitive with those of the cards (which they are able to keep low due to their dominance and market power). This will further entrench the dominance of cards as a payment method in the UK.

Alternatives to PIS liability should be left to the market to develop

It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method. There are a range of options for PISPs and merchants to consider, some of which are already being implemented in the market, as alternatives to taking on liability for refunds:

- PISPs working with merchants to provide extra sign-posting to merchants' existing refund policies and procedures
- PISPs could work with merchants to offer insurance for purchases (which may be especially appropriate for high value purchases, such as airline tickets)
- In extreme cases, where there is a refund dispute, a more streamlined process for small claims court claims could be developed, where some of the burden is removed from the customer, e.g. by the merchant 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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes' dominant position, and frustrating the competition aims of the Payment Services Regulations.

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

No. The Open Banking Implementation Entity has [consulted](#) extensively on measures to ensure that consumers would be highly protected when using variable recurring payments. The OBIE points to the existing legal protections in place under the PSRs, and has developed [additional](#) measures to protect consumers using VRPs.

The FCA's [Approach Document](#) is also clear (section 8.230) that existing variable recurring payment methods, such as direct debit and continuous payment authority are covered by a requirement for the consumer to be fully refunded '*If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances*'. There is no reason why this guidance should not apply to variable recurring payments initiated by PISPs.

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

There is already clear consumer protection for recurring and variable recurring payments under the PSRs, as outlined in the FCA Approach Document at section 20.53 onwards, and in the OBIE consultations on variable recurring payments mentioned above.

We do not agree with imposing liability on PISPs for a whole series of variable recurring payments. We believe this would be extremely financially burdensome for PISPs, and would create barriers to entry for new PISPs.

It is well known that the protections afforded by the Direct Debit Guarantee Scheme have been open to abuse, which has been extremely costly for banks. For example, fraudsters have used the scheme to claim back entire series of mortgage payments¹. We believe it is highly likely that imposing liability on PISPs will attract this type of abuse. However, PISPs, being likely smaller than banks, will be even less able to dedicate the resources required to investigating this type of fraud.

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?

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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

PISPs contract with the merchants they initiate payments for, so are able to identify the types of payments initiated to those merchants. The Open Banking standards allow for PISPs to pass this information to banks, in the form of Payment Context Codes.

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)?

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes’ dominant position, and frustrating the competition aims of the Payment Services Regulations.

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

PISPs contract with merchants to enable merchants to offer PIS as a retail payment option. Therefore, not only can PISPs identify the payee, and the type of the payee, but PISPs will have undertaken

¹ <https://www.lexology.com/library/detail.aspx?g=46f61ab4-92fd-4e9f-8089-1380b982b49d#:~:text=This%20guarantee%20provides%20that%20if,your%20bank%20or%20building%20society.>

extensive due diligence on the payee, including assessing the payee against acceptance criteria, restricted business lists, reputation and track record as a retailer.

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)?

If by payment protection, the PSR means an equivalent to chargeback should be applied based on the identity of the payer or payee, we do not agree. As discussed above, imposition of refund liability on PISPs will make this payment method uncompetitive with cards and further entrench the card schemes' market dominance.

If such 'buyer protection' was to be imposed, we do not consider the identity of the payer to be relevant, because any payer can make purchases. Chargeback rights in cards do not vary depending on the payer's identity.

With regard to determining buyer protection based on the identity of the payee, we struggle to understand how this would be feasible. In terms of direct payments, consumers can use internet banking to instruct inter-bank payments to any payee. The customer might be paying a friend, a charity or a plumber - they input the payee details. In order for the bank to recognise which of these payments requires buyer protection, all banks would have to maintain a registry of which of their customers were merchants. This would be difficult, for example, with sole traders, and part time merchants who might use their bank accounts for personal and business purposes.

In terms of PISPs, who are able to identify merchant payees, because they have contracts with them, the merchants themselves will provide buyer protection and refund customers when goods and purchases do not meet expectations. It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method.

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

The card schemes can maintain centralised governance, rulebooks and dispute management because of their size and market dominance. Attempts to replicate this for interbank payments, and for PSPs (and PISPs) at different levels of the payments chain, would increase the costs of interbank payment transactions, making them uncompetitive with cards.

Fundamentally a governance framework would not be appropriate to govern interbank payments, because interbank payments are not part of a payments network. There is no agreement between all banks and all merchants regarding how interbank payments and purchases should be handled by each party. An interbank payment occurs between two banks, governed by the Payment Services Regulations.

We dispute the idea that a payment system wide governance framework is required in order to 'give the consumer more trust in using the payment method'. Paypal is not part of the visa and mastercard scheme rules, and has instead developed its own approach to ensuring good consumer outcomes.

That said, PayPal is also a dominant PSP, with the scale and market power to be able to maintain an efficient charge-back type system.

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)? [Merchant pov]

Merchants are frustrated at the high costs of card acceptance. They are very interested in being able to use PIS as a payment method, but would be less likely to if regulatory intervention, and layering of governance frameworks and buyer protection increased the costs of PIS so that it becomes uncompetitive with cards.

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

We agree that consumers should be aware of the protections in place. When using PIS, consumers should be fully aware that:

- if something goes wrong with the payment, they can contact their bank for a refund (as per the FCA's website)
- If something goes wrong with the purchase, they can contact the merchant (as per their rights under the Consumer Rights Act)

PSPs, and PISPs are already legally required to provide information to consumers on their rights and obligations when a payment goes wrong, including how to complain and escalate to the Financial Ombudsman. See Chapter 11 of the FCA Approach Document.

Customers using PIS to pay merchants will have a primary customer relationship with the merchant. The merchant will be their first port of call when there is a dispute about goods and services. We are supportive of working with merchants to ensure there is clear signposting to complaints and dispute management processes offered by the merchants.

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

It is the PSP/ PISP's legal responsibility to ensure consumers understand what to do if something goes wrong with a payment.

The merchant is best placed to ensure the consumer understands the protections that are offered to them if something goes wrong with the purchase (i.e. goods and services are not as expected).

Any sharing of those responsibilities needs to be carefully managed between the PSP/PISP and the merchant, to ensure there is no room for consumer confusion.

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

If the dispute is about a purchase (i.e. goods and services are not as expected), the consumer is most likely to ask the merchant to resolve the dispute. This is because the consumer will have the primary customer relationship with the merchant, and will expect the merchant to address any issues in the first instance. This will be the case whether or not the consumer uses cards, or interbank payments to pay. Indeed, most banks expect the consumer to have tried to resolve a purchase dispute with their merchant, before beginning a chargeback claim.²

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

The customer's primary relationship would still be with the merchant, so customers will still most likely contact the merchant for help with a purchase dispute.

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?

Our answer to this is already covered in our other answers.

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?

Our answer to this is already covered in our other answers.

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

The FCA is already responsible for supervising and enforcing interbank consumer protection requirements on PSPs and PISPs.

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?

We strongly disagree that legislative or regulatory intervention is required. Payment Initiation services have only been subject to regulation since 2018. No evidence has been presented of any market failure leading to poor consumer outcomes through the use of PISPs. It would be extremely disproportionate and unfair to impose further regulation on PISPs. It would create barriers to entry and likely undermine the competition objectives of the Payment Services Regulations.

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

² <https://www.barclays.co.uk/help/cards/debit-card/visa-debit-card-problem/>

We strongly disagree with the assumption that retail interbank payment use will grow more slowly if the PSR's proposed 'buyer protections' are not put in place. No evidence has been presented to support this statement.

The PSR has not discussed any of the harms present in the current card market, and whether the benefits of the introduction of PIS, with its additional security benefits could hugely outweigh any hypothetical purchase dispute issues. Payment initiation services are secure by design. Because they don't involve the sharing of card details, or any banking credentials, they eliminate unauthorised payments. On the other hand, fraud losses on UK-issued cards totalled £620.6 million in 2019.

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

"a reduction in payment system participants if PSPs or PISPs stop offering interbank payment services (or decide not to begin offering them)"

If the PSR's intervention leads to PISPs leaving the market, clearly, the costs will have outweighed the benefits. The card schemes' dominance will be entrenched, leading to continued high prices for merchants, which are ultimately passed on to consumers.

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

If any payment participant is required to bear these costs, it will need to be the banks. They have ultimate responsibility for executing inter-bank transactions, and also have the resources to meet the significant costs that would be imposed.

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

Our answer to this is already covered in our other answers.

Financial Services Consumer Panel

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: [REDACTED]

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Financial Conduct Authority
12 Endeavour Square
London E20 1JN

8 April 2021

By email: [REDACTED]

Dear Sir / Madam,

The Financial Services Consumer Panel (FSCP) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Consumer Panel welcomes the PSR issuing a call for views on interbank payments and is broadly supportive of the PSR's vision. Currently, the protections for consumers making interbank payments are insufficient and improvements need to be implemented.

Protections should be clear and consistent and apply across all payment methods. A high standard of consumer protections must exist for consumers where they use emerging payment methods and providers for retail payments.

The move to fast and frictionless payments brings significant risks to consumers, making it easier for consumers to spend and more difficult for transactions to be reversed. Further, consumer awareness of the payment methods they use is low (the PSR and UK Finance consumer research cited in the call for views confirms this).

There should be a clear, efficient and consistent process for settling disputes and obtaining redress for both consumers and SMEs. The lack of success of the Contingent Reimbursement Mode (CRM) code for APP scams suggests that a purely industry-led solution will be ineffective at protecting consumers. Also, the rules should be enforceable, and success measures clearly defined and measurable.

The design of a future regime should be inclusive¹ and take into account the wide-ranging needs, behaviours and lived experiences of real consumers to ensure that services are accessible to, and usable by, the greatest number of people possible. It is also essential that firms consider the needs of consumers in vulnerable circumstances at all stages of the customer journey, as vulnerability increases an individual's propensity to suffer harm.

The Panel would like to reiterate the importance of the following key principles that should guide future developments in the payments market, which were included in its response to the HMT Payments Landscape Review²:

- **Accessibility:** All UK consumers must be able to pay and be paid. The system must be accessible to all.

¹ Inclusive design for regulators report by Fair By Design and the Money Advice Trust: <https://fairbydesign.com/wp-content/uploads/2021/01/Inclusive-Design-Regulators-Report-Final-Fair-By-Design-Money-Advice-Trust.pdf>

² https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_payments_landscape_review.pdf

- **Fairness and affordability:** The cost of making payments should not exclude particular consumers, businesses or transaction types. It should not cost more for the poorest to pay.
- **Reliability:** Individual payment systems must be robust and reliable with appropriate redundancy measures in place to ensure continuity of service in case of need.
- **Sustainability:** The Payment System should be operated on an economically sustainable basis. The failure of individual payment systems should not result in consumer losses.
- **Safety, security and consumer protection:** Individual payment systems must be safe and secure. The Payment System should offer at least a minimum level of protection to consumers, including against fraud and losses as a result of firm failure.
- **Transparency:** Individual payment systems' costs and protections must be clear and easily understandable. Individual payment systems should offer full transparency about how end users' data is used, by whom and to what end.

On the call for views on Interbank payments, the Panel also makes the following observations:

- **Consumer understanding:** The payments landscape is complex and consumer awareness of the payment methods they are using, and their varying level of protection, is low. In addition to regulatory interventions, the differences in protections between payment methods needs to be clearly and transparently communicated to consumers using terminology that is easy to understand. Authorities must ensure their messages to consumers are consistent and co-ordinated.
- **Future proofing regulation:** Consumer protections need to be future proofed for new propositions and business models. There are risks to consumer protection beyond banks and building societies. Those running innovative payments companies may be less familiar with regulation and longstanding consumer issues, and the potential for consumer harm is therefore large.
- **Fewer frictions pose risks to consumers:** There exists a trade-off between innovation which permits faster payments and consumer protections. Less friction also makes it more challenging for consumers to effectively budget and reverse transactions. This may result in significant consumer detriment, for instance in respect of spending on gambling.
- **Fraud detection:** The move to fast and frictionless payments should be matched by equally fast and strong fraud detection measures at both the paying and receiving ends of transactions. To maintain consumer confidence and appropriately protect consumers, safety should increase alongside speed.

Yours faithfully,

[Redacted signature block]

Financial Data and Technology Association

8 April 2021

**Consumer Protection Project Team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN**

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FDATA Response to Payment Systems Regulator Consumer Protection in Interbank Payments: Call for Views (CP21/4)

FDATA appreciates the opportunity to respond to the PSR's Call for Views on Consumer Protection in Interbank Payments. We address the questions contained in the CfV, and have also provided an overview of our analysis of PSR CP21/4. Below the question responses, please find a table addressing section by section assumptions listed in the CfV for which FDATA members have a rebuttal.

FDATA Response Overview:

- While we recognise that this exercise is forward looking, it is based on the assumption that consumers are underprotected when using faster payments/PISPs and experience problems in the receipt of goods and services; FDATA questions the lack of evidence presented by the PSR as to the scale of the problem, as well as the immediate response in going so far as to consider legislation to require PISPs to join protection schemes.
- FDATA notes the lack of discussion of any collaboration with the FCA or HM Treasury on this work, despite the interrelation with the PSRs 2017, which HM Treasury owns and the FCA oversees.
- The term 'payment protection' is used throughout the Call for Views and defined in Table 1 as the equivalent of a card chargeback option; this conflates measures required when a payment goes wrong (which is already addressed by the PSRs 2017), and measures required when there is a problem with goods and services, Which could be more accurately described as 'buyer protection'.
- FDATA notes the lack of acknowledgement that the reason card schemes have chargeback/buyer protection schemes is because the card schemes have market

power/dominance. There is very little risk that issuers will be left out of pocket given the incentives for merchants to refund issuers: merchants face sanctions or expulsion from the scheme if they do not refund issuers. PISPs have no such market power.

- Imposing a chargeback or similar scheme on PISPs would likely make PISP payments uncompetitive against card payments. FDATA notes the lack of acknowledgement in the Call for Views of this likelihood; rather, it appears the PSR assumes the opposite.
- FDATA also notes that a chargeback equivalent for errors with goods and services (i.e., buyer protection) is absent from Direct Debit payments (see CP21/4 footnote 48, page 29), and yet there is no discussion about requiring additional buyer protections for Direct Debit payments but there is deep scrutiny of PISP buyer protection additions and a change in the liability arrangement to accommodate them (see CP21/4 footnote 51, page 29).
- The PSRs 2017 support PISPs in order to inject competition into the payment market, particularly to provide alternatives to cards, yet many of the measures being considered in this Call for Views constitute additional burdens, obstacles, or impediments to PISPs becoming viable competition against cards.
- FDATA notes some sweeping statements that lack validation - or showcase erroneous assumptions - that misstate PISP business objectives. For example, “PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection” (pg 15, paragraph 3.8). FDATA would ask the PSR to provide evidence to back up this assertion,
- FDATA notes the asymmetric discussion of possible problems with PISP payments, while there is no commentary on the reduction in errors, improvements in security, or existing obligations of the PISP/ASPSP as regulated entities in context of consumer protection measures; FDATA proposes that this imbalance in emphasis implies PISPs are not taking their responsibilities seriously in providing a highly regulated and supervised service to consumers and paints them in a poor light.
- FDATA suggests the following be noted in regards to reduction in PISP payment errors:
 - Errors made by the payer should not be conflated with consumer initiated bank transfers where amounts and beneficiary details can be entered incorrectly. PISP payments encode the amounts and beneficiary details to prevent data entry errors
 - Errors made by a PISP or ASPSP are already under obligation to be investigated
 - Errors with goods and services fall under two types of categories:
 - Caused by bad actors (merchants): PISPs follow onboarding processes like KYC/AML and are required to do customer due diligence in all cases; PISPs have every incentive to work with reputable merchants in order to reduce bad-actor risk in the delivery of goods and services. PISPs in the FDATA community are open to additional risk mitigation mechanisms for merchant onboarding
 - Caused by bad products/services: resolution for this appropriately remains between the merchant and consumer, however PISPs acknowledge that both the PISP or merchant can offer insurance at the point of sale to mitigate this

risk; this allocates cost of buyer protection fairly rather than overinflate the entire cost of the payment provision for all PISP end customers

Call for View 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?

No. We strongly disagree.

The PSRs provide strong legal protections for consumers using interbank payments, including via payment initiation service providers (PISPs):

- Each payment initiated, must be strongly authenticated by a customers bank (with two forms of banking credential)
- Irrespective of what type of payment is executed (cards, bank transfers, or payment initiation services), if money is taken from an account without authorisation, the customer is entitled to a refund from their bank (see [FCA website](#))
- If a payment does not reach the recipient as per instruction to the payment provider, again irrespective of payment method, the customer is entitled to a refund from their bank

Where a consumer is not happy about an interbank payment - whether initiated directly or via a PISP - PSPs are required to provide well sign-posted, complaints procedures (see Chapter 11 of the FC's Payment Services [Approach Document](#)).

Furthermore, a consumer can escalate a complaint about an interbank payment service (whether initiated directly or via a PISP) to the Financial Ombudsman, who can award compensation to a consumer.

In terms of **buyer protections**, which come into play once a consumer has **authorised** a payment to a merchant, consumers have strong **legal buyer protections** under the Consumer Rights Act 2015. Regardless of the payment method used, the protection entitles consumers to:

- Goods that are of satisfactory quality, as described, fit for purpose, and last a reasonable length of time
- return goods within 30 days and receive a full refund
- where a refund is not given payments can be disputed in the small claims court

In addition to these requirements, card issuers can offer *additional* buyer protections. Where the merchant refuses a refund, you can additionally ask your bank (the card issuer) for a refund, known as

a ‘chargeback’. Card schemes have been able to voluntarily introduce buyer protection in the form of chargeback because of their dominance and market power.

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won’t be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won’t be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

Just because card schemes have the ability to offer this additional, voluntary buyer protection to consumers, does not mean that there are *insufficient* consumer protections for interbank payments. The following table demonstrates the high degree of consumer protection offered by interbank payments (including those initiated by PISPs). Chargeback/ Section 75 is the only differentiator.

Protection	Credit Card	Debit card	Faster payments	Payment Initiation Service
Consumer protections				
Legal protection for <u>unauthorised transaction</u>	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer
Legal protections for wrongly executed transactions	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer If it is found to be PISPs fault, PISP must then refund bank

Security	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication	Strong customer authentication
Buyer protections				
Legal protections for authorised transactions where a customer does not receive goods or services satisfactorily	Consumer Rights Act: Customer entitled to a refund from merchant Consumer Credit Act 1974 - bank must refund customer	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant
Voluntary protections for authorised transactions where a customer does not receive goods or services satisfactorily	Chargeback	Chargeback	No industry wide voluntary scheme	No industry wide voluntary scheme

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

Industry provision of consumer protection

Requirements

We strongly disagree that the industry does not provide appropriate levels of protection. PSPs (including PISPs) must meet stringent requirements for consumer protection (as described above), in order to become and remain authorised. Where levels of consumer protection are deemed to be lacking, the Financial Conduct Authority, which has a Consumer Protection Objective, will take supervisory or enforcement action against individual firms.

The FCA has recently bolstered its ability to supervise PSPs against consumer protections requirements (including PISPs) by extending its principles for business to payment and e-money firms (these principles already applied to banks). These principles include that PSPs must:

- observe proper standards of market conduct.
- pay due regard to the interests of its customers and treat them fairly.
- pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

Incentives

In addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs take steps beyond the legal requirements to further the interests of their users.

This includes:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, setting out the expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)

Evidence

No evidence has been presented by the PSR or other regulators of specific issues arising from the levels of consumer protection currently provided by PISPs.

Consumer demand for consumer protection

Consumer representatives (such as Which?) have long demanded that aspects of interbank payments that are open to fraud and scams be tightened up. The concerns raised by the Which? Super Complaint about authorised Push Payment Scams have been borne out with UK Finance [highlighting](#) that APP scams rose from £345m in 2018 to £456m in 2019. Rightly, this area of consumer harm has been addressed with initiatives such as Confirmation of Payee and the Contingent Reimbursement model. This demonstrates that clearly, consumers (represented by organisations like Which?) do demand high levels of consumer protection. This is particularly the case in the UK which has been the first country in Europe to introduce initiatives to tackle APP fraud.

Moreover, PISPs are competing with the card schemes and issuers who are actively ensuring consumers are educated about the additional buyer protections they offer, increasing the demand for this type of protection e.g. [Visa How You Pay Matters](#); [Barclaycard, Get Credit Confident, Protect your purchases](#)

The high degree of consumer protection demanded by UK consumers, and the highly competitive market for providing payment services in retail and e-commerce, strongly incentivises PISPs to ensure consumers trust the new payment methods they are introducing. This supports a market led approach to addressing any gaps in buyer protection, where those gaps are deemed to be preventing take-up of PIS.

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)?

As noted above, in addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, e.g. setting out expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)

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?

No.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

FDATA does not fully understand this question.

However, we would like to point out that the Consumer Rights Act 2015 Section 20(16) notes that “If the consumer paid money under the contract, the trader must give the refund using the same means of payment as the consumer used, unless the consumer expressly agrees otherwise.”

This clearly applies to PISP payments, and would continue to apply to any current and future use cases for PISP interbank payments. We fail to see how adding additional payment protections atop the current Consumer Rights Act provisions would bolster consumer protections; especially considering there are no additional provisions for the choice of cash as a payment instrument, and yet consumers continue to pay with cash despite not having additional payment protections beyond those provided for in the 2015 Act.

While this nascent payment method is working to build trust with consumers, there is still a degree of responsibility borne by consumers when transacting. For those consumers who use cash, there are limits to the protections afforded then when a good or service is faulty or subpar; yet consumers still choose cash for some transactions. To mandate that PISPs bear full responsibility for educating and meeting a theoretical level of informed consent about the risks attached to using PISP interbank payments is disproportionate. Measuring fully informed consent across all consumers is an impossible task, let alone an impossible standard to meet. Consumers must accept a certain degree of responsibility for their choices, and PISPs must meet a reasonable standard of informed consent. To mandate otherwise is unenforceable and unmeasurable regulation.

Speaking to the shift in liability framework, any proposed additional liabilities borne by PISPs will certainly come with additional costs built into the service. This additional cost is either carried by the PISP directly, or passed on to the merchant client or end consumer. In either case, this diminishes the competitive advantage PISP has against card payments. The additional buyer protections under the chargeback mechanism are funded by merchant fees, scheme fees, and interchange fees, as well as annual fees paid by the end consumer. The PIS business model currently does not have these additional fees built in, and any attempt to force PISP to assume liability would create a distinct barrier to entry for a number of PISPs, and increase cost overheads for those already in the market to a point that either 1) forces a number of PISPs to exit the market, or 2) force PISPs to increase fees thereby

diminishing the competitiveness of PISP against cards, thereby frustrating the aim of PSD2, and failing to provide an alternative to the chokehold card schemes have on the market.

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?

We strongly disagree with imposing liability for refunds for retail purchases onto PISPs. Rather, any buyer protection coverage should fall upon the merchant to provide.

This Call for View is in danger of conflating merchant risk with payment instrument risk, and the two must be dealt with separately. High risk merchant risk - such as airlines - is not the same as high risk payment instruments, of which PIS is low risk, as it is not actually a payment instrument but an instruction to initiate a payment. If the PSR is intent on examining the question of buyer protection, then it must separate that discussion from PIS risk, and apportion the accountability for making the consumer whole if something goes wrong with the delivery of the good or service to the merchant providing that service rather than the chosen payment method. Moreover, the Consumer Right Act of 2015 provides for customer redress for all payment instruments if something goes wrong with a purchase properly authorised by the end-consumer - redress provided by the merchant, not the payment service provider.

It should be noted that the vast majority of online merchants have well established refund and dispute resolution processes and procedures. Chargeback is a last resort option, where the customer has not been granted a refund by the merchant. We would like to see more evidence from the PSR about the proportion of purchases which actually do end-up being disputed, and which result in chargeback claims.

Chargeback is flawed and prone to fraud

According to the [British Retail Consortium](#), instances of fraudulent chargeback claims (aka friendly fraud) more than doubled between January and June 2020. This is because it is now easier to commit than ever before. Consumers are cloaked by anonymity when shopping online, and merchants aren't always present at the point of exchange to confirm if goods arrived safely. Imposing liability on PISPs would shoulder PISPs with the burden of investigating both genuine and fraudulent disputes, adding costs and barriers to entry for PISPs. Individual PISPs would not have the resources or economies of scale that card schemes and card issuers have to investigate this type of abuse.

Chargeback is available to card schemes because of their market dominance

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat

of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

PISPs could enact rules that ensure a merchant can no longer accept PIS payments where they fail to refund the PISP. However, a merchant could easily switch to another PISP, or back to accepting cards - they are not incentivised to accept any particular type of PISP, and there are currently over 70 PISPs in the UK (according to the FCA register). While it is unlikely that merchants would refuse to refund PISPs, they could negotiate more favourable refund thresholds with PISPs, than they can in card schemes. This would ultimately drive-up the costs of individual PISP transactions.

Imposing liability on PISPs is contrary to existing law (the PSRs)

The PSRs ensure that there are strong consumer protections for the correct execution of bank transfers, including where those bank transfers are initiated by PISPs. Consumers are entitled to a refund from their bank if something goes wrong with the payment. The PSRs do not impose liability for the successful sale of goods and services on the bank or the PIS. Imposing liability on PISPs would contradict the liability framework set out in the PSRs.

Imposing liability on PISPs would also contradict the policy intentions of the PSRs. The EU directive PSD2, which forms the basis of the PSRs in the UK, was revised in 2017 in part to address the dominance of the card schemes by supporting new types of payment providers into the market. By imposing liability on PISPs, the PSR will increase PIS transaction costs so that they are uncompetitive with those of the cards (which they are able to keep low due to their dominance and market power). This will further entrench the dominance of cards as a payment method in the UK.

Alternatives to PIS liability should be left to the market to develop

It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method. There are a range of options for PISPs and merchants to consider, some of which are already being implemented in the market, as alternatives to taking on liability for refunds:

- PISPs working with merchants to provide extra sign-posting to merchants' existing refund policies and procedures
- PISPs could work with merchants to offer insurance for purchases (which may be especially appropriate for high value purchases, such as airline tickets)
- In extreme cases, where there is a refund dispute, a more streamlined process for small claims court claims could be developed, where some of the burden is removed from the customer, e.g. by the merchant 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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes' dominant position, and frustrating the competition aims of the Payment Services Regulations.

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

No. The Open Banking Implementation Entity has [consulted](#) extensively on measures to ensure that consumers would be highly protected when using variable recurring payments. The OBIE points to the existing legal protections in place under the PSRs, and has developed [additional](#) measures to protect consumers using VRPs.

The FCA's [Approach Document](#) is also clear (section 8.230) that existing variable recurring payment methods, such as direct debit and continuous payment authority are covered by a requirement for the consumer to be fully refunded '*If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances*'. There is no reason why this guidance should not apply to variable recurring payments initiated by PISPs.

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

There is already clear consumer protection for recurring and variable recurring payments under the PSRs, as outlined in the FCA Approach Document at section 20.53 onwards, and in the OBIE consultations on variable recurring payments mentioned above.

We do not agree with imposing liability on PISPs for a whole series of variable recurring payments. This would be extremely financially burdensome for PISPs, and would create barriers to entry for new PISPs.

It is well known that the protections afforded by the Direct Debit Guarantee Scheme have been open to abuse, which has been extremely costly for banks. For example, fraudsters have used the scheme to claim back entire series of mortgage payments¹. We believe it is highly likely that imposing liability on PISPs will attract this type of abuse. However, PISPs, being likely smaller than banks, will be even less able to dedicate the resources required to investigating this type of fraud.

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?

¹

<https://www.lexology.com/library/detail.aspx?g=46f61ab4-92fd-4e9f-8089-1380b982b49d#:~:text=This%20guarantee%20provides%20that%20if,your%20bank%20or%20building%20society.>

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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

PISPs contract with the merchants they initiate payments for, so are able to identify the types of payments initiated to those merchants. The Open Banking standards allow for PISPs to pass this information to banks, in the form of Payment Context Codes.

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)?

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes’ dominant position, and frustrating the competition aims of the Payment Services Regulations.

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

PISPs contract with merchants to enable merchants to offer PIS as a retail payment option. Therefore, not only can PISPs identify the payee, and the type of the payee, but PISPs will have undertaken extensive due diligence on the payee, including assessing the payee against acceptance criteria, restricted business lists, reputation and track record as a retailer.

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)?

Payment protection here is equivalent to buyer protection, and therefore confuses the question. All payments are covered by the PSRs 2017 when an error with the payment happens. The question of who makes the customer whole when a good or service is erroneous is one of liability, and according to the Customer Rights Act of 2015 that liability falls on the seller, who in the question above is the payee. We submit that this question as written is moot.

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

Giving the consumer clear instruction and guidance when something goes wrong with a payment is good for interbank payments. These instructions already exist, and can be found on the FCA [website](#), and consumers are instructed to contact their ASPSP as a first step in the process, irrespective of the type of payment instrument used.

In terms of a buyer protection governance process, this also already exists under the [Consumer Rights Act of 2015](#), Chapter 2, sections 19-24 detailing those specific rights and protections.

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)? [Merchant pov]

Again, we refer to the existing processes outlined by the PSRs 2017 and the Consumer Rights Act of 2015 that provide a standardised process for claiming consumer protections.

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

Consumer awareness is always important. No one single party is best placed to lead on the whole of consumer protections available. Rather, the accountable party for payments is best placed to lead on consumer education (PIS/PSP communication on what happens when a payment goes wrong; Merchant/seller on what to do if a good or service is disputed).

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

PISPs/ASPSPs are best placed to educate consumers on payments and what protections are available if the payment instrument goes wrong; Merchants are best placed to educate consumers on buyer protections if a good or service is faulty. The party accountable for the thing being contracted with the end-customer is best placed to provide insight and overview of what protections are offered.

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

As per the PSRs 2017 guidance, a consumer is most likely to contact their bank if a payment has gone wrong. Should there be a dispute or defect with a good or service, the first point of contact for resolution is with the merchant. However, it should be noted that PSPs and PISPs are required to make complaint processes clear to the consumer. These procedures can be used to raise issues with the merchants as well; when PISPs provide payment services, they are likely to work with the merchant to assist in resolving the issue.

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

Our response would not change.

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

FDATA members each have their specific communication channels; we cannot provide detail on this at an aggregate level.

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?

The assumptions presented in the options outlined dismiss the practical incentives for PISPs to ensure that consumers trust and use payment initiation services for merchant transactions, and that any participation in a payment protection governance scheme would have to be mandated and enforced. It also assumes that said payment protection governance scheme is required to provide coverage missing in the current regulations that already provide for consumers to be made whole when a payment goes wrong.

We would also like to point out that the example of Confirmation of Payee as a payment governance system that includes PISPs is misleading. PISPs were not included in the design nor participation of CoP, and PISPs still remain outside the system despite the current OBIE consultation intended to solicit PISP interest in CoP participation.

PISPs have every incentive to coordinate and collaborate to find an industry approach and solution, but so far PISPs have been excluded from the practice. To rush in with a legislative approach first, rather than inviting PISPs to be part of the solution design process, it puts the cart before the horse; it also denies PISPs the opportunity that card providers had: to have a hand in crafting the solution to the challenge.

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

The FCA is already responsible for supervising and enforcing interbank consumer protection requirements on PSPs and PISPs.

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?

We strongly disagree that legislative or regulatory intervention is required. Payment Initiation Services have only been subject to regulation since 2018. No evidence has been presented of any market failure leading to poor consumer outcomes through the use of PISPs. It would be extremely disproportionate and unfair to impose further regulation on PISPs. It would create barriers to entry and likely undermine the competition objectives of the Payment Services Regulations.

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

We strongly disagree with the assumption that retail interbank payment use will grow more slowly if the PSR's proposed 'buyer protections' are not put in place. No evidence has been presented to support this statement.

The PSR has not discussed any of the harms present in the current card market, and whether the benefits of the introduction of PIS, with its additional security benefits could hugely outweigh any hypothetical purchase dispute issues. Payment initiation services are secure by design. Because they don't involve the sharing of card details, or any banking credentials, they eliminate unauthorised payments.

In 2019 payment card fraud was £671.4 million on a total payment volume of £800 billion or 8bps (about £1 out of each £1000). On the other hand, interbank fraud was £528 million² on a total payment volume of £7.4 Trillion³ or 0.7bps (£0.07 out of each £1000). As such bank fraud is less than a tenth of card fraud.

The PSR has also not discussed the impact that imposing liability as proposed would have on the cost of individual transactions, which would be passed on to consumers, and, as we've discussed above, would make PISPs uncompetitive with the card schemes.

Nevertheless, we agree with the listed costs (although these have not yet been quantified), and believe these will amount to a significant and disproportionate burden on PISPs, which could affect their ability to operate in the payments market.

We do not agree with some of the stated benefits:

²

<https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202019%20-%20FINAL%20ONLINE.pdf>

³<https://www.bacs.co.uk/NewsCentre/PressReleases/Pages/PayUKProcessesRecordPaymentVolumesValueIn2019.aspx>

- Introducing liability on PSPs and PISPs for purchases will have no bearing on 'payment errors' as PSPs and PISPs are already legally responsible for payment errors. The Payment Services Regulations ensures that consumers are entitled to a refund from their bank if there are errors with a payment.
- We do not believe that a higher proportion of consumers will make claims when things go wrong with purchases. Consumers already make claims against their merchant when goods and services are defective. This would remain the case whether or not additional requirements are imposed on PISPs.

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

We are most concerned with the PSR's point that an indirect cost to the system would be: "a reduction in payment system participants if PSPs or PISPs stop offering interbank payment services (or decide not to begin offering them)" (6.6).

If the PSR's intervention leads to PISPs leaving the market, clearly, the costs will have outweighed the benefits. The card schemes' dominance will be entrenched, leading to continued high prices for merchants, which are ultimately passed on to consumers. The entire exercise of enabling PISP as a competitive alternative to card schemes will have been for not, not to mention an incredibly expensive exercise that fails to fulfill on the promise of PSD2 and the PSRs 2017.

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

If any payment participant is required to bear these costs, it should be the banks. They have ultimate responsibility for executing inter-bank transactions, and also have the resources to meet the significant costs that would be imposed.

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

FDATA members each have their specific service contracts with their respective customers; we cannot provide detail on this at an aggregate level.

CALL FOR VIEW ASSUMPTIONS / REBUTTAL

Section	PSR Statement	TPP Community Response
1.3	"If people are going to use interbank payments	Consumers are fully protected regardless of payment

	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.”	<p>type under the PSRs when ‘something goes wrong with the payment’.</p> <p>The PSRs provide legal protections for wrongly executed payments regardless of payment type. The Customer is always entitled to a refund by their bank if ‘something has gone wrong with the payment’ and it was the PSPs fault. (see Regulation 91 of the PSRs 2017.</p> <p>For misdirected payments, under PSRs 2017 Reg. 90(3) The payee’s payment service provider must cooperate with the payer’s payment service provider in its efforts to recover the funds, in particular by providing to the payer’s payment service provider all relevant information for the collection of funds.</p>
1.4	Depending on which payment system they use, consumers may find they have more limited options when something goes wrong with <u>their purchase</u>	This statement indicates the consultation is focused on buyer protection, rather than protections when something goes wrong with the payment.
1.5	Consumers could, in these cases, also rely on a PSP’s complaints resolution procedure where the Ombudsman scheme is unavailable.	The FOS scheme is always available where a consumer or micro-enterprise wishes to escalate a complaint about a payment service. See Chapter 11 of the <u>FCA Approach Document</u> .
1.5 / 3.0	<p>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:</p> <ul style="list-style-type: none"> • 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 	<p>The level of consumer protection is already high for consumers.</p> <p>How has the PSR concluded that providers are not incentivised / have misaligned incentives?</p> <p>Why does PISPs not being direct or indirect members of the schemes mean protection for consumers is unlikely to improve?</p>
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	The PSRs 2017 provide consumer protection for payments.

	these payments.	
1.8	<p>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.</p>	<p>As above, consumers are entitled to a refund if something goes wrong with their payment under the PSRs 2017.</p>
1.9	<p>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.</p>	<p>Is the PSR also considering the impact on competitiveness of payment methods if liability is shifted?</p> <p>The card schemes can afford charge-back because of their dominance and market power. Imposing equivalent systems onto PISPs would likely make PIS un-competitive with cards and defeat the PSRs 2017 objectives.</p>
1.10	<p>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:</p> <ul style="list-style-type: none"> • embedding formal provisions in the payment system rules • including consumer protection under a new payment governance system • creating a voluntary industry-led process 	<p>Guidance is already very clear (e.g. FCA website). If something goes wrong with a payment, customers should contact their bank (regardless of whether the payment was initiated by a PISP).</p>
1.11	<p>Improving the effectiveness of consumer protection in interbank payment systems is likely to generate direct costs. We will assess the</p>	<p>The card schemes can afford charge-back because of their dominance and market power. Imposing equivalent systems onto PISPs would likely make PIS un-competitive with cards and defeat the objectives of</p>

	proportionality of any action we propose against the expected benefits they bring.	the PSRs 2017.
2.3	[PISPs] 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.	PISPs do not 'make' i.e. execute transactions, they only submit payment orders to the customer's bank on their behalf; the bank then executes the payment.
2.4	In comparison, not every interbank payment is protected in the same way ⁵ and, at present, there is no agreed process for claiming the protection that is available.	<p>The PSR needs to be much clearer about what protection they are talking about. At the moment two things are being conflated:</p> <ul style="list-style-type: none"> • Consumer Protection when something goes wrong with the payment • <i>Buyer protection</i> in case goods and services do not arrive
2.5	<p>This includes assessing whether consumers are protected when there is:</p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • There is clear legal protection when there is a fault in the service provided by the PSP or PISP (i.e. Reg 91 of the PSRs 2017) - bank must refund customer • This is buyer protection and needs to be separated out from the functioning of the payment service • There are clear legal protections for misdirected payments, and the PSR's own initiative for maliciously misdirected payments • A fraudulent act that causes the customer harm - is very vague - the PSR needs to be clearer here.
2.8	"Payers can dispute their payments when something goes wrong"	There are already clear legal requirements for disputing interbank payments, including those initiated by a PISP, under the PSRs 2017.
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.	<p>The PSR has stated that improving consumer protection in interbank payment systems will have direct costs. It must consider whether these costs will impact the effectiveness of competition in the payment services market.</p> <p>The PSR must also consider that if they've conflated buyer protection and consumer protection if a payment goes wrong - any costs associated with buyer protection are disproportionate and shift the liability to the PISP - this changes the very nature of the business model, damages the competitive offering against cards, and</p>

		has a down-the-line impact on the liability model already established in the PSRs 2017.
3.1	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.	Is it true that standing orders are used by consumers? Most recurring payments to merchants and businesses are by Continuous payment authority (cards) and direct debit. Merchants are very unlikely to ask consumers to set up standing orders to make payments.
3.4	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.	<p>'Payment protection' is a vague term, and risks confusing situations when something goes wrong with a payment, with situations when something goes wrong with a purchase.</p> <p>Despite defining the term 'payment protection' in Table 1 as the equivalent of a card chargeback option, the term itself implies that it covers the payment alone. We suggest the PSR use the term "buyer protection" if they are referring to protections when something goes wrong with the purchase of goods and services.</p> <p>Using payment protection confuses things with the existing legal protections that consumers do have under the PSRs 2017 if something goes wrong with the payment itself.</p>
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).	<p>This is an incredibly sweeping statement.</p> <p>PISPs have every incentive to ensure good consumer outcomes. They are new to market and must build trust as part of an encouraging adoption, if their businesses are to remain commercially viable.</p>
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.	<p>PISPs do earn revenue when initiating faster payments.</p> <p>However, if PISPs were required to take on liability for defective goods and services, providing PIS would soon become unprofitable.</p>
3.6	The incentive to provide an appropriate level of consumer protection for retail payments, therefore, is not as significant for interbank	The reason card schemes can provide chargeback is because they have a duopoly. There is extremely low risk that the issuer will not be reimbursed by the merchant, given the risk to the merchant of being kicked

	payments as it is for card payments.	<p>out of the payment scheme, and unable to accept Visa or Mastercard.</p> <p>There is every incentive for PISP to ensure that customers can trust in their offering, however they are up against a duopoly scheme with enforcement mechanism that do not yet exist for PISP.</p>
3.7	<p>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.</p>	<p>It is not true that protection would always require the cooperation of the payee and payer's PSPs. A PISP could provide a refund directly to a consumer, and be reimbursed directly by the merchant (with which it has a commercial arrangement).</p> <p>However, it is also untrue to state that PSPs are unlikely to have an interest in coordinating with each other. PSPs coordinate with each other already, when fraud occurs, or as required under PSRs 2017 Re.90(3) when a customer misdirects a payment.</p>
3.8	<p>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.</p>	<p>Stating that PISPs might not fully recognise the value of providing consumers with protection is an incredibly misguided view of how PISPs operate.</p> <p>PISPs' strategy is to compete with cards by offering a more attractive consumer payment method. Anything that can increase the trust of a consumer is incredibly important to PISPs.</p>
3.9	<p>Card payments schemes have rules for parties involved in the payment, with sanctions (for example, imposing fines) for those not adhering to the rules.</p> <p>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:</p>	<p>Card schemes can maintain chargeback rules only because they have market power and dominance. The merchant has everything to lose from being kicked out of the card scheme.</p> <p>PISPs have no such market power. A centralised scheme would pass on costs to PISPs and make PIS payments uncompetitive with card payments.</p>
3.10	<p>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.</p>	<p>CoP PSPs are the ASPSPs - PISPs have not been included in CoP, and are still outside the tent despite the current consultation OBIE is running to solicit PISP interest.</p> <p>This statement about coordination issues should be put in context: it was ASPSPs who frustrated that process, as PISP were not involved.</p> <p>PISPs have every incentive to coordinate and</p>

		collaborate to find an industry resolution, but so far have been excluded from the practice. We cannot know for certain that they wouldn't have a positive influence on industry coordination.
3.11	Payments initiated by a PISP require additional coordination. PISPs may interact with both the payer and the payee, as they have the 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.	<p>This misunderstands the relationships between PISPs and Payees. PISPs contract with payees in a similar way to how acquirers contract with payees - i.e. to enable payees to accept a form of payment - in this case, PIS as a form of payment.</p> <p>Why is a formal relationship with the payee's PSP needed in order to coordinate with the merchant to provide the consumer with a refund, for example?</p> <p>The OBIE has already developed a standard for enabling refunds in PIS payments. https://standards.openbanking.org.uk/customer-experience-guidelines/pis-core-journeys/payment-refunds/latest/</p>
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.	<p>PSPs have the capability to understand payee types in PIS initiated payments because the OBIE API standards provide Payment Context Codes (PCC) which TPPs provide when they initiate a payment.</p> <p>This enables a PSP to understand whether a payment is</p> <ul style="list-style-type: none"> • BillPayment • EcommerceGoods • EcommerceServices • Other • PartyToParty <p>See: https://openbanking.atlassian.net/wiki/spaces/DZ/pages/645367011/Payment+Initiation+API+Specification+-+v3.0</p>
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. 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.	Merchants who choose to use PISPs are likely doing it because of lower costs, as well as less friction in consumer journeys, than cards. However, PISPs are required under AML legislation to undertake due diligence of merchants (with whom they have a business relationship).

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. 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. 34	Again, the term 'payment protection' here is misleading; the PSR has defined the term to be equivalent to chargeback options under the card schemes, and therefore is essentially buyer protection.
3.31	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. 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. 34	Given that buyer protections such as chargeback have been developed in the commercial space by the card schemes, would it be competitively fair to new entrants such as PISPs to make customers aware of the commercial features of one payment type (cards) over the the lack of commercial features of others (such as PISPs)?
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)	The assumption that interbank payments will grow faster if buyer protections (equivalent to chargeback) are in place, does not take into account that such protections would add significant costs to interbank payments and would make them uncompetitive with card payments.
3.34	...and, given that the existing legal protection provided by the PSRs 2017 do not always apply for these payments, for the potential for harm to increase as a result.	<p>Protections provided by the PSRs always apply to interbank payments.</p> <p>The issue here is that the PSRs do not cover 'buyer protection' i.e. what happens if a payment is made and goods and services are not provided satisfactorily.</p>
3.34	A greater variety of payment providers (including PISPs) offering payment services could lead to an overly complex value chain.	<p>PISPs have been supported into the market by regulation to inject competition into the payments market.</p> <p>Why does the emergence of PISPs lead to an 'overly complex value chain'?</p>
4.3	We see these protections as the minimum standard for protection, but need to consider whether going to court or reaching out to the Financial Ombudsman is the most effective way for consumers to remedy the consequences of something going wrong with their payment.	<p>Again, the PSR is conflating 'something going wrong with a payment' with 'something going wrong with the sale of goods and services'.</p> <p>If something goes wrong with a payment, there are clear protections, and the consumer is entitled to a refund from their bank.</p>

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. Consumers could, in these cases, also rely on a PSP's complaints resolution procedure where the ombudsman scheme is unavailable. These options are not available for consumers faced with errors with the goods or service they purchased.	<p>This is a misunderstanding of the PSRs 2017.</p> <p>PSPs must make complaints processes available as the first step for consumers to get redress. Then consumers can escalate to the Ombudsman.</p> <p>The option to escalate to the ombudsman is always available to any consumer or microenterprise that wants to complain about a payment service.</p>
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.	<p>Legal responsibility for unsatisfactory purchases already rests with the seller under the Consumer Right Act of 2015.</p> <p>Placing liability on the seller's PSP, or the PISP would require a chargeback framework so that the PSP, or the PISP could reclaim the refund from the merchant.</p> <p>Chargeback is only commercially viable for card schemes due to their dominance and market power. If a chargeback scheme was imposed on PISPs, it would likely raise the costs of PISP payments above the costs of card payments, and make PISP uncompetitive with cards. This would be counter to the objectives of the PSRs to increase competition in the payments market.</p>
4.18	Consumers will soon also be able to instruct PISPs to initiate variable recurring payments.	This is incorrect. There has been no certainty given that VRP APIs will be made a requirement for banks and therefore will be available to TPPs.
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). 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.	<p>There are clear consumer protections for the cancellation of recurring payments under the PSRs 2017. See Approach Document section 8.156</p> <p>https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf</p>
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	PSPs have the capability to understand payee types in PIS initiated payments because the OBIE API standards provide Payment Context Codes (PCC) which TPPs

	a business, organisation or consumer.	<p>provide when they initiate a payment.</p> <p>This enables a PSP to understand whether a payment is</p> <ul style="list-style-type: none"> • BillPayment • EcommerceGoods • EcommerceServices • Other • PartyToParty <p>See: https://openbanking.atlassian.net/wiki/spaces/DZ/pages/645367011/Payment+Initiation+API+Specification+-+v3.0 </p>
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	The PSR should be clearer about what it means when referring to 'payment protection'. The card scheme rules around chargeback offer 'buyer protection' i.e. protection against goods and services that are not satisfactory.
5.3	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	As noted above, replicating the card scheme chargeback model would likely make interbank payments uncompetitive with card payments, further entrenching the Visa and Mastercard duopoly.
5.8	The current interbank payments ecosystem does not have much additional support and governance to protect consumers and service providers.	This is a very sweeping statement - and shows little understanding of the legal requirements of PSPs to ensure consumer protection under the PSRs 2017.
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	This is simply not true. PSPs and PISPs are required to make complaints processes known to consumers. Consumers can use these complaints procedures to

	<p>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.</p>	<p>raise issues with the provision of goods and services.</p> <p>In the case of PISPs, where a customer complains about goods and services, the PISP is likely to work with the merchant to resolve the issue.</p>
5.10	<p>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.</p>	<p>The OBIE dispute management system does not solve for issues consumers face with goods and services.</p> <p>It is a mechanism that banks can use to reclaim any compensation they have paid out to a consumer in the case of unauthorised payments, where these can be shown to have been the fault of the PISP.</p>

FIS



Payment Systems Regulator
12 Endeavour Square
London
E20 1JN

16 April 2021

To whom it may concern,

FIS response to the Payment System Regulator's call for views on consumer protection in interbank payments (CP21/4)

Thank you for the opportunity to provide input to the Payment System Regulator's (PSR) call for views on consumer protection in interbank payments. We understand the PSR is seeking to understand whether any action needs to be taken to ensure there is an adequate level of protection in place for consumers that make retail payments¹ using Faster Payments (the UK's interbank real-time payment (RTP) system).

FIS are a leading provider of technology solutions for merchants, banks and capital markets firms globally. Our more than 55,000 people are dedicated to advancing the way the world pays, banks and invests by applying our scale, deep expertise and data-driven insights. Following our recent acquisition of Worldpay, we are also one of the largest acquirers of card payments in the UK.

We have a strong interest in the continued successful growth of real-time payments (RTP) in the UK. Our Merchant Solutions business has recently launched its "Open Banking Hub", a technology solution that enables merchants to accept payments directly from customer's bank accounts in an ecommerce environment.² It is based upon Faster Payments and Open Banking technologies. Separately, our Banking Solutions business provides a range of technology propositions to UK banks that utilize RTP and related technologies.

Further, our experience as a large card acquirer enables us to provide our comments from the perspective gained from being a key player in the operation of the chargeback protections that exist in the card-based payment ecosystem.

We agree with the PSR that RTP-based payment methods will play an increasingly important role in the future, particularly with respect to retail payments. Going forward, we see RTP and Open Banking based payment methods increasingly competing with traditional card-based methods for retail payments. We also agree that there needs to be adequate protection in place for consumers that use RTP-based payment methods for retail payments. In addition to being the right thing to do, building consumer trust in the use of these payment methods is key to enabling their wider usage.

However, our view is that it is not currently an appropriate time for the PSR to undertake any material interventions or introduce new regulatory requirements aimed at developing further consumer protections for disputes relating to commercial exchanges³ paid for with RTP-based retail payment methods. This is for the following reasons:

- **RTP-based retail payment methods are still a nascent market:** Overall consumer usage is still very low compared to existing retail payment methods, such as card payments and cash – 17,566

¹ "Retail payments" in this context being payments where a consumer pays a business for goods and services.

² We act as a Payment Initiation Service Provider (PISP) for the payee (the merchant), enabling the payer (the consumer) to initiate a Faster Payment.

³ Disputes related to the underlying goods or services provided by the merchant. We note that consumers are protected by law for disputes relating to fraudulent unauthorised payments.

million purchase transactions were made using cards in the UK in 2020⁴, compared to less than 6 million successful payments made using Open Banking⁵. Open Banking payments that then go on to be disputed (and on which consumers could potentially benefit from enhanced protections) will form only a very small subset of this overall usage. This implies the current level of consumer harm from disputes on RTP-based retail payments is likely extremely limited. This needs to be considered given the potential costs and risks of unintended consequences of any regulatory interventions (including discouraging usage and investment in RTP-based retail payment methods and curbing their emergence as a competitor to card payments).

- **More time should be given for market-based solutions to emerge:** Given the nascent stage and limited level of consumer harm, more time should be given to allow the market to deliver enhanced consumer protections. We see competition playing an important role in delivering these outcomes. Consumer protections are one of the many different elements that providers can compete upon to drive adoption of their relative propositions. [REDACTED]
[REDACTED] Retailers can also compete on the basis of the protections they offer to their customers (beyond a consumer's statutory rights) e.g. returns and exchange policies. In addition, in doing this work we would encourage the PSR to also consider other international markets that have more mature account-to-account retail payment methods (for example, iDEAL in the Netherlands). [REDACTED]
[REDACTED]
- **The introduction of chargeback-like protections to RTP-based retail payment methods may fundamentally change their economics:** The PSR appears to be considering the introduction of chargeback-like protections to RTP-based retail payment methods, similar to those currently provided by international card schemes. It is important to note that the relative costs and risks to PSPs involved from providing such arrangements has meant that the card payment ecosystem has in general settled on an *ad valorem* fee structure (i.e. fees are a percentage of the purchase price). In contrast, RTP-based retail payment methods are currently generally charged on a fixed fee basis (i.e. fees are a constant level regardless of purchase value). The PSR should be conscious that any significant widening of consumer protections, particularly those that expose PSPs to expanded liability, has the potential to fundamentally change the economics of providing these payment types. This may have implications for the costs of their provision (see next point) and for the overall set of providers that consider their provision to be economically viable.
- **Enhanced consumer protections will lead to increased costs, including for merchants and consumers:** As recognized by the PSR, enhanced consumer protections for RTP-based retail payments will increase the cost to PSPs of their provision. These costs could be both operational (e.g. running processes to manage disputes) and risk-based (e.g. underwriting liability for merchants). PSPs are likely to pass these increased costs on to their end-users, who in our case are our merchants. These increased costs may limit the rate of uptake of new RTP-based retail payments by merchants. Further, merchants themselves will then indirectly pass these costs on to their customers, who in many cases will be consumers.⁶ Any potential benefit consumers may receive from enhanced retail payment protections thus needs to be carefully balanced against the increased costs they will face.

For the reasons above, at this time we think the risks and costs of any material PSR interventions to enhance consumer protections for RTP-based retail payments outweigh the potential benefits. We would encourage the PSR to instead continue to monitor the growth and development of these

⁴ Source: UK Finance Card Expenditure statistics, Number of purchase transactions – All sectors

⁵ Source: Open Banking API Performance statistics, Total successful payments in the 12 months to January 2021

⁶ Surcharging for payment method is not allowed for most common payment types in the UK. However, merchants need to recover payment acceptance costs like any other costs, and these will feed into merchant's overall pricing decisions.

payment types, including the levels of consumer disputes and market-led developments in consumer protections.

If the PSR were minded to intervene, we would suggest consideration of a coordination/facilitation type role between relevant industry participants. In this regard, we think the following are potential areas where facilitating coordinated action between industry participants could help enhance consumer protection without being overly prescriptive or burdensome:

- Supporting further development of common dispute resolution communication frameworks for use when a consumer-to-business PIS payment is made and is subsequently disputed. This would provide comfort and clarity to consumers on the different roles and responsibilities of different parties involved in a PIS payment.
- Supporting development of an accreditation scheme where PIS providers commit to certain actions and minimum standard levels of service in the event of disputed payments. This scheme could be associated with a “check-mark” type branded logo that over time would build brand recognition and consumer trust.

We think there is a potential for an independent open banking future entity, such as currently proposed by UK Finance to succeed the Open Banking Implementation Entity, to play a role in taking forward work in some of these areas. We note that UK Finance proposal for the open banking future entity suggests that in the future members may decide there is a role for the Future Entity to develop a Payment Arrangement to provide a more rigorous legal and governance framework for open banking payments.

We would welcome the opportunity to discuss these issues further with the PSR.

Sincerely,



HSBC Bank Plc

HSBC BANK PLC

CONSUMER PROTECTION IN INTERBANK PAYMENTS

CONSULTATION PAPER

RESPONSE TO PSR CONSULTATIONPAPER DATED FEBRUARY 2021

8 April 2021

COVER SUBMISSION

HSBC Bank plc ('**HSBC**') recognises that there is a relative gap in protection when consumers are dissatisfied with goods and services which were paid for using interbank systems, compared with payment options available for debit or credit cards, or Direct Debit. We agree that there is currently a lack of consumer awareness which may restrict effective decision making, creating the potential for customer harm.

HSBC also acknowledges that the purchase of goods and services made by Faster Payments ('**FPS**') is growing and has the potential to grow to scale, potentially competing with the volumes and values of credit and debit cards. The anticipated growth of payments made via Open Banking / Payment Initiation Service Providers ('**PISPs**') as an alternative to card payments also highlights the need to carefully evaluate comparable protections. Use of FPS for the purchase of goods and services online was not envisaged when FPS was originally developed, and as a result the existing functionality and commercial model of the FPS service was not designed with this in mind. We agree that now is the right time to evaluate the options available to ensure the right consumer outcomes as the use of FPS continues to evolve.

Notwithstanding our recognition of potential eco systems changes, the introduction of a new consumer protection framework for interbank payments in the UK would be a complex undertaking, with major implications for consumers and participants in the payments market. Prior to undertaking any changes an objective assessment of the options is needed with careful judgement on whether changes would be proportionate to the provision of a low cost, high volume, open payment service. HSBC believes that it is unlikely that it will be possible to continue to provide interbank payments on a comparable cost base to the current model, with a protections framework as described in the Call for Views.

HSBC's view is therefore that much more work is needed to define the potential options for any such protection framework and for a full economic analysis to be undertaken, to understand the costs and benefits to the UK for those options. This work is necessary to determine whether and how intervention on this issue can be proportionate to the impacts. We believe that the analysis must be focused on:

- Trade dispute use cases only. Specifically, we believe business-to-business transactions (typically under contract) and person-to-person transactions (akin to cash) must remain out of scope.
- That the card schemes (and Direct Debit Scheme) do not provide an automatic right to a refund today and there are a number of ways in which the commercial and first party fraud risk is managed and how redress is funded. The table below sets this out. Mechanisms to control risk will be needed to be replicated in an interbank model;

- Any such framework cannot be established on a voluntary or partial coverage basis. All PSPs and retailers will need to be in scope and held to the same standards of protection;
- Whilst the industry may be able to establish the framework and process, and play a role in bearing risk, ultimately, the liability framework for goods and services sold, must sit with the seller rather than the payment rail, as is the case for all comparable protection models. A clear and commercially viable framework will be needed that ensures all parties are able to share the operational and cost burden and places risk at the appropriate place in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship according to the risk. This framework will need to include who is best placed to adjudicate on claims with a mechanism for access to information assess customer redress claims;
- Currently all business accounts are Faster Payments and Direct Credit addressable. Depending upon the consumer protection model identified, a risk and liability is created for the seller's PSP that will effectively mean those payments will need to be treated as a line of credit, assessed on that basis and with a supporting contractual change of relationship. This therefore means PSPs will have a requirement for associated commercial terms and a model to assess, manage and monitor the risk exposure for the retailer PSP;
- From an Open Banking perspective, it will be appropriate that where a PISP holds the relationship with the merchant, the PISP bears the risk and control, with a model determined that allows appropriate oversight so ASPSPs are clear on the grounds for reimbursement;
- A consumer protections framework for interbank payments would require a cross industry operational model which could mirror some of the established provisions and processes used successfully for card payments. This model would need to be based on appropriate parameters for claims (e.g. nature, value and time-limit on claims), claims process, assess the validity of the claim against an agreed burden of proof and create provisions for the ring fencing of redress amounts and dispute handling. This is a highly complex piece of work and a major new operational process would be needed;
- Given that all business accounts will need new commercial terms and a credit risk assessment, the set-up of a new framework would be significant undertaking with several years of work that is also unlikely to be welcomed by business community;
- A broad consumer protections framework will fundamentally change the low cost, low friction nature of interbank payments in the UK. Our expectation is that the cost of interbank payments will rise to be akin to card payment processing and greater interaction will be needed between PSPs and their customers receiving Faster

Payments. As a result, some businesses may want to stop accepting payment by Faster Payments and some may need to be excluded on the basis of risk. Likewise, this risk this is currently disassociated with PISP business models;

- There may be an impact on the attractiveness of Faster Payments for direct participation and the potential for participants (direct and indirect) to exit the market, and
- A significant technical change to payment journeys is required across all channels to ensure that payments can be correctly identified as falling within the scope of a consumer protections framework, with the purpose of the payment identified and recorded. Whilst this would be a technically straightforward change for PISP initiated payment, for interbank payments more broadly, it would be a major undertaking. Our view is that it is best considered as part of New Payments Architecture, which can be designed with this purpose in mind and the flexibility of enhanced data alongside the payment, rather than requiring wholesale change on a payment infrastructure with limited data fields and an assumed near-term demise.
- Alternative models, such as 'protection insurance' or leaving the market to consumer choice should also be considered as counterfactuals.

HSBC understands from the PSR that whilst the Call for Views talks about 'consumer protections' the view is that any protections model would apply more broadly to those businesses and charities that the regulatory environment in the UK expects to be treated as consumers (i.e. micro businesses and small charities). We have answered the questions on this basis.

In addition, HSBC is of the strong view that it is not relevant to include Direct Credit payments in the scope for any consideration of a new protection framework. Consumers and most micro businesses do not have access to Bacs Direct Credit to make payments, particularly for the purchase of goods and services; nor is the market for Open Banking likely to expand to include Bacs Direct Credit. Our response to this Call for Views is therefore answered principally with Faster Payments in mind.

Table of different Consumer Protections

Payment Type	Limitations on redress	Liability model	Commercial Risk Control Tools
Credit Card and Debit Card	<p>Chargeback</p> <p>Generally, no minimum or maximum amount</p> <p>Time Frame, one of the following:</p> <ul style="list-style-type: none"> • 120-calendar days from when the services ceased with a maximum of 540-calendar days from the transaction settlement date for issues of interruption of ongoing services. • Between 15 and 120-calendar days from the transaction settlement date. • Between 15 and 120-calendar days from the delivery/cancellation date of the goods or services <p>Evidence based and burden of proof required that goods or service is not as described or faulty</p> <p>Cardholder must try to resolve dispute with the retailer before approaching the issuer and return of attempt to return goods where appropriate.</p>	<p>Chargeback is not legal protection</p> <p>Chargeback rules are managed by individual Card Scheme e.g. Amex, Mastercard and Visa</p> <p>Cardholders may dispute transactions, Issuers may submit a chargeback and merchant has right to challenge chargeback disputes. Card Schemes arbitrate where required.</p> <p>Amount of dispute is up to the value of the card transaction – not value of the services/ goods received</p> <p>Payment Service Regulations requires Card Issuer to refund unauthorised transactions within one business day, unless there is risk of first party fraud.</p>	<p>Merchant is recruited by merchant acquirer and signs a merchant service agreement which define commercials and operating requirements.</p> <p>Merchant Acquirer undertakes due diligence prior to accepting the new customer, including a detailed credit and risk assessment. As part of the signup process merchant acquirer must check Card Scheme terminated merchant list.</p> <p>Merchant acquirer at risk of possible chargebacks and if chargebacks are deemed by the Card Schemes excessive there are compliance programmes and fines for merchant acquirers to change</p>

Payment Type	Limitations on redress	Liability model	Commercial Risk Control Tools
			merchant behaviour.
Credit Card	Section 75 of the Consumer Credit Act Minimum & maximum value threshold limits on claims (>£100-<£30,000)	Credit Card issuer is jointly liable by law with merchant for any breach of contract.	As above
Direct Debit	Direct Debit Guarantee only applies where an error is made in the payment of your Direct Debit, for instance if a payment is taken on the incorrect date, or the wrong amount is collected. It cannot be used to address contractual disputes between the customer and the billing organisation.	Customer's bank will refund the customer immediately and seek refund from the billing organisation and its Bank/Bureau.	Vetting process, including credit assessment and service agreement on firms offering Direct Debits as payment PSP/bureau may set aside funds for risk of Direct Debit claims Originator may have service removed/ exited if excessive claims.

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?**

Taking questions 1 and 2 together:

- 1.1 Interbank payments in the UK are a success story. The near real-time functionality of Faster Payments has provided wide benefits for the UK economy. The flexibility and simplicity, means that Faster Payments is used for a vast range of different payment purposes, be it person-to-person, person-to-business or business-to-business payments and virtually all UK consumer current accounts are able to receive Faster Payments at no or low or no cost or credit check.
- 1.2 Bacs Direct Credit is much more established and remains a simple, secure, and reliable method to make and receive payments by electronic transfer. Bacs Direct Credit dramatically reduces the time and costs associated with legacy methods of payment processing and is widely used for a host of purposes, including salary, pension, benefit, supplier, dividend and insurance payments.
- 1.3 Faster Payments is primarily used for higher volume, lower value payments and are increasingly being used as a replacement for cash and cheques, supported by the growth in the number of people using online and mobile banking, making Faster Payments quick, cheap and convenient. However, the growth in Faster Payments has also been led by businesses, with four out of ten business-to-business payments made by Faster Payments in 2019.
- 1.4 Whilst Faster Payments and Bacs Direct Credit do not have the protection framework for trade disputes as is the case for card payments or Direct Debits, there are other protections for users in place. These include the industry-led Credit Payment Recovery process and, in the case of Faster Payments, where the customers' firm is a signatory to the Contingent Reimbursement Mechanism Code ('CRM'), for APP scams. More recently, the introduction of Secure Customer Authentication prevents unauthorised transactions.
- 1.5 The introduction of Confirmation of Payee ('CoP') also provides beneficiary validation for Faster Payments and CHAPS, and serves to defend against errors and some fraudulent activity, again where firms have chosen to participate and develop CoP functionality. As the PSR is aware, such measures are not universal across the industry, with different firms having chosen to invest or not, depending on their business model and availability to engage in new developments.

- 1.6 HSBC recognises there is a difference in the customer protection options for Faster Payments when they have been used for payment of unsatisfactory goods and services, when compared with payments made using the card schemes. The model in place in the UK is the same globally, including those countries such as the Netherlands and Singapore where use of interbank payments for retail purchases is widespread and commonplace.
- 1.7 HSBC also agrees that the lack of comprehensive scheme rules to deal with resolution of disputes and assign liability for unsatisfactory goods and services is an issue that should be considered as use of Faster Payments continues to evolve and increase. Our rationale includes:
- Without such a model, customers may pursue redress for trade disputes through the CRM, presenting the case as a purchase scam, out of frustration and understandable desperation to get their money back. Purchase scams, often with a lower value than more sophisticated investment or impersonation scams, currently make up the vast majority of APP scams by volume, creating a cost and operational burden which is inconsistent with the purpose of the Code. Trade disputes were not the original intention of the Code and we believe that many cases are buyer/seller disputes rather than scams. This may indicate that there is a customer requirement for protection, as payment offerings from retailers change and there is increasing retailer reliance on online sales instead of purchases in high street stores.
 - The Pay.UK research on ‘Consumer Perceptions of Payment Protections’ shows that consumers do not always consider protection when choosing how to pay, nor do they understand the difference between the protections available. This creates a potential for harm and we support consideration of how this can be fairly and proportionately addressed.
 - Whilst general awareness campaigns better education for consumers on protections available have a role to play as a measure to support customers to protect themselves, we accept that this cannot be regarded as a single solution to the potential for customer harm. There are however, opportunities for this to be improved, especially by retailers on the payment options offered.
 - However, we also recognise that this is only part of the answer and that this approach may not reach or be effective for those who are most vulnerable to harm when they experience a trade dispute.
 - HSBC believes that the right framework may support future growth of Open Banking and encourage customer confidence. Faster Payments will continue to

diversify as account aggregation models and Payment Initiation Services provide a wider range of opportunities to use Faster Payments for payment.

- 1.8 However, HSBC believes it is too early to conclude, as stated in the Call for Views, that there are ‘insufficient’ consumer protections, or that industry is ‘not providing appropriate’ protections for interbank payments. There are *different* consumer protections in interbank payments compared with the card schemes as protections for APP Scams and misdirected payments. Crucially, this difference largely reflects the original design and purpose of interbank payments, which was not intended for consumer purchase of goods and services. Interbank payment systems are designed for high volume and low cost payments to known and trusted beneficiaries. In the case of Faster Payments these are single immediate payment and standing orders; and for Bacs Direct Credits, these are typically largely corporate salary, pension and Government payments (e.g. Universal Credit).
- 1.9 To determine that the current structure of consumer protections is ‘insufficient’ or to say that it does not have ‘appropriate provision’ requires a judgement that the gap in protections is not proportionate to the model for a low cost, high volume, open payment service. Careful consideration is needed to assess whether the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes.
- 1.10 HSBC believes it is this balance, in light of the potential implications for interbank payments, that should underpin any determination for the need for intervention.

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)?**

- 3.1 HSBC notes that the Call for Views already considers intervention given the potential growth in Open Banking using Faster Payments for the purchase of goods and services. Such intervention would take place in a nascent market when, in theory, there could be competitively motivated offerings or industry intervention in the PISP model to address this without the need for regulatory action.
- 3.2 It is clear that the industry is already being responsive to the need for greater consumer protections. Some innovative offerings for retail payments using Faster Payments include a consumer protection framework, such as PayPal or the ‘Pay by Bank’ offering from MasterCard, which provide a parallel offering similar to chargeback. With some increased investment, consumer awareness of the protection on these propositions could drive preferential use.

- 3.3 Likewise, work underway at the Open Banking Implementation entity on protections shows that industry is being proactive to consider change.
- 3.4 Subject to a clear need for change being established, HSBC's view is that on Open Banking payments, an industry solution is likely to be needed to avoid fragmentation inconsistent customer outcomes. Whilst the PISP market (which includes HSBC UK Bank plc) would welcome the benefits of consumer protections to help the market flourish, most firms are not set up to establish a commercial credit risk contract with retailers and the risk is currently disassociated from the business model. Our view is therefore that cross industry leadership is needed to ensure that if such a framework is required, risk is placed at the appropriate point in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship of that risk.
- 3.5 In terms of consumer protections for wider interbank payments, the complexity and potential market impacts mean it is highly unlikely that a voluntary industry approach could be taken.

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?**
- 4.1 No. HSBC's practice is that interbank scheme payments and on-us payments are treated in the same way for customers. Our assumption is that any regulatory or industry intervention on an interbank system would need to include on-us payments within the scope.
5. **Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?**
- 5.1 HSBC agrees with the analysis set out in the Call for Views that points to purchase transactions (payments for goods and services) as the key gap described in payment protections when compared with other payment types used for the purchase of goods and services.
- 5.2 Putting aside the implications of introducing protections for these payments, HSBC accepts that there is a difference compared with the card scheme models for this use case and that the customer experience is different. From a consumer lens, a payment from a debit card comes from their bank account, which is no different to a payment initiated from their account directly.

- 5.3 Given that it is the comparative gap that the PSR calls out as creating the potential for customer detriment and harm, HSBC's view is that it will be important to consider the scope of any future protections model with reference to the protections on card payments. Therefore, it is our view that *only* use cases related to purchase transactions should be considered.
- 5.4 Specifically, we believe business-to-business transactions (typically under contract) and person-to-person transactions (akin to cash) must remain out of scope.
- 5.5 Any introduction of payment protection will need to be very clear to the consumer whether it falls under the banner of protection or not. The model for card payments provides a clear model that all payments are protected because of the nature of what they can be used for, above a value threshold and within a clear time frame.
- 5.6 For interbank payments, this is more difficult to define given that all accounts are able to receive a Faster Payment or Bacs Direct Credit payment, from both personal and business accounts and for any purpose.
- 5.7 However, from a consumer lens it may not be clear whether the payment is to a 'person' or a 'merchant' with the market for purchasing goods and services often blurred (such as Facebook Marketplace or Gumtree). HSBC is not proposing a wider scope, but notes that even with a clear framework for protection where there is a defined 'consumer to merchant' model in the traditional sense, consumers may still experience gaps in protection.
- 5.8 Likewise, there is not always a clear distinction what is a fraud and what is a dispute, with a blurred line between purchase scams, customers changing their mind and poor products/business practice in accurate descriptions and supply of goods/services. In line with the card model, a clear burden of proof will be required in any future protection model, a right for the business to defend the claim and parameters on the nature of claims accepted, such as within a clear and short defined time period and over a certain value.
- 5.9 Regardless of these points, HSBC's view is that to determine that a protections framework 'should be introduced' – as per the question - requires a judgement that the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes. is not proportionate to the provision of a low cost, high volume, open payment service. HSBC believes that it is unlikely that it will be possible to continue to provide universal, low cost interbank payments with a protections framework as described in the Call for Views.
- 5.10 HSBC's view is therefore that more work is needed to define the potential options for any such protection framework and for a full economic analysis to understand

the costs and benefits to the UK economy for those options, in order to determine whether and how intervention on this issue can be proportionate to the impacts. This should include customer and merchant insight on willingness to pay and alternative models such as 'insurance' options akin to sending a parcel by registered post.

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)?**

Taking questions 6 and 7 together:

- 7.1 Ultimately the liability framework for goods and services sold, must sit with the seller rather than the payment rail. This is the case with Direct Debits and card payments with the contractual relationship for the provision of payment services framed accordingly. The seller's PSP may be able to facilitate the dispute management as part of the commercial arrangement of the payment service provided, and bear risk through the commercial arrangement, but it is not appropriate for the PSP or the PISP to bear the liability. The same process applies to both the card schemes and the Direct Debit Guarantee, where the liability sits with the merchant or payment originator.
- 7.2 Any change in the liability framework for interbank payments will fundamentally change the commercial relationship with businesses accepting FPS payments for this purpose there are material impacts for the provision of interbank payments in the UK.
- 7.3 All business accounts are currently able to receive a Faster Payment or Bacs Direct Credit payment. A protections model for retail purchases means that there will be a liability for refunding the customer that we would expect to be aligned with the card schemes, placing that liability on the seller, with provisions in place to manage that liability risk to the seller's PSP depending on the nature of the seller business model. For example, businesses may be expected to hold a cash reserve for the purpose of liability claims or a proportion of the payment received may not be passed to the seller until after such time the risk of a claim has passed.
- 7.4 This change in model introduces a risk and liability to the seller's PSP that will effectively mean those payments will need to be treated as a line of credit, assessed on that basis and with a supporting contractual change of relationship. As is the case

with the payment protection model for card payments and payments collected by Direct Debit, businesses need to be assessed on their risk profile with clear rules and processes in place for the management of claims, disputes and reserves. This places considerable new cost and friction into the payment service and may see some businesses and PSPs unable to accept payment by the schemes within scope, which is likely to migrate volume to the higher cost CHAPS option.

- 7.5 Furthermore, under the cards schemes, issuers and acquirers are able to place disputed transactions on hold pending investigation. Currently, credit transfers do not enable this. There are currently limited circumstances where a PSP is legally able to put funds on suspense, which do not include for a commercial dispute. As a result, a changes to the Payment Services Regulations 2017 may be required to ring-fence funds if this cannot be dealt with through commercial terms.
- 7.6 Under Open Banking, it will also be important to ensure that the party who has the commercial relationship with the retailer (or seller of services), leads on the commercial management of the risk of a consumer dispute. As the firm providing that payment service to the party and therefore acting on behalf of the merchant, the PISP is in a unique position to manage the risk. This places risk at the appropriate place in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship of that risk. However, such a model will also need to ensure appropriate oversight so that ASPSPs are clear on the grounds for reimbursement.

8. **Should any new payment protection arrangements be extended to recurring and variable 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?**

Taking questions 8 and 9 together:

- 9.1 Customers are unlikely to differentiate between single payments and recurring payments, therefore in principle we would expect any new payment protection arrangement to be extended to include both recurring and variable payments.
- 9.2 Given that card payments protections extend to payments under a continuous payment authority, our assumption is that protections would extend to such payments. We would expect the last payment to be treated in the same way as a Single Immediate Payment.
- 9.3 Separate consideration may be needed for new payment types currently proposed for open banking transactions, such as sweeping and variable recurring payments.

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?**
- 10.1 Protections in place on card payments do not provide an automatic right to redress for customers. Depending on the framework, there are de minimus value thresholds and fixed time bands on claims, as well as a structured approach to the burden of proof required to agree a refund.
- 10.2 HSBC's view is therefore that more work is needed to define the potential options for a protection framework and for a full economic analysis to understand the costs and benefits to the UK economy for those options, in order to determine whether and how intervention on this issue can be proportionate to the impacts.
- 10.3 Our strong view is that any future framework for interbank payments will need an equivalent structure to the cards model, to support the management of risk and to ensure protection is proportionate. A time limit on claims will be crucial to ensure businesses do not face an unlimited and uncertain liability which is difficult to codify in a commercial relationship for payment provision. This has proven to be a significant barrier for businesses wishing to offer customers Direct Debits.
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)?**

Taking questions 11 to 15 together:

- 15.1 HSBC is not currently able to identify the purpose of a Faster Payment received into a business account, or determine whether the payment is from a personal or business account.
- 15.2 For payments made, information on the beneficiary as a consumer of business, is collected as part of the CoP check, for new beneficiary payments made by Faster

Payments, although for payments made to PSPs outside the CoP service, this information may not be checked.

- 15.3 For Open Banking payments, the PISP is in control of any ancillary data collected alongside the payment and HSBC does not have visibility of that information for payments made or received (with the exception of where we are acting as the PISP). However, we believe it would be a straightforward technical change to add this as a marker to PISP payments.
- 15.4 HSBC believes that the payer/payee type, use case, transaction value and time since the transaction will be critical components to determine which payments are covered under payment protection. Such parameters, as are standard in other payment protection frameworks, are important measures for the control of risk and liability and therefore help to support unintended consequences of such a change in the interbank space. A fundamental change in the relationship between the seller and its PSP will be required to reflect the commercial risk of the payment service.
- 15.5 HSBC's view is that a significant technical change to payment journeys would be required across all channels to ensure that payments can be correctly identified as falling within the scope of a consumer protections framework, with the purpose of the payment identified and recorded. This is a major undertaking that would need to be replicated for indirect access participants and PISPs to ensure a consistent approach to the delivery of protections. HSBC's view is that this is best considered as part of New Payments Architecture, which can be designed with this purpose in mind, rather than requiring wholesale change on a payment infrastructure with limited data fields and an assumed near-term demise.

Questions related to how consumers might claim protection

- 16. **To what extent would a consumer protection governance process be beneficial for interbank payments?**
- 16.1 HSBC recognises that there is a relative gap in consumer protection when consumers are dissatisfied with goods and services which were paid for using interbank systems, compared with payment options available for debit or credit cards, or Direct Debit. We agree that there is currently a lack of consumer awareness which may restrict effective decision making creating the potential for customer harm.
- 16.2 If it is determined that a consumer protections framework for trade disputes is required on interbank payments, a governance process will be essential to enable all parts of the industry that initiate interbank payments are able to participate. A

partial solution would not be acceptable as there are clear risks of customer detriment.

- 16.3 Given the parallels to the requirements under the card schemes, HSBC's view is that experts on the card protection framework will be able to support the development of a parallel interbank framework, process and governance framework.
- 16.4 However, our strong view remains that much more work is needed to define the range of options for how a consumer protections framework for interbank payments would work in practice, including payments initiated via a PISP.
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 enquiries and issues with other parties involved in a disputed interbank payment?**

Taking questions 17 to 22 together:

- 22.1 HSBC's agrees that an important part of customer protection on different payments is the customer understanding of the protection available (or not) and who to approach when something goes wrong. All parties involved in providing a payment service have a key role to play in making those protections clear, including the merchant.
- 22.2 Whilst general awareness campaigns and resources for consumers have a role to play as a measure to support customers to protect themselves, we accept that this cannot be regarded as a single solution to the potential for customer harm. There are however, opportunities for this to be improved, especially by retailers on the

payment options offered, or for trust marks or in-journey messaging to help make it clearer to consumers when protection is available and when it is not.

- 22.3 Like the PSR, our expectation is that customers will typically approach their bank once they have already raised a dispute with the retailer and found that avenue has not provided the recourse they were seeking. On PISP payments, we have not received any customer complaints to date where goods/services were not received on PISP payments, which is not unexpected as the volumes of PISP e-commerce payments remain low.
- 22.4 Current communication channels with other banks are established for credit payment recovery and financial crime purposes. These are not designed or resourced for disputed interbank payments and would not handle such enquiries today. More importantly, PSPs are not best placed to adjudicate on merchant disputes
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? *[payment system rule requiring adherence to specific requirements and processes, payment governance system, industry led standards on payment protection]***
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?**

Taking questions 23 to 25 together:

- 25.1 HSBC's view is that the governance process to support a consumer protections framework for interbank payments would need to be both **enforceable** and achieve **comprehensive coverage** across all PSPs and PISPs offering interbank payments. A solution which only captures direct participants or is voluntary will not provide consumers with certainty and will lead to unfair market outcomes. This approach has been tested on both APP Scams and Confirmation of Payee, and in both cases led to different standards of customer protection which HSBC does not regard as acceptable for the industry or end users.
- 25.2 HSBC suggests that different options for the operation and governance of an interbank protections framework should be considered as part of the economic analysis we believe is needed, in order to establish how a solution which is comprehensive across the market and will work effectively, can be established in a way which is proportionate to the market. The analysis must consider all consequences of introducing such a model – intended and unintended - in order to

determine whether and how intervention on this issue can be proportionate to the impacts. Analysis should also consider who is best placed to adjudicate and enforce claims across the ecosystem.

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?**
- 1.11 Taking questions 26 to 29 together, HSBC's view is that introducing a new consumer protection framework for interbank payments in the UK is deeply complex and will have major implications for the UK payments market. To determine that a protections framework is needed requires a clear and evidence-based judgement to assess whether the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes.
- 29.1 HSBC believes that it is unlikely that it will be possible to continue to provide low cost interbank payments with a protections framework as described in the Call for Views and therefore more work is needed to define the potential options for any such protection framework. A full economic analysis is needed to understand the costs and benefits to the UK economy for those options. The analysis must consider all consequences of introducing such a model – both intended and unintended - in order to determine whether and how intervention on this issue can be proportionate to the impacts.
 - 29.2 HSBC broadly recognises the costs and benefits of a consumer protections model for interbank payments as set out in the Call for Views, but believe that a number of the costs and unintended consequences would be severe, particularly for smaller PSPs and businesses receiving payments by Faster Payments (and Direct Credits if in scope).
 - 29.3 As noted in earlier questions, whilst PSPs and the payments industry may be able to establish the process and governance for any such protections framework, the commercial risk and liability of accepting payments this way, will need to sit with the

receiving businesses as a credit risk. All customer contracts will need to change and appropriate commercial terms put in place.

HSBC UK Bank Plc

HSBC UK BANK PLC

CONSUMER PROTECTION IN INTERBANK PAYMENTS

CONSULTATION PAPER

RESPONSE TO PSR CONSULTATIONPAPER DATED FEBRUARY 2021

8 April 2021

COVER SUBMISSION

HSBC UK Bank plc ('**HSBC UK**') recognises that there is a relative gap in protection when consumers are dissatisfied with goods and services which were paid for using interbank systems, compared with payment options available for debit or credit cards, or Direct Debit. We agree that there is currently a lack of consumer awareness which may restrict effective decision making, creating the potential for customer harm.

HSBC UK also acknowledges that the purchase of goods and services made by Faster Payments ('**FPS**') is growing and has the potential to grow to scale, potentially competing with the volumes and values of credit and debit cards. The anticipated growth of payments made via Open Banking / Payment Initiation Service Providers ('**PISPs**') as an alternative to card payments also highlights the need to carefully evaluate comparable protections. Use of FPS for the purchase of goods and services online was not envisaged when FPS was originally developed, and as a result the existing functionality and commercial model of the FPS service was not designed with this in mind. We agree that now is the right time to evaluate the options available to ensure the right consumer outcomes as the use of FPS continues to evolve.

Notwithstanding our recognition of potential eco systems changes, the introduction of a new consumer protection framework for interbank payments in the UK would be a complex undertaking, with major implications for consumers and participants in the payments market. Prior to undertaking any changes an objective assessment of the options is needed with careful judgement on whether changes would be proportionate to the provision of a low cost, high volume, open payment service. HSBC UK believes that it is unlikely that it will be possible to continue to provide interbank payments on a comparable cost base to the current model, with a protections framework as described in the Call for Views.

HSBC UK's view is therefore that much more work is needed to define the potential options for any such protection framework and for a full economic analysis to be undertaken, to understand the costs and benefits to the UK for those options. This work is necessary to determine whether and how intervention on this issue can be proportionate to the impacts. We believe that the analysis must be focused on:

- Trade dispute use cases only. Specifically, we believe business-to-business transactions (typically under contract) and person-to-person transactions (akin to cash) must remain out of scope.
- That the card schemes (and Direct Debit Scheme) do not provide an automatic right to a refund today and there are a number of ways in which the commercial and first party fraud risk is managed and how redress is funded. The table below sets this out. Mechanisms to control risk will be needed to be replicated in an interbank model;

- Any such framework cannot be established on a voluntary or partial coverage basis. All PSPs and retailers will need to be in scope and held to the same standards of protection;
- Whilst the industry may be able to establish the framework and process, and play a role in bearing risk, ultimately, the liability framework for goods and services sold, must sit with the seller rather than the payment rail, as is the case for all comparable protection models. A clear and commercially viable framework will be needed that ensures all parties are able to share the operational and cost burden and places risk at the appropriate place in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship according to the risk. This framework will need to include who is best placed to adjudicate on claims with a mechanism for access to information assess customer redress claims;
- Currently all business accounts are Faster Payments and Direct Credit addressable. Depending upon the consumer protection model identified, a risk and liability is created for the seller's PSP that will effectively mean those payments will need to be treated as a line of credit, assessed on that basis and with a supporting contractual change of relationship. This therefore means PSPs will have a requirement for associated commercial terms and a model to assess, manage and monitor the risk exposure for the retailer PSP;
- From an Open Banking perspective, it will be appropriate that where a PISP holds the relationship with the merchant, the PISP bears the risk and control, with a model determined that allows appropriate oversight so ASPSPs are clear on the grounds for reimbursement;
- A consumer protections framework for interbank payments would require a cross industry operational model which could mirror some of the established provisions and processes used successfully for card payments. This model would need to be based on appropriate parameters for claims (e.g. nature, value and time-limit on claims), claims process, assess the validity of the claim against an agreed burden of proof and create provisions for the ring fencing of redress amounts and dispute handling. This is a highly complex piece of work and a major new operational process would be needed;
- Given that all business accounts will need new commercial terms and a credit risk assessment, the set-up of a new framework would be significant undertaking with several years of work that is also unlikely to be welcomed by business community;
- A broad consumer protections framework will fundamentally change the low cost, low friction nature of interbank payments in the UK. Our expectation is that the cost of interbank payments will rise to be akin to card payment processing and greater interaction will be needed between PSPs and their customers receiving Faster

Payments. As a result, some businesses may want to stop accepting payment by Faster Payments and some may need to be excluded on the basis of risk. Likewise, this risk this is currently disassociated with PISP business models; and

- A significant technical change to payment journeys is required across all channels to ensure that payments can be correctly identified as falling within the scope of a consumer protections framework, with the purpose of the payment identified and recorded. Whilst this would be a technically straightforward change for PISP initiated payment, for interbank payments more broadly, it would be a major undertaking. Our view is that it is best considered as part of New Payments Architecture, which can be designed with this purpose in mind and the flexibility of enhanced data alongside the payment, rather than requiring wholesale change on a payment infrastructure with limited data fields and an assumed near-term demise.
- Alternative models, such as ‘protection insurance’ or leaving the market to consumer choice should also be considered as counterfactuals.

HSBC UK understands from the PSR that whilst the Call for Views talks about ‘consumer protections’ the view is that any protections model would apply more broadly to those businesses and charities that the regulatory environment in the UK expects to be treated as consumers (i.e. micro businesses and small charities). We have answered the questions on this basis.

In addition, HSBC UK is of the strong view that it is not relevant to include Direct Credit payments in the scope for any consideration of a new protection framework. Consumers and most micro businesses do not have access to Bacs Direct Credit to make payments, particularly for the purchase of goods and services; nor is the market for Open Banking likely to expand to include Bacs Direct Credit. Our response to this Call for Views is therefore answered principally with Faster Payments in mind.

Table of different Consumer Protections

Payment Type	Limitations on redress	Liability model	Commercial Risk Control Tools
Credit Card and Debit Card	<p>Chargeback</p> <p>Generally, no minimum or maximum amount</p> <p>Time Frame, one of the following:</p> <ul style="list-style-type: none"> • 120-calendar days from when the services ceased with a maximum of 540-calendar days from the transaction settlement date for issues of interruption of ongoing services. • Between 15 and 120-calendar days from the transaction settlement date. • Between 15 and 120-calendar days from the delivery/cancellation date of the goods or services <p>Evidence based and burden of proof required that goods or service is not as described or faulty</p> <p>Cardholder must try to resolve dispute with the retailer before approaching the issuer and return of attempt to return goods where appropriate.</p>	<p>Chargeback is not legal protection</p> <p>Chargeback rules are managed by individual Card Scheme e.g. Amex, Mastercard and Visa</p> <p>Cardholders may dispute transactions, Issuers may submit a chargeback and merchant has right to challenge chargeback disputes. Card Schemes arbitrate where required.</p> <p>Amount of dispute is up to the value of the card transaction – not value of the services/ goods received</p> <p>Payment Service Regulations requires Card Issuer to refund unauthorised transactions within one business day, unless there is risk of first party fraud.</p>	<p>Merchant is recruited by merchant acquirer and signs a merchant service agreement which define commercials and operating requirements.</p> <p>Merchant Acquirer undertakes due diligence prior to accepting the new customer, including a detailed credit and risk assessment. As part of the signup process merchant acquirer must check Card Scheme terminated merchant list.</p> <p>Merchant acquirer at risk of possible chargebacks and if chargebacks are deemed by the Card Schemes excessive there are compliance programmes and fines for merchant acquirers to change</p>

Payment Type	Limitations on redress	Liability model	Commercial Risk Control Tools
			merchant behaviour.
Credit Card	Section 75 of the Consumer Credit Act Minimum & maximum value threshold limits on claims (>£100-<£30,000)	Credit Card issuer is jointly liable by law with merchant for any breach of contract.	As above
Direct Debit	Direct Debit Guarantee only applies where an error is made in the payment of your Direct Debit, for instance if a payment is taken on the incorrect date, or the wrong amount is collected. It cannot be used to address contractual disputes between the customer and the billing organisation.	Customer's bank will refund the customer immediately and seek refund from the billing organisation and its Bank/Bureau.	Vetting process, including credit assessment and service agreement on firms offering Direct Debits as payment PSP/bureau may set aside funds for risk of Direct Debit claims Originator may have service removed/ exited if excessive claims.

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?**

Taking questions 1 and 2 together:

- 1.1 Interbank payments in the UK are a success story. The near real-time functionality of Faster Payments has provided wide benefits for the UK economy. The flexibility and simplicity, means that Faster Payments is used for a vast range of different payment purposes, be it person-to-person, person-to-business or business-to-business payments and virtually all UK consumer current accounts are able to receive Faster Payments at no or low or no cost or credit check.
- 1.2 Bacs Direct Credit is much more established and remains a simple, secure, and reliable method to make and receive payments by electronic transfer. Bacs Direct Credit dramatically reduces the time and costs associated with legacy methods of payment processing and is widely used for a host of purposes, including salary, pension, benefit, supplier, dividend and insurance payments.
- 1.3 Faster Payments is primarily used for higher volume, lower value payments and are increasingly being used as a replacement for cash and cheques, supported by the growth in the number of people using online and mobile banking, making Faster Payments quick, cheap and convenient. However, the growth in Faster Payments has also been led by businesses, with four out of ten business-to-business payments made by Faster Payments in 2019.
- 1.4 Whilst Faster Payments and Bacs Direct Credit do not have the protection framework for trade disputes as is the case for card payments or Direct Debits, there are other protections for users in place. These include the industry-led Credit Payment Recovery process and, in the case of Faster Payments, where the customers' firm is a signatory to the Contingent Reimbursement Mechanism Code ('CRM'), for APP scams. More recently, the introduction of Secure Customer Authentication prevents unauthorised transactions.
- 1.5 The introduction of Confirmation of Payee ('CoP') also provides beneficiary validation for Faster Payments and CHAPS, and serves to defend against errors and some fraudulent activity, again where firms have chosen to participate and develop CoP functionality. As the PSR is aware, such measures are not universal across the industry, with different firms having chosen to invest or not, depending on their business model and availability to engage in new developments.

- 1.6 HSBC UK recognises there is a difference in the customer protection options for Faster Payments when they have been used for payment of unsatisfactory goods and services, when compared with payments made using the card schemes. The model in place in the UK is the same globally, including those countries such as the Netherlands and Singapore where use of interbank payments for retail purchases is widespread and commonplace.
- 1.7 HSBC UK also agrees that the lack of comprehensive scheme rules to deal with resolution of disputes and assign liability for unsatisfactory goods and services is an issue that should be considered as use of Faster Payments continues to evolve and increase. Our rationale includes:
- Without such a model, customers may pursue redress for trade disputes through the CRM, presenting the case as a purchase scam, out of frustration and understandable desperation to get their money back. Purchase scams, often with a lower value than more sophisticated investment or impersonation scams, currently make up the vast majority of APP scams by volume, creating a cost and operational burden which is inconsistent with the purpose of the Code. Trade disputes were not the original intention of the Code and we believe that many cases are buyer/seller disputes rather than scams. This may indicate that there is a customer requirement for protection, as payment offerings from retailers change and there is increasing retailer reliance on online sales instead of purchases in high street stores.
 - The Pay.UK research on 'Consumer Perceptions of Payment Protections' shows that consumers do not always consider protection when choosing how to pay, nor do they understand the difference between the protections available. This creates a potential for harm and we support consideration of how this can be fairly and proportionately addressed.
 - Whilst general awareness campaigns better education for consumers on protections available have a role to play as a measure to support customers to protect themselves, we accept that this cannot be regarded as a single solution to the potential for customer harm. There are however, opportunities for this to be improved, especially by retailers on the payment options offered.
 - However, we also recognise that this is only part of the answer and that this approach may not reach or be effective for those who are most vulnerable to harm when they experience a trade dispute.
 - HSBC UK believes that the right framework may support future growth of Open Banking and encourage customer confidence. Faster Payments will continue to

diversify as account aggregation models and Payment Initiation Services provide a wider range of opportunities to use Faster Payments for payment.

- 1.8 However, HSBC UK believes it is too early to conclude, as stated in the Call for Views, that there are 'insufficient' consumer protections, or that industry is 'not providing appropriate' protections for interbank payments. There are *different* consumer protections in interbank payments compared with the card schemes as protections for APP Scams and misdirected payments. Crucially, this difference largely reflects the original design and purpose of interbank payments, which was not intended for consumer purchase of goods and services. Interbank payment systems are designed for high volume and low cost payments to known and trusted beneficiaries. In the case of Faster Payments these are single immediate payment and standing orders; and for Bacs Direct Credits, these are typically largely corporate salary, pension and Government payments (e.g. Universal Credit).
- 1.9 To determine that the current structure of consumer protections is 'insufficient' or to say that it does not have 'appropriate provision' requires a judgement that the gap in protections is not proportionate to the model for a low cost, high volume, open payment service. Careful consideration is needed to assess whether the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes.
- 1.10 HSBC UK believes it is this balance, in light of the potential implications for interbank payments, that should underpin any determination for the need for intervention.

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)?**

- 3.1 HSBC UK notes that the Call for Views already considers intervention given the potential growth in Open Banking using Faster Payments for the purchase of goods and services. Such intervention would take place in a nascent market when, in theory, there could be competitively motivated offerings or industry intervention in the PISP model to address this without the need for regulatory action.
- 3.2 It is clear that the industry is already being responsive to the need for greater consumer protections. Some innovative offerings for retail payments using Faster Payments include a consumer protection framework, such as PayPal or the 'Pay by Bank' offering from MasterCard, which provide a parallel offering similar to chargeback. With some increased investment, consumer awareness of the protection on these propositions could drive preferential use.

- 3.3 Likewise, work underway at the Open Banking Implementation entity on protections shows that industry is being proactive to consider change.
- 3.4 Subject to a clear need for change being established, HSBC UK's view is that on Open Banking payments, an industry solution is likely to be needed to avoid fragmentation inconsistent customer outcomes. Whilst the PISP market (which includes HSBC UK UK Bank plc) would welcome the benefits of consumer protections to help the market flourish, most firms are not set up to establish a commercial credit risk contract with retailers and the risk is currently disassociated from the business model. Our view is therefore that cross industry leadership is needed to ensure that if such a framework is required, risk is placed at the appropriate point in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship of that risk.
- 3.5 In terms of consumer protections for wider interbank payments, the complexity and potential market impacts mean it is highly unlikely that a voluntary industry approach could be taken.

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?**
 - 4.1 No. HSBC UK's practice is that interbank scheme payments and on-us payments are treated in the same way for customers. Our assumption is that any regulatory or industry intervention on an interbank system would need to include on-us payments within the scope.
- 5. **Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?**
 - 5.1 HSBC UK agrees with the analysis set out in the Call for Views that points to purchase transactions (payments for goods and services) as the key gap described in payment protections when compared with other payment types used for the purchase of goods and services.
 - 5.2 Putting aside the implications of introducing protections for these payments, HSBC UK accepts that there is a difference compared with the card scheme models for this use case and that the customer experience is different. From a consumer lens, a payment from a debit card comes from their bank account, which is no different to a payment initiated from their account directly.

- 5.3 Given that it is the comparative gap that the PSR calls out as creating the potential for customer detriment and harm, HSBC UK's view is that it will be important to consider the scope of any future protections model with reference to the protections on card payments. Therefore, it is our view that *only* use cases related to purchase transactions should be considered.
- 5.4 Specifically, we believe business-to-business transactions (typically under contract) and person-to-person transactions (akin to cash) must remain out of scope.
- 5.5 Any introduction of payment protection will need to be very clear to the consumer whether it falls under the banner of protection or not. The model for card payments provides a clear model that all payments are protected because of the nature of what they can be used for, above a value threshold and within a clear time frame.
- 5.6 For interbank payments, this is more difficult to define given that all accounts are able to receive a Faster Payment or Bacs Direct Credit payment, from both personal and business accounts and for any purpose.
- 5.7 However, from a consumer lens it may not be clear whether the payment is to a 'person' or a 'merchant' with the market for purchasing goods and services often blurred (such as Facebook Marketplace or Gumtree). HSBC UK is not proposing a wider scope, but notes that even with a clear framework for protection where there is a defined 'consumer to merchant' model in the traditional sense, consumers may still experience gaps in protection.
- 5.8 Likewise, there is not always a clear distinction what is a fraud and what is a dispute, with a blurred line between purchase scams, customers changing their mind and poor products/business practice in accurate descriptions and supply of goods/services. In line with the card model, a clear burden of proof will be required in any future protection model, a right for the business to defend the claim and parameters on the nature of claims accepted, such as within a clear and short defined time period and over a certain value.
- 5.9 Regardless of these points, HSBC UK's view is that to determine that a protections framework 'should be introduced' – as per the question - requires a judgement that the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes. is not proportionate to the provision of a low cost, high volume, open payment service. HSBC UK believes that it is unlikely that it will be possible to continue to provide universal, low cost interbank payments with a protections framework as described in the Call for Views.
- 5.10 HSBC UK's view is therefore that more work is needed to define the potential options for any such protection framework and for a full economic analysis to understand

the costs and benefits to the UK economy for those options, in order to determine whether and how intervention on this issue can be proportionate to the impacts. This should include customer and merchant insight on willingness to pay and alternative models such as 'insurance' options akin to sending a parcel by registered post.

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)?**

Taking questions 6 and 7 together:

- 7.1 Ultimately the liability framework for goods and services sold, must sit with the seller rather than the payment rail. This is the case with Direct Debits and card payments with the contractual relationship for the provision of payment services framed accordingly. The seller's PSP may be able to facilitate the dispute management as part of the commercial arrangement of the payment service provided, and bear risk through the commercial arrangement, but it is not appropriate for the PSP or the PISP to bear the liability. The same process applies to both the card schemes and the Direct Debit Guarantee, where the liability sits with the merchant or payment originator.
- 7.2 Any change in the liability framework for interbank payments will fundamentally change the commercial relationship with businesses accepting FPS payments for this purpose there are material impacts for the provision of interbank payments in the UK.
- 7.3 All business accounts are currently able to receive a Faster Payment or Bacs Direct Credit payment. A protections model for retail purchases means that there will be a liability for refunding the customer that we would expect to be aligned with the card schemes, placing that liability on the seller, with provisions in place to manage that liability risk to the seller's PSP depending on the nature of the seller business model. For example, businesses may be expected to hold a cash reserve for the purpose of liability claims or a proportion of the payment received may not be passed to the seller until after such time the risk of a claim has passed.
- 7.4 This change in model introduces a risk and liability to the seller's PSP that will effectively mean those payments will need to be treated as a line of credit, assessed on that basis and with a supporting contractual change of relationship. As is the case

with the payment protection model for card payments and payments collected by Direct Debit, businesses need to be assessed on their risk profile with clear rules and processes in place for the management of claims, disputes and reserves. This places considerable new cost and friction into the payment service and may see some businesses and PSPs unable to accept payment by the schemes within scope, which is likely to migrate volume to the higher cost CHAPS option.

- 7.5 Furthermore, under the cards schemes, issuers and acquirers are able to place disputed transactions on hold pending investigation. Currently, credit transfers do not enable this. There are currently limited circumstances where a PSP is legally able to put funds on suspense, which do not include for a commercial dispute. As a result, a changes to the Payment Services Regulations 2017 may be required to ring-fence funds if this cannot be dealt with through commercial terms.
- 7.6 Under Open Banking, it will also be important to ensure that the party who has the commercial relationship with the retailer (or seller of services), leads on the commercial management of the risk of a consumer dispute. As the firm providing that payment service to the party and therefore acting on behalf of the merchant, the PISP is in a unique position to manage the risk. This places risk at the appropriate place in the value chain – so that the party acting on behalf of the retailer leads on the management and commercial relationship of that risk. However, such a model will also need to ensure appropriate oversight so that ASPSPs are clear on the grounds for reimbursement.

8. **Should any new payment protection arrangements be extended to recurring and variable 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?**

Taking questions 8 and 9 together:

- 9.1 Customers are unlikely to differentiate between single payments and recurring payments, therefore in principle we would expect any new payment protection arrangement to be extended to include both recurring and variable payments.
- 9.2 Given that card payments protections extend to payments under a continuous payment authority, our assumption is that protections would extend to such payments. We would expect the last payment to be treated in the same way as a Single Immediate Payment.
- 9.3 Separate consideration may be needed for new payment types currently proposed for open banking transactions, such as sweeping and variable recurring payments.

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?**
 - 10.1 Protections in place on card payments do not provide an automatic right to redress for customers. Depending on the framework, there are de minimus value thresholds and fixed time bands on claims, as well as a structured approach to the burden of proof required to agree a refund.
 - 10.2 HSBC UK's view is therefore that more work is needed to define the potential options for a protection framework and for a full economic analysis to understand the costs and benefits to the UK economy for those options, in order to determine whether and how intervention on this issue can be proportionate to the impacts.
 - 10.3 Our strong view is that any future framework for interbank payments will need an equivalent structure to the cards model, to support the management of risk and to ensure protection is proportionate. A time limit on claims will be crucial to ensure businesses do not face an unlimited and uncertain liability which is difficult to codify in a commercial relationship for payment provision. This has proven to be a significant barrier for businesses wishing to offer customers Direct Debits.
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)?**

Taking questions 11 to 15 together:

- 15.1 HSBC UK is not currently able to identify the purpose of a Faster Payment received into a business account, or determine whether the payment is from a personal or business account.
- 15.2 For payments made, information on the beneficiary as a consumer of business, is collected as part of the CoP check, for new beneficiary payments made by Faster

Payments, although for payments made to PSPs outside the CoP service, this information may not be checked.

- 15.3 For Open Banking payments, the PISP is in control of any ancillary data collected alongside the payment and HSBC UK does not have visibility of that information for payments made or received (with the exception of where we are acting as the PISP). However, we believe it would be a straightforward technical change to add this as a marker to PISP payments.
- 15.4 HSBC UK believes that the payer/payee type, use case, transaction value and time since the transaction will be critical components to determine which payments are covered under payment protection. Such parameters, as are standard in other payment protection frameworks, are important measures for the control of risk and liability and therefore help to support unintended consequences of such a change in the interbank space. A fundamental change in the relationship between the seller and its PSP will be required to reflect the commercial risk of the payment service.
- 15.5 HSBC UK's view is that a significant technical change to payment journeys would be required across all channels to ensure that payments can be correctly identified as falling within the scope of a consumer protections framework, with the purpose of the payment identified and recorded. This is a major undertaking that would need to be replicated for indirect access participants and PISPs to ensure a consistent approach to the delivery of protections. HSBC UK's view is that this is best considered as part of New Payments Architecture, which can be designed with this purpose in mind, rather than requiring wholesale change on a payment infrastructure with limited data fields and an assumed near-term demise.

Questions related to how consumers might claim protection

- 16. **To what extent would a consumer protection governance process be beneficial for interbank payments?**
- 16.1 HSBC UK recognises that there is a relative gap in consumer protection when consumers are dissatisfied with goods and services which were paid for using interbank systems, compared with payment options available for debit or credit cards, or Direct Debit. We agree that there is currently a lack of consumer awareness which may restrict effective decision making creating the potential for customer harm.
- 16.2 If it is determined that a consumer protections framework for trade disputes is required on interbank payments, a governance process will be essential to enable all

parts of the industry that initiate interbank payments are able to participate. A partial solution would not be acceptable as there are clear risks of customer detriment.

- 16.3 Given the parallels to the requirements under the card schemes, HSBC UK's view is that experts on the card protection framework will be able to support the development of a parallel interbank framework, process and governance framework.
- 16.4 However, our strong view remains that much more work is needed to define the range of options for how a consumer protections framework for interbank payments would work in practice, including payments initiated via a PISP.
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 enquiries and issues with other parties involved in a disputed interbank payment?**

Taking questions 17 to 22 together:

- 22.1 HSBC UK's agrees that an important part of customer protection on different payments is the customer understanding of the protection available (or not) and who to approach when something goes wrong. All parties involved in providing a payment service have a key role to play in making those protections clear, including the merchant.
- 22.2 Whilst general awareness campaigns and resources for consumers have a role to play as a measure to support customers to protect themselves, we accept that this cannot be regarded as a single solution to the potential for customer harm. There are however, opportunities for this to be improved, especially by retailers on the

payment options offered, or for trust marks or in-journey messaging to help make it clearer to consumers when protection is available and when it is not.

- 22.3 Like the PSR, our expectation is that customers will typically approach their bank once they have already raised a dispute with the retailer and found that avenue has not provided the recourse they were seeking. On PISP payments, we have not received any customer complaints to date where goods/services were not received on PISP payments, which is not unexpected as the volumes of PISP e-commerce payments remain low.
- 22.4 Current communication channels with other banks are established for credit payment recovery and financial crime purposes. These are not designed or resourced for disputed interbank payments and would not handle such enquiries today. More importantly, PSPs are not best placed to adjudicate on merchant disputes
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? *[payment system rule requiring adherence to specific requirements and processes, payment governance system, industry led standards on payment protection]***
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?**

Taking questions 23 to 25 together:

- 25.1 HSBC UK's view is that the governance process to support a consumer protections framework for interbank payments would need to be both **enforceable** and achieve **comprehensive coverage** across all PSPs and PISPs offering interbank payments. A solution which only captures direct participants or is voluntary will not provide consumers with certainty and will lead to unfair market outcomes. This approach has been tested on both APP Scams and Confirmation of Payee, and in both cases led to different standards of customer protection which HSBC UK does not regard as acceptable for the industry or end users.
- 25.2 HSBC UK suggests that different options for the operation and governance of an interbank protections framework should be considered as part of the economic analysis we believe is needed, in order to establish how a solution which is comprehensive across the market and will work effectively, can be established in a way which is proportionate to the market. The analysis must consider all consequences of introducing such a model – intended and unintended - in order to

determine whether and how intervention on this issue can be proportionate to the impacts. Analysis should also consider who is best placed to adjudicate and enforce claims across the ecosystem.

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?**
- 1.11 Taking questions 26 to 29 together, HSBC UK's view is that introducing a new consumer protection framework for interbank payments in the UK is deeply complex and will have major implications for the UK payments market. To determine that a protections framework is needed requires a clear and evidence-based judgement to assess whether the benefits of choice and competitive differentiation – together with the benefits of cheap and frictionless payments – are outweighed by the downsides of having relatively less protection in trade disputes.
- 29.1 HSBC UK believes that it is unlikely that it will be possible to continue to provide low cost interbank payments with a protections framework as described in the Call for Views and therefore more work is needed to define the potential options for any such protection framework. A full economic analysis is needed to understand the costs and benefits to the UK economy for those options. The analysis must consider all consequences of introducing such a model – both intended and unintended - in order to determine whether and how intervention on this issue can be proportionate to the impacts.
 - 29.2 HSBC UK broadly recognises the costs and benefits of a consumer protections model for interbank payments as set out in the Call for Views, but believe that a number of the costs and unintended consequences would be severe, particularly for smaller PSPs and businesses receiving payments by Faster Payments (and Direct Credits if in scope).
 - 29.3 As noted in earlier questions, whilst PSPs and the payments industry may be able to establish the process and governance for any such protections framework, the commercial risk and liability of accepting payments this way, will need to sit with the

receiving businesses as a credit risk. All customer contracts will need to change and appropriate commercial terms put in place.

Lloyds Banking Group

LLOYDS BANKING GROUP PLC

**Response to PSR Consumer protection in interbank
payments – call for views**

16 April 2021

Introductory Comments

Lloyds Banking Group (LBG) is pleased to respond to the Payment Systems Regulator's (PSR) call for views on consumer protection in interbank payments.

As set out in our 2020 responses to HMT's Call for Evidence on the Payments Landscape and the PSR's Payment Strategy, **LBG supports the peace of mind and trust in payment systems that payments protections bring to our customers and more widely to UK consumers.**

The UK retail payments industry is in a state of change. As recently as 2017, physical cash was the payment type most used by UK consumers. In the four years since, debit card payments have overtaken cash, driven by the growth of contactless payments. Open Banking launched in 2018, giving rise to a new class of payments providers – Payment Initiation Service Providers. **With Open Banking to be followed by the New Payments Architecture, the potential for interbank payments to grow significantly for buying and selling purposes is an increasingly likely prospect in the years ahead.**

Today, consumers benefit from a range of protections when paying for goods and services using various payment types. However, where consumers use interbank payments, there is no additional payments protection if there is a problem with their purchase. Therefore, interbank payments are not on a level playing field with credit and debit cards, which provide enhanced protections by way of the Consumer Credit Act and contractual chargeback provisions respectively. Currently this isn't a material issue as the usage of interbank payments for goods and services is low, whilst noting to the PSR that the landscape for authorised push payment fraud, which has a specific overlap with paying for goods and services, has a different set of considerations. **We note that the risks to consumers will increase as the uptake of interbank payments for purchases increases if additional protections are not made available. Additionally, we recognise that a lack of additional protections might inhibit growth of interbank payments.**

The current Faster Payments Service does not have the requisite infrastructure and capabilities to support enhanced payments protections. Therefore, a robust framework and infrastructure for enhanced interbank consumer protections must be developed at pace for delivery into the New Payments Architecture. Importantly, enhanced protections must be sustainably funded. To this end, the framework must be underpinned by a sustainable economic model that is likely to include the provision of interchange fees, akin to the debit and credit cards networks. Responsibilities and accountabilities for facilitating protections must be spread across all types of payments providers including Payment Initiation Services Providers. LBG is keen to support the development of such an approach working with industry, regulators and other bodies.

Consumer understanding

We recognise recent research suggests consumer understanding of payments protections is low, and therefore many consumers do not take adequate consideration of protections when selecting a payment method. Improved information about consumer protections, delivered via a variety of organisations (government, regulators, consumer groups, industry) could potentially improve consumer understanding, which might then cause consumers to demand enhanced protections. However, influencing consumer behaviour at scale is especially challenging, and comes at significant cost, and therefore success cannot be assumed. In the light of these considerations, we cannot rely upon consumer demand alone driving provision of enhanced protections. Merchant acceptance of Faster Payments is also essential in driving changes in customer behaviour.

Development of enhanced interbank protections

Enhanced interbank protections will require additional infrastructure. We expect this to include enhanced payments data to identify types of payments and bank accounts as well as a chargeback mechanism. From a framework perspective, liability and dispute models will need to be designed. There are no such infrastructure and framework provisions in the Faster Payments Service – we have included an appendix that compares the key features of the card scheme models with those in the Faster Payments Service. Retrofitting such provisions would be complex and inefficient. In

our view, the upcoming New Payments Architecture must be used to deliver enhanced protections. However, work must start now on designing an approach that can be delivered into the New Payments Architecture at pace when it launches. Such an approach will deliver enhanced protections at a time when we expect interbank payments to accelerate.

There are various approaches that could be taken to determine the scope of enhanced protections. These could include taking a use-case driven approach, which could give rise to efficiencies for sellers/payments recipients but might be more complex for consumers to understand. Alternatively, a minimum and maximum level of protection in value terms could be set. This approach could be easier for consumers to understand but its "one size fits all" nature could result in inefficiencies. More analysis is required, but ultimately a pragmatic way forward from the range of possible options must be decided upon and then developed.

Funding of enhanced interbank payment protections

Having learned lessons from the Authorised Push Payment fraud landscape, it is crucial that enhanced payments protections are underpinned by sustainable economic models, as the credit and debit card networks are today. In the case of consumer to business payments, an interchange fee mechanism is likely to be needed alongside associated checks and balances on sellers. The fee could be paid by sellers, and potentially there could also be contributions from other parties with a stake in the payments chain, such as seller platforms. It is simply not tenable for payments providers to absorb the costs of enhanced consumer protections.

Consideration should also be given to the demand and need for consumer-to-consumer interbank payment protections. Again, the provision of any such protections will need to be adequately funded. Where a consumer chooses not to make use of such provision, it cannot be expected that they will be reimbursed by their payments provider in the event of something going wrong.

Responsibilities and accountabilities of payments providers

To preserve a competitive market and ensure retail banking remains sustainable, responsibility and accountability for facilitating enhanced interbank protections must rest with the seller's payments provider, whether that is an Account Servicing Payment Service Provider / credit institution, a Payment Institution, Electronic Money Issuer or Payment Initiation Service Provider. The ultimate liability for reimbursement when something goes wrong must rest with the seller.

Regulatory intervention

The PSR could consider mandating that Pay.UK develops an enhanced consumer protection framework as well as the supporting infrastructure to be delivered via the New Payments Architecture. The PSR could also consider mandating payments providers to offer a minimum level of consumer protections to their seller customers, which could be provided by way of a centralised solution or alternatively via a market solution that meets or exceeds the prescribed minimum standards. Further analysis would be required to determine effective regulatory interventions and the potential for unintended consequences or disincentives.

Costs and benefits

We recognise both the direct and indirect costs and benefits of enhanced protections that have been identified by the PSR. Importantly, consumers should benefit from enhanced protections as it will be easier to achieve a resolution when something goes wrong, whilst noting the seller should continue to be the first point of contact. More generally, enhanced protections should improve consumer confidence in interbank payments, which could enable positive competition to flourish.

With regards to costs, the PSR should also take account of the cost / opportunity cost of credit risk exposure for the parties that are liable for refunding customers. Further costs include marketing and communications, costs that could arise from the decline of other payment methods and as well as the risk of costs incurred by payments providers that cannot be recouped from sellers if there is a lack of take-up. Incentivising interbank payments for both sellers and consumers whilst ensuring payments providers are not unduly exposed to costs will need to be considered carefully.

Response to Consultation Questions

- 1. DO YOU AGREE THAT THERE ARE INSUFFICIENT CONSUMER PROTECTIONS FOR INTERBANK RETAIL PAYMENTS?**
- 1.1 LBG agrees there are insufficient consumer protections for interbank payments when compared with the card schemes. In terms of the protections that are in place, as well as general customer protection legal provisions, consumers currently benefit from a range of specific statutory provisions (the protections in the Payment Services Regulations) and industry measures (including the Credit Payment Recovery process). Services such as Confirmation of Payee are providing an additional layer of protection. However, unlike when paying by credit or debit card, consumers do not benefit from protections in the event that a good or service they pay for is not provided or is not as described.
 - 1.2 We also recognise that interbank payments for goods and services have not yet reached critical volumes. We note that, in 2019, the most recent year for which figures are available, only 2% of spontaneous retail payments were made by a payment method other than cash, debit or credit card¹. Therefore, whilst there are insufficient consumer protections today, the negative impact of this insufficiency is limited in the market by the low volumes. However, as Open Banking and ecommerce gains more traction, there is a risk that appropriate consumer protections lag behind, exposing consumers to unacceptable harms.
 - 1.3 In our view, a robust consumer protections framework must be developed for delivery into the New Payments Architecture (NPA). We expect the framework could be designed and delivered as an overlay service, whilst noting there will need to be a full consideration of what elements can be delivered within the overlay wrapper and which are core NPA deliverables required to facilitate enhanced protections. For example, enhanced data, to enable identification of different types of payments, is a core deliverable. Whereas the provision of a chargeback mechanism might be a core deliverable, or it could potentially be delivered via the overlay service.
 - 1.4 Responsibility for providing enhanced protections must apply to payments providers across the board. Payment Initiation Service Providers, Payment Institutions and Electronic Money Institutions must take responsibility alongside credit institutions / Account Servicing Payment Service Providers.
 - 1.5 Alongside an NPA consumer protections offering, we can also envisage market propositions being developed – for example, sellers partnering with Payment Initiation Service Providers to develop bespoke arrangements for their customers.
 - 1.6 In both types of scenarios – a scheme proposition and market propositions – effective economic models that drive the right behaviours will be crucial. We would expect a scheme proposition to include provision for funding such as by way of interchange fees – if retail banking is to remain sustainable then the retail banking industry must not absorb the costs of reimbursement.

¹ UK Finance, UK Payments Market 2020 publication

2. TO WHAT EXTENT DO YOU AGREE THAT CURRENTLY THE INDUSTRY DOES NOT PROVIDE AND CONSUMERS DO NOT DEMAND APPROPRIATE LEVELS OF PROTECTION?

- 2.1 In LBG's view, this question is complex and there are various considerations that need to be taken into account. With that in mind, we don't currently have a definitive view.
- 2.2 With respect to industry provision of consumer protection, it should be noted that consumers' first point of contact should something go wrong with buying a good or service is usually the merchant. In the case of the card schemes, unless a merchant has ceased trading, consumers are expected to make efforts to resolve the issue directly with the merchant ahead of making a claim with the card issuer. Additionally, consumers have rights to take civil action against sellers via the court system. Therefore, payments protections must be considered in the round alongside the various other avenues available to UK consumers. We note that, in other jurisdictions, established payment systems outside of the cards networks do not provide protections in the event of a problem with a good or service – Sweden's Swish mobile payment system being one such example.
- 2.3 In situations where consumers are actively seeking protection for payments they wish to make, they are well served by the cards networks – particularly in relation to credit cards where S. 75 of the Consumer Credit Act 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 £30,000. However, we recognise that, if interbank retail payments for goods and services become more established, then consumers are likely to be under-served in relation to the types of protection that is provided.
- 2.4 With respect to consumers demanding appropriate levels of protection, we understand from research conducted by both the PSR and Pay.UK that consumer awareness of the protections available to them is lower than we would like – with around 56% of the public saying they have a good understanding of their rights when making payments. We also recognise that some consumers don't feel confident making a claim when something does go wrong. However, there are complexities, because research suggests that generally consumers consider that protection is most relevant for: high-value purchases; situations where there is a lower trust in sellers; and purchases where consumers receive their goods and services after they pay for them. It is possible within the current landscape to protect these types of purchases – using credit and debit cards or a service such as PayPal.
- 2.5 On balance, whilst the current payments protection offerings are by no means perfect nor easily understandable for all consumers, we consider that consumers *today* are reasonably well served. It is worth noting that physical cash, the dominant payment type in the UK until 2017, carries no issuer-based protections and this is generally understood and accepted by consumers. However, we recognise that both the UK payments landscape and consumer needs are evolving, and therefore we agree with the PSR that the lack of protection in interbank payments is likely to become a pressing issue if it is not addressed. In particular, if interbank payments begin to be used at scale for high value purchases as well as goods or services that are provided some time after payment being made, then consumers are likely to be under-served in relation to 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)?

- 3.1 In LBG's view, enhanced consumer understanding of protections and risks when making a payment could lead consumers to demand the provision of enhanced protections, which could potentially be delivered by way of market propositions. From an industry perspective,

the development of the NPA provides the best opportunity to design and deliver an effective and efficient consumer protection framework given the limitations of the current Faster Payments Service.

- 3.2 In relation to enhanced consumer understanding, a holistic awareness raising campaign across industry, government, regulators and consumer groups could potentially lead to consumers demanding enhanced protections when making payments. This might then, for example, result in PISPs developing consumer protection arrangements for interbank payments. However, it is perhaps over-optimistic to consider that an information campaign could have this level of impact on consumer behaviour. Additionally, the possible unintended consequences of such an approach should be recognised – it could have the effect of reducing consumer confidence in Open Banking propositions, which could negatively affect competition in the longer term.
- 3.3 From an industry perspective, LBG is a strong proponent of a consumer protection infrastructure and framework being developed and deployed within the upcoming NPA. Arrangements must be made for funding of these protections, likely to be by way of a merchant interchange fee. Frameworks must be designed in such a way that ensure PISPs take the requisite level of responsibility for payments consumers initiate via them – current frameworks risk consumers defaulting to raising disputes with their payment account provider rather than pursuing via their PISP. As noted in our response to Q1, the NPA will deliver improvements such as enhanced data that will be critical to designing a protections scheme that can distinguish between types of payments and the risks they pose from a consumer perspective.
- 3.4 In our view, interventions to facilitate enhanced protections within the *current* Faster Payments infrastructure would add costs and inefficiencies ahead of the NPA coming to fruition. The Faster Payments Service was not designed to support consumer to business payments, and so these would need to be retrofitted.
- 3.5 We would welcome a review of the current framework for PISP accountabilities and responsibilities. that the distribution of responsibilities and accountabilities should be fair across payments providers, but we recognise that proposed changes arising from any such review are likely to require infrastructure enhancements. On balance, we would suggest the PSR considers whether there is a need to intervene in the development of the NPA to ensure that appropriate, proportionate and efficient arrangements are made for consumer protection.
4. **DO YOU FORSEE ANY DIFFICULTIES WITH PROVIDING THE SAME PROTECTION FOR ON-US PAYMENTS AS THOSE THAT USE AN INTERBANK SYSTEM?**
- 4.1 No, at this stage LBG does not foresee any additional difficulties in providing the same protection for on-us payments.
- 4.2 Depending on the recommendations and solutions developed, it is likely that we would build on and replicate any industry approach to LBG on-us transactions. This would be in line with our current approach to existing processes such as Bank Error Recovery (Payments in Error) where we review the transaction in-house, replicating all payments industry considerations and rules.

5. SHOULD PAYMENT PROTECTION BE INTRODUCED FOR USE CASES RELATED TO PAYING FOR PURCHASE TRANSACTIONS AND/OR ANY OTHER USE CASES? WHY(NOT)?

- 5.1 LBG supports the development of a framework and infrastructure in the NPA to provide payment protection to retail consumers for purchase transactions. Such a framework must apply to the provision of PISP services as well as to account providers. In the course of developing payment protections, consideration must be given to types of transactions, transaction values and risks.
- 5.2 Additionally, consideration should be given to whether there is a need for payment protection in relation to peer-to-peer payments. We note that personal accounts being used for selling on an ad hoc basis – this requires exploration.
- 5.3 In all cases, it is vital that additional payment protections are underpinned by a sustainable economic model. In our view, it is not tenable for payments providers to absorb these costs. Where payments protection is available, if a consumer declines to use it then the payments provider must not be held liable for reimbursement if something goes wrong.

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?

- 6.1 In LBG's view, if payments protection is introduced for retail purchases then the liability must be imposed on the seller.
- 6.2 Retail purchases today see the merchant have the liability for refunding the customer if something goes wrong – it is the merchant that enters into an obligation with the consumer when they sell goods and services. This is underpinned by the Consumer Rights Act 2015.
- 6.3 This arrangement is generally well understood by consumers and LBG strongly believes that it should remain in place as the liability and responsibility for refunding the consumer should sit with the seller/merchant as the entity earning the revenue from the transaction. Any reinforcement of this liability needs to be clear and simple in its messaging to consumers.
- 6.4 We recognise that there are some situations where, if a consumer pays by credit card, the credit card issuer is liable given the credit element of the contract. Such considerations would need to be worked through in relation to interbank payments.
- 6.5 In an arrangement where the seller is liable, there must be mechanisms and governance in place to facilitate a refund via the seller's payments provider.

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)?

- 7.1 LBG considers that changing the liability framework could lead to a change in the commercial relationship between sellers and their payments providers. The commercial terms of enhanced protections are something we believe should be agreed between sellers/merchants and payments providers.
- 7.2 The responsibility for refunding a customer if goods or services are not provided to the consumer's satisfaction rests with the seller and in our opinion, sellers should expect to continue to accept responsibility if they decided to offer interbank payments in the future.

Sellers pay today for the payment methods that they offer to consumers such as card payments and PayPal.

- 7.3 LBG does not agree or endorse liability being imposed on a seller's payments provider. Furthermore, the impact of such a change would need to be considered in relation to payments provider business models – particularly for smaller players that might find such an arrangement untenable.
- 7.4 We also note that Faster Payments does not have an acquirer mechanism in the same way that card schemes do that provides equivalent verifications specifically for payments or a built-in chargeback element for either PISP payments or payments made directly from one bank account to another. Having the functionality to make or receive a faster payment is an integral element of a payment account, and therefore any consumer or business that owns a payment account can make and receive faster payments. Solutions to these challenges would need to be found to facilitate contractual protections in the Faster Payments Service.
- 7.5 Many aspects of the interchange structure in place for cards, if simplified, would lend themselves to a payment protection model for interbank payments. LBG supports further exploration on a payment protection model for interbank payments based on an interchange structure.

8. SHOULD ANY NEW PAYMENT PROTECTION ARRANGEMENTS BE EXTENDED TO RECURRING AND VARIABLE RECURRING PAYMENTS? WHY (NOT)?

- 8.1 LBG believes that the use case for extending payment protection for recurring and variable recurring should be developed before we are able to give a clear view. We are mindful that the direct debit guarantee covers 76% of recurring payments today, and that recurring payment disputes are often more complex. With this in mind, we believe that further data and analysis is required to understand these types of payments more fully.
- 8.2 In working up a use case, the seller protections in place for the goods and services must be considered so that the guarantee of protection does not supersede the manufacturer's warranty simply on the basis of the ongoing payment – i.e., if a retailer gives a one-year warranty for a washing machine, the consumer shouldn't be able to claim protection 2 years after this just because they are paying back the cost of the item over say 3 years. A frequency/time limit on recurring payments would therefore be required.

9. TO WHAT EXTENT DO YOU THINK PAYMENT PROTECTION FOR RECURRING AND VARIABLE RECURRING PAYMENTS SHOULD BE EXTENDED BEYOND THE LAST PAYMENT?

- 9.1 Recurring payments are complex in nature when considering the case for protection and include transactions for rent, mortgages, and loans as well as subscriptions and utilities.
- 9.2 As noted in our response to Q8, we note the coverage of the direct debit guarantee today and therefore recommend the use case for recurring payments is given more detailed investigation.

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?

- 10.1 LBG agrees that payments thresholds should be considered while developing a framework for payments protections. An analysis of the existing upper and lower thresholds for credit card protection should be undertaken to help inform an approach for interbank payments. Any thresholds would need to be simple for consumers to understand.

11. TO WHAT EXTENT ARE YOU CURRENTLY ABLE TO IDENTIFY DIFFERENT TYPES OF PAYMENTS?

- 11.1 LBG can identify whether payments are initiated from commercial or personal accounts, but there are instances where sellers of goods and services use personal accounts – we are currently unable to identify these.

- 11.2 Recent industry developments have implemented background codes, which, which could potentially be used or adapted. Three key types are as follows.

- Open banking APIs have an optional merchant category code that was originally intended to help with the identification of fraud but note the code doesn't sit in the payment message itself.
- A payment context code reason now features within FPS to support Authorised Push Payment Fraud data.
- Payers are asked to input whether the recipient of a payment is a business or person as part of the Confirmation of Payee payment process. As we have no certainty of the accuracy of this information inputted by customers it is not readily used or collated currently.

- 11.3 We expect the NPA to enable much-improved identification of different types of payments given that it will deliver enhanced messaging standards via compliance with the ISO 20022 standard.

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)?

- 12.1 LBG considers it would be helpful as a starting point to explore a range of factors that could be used to determine the extent of payments protection. We note that there are likely to be trade-offs in relation to developing framework that is use case driven versus one that is aligned to transaction values. A use case driven framework is likely to protect consumers more accurately and efficiently from risk, with lower associated costs for some sellers, but could give rise to complexity, which in itself carries costs. Whereas taking forward an approach based on transaction value is likely to be easier for consumers to understand but could be inefficient in some instances, for example in relation to charity donations or "me to me" payments. We recommend that various combinations of approaches are explored.

- 12.2 Ultimately, there is unlikely to be one approach that is materially superior to all of the others, so pragmatism will be required to determine an approach that is credible and workable and underpinned by an economic model.

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)?

- 13.1 LBG considers that the relationship between sellers and their payments providers could be affected if protection is offered on a use case basis for interbank payments. We see several considerations as follows.

- 13.2 To participate in the card schemes, sellers are subject to comprehensive checks by their merchant acquirer of choice and must comply with the card scheme rules. The merchant acquirer can hold back funds in accordance with the level of risk presented by the merchant, and if the merchant demonstrates undesirable behaviour – such as a high volume of chargebacks over a short timeframe – then the acquirer can adjust the terms or ultimately end the commercial relationship.
- 13.3 We believe that if any protections are introduced for interbank payment purchase transactions then the relationship between sellers and their payments providers would be affected given that checks and balances would be required.
- 13.4 Given that additional protections must be funded, sellers would be likely to find that their payments provider instigates arrangements to ringfence a proportion of payments inflows and will also charge an interchange fee.
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?**
- 14.1 Currently, LBG is not able to identify the different types of payee, including whether the payee is a business, organisation, or consumer.
- 14.2 Payers are asked to input whether the payee is a business or person as part of our initial Confirmation of Payee payment set up process. However, we have no certainty of the accuracy of this information and it is not therefore readily used or collated at the present time. The NPA will enable richer payments data via compliance with the ISO 20022 standard.
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)?**
- 15.1 In LBG's view, the identity of the payer and the payee is important information that could be used to help determine which payments are covered under payments protection. One option could be to consider a seller directory for accredited sellers. Further consideration of how to take forward and use identification alongside other key data points for developing protections is required. We could envisage rules being defined, which combine data points to determine qualification, election or auto enrolment to protections.
16. **TO WHAT EXTENT WOULD A CONSUMER PROTECTION GOVERNANCE PROCESS BE BENEFICIAL FOR INTERBANK PAYMENTS?**
- 16.1 In LBG's view, a consumer protection governance process that sets out responsibilities, liabilities and arrangements for dispute resolution is vital for the provision of protection for interbank payments. Supporting guidance should be made available to consumers so they understand their rights, obligations and how to claim. Without such a process, we cannot see that additional consumer protections will be workable. Such arrangements will carry costs, which must be paid for via an economic model.
- 16.2 The success of the card schemes demonstrates the importance of clear, strong governance arrangements, whilst noting that wider consumer understanding could be improved.
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)?

- 17.1 In LBG's view, a standardised process for claiming consumer protection is likely to be easier for consumers to understand as well as sellers. Any such process must be fair to both consumers and to sellers – there must not be a presumption of an automatic refund in all circumstances. The process must also be underpinned by an economic model.

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?

- 18.1 In LBG's view, promoting consumer awareness around the level of protections offered could in principle help empower consumers to make choices that protect them. However, consideration would need to be given to objectives, desired outcomes, and the return on investment of any such promotion at scale. Noting that 56% of the public *do* say they have a good understanding of their rights when making a payment (Pay.UK research), this could suggest that efforts should be concentrated on the other 44%. Any such campaign must take account of consumer behaviour, including competing preferences for convenient, fast payments.
- 18.2 Other approaches that could be considered include messaging within payments journeys, which could be taken forward by payments providers, payments gateway providers and / or seller platforms. We note that journey interventions must be approached with care and informed by consumer behavioural analysis, given the potential for both information overload as well as reducing focus on other important messages in the payments journey.
- 18.3 We have seen success with the Direct Debit guarantee, and a trust mark for interbank payments could share some similarities with this. However, we note that a trust mark requires branding and a central structure to administrate, which adds costs that would need to be funded.

19. WHO DO YOU THINK IS BEST PLACED TO ENSURE CONSUMERS UNDERSTAND THE PROTECTIONS OFFERED TO THEM AND WHY?

- 19.1 LBG considers that there is not one type of organisation that is best placed to ensure consumers understand the protections offered to them. Depending on objectives and desired outcomes, we could envisage payments providers, industry bodies, government, regulators and consumers groups all playing roles. Additionally, consideration must be given to the role of sellers and seller platforms such as Facebook Marketplace, Ebay, Instagram, and Depop. It is likely that central coordination would be required to ensure consistent messaging across different types of organisations, which again would need to be funded.
- 19.2 LBG conducted market research to understand more about consumers behaviours, attitudes and experiences of APP fraud. Findings showed that of the 600 respondents, 53% wanted to see more information about protecting themselves from scams from banks, 43% on TV adverts, 39% from the government and 36% from online marketplaces. Similar research could be conducted for protections in payments.

20. WHICH PARTY INVOLVED IN AN INTERBANK PAYMENT DO YOU THINK A CONSUMER IS MOST LIKELY TO ASK TO RESOLVE A DISPUTE AND WHY?

- 20.1 In LBG's view, we believe consumers are most likely to approach the seller initially if they are unsatisfied with the goods and services that they have purchased regardless of the

payment method used. As noted previously, within the card schemes there is an expectation that a consumer will approach the seller in the first instance, and this is generally the case. However, this is not always possible, such as in circumstances where a seller has ceased trading.

- 20.2 We note that our retail customers do sometimes contact us as their card issuer in the first instance if something goes wrong with their purchase, such as in relation to claims for travel not taken in the coronavirus pandemic environment. In such circumstances, we explore with the customer how they might first pursue reimbursement with their seller, taking account of the particular aspects of the customer's situation.

21. HOW, IF AT ALL, WOULD YOUR RESPONSE CHANGE IF RETAIL PURCHASES THROUGH INTERBANK PAYMENT SYSTEMS WERE TO INCREASE?

- 21.1 LBG considers it is not yet clear how customer behaviour would change if the use of interbank payments increases. However, we envisage a material risk to payments providers in the absence of vetting and risk management arrangements for sellers (such as ringfencing funds), which are a key pillar of the card schemes. Without such arrangements, payments providers could increasingly find themselves being the first port of call if the consumer doesn't have sufficient trust that the seller will put things right. Therefore, a framework for vetting of sellers and ongoing risk management must be developed to deliver consumer protections for interbank payments.

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?

- 22.1 In LBG's view, arrangements to address consumer enquiries and issues with other parties involved in a disputed interbank payment have improved in recent years. For example, in 2016 Faster Payments participants agreed principles and good practice in relation to misdirected payments. Where funds are still available, we now see a more proactive approach from the receiving payments provider to protect the funds whilst it contacts the beneficiary. An industry service level of 20 working days is in place for the sending payments provider to communicate the outcome to its customer. Additionally, more recent developments in the Image Clearing System include a provider-to-provider messaging service, which helps in the recovery of any funds.
- 22.2 In the development of interbank consumer protections, consideration must be given to defining clear roles and responsibilities for parties involved in disputed payments, including service level agreements. The role of automation and machine learning should also be considered with a view to driving efficiencies.

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?

- 23.1 LBG notes the three possible options the PSR has outlined to deliver consumer protection for interbank payments: a payment system rule; a payment governance system; and industry-led payment protection.
- 23.2 In our view, arrangements for interbank consumer protections must be developed in the expectation that interbank payments will become ubiquitous. Consideration must be given to both the framework of these protections and the facilitation of them within the payments infrastructure by way of common services. It is not possible to have a framework for protections without facilitation by way of common services such as for chargebacks disputes and enhanced payments data. However, it could be possible to facilitate the necessary

provisions within the infrastructure, *without* developing an associated framework, which could then enable the development of industry solutions via overlay services.

23.3 We could envisage a scenario where the PSR makes a direction compelling Pay.UK to design a framework and infrastructure for consumer protections in interbank payments to be delivered by the NPA. We could also envisage the PSR setting out a minimum level of consumer protection that must be provided by sellers wishing to use interbank payments. A centralised scheme could provide this minimum level, with the option of competing services delivering an enhanced level of protection.

23.4 LBG is keen to take forward further analysis of the options at industry level, with a view to determining the best way forward that can be delivered by the NPA at pace.

24. **WHO DO YOU THINK IS BEST PLACED TO ENFORCE INTERBANK CONSUMER PROTECTION CLAIMS AGAINST BOTH PAYMENT INITIATORS AND PAYMENT SERVICE PROVIDERS?**

24.1 In LBG's view, we would expect there to be an enforcement mechanism provided by either a centralised body or by commercial agreement. We would expect claims and disputes to be written in the rules applicable to participants and be self-enforcing. Ultimately, a payments provider would have the power to no longer conduct business with a seller that does not comply with the rules.

24.2 The circumstances where enforcement action could be taken against a payments provider are unclear. We suggest that this would only happen where a provider has declined to provide consumer protections to sellers, with or without a seller's support, or is otherwise uncooperative. The enforcing body in such circumstances would depend on whether or not a payments provider had breached a regulatory requirement.

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?**

25.1 As noted in response to Q23, LBG is keen that the industry develops a consumer protection framework for interbank payments within the NPA. We want to take forward discussions at pace with industry, regulators and consumer groups involved.

25.2 Consideration could be given to setting high-level directions that are binding on Pay.UK should the PSR consider regulatory intervention to be required. The PSR could also consider mandating that payments providers facilitate a minimum level of consumer protection to their seller / merchant clients, which could be delivered by either a centralised approach or a competitive proposition that meets or exceeds the prescribed standards.

26. **DO YOU AGREE WITH OUR ASSESSMENT OF THE LIKELY COSTS AND BENEFITS?**

26.1 LBG has reviewed the PSR's summary of likely direct and indirect costs. We agree with the types of costs identified. In particular, we note the reference to the cost of fraudulent claims, and note the crossover with authorised push payment fraud, in particular purchase scams. The costs that arise in both types of scenarios must be addressed by way of appropriate funding.

26.2 Additional types of costs we have identified are as follows.

- The cost / opportunity cost of credit risk exposure for the parties that are liable for refunding customers.

- The costs incurred if consumer information campaigns are taken forward.
- Implications of increasing Faster payment volumes on scheme charges. Currently, if expected volumes are exceeded, costs can increase significantly.
- Costs associated with possible declines in other payment types – for example, cards.
- Any cumulative effects of de minimis automatic refunds without investigation.
- Potentially, changes to terms and conditions.
- Costs incurred by payments providers that cannot be recovered via an interchange fee if there is a lack of take-up of interbank payments.

26.3 With respect to benefits, we agree that interbank consumer protections could make it easier for consumers to claim back costs when something goes wrong, which is a direct benefit. However, we note that the seller of the goods and services should continue to be the first point of contact to resolve a problem. We also recognise the potential indirect benefits associated with interbank consumer protections, including a boost to consumer confidence.

26.4 We would caution that these benefits depend on the take-up of interbank payments. Interbank payments protections will need to be funded in a similar way to the card schemes, and therefore sellers are likely to have to pay fees for offering either payment method. It is likely that, to create the necessary incentives for sellers to offer interbank payments, enhanced interbank protections will need to be less costly for sellers than accepting card payments. Other potential funding options could include payments gateway providers and seller platforms, but we recognise incentives would need to be worked through and that such an approach could add complexity to the payments chain.

26.5 From another perspective, it is possible that the improved payments functionality due to be delivered by the NPA and enhanced Open Banking services could give rise to additional drivers for sellers to offer interbank payments and / or for consumers to demand them. For example, the provision of enhanced payments data and useful propositions that harness this data could incentivise the use of interbank payments to make optimal use of the tools and insights being offered. In such scenarios the costs of funding enhanced consumer protections could potentially be less relevant to the decision to offer interbank payments. The likelihood of such a scenario cannot be reliably quantified at this stage.

27. **WHICH COSTS AND BENEFITS DO YOU THINK ARE LIKELY TO BE THE MOST SIGNIFICANT AND WHY?**

27.1 In LBG's view, the most significant costs are likely to result from the set up and ongoing costs of running an enhanced protections framework. These would need to be funded, most likely via an interchange arrangement.

27.2 We consider the most significant benefit, if it materialises, could be increased take-up of interbank payments within the NPA, which could bring associated consumer benefits such as enhanced information about spending and budgeting.

28. **WHO DO YOU THINK WOULD AND SHOULD BEAR THE COST OF ADDITIONAL CONSUMER PROTECTION AND/OR GOVERNANCE?**

28.1 LBG strongly believes that enhanced protections and their associated governance must be funded by a sustainable income stream. In the case of consumer to business payments, sellers / payments initiators, and potentially other vested parties, must bear the costs likely via an interchange fee. If there is appetite to take forward protection for consumer-to-consumer payments then an income stream must also be established to fund these. In our view, if enhanced interbank protections are available but a consumer decides not to use them, then it cannot reasonably be expected that the payments provider will offer reimbursement.

- 28.2 Enhanced protections must be funded by an associated income stream. Based on our preference to further consider an interchange type arrangement, this would align costs and liability to a merchant funded model.
29. **TO WHAT EXTENT WOULD CONSUMER PROTECTION MEASURES INTRODUCE SIGNIFICANT COSTS TO YOUR BUSINESS OR THE NEED TO CHANGE SERVICE CONTRACTS WITH YOUR CUSTOMERS?**
- 29.1 LBG considers that at this early stage it is not possible to give a detailed response as to what extent enhanced consumer protection measures would introduce additional and significant costs to LBG. In response to Q26 we outlined additional types of costs that could be incurred as a result of enhancing protections. We also noted the risk of being unable to pass these costs on should the demand for interbank payments not materialise, which would give rise to allocative inefficiencies.
- 29.2 We would expect to need to update our service contracts with our customers in the light of enhanced consumer protections but would look to combine other changes into one update, as is our usual approach.

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Mastercard

Mastercard response to PSR '*Consumer protection in interbank payments – Call for views*' CP21/4

8 APRIL 2021

Introduction

Mastercard is pleased to be able to contribute its experience to the development of the PSR's proposals for consumer protection in interbank payments. We have a deep understanding of the importance of consumer protection in payments and have played a central role in building an ecosystem which has given consumers confidence to make payments and participants the assurance that the costs and benefits of doing so are fairly distributed.

The challenge of creating an ecosystem which works equitably for all, should not be underestimated. Not only does it take time and considerable investment, but it requires all participants to feel that their interests have genuinely been taken into account and they will receive a benefit, where they may also experience a cost. Any sense that some are having to pay for the mistakes of others will likely lead to attempts to minimise or avoid obligations which are perceived to have been unfairly imposed, without any commensurate benefits. Ultimately, this will make the system unsustainable and not operate in anyone's interests.

As Mastercard develops its business beyond that of a cards network, consumer protection, combined with the fair distribution of costs and benefits, will remain central to what we do. Therefore, in this response, we are not seeking to advise the PSR on a specific direction as to exactly how it should implement consumer protection in interbank payments. Rather we are intending to provide the PSR with a broader perspective of some of the wider issues it should consider in developing its proposals.

In particular, we suggest to the PSR to keep in mind the diversity of payment methods and the payment needs which they address. As payment needs differ, so it is legitimate for the levels of consumer protection in payment methods also to differ. The PSR should not feel it is necessary to maximise consumer protection in all cases to the highest level where to do so may not actually provide consumers with useful additional rights, but could add significant cost and friction into a payment system, which ultimately will have to be borne by its users.

Different payment methods for different payment needs

The UK market is well served by a variety of competing payment methods. In any market, effective competition requires differentiation between available service offerings which may take several forms e.g. price, quality or product features. As there are many different 'reasons' to make a payment, the market is well suited to supporting a wide range of payment methods to respond to the many different payment needs.

At Table 3, the PSR provides a useful overview of some of the most common payments use cases (involving consumers) and highlights which interbank systems are typically used to make them. Of course, cards also have an important role to play in most of those use cases, particularly (but not exclusively) with respect to the payment for goods and services and other consumer to business transactions. As Table 3 demonstrates (but somewhat understates) there is invariably more than one method which could (technically) be used to make any particular type of payment. In particular, Faster Payments could probably be used for any domestic payment (subject to its upper transaction limit) because any payer or payee with a bank account is likely to have access to it.

However (notwithstanding what is technically possible) in practice, different methods tend to be used for different types of payments, precisely because of the differentiating factors referred to above and the respective interests of payers and payees. For example, Bacs is most suited to large volumes of batch payments which are not urgent; CHAPS is most suited to high value payments (e.g. for consumers house purchases for which the consumer does not make

the payment directly); Faster Payments is often used for time sensitive payments initiated directly by the payer (particularly where the payee is another consumer or small business), although there are many other use cases; and card payments are best suited to the most time sensitive payments for which the payee wants to benefit from a payment guarantee and the payer wants greatest convenience.

These types of decisions by well-informed consumers are evidence of a well-functioning and effectively competitive market, in which payers have a wide choice of payment methods to suit their particular needs for any given transaction. There is, of course, no need for all payment methods to serve the same needs in the same way and nor would it be healthy for them to coalesce in this manner.

Different consumer protection for different payment methods

Consumers are well-used to understanding that different transactions have different types of consumer protection associated with them, of which Table 1 provides a broad overview, although in fact there are a greater number of consumer protections available than is suggested.

Chargeback is a core element of card payments, but in itself is not actually a *consumer* right. Chargeback is a method of resolving disputes between issuers and acquirers and ultimately whether or not a consumer receives a refund does not depend directly on the outcome of the chargeback dispute. Nevertheless, consumers are far more likely to be refunded by their issuer, because chargeback allows the issuer to recover the funds from the acquirer/merchant (although for a low value transaction, the issuer may choose to refund the consumer anyway, sometimes without even initiating a chargeback). Therefore, without knowing the detail, consumers understand that they are well protected by card payments, but there are additional complexities. Most obviously s75 (which is a consumer right) only applies to credit card payments and not debit card payments and even then, only for transactions between £100 and £30,000 (not £300,000 as the PSR states). (Chargeback also assists with s75 cases, as it will allow the issuer to recover funds where the acquirer/merchant is at fault and still in business).

Table 1 does not mention the Consumer Contracts Regulations which provide important additional consumer protections, particularly for consumers buying online or through other remote methods, regardless of payment used – specifically the right to cancel the purchase for any reason within 14 days, which does not exist elsewhere.

Table 1 refers to retailer protections, which can vary significantly. Some merchants will only provide credit notes for non-faulty goods (with different expiry conditions) whilst others will offer full cash refunds for many months, simply if the payer changes their mind. Often (but not always) this will vary according to the type of goods being purchased. Consumers must also consider the guarantees which manufacturers or retailers may offer on certain items.

Other regulation or industry initiatives may provide consumers with additional protection for certain purchases. Most obviously, there is regulation specific to the travel industry providing refunds or guarantees in certain circumstances, as well as the bonding schemes operated through ABTA and ATOL, in addition to any travel insurance which may have been taken.

Whilst these differences could appear to work against the interests of consumers, in reality they have evolved over time to provide effective means of consumer protection, appropriate to the particular payment and purchase which has been made. Consumers generally have a good understanding of what protections apply to what type of payments, but they also have a responsibility to take reasonable care and to inform themselves where they may be unsure. Mastercard would be very supportive of any industry-wide initiatives designed to help consumers understand the

protections which are provided by different payment methods. It is important that consumers are provided with the necessary support and information to make informed choices on the basis of a clear understanding and payment providers have a responsibility to help in that process.

Differences in consumer protection for different transactions need not necessarily be seen as a 'problem' to be solved. Rather, they should be viewed as evidence of a diverse market meeting different needs in different ways. In practice, diversity means that differences are unavoidable and any regulatory interventions must be mindful of the possibility of causing harm.

Competitive markets rely upon well-informed purchasers making decisions in their best interests and it is not the role of regulation to undermine that responsibility, as ultimately that will make the market work less well because competition will be less effective. More practically, the PSR's remit does not extend to all of the types of consumer protection outlined above and so it must accept that different protection for different purchases will remain a core feature of the payments market.

Consumers' rights to choose

In making a choice as to which type of payment method to use for a particular transaction, the level of consumer protection provided is a valid differentiating factor to be taken into account and weighed against other factors and priorities. Removing it as a differentiating factor is not only unnecessary, it is potentially harmful.

For example, when making a relatively high value deferred delivery transaction e.g. for travel or furniture, the payer's priority may be to maximise consumer protection and therefore might choose cards as the best option. Alternatively, when paying a small business for a service which has already been satisfactorily delivered e.g. an electrician or a window cleaner, there may be no need at all for consumer protection and so the consumer will choose Faster Payments as a quick and simple cash alternative. Objectively, it is easy to see that would be the 'correct' choice in both cases and that there is no need for regulatory intervention to provide further consumer protection.

Whilst it may seem as if consumer protection can only bring benefits, in practice there will always be trade-offs to be made (consciously or sub-consciously) when deciding upon which payment method to be used. We refer below specifically to the issue of costs, but in this context, it is important also to consider the role of the merchant and particularly the merchant's legitimate desire and ability to steer consumers towards its preferred payment method. If there is an indirect negative effect to the merchant of the consumer using a payment method with the greatest consumer protection, it may decide to try to steer them away from that method, to the extent to which competitive conditions permit.

Merchants have many ways in which they can steer consumers, most obviously through the payment methods which they accept. Small merchants wanting immediate payment and to eliminate acceptance costs may only accept Faster Payments, which might not be feasible for large high street retailers at point of sale, for which cards may be better suited. Providers of utility, financial or subscription type services may prefer (or sometimes only accept) Direct Debit because it gives them the greatest assurance that regular payment will be made.

Ultimately, for any payment method to be used, there must be agreement between the payer and payee. It may not be commercially viable for a travel or furniture provider only to accept payment methods which do not have consumer protection mechanisms because that will be a priority for consumers. Conversely, the business of an electrician or a

window cleaner may not be in any way negatively affected and so consumers choice of payment method could be limited, but without any adverse consequences to them.

The balance of interests between the payer and payee and the choice which both ultimately have as to whether to use a certain payment method (or seek alternative customers/suppliers) is evidence of a well-functioning market. Although the PSR has an important role in protecting consumers, it must be sensitive and subject to these careful considerations. If the PSR simply concludes that it must maximise and equalise consumer protection across all payment methods, it will remove an important element of competitive differentiation between them. More importantly, it will distort the market by adding costs and obligations on certain merchant payees without any resulting benefits to consumer payers (and therefore indirectly the merchants). Perversely, this may reduce merchants' incentives to accept these payment methods, thereby limiting choice to consumers, who will have gained no additional benefit as a result.

The costs of protection

Whilst consumers would ideally always be fully protected in all circumstances, there is a cost to providing that level of protection, which ultimately can only be borne by the total population of consumers. The question therefore, is not whether consumers should be protected, but rather what is the necessary and appropriate level of protection in the circumstances.

Different payment methods have different acceptance and usage costs associated with them and different benefits which flow from that, of which consumer protection is a key element. Cards provide the obvious example by which to judge what may be possible. Whilst cards may not have the lowest direct acceptance costs, they probably provide the greatest overall level of benefits. Chargeback is the primary (indirect) benefit in this context, but actually the wider benefits of cards are much more extensive and focus on safety, security, speed and convenience of the transaction.

The cards ecosystem has a cost associated with it, which (by the nature of the franchise model) is borne directly by those who benefit commercially from it, namely issuers, acquirers and merchants. Although consumers do not bear direct costs, they will of course do so indirectly through their relationships with issuers and merchants. The cards model works well precisely because of balance of benefits and costs fairly attributed to all participants in the payment chain.

Mastercard very much welcomes the PSR's strong endorsement of the cards model, as a means of providing consumer protection. As the PSR highlights, the nature of the franchise and the rules overcomes any challenges of coordination and misaligned incentives and ensures that participants cooperate in a way which ultimately serves everyone's interests. In practice, however, the benefits and objectives of a card scheme franchise extend well beyond providing consumer protection. There are many ways other ways in which the model operates to serve the interests of all of its participants.

However, it is not simple, nor necessarily desirable, to replicate the consumer protection aspects of the cards model with all other forms of payment, not least because of the costs involved. In particular, the Open Banking model, which is intended to serve a similar need to card payments, has been developed in a very different way. An Open Banking payment is also very different to a payment made over Faster Payments (other than through Open Banking), which may necessitate a quite different approach to consumer protection.

On a practical level, it has taken many years to create the cards model which exists today, but it has also required a very significant investment. As explained, that investment in the franchise serves many purposes beyond consumer protection of the kind envisaged by the PSR. Clearly, it would not be cost effective to reproduce the level of investment in the entire franchise, only to deliver the consumer protection elements. Yet, it is not possible to deliver those elements, without the franchise and rules which support it.

Ultimately, whatever investment is considered appropriate will have to be borne directly by participants and indirectly by consumers. As has been seen with the implementation of the Contingent Reimbursement Code, the recovery of those costs can be contentious. But in any model, additional consumer protection costs are likely to lead to increases in acceptance costs.

Before concluding what type of consumer protection may be appropriate, the PSR will have to consider the cost implications carefully and how any increase in acceptance costs might change the nature of the payment method, the incentives to merchants to accept it, or steer consumers towards it, and therefore ultimately its availability and benefit to consumers.

Where might consumer protection be enhanced

Mastercard does not intend to provide detailed commentary on the governance options outlined in Chapter 5, but we will provide some broad observations of issues which the PSR may wish to consider.

But first, whatever intervention may be contemplated, it is important that consumer education and information remain central. Clearly, no consumer protection mechanism can be effective, if consumers do not understand their rights and how to exercise them. Although consumers have a responsibility to make informed payment choices, it is incumbent on their payment providers to help them by providing the necessary information and explanation and Mastercard is very willing to play a supportive role in that process.

It is important, too, that consumers know the boundaries of the available protection. No form of consumer protection can be unlimited and even in cards, there are caps, most obviously with respect to the operation of s75 which consumers must understand. That means that consumers will always have a responsibility to be informed, take care and protect themselves, as far as reasonably possible and not to assume that any potential financial loss will be covered in all circumstances. It is not the role of regulation to relieve consumers of their responsibility to look after their own interests, particularly if by doing so it will impose significant costs on the ecosystem, which might otherwise easily have been avoided.

Of the various use cases outlined in Table 3, we assume that the PSR is only considering the need for consumer protection with respect to the final three, relating to 'paying for goods and services' rather than the first four, relating to 'transferring money'. Certainly, we would agree that there would be no reason to introduce additional consumer protection measures for the 'transferring money' use cases. Even if it was practical to do so, the costs would far exceed the benefits and could not readily be justified.

Throughout the consultation, the PSR focusses principally on Faster Payments with only limited references to Open Banking. Although Open Banking relies on Faster Payments, from a consumer perspective, they are very different experiences and so it seems sensible to treat them separately when considering consumer protection measures.

One of the principal differences is that Open Banking ‘payment initiated’ payments have developed quite differently to other Faster Payments. In particular, Open Banking has been designed very specifically as a retail payment mechanism with ‘payment initiation service providers’ (PISPs) as the consumer facing entity providing the interface through which the payment is made. By contrast, Faster Payments is more generic in nature, with multiple use cases, but less specifically focussed today on ‘paying for goods and services’ in particular. Therefore, it would seem to be a greater current priority to consider how Open Banking consumers will be protected and given the confidence to make payments in this way.

In addition, PISPs exist to promote Open Banking solutions, which may mean that consumers are more likely to be aware of and utilise them for retail payments. This, in turn could make consumer protection in Open Banking a higher priority for the PSR. However, the market is nascent and still developing, particularly with regards to overlay services and consumer protection and so it seems too early to consider imposing consumer protection obligations on its participants. That is not because there is no need for consumer protection, but rather because the Open Banking ecosystem is already working to deliver it.

In particular, the ‘future entity’ for Open Banking governance on which the CMA is currently consulting is likely to play a significant role in that respect, potentially building on the voluntary code which the OBIE established. At the same time, private innovation and investment (by Mastercard and others) is helping to create new ways in which participants may choose to cooperate and consumers could be protected. As these solutions are still developing, it is too early for the PSR to seek to impose solutions which undermine choice and the incentives for private investment. There is no market failure which would currently justify regulatory intervention.

At the same time, it is hard to see how an approach to enhancing consumer protection for Faster Payments transactions could apply equally to Open Banking and non-Open Banking transactions. The PSR appears to acknowledge that ‘payment system rule’ approach would not be compatible with Open Banking, whilst the ‘payment governance system’ and ‘industry led payment protection’ approaches would seem not to be compatible with native Faster Payments transactions.

Objectively, the simplest approach would therefore be for the PSR to make a clear distinction between Open Banking and non-Open Banking transactions and to allow the future entity and wider ecosystem to design consumer protection for the former in a way which is specifically designed to fit that model. Separately, the PSR can consider whether any intervention targeted at native Faster Payment transactions is justified. Mastercard has no strong view on this question, other than to observe that there may be a case for industry to consider the need for enhancing the level of protection in the case of certain transaction types. However, prior to any potential regulatory intervention, PSR should consider whether the current level of usage of Faster Payments for (non-Open Banking) retail payments would be sufficient to justify further intervention beyond what is already happening in response to APP scams.

Given a ‘one-size fits all’ approach to consumer protections is neither feasible nor appropriate for payments, the PSR focus should be on consumer awareness of protections of the different payment types.

[REDACTED]

Member of the public

8 April 2021

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Dear Sir/Madam,

Consumer protection in interbank payments: call for views

Please find attached my responses to your consultation.

I am a long-standing, UK-based payments professional - I led Accenture's European payments practice for many years, and more recently had a senior role at Ripple, a Silicon Valley payments Fintech and I am currently setting up a payments Fintech with a business partner. I am providing these responses in a personal capacity, as a stakeholder with a keen interest in the success of UK payments.

I personally believe that consumer protection rules for account-to-account push payments for retail transactions (or any transactions) should only be considered if these transactions become problematic for consumers. At the moment there is no evidence for this even though FPS is used extensively for consumer-to-business payments.

Designing consumer protections in the absence of real evidence for their need is a case of regulation looking for a problem. It is best to wait and see if problems arise before any regulation.

The following pages explain my rationale for this view, after which I have answered a sub-set of specific questions from the consultation.

The key themes in my responses are:

1. **account-to-account (A2A) push payments are fundamentally different and safer than card pull payments**, and the need for consumer protection rules is correspondingly much lower
2. **consumer protections are often part of a commercial payments service or product** e.g. PayPal buyer and seller protection - the PSR should consider letting the **market drive consumer protection programmes** like these
3. contrary to the assumption in the consultation, a significant driver of **FPS growth is due to the purchase of goods and services** using online/mobile banking, which has occurred without the need for consumer protection measures
4. **consumer protections may make it more costly** for PISPs to operate, reducing innovation and volume growth

5. the **dynamics and risks of A2A push payments in UK retail commerce are unknown**
6. however, the **iDeal** A2A push payments system in the Netherlands, used in 60% of ecommerce payments, **after 15 years of operation still has no chargeback controls**
7. **the best approach is to wait and see** how adoption of A2A push payments for retail transactions develops.

Should you wish to discuss further, I am at your disposal,

Yours faithfully



Introduction

Account-to-account payments (A2A) are increasingly being used worldwide for retail purchases, at point-of-sale and online. A2A payments are threatening the dominance of credit cards and debit cards, although with billions of cards in issue globally, 100s of billions of transactions annually and continued growth, and new innovations such as ApplePay, the cards industry will continue to be around for many years to come. Even so, **A2A payments in countries such as the Netherlands and Poland already far exceed card payments in ecommerce.**

Open Banking is spurring innovation in A2A in the UK, with PISPs such as Ordo, Bankifi, Answer Pay and others launching A2A services. Since Faster Payments (FPS) is the means by which most online and mobile A2A payments are made in the UK, it reasonable to expect that Faster Payment volumes (specifically SIPS – single immediate payments) will grow significantly over the coming years.

Card networks have well established and proven measures in their rulebooks for chargebacks and disputes to protect consumers, so the question the PSR is considering is whether consumer protection measures are needed as well for A2A payments in the payment systems they regulate, in particular FPS as its use in retail payments grows.

Defining the problem

However, there is a risk that developing consumer protection rules for Faster Payments (and Bacs credits) is a case of regulation looking for a problem. This could have unintended consequences, specifically a higher cost of entry for payment innovators and for new entrants, in turn creating a regulatory moat protecting large incumbents from competition - **in direct contradiction to the PSR's objectives to promote innovation and competition.**

The consultation document refers often to “what happens when something goes wrong with a payment”. The structure of the consultation is – payments can go wrong, consumers therefore need protection, therefore what protections should we consider introducing? But what can go wrong with A2A push payments that affects consumers, and what is the problem that consumer protection rules in FPS would actually solve?

Para 2.5 lists four type of wrongdoing that adversely affect consumers in payments, summarised as fraud and error. The possible fraud and errors in retail transactions should be the focus for analysis, starting with a detailed breakdown of each:

Frauds:

1. retailer fraud where the retailer deceives the consumer into paying for non-existing goods or services
2. retailer fraud where the retailer overcharges the consumer more than the agreed price
3. retailer misrepresentation, where the retailer misrepresents the goods they sell, or deliberately provides defective goods
4. a retailer deliberately uses a pull payment to pay itself without the knowledge or the consent of the payer
5. third party fraud where a fraudster illegally accesses a payment product/service and steals money from the account holder

Errors/mistakes:

1. a retailer provides the wrong goods or defective goods in error
2. a retailer uses a pull payment to pay itself without the knowledge or the consent of the payer
3. a consumer accidentally pays the wrong payee
4. a payment fails to reach the payee in full, or only in part
5. a payment incurs fees without the payer's knowledge

Consumers clearly need protecting from fraud, and they need protecting from error and mistakes if the retailer or payment provider refuses to accept liability and refuses to correct them.

The cards networks have rules in place that cover all the eventualities listed here, which are also clear on where liability lies – with the card issuer, the card holder or the retailer, and on remedies and enforcement actions. However, **cards are inherently prone to fraud, as they are pull payments** where the payer shares their card details with the payee. Card rules and safeguards for disputes and chargebacks have always been essential to contain fraud to allow the card networks to grow.

So, in the A2A push payments domain which is fundamentally different and safer than card pull payments: how likely are these frauds and mistakes in A2A push payments? are consumers protected from them? and is there a case for additional rules in FPS to ensure consumers are fully protected?

To examine these questions, the following sections consider what evidence is available, what examples there are of consumer protection in payments, examples of A2A push payments in other countries and suggestions on how the PSR could proceed.

First there are statements in the consultation where there may be differences in opinion which are worth highlighting.

Consultation document

Table 1 on p5 is helpful in understanding the PSR's analysis, which shows the consumer protection options – retailer protection, payment protection and legal protection against the different payment methods. In addition to the protections shown on the table, in ecommerce (PayPal, eBay etc) there are also platform protections such as money-back guarantees, delivery guarantees, delivery protection (e.g. Post Office), seller protection and buyer protection. These are important as they show **that consumer protections are often part of a commercial payments service or product**, tailored to the service or product being offered.

Para 2.2 states that people have not used FPS extensively to buy goods and services, and implies the growth in FPS is due the boom in online and mobile banking. However, through online/mobile banking FPS is used extensively for bill payments – to utilities, to service providers, sole traders such as plumbers, painters and electricians, and **a significant driver of FPS growth is due to the purchase of goods and services**, even if their use in A2A ecommerce payments has yet to take off. It is also worth pointing out that about 13% of FPS payments are standing order payments which although are typically used to pay for rent, charitable donations, and transfers to savings accounts, they are also used for subscriptions for goods and services such as magazines and club memberships.

Para 3.11 states that PISPs have the ability to initiate a payment from a payer's account. This is only true for variable recurring open banking payments (still in definition) where a PISP initiates payments automatically. For standard open banking payments, the PISP may provide the link to the payer's bank, but the payer still authorises and initiates the payment, fully under the payer's control.

Para 3.34 states the PSR expects interbank payments for retail transactions to grow more slowly than they would if protections were in place. This would be true if consumer issues increased with volume growth, but **FPS volumes have tripled in the past seven years and doubled in the past three years without consumer protection rules, and without any significant issues other than APP fraud.** APP fraud is a big concern, and consumers need protecting from it, but it has little to do with payments for high volume retail transactions. In contrast, there is a risk that **consumer protections may make it more costly for PISPs to operate, reducing innovation and volume growth.**

Evidence of risks

The PSR needs evidence of consumer harm in A2A push payments in order to formulate the right rules to protect consumers and judge whether the level and scaling of harm justifies implementing rules. Outside of APP fraud there is no evidence or data provided on the risks listed earlier or the more general ones listed in para 2.5 of the consultation. There is also no evidence in the press (except for APP fraud) who are usually the first to pick up on even the smallest risks – for example, as they did with (virtually non-existent) skimming fraud on contactless cards for at least the first five years of contactless operations.

The reality is that **the dynamics and risks of A2A push payments in UK retail commerce are unknown,** and unquantifiable until this type of payment is established in UK retail. The cards networks are no guide, as they are pull payments, with an inherently fraud-prone payment initiation method using visible card numbers. This is why the cards industry spends billions on combatting fraud through PCI compliance, tokenisation and so on (all catered for in Visa's Core Rules and Visa Product and Service Rules which run to 892 pages). In contrast for example, **the iDeal A2A push payments system in the Netherlands, used in 60% of ecommerce payments, after 15 years of operation still has no chargeback controls,** very little fraud and no consumer protection controls specific to iDeal. Adding a consumer protection overhead to A2A retail commerce payments before they have barely started in the UK (with open banking and request-to-pay) risks a significant slowing in innovation and take-up.

Other Examples

In addition to iDeal in the Netherlands, there are plenty of examples of push payments used in retail commerce. Researching these should give the PSR evidence and insights to inform their analysis. These other examples include (and there are many more):

- PayPal
- Alipay and Wechat Pay in China
- PromptPay in Thailand
- Blick in Poland
- USA ACH payments at POS (transaction type POS) and online (transaction type WEB).

Cash and cheques have also been used in the UK and other countries for centuries for retail transactions without consumer protection rules.

There are also numerous examples of consumer protection built into payment products as features of the product rather than the payment system itself. These products are designed typically to increase sales for merchants and provide convenience and security to consumers. This includes credit and debit card products operating to Visa and Mastercard rules. PayPal has its buyer protection and seller protection programmes, eBay has its money back guarantee and so on. Another example is Germany's ELV point-of-sale card system and OLV online system, which use pull payments (single direct debits) and a voluntary guarantee system retailers can choose to pay for protection against insufficient funds. These demonstrate that protection programmes are being commercially driven and implemented – **the PSR should consider encouraging market-driven programmes like these as an alternative to regulation.**

Finally, there is the example of the strong customer authentication (SCA) technical standards introduced into the SEPA zone by the European Banking Authority as part of PSD2. These were prompted by the alarming growth of card-not-present fraud and designed to keep fraud levels down while allowing ecommerce to grow. SCA has proven to be immensely complex, costly and confusing, and when fully implemented there is a strong risk of consumer inconvenience, dissatisfaction with their PSP, inconsistency, and a slowdown in ecommerce, innovation and new entrants. Unfortunately, the EBA applied SCA to A2A push payments as well as to card pull payments, so even though A2A push payments are far less risky as iDeal has proved, they are suffering the same restrictions as cards. It would have been much simpler and more effective for the EBA to ban manual entry of card data and set maximum permissible levels of fraud, and the market would have worked out the solutions needed, resulting in faster adoption of A2A commerce payments, QR code and in-app payments for all channels.

This is an example of well-intentioned regulation introduced ahead of innovation and technology adoption leading to serious difficulties in both innovation and adoption.

Recommendation

The best approach for the PSR to take is to **wait and see how adoption of A2A push payments for retail transactions develops**, how it grows Faster Payments volumes, how any consumer issues materialise and how PSPs/ PISPs start offering their own buyer and seller protection programmes and guarantees as part of their commercial propositions to retailers and consumers. If it becomes apparent consumer protection rules are required in FPS and other payment systems, then the PSR should act.

The APP scams also need to be fixed and I have suggested recommendations on how to do so in the separate consultation. Core to my suggestions is strengthening **KYC and CDD controls** on bank accounts to prevent fraudsters using them in the first place. **This is the single most important action to protect consumers**, and is also critical to new innovations. For example, the new request-to-pay (RtP) propositions using open banking are dependent on the PSPs' KYC of bank accounts to ensure that consumers receive payment requests only from bona-fide retailers and pay into the right bank accounts. **The combination of RtP and PSP KYC is very powerful**, and has the potential drive up A2A push payments considerably over the next few years.

Finally, the **PSR should consider encouraging the development or enhancement of returns processing and scheme rules for it.** Easy returns and refunds are a core feature of successful ecommerce business models, and embedding retailer-friendly rules for them in FPS (and later the NPA) will encourage and enable innovation in A2A retail push payments. They will also provide the capability for consumer refunds and reimbursements should the PSR need to implement consumer protection rules later on once A2A retailer push payments gain traction.

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?

No – aside from APP fraud which does need to be dealt with, there is no obvious need for consumer protection rules in FPS. This is despite the sustained 20%+ p.a. growth in FPS over the past 7 years, in large part due to consumer-to-business payments. International evidence such as the iDeal system in the Netherlands also shows interbank retail payments can operate at scale without consumer protection rules built into the scheme.

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

The interbank payment systems clearly have no consumer protection rules (apart from the Bacs direct debit guarantee). However, individual PSPs such as PayPal and eBay have their own buyer and seller protection programmes. This indicates the market can provide appropriate levels of protection as features in commercial payment products/services for retail payments.

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)?

Yes – as for the previous answer, the market has shown PSPs can provide their own levels of protection to encourage adoption of their commercial payment products/services for retail payments. This has long been the case with credit and debit cards (albeit to common product standards set by the card networks), and also with ecommerce platforms acting as PSPs and with PSPs servicing ecommerce platforms and marketplaces.

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?

This shows that if protection is required, it is sub-optimal and incomplete to place rules in interbank payments systems, as on-us transactions are the same to consumers as interbank transactions. The correct place for any rules is with PSPs providing payment accounts, and as the market has shown these PSPs will introduce their own rules as differentiators and enablers to encourage adoption of their payment accounts.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

Payment protection should only be introduced if there is evidence it is needed. There are plenty of consumer-to-business use cases which use Faster Payments which so far have shown no need for special consumer protection rules.

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?

No such protection should be introduced. **A2A push payments are fundamentally different to card pull payments.** Card payments suffer from third party fraud where the consumer sees fraudulent payments on their account initiated by a fraudster. **This type of fraud accounts for around 70% of card fraud, but is far less likely with A2A push payments** as only the payer can initiate payments (unless their account credentials are stolen).

If a scenario materialises where payment protection is required and liability needs to be imposed on the seller, then it should be on the PSP which holds the seller's account. If a PISP has no responsibility for a seller's account, then it should have no liability for any fraud committed with that account – the PISP is dependent on the KYC of the PSP which holds the account.

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)?

Yes – the PSP is likely to start charging the seller considerably more for operating their account, including possibly ad valorem transaction charges to manage its risk, and it would demand a minimum level of annual fees from the seller, potentially making it uneconomic for the seller to use the PSP.

The relationship between the PSP and seller would become similar to that between PSPs and money service businesses and cross-border remittance businesses, where compliance requirements introduce a risk/revenue dynamic for the PSP which is very different to a normal business banking relationship.

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

There would need to be a risk that the PISP can initiate a payment without the payer's consent or for a different amount to that the payer expected. If this is the case, there may be a case for payment protection for open banking payments if the payer hands responsibility for initiating each individual payment to a PISP. This would be similar to the Direct Debit guarantee which protects the payer from the biller initiating fraudulent or erroneous payments.

For existing recurring payments such as standing orders and Bacs direct credits which have been in existence for over 50 years, there would have to be a good reason to introduce any new payment protection arrangements at this stage.

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?

Evidence is required first to show that payment protection is needed. This evidence would also indicate if a threshold is needed.

Modulr



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08 April 2021

CP21/4 – Consumer protection in interbank payments – call for views

We welcome the opportunity to contribute to this consultation and recognize the importance of exploring opportunities to improve consumer protection.

Our response is structured to provide a focus on key themes rather than addressing each of the 29 questions posed. We have also contributed to and are supportive of the more detailed response provided by the Electronic Money Association (EMA).

The key themes from our perspective are:

- At this stage in the consultation, we do not believe that the case has been made to support the statement that *'there is insufficient consumer protection for interbank retail payments'* and we would be keen to see more detailed analysis to help scope out the scale and nature of the perceived problem. We understand some of the early thinking is being driven by the potential future growth of interbank payments and its use in the acquisition of goods and services. Whilst this has significant potential, we are concerned that designing solutions without the necessary depth of analysis will impact their effectiveness and if implemented too early adversely impact the potential growth for this use case. The impact on cost and pricing models is of particular importance and will require serious consideration and may make FPS uncompetitive and unviable especially if fees are not aligned to liabilities (either via flat fee or % pricing)
- We also believe that before looking to design or introduce new solutions the first step should be to assess the existing protections in place to present a case as to (a) why these aren't sufficient (b) the best way to bridge or resolve any inadequacies in these controls either through enhancements to existing controls, the introduction of new controls or a combination of the two. We note in the EMA response they provide greater detail in relation to the existing frameworks (such as *Small Claims Track* and *Money Claim Online*) and we agree a review of these would be a positive first step.
- We do support the principle of working to raise consumer awareness as well as the key role of organizations such as *Citizens Advice* in helping consumers to understand their rights. We also recognize that consumer behavior is a key step to mitigate many risks at source. As is referenced in your paper shifting these liabilities to a single point (the PSPS) who have limited direct control

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[REDACTED]

over the actions of either the consumer or the trader may adversely impact either parties levels of vigilance

- Moving the liability for refunding consumers onto PSPs /PISPs has the potential to introduce several risks including:
 - Additional financial risks/liabilities for PSPs including concentration risk in the event that a large merchant was to become insolvent with unfulfilled orders.
 - Organized crime and fraudsters look to exploit opportunities with the burden on the PSP to disprove claims coupled with the risk of consumers becoming less vigilant
 - Increased complexity and cost in the management of processes reducing the competitiveness of PSPs, stifling innovation, and reducing the viability of services offered in this space
 - The potential for PSPs to attempt to mitigate risks through practices such as de-risking to avoid clients/sectors that may be deemed as more exposed and even discouraging consumers from using Faster Payments to purchase goods and services

We believe it is important to recognize that where comparisons to other sectors/services are made to support the argument for greater PSP liability there is clear evidence to establish that these same issues proportionately impact consumers and their use of interbank transfers. Key comparisons made which we do not believe proportionately impact interbank payments are covered in greater detail by the EMA (in response to Question 2) but consider the grounds and logic in relation to credit and Insurance (as it relates to homes and motor vehicles).

Whilst we remain committed to improving consumer protection, we are not convinced on the basis of the analysis produced to date that the proposals would have the desired effect. We are also of the view that the costs of such moves could disproportionately impact the competitiveness of PSPs and the ability of intrabank payments to offer an alternatives to current solutions.

I hope this response is helpful and if you have any queries or require any clarification in relation to the points raised in this letter, please do contact [REDACTED].

Yours faithfully

[REDACTED]
[REDACTED]

Monzo

Call for Views: Consumer protection in interbank payments

Introduction

Monzo is a fast growing, UK based fintech challenger bank. We received our full banking license in Spring 2017, and now have over 5 million customers across the UK. We are app-only, a retail bank that lives on your smartphone, and our digital DNA has allowed us to bring a whole range of innovation to the UK retail banking market, giving our customers visibility and control over their finances.

Monzo are incredibly supportive of the ambition to create a sustainable, transparent and clear framework to support the use of Faster Payments for retail transactions. Thanks to the regulatory framework in the UK, the use case for interbank payments has emerged faster than in other jurisdictions. As such, we welcome this Call for Views, and the Treasury's Payments Landscape Review, as an opportunity to further support these developments.

For the purposes of this response, we will focus on whether consumer protections on interbank payments made for online retail purchases (C2B) would be of use. The card scheme protections that most relate to this use case are chargebacks for: goods and services not provided or not as described, situations where the merchant is no longer in business, or addendum disputes, where only part of a contract has been fulfilled. There are other use cases, but generally speaking these would be the most relevant situations in which a user would benefit from protections for the purchase of goods or services. In most of these cases, the merchant (or subsequently the acquirer) would be held liable for failure to fulfil these contracts. This liability model is long established, as the acquirer holds the relationship with the merchant - they have the ability to take in depth risk calculations on every merchant they onboard, the flexibility to deny services, the support of the scheme rules, and the ability to reserve collateral in order to mitigate the risk of contracts not being fulfilled. This visibility and relationship is crucial to managing the risk of offering consumer protections. This kind of infrastructure underpins the economic model that could support consumer protections on Faster Payments yet.

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

Currently, we believe this is an emerging need - but not a significant risk for the vast majority of users making interbank payments. However, we are fully supportive of considering this issue now, rather than waiting for the risk to become acute. Any interventions considered by the PSR should take into account

[REDACTED]

that the services and technology driving these risks are in their infancy - and could drive real value in the UK payments market. Intervention should be proportionate and risk based. At this stage, we believe the focus should be on how the scheme could unlock data and visibility over FPS transfers to de risk them - and support the development of commercial consumer protection propositions.

Primarily, the use case for interbank payments will be driven by the adoption of Payment Initiation Services. PIS providers offer users an easier way to initiate bank transfers, and a competitive solution for merchants compared to card payments. However, despite the comparatively faster growth of payment initiation services in the UK than in other regions, these services are still nascent. The risk here is also driven by very specific scenarios - in cases where consumers are using PIS providers to pay smaller merchants online, without established dispute resolution processes (e.g. product guarantees, specific returns policies etc).

These services need time to scale, and respond to consumer or merchant demand from the market. Merchants are incentivised to utilise new payment methods for a number of reasons, including cost. As such, they are well incentivised to build consumer trust in these solutions, as are the regulated providers offering them. This is especially true, as merchants cannot encourage users to utilise their preferred payment method through differential pricing at point of sale. The surcharging ban prevents merchants from discounting the cost of an Open Banking payment, for example, as opposed to a card payment. This means that merchants can only hope to drive adoption through other factors: user experience, convenience, and vitally - trust.

The same is true for PIS providers themselves. Consumer trust is crucial to building a scalable, attractive new domestic payment product. It's a key driver for all new market entrants in financial services - including banks like Monzo. It would be difficult to consistently grow a new payment method to compete with card schemes, without that crucial element.

Finally, the risk for retail transactions occurs primarily for online transfers made to smaller, less established providers without clear refunds or exchanges policies. Many of these may be sole traders or SMEs operating on marketplace platforms. However, Payment Initiation Services, in time, should become a solution for physical POS transfers run over the Faster Payments Scheme too. There are barriers to this - decoupled authentication would be crucial, as well as terminal technology and instant communication to allow for the merchant to know that a transaction has been cleared. However, this use case could be built out. When looking to establish consumer protections for interbank payments, the PSR should consider the variety of use cases for retail purchase transactions, and

[REDACTED]

ensure that the benefits of the payment method are not prevented from developing.

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

Yes, we do see scope for commercial protections to emerge. As outlined above, PIS providers and merchants have adequate incentives to drive adoption of this new payment method, and thus will eventually consider payment protections - once the product has begun to scale.

However, we think this would be highly unlikely without significant infrastructural improvements, as well as demand from merchants (who primarily drive the competition between payment instruments, as opposed to users).

Infrastructure changes

We support the PSR's suggestion that the *current* interbank payment system would struggle to support an intricate framework, established through an extensive rulebook, to ensure that all parties in the scheme could manage the risk of offering consumer protection for interbank retail transactions.

However, the interbank payment system supports a wider variety of use cases than the card scheme network. The interbank system for the customers of direct or indirect participants (either retail consumers, or UK businesses) offers the ability to send money for a variety of reasons - not solely commerce e.g. paying bills, rent, sending money to friends and family, receiving salaries etc. These frictionless transactions are a net benefit to users, and competition in the UK. Monzo's growth has been driven in part by making it easier for people to quickly, conveniently and instantly send low value transfers to friends, family, small businesses etc. This network effect is so strong that it's even become a verb - to 'Monzo' someone funds. Where the risk on transactions is low, placing an incentive to create a high friction, frustrating environment is likely to be disproportionate.

The PSR rightly raises that the card scheme network has a higher barrier of entry from those wishing to accept card payments, and the ongoing right to impose sanctions and other fines to ensure compliance by those operating under that system. The relationship in particular between the acquirer and merchant is very different between that of the payee and the PSP offering account services, and the ability to receive faster payments. The data that is collected by ASPSPs to onboard individuals and businesses to access day to day banking services, is very different to that which is collected, shared or expected from a business when an

[REDACTED]

acquirer is seeking to onboard a merchant, and manage that risk. Where the acquirer will take on liability for fraudulent or undelivered goods in the case the merchant proves to be illegitimate, they manage that risk of the recipient account through enhanced data, as well as protecting their liability by collecting collateral, or a proportion of their payments, as a condition of opening the relationship.

Furthermore, new developments in technology, e.g. electronic verification, in combination with the legislative requirements laid out in the Payment Accounts Regulations, have led to huge strides in raising accessibility and convenience for individuals and businesses to access basic banking services.

As such, it would not be proportionate to require at a scheme level that all direct participants take steps to emulate the acquirer - merchant model for all business customers, sole traders or simply individuals selling occasional items on platforms like Etsy or eBay. The high levels of ongoing due diligence, additional data collection, and the collateral collected by acquirers would not be proportionate to require from every user as a condition of access. Consumers and businesses benefit from low cost, convenient, frictionless onboarding (that still manages money laundering and financial crime risk) and easy and convenient instant payments. We would not support any requirement to replicate this model wholesale, due to the consequences for accessibility and the disproportionate requirements it would place on businesses and friction in the transaction flow.

However, the collection and transmission of data, to improve visibility over the payment chain and mitigate risk, as well as the creation of a standardised framework in order to facilitate this, would be hugely beneficial to helping PSPs offer consumer protections as a commercial proposition for their business customers, for merchants that do have incentives to drive the uptake of Faster Payments for retail transactions (with all the associated benefits).

Basic information, such as communicating MCCs to the sending bank prior to the initiation of a transaction, as well as aggregated views of elements driving the risk of not fulfilling contracts - such as the age of accounts, business activity, etc, could all be helpful data points. We strongly believe that the first step towards preventing both APP scams and improving protections for purchases generally on the interbank payment rails - be that for goods and services not provided or as described, etc - would be to improve communication and visibility over the payment chain. These infrastructure improvements should be developed now, to support better outcomes regardless, and to help facilitate commercially driven propositions for consumer protections in response to specific use cases in the long run.

Commercial incentive

[REDACTED]

Should the needed infrastructure changes emerge, providers could then begin to consider whether payment protections would be a valuable product for their business users. As noted, there are a variety of use cases present within the Faster Payment Scheme - not all of them are retail transactions that would require payment protections. It's important to differentiate even between business users who offer goods and services online, who may see a clear use case for consumer protection to build trust in their business, and businesses who conduct primarily B2B operations, or do not sell their services online. The costs of this system - in which a PSP offers consumer protection on behalf of the merchant - would also have to be borne by the merchant ultimately, in order to create a sustainable economic model. As a result, it is important to preserve access to banking services - business bank accounts and cards for example - without high barriers to entry. As such, we do believe that there is a strong case to allow protections, at least initially, to emerge as a commercial proposition from PSPs to merchants looking to accept Faster Payments specifically for retail purchase transactions.

Finally, we would urge the PSR to take a holistic approach to de-risking Faster Payments for retail purposes. Payment Initiation Services hold a relationship with the merchant. These services could play a fundamental role in improving visibility over the payment chain for sending banks through enhanced API calls. These services are obliged entities under the Money Laundering regulations and do conduct due diligence on their merchants. Monzo have already experimented with solutions like this to support our vulnerable customers utilising retail faster payment transactions. Recently, we piloted an Open Banking powered gambling block with TrueLayer. Their team agreed to pass through information on their merchant's business activities via API call when attempting to initiate a payment, in order to allow Monzo to block payments to gambling firms for our users who have their gambling block turned on. This was an entirely optional initiative, but demonstrates the value of PIS within the payment chain to derisk transfers.

Nationwide

PSR Call for Views on Consumer Protections in Interbank Payments (CP21/4)

Nationwide Building Society Response

Thank you for the opportunity to engage on the important topic of consumer protections. We hope that the PSR receives the breadth of input it is hoping for. We would be happy to engage further to discuss any of our views below.

About Nationwide

Nationwide Building Society is owned by, and run on behalf of, our 16 million members. As a mutual society, it is key that we look after our members and their money, providing sustainable and reliable payment services. As Nationwide does not provide a business banking service or have a card acquiring arm, our response is focused on the payer – our member.

With the application of Faster Payments in a retail context being at an early stage, especially in comparison to card payments, we believe now is the time to consider the development of the right protections for consumers and deliver better payment systems. As we discuss below, we strongly believe that any reform should start with the Consumer Rights Act as this provides a strong foundation which new solutions can be built from.

In our response we highlight:

- Our support for the alignment of industry / regulatory conversations on consumer protection.
- There are options to enhance access to consumer protections – for all payments.
- The value of gathering more evidence on Faster Payments in retail transactions.
- Options to create a model without Payer PSP credit risk.
- Requirements for a sustainable model for consumer protections.
- The need for a cost / benefit analysis.

We recognise that there is a simultaneous APP scam Call for Views taking place and that this Consumer Protections Call is at an earlier stage and does not consider instances where there is a clear intent to scam.

Our Overall Feedback

I) Support for alignment of industry / regulatory conversations on consumer protection

- i) We welcome alignment of various industry and regulatory Consumer Protections conversations – to clarify regulator roles, streamline effort and maximise consumer outcomes. These conversations could be joined with others on the New Payments Architecture (NPA) to form both short- and longer-term strategies, the latter fuelled by innovation such as the NPA’s enhanced messaging - which will enable solutions to support good customer outcomes.
- ii) We are supportive of wider work Pay.UK / UK Finance is undertaking on the development of standards [REDACTED] as we see this having a positive effect on payment protections.

II) Options to enhance access to consumer protections – for all payments

- i) As this is the start of the process, we think it is valuable to highlight work that could be undertaken for all payments not just Faster Payments. Later we take this opportunity to discuss, alternative models (IV) and some key elements which we believe should be in place should inter-bank models be considered in the future (III and IV).
- ii) Statutory protections are set out in the Consumer Rights Act (CRA) for consumers who have issues with goods and services supplied by merchants. We understand those may be difficult for consumers to access as court proceedings may need to be undertaken. However, there are many ways in which access to these protections could be enhanced by way of a merchant code, for example. We would encourage the PSR to work with HMT, Department for Business, UK Finance, industry and others to explore more macro-environmental ideas. For

example, the CRA protections could be accessed more easily by introducing a timeframe within which a seller must reach a decision to refund, and actually make the refund (e.g. 28 days). Ombudsman recourse could be provided to cover a faulty goods / services scenario. Other alternatives could be placing responsibilities on online marketplaces or accredited insurance for particular transaction types. One benefit of a solution along these lines is that it could be payment agnostic and so apply to all payment types - including cash.

III) Liability Position should be based on that set out in the Consumer Rights Act

- i) Any solution which includes payment service providers (PSP) should be based on the liability position set out in the Consumer Rights Act. It provides a clear position that merchants are liable if there are issues with goods / services supplied. Responsibility for making the refund could sit with the Payee's PSP or Payment Initiation Service Provider (PISP) and be catered for in the commercial relationship between them and the payee. If after consultation, the PSR is minded to create a consumer protections model placing responsibility on PSPs to refund, it would be for the party with whom sellers have a commercial contractual relationship e.g. their PSP / PISP to be responsible for refunding consumers. Please see our comments below on options to create a model without credit risk.

IV) Need to Know More

- i) As the Call highlights, use of Faster Payments in retail transactions is currently low – with technical issues impacting their adoption - but innovation is taking place. Given this it is early to judge if the industry or the competitive space will not create viable alternative solutions. Examples of protections exist today e.g. PayPal. Over time it is likely that parties may wish to differentiate themselves through consumer protections. Today, entirely different models exist, such as iDEAL in the Netherlands which is widely used but does not have the protection of cards. Consideration of the success factors of these models would be relevant.
- ii) There needs to be a consideration of how to support the convenience of Faster Payments in situations where trade dispute protections would not be as valuable e.g. account transfer payments to friends and family. Having clear, consistent customer messaging of which protections are offered with each mechanism would help consumers make informed choices.
- iii) More evidence on shape of demand / usage / timing will help determine the direction for consumer protection. However, we recognise that new Faster Payments use cases will emerge over time – particularly through Open Banking and see the launch of instant payments in the NPA as a milestone (see V.vii).

V) Options to create a model without Payer PSP credit risk

- i) We understand that consumer protection in this area could take a completely separate form to chargebacks and would very much welcome the opportunity to work with industry on the consideration of such options.
- ii) It is important however, to understand that Faster Payments are not like cards. Since their inception more 50 years ago, cards have been designed to operate at point of sale and have an economic and commercial model, rules, payment messaging, acceptance mark and processes completely geared and evolved for this purpose on an international basis. Faster Payments do not have this economic or governance model or other facets for this type of usage.
- iii) These factors shouldn't prevent innovation, but they do call for consideration to promote consumer protection solutions that are truly viable and can be commercially sustained. It is also important that these solutions are not so complex and expensive that their implementation would affect the health of the payments eco-system in terms of, competition, innovation and its users.
- iv) As a retail focused mutual, we wish to see good purchase outcomes for our members but would regard the creation of a consumer protection model which places a requirement for immediate refunds on a payer organisation – without strong economic or governance models - as unviable for our members and potentially a threat to free in credit banking.
- v) If the PSR is minded to develop an inter-PSP consumer protection model we would urge consideration of a model under which the Payer PSP does not incur a credit risk. A potential model could be a rule requiring that to be paid for goods and services via a Faster Payment, a business payee must offer protections such as a number of days in which to refund / explain why a refund is not available. Payer PSPs could facilitate customer's requests for refunds by passing these to Payee PSPs / PISPs but a refund would be contingent on one from the payee or Payee PSP. This would have the advantage of covering all relevant payees in the existing

Faster Payments Scheme; as well as being administratively simpler and removing some of the complexity of an economic model by removing credit risk for immediate refunds.

- vi) The method through which these protections could be introduced – to include merchants - would need to be agreed. A kite mark could be introduced to communicate to customers where the protection is provided.
- vii) We see the roll-out of instant payments as part of the NPA as being a key milestone for consumer protection model(s). Overtime, more than one consumer protection model may exist. For example, an overlay retail payments service providing consumer protections could be developed - with its own acceptance mark – which those accepting payment for goods and services could join.

VI) Requirements for a sustainable model for Consumer Protections

- i) In this section we summarise some of our responses but overall, to put in place an inter PSP / PISP consumer protections mechanism for trade disputes – particularly one in which Payer PSPs bear credit risk - we would say the following must be in place:

- a) **A strong economic model** to support a sustainable vibrant payment system – especially if FPS / instant payments in retail transactions are to grow over time.

- (1) The economic model would need to reflect the service, cost and risk of participants.
- (2) Sufficient reserves would be necessary in the system.
- (3) Given recent experience, we would wish a consumer protections model – no matter how modest - to start with an economic model. The absence of one could be a threat to free in credit banking.

- b) **A strong governance model:**

- (1) The payments industry has a history of competing organisations working together to offer consumer protections to give confidence in a payment type e.g. card and Direct Debit protections. There are a number of parties in a purchase transaction and without agreed rules which make apparent each party's responsibilities, the protections offered and also, rights - such as a payee's ability to challenge a refund – the extent, efficiency and confidence in the protection could be undermined.
- (2) We would wish to offer our customers consistency and ability to be aware of a dispute's status. There could be an alignment between the scope of coverage of protection for Faster Payments and debit cards - but the economic model would need to cover insolvency if that is to be in scope. However, as above a protection could be created whereby the Payer PSP facilitates the request for a refund but the refund is contingent on receipt of funds.
- (3) Following the example of the provider of governance in the cards or Direct Debit consumer protection models, the payment systems operator would be the governance body. We are conscious though that Pay.UK would require a capacity and capability uplift to operate a trade disputes model or a disputes / monitoring capacity - so think strong consideration should be given to how they would gain this necessary capacity or use of an external body outside the existing ones.
- (4) There is a consultation underway today regarding future governance of Open Banking. We believe it would be important for indirect participants / PISPs to be able to participate in consumer protections – while not wishing to stifle innovation. So, would be interested understanding how the capability would be grown to accompany a scheme rule change or a payments governance model.
- (5) We would not be in favour of a voluntary model as it offers differential protection for consumers.

- ii) **Definition of scope and liability model:**

- a) **The liability model should reflect the Consumer Rights Act and business providers of goods and services should be liable for defective goods / services.** We would be less in favour of a model built on value or use case - both offer simplicity of concept but difficulty in definition. It would be also necessary to explain to customers which transactions are protected and the rationale. [REDACTED]

[REDACTED] However, research could help shape targeted consumer protections.

- b) **Responsibility for making the refund could sit with the Payee's PSP or PISP and be catered for in the commercial relationship between them and the payee.** If responsibility were placed with the Payee PSP / PISP it would be likely to result in the vetting of who could accept FPS / instant payments for goods and services.

- c) **We would envisage that a payer is most likely to approach the payee if goods / services are defective, followed next by their Payer PSP.** As a Payer PSP – we would expect to approach / seek redress as appropriate under a model from the Payee PSP – rather than approaching the payees.

iii) **Facilitating Processes and Technical Support:**

- a) To avoid later reworking, consumer protection models should consider upcoming technical changes which could ease implementation. The [REDACTED] ISO 20022 messaging in the NPA could be an enabler of a consumer protection mode [REDACTED]. Any model should recognise potential of developments and consider the timeframe for the launch of services such as instant payments.

- iv) **Consumer Communication of Protection** - Protections could be signified by a separate mark. For example, for instant payments at Point of Sale. Funding and governance of this would need to be agreed.

VII) Need for Cost Benefit Analysis: Creating a consumer protections model is likely to be very expensive for PSPs. We would encourage consideration of costs, timing, demand, and wider impacts on participants in the value chain in the PSR's consideration of proportionality.

VIII) Any model should be designed to consider unintended consequences of non-participation on existing and potential future users of Faster Payments.

Call for View Responses

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

- 1.1. We understand that the PSR's interest primarily focuses on Faster Payment and so have focused our response on this.
- 1.2. In our view there are strong existing protections for Faster Payments where there is:
 - 1.2.1. **A fault in the payment service provided by a PSP or a PISP** through the Payment Services Regulations 2017.
 - 1.2.2. **A mistake with the payment due to an error caused by the payer where:**
 - 1.2.2.1. Protection for accidentally misdirected payments is offered in the form of Confirmation of Payee to enable the payer to gain assurance of the payee account name before initiating a payment.
 - 1.2.2.2. The Credit Payment Recovery Process exists to help attempt to recover funds which have accidentally gone astray; and
 - 1.2.2.3. The Payment Services Regulations requires PSPs to try to recover the funds and enables the payer to be provided with relevant information about the payee in order for them to claim repayment of the funds.
 - 1.2.3. **A fraudulent act that causes consumers harm** where unauthorised payments are covered by the Payment Service Regulations. Please see our response to the simultaneous APP scam Call for our thoughts on APP scam protections.
 - 1.2.4. **A fault with goods or services purchased; provided by the Consumer Rights Act 2015 (CRA).** And the Call itself refers to other protections offered by alternative means of payment, retailer / PISP protections, insurance, warranties.
- 1.3. The issue here relates mainly to 1.2.4 above as consumers can only currently access the CRA protections through the court system. We agree that this process should be smoothed so it is easier for consumers to obtain redress if goods / services are unsatisfactory.
- 1.4. This concern can be dealt with in a number of ways including through strengthening rights consumers have against merchants or by involving payment service providers in the process. The benefit of strengthening consumer rights against merchants is that this could be payment agnostic and could also apply, for example, to cash purchases. Involving payment service providers by changing, for example, the Faster Payment scheme rules would limit the protections to Faster Payments only and leave cash payments without equivalent protection. Strengthening consumers rights against merchants could be achieved by, for example:
 - 1.4.1. Building on the underlying protections in the Consumer Rights Act e.g. by introducing a timeframe within which merchants need to reach a decision to refund and carry out the refund (e.g. cumulatively 28 days) and the introduction of an ombudsman service to deal with disputes. This could mean that all straightforward cases could be dealt with quickly by merchants with the court route being reserved for more complicated, disputed cases.
 - 1.4.2. Placing responsibilities on online marketplaces.
 - 1.4.3. Requiring that consumers take out insurance / payers provide protections on certain high-risk transactions as described today by the PSR in 3.32 for motor insurance. This protection could be accredited.
- 1.5. We understand that the PSR would like to gather views here about what the payments industry can do but government, merchants and online marketplaces can also help with consumer protections and put in place preventative measures for trade disputes. We would urge the PSR to work with the government and industry to explore these as part of on-going consumer protections work including the Payments Landscape Review.
- 1.6. Such protections could also complement protections for Faster Payments.

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

- 2.1. We refer above to existing protections - some provided through statute and others through groups of competing organisations working together to establish sustainable consumer protections for the health of the payment system such as card and Direct Debit protections.
- 2.2. Therefore, we don't agree that competing organisations cannot be motivated to work to provide consumer protections. And greater good can be supported by mutual interest that protections such as Direct Debits provide - the outcome of low-cost payment processing with high accuracy and protection. But key co-ordinating factors such as economic and governance models enable this to happen - especially in situations where PSPs are intermediaries in a trade dispute such as cards.
- 2.3. Usage of Faster Payments for retail transactions is low and consumers do not perceive many FPS transactions as risky - as these are often made to people they know or for services received. Research shows that consumers do not expect - and so do not demand - to have consumer protection for many everyday purchases in which they are paying someone they know. The Pay.UK research says.... *They do not actively seek protection for all of their purchases, as most everyday purchases are not perceived as risky. The purchase of lower value items from well-known brands are not considered risky by consumers.* Please see our response to question 3 on need for more information and value of additional data on Faster Payment usage in retail payments.
- 2.4. There is opportunity for research on specific use cases to identify where other solutions may be appropriate e.g. escrow services, insurance etc. Or other focused consumer protection.
- 2.5. Greater clarity of what protections are provided by different payment methods should be considered now so that consumers can consider if the protections offered match their needs:
 - 2.5.1. As a baseline - customers understand if they make a transaction with cash, they have low protections and act accordingly.
 - 2.5.2. The different protections provided by cards or Faster Payment can be explained
 - 2.5.3. Where a customer is not clear on when a card or Faster Payment is the underlying payment method - there is a need to consider what messaging should be given at point of transaction and who can give this message.
- 2.6. In payments being made now, or in consumer protection models of the future, it should be clear to the customer which protections apply in difference circumstances.

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)?

- 3.1. Usage of Faster Payments in retail transactions is low and future demand and trajectory unknown. Cards do provide protections today and a one size fits all consumer protection may not suit all end users going forward. We would for example, wish to ensure the convenience of Faster Payments for person to person transactions is maintained.
- 3.2. However, we recognise that new use cases are likely to emerge. The development of instant payments through the NPA is likely to be a turning point in this uptake. So, there may be a question of timing and need for evidence to answer this question.
- 3.3. It is early to say that competitive offerings will not emerge to enable the trade disputes between payers and payees to be resolved. Some merchants already offer payment protections and it is possible that, in order to distinguish themselves competitively, others may also do so in the future. And today, different models exist. For example, Faster Payments models exist internationally which don't have specific inbuilt consumer protections for trade disputes. Example: iDEAL in the Netherlands is a direct account to account transfer that does not have the same protections as card but is widely used.
- 3.4. Any final inter-bank solution could also be improved upon through the implementation of data sharing solutions; ISO 20022 messaging and ability to develop services such as for instant payments through the NPA.

[Redacted]

[Redacted]

[Redacted]

- 3.5. An informed decision should be made on the way forward so as to not deter the possibility that consumer protections will develop in the competitive domain or require investment which may need to be duplicated later.
- 3.6. If after consultation, the PSR is minded to involve PSPs in enhanced protection in this area – especially ones creating PSP credit risk - a number of building bricks will need to be put in place. Including economic; governance and liability models; and ideally technological capacity and consumer messaging etc.

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?

- 4.1. The response to this question is really dependent on the final design of any consumer protection – including any technical components. If there were a barrier that prevented participation in the consumer protection – e.g. technological – this could present a difficulty. But we would not anticipate a major difficulty in on-us payments.
- 4.2. [REDACTED]
- 4.3. Additional protections based on the CRA would, as mentioned above, be payment agnostic and so could cover internal transfers as well as cash payments.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

- 5.1. Simply put, this depends on adoption of other macro-environmental options and a model’s design and proportionality to harm.
- 5.2. As we describe in Question 1, there are wider macro-environmental solutions which could be enacted here and in Question 3, that in moving too quickly in this area could pre-empt market solutions and technology.
- 5.3. However, we recognise that new use cases will emerge over time. With the development of instant payments through the NPA, there is likely to be a turning point in this uptake.
- 5.4. A consumer protection model which smooths refunds for defective goods / services and means consumers do not have to take court proceedings would be a good thing for our members. As mentioned above, this could be done by strengthening protections consumers have against merchants and / or involving payment services providers, as intermediaries, between the merchant and the consumer. However, if the design of a solution which involves payment service providers is too onerous or expensive this would outweigh any benefit to our members. For example, a requirement on a Payer PSP to refund with no sustainable economic model sitting behind that could undermine free in credit banking.
- 5.5. Of the purchase transactions listed in Table 3 of the Call, we would consider one off payments for goods and services and recurring transactions for subscriptions procured from a business - to be those on which a consumer protection model would focus.
- 5.6. As we say above, depending on model, if the PSR is minded to develop consumer protections a number of building blocks will need to be put in place. [REDACTED]
- 5.7. [REDACTED]
[REDACTED] the industry through the implementation of ISO 20022, Confirmation of Payee and other initiatives seeks to continue to improve sharing of information. Such knowledge could help enable PSPs to profile payments in line with consumer protection methods.

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?

- 6.1. Our view is that the liability model set out in the CRA should be the starting point here, ultimately merchants must be liable if they have supplied unsatisfactory quality goods / services. So, all roads should lead back to the merchant. On this basis, it makes sense for either the merchant themselves or a party with whom they have a contractual relationship e.g. their PSP / PISP to be responsible for refunding consumers.
- 6.2. If this is achieved through changing the Faster Payment scheme rules, this needs to be carefully considered as this will be a fundamental change from how Faster Payments works today. In addition to the blocks referred to above, the scope would need clear definition. As discussed in questions 25-29 below, required investment for all parties in the process should be factored into the PSR's cost / benefit analysis.

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)?

- 7.1. The providers of business bank accounts would be in a better position to comment but we would envisage that the creation of consumer protection in which a Payee PSP were responsible for making a refund would result in greater scrutiny of who could receive Faster Payments – e.g. credit checks and contractual changes. This is because, today, holders of most current accounts can be paid by Faster Payments. However, if the Payee PSP is responsible for providing the refund of a payment for faulty goods and services – this would create an exposure causing them to consider the nature of the relationship.
- 7.2. [REDACTED] payee's right to challenge a refund would need to be considered here. As would an effective economic model.
- 7.3. The role of PISPs etc. could be important in such a model.

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

- 8.1. This is complex and to an extent depends on the purpose of the payment. If the recurring payment covers the supply of faulty goods and services e.g. under a subscription contract, our view is that they should be included in any new protections.

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

- 9.1. The answer here is use case specific as it depends on what the payment is for.
- 9.2. If consumers are spreading the cost of goods over, for example, a year, it may not be fair on merchants for consumers to be refunded the amount of all payments as they will have had the benefit of the goods for a period of time. Any rules around this will need to be developed, based on CRA principles. However, if the payment is for a monthly service it makes sense for the refund to just be the last payment to reflect the period of time the service has been down.
- 9.3. It would be important to apply industry experience on recurring / regular payment claims to enable valid claims to proceed while preventing unreasonable or malicious claims.
- 9.4. Credit risk would also need to be considered with regards to timescale for multiple / ongoing claims as these could have detrimental impact on the payee and warrant further investigation / dispute resolution.
- 9.5. Any protections here would operate alongside those within the Payment Services Regulations for error in payment execution which entitle consumers to an immediate refund over a period of 13 months.
- 9.6. The outcome of the OBIE consultation on Variable Recurring Payments will help to inform thinking here.

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?

- 10.1. Consideration could be given to transaction value which offers simplicity of concept and could help address consumer concern about making high value transactions as cited in Section 3.19 of the Call but there would be

a difficulty in agreeing the correct amount. And, it would also be necessary to explain to customers which transactions are protected.

10.2. As above, research could help identify areas of harm to perhaps target consumer protection – as part of the wider review we refer to in (I, II & III) above - or inform what additional protection may need to address and what it would take to deliver these. And assess if protections / regulations are proportionate to the level of harm.

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

[illegible]

11.5. The industry continues to explore how to share information effectively and securely on a payment and ISO 20022 messages to be used in the NPA will enable greater information to be shared on payments [REDACTED]

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)?

12.1. Given the early state of adoption of FP for retail transactions and relatively modest research available, more research could demonstrate harm being caused by specific use cases and values combinations. This could identify where other solutions may be appropriate e.g. insurance etc.

12.2. In our responses to Questions 5 and 15, we discuss payment and payer / payee types which are relevant to consider here. We would not be overly supportive of an inter-PSP model under which a combination of use case and transaction value determines the payment protection. Although, factors such as that in OBIE / PSR, Pay.UK research could also be used in risk profiling and would be relevant in informing any model's development.

12.3. Our response is for several reasons such as, how would the use cases and values be determined [REDACTED] [REDACTED]? Such a model could be operationally complex. Also, it could also be difficult to explain to customers which transactions are protected.

12.4. Alignment to the trade dispute reasons for refund under the rules of debit cards could enable greater consistency for customer communication. But any economic model would need to cover the costs for insolvency should this be covered by any new consumer protections. It would not be necessary to enact a chargeback model though to align the scope of protection.

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)?

13.1. Business account PSPs would be in a better position to comment but we would envisage that the creation of a consumer protection in which they are held responsible to make a refund would result in greater scrutiny of who could receive Faster Payments – e.g. credit checks and contractual changes – and ongoing monitoring of their payment flows to maintain sufficient liquidity and sustainability in the protections.

- 13.2. This is because, today all current account holders within the scheme can be paid by Faster Payments. However, if the Payee PSP is held responsible for refunding payments and is at risk of not being reimbursed by the merchant – this would create a credit exposure causing them to consider the nature of the relationship.
- 13.3. As above, this needs to be carefully considered as this would be a change in operating model.
- 13.4. The creation of use case dependent protection may also introduce complexities in implementation but without greater detail it is not possible to comment.

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?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 14.3. This, like other parts of this response, suggests that the development of any protections could be progressive.

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)?

- 15.1. A consumer protection model should be between consumer payers and business providers of goods and services – participating in the protection - and in that way the identity of the payer and payee would be relevant. Depending on model adopted this could be more complex than simply applying to all business account providers. [REDACTED]
- 15.2. The risk that the business payee may be seen to be an ‘official seller’ would need to be considered within the governance model for any consumer protection model. As would, non-commercial consumer to consumer sales such as second-hand goods.

Questions related to how consumers might claim protection

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

- 16.1. To put in place a mechanism which governs payment of the refund by either the payee, their PSP or PISP, it is difficult to see how this could be done in the absence of a consumer protection governance process. Rules would need to be in place which make apparent what each party’s responsibility would be and what protections are offered. And also, rights such as a payee’s ability to challenge a refund.
- 16.2. The model for cards has grown up over many decades and is one in which different participants understand their roles and responsibilities. A governance model in the absence of an economic model to cover the costs of administering a scheme and enabling recovery of costs of refunds, as appropriate, would not be sufficient.

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)?

- 17.1. This would be easier to answer with greater insight into any protection model. A response would also be linked to the status of the APP scam work
- 17.2. Nationwide provides our customers with a range of payment methods for retail purchases. Although we do advise in our mobile app / internet bank scam warnings that more protections are provided by card transactions.
- 17.3. Looking at this another way, if an effective process for claiming consumer protection did not exist - operating a protection model would be administratively very difficult and offer poor customer experience.
- 17.4. Overall, not having a standardised process for reclaiming refunds would make the costs and exposure of providing such a protection exponentially greater than having one and would not be conducive to its effective running for our members (especially if immediate refund were required).

- 17.5. Asking PSPs to refund without effective governance and economic model may not only act as a disincentive to some merchants to provide refunds but disincentivise participation in the scheme for new participants and make its operation difficult for existing ones – threatening free in credit banking.
- 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?**
- 18.1. An element of competition is choice and having different payment systems can help meet different end user needs. Thinking here needs to consider how to support the convenience of Faster Payments in situations where trade dispute protections would not be as valuable e.g. account transfer payments to friends and family. Coordinated consumer awareness messaging can help with awareness of levels of protection offered by different payment types and enable informed action.
- 18.2. Targeting this awareness at point of interaction can also be effective – such as in payment journeys. The Visa and MasterCard acceptance marks and Direct Debit guarantee mark are all recognised by consumers at point of interaction. It is possible that a consumer protection mark could help with consumer understanding of protections offered.
- 18.3. Although how such as trust mark would be funded, governed and supported would need to be agreed.
- 19. Who do you think is best placed to ensure consumers understand the protections offered to them and why?**
- 19.1. There is a role for more than one party in this space.
- 19.2. Overall messages which benefit from consistency and co-ordination – such as those surrounding scams – can be organised at an industry level with supporting activities from banks, building societies, PISPs, government, consumer groups and merchants.
- 19.3. Intervention at point of interaction such as in payment channels – when warning of risks with payment types – can also be important and provided by PSPs.
- 19.4. If an acceptance mark were created for consumer protections in interbank payments – communication on this could also be given by merchants and by PISPs. It could explain, both the protection and who to approach.
- 19.5. There may be a need to separate the protection from the payment rails. A trust / acceptance mark could enable competitive participation in a scheme under which all participants have agreed to the same consumer protection commitments. Although the funding, administration and governance of such a mark would need to be determined and shared.
- 19.6. The occurrence of instant payments through the NPA could be an opportunity for participants to adopt such a mark for in scope transactions (but not a dependency).
- 19.7. The media and consumer organisations also play a large part in discussing the advantages and disadvantages of different consumer protections and how consumers can best use these.
- 20. Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?**
- 20.1. We would anticipate that, for issues relating to faulty goods / services, the payer is likely to ask the payee to resolve a dispute in the first instance. This would be the natural first port of call. Any consumer protection model should have a very clear definition of what instances are covered / not covered. Poor customer service, a customer not liking a product – should be dealt with by the retailer's own policies.
- 20.2. If conversations with the payee proved fruitless and there was a consumer protection model, we would envisage that a payer is most likely to approach their Payer PSP as they will not know the Payee's PSP and may not know the identity of any PISPs.
- 20.3. If the payer approached a Payer PSPs under a consumer protection model, we would expect the Payer PSP to contact the Payee's PSP – and perhaps the Payee PISP – rather than approaching the payees. Transparency of participant's identities will be important here.

20.4. Please see our earlier comments on responsibility for the refund. In the implementation of inter-PSP consumer protection model, we would wish to see that the Payer PSP is not obliged to provide refunds without being covered by the Payee / Payee PSP.

20.5. Within the chargeback model there are processes and systems to enable inter-PSP interaction.

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

21.1. This would depend on consumer protection but not anticipating any major change as our response assumes that these will 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?

22.1. The PSR specifically asks about the Credit Payment Recovery process here. We would regard this to be an effective process. It is a standardised - containing clear guidance for participants on timelines, communication and escalation processes, etc. Which enables all participants to clearly communicate with each other and on the process with their customers.

22.2. There is also communication to notify payers of next steps they can take – including their rights under the Payment Services Regulations and a process to enact those customer rights.

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?

23.1. As we discuss above, it is possible that consumer protections will emerge in the competitive space or be led by the industry.

23.2. More information on the areas of concern could help shape focused protections / governance.

23.3. We are aware that scheme rules would not include all actors in the payments chain and therefore would not be effective in their current state. We believe it would be important for PISPs to be able to participate in any collaborative consumer protection models as part of the payments chain – while not wishing to stifle innovation. So, would be interested in understanding how the capability would be grown to accompany a scheme rule change or a central payments governance model.

23.4. We would not be in favour of a voluntary model as it offers differential protection for consumers.

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

24.1. As we say above, the liability model should reflect the Consumer Rights Act and business providers of goods and services should be liable for defective goods / services. In this context the PSPs will have correctly executed the transaction. Therefore, this question should read who is best placed to enforce or arbitrate interbank consumer protection claims against the seller.

24.2. It is very difficult to give a clear answer to who is best placed to enforce consumer protection claims against PISPs and PSPs. We are also aware of the ongoing Future of Open Banking Governance consultation.

24.3. We say above, it is early to say no consumer protection model would emerge and more needs to be understood about the design of any consumer protection model to really comment here

24.4. Following the example of the provider of governance in the cards or Direct Debit consumer protection models, the payment systems operator would be the governance body. We are conscious though that Pay.UK would require a capacity and capability uplift to operate a trade disputes model or a disputes / monitoring capacity - so think strong consideration should be given to how they would gain this necessary capacity or use of an equivalent status external body to provide governance and enforcement rights.

24.5. If there were to be a regulatory change there would need to be agreement of the most appropriate regulator, which could be the PSR / FCA.

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?

- 25.1. The shape of the protection to be offered would determine the degree to which it would be necessary for regulatory / legislative change to be sought. For example, to enable payees or Payee PISPs to have responsibilities placed on them - given they aren't contractual parties to Payment Scheme Rules – may require regulatory or legislative change.
- 25.2. However, a payment governance system under which PISPs / merchants are contractually bound could be effective.
- 25.3. We would not be supportive of a situation under which some participants in a new model are legally bound, but others are not.

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?

- 26.1. Overall, the PSR has identified the correct direct costs – albeit at a very high level. A cost / benefit model is needed to assess the proportionality of the introduction of a consumer protection model.
- 26.2. Introduction of a full consumer protection model would be a significant cost from an operational and technical perspectives even as a Payer PSP. For Nationwide we would have to balance the value it may yield for our members against the costs that we cannot offset by way of commercial terms with relevant payees, because we don't have business customers.
- 26.3. Upfront costs are likely to include:
 - 26.3.1. Central fees to set up the consumer protection scheme and ongoing governance costs to maintain.
 - 26.3.2. Staff training
 - 26.3.3. Technical costs for development of internal disputes systems and external communication networks
 - 26.3.4. Wider consumer education about any new protections, which may need to accompany
 - 26.3.5. Potential Terms and Conditions changes depending on shape of protection (see Question 29 below).
- 26.4. Administrative costs of operating schemes are likely to include:
 - 26.4.1. Customer facing staff to receive dispute and take details.
 - 26.4.2. Operational staff to process.
 - 26.4.3. Arbitration and disputes costs.
- 26.5. Depending on the consumer protection models other costs could be the cost of reimbursement – including any below a de minimis level at which it is not economically effective to progress – or other write-offs
- 26.6. As above, the design of the consumer protection and economic model should consider how to meet the needs of end users but also recognise the service, risk and cost of different PSP and PISP participants.
- 26.7. The PSR cites among the benefits, that customers will get swifter resolution of disputes. The swiftest method of resolution on the whole is likely to be for the payer to approach the payee and we would expect the payer to do this. We suggest in our response to Question 1, above a method of resolving this for a wider variety of transactions.
- 26.8. It may be though, where a payee has a legitimate case to retain disputed funds that this could take a while to resolve and the customer may not ultimately receive back the funds. Payee's rights also need to be considered.

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

- 27.1. Future costs could be influenced by strategic developments across the alternative payment services – such as Faster Payments in Open Banking, Request to Pay, instant payments and the overall level of take-up delivered by innovation and competition. This growth could spur consumer protection solutions in the competitive space to further benefit end users. So, there are factors which may increase or decrease costs.
- 27.2. However, if an inter-bank consumer protection liability model were created without an economic model – the cost of reimbursements on the payments industry could be very large.

27.3. Other significant operational costs would fall into three main types – write-offs: staff and systems.

27.4. Overall, though there are existing retail payment mechanisms which offer consumer protection and which PSPs and merchants have invested in processes, infrastructure and acceptance marks etc. Significant investment would be needed by all parties across the payment value chain to emulate these services.

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

28.1. In this scenario, the PSP will have correctly executed the payment and will be acting as an intermediary between the buyer and the seller. An effective economic model reflecting service, cost and risk would be necessary to enable sustainable consumer protection. Including to cover costs of a Payer PSP acting as point of contact and support for a customer.

28.2. Following other consumer protection models and given the liability position set out in the CRA, we would anticipate the payee would bear this cost. They will be receiving value through having an alternative means of payment, in the future, immediate settlement etc. As would their customers who would be receiving the value of increased protection on a new point of sale payment service.

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

29.1. Again, more needs to be understood here about any consumer protection model to enable an impact analysis to answer this question. But inter-bank consumer protections come at a cost – not just operational and technical but potentially in the form of credit risk and exposure.

29.2. Putting in place a consumer protection model is likely to be very expensive - particularly if the growth of FP in retail transactions takes place over time.

29.3. Although a progressive approach to development of consumer protections could be considered. An economic model must be in place from the 'get go'. Not having this will act as a disincentive to new and existing participants.

29.4. The PSR in section 2.8 states it does not want protections to cause disproportional costs. We would encourage consideration of costs, timing, demand, and wider impacts on participants in the value chain in its consideration of proportionality.

29.5. The need to change service contracts would be dependent on shape of any consumer protections model. If Nationwide, is involved in the consumer protection process, terms and conditions may need to be amended to reflect its role. And a wider customer education piece, tied into any terms change undertaken.

NatWest Group

PSR Call for Views on Consumer Protections CP21/4

response from NatWest Group plc

Date: 08 April 2021

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Introductory comments

NatWest Group (NWG) welcomes the opportunity to respond the PSR's call for views on Consumer Protections in interbank payments.

As the PSR is aware, industry came together through the UK Finance Payment Futures initiative to look at how payments could and should evolve in the next decade. This recognised that many building blocks were in place to drive forward improvements under three key themes:

- Delivering customer benefits which covered more customer choice, improved consumer protections and more emphasis on building digital financial inclusion and confidence
- Delivering further innovation which includes developing a Digital ID use case, seen as an increasingly important attribute for the digital economy, alongside tackling economic crime
- Supported by aligned payment standards, accessible, competitive infrastructure and effective regulation

The work on consumer protections was able to show where gaps exist, how recent payment developments and changing customer behaviour are making it evident that protections also need to adapt, and that industry and wider society should consider what is appropriate.

We believe that the PSR's call for views is timely, and whilst the topic is an important one, any changes will need to be carefully considered to develop a framework which can adapt as payment change continues. This is because of the nature of the changes required; the developing payments landscape which includes major infrastructure renewal and the emergence of alternative forms of consumer protection. We can envisage that these changes will progress over perhaps a 3-5 year time span.

In our view, it is the assessment and consideration of the impacts that these changes introduce that will be important, to ensure appropriate consumer protections develop in parallel with them. Ideally, rather than the many different and payment type specific protections, it will be possible to develop equivalent and proportionate protections that cover the use of different payment methods for the same buying or payment activity. This might see considerable change but provided this happens alongside the anticipated infrastructure change programmes, could lead to clearer and more understandable

economic models for payment use and their protections. These might build from models which exist now and are shown to be effective, particularly those where consumers buy goods and services.

Ideally, we would want to see this lead to consumers being confident about the protections they have and that those protections will meet their needs if something goes wrong when they make a payment.

Questions related to why additional protection may be needed

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

Across the interbank retail payment systems there are different consumer protections; most of which are well embedded and fit for purpose, e.g. the Direct Debit Guarantee (DDG). As the use of interbank retail payments has changed and developed, other forms of consumer protection have developed, such as those in the Open Banking service and other commercial protections.

The introduction of Confirmation of Payee (CoP) adds an additional protection where payment is being made to a new recipient. Others such as Credit Payment Recovery where a payment is made in error, might benefit from a review by Pay.UK to drive improved performance, particularly looking at receiving firms and how promptly action is taken to contact a customer who has mistakenly been paid funds. We understand refund levels remain perhaps lower than expected when the service was introduced.

Use of Faster Payments, and possibly also Bacs payments, to buy goods online show that there appears to be a gap in consumer rights protection legislation and if so, this would ideally be reviewed and amended sooner than seeking to introduce new consumer protections. This particularly applies to Faster Payments, which is the payment method most used by consumers.

We have seen alternative payment models such as 'buy now pay later' emerge in recent years that may themselves lead to consumer harm without protections by firms that offer such services. We note that the FCA is tasked with putting rules in place to require providers to undertake affordability checks and treat borrowers fairly.

The focus on consumer harm has been influenced by the growth in APP scams, where the consumer is tricked into making a payment, and the use of Faster Payments sees the money move quickly to and beyond the fraudster. This requires parallel but different action to address the harm caused to consumers and is under consideration in the PSR's separate call for views on APP scams. The payments industry is supporting fraud counterparts to find ways to improve information sharing that may help prevent fraud, and this will need to be considered in parallel with the development of other protections. In addition, we would like PSR to support and encourage all of Pay.UK, the LSB and UK Finance to work together to reinforce in FPS/ Confirmation of Payee procedural guidance, for example the provision of effective warnings and best practice actions.

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

It is interesting to note that the UK is by no means an exception in not having protections in place on its real time retail interbank payment system. The Payment Futures report showed that all of the Netherlands, Singapore and Australia did not, and even accepting that payments use can be cultural a

and that these markets will not be the same as the UK, nevertheless it is interesting that they have also not found it necessary yet to do so.

We are aware from the Pay.UK Payment Futures Consumer Protections workstream, that consumers do not generally have a clear understanding of payment protections and tend to have preferred ways of making payments. In addition, consumers that are financially more secure tend to use a wider range of payment types and are more aware of the protections offered by credit cards. They are also more confident when seeking a refund. The converse applies to those less financially secure, and who may have experienced debt problems from credit card use, become more cautious and possibly as a result more susceptible when buying online. The growth in vulnerability during the COVID pandemic may also have increased susceptibility. Industry has worked to overcome this by developing solutions such as companion cards to support home-bound individuals to provide a card with defined spend to a carer to do their shopping, or arranging for cash to be delivered for those unable to go to a bank, Post Office or ATM.

We believe that industry has made considerable progress in improving protections for consumers in recent years, which includes thinking about these in new developments such as Open Banking. In addition, both CoP and the CRM code now see more firms providing improved payment messages to prompt customers, before paying money to a new payee or perhaps to a payee who raises suspicion. Behind the scenes, there has been considerable investment in fraud prevention and response systems to protect customers making and receiving payments. We regard the latter as a vital investment for all payment firms if we are to achieve a safer payment ecosystem.

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)?

We have seen some initiatives by providers to reduce harm, such as introducing their own protections – see examples¹. We expect in time more firms to introduce their own options. However, what may be possible for a larger firm, may be less so for smaller firms, and a possible way forward is for Pay.UK to continue its work with trade bodies, and potentially its infrastructure provider, to assess potential future interbank payment protections. These might encompass seeking to lobby to add consumer right protections.

Consumer behaviour is usually good, but consumers can make mistakes, be tricked by fake websites, those selling on social media sites, by callers impersonating bank staff or the police. These are criminal actions and we believe remedies here need to sit under wider fraud and crime prevention solution which incorporate clear principles to deliver consumer protection.

Newer models include the commercial 'Pay by Bank' App which offers a good example of a solution of an interbank payment service that is taking learnings from the four corner card scheme model. It has a consumer disputes process built in that covers consumers where goods are not delivered, goods supplied are defective or where the consumer is dissatisfied with the non-provision or level of provision of a service agreed to be provided by a merchant. Claims must be raised within a certain number of days from delivery of goods or services and will usually be resolved within 14 days (but with a longer period for complex cases). There is no minimum claim amount. The process involves informal query management between the ASPSP and merchant, formal dispute process, presentment of merchant

response, pre-arbitration and then acceptance of the claim or full arbitration if the merchant does not accept liability.

The disputes process is incentivised by a commercial structure that sees ASPSPs benefitting from a revenue share with the provider – so there is reason for the service to operate a ‘scheme’ that facilitates a consumer protection process similar to chargebacks. There is no liability taken on by the merchant's PSP, as liability is owed directly by the merchant through their participation in the scheme i.e. slightly different to the cards’ framework.

This doesn't read across naturally to the broader PISP market because the current framework under the Payment Services Regulations means that mandatory contractual frameworks should not be imposed on PISPs, and is likely to mean that any involvement in a payment scheme or code for consumer protection would have to be "voluntary" for PISPs, given the underlying prohibition on obstacles to access for PISPs as per Reg 69 (2) (d) and Article 32 of the UK RTS. Whilst there may be scope for legislative change to mandate more than voluntary engagement, from a broader “open banking” perspective, it’s worth remembering that the purpose of the CMA Order was to increase competition by driving innovation, and the PISP market remains nascent in the UK, meaning that it would be unwise to stifle emerging innovation through regulatory/scheme arbitrage.

We think it is more likely that PISPs which provide services for commercial customers to receive payment from consumers via Open Banking will have commercial arrangements in place. These are currently in the competitive space and therefore there is no minimum standard that consumers could expect when using Open Banking via different merchants or providers.

We remain mindful of HMT’s call for evidence on the Payment Landscape where it sought views on what might be required to enable Payment Initiation Services to take off in the UK and to do so safely and securely, and how Open Banking and the advent of Payment Initiation Services interacted with its question on whether additional rules might be needed to protect the consumer when making Faster Payments. Clearly there may be overlaps with parts of this call for views. We remain concerned about the risk of market fragmentation and consumer confusion if some PISPs are in a protection scheme and some are not, which links to the divergence in the PISP market and the challenge of added overhead costs of providing more support to consumers. This issue will need to be carefully considered to ensure adequate and timely proportionate consumer protections which do not stifle market innovation but which may also bring consumer benefit.

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?

In general terms, we do not foresee any difficulties in doing this, and already provide CoP to our customers when making relevant internal payments and similarly for fraud prevention support.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

Our view is that Consumer Rights legislation has lagged and should form part of any review and potentially ahead of new consumer protections being introduced. The move to interbank payments for

goods purchase transactions, given the known issues with existing consumer rights protections and the limited and bespoke payment protections only, should be considered in parallel to ensure outcomes are aligned.

We understand that the Law Commission Recommendations for Reform – Consumer Sales Contracts: Transfer of Ownership includes consulting on draft legislation to modernise the Consumer Rights Act rules on when consumers acquire ownership of goods under sales contracts. It is looking to improve access to remedy through the retailer by more clearly determining when transfer of ownership happens when a consumer has purchased goods but does not have physical possession immediately (i.e. online purchases, which would be a key focus area for any interbank payment protections).

One of the Law Commission's points is that this will potentially have a positive knock on impact on chargeback claims by giving consumers more access to remedy issues directly with their retailer. As the Consumer Rights Act is referred to as the legal protection for errors with goods and services, it's worth noting that this framework will potentially also be bolstered to help consumers, especially in a merchant insolvency scenario.

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?

This is a much more difficult question to answer as the underlying interbank payment/Open Banking model, unlike the cards model, has no equivalent protection or interchange features that would support such a model. To move to such a model in the future would need considerable engagement and consultation on potential options, their funding, governance and oversight. The still early stage growth of PISP payments, with limited data on customer experiences that suggest such a model is needed, leads us to conclude that it is not yet the right time to introduce a formal payment protection 'scheme'.

At the present time in equivalent models (for example, Direct Debits), liability falls back to the seller's PSP, which has the merchant banking relationship.

Good practice guidance for sellers, PSPs and PISPs might however be something which could be worked on and adopted. It might also prompt commercial payment protections to emerge to support the market.

As an observation, commercial payment protections are likely to result in higher costs than a centralised solution would; and in both cases costs would likely be passed down to consumers or merchants via increased fees. There is also a risk that a lack of consistency might cause further confusion for consumers around the protections available to them. The PSR notes that this is already a problem today. A minimum standard for consumer protection would not prevent PISPs or other innovators from providing additional protection as a commercial competitive differentiator.

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)?

Were the liability framework to change between the seller and their PSP, the commercial relationship would inevitably also have to change. This would have commercial impacts on both SME banking and PISP business models.

An example is acquirer charging models which build in the risk associated with granting merchants access to the card payment system, which includes the credit risk that comes from being liable under scheme rules for disputes between cardholders and merchants. This has resulted in concerns around the lack of transparency around fees that merchants pay to accept card payments, which are being addressed by the PSR's market review of acquirers, but it underlines the complexity and nuance in building a commercial model that factors in equivalent credit risk to chargebacks.

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

There are several types of recurring and variable recurring payments (VRP) spanning Direct Debits, Standing Orders, Card payments and Open Banking variable recurring payments. It seems logical that each should have clear terms which cover how the service works, what the responsibilities are of both payer and payment collector, and the procedure to follow when something goes wrong. These seem normal attributes covering any payment service/scheme and which a consumer, indeed any end user, should be able to expect of their provider.

There is an inherently greater risk to consumers of issues arising with VRP against single payments due to potential multiple payments and the goods/services that they relate to over time.

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

This is difficult to answer. Where a recurring payment mandate stops after each payment has been collected, but the payee collects payments beyond the agreed number, these should be subject to the same consumer protection. If the payments had stopped after the agreed number and all had been collected as agreed, the protection would stop. However, where the consumer protection extended to cover the service provided, then one would expect this to be covered by ongoing service terms/guarantees as part of wider consumer protection.

Whatever is agreed needs to be proportionate for both the payer and the payee. The Direct Debit Guarantee (DDG) is an example where this has not been the case due to its unlimited nature, although recent improvements in the process between sponsor banks and their sponsored DD Originators have helped to address misuse of the DDG.

A reasonable suggestion might be to allow a period of 13 months (i.e. in line with the Payment Services Regulations 2017), for scenarios where VRP is set up for annual payments* and a consumer does not notice a cancelled payment is initiated, until they review their bank statement. This would limit the exposure that a merchant or PSP/PISP would need to consider. In the past the unlimited nature of the DDG has been a barrier to some commercial customers getting access to Direct Debit, so the PSR should consider how the length of protection beyond the last payment for VRP, to ensure is not a barrier for customers to access VRP based solutions.

*note that VRP is still being defined and there is no clarity yet on how long a VRP may be set up for, or if this may even be open ended.

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?

We believe it is important to consider the attributes of current protections which consumers are familiar with; most of which have no threshold value. This already applies to chargebacks which have no lower limit (which makes it an attractive alternative for s75 claims on credit cards). For purchases of goods online, where no fraud is involved, and faulty or wrong goods are provided or no goods provided, the consumer should be fully recompensed or provided with correct goods where available. There would be a risk of disenfranchising consumers who most need the protection if a threshold value were set (or if it was set too high).

There will be differences for example where regulated products are sold online, and consumers will have different types of protection, depending on product and provider status

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

Our systems allow us to identify the payment type used by a customer e.g. as a Faster Payment, but not necessarily the purpose it is being made for. The payer reference may provide the payee with information that helps them identify what it was for, but not necessarily the PSP sending it on behalf of a customer. The development, and ultimate use, of purpose codes in for example the NPA message standard, might enable this at a generic level, but accuracy may be low. Customers will also have online or paper statements that provide information and if required can seek more detail from their bank.

PSR may be aware that there is a gap in the Open Banking and Faster Payment scheme rules to require that PSPs populate information in a payment to identify that it was initiated via Open Banking. Mandating this will have numerous benefits in identifying those payments from other Faster Payments (such as for Transaction Monitoring purposes) and could also lend itself to a tailored consumer protection model for specific interbank payment use cases

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)?

We recognise the use case as being the more important of the two, particularly for online and in store significant value purchases. For in person purchases of lower value, it is much easier and quicker to let the seller know if something is below standard, but perhaps more difficult after the event. Ultimately, if something bought is not fit for purpose, there should be a right of return or exchange, and money back with no de minimis limit.

Using these two parameters could however enable the development of proportionate consumer protection to address the identified gap for which existing payment protections do not currently provide cover. Value would allow alignment with existing equivalent protections such as those offered under Section 75. Further thinking will be needed to identify use cases and examples against current protections. PSPs may not be equipped to identify the full range of services a merchant provides to its customers for example. It would also be beneficial to consider in more detail the nature of consumer detriment and in what particular use cases it appears more often – this will help the PSR develop payment protection in a targeted and proportionate manner.

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)?

This would depend on how this affected each of the seller and PSP and is difficult to answer with clarity. For example, if a seller were to offer its own or a commercial consumer protection, and a customer asked the PSP how it could recover money paid for goods, the PSP would need to know that the seller provided protection to be able to inform its customer. Were protections to move to a use-case basis, it would require a framework which included buyers being able to check which seller offered what protection. This could be an extremely complex model for consumers to understand, without some coordination of such protections. We would not envisage this applying for protections which are part of a scheme or regulatory requirement. Use case scenarios will need to be worked through to allow better consideration.

We believe there also needs to be further consideration to whether this is the right model. It could potentially see PSPs needing to consider the impact on business account terms and charging models for example, which might present barriers to some customers accessing payment accounts and payment mechanisms.

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?

Under the CoP process, payers are asked to state if they are paying a person or business, but this does not yet form part of a PISP CoP journey although work is underway to consider how such a CoP journey should flow. The payer is usually correct in their selection, except where the 'business' is a sole trader and still uses a personal account, or has a trading name which makes it difficult to identify. We do not think many consumers would be clear on what the difference is between an organisation and a business. These details are not transferred to the payment currently, but potentially could be once ISO20022 is adopted. In addition, all accounts should be able to receive Faster Payments.

Care will be needed to define consumer-to-business payments. PSR will be aware of the growth in purchase scams, many through 'side-hustle' businesses often set up by fraudsters where goods bought online do not exist/materialise. Consumers will not always be able to identify the type of the account they are paying which creates uncertainty and exposes them to risk

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)?

This will need to be aligned with work on payment standards to understand if it is possible to put an identity code in the payment message. However, if the payer self-identifies, there might be scope for falsifying identity, and equally the payer might not know the payee identity e.g. sole trader issues, and the difference between a business or organisation. If the ASPSP holding the payer account were able to identify the account as that of a consumer or business, and the payee ASPSP similarly to do the same for the payee, as part of a CoP /payment response message this might be possible. The question remains, would it be cost effective and make a difference?

In Open Banking, there is a challenge that the Payer and Payee identity may not be known to any one single party. The EBA has recently issued clarifications to its Guidelines on the Money Laundering Regulations (MLRs) clarifying that in the specific case where a PISP has a business relationship with the payee for offering payment initiation services, and not with the payer, and the payer uses the respective

PISP to initiate a single or one-off transaction to the respective payee, the PISP's customer for the purpose of the guidelines is the payee, and not the payer. This means that PISPs offering this type of service may not know the identity of the payer and may need input from the payer's ASPSP to identify them for the purpose of a dispute. In this scenario consideration would need to be given on how this aligns to Data Privacy regulations such as the GDPRs and whether existing provisions for payment services include this type of information sharing.

Questions related to how consumers might claim protection

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

As we said in our introductory comments, we'd like to see proportionate and equivalent consumer protections that cover use of different payment methods for the same buying or payment activity. This would lend itself well to a governance framework that could encompass different payment firms and payment types, potentially by payment type or purpose. It would also need to recognise consumer protections being offered independently by different firms and how the governance framework would bind them.

In addition, a governance process would be beneficial for several reasons including standardisation of the process, cost efficiency for all parties involved leading to reduced costs for end users, clearer expectations for consumers on the process (timeline, outcomes etc.).

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)?

Whilst this is more focused on consumers and merchants, we believe that having a more standardised process of claiming protection when something has gone wrong might make consumers more confident about making a claim. The outcome of these claims which also impact confidence levels in the merchant and potentially using interbank payments.

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?

Clearly where protection exists, consumers should be made aware of this, either generically as part of their service proposition or in app /online channel. Ideally, if a framework were developed, this could include requirements on what information should be included, together with any charge for the service notified and accepted.

We would only favour a trust mark, if a standardised process was agreed and adopted by a cohort of firms, otherwise it may be confusing for consumers, as even if the mark is recognised they may not be aware of exactly what it covers, or who has signed up to it.

There are examples of recognisable trust marks such as that developed for the Direct Debit Guarantee, or trusted consumer information websites which provide clear and consistent messages around the protection available, which are easily accessible to consumers and would enable provider details to be shared.

If we look ahead to improvements or changes in consumer protection, particularly if these were introduced in parallel with the NPA changes, there will need to be careful planning of consumer and business messages, which would almost certainly need coordinated industry messaging. This might also require a public awareness campaign and the appropriateness of the type of communication can be decided once there are clearer plans on the what and when.

In the current competitive environment, market players are wary about what they can and should do now as their action might undermine emerging payment methods. Firms will tend to focus on the benefits (for PISP better liquidity for merchants, speed and ease for consumers) and disbenefits of other payment methods rather than the risks associated with their own, which can often result in contradictory marketing strategies across larger PSPs which operate across different payment channels/markets. There are also risks which could impact the commercial viability of solutions, and whilst the PSR's focus is on consumer protections, we would encourage it to retain its focus on competition and innovation and recognise the impacts that uncertainty could bring to the market.

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

This should be a responsibility of all parties including merchants, TPPs and PSPs.

Consumers obtain their information from multiple sources so we should expect information to be provided by all that support consumers. As in Q18 above, we believe central resources should enable all parties to provide consistent information to consumers

We would expect a consumer to start with their account providing PSP or TPP. They may also seek advice through key consumer bodies such as the Money Advice Service, Which? and trusted consumer programmes and websites.

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

We would expect it to continue to be their ASPSP or main payment provider in the short term, except where goods are purchased when the consumer is more likely to contact the merchant. Where a dispute arises, a consumer cannot seek assistance from their payment provider. Like the PSR, we think few consumers will pursue an action via the Small Claims Court.



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

If this were to happen, as potentially seems likely, we would anticipate first to the merchant /seller where the dispute lies, and then to their account PSP where the relationship is with and where they hold their money for guidance.

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?

The protections that sit under payment and card schemes are well embedded and the operator facilitates, supports and oversees participant performance. Communication is structured and subject to time constraints to ensure good consumer outcomes in an acceptable time frame.

PSR's example of a voluntary industry-led protection i.e. the OBIE's dispute resolution system (as is the associated code of practice) may be acceptable for a new entity and we might expect this to develop further in time.

Our view is however that a more formal payment governance system for wider consumer protections will be required in time to drive standards and adherence, and equally to facilitate continuing review of protections, their efficacy and to provide a means to consider, in conjunction with industry, any change or improvement that may be needed. This will provide consumers with greater confidence and facilitate the adoption of best practice by PSPs. Even without formal governance, good adoption would see those firms potentially not adopting or complying, more likely to be less favoured by consumers.

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?

On the options set out by PSR, we are aware of certain protections which are incorporated into payment scheme rules which cover both direct and indirect participants. The Direct Debit Guarantee extends to all PSPs and corporate originators of Direct Debits. This reflects the extended Bacs participation model. The Credit Payment Recovery process, part of FPS procedures, was to extend direct recovery of their customer payments to indirect participants but was never progressed. This is now supported by their agency provider.

Ideally any future model for consumer protection would bind all those that can participate in a payment system, albeit in different ways, and recognise in those protections, where necessary, that each may play a different role in the payment journey, and possibly also in the protection of the consumer.

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

One might instinctively say the payment system operator, as generally they are best placed to do this where the protection relates to a particular scheme process.

Given that the proposal here is to consider potential consumer protections using interbank payment systems to buy goods and services online, the customer journey may vary and overlap Pay.UK and Open Banking, possibly also Bank of England as the CHAPS scheme operator. We believe this will need to be considered further as the proposals develop and might see the need for a new coordinating entity to provide this service under a wider payment governance system. This could be formed from the relevant



payment system operators and Open Banking with appropriate governance and wider representation as agreed, and appropriate terms of reference and objectives. This might in due course require further consultation.

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?

This will depend on the consumer protections seen as appropriate for those interbank payments used to buy goods and services online. If they were to grow in volume to a level to compete with card purchases, proportionate protection would be required. Where credit is not provided, interbank payments might benefit from a similar voluntary 'chargeback' option as provided on debit cards. It is also worth noting that there is no regulatory protection for debit card purchases, with 'chargeback' being a scheme only protection. It will be important for PSR to be mindful

not to create regulatory asymmetries, and instead to aim for a holistic view for all payment methods where same risk/same regulation applies.

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?

Yes, we agree with these.

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

Whilst it will depend on how complex any new consumer protection model is to implement, combined with a share of the overhead costs of any payment governance framework, we do believe the costs could be significant. This would particularly be the case if systems required to be changed to identify different payment uses or payee types.

The benefits are less tangible, although we might expect consumers to welcome the protection.

What it does make clear is that this will need to be taken forward on a careful and planned basis, to ensure that any new model is introduced incrementally and in line with growth in interbank use. Currently, it would be disproportionate and might stifle current innovation where protection is supported by the OBIE's voluntary model.

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

Ideally, we would wish to see these costs borne proportionately across the participants – both ASPSPs and TPPs – that support these services and their protections.



29. To what extent would consumer protection measures introduce significant costs to your business or the need to change service contracts with your customer

We cannot say with certainty what the costs would be, but can envisage that it would add overhead not only to the cost of offering interbank payments that could be used for these purposes, and might impact certain product offerings which support this type of purchase.

PSR is aware of the continued cost challenge of providing real time payments, whether the cost of reimbursing APP scams, the continued investment in fraud prevention and monitoring, the development and delivery of CoP and its ongoing costs.

We anticipate that any new consumer protection measures would need be incorporated into our customer contracts, and supported by new internal procedures and staff training, along with all relevant monitoring, controls and oversight.

We made clear earlier that any new consumer protection measures need to be developed proportionately and iteratively, as the ways consumers pay changes. Ideally any new protection measures would be made in parallel with changes to the necessary consumer protection legislation that recognises the need to place interbank payments on a level footing.

ⁱ <https://www.paypal.com/uk/webapps/mpp/paypal-safety-and-security> and
<https://paybybankapp.mastercard.co.uk/faq>

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Northey Point



Northey Point Limited

Consumer Protection – Call For Views (CP21/4)

Introduction

This paper sets out Northey Point's response to the PSR's Consumer Protection: Call For Views (CP21/4).

██████████ is a recognised authority on retail payments and, as Chief Executive Officer, led Bacs Payment Schemes Limited (Bacs), the UK's biggest retail payment system, from 2004 until 2018. During this time, he successfully steered the company through a record number of payment processing, technological, regulatory and innovative customer proposition 'firsts' including extending Bacs' product offering to include the ownership, management and market adoption of the Current Account Switch Service (CASS) and the Cash ISA Transfer Service.

During his time at Bacs, ██████████ also led the UK's systemically important RTGS payment system (CHAPS) as its CEO and operated the UK's Faster Payment Scheme as its first Chief Executive creating the Payment System Operator (Faster Payment Scheme Limited).

██████████ was an integral part of the industry initiative which led to the New Payments Architecture (NPA) vision (including concepts such as Request to Pay and Confirmation of Payee), the regulatory endorsed merger of the UK's retail payment schemes and the formation of Pay.UK.

Having successfully merged Bacs into Pay.UK, ██████████ has developed a portfolio including roles as chairman, payments advisor, Non-Executive Director, ambassador. ██████████ also publishes a newsletter which provides an informed insight into the UK's retail payments landscape.

Response to selected consultation questions

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

The trust and confidence that consumers enjoy in the UK's interbank retail payment schemes (principally Faster Payments) is clear. There is a general understanding that, for the very few, payment errors their PSP will rectify the problem and, whilst generally unaware, benefit from the Payment Services Regulations 2017.

Card based chargebacks and the Direct Debit Guarantee provide consumer protections for some types of payments and there is an argument that either of these mechanisms could provide a baseline solution for interbank payments.

A significant barrier is that, unlike Direct Debit and card based payments, Faster Payments do not offer a PSP a revenue stream. The costs of an interbank reimbursement model will require funding and an unintended consequence may be the introduction of a tariff for interbank payments or the end of ‘free in credit’ banking.

However, consumer protections only address a problem that has already occurred and needs rectifying which leads to a lack of trust and confidence.

There is an argument that the consumer would be better served by ensuring payment accuracy in the first place.

The introduction of Confirmation of Payee (CoP) checks has made a significant difference in this respect but there is much more to be done, we’d argue that [safer payments need \(CoP\) service ubiquity](#). We believe that there is much to be gained by an accelerated and mandated roll out of CoP to all PSPs.

Similarly, the new [Request to Pay](#) service framework has the potential to reduce both fraudulent APP Scams and provide a greater level of consumer trust and confidence for all types and values of interbank payments.

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

Consumer demand for increased levels of protection in interbank payments is low due to the high levels of trust and confidence in an interbank payment system that operates to a very high standard.

CoP service ubiquity, PSP adoption of the new Request to Pay service framework are two examples of how PSPs can provide increased levels of protection and reduce the occurrence of errors.

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)?

It is clear that the exciting and innovative Open Banking payments use cases will equate to an increased use of Faster Payments.

Just as Request to Pay provides increased levels of protection for consumers initiating an interbank payment it might be that some of the Open Banking use cases that involve an interbank payment leg would benefit from an additional level of consumer protection.

This suggests that a ‘one size fits all’ approach to consumer protection might not be appropriate and that multi-faceted approach to protection might be more appropriate.

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

Given that the person or entity initiating the interbank payment does not choose or know how their PSP will process the payment it is vital that ‘on-us’ payments are afforded the same levels of protection that the use of an interbank system would offer.

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)?

Answer to questions 5, 6 and 7.

Our answer to question 3 covers these questions by suggesting that a 'one size fits all' approach to consumer protection might not be appropriate and that multi-faceted approach to protection might be more appropriate.

However, there is a danger in any solution being too complex, too difficult to understand, too difficult to operate and too ambiguous. If this proves to be the case, any solution is in danger of not being effective and not making a positive contribution to trust and confidence in interbank payments.

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?

Answer to questions 8 and 9.

The protections offered by the Direct Debit Guarantee have stood the test of time (50 years) and are unrivalled both in the UK and globally.

Whilst recurring and variable recurring payments do not offer the same attributes as a Bacs Direct Debit it is important that, if consumer trust and confidence is to be established, they are afforded a level of consumer protection.

We agree that the nature of these payments (i.e. a 'push' rather than a 'pull') suggests that the protection should be limited to 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?

Rather than a lower threshold value being imposed we favour a solution that is based on payment use or type – a solution where the protection equates to the use not the amount would be an equitable and inclusive approach.

Given the limited mechanisms for high value payments any protection should not be subjected to a limit below the overall scheme limit. We would always promote using CoP and Request to Pay as effective mechanisms to reduce the potential for payment error.

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?

We support the need for effective consumer education. Working with the Emerging Payments Association, Northey Point published a blog '[Education – the secret sauce](#)', which concluded:

“If the secret ‘sauce’ of successfully implementing payments regulation is education, then the principle of ‘education, education, education’ moves beyond compliance for compliance sake, reinforces our desire to ‘Treat Customers Fairly’ and should be a central tenet of our principles of business”.

The promotion of the Direct Debit Guarantee and the Current Account Switching Service mark have both had a significant impact on the adoption, trust and confidence in the underlying schemes they support. We are hopeful that the planned Request to Pay service mark will have a similar effect.

Noting the existing trust and confidence in the UK’s interbank payment schemes it is likely that the promotion of consumer protections will have an effect but the effect may be limited.

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

Experience with Bacs Direct Debit and the Current Account Switching Service suggest that the operator of the underlying scheme is best placed to ensure consumers understand the protections offered to them.

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

The first option is for the recipient of the funds to rectify any problem, if this does not prove possible then the PSP that initiated the payment for its customer should take the lead in resolving.

In considering any disputed resolution process the needs and concerns of all parties need to be equally considered.

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?

Of the three options presented we possibly favour the payment governance system option.

Such an option could cover all interbank payment systems not just Faster Payments (e.g. CHAPS, card and ‘on us’ transactions). It could also encompass indirect scheme participation.

A payment governance system could also be the responsible body for (mandated) Confirmation of Payee governance.

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?

The key issue here is service ubiquity and points to mandated participation rather than an ‘opt in’ voluntary solution.

██████████, April 2021

Open Banking Implementation Entity (SME Customer & Consumer Representative)

Consumer protection in interbank payments: PSR Consultation Response

Final

April 2021

██████████ as SME Customer Representative on the Open Banking Implementation Entity Steering Group and acting as Consumer Representative on the Open Banking Implementation Entity Steering Group

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Executive Summary

We are pleased to provide our response to the questions posed by the PSR and welcome the detailed work which has gone into setting out the challenges related to consumer protection.

Our response relates only to open banking payments¹, since we are responding as consumer and SME customer representatives to the Open Banking Implementation Entity (OBIE). We have previously provided responses to the Treasury's Payment Landscape Review and our response here builds on that and provides additional detail.

We remain deeply concerned about what we refer to as the 'protection gap' between incumbent payment methods and open banking payments. In particular, we highlight the protection gap between cards and open banking payments. For clarity, we are strongly supportive of a thriving open banking payments market and believe this presents the best opportunity to create a more competitive payments market, with more choice for both payers and payees. However, the cost of this greater competition cannot be consumer detriment.

We have heard some voices suggest that we should "wait and see", waiting for detriment to occur before taking action. We think this runs counter to regulatory best practice, which should seek to prevent harm taking place where there are significant risks of it occurring. It is worth noting that the End User Risk Committee for Open Banking rated this risk as the highest of all end user risks identified in the open banking ecosystem. As such, we urge regulators not to sit back and wait for consumers to lose potentially life-changing sums of money before taking action. These issues are complex and will take time to resolve, so the work should start now.

We aspire to a payments market where the level of protection and the process a consumer goes through to obtain resolution is the same irrespective of how they paid. Many consumers will not understand the differences between different payment methods and we would expect that many experts would also struggle to explain in plain English the difference between a debit card transaction and an open banking payment. Consumers therefore cannot be expected to navigate this complexity and choose the appropriate method of payment for the risk of the good or service they are buying. Education and awareness is simply not tenable as a way of resolving the protection gap. Nor can this be left to the market to solve, which will result in a patchwork of different protections from different payment initiation service providers (PISPs), some offering no protection at all.

We recognise that this work is challenging and that the PSR will need to consider other payment types beyond open banking payments, as well as the related but separate area of authorised push payment (APP) fraud. However, we urge the PSR to take action now to help to build a viable competitor to the cards infrastructure and prevent consumer harm.

Throughout this consultation response when we use the expression "consumer" we intend it to refer to both people and small businesses.

¹ We use this term throughout to refer to Payment Initiation Services, where a regulated third party initiates a payment on behalf of the Payment Service User (PSU).

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?

We focus our response to interbank payments initiated through open banking APIs (hereafter referred to as open banking payments), although we recognise that this is only one aspect of this complex picture.

We agree that there are insufficient consumer protections for open banking payments. This causes us two major concerns:

1. That consumers will suffer detriment if they use open banking payments and inadvertently forgo the protections of card chargebacks and / or Section 75 Consumer Credit Act 1974 (Section 75). We refer to this as the ‘protection gap’.
2. That this ‘protection gap’ will expose the nascent open banking payments market to being undermined by warnings from consumer protection experts, scandals, press articles and the competitive response from incumbent payment providers². We welcome the development of open banking payments as they will bring much needed competition to UK Payments, bringing more choice to both payers and payees. In particular, we are keen that open banking payments bring more choice and reduced costs to small businesses who are hit particularly hard by the dominance of card payments.

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

This question is in two parts and we will answer each separately for clarity.

To what extent do you agree that currently the industry does not provide... appropriate levels of protection?

This is a complex question, given that different payment methods have such different levels and types of protection. This complexity is part of the challenge for consumers and one we would urge the PSR to work to simplify.

The cards industry does provide appropriate levels of protection – this causes the ‘protection gap’ which is our overriding concern. There are however some areas which could catch out consumers, which could helpfully be resolved (such as whether Chargeback protection is provided if you save your card in a PayPal wallet, and whether Section 75 covers buy now pay later services).

Where payments are made over Faster Payments, the level of protection is complex and inconsistent – but typically not appropriate due to the high number of payments where consumers are not protected. For example, if the payment was defined as a Purchase Scam (ie the product never existed and it was a scam), this would be classified as an APP Scam and the consumer would have some level of protection from their bank. If the provider was genuine but fell into bankruptcy before the goods were shipped, it would not be a Purchase Scam and the consumer would be left unprotected.

To what extent do you agree that currently ... consumers do not demand appropriate levels of protection?

² The response from incumbents has already started, with both Barclaycard and Visa focusing on the consumer protection benefits of cards in recent advertising.

Consumers clearly have limited ability to understand and navigate these different levels of protection and for most the issues only arise some time after the point of purchase, particularly in the riskiest type of payments which are deferred delivery scenarios such as flight purchases, deposits for goods, etc.

We would welcome detailed research on this point, however our understanding is that consumers have very little understanding of what protection they have at the point of purchase. There is some understanding that it is “safer” to use a credit card than any other form of payment because of Section 75. Given that Section 75 protection has existed since 1974, it is to be expected that over the course of 5 decades consumers would have some level of awareness of this protection.

Chargeback is very poorly understood by most consumers, and many experts as well (who routinely suggest that only credit card payments offer consumer protection, whereas chargeback covers all card types). However consumers who suffer a loss quickly learn about their protections, with extensive media references to chargeback in the case of a high profile airline or other bankruptcy.

This low level of understanding drives two major implications:

1. Consumers are not able to select a payment type based on the type of purchase balanced against the likelihood that something may go wrong. Even a brief consideration of this point shows that it is ridiculous. Take for example a consumer buying a flight which departs in 12 months time. Should they use a card or use open banking payments if offered? In part that decision should be based on the likelihood of that airline going out of business in the intervening 12 months. Should they research the financial stability of the airline in question?
2. Because of Point 1, consumers are at risk from steering at point of sale. We know that consumers are prey to behavioural tricks which can encourage them to make certain choices. Simply offering open banking payments first in a list would likely encourage consumers to choose this option. Worse, a company could offer some form of incentive to get people to select this option, such as double points or a trivial freebie. These are all common tactics.

We are particularly concerned over this point because higher risk merchants (where the risk of consumer detriment is clearly greatest) have the greatest incentive to adopt open banking payments and the greatest incentive to use behavioural approaches to steer consumers towards adoption of open banking payments with potentially less consumer 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)?

The ‘protection gap’ is real and concerning. Logically there are only 3 options to close it:

1. Remove protection on incumbent payment types.
2. Educate consumers to such a level that we can be confident that all consumers will be able to make informed decisions about the most appropriate payment method based on the risk of the transaction.
3. Provide comparable protection on emerging payment types.

Option 1 is clearly unacceptable. Option 2 is unworkable in our opinion, or would require investment in the hundreds of £ms. The other option is to leave the protection gap in place, but as set out in response to

Question 1, that will result in either high levels of consumer detriment, or the fatal curtailment of the growth in open banking payments (and likely both).

Clearly, if we could be confident that PISPs would not sign up merchants who are high risk or who operate in sectors with inherently high levels of risk, this would reduce the size of harm. We recognise that TPPs and their trade associations make the point that it is not in their interests to be associated with consumer harm and their reputation is important. However, ultimately these are commercial businesses and we repeat the point that the commercial incentive to adopt open banking payments is greatest where the risk is highest, because the cost of cards can be so high (and high risk merchants often have to wait for funds to be released).

Ultimately therefore we conclude that the risk of consumer detriment and / or the damage to the nascent open banking payments market is so great that it would be unwise to rely on the industry making good choices about the merchants it does / does not contract with. Accordingly we firmly believe that regulatory intervention is required.

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?

This question does not relate directly to open banking payments and therefore we are not providing a response.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

This question does not relate directly to open banking payments and therefore we are not providing a response.

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?

Our priority is that the 'protection gap' is closed. We recognise that there are a range of options available, but we believe that there is one high level option which is most logical and practical.

Our preference is to align with the way that the cards ecosystem works, given that this is the gap which we are seeking to close. In the cards ecosystem, our understanding is that the acquirer carries the liability in cases such as bankruptcy (even though the consumer would initiate the process and be refunded through their card issuer).

This clear liability forces the acquirer to undertake detailed due diligence and a financial review of the merchant to assess the risk. The acquirer then covers that risk through a combination of higher merchant service charge, or by holding funds for a period of time (or a combination of the two).

Our view is that this model has significant benefits and would be very effective in the open banking payments market. Many consumers, and experts for that matter, may struggle to understand the difference between an open banking payment and a debit card transaction, since both come directly from the bank account. It therefore makes sense to align the approaches.

Our preferred option therefore to close the protection gap is that the PISPs should be obliged to perform the same role as an acquirer and ensure that they adequately set aside sufficient funds for the potential costs of consumer protection. Consumers would claim from their bank / PSP as today, who would in turn seek recovery of funds from the PISP.

Some payment firms already provide this kind of protection voluntarily (for example PayPal or Amazon pay³), but this creates further levels of confusion for consumers. Are there differences between the levels of protection provided? Is Amazon Pay protection better than PayPal's for example? And without any clear indication at point of sale, how is a consumer intended to know whether a PISP provides protection or not?

³ We refer here to where Amazon provides payment services to other retailers. ("... we guarantee purchases from third party sellers ... when you use Amazon Pay for qualified purchases on third party websites. The condition of the item you buy and its timely delivery are guaranteed under the Amazon Pay A-to-z Guarantee"). See [here](#)

Consumers are not well served by this variation and it is the clear duty of the PSR to resolve this as part of its core aim to make sure payment systems work well for all.

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)?

This would need to be explored in detailed evaluation of options to close the protection gap. We do not have any specific comments at this stage, although highlight that the model we propose works effectively in the cards ecosystem.

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

We can see no reason not to extend any new payment protection arrangements to variable recurring payments (VRPs). It must be remembered that despite their name Variable Recurring Payments are not necessarily recurring. OBIE has created a standard where VRPs can be used for one-time purchases, similar to card on file.

In true recurring scenarios, where a VRP is being used in place of a continuous payment authority on a card or a Direct Debit, we consider the primary risk to be an APP risk – where the consumer is unwittingly making payments to an account which is not their own.

However there may be situations where consumer protection risks accrue in true recurring scenarios and it would be sensible to include these.

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

It would be sensible that protection extends beyond the final payment, to allow for scenarios in which the harm occurs or is identified after the last payment has been made.

We would welcome more analysis than is provided in the paper however to make an informed assessment of this point. The key analysis would be a break-down of the types of scenario in which a VRP payments may be used, so that we would be able to identify potential risks.

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?

In the cards ecosystem there is no threshold and in principle we would expect the same here. However, this is a detailed implementation point and should be considered in the next phase of work.

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

This question is not relevant for us.

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)?

Our priority is to close the protection gap between cards and open banking payments. Cards do not offer different levels of protection based on use case and transaction value, so we would be disappointed if any solution for open banking payments did. We would question how consumers would be able to navigate or comprehend this.

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)?

See our response to Question 12, we do not agree that consumer protection should be offered on a use-case basis. This seems impractical and confusing.

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?

This question is not relevant for us.

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)?

See our response to Question 12, we do not agree that consumer protection should be offered on a use-case basis. This seems impractical and confusing.

Questions related to how consumers might claim protection

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

A governance process seems inevitable to ensure the smooth running of any liability structure and associated consumer protection. Liability requires a 'rule book' to provide, so far as practicable, certainty and all parties should be able to input into the drafting and revision of that rule book. Even with the best rules, there will also be outliers and cases where there is ambiguity. There will therefore need to be a solution to arbitrate when parties dispute who is at fault. This would again require governance structures.

Careful thought would be required to ensure that such governance was representative, was able to make decisions and was able to do so in a way which was in the interests of the overall payments ecosystem and those who use it.

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)?

In our role as end user representatives to OBIE we are not in a position where we recommend payment types to consumers.

However, given feedback we have received from other bodies, we would be confident that a standardised process for claiming consumer protection would increase their levels of confidence in recommending open banking payments.

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?

It is of course beneficial for consumers to have improved levels of awareness about levels of protection, however we must be realistic that this is a challenging goal. Section 75 has existed for almost 50 years and chargeback (in one form or another) has existed since the card ecosystem was established, and yet consumers do not have good awareness of these protections (particularly chargeback).

We are concerned that any suggestion of improving levels of consumer awareness is linked to the theory that if consumers are educated any loss of protection is their fault. Education as a means to shift liability to consumers is a dangerous approach, particularly in a sector as complex and confusing as this, where even experts make mistakes.

If the objective of consumer awareness is to build trust and confidence in using open banking payments, once the protection gap is resolved, we are of course strongly supportive and would argue that this is required to enable open banking payments to flourish as a viable alternative to cards.

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

A detailed plan for communicating protections would need to be defined once the proposed solution was in place. We would suggest that a multi-pronged approach would be beneficial, including PSPs, Regulators, consumer groups and (at the point of sale) PISPs.

However, this plan would need to be defined only once the protection gap was closed.

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

In the first instance consumers would most naturally go to the merchant, and this should continue to be the first party the consumer should approach.

Following this, we would assume that consumers would approach their PSP / bank. Consumers will not in most cases have a relationship with the PISP that they have used and may not even be aware who they are or how to contact them. It would be equivalent to a consumer seeking to approach an acquirer with a query about a card transaction.

Whilst most consumers would expect their PSP / bank to resolve such issues, it would still be helpful to clarify this relationship and to ensure that PSP / banks make such a process easy to follow, with a clear process, service level agreements and transparent communications to the consumer.

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

We strongly desire growth in retail purchases through interbank payment systems (as open banking payments) as this provides the most effective potential competitor to cards, which will therefore provide more choice on how to pay and get paid.

Our robustly evidenced view is that open banking payments will not grow without resolution of the protection gap. There may be a period of initial growth, but one scandal or series of negative press reports will fatally undermine the growing ecosystem. We understand that Money Saving Expert have already approached OBIE to ask questions relating to consumer protection on open banking payments. Once such experts take a negative stance towards open banking payments, the market will be significantly damaged. The message “only use open banking payments if you are paying for something where there’s no risk that the provider could fail to send the goods or go could go bankrupt” is too nuanced and confusing. Much simpler to say “don’t use open banking payments, use a card instead”. As we pointed out earlier, the incumbent payment industry will reinforce such messages (as Visa and Barclaycard have already started doing).

Therefore we challenge the logic of the question which implies that consumer protection only needs to be considered once the market reaches a certain level of maturity. Our view is that the open banking payments market will never reach a level of maturity until this issue is resolved, or that any short term growth will be negated by very significant reputational and trust issues.

We also challenge any suggestion of taking a ‘wait and see’ approach to this issue which runs counter to the FCA’s documented approach to regulation, which seeks to avoid harm⁴.

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?

This question is not relevant for us.

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?

These options should all be considered as the PSR develops its approach. There are clear benefits in the governance system sitting outside the payment system, given that our preferred approach to resolving the payment gap in open banking payments would require PISPs to join this governance structure. We recognise however that the PSR cannot compel PISPs to join such a structure and joined up thinking with other regulators (such as the FCA) will be needed.

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

This would need to be clarified as the detailed options are progressed, however our initial view would be that the FCA would be best placed to set the obligations on PISPs since they control the authorisation process for all PISPs.

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?

It appears essential that regulatory intervention occurs in this space to ensure consistent levels of protection and help to ensure that consumers do not fall between the cracks of protection.

⁴ “The FCA will aim to pre-empt or address poor conduct so that risks do not arise and any associated harm does not materialise or if the harm is likely to materialise to ensure it does not cause significant harm to consumers or the UK financial system” – The FCA Approach to Supervision

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?

We agree with the outline of costs and benefits. We are pleased that the consultation document fully recognises both the direct benefits (prevention of harm) and the indirect ones (development of open banking payments and promotion of greater competition).

Any assessment of the costs introducing protection to open banking payments must however accurately assess the existing costs within the card ecosystem, many of which are not transparently revealed or published. These significant and hidden costs must be considered as part of any cost benefit assessment of a comparable protection regime for open banking payments. We urge the PSR to force participants in the card ecosystem to reveal accurate costs – for example costs of Merchant Service Charge (MSC), which are typically confidential, particularly those paid by smaller businesses and those in high risk sectors, the proportion of these MSC costs which relate to consumer protection and the value and extent of claims under chargeback and Section 75.

Without an accurate understanding of the costs already incurred by participants in the card ecosystem, the analysis of cost benefits in open banking payments will be distorted.

In terms of governance costs, again the PSR should be guided by other examples, such as the costs of the Visa and MasterCard schemes. With the separation of scheme and processing required under European Regulation, this should be an easier cost to understand. Our understanding is that scheme costs are a relatively trivial part of the overall cost of operating a payment scheme, with significant costs in processing transactions and providing other ancillary services such as brand and communications.

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

As noted above it is not appropriate to estimate costs which the industry has not revealed. The first step, rather than ask the opinion of respondents to a consultation, would be to require participants in the card ecosystem to reveal the true cost of providing and governing the protection regime on cards.

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

Our view, as set out in response to other questions, is that the PISP should bear the costs of additional consumer protection, who should pass these costs on to the merchants they serve, transparently.

The risk of individual transactions is very different, depending on the nature of the good or service being purchased. The OBIE's Customer Protection Working Group established this very clearly. The only party able to understand and set aside sufficient funds to cover these risks is the PISP. It would be deeply unsatisfactory if costs were born by all participants, when the risk is highly concentrated in a few key sectors. (To illustrate this point: HMRC payments are an ideal open banking use case where we can identify almost

no consumer protection risk. PISPs operating in this sector, should not carry costs incurred by PISPs who are operating in the airline sector, where there is a very high consumer protection risk).

Further consideration would be needed to identify how to proportion the costs of governance, which would more appropriately be born by both PISPs and PSPs.

This model broadly recreates the allocation of cost in the card ecosystem, where acquirers carry the liability for merchant failure and set aside sufficient funds to cover this cost in their MSC charge. However the costs of governance (ie membership of the Visa and / or MasterCard scheme) are borne by both issuers and acquirers.

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

We are not a business and therefore cannot directly respond to this question. However, we hope that a full fact-based assessment of the costs of providing consumer protection will be undertaken such that it dispels any myths that consumer protection will be an expensive burden. To be clear, consumer protection is rightly expensive when the risks are high; but low to negligible when the risks are low. Having a proper, fact-based assessment of these costs will be very welcome as currently there is a lot of guesswork going on, much of which is likely to be highly inaccurate. We would also urge the PSR to be mindful that there are some very powerful forces who have a commercial interest in open banking payments remaining niche, including all the largest banks, the payment schemes and many large acquirers. These parties would stand to lose significant revenue streams if there was a significant shift from cards to open banking payments. It is likely therefore that many parties will seek to overstate the costs of providing consumer protection as a means to reduce the likelihood of open banking payments succeeding on any significant scale.

Ordo



PSR Consultation:

Consumer Protection in Interbank Payments

(paper CP21/4)

Ordo response, 6 April 2021

Submission to [REDACTED]

The following information is the property of The Smart Request Company Ltd, trading as Ordo ("Ordo") and is provided to you in response to the above consultation only.

The information is only to be used by you in connection with the consideration of consumer protections in interbank payments and, as related, APP fraud. It is not to be used by you for any other purpose.

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Context and Introduction to Ordo

Who we are:

We are Ordo, the trading name of The Smart Request Company Ltd (company number 11338545). We are a fintech start-up and TPP. We are regulated by the FCA to carry out AIS and PIS under FRN 836070

The five founding directors incorporated the business in May 2018, having previously worked together in the Faster Payments Scheme, driving new competition in banking and payments and transforming access to the Systemically Important payment system. Whilst we were the leadership team at Faster Payments, we instigated bringing on new challenger banks and other PSPs such as Monzo, Starling, Atom, ClearBank and Transferwise (as they were then). The team were awarded the Payments and Cards Awards Industry Achievement Award in 2017 by their payments industry peers for their work to allow Transferwise and its customers direct access to the Faster Payments System.

Following our time at Faster Payments, we set up Ordo to build and run Open Banking enabled solutions such as Request for Payment, eCommerce and Account Details Verification services, amongst others. We are backed by Nationwide Building Society, and are fully integrated with the well-known accounts package services QuickBooks, Sage, Xero, and banking platforms such as Contis. We are partnered with CGI to run our platforms.

The first of our solutions, our Request for Payment service, went live on 23 March 2020. Hundreds of thousands of pounds has been transferred using Ordo with thousands of payment requests being sent and successfully paid, helping businesses and consumers pay and get paid easily.

Ordo's company purpose is:

to improve financial wellbeing of individuals, businesses, social enterprises, charities, community groups and the public sector by helping them to be more in control of their finances. We do this by:

- enabling payers to securely and simply see what they've been asked to pay, trust who's asking, and then choose how and when they make or don't make payments;
- enabling billers to securely, simply and cost effectively provide information to, and request payments from, their customers without having to gather, store and protect payers' private financial information; and
- enabling billers to understand the status of their payment requests and receive settlement irrevocably and without delay from their customers, directly into their bank accounts.

We are leveraging our collective experience in payments, technology, consumer markets and regulation to achieve this.

Our view and what we think a secure payments future should look like:

We are creating a better way to request and make payments with a new, secure competitive end-to-end digital payments overlay services. We believe the solutions we have built are an important part of the strategic long-term solution which will afford all payers, be they individual consumers or businesses of any size, the confidence and assurance that their payment has gone to the intended destination, and businesses to be able to receive payment instantly, securely and at low cost.

If every payment begins with a request from the biller concerned (which could be a consumer or a business) with the biller populating its account and reference information, this significantly lessens the likelihood of a payment going to the wrong destination and being defrauded. A biller's request for payment, be it via a specific Request for Payment service, or via one of our Open Banking enabled eCommerce, QR code or point of sale solutions, will contain the account details for the biller as captured from the biller (directly from their bank account provider), and these are neither revealed to, nor can they be changed by, the payer. The receiving (of the request for payment) potential payer will then only choose to pay the request if they recognise the biller, what the requested payment is for and if it is for the correct amount.

Preliminary premise – Interbank payments usage for retail

A significant theme of the consultation paper and the first point in the 2021/2022 Annual Plan, seems to be that if only there were consumer protections for interbank payments as there were for eg cards, consumers would use interbank payment systems more for retail payments. This is not the case. The reason consumers do not use interbank payments (presumably Faster Payments as a retailer would not wait three working days to receive payment through Bacs) for retail to date is because there has not been the immediate hardware and technology available for easy to use point of sale or eCommerce retail real time interbank payments. Open Banking, of course, if afforded an environment in which adoption can flourish, will change this, with benefits to be reaped for both consumers and businesses. Interbank payment usage for retail is not held back by concerns about consumer protections (which for example in credit cards only apply to items over £100 and the chargeback protection on debit cards is little known), but by the lack of easy to use interbank payment overlays that make the process work easily and simply for businesses and their customers.

PSR proposal for consumer protection needed for interbank payments

The PSR's position is that consumer protection should be applied to all payments in response to the fact that a very small proportion of transactions go wrong. This will inevitably incur costs across all payments, whether the payment is made legitimately or not, or safely and sensibly or not; such position acts as a cross-subsidy, with a costs-increase for all and sometimes those behaving wisely and/or in low risk areas such as grocery shopping subsidising those that behave without due care and/or in riskier sectors like, for example, travel. This is the case with the protections that are afforded to consumers in purchasing goods and services today, when making a card payment; the cost of everything is increased to accommodate potential losses that the few create by claims on card transactions for goods and services going wrong. Ordo does not agree that consumer protections that drag down the benefits of new low-cost Open Banking technology to a least useful common denominator, especially without analysis of the cause of harm resulting in attributing liability where liability is caused. Furthermore, we agree that imposing blanket protection would create a moral hazard and does not encourage right, or helpful behaviours for the greater good and wider economy.

Small businesses, some of whom have the same characteristics as consumers, suffer great harm today where card payments are accepted and chargebacks made, and for a society to function and flourish with goods and services being bought and paid for efficiently, in a payments world leading economy, there needs to be balance between justified proportionate protections for consumers and an environment in which businesses, and in particular small businesses who are not served well by PSPs or payment services today either, can thrive in selling their wares. Introducing such blanket consumer protections for covering the purchases of goods and services applied at the payment level, would not achieve this; it would only increase costs, inefficiency and uncertainty for all transactions.

Small businesses already suffer a worse deal than large retailers and corporates today; they are afforded fewer options for collecting payment, predominantly at a higher cost, and it is the consumer that ultimately covers this higher cost due to the lack of options smaller businesses have. Now more than ever, in a COVID recovering world, small businesses and consumers need technology that improves efficiency and security, and lowers cost, not the reverse. Therefore, the suggestions in the introduction to chapter 4 of the consultation are refuted. PayPal, for example, already employs delaying payment out to businesses which only serves to cripple small businesses, and increases their need for agile liquidity which, in turn, increases their cost-base. In research Ordo commissioned into what payment problems SMEs face, some SMEs told us that 42% of their payments are received late. Payments are already too hard, too time consuming, too late and too costly for SMEs with a lack of affordable competitive solutions available to them, the PSR's proposals will intensify this pain.

One of the benefits the PSR states for its hypothesis that protection should be overlayed onto Faster Payments where a supplier of goods or services is at fault is that those who face liabilities in a new protective system will work hard to reduce their costs. This does not correlate with the purported main objective of this consultation being to ensure consumers and businesses are not disproportionately affected when a payment goes wrong.

The PSR needs to consider carefully the economic dead weight impact of bundling general consumer protection insurance into interbank payments instruments. The risk is that this cost becomes the dominant

component, meaning that the economic benefits of really low-cost payments to businesses and their customers from existing and future (NPA) payments systems are obscured and ultimately lost.

Open Banking - enhanced security for payments

Open banking technology can offer more enhanced security of payment and liquidity management than is available by card or simple bank transfer today, even with CoP (which is an attempt at a preventative step, not a more secure system). In Ordo's PIS, the following checks are incorporated on every single payment request and payment, preventing the harm from occurring in the first place:

- billing party (business or consumer, who will be the payee on any resultant payment) selects the account details of where they want to be paid – extinguishing the risk of mis-typed account numbers (when setting up an account to receive money into, these account details are captured by Ordo directly from the biller's bank, also avoiding mis-keying and confirming account title integrity and ownership);
- invoices and payment requests are sent across our secure platform – removing the risk of emailed invoice interception fraud;
- displaying the biller's exact account title – providing complete certainty to the payer of who they are about to pay. We obtain the account title from the biller's ASPSP and display this directly to the payer, resulting in precise and correct information every time; there are no fuzzy matches or misleading and possibly alarming or disconcerting messages discouraging people from making payment. If the payer doesn't recognise the account title, they decline or ignore the payment request;
- in a glance, on every payment request, a payer can see who is asking them to pay, how much and by when, together with any related attachments. All information is in one place evidencing a complete picture enabling the payer to clearly, comprehensively and conclusively decide whether or not to make payment;
- all information is up to date and accurate because the Ordo service runs on API calls in real time. Users, both those requesting payment and payers, are given immediate notifications of progress updates such as a payment request has been read and what action has been taken (read, paid, declined, extension requested, part payment made);
- payers consent to using a PIS before they are permitted to use it – this is a FCA requirement;
- payers consent and authenticate every single payment in their own bank domain before making the payment; implementing 2 factor authentication which is not otherwise in force today in the UK. Whilst it is true, as per the PSR's consultation at point 2.3 that PISPs have the ability to initiate payment from people's bank accounts, it is only with their consent to PIS and their consent and authentication of every payment, affording more protection and security than card payments today; and
- in the event that a biller sends unwarranted requests for payment, the recipient of these requests can 'block' that biller's requests.

Not everything that goes wrong with a purchase is a problem with the payment. The Payments industry should be focussed on failures in their processes and systems; government should be focussed on helping consumers who have been mis-sold to through existing consumer protection legislation. The bundling of general consumer protection into card payments is an accidental product of their initial incarnation as sources of credit, not because the payment was the best place on which to layer protection.

Therefore, instead of blanket cross-subsiding goods and services protection, in support of Genevieve Marjoribanks' statement during the Annual Plan webinar on 30 March 2021 that the main objective of this consultation is to ensure that "...consumers and businesses are not disproportionately affected if *something goes wrong with their payment*", we analyse the potential scenarios to be considered where *transactions* may not complete as expected, which ones of those transactions are where the *payment* has gone wrong, and which party should be liable, including whether insurance could play a part, as follows:

Error	<u>Payment error?</u>	Liable party	Insurance at end user stage applicable?
PSP/PISP mistake	Yes	PSP/PISP	No

Goods/services not provided or defective	No	Supplier	Yes
Consumer mistake	No	Consumer, parties to cooperate to try to resolve	No/maybe – see considerations below
Fraud	No	<p>Criminal - fraudster liable</p> <p>Who compensates?</p> <p>This is typically funded by the Contingent Reimbursement fund – focussed on the actions of the paying ASPSP, largely making no regard to the fraudster acting via the receiving ASPSP where it is the receiving ASPSP that has allowed a fraudster to open an account with it, passing it's Customer Due Diligence efforts.</p> <p>Outside the scope of this consultation → APP fraud being consulted on separately.</p>	<p>Consider:</p> <p>(i) consumers insure themselves against theft, damage, lost tickets, missed gigs and travel etc.; and</p> <p>(ii) a house is typically purchased via a mortgage. Insurance against damage to the property or its contents is purchased separately by the property owner. Any damage is dealt with between the owner and the insurance firm, not the mortgage provider.</p> <p>Insurance is for those that can afford it and comes with incentives to take care such as exclusions, excess payments and increased premiums following claims.</p> <p>Ordo is not purporting that insurance is the answer in this scenario; it certainly isn't the “<i>right</i>” answer as insurance, despite only being for those that can afford it, is the innocent victim paying.</p> <p>Outside the scope of this consultation → APP fraud being consulted on separately.</p>

Alternative oversight, protection and enforcement – Trading Standards

There is, already in place, a package of consumer rights and protections. These range from payment specific credit card s75 and debit card chargeback protections, to trading payment agnostic protections such as the Consumer Rights Act 2015, amongst others.

The main gap it appears the PSR has identified and is concerned about (as APP scams are treated separately) seems to be where goods or services have been purchased and are not as expected or not received. This is a trade and supplier issue, and that harm is best tackled at the trade level, rather than overlaying payment protections onto trade where a consumer is required to be savvy and diligent and persevere with any payment and/or bank process in place to claim compensation for harm done by a business. As Pay.UK's research is cited at point 3.19, consumers do not expect payment protection except where (i) high values are being transferred, (ii) there is low trust in the seller, and (iii) goods are received after payment. Out of these three instances where consumers do expect/would like protection, only the first of these is do with the payment, the second two are supplier responsibilities and it is the supplier that should face recourse where applicable.

Rather than another form of payment protection for where suppliers are at fault, we propose that an already established form of oversight, regulation and enforcement, namely Trading Standards, be resourced and empowered to more effectively respond to this isolated need. This would place powers with regulatory bodies and not expect consumers to be willing and able to negotiate the small claims court, as the PSR, rightly in Ordo's view, notes.

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?

No. As per our opening view, where there is a payment error, the institution committing the error is liable and should compensate; where there is a supplier issue, there should be redress against the supplier, that be the expected course of redress and a framework in place to allow consumers to effectively utilise this route against the perpetrator.

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

See answer to Q1

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)?

We see that our view, concentrating consumer and business minds on who is responsible for the payment and the delivery of goods and services, reflects reality, would encourage the right behaviour and see the correct party liable when transactions go wrong, rather than the moral hazard and increased costs for all that will result from applying blanket interbank payment protection to all transactions.

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?

If our view is understood, that protection should be obtained from the liable party which will be, in the instance the PSR appears to be focussed on, the supplier whereby there is no difference for on-us payments.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

Please see previous answers.

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?

Please see previous answers.

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)?

Yes. Please see opening view on small businesses and, for example, PayPal delaying payment.

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

It is irrelevant whether the payment is recurring or not. The party that is liable should be the party that did not perform its duty. The table above applies equally to recurring and variable payments.

Variable recurring payments have the ability to transform how people manage their finances, giving them immediate knowledge of what they have available to spend. VRP also allows a consumer to set parameters as to what they are happy to be paid without specific consent. If a consumer has a concern with a particular business, they will be able to amend (rather than cancel) their mandate – lowering the amount/reducing the number of transactions that can be paid without specific consent. It will also transform businesses and supply chains, for the better, through improved liquidity and real time information. To overlay a misaligned payment protection would stifle this innovation and development for consumers, businesses and the UK.

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

Please see previous answer.

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?

Please see opening view and previous answers.

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

We built our service to have privacy at its core and designed it around only collecting the minimal amount of data necessary to run our services. Consequently, it is irrelevant to Ordo what people's payments are for, and all payment requests paid through Ordo are paid using Faster 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)?

Please see previous answer.

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)?

Yes. Please see opening view and previous answers regarding harm suffered particularly by small businesses in obtaining PSP services and by the likes of PayPal in delaying payment.

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?

We built our service to have privacy at its core and designed it around only collecting the minimal amount of data necessary to run our services. We also did not want to charge consumers for requesting or sending money as largely they do not pay to request or send Faster Payments today. We charge businesses a maximum flat fee of 20p to securely request a payment through Ordo and for the communication and management of the payment of that request. To support that commercial model, we see whether those requesting money through Ordo (who could be businesses or consumers or both with multiple profiles) link a personal or business account to be paid into. Where a business account is linked we charge the user to send payment requests, where a personal account is linked it is free (subject to a common fair usage policy).

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)?

Please see our opening view.

Questions related to how consumers might claim protection

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

Please see our opening view.

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)?

No. Please see our opening view. Open Banking is an enhancement of payment availability today. It brings with it benefits of liquidity, financial management, lower cost, speed, security and efficiency. It should be celebrated as such with liability placed where liability is incurred and society educated to take advantage of these technology advances,

not stifled and drag all payment methods down to an unnecessary ill-fitting equality where ultimately the consumer is worse off through poorer notifications, slower services, and increased costs through subsidising bad businesses

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?

Marketing of the benefits and advantages of Open Banking, namely, that it is more secure and will allow consumers and businesses to better be able to manage their finances, in real time, lower costs and improve liquidity for businesses is being carried out by TPPs and ASPSPs in respect of their own services, today. Consumers generally do not care about the technology but rather what they stand to gain from it, which is the benefits as listed.

We strongly disagree with a further trust mark.

All ASPSPs and TPPs are required to be regulated by the FCA. All regulated entities have a FRN. This is a trust mark enough and it is all that is required by law to operate a PIS. No additional layering of regulation should be added to this. We refer to our numerous letters and countless conversations with the PSR regarding Pay.UK's attempt at purporting to authorise request to pay providers in their request to pay service. Such overlaying of unnecessary regulation will stifle competition and innovation. What would a trust mark look like, who would administer it, how will the trust mark be marketed, made familiar to consumers and be trusted, how will the organisation managing the trust mark be recognised? Or will it be an unrecognisable mark administered by an unrecognisable body to UK consumers who will be none the wiser but who will bear the cost of the exercise?

The FCA is a well-known and established body. Operators of regulated services are required to be regulated by the FCA and their FRN is an understood mark of trust. No further overlay is required.

We are in dialogue with the competition and enforcement team at the FCA regarding Pay.UK's activity in this area.

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

Please see our previous answer regarding the FCA, with consumer support and route of redress to the Financial Ombudsman.

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

A consumer's first port of call, where goods or services have not arrived as expected, should be the supplier. Where an error occurred with the payment, they should contact their bank or PISP. If the consumer is using a PISP, they will be aware of this as they will have consented to using PIS, as per FCA requirement.

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

Our response would not change.

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?

In being authorised by the FCA we are required to have complaints processes, policies, time lines and officers in place with which we comply. We are required to collect data and report on this regularly to the FCA.

Via OBIE's service desk, we are able to raise technical and operational issues related to PIS transactions. To date these have, without exception, been of a technical nature (an ASPSP's user journey failing, for example). We are also building up direct relationships with a number of ASPSPs. OBIE has also set up a PISP Forum, which Ordo

contributes to, which is a place where PISPs can share their experiences regarding how ASPSPs operate/fail to do so correctly.

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?

If our view is understood, that protection should be obtained from the liable party which will be, in the instance the PSR appears to be focussed on, the supplier, such options are not applicable. Solution options should be resourcing and empowering Trading Standards, and insurance.

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

Where something has gone wrong with the payment, which is the only circumstance the payment providers should be liable, the FCA.

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?

The FCA has jurisdiction over ASPSPs and PISPs for payments. Trading standards should regulate trade.

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?

As has been mentioned in this response, for the framework and solutions suggested, burden and liability is being placed on parties not at fault where there is a failure to provide goods or services as expected. This will increase costs for all, ultimately including consumers, and those increased costs and the regulatory burden will damage deeply small businesses, which includes PISPs.

We do not agree that these misaligned remedies will heighten take up of interbank payments for the reasons stated in our opening paragraph regarding the preliminary premise of the consultation.

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

Please see previous answer. Any increase in costs and unnecessary addition to the regulatory burden will stifle competition in a nascent PIS market which is still trying to gain awareness and adoption. More regulation over and above being regulated by the FCA will have significant effects on those operating in the market today.

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

Please see our previous answers and opening view, including the table for where liability lies. The only correct answer to this question is that the party that causes the loss should bear it. Where insurance could play a part, the cost of the insurance should be borne by the party that caused the loss, which would be the receiving ASPSP in the case of fraud.

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

Consumer protection measures would increase our cost base significantly, and consequently the cost at which we could provide our Open Banking enabled services to businesses. It would render us helpless in being able to compete with the goliaths that are MasterCard, Visa and Amex to the detriment of small businesses and consumers. It would likely mean Open Banking could not compete with the card schemes and Open Banking would not be able to flourish in the UK.

We are a commercial TPP providing multiple Open Banking enabled competitive solutions and are live in the market today. We have been running our *Request-for-Payment* solution for over a year, more than £2 million has been requested and we have saved businesses, largely small and medium businesses, an average of £28 per transaction. We are connected to 97% of the banking market. See our range of [solutions](#), [learn more](#) or [try for free](#) today.

Our response is being led by [REDACTED]
[REDACTED]

Pay.UK



Pay.UK's response to the PSR's Call for Views on consumer protections in interbank payments

April 2021

Pay.UK's response to the PSR's Call for Views on consumer protections in interbank payments

1. Pay.UK welcomes the opportunity to respond to the PSR's Call for Views on consumer protections in interbank payments.
2. The views expressed in this response are those of Pay.UK and have been agreed by our Board. These views have been informed through our stakeholder engagement activities and have been tested with our End User Advisory Council, Participant Engagement Forum and Consumer Protections Working Group. We will continue to discuss consumer protections with these forums.

About Pay.UK

3. Pay.UK was formed in July 2017 (initially under the name New Payment System Operator or NPSO). We are a not for profit company, with independent governance. Pay.UK is the Recognised Payment System Operator for the Bacs and Faster Payments systems, which are recognised under the Banking Act 2009, and are therefore subject to macroprudential regulation by the Bank's Financial Market Infrastructure Directorate. In addition, Pay.UK's operation of Bacs, FPS and the Image Clearing System is subject to economic regulation by the PSR as designated systems under FSBRA 2013.
4. As well as operating these three key payment systems, Pay.UK also delivers a variety of other services relating to payments and is responsible for designing the New Payments Architecture – which will upgrade and enhance the UK's retail interbank payment systems.
5. Pay.UK also delivers a range of 'managed services' which offer capabilities to enhance the payments systems, such as Paym and the Current Account Switch Service.

Background to our response

6. Pay.UK welcomes the opportunity to respond to this Call for Views, which we consider to be timely and constructive. We are pleased that PSR intend to use their convening power to explore what constitutes appropriate consumer protection for interbank payments (CP). We share the view expressed in the document that it is necessary to ensure that consumers get the right protection when they use interbank payment systems to transfer funds.
7. The focus of the Call for Views is on consumer-to-business FPS payments: we support that focus, not only because the use of FPS in retail is part of our strategy, but also because trust in our payment services is vitally important to Pay.UK and to our participants. As the PSR are aware, Pay.UK has been undertaking a project exploring consumer-to business FPS payments and the protections landscape, supported by a working group of participants and end-user representatives. This project has produced secondary and primary research, and has highlighted a number of areas for consideration in applying protections to these transactions. Insights from this work have informed our response.
8. We think it is important that any protection and governance would provide customers with consistent minimum protections and outcomes across FPS payments, whether made directly from a PSP or through a PISP. Different systems and processes for consumers could be confusing and could produce differing levels of protection.

9. The breadth and complexity of the questions raised in the Call for Views highlights the need for more work to establish the desired liability and legal framework that would underpin any CP regime. Implementation of that framework would require a commercial model, a rulebook, a disputes mechanism and a body to provide governance. It will be necessary to involve the full range of affected parties in the design of the regime including, importantly, the sellers of the goods and services.
10. It is acknowledged by the PSR and the industry more generally that detriments in this space are not as pronounced as with APP scams and will likely not emerge for some time yet. In the PSR's Call for Views on APP Scams, solutions are focused more on the short term due to the detriment which is currently being felt by many consumers. It may be that some of those solutions, measures and exploration which is being undertaken through that Call for Views may assist in the broader consumer protections area.
11. Many of the questions in the Call for Views rightly focus on the desired outcomes for consumers, and on the feasibility of different options for payment providers. We have not answered every question in the Call for Views. The key for Pay.UK is to identify which actions we can take to build confidence in FPS as a retail system in a way that is complementary to our core functions as a PSO. That is the focus of our response – areas where we can uniquely act, areas where we think we can enable outcomes and areas where there are limitations on our current ability to act.
12. We anticipate that we can support participants to provide protection to their customers by enabling the exchange of data and payment information and, potentially standards for their use. An initial view is that we would not want any CP framework to disrupt the flow of FPS transactions that do not relate to a purchase of goods or services, so it may be necessary to develop a 'retail overlay' with the ability to vary the payment journey.
13. As we consider what a successful framework looks like and our role in it, we have identified that we may not have the legal powers necessary to be the body that assigns liability, or that Pay.UK currently has the legal capacity or capability to monitor compliance with any liability framework or govern a disputes regime.
14. For these latter cases, we set out the nature of the limitations, along with options to explore how the outcomes could be achieved, including what could be needed to remove those limitations where appropriate.
15. We look forward to working with PSR and all the other relevant parties over the coming months to identify how to deliver effective consumer protection in interbank payment systems.

ADDRESSING THE CALL FOR VIEWS QUESTIONS

Questions related to why we think additional protection may be needed

Call for Views question #1

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

16. As the operator of FPS, we want end-users to be confident in our payment systems and in particular the use of FPS in retail, as this is a part of our strategy. In the longer term as the usage of FPS for the purchase of goods and services increases, it is likely that there would be insufficient consumer protections as the landscape currently stands.
17. Currently, usage of FPS for the purchase of goods and services is fairly low, however growing. It is acknowledged by the PSR and the industry more generally that detriments in this space are not as pronounced as with APP and will likely not emerge for some time yet. All parties agree, however, that it needs to be assessed now as Faster Payments use for retail purposes increases.
18. As of November 2020, 13% of the top 500 online stores in the UK offer bank transfers as a payment option while a further 37% offer invoices/instalments¹, which could include FPS as well as cards and other payment methods.
19. Research from Paysafe² shows that 19% of UK consumers paid via bank transfer when shopping online, whilst 6% did this for the first time during the Covid-19 pandemic. The pandemic has made protection against loss from fraud more important for 30% of UK consumers when shopping online, and being easy to get a refund has become more important for 20%.
20. The uptake of FPS as a payment method for the purchase of goods and services in the UK is dependent on a number of factors. Our secondary research identified factors that could potentially accelerate the rate of take-up of FPS for retail transactions:
 - Open Banking could create a new market of innovative and competitive PISPs, some of which will offer FPS payments for the purchase of goods and services.
 - The speed of retail FPS payments will appeal to consumers, who are increasingly used to getting information (such as updated account balances) immediately.
 - Retail FPS payments are expected to be increasingly used for e-commerce, which is booming in the UK, with a forecast to continue to grow.
21. Other factors that could influence take up:
 - **Local payment culture:** In the UK, cards are a widely accepted way of paying. In 2019 half of all payments in the UK were made by cards (credit and debit). Online shopping experiences when paying by card are typically quick, convenient and nearly frictionless. For consumers to consistently opt for FPS as the payment method for retail transactions, the user experience will have to be comparable, if not better, than when

¹ <https://www.statista.com/study/69526/ecommerce-in-united-kingdom/>

² <https://www.paysafe.com/gb-en/paysafe-insights/how-covid-19-is-impacting-consumer-payment-preferences/>

cards are used. Presently, several factors result in additional friction in the consumer experience.

- **Appetite for technology and payments innovation:** The UK is one of the most technically mature nations, with 90% of adults regularly using the internet (99% for 16-34 year olds). Smartphone penetration is also high at 82%. Online banking is the new norm, with 73% of individuals classified as regular users, including 69% using mobile banking. This maturity has created the third largest e-commerce market globally.³
 - Consumer cost and experience are also factors that will influence take-up.
22. As more and more touch-points in our daily lives become digital, and technology continues to facilitate frictionless, invisible payments for most products, services and experiences, it is anticipated that the UK will become a centre of innovation in payments, with a focus on real-time payments.
23. There are several other industry, sector and consumer factors that could positively or negatively impact the take up of FPS for the purchase of goods and services. Considering the current growth rate and pace of innovation in the market, FPS transactions are expected to grow to 3.2 billion by 2028. It now becomes increasingly important to not just consider whether FPS will grow to account for a significant portion of retail transactions over the next few years, but to consider the various aspects the industry will need to pay attention to, if this happens. This underpins the need to assess whether there is potential for consumer detriment and whether consumer protections are needed to address any detriment.⁴

Call for Views question #2

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

24. With increasing use of FPS for the purchase of goods and services, there is a clear need to assess whether the lack of official consumer protection may lead to consumer detriment in the future. Our secondary research looked at potential areas of detriment.
25. Due to the low number of retail FPS payments today, it has not yet been possible to exhaustively study the landscape or identify specific cases where customers have been left unprotected. What is clear is the fact that lack of consumer clarity on payment mechanisms and corresponding protections will contribute to consumer detriments.
26. As the usage of FPS for goods and services is in its early stages, it is not clear that the industry does not provide and consumers do not demand appropriate levels of protection. However, noting the factors that could encourage uptake of this usage of FPS in question 1, this may become clearer as FPS is used more widely for retail purchases.
27. Our primary research showed that at the current level of use of Faster Payments, consumers neither feel the need for additional protection nor do they expect it, though this could change if this mode of payment becomes a more widely available choice, for varied types of transactions. The research found that there are a few factors that could increase the need and expectation for additional protection around transactions using Faster Payments:

³ Internet users, UK: 2018. <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018>

⁴ <https://www.wearepay.uk/wp-content/uploads/Consumer-Protection-Summary-Paper.pdf> (p.7-8)

- Promotion by financial providers, retailers or tech companies - seller preference, rewards
- The increasing fragmentation of the payment provider market (particularly online): PISPs emerging that use Faster Payments, but do not offer clear protection, and/or alternative models
- Increasing use for 'higher risk' purchases: retail use cases proliferate when purchasing from less well-known sellers, less tangible goods or services and/or higher value items e.g. travel.⁵

Call for Views 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)?

28. This is a difficult area to comment on, but we can share what we see happening in other countries and the emergence of products in the UK market, including emerging PISP models with varying levels of protections. The PSR should consider these when considering what is appropriate for the UK market.
29. Attention should also be given to the introduction of the NPA, and opportunities this could bring.

Emerging products and models

- **Monzo and TrueLayer** worked together to create an open banking powered gambling block. This means that Monzo can now prevent open banking initiated bank transfers to gambling operators supported by TrueLayer, for any customer who has our gambling block turned on. Previously the PSP relied on MCC codes to prevent card payments to gambling operators for users that requested it.
- **Bopp** offers merchants an account-to-account retail payment solution at a fixed monthly cost. A payment request can be sent in the form of a pay link via SMS, WhatsApp, email or QR code. The payment request link takes the user to the secure BOPP site, connects to the recipient's online banking app and provides all the payee and transaction details - the payer only needs to authorise and confirm the payment with their bank. No payment protections are provided as part of this service – the merchant retains all responsibility for legal and contractual obligations and no chargeback-equivalent facility is offered.
- **NatWest** launched Payit in June 2020, an online payment service that allows retail payments via FPS. It was reported in February that the service has now processed 200,000 retail transfers⁶. The latest update to the service gives businesses the ability to pay their customers without needing to know their bank details, with refunds being a prime use case.
- **Revolut** launched a Plus Account as an addition to its other, more expensive, premium services; Premium and Metal. The features in the Plus Account include versions of payment protections:
 - Purchase protections: Plus Account holders' purchases are protected from theft and accidental damage up to £1,000 per year.

⁵ https://www.wearepay.uk/wp-content/uploads/20201211-ConsumerProtection_PrimaryResearchPaper.pdf (p.14)

⁶ [NatWest open banking upgrade wants to try and kill off cheques for good | TechRadar](#)

- Refund protection: Plus Account users can return a product purchased with a Revolut card within 90 days, and if they don't receive a refund then Revolut will reimburse them.
- Event tickets protection: If an event is cancelled or a Plus Account holder cannot attend it, then they will be reimbursed by Revolut.

Revolut is providing these payment protection services by outsourcing insurance to the insurtech company Qova

Other territories

30. Our secondary research explored international markets and their approaches, uptake and management of real-time payments systems. In Asia, countries leading the adoption of real-time payments have encouraged uptake by creating innovative use cases to increase acceptance. In contrast, in the UK, Australia and Europe the roll-out of real-time payments has been encouraged centrally, with involved regulatory entities taking a structured, collaborative approach.⁷ For the purposes of this research, we focused on three territories currently using real-time payments for retail transactions; Singapore, Australia and the Netherlands. Details of this research can be found in Annex A.
31. We separately looked into the **Netherlands** more closely due to the advanced retail use-cases.
32. In the Netherlands, E-Commerce transactions are dominated by iDEAL, a payment scheme operated by the dominant Dutch banks. It accounts for 59% of the e-Commerce market. Through the scheme, consumers can pay via bank transfer straight into the merchant's bank account. The scheme has been in use since 2005, but became real-time in 2017 when it joined the SEPA instant payment scheme⁸.
33. The scheme is so popular because it is user-friendly, cost-efficient for banks and secure⁹. It operates using a 4-corner model similar to card schemes with 11 issuing banks, 12 acquiring banks and 60 payment institutions².
34. iDEAL payments have risen rapidly since the scheme's inception, and has been driven recently through new use cases outside of e-Commerce payments such as charity payments, invoices and fines. In 2016, iDEAL QR was launched. This allowed users to make both online and offline payments through scanning a QR code with their mobile phone¹⁰. In fact, nearly 70% of iDEAL payments are now made from mobile banking apps².
35. Unlike card schemes, handling refunds is not part of the iDEAL scheme. Payment is considered separate to the delivery of a good or service. An iDEAL payment is an irrevocable bank transfer that cannot be refunded once the payer has approved and made the transaction. However, in the event of a dispute there is strong protection outside of the payment scheme. The Dutch model has resulted in consumers receiving a refund over travel cancelled by coronavirus without the use of section 75, providing an excellent example of how an alternative payment protection model could work.

⁷ Flavors of Fast Report. <http://empower1.fisglobal.com/rs/650-KGE-239/images/FLAVOR-OF-FAST-Report-2018.pdf>

⁸ <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-fs-sepa-instant-payments-sct-inst-f-insight.pdf>

⁹ <https://www.ideal.nl/en/ideal-information/>

¹⁰ <https://www.businesswire.com/news/home/20190308005226/en/2019-Study-on-the-Alternative-Payment-Solution-iDEAL---ResearchAndMarkets.com#:~:text=Payments%20through%20iDEAL%20are%20supported,Bank%2C%20and%20Van%20Lanschoot%20Bankiers.>

36. If the disputed transaction is between consumers, then iDEAL suggests to contact the consumer-to-consumer provider and resolve the issue through them¹¹.
37. If the transaction is between a consumer and a business, then there are 2 steps in order to resolve a dispute. Firstly, the consumer must lodge a complaint with the business and the 2 parties can try to resolve the issue. Some Collecting Payment Service Providers (CPSPs) in the iDEAL model offer mediation services to help the 2 parties settle amicably¹². Because these PSPs also help companies receive payments from schemes other than iDEAL, this service is not limited to one scheme type. In addition to this, there are two main e-Commerce Trustmarks in the Netherlands that provide free mediation between consumers and businesses; the Webshop Trustmark¹³ and the Thuiswinkel Trustmark¹⁴. Businesses must meet the terms and conditions and pay a monthly fee to be a member of the Trustmark. In the event of a dispute, the Trustmark organisations provide free and independent mediation. It is not guaranteed that free mediation exists because PSPs do not have to provide it and sellers do not have to be a member of a Trustmark foundation. However, in the majority of the occurrences this will be the case; the Thuiswinkel Trustmark has 2,100 members which represents around 70% of Dutch online consumer spending⁷, whilst the Webshop Trustmark has 7,400 registered members⁶.
38. In the event that a dispute cannot be resolved between the consumer and the business, a consumer can call upon Alternative Dispute Resolution (ADR). There are 4 Dutch ADR organisations¹⁵, but The Dispute Committees for Consumer Affairs Foundation handles disputes where payment protection is involved. This is a private, independent organisation comprising of 80 separate committees¹⁶. These committees are set up by trade bodies or organisations and the SGC (Foundation for Consumer Disputes Committees)¹⁷. Businesses are bound by the decisions of the committee by virtue of being affiliated with the organisation that set it up¹⁸. The costs of the individual committees are paid by the business community, whilst the SGC receives a small subsidy from the government to cover infrastructure costs¹⁹.
39. There are 2 committees focused on e-Commerce; the Thuiswinkel and Webshop committees which handle disputes for their respective members, both deal with complaints around 'distance purchases' (purchases not made in store). In order to make a complaint, the consumer must pay €52.50 to the committee²⁰, if they win then the business will also cover this cost. 72 complaints were handled by the Webshop committee in 2019²¹. In 2020, the Thuiswinkel committee helped consumers get their money back from travel holidays that couldn't go ahead because of the coronavirus pandemic²².

¹¹ <https://www.ideal.nl/en/consumers/frequently-asked-questions/>

¹² <https://www.ideal.nl/en/consumers/frequently-asked-questions/>

¹³ <https://www.keurmerk.info/en/home-en/>

¹⁴ <https://www.thuiswinkel.org/english>

¹⁵ <https://www.degeschillencommissie.nl/over-ons/adr-organisatie/>

¹⁶ <https://www.degeschillencommissie.nl/over-ons/commissies/>

¹⁷ <https://zoek.officielebekendmakingen.nl/kst-33982-3.html>

¹⁸ <https://zoek.officielebekendmakingen.nl/kst-33982-3.html>

¹⁹ <https://zoek.officielebekendmakingen.nl/kst-33982-3.html>

²⁰ <https://www.degeschillencommissie.nl/over-ons/commissies/webshop/>

²¹ <https://www.samenwerkenaankwaliteit.nl/jaarverslag-2019/inhoud/jaarverslag-consumenten/webshop>

²² https://www.degeschillencommissie.nl/uitsprakenoverzicht/?search_query=&meta_uitspraak_referentie=&tax_category=thuiswinkel&tax_uitspraak_jaartal=&tax_uitspraak_category=&tax_uitspraak_org=&tax_uitspraak_soort=&tax_uitspraak_uitkomst=&tax_uitspraak_product_dienst=&orderby=date&order=DESC&posts_per_page=10&wpas_id=myform&wpas_submit=1

NPA

40. One of the core benefits of the NPA is to move interbank payments to a point where they are a realistic alternative to card. With this comes a wealth of opportunity to build effective protections into the NPA itself, working with the industry in the design phase to ensure this is appropriate, proportional and effective to the functionalities of the NPA.
41. As covered in question 1, detriments in the consumer protections space will likely not emerge for some time yet. As we cover in questions 5 to 14, introducing protections in FPS has a number of implications, and there are a number of key considerations which would need to be taken into account in order for protections to be introduced, which will ultimately change the value chain of FPS and potentially the availability of its use for end-users such as merchants.
42. Therefore, consideration should be given as to whether it would be appropriate to focus on the development of protections for retail payments in the NPA above those in FPS where uptake of this use case is currently low.

Questions related to which payments might need additional protection

Call for Views question #5

Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

43. Pay.UK's view is that all transactions using FPS for the purchases of goods and services should be treated the same. As the consumer protections landscape is already complex and confusing for customers, it is important to ensure that any changes to protections remain consistent and comprehensive, as well as simple for end-users.
44. We are clear that this does not mean all FPS transactions should be subject to protections, as this would unnecessarily increase costs and friction. We would not want any protections framework to disrupt the flow of FPS transactions that do not relate to a purchase of goods or services. It is important to strike the balance between these two issues; ensuring consumer are adequately protected and ensure other use cases of FPS are not affected by this.
45. This would require the identification of FPS payments used for retail purchases, which we expand on in question 11.

Call for Views 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?

46. This question is one of the fundamental aspects of any proposed regime – if the purpose of payment protections is to provide customers with a more effective way to request a refund, then the liability could sit with the seller, as it does under legislation, and the focus in designing payment protection would be on developing a reliable and effective process to deliver that refund. If, however, the purpose of any payment protection was to provide additional rights to the consumer, then that might point to introducing a liability on the seller's payment provider. A potential benefit of the latter model might be greater due diligence on the part of the payment provider over the sellers, with the effect that consumers were shielded from less reputable organisations and scams. But the consequences of this would need careful

consideration: the introduction of such a liability would carry cost implications and potentially slow down the completion of the payment.

47. The Pay.UK Consumer protections working group raised concern around the lack of economic model in interbank payments, which are present in the card schemes, for the funding of refunds. It is prudent that we dedicate an appropriate time and effort to understand how the protections could be sustainably delivered in this way. The economic models behind protections, and where the money for refunds would come from, would require careful consideration.

Call for Views question #11

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

48. As noted in answer to question 5, the process of benefiting from protections needs to be simple for end users. To ensure this is the case, protections should apply to all uses of FPS for the purchases for goods and services.
49. This means PSPs need to be able to identify these transactions separately from others. We think there is a role for Pay.UK to help PSPs with this through the use of data, standards and technical solutions. Our initial view is, in order to not disrupt the flow of FPS transactions that do not relate to a purchase of goods or services, it may be necessary to develop a 'retail overlay' with the ability to vary the payment journey.
50. This would require substantive work with the industry to explore.

Call for Views 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)?

51. Our primary research identified three key factors that drive perception of risk and in turn may be indicators for the need for protection:
- Tangibility of product or service: More important where products and services are paid for in advance (e.g. online), less important when buying on sight (offline)
 - Value of payment: More important for higher value purchases. Consumables are likely to be low value and not much is expected to go wrong.
 - Trust in seller: More important when buying from an unfamiliar seller / less well known brand. Big retailers trusted to deliver: brand reputation to uphold.
52. A key point to be noted is that protection is not felt to be as important when just one of these factors is involved, but becomes increasingly important as they overlap or appear together.²³
53. This demonstrates the complexity of the needs of customers, and each customer view of these factors will be unique. The degree of subjectivity leads us to hold the view that all uses of FPS for the purchase of goods and services should benefit for protections. [See question 5]

²³ https://www.wearepay.uk/wp-content/uploads/20201211-ConsumerProtection_PrimaryResearchPaper.pdf (p.11)

Call for Views 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?

54. There are ways in which a PSP may be able to identify whether a customer is using a personal or a business account, for example, this is one of the aspects which is identified by a Confirmation of Payee check. However, as sole traders are not required to hold a business bank account, some personal accounts may be used for business purposes. It may not, therefore, be a reliable way of identifying whether a payee is a business, organisation or a consumer.
55. It is important to note that currently everybody who has a bank account can receive an FPS payment. Introducing protections and liabilities could lead to PSPs applying restrictions and conditions to accounts – one participant mentioned that they might need to repaper all their customers, which demonstrates that would not be a trivial change. Technical build and change for this will also be a key aspect for industry consideration.

Questions related to how consumers might claim protection

Call for Views question #16

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

56. As previously explored, clarity and consistency are key when providing protections for customers. We think that there does need to be a governance process in place, which delivers consistent outcomes, and this would be beneficial.
57. As the operator of FPS, we want end-users to be confident in our payment systems and in particular the use of FPS in retail, as this is a part of our strategy. We believe a consumer protections governance process would help with this.
58. We think it is important that any protection and governance would provide customers with consistent minimum protections and outcomes across FPS payments, whether made directly from a PSP or through a PISP. Different systems and processes for consumers could be confusing and could produce differing levels of protection.
59. We think it will be important to continue to collaborate with OBIE in the next phase of this work.

Call for Views 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)?

60. Our primary research explored drivers for choice of payment method, and it is clear that drivers are very subjective and heavily influenced by personal circumstances:
 - Consumers with higher financial confidence – are comfortable using a wide repertoire of payment methods, driven by convenience and potential rewards. They do not actively seek out new payment types, but are happy to try new methods if nudged and

there is good reason. They do not have an overwhelming fear that using new methods will lead to excess spending, scams and/or having their personal details stolen.

- Consumers who are not very financially confident – in general have a smaller repertoire of payment methods used regularly, driven by control. They are less interested in trying new methods and are highly cautious and fearful of scams, theft and fraud. Consumers in this segment are likely to be heavy cash users; with some using debit cards. There is a general aversion to using credit, due to fear of losing financial control and getting into debt.
61. The research shows that the motivators that drive payment method choices and the inclination to try new payment methods are heavily influenced by: life stage; personal circumstances; financial literacy and confidence; access to or knowledge of digital tools; and financial circumstance.²⁴
62. With this in mind, and in particular considering the support of less financially confident, we think a standardised process for claiming protections would make customers more confident in using interbank systems, due to the control this would give them in their payments.

Call for Views 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?

63. Our primary research explored consumer awareness and understanding of payment protections:
- Awareness was found to be mixed, with users of credit cards and PayPal most likely to know about payment protection provisions.
 - Awareness of credit card protections and PayPal Buyer Protection were seen to be the strongest, although, there was limited awareness of the term “Section 75”.
 - General understanding of how payment protections worked in practice was minimal and informed only by direct, personal experience of the claims process
 - In the case of consumers who are not online banking users, and/or those who are financially less literate/confident, there appeared to be lower awareness of any kind of payment protection mechanisms that might be available to them.
64. Several factors seem to increase awareness and understanding of payment protections for all consumer segments:

Personal experience	Relatively few have direct experience of claiming on payment protection, but those who do seem to have the strongest understanding of how it works in practice.
Word of mouth	Driven by other people sharing experiences of dispute, supported by real-life examples.

²⁴ https://www.wearepay.uk/wp-content/uploads/20201211-ConsumerProtection_PrimaryResearchPaper.pdf (p.8)

Consumer experts	Sources of insight (such as Which! or MoneySavingExpert.com) have raised awareness of protection and the financially confident are more likely to turn to these people in a dispute situation.
Payment providers	Companies like PayPal are seen to promote Buyer Protection at the point-of sale. Credit card providers have also made customers aware of the protection provisions in place.
Media coverage	Recent high profile collapses (e.g. Monarch), and the pandemic (due to the high number of flight/holiday cancellations) have also highlighted the seriousness of the issue of consumer protection ²⁵

65. Our consumer protections working group were clear that it is important to get customers to the same level of comfort with new protections as they have with protections such as charge backs and the Direct Debit Guarantee. Members agreed that building on consumer understanding could help this point. Further work into education and how to increase customer understanding would be needed, particularly as payments through open banking are more complex. Our end-user representatives point to the limits of education, in particular to the most vulnerable groups in society.

Call for Views 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?

66. This is an area which our primary research explored. Even in the cases where payment protection becomes a more important consideration, it takes a back seat when there are other recourse options available, for example retailer guarantees. These are explored further below:
- Retailer protections are almost always the first port of call in cases of disputes. Half of our research participants had claimed a refund from a retailer and had learnt from experience to save proof of purchase or receipts etc.
 - Personal protections had been used by one in ten, who said they had claimed a refund via insurance or warranties
 - Legal protections were less frequently mentioned - mainly by the financially confident for service disputes.
 - Payment protections had been used or considered by relatively few people and not all were aware of the provisions in place. The general consensus was that payment protection is seen as a safety net, in the event that the retailer refuses or is unable to offer a refund. The PwC Research Quantibus5 found that:
 - 14% had claimed a refund on their credit card.
 - 7% had claimed a refund on their debit card – accessed after other potential avenues had been explored.²⁶

²⁵ https://www.wearepay.uk/wp-content/uploads/20201211-ConsumerProtection_PrimaryResearchPaper.pdf (p.13)

²⁶ https://www.wearepay.uk/wp-content/uploads/20201211-ConsumerProtection_PrimaryResearchPaper.pdf (p.12)

Call for Views 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?

67. Below we explore the three governance options set out in the Call for Views.

Payment system rule

68. Under the current legal framework for payment systems in FSBRA, we do not believe that we have the legal powers necessary to be the body that assigns liability, nor does Pay.UK currently has the legal capacity or capability to monitor compliance with any liability framework or govern a disputes regime.
69. A key concern with a rule change approach is that the risks that the rules would be seeking to control are risks which originate between the customer and their payment provider. If Pay.UK is to be responsible for rules which address these risks, it needs to do so on a sound legal basis, which protects the integrity and resilience of the payments system.
70. We agreed with the analysis in the Call for Views in paragraph's 5.18 and 5.19 that there are limitations on the use of rules to reach the full range of payment providers and to appropriately enforce any such rule.
71. However, as one of the core benefits of the NPA is to move interbank payments to a point where they are a realistic alternative to card, Pay.UK is likely to have a part to play in the consumer protections space. As previously noted, we think an 'retail overlay' with the ability to vary the payment journey may be an appropriate way in which Pay.UK could contribute to the introduction of protections. We would be interested to explore with PSR what potential changes to regulation and/or legislation may be appropriate to support the development of retail use of FPS.
72. We continue to explore the legal issues we have noted in this response, and will work with the PSR on appropriate ways to mitigate risks.

Payment governance system

73. To provide a firm statutory basis for the implementation of consumer protections governance scheme, a payment governance system operated outside the perimeter of the payment system may be a solution. Such a solution may be required to appropriately target the payments ecosystem-wide risks posed by dispute transactions that cannot be effectively addressed through the system rule changes.
74. This would mean amending the FSBRA regime (or introduce a separate statutory vehicle) to incorporate a new concept of a payment governance system – operating or administered outside the perimeter of any payment system – that itself includes a standardised contractual arrangement with common requirements put in place and administered by a regulated payment governance manager (or similar) to manage broader payment ecosystem-wide risks.
75. Such an approach would provide a robust legal and regulatory basis for Pay.UK or another body (acting in the capacity of a regulated payment governance manager) to put in place a comprehensive, effective and efficient scheme to deal with disputes and to assign liability when electronic payments (including FPS payments) go wrong. It could also provide a risk management framework for operational or other risks arising from the provision of electronic payment services by PSPs – whether those electronic payments are or are not ultimately

executed and settled through a payment system that might be operated by the regulated payment governance manager, acting in its separate capacity as a PSO.

76. We would be happy to discuss this idea further with the PSR.

Industry led

77. Pay.UK would be happy to work with industry to provide any necessary technical developments if this were to be the preferred route.

Call for Views question #24

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

78. At the moment, we do not think that there is a body which is best place to undertake this role. Protections would need to be governed and a body would need to make judgement on cases. It does not seem to us that there a natural body that already exists.
79. We believe that either something new needs to be established, for example a payment governance system as set out in question 23, or an existing organisation would need an expansion of roles and responsibilities. This would need careful consideration of capability and capacity, and legal underpinning.

Call for Views 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?

80. Please see answer to question 23.

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

Call for Views question #26

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

81. Pay.UK broadly agrees with the assessment of the likely costs and benefits. We think there are a number of areas which to which consideration must be given throughout this process:
- **Proportionality** – The overall proportionality of action, including the effectiveness of this action, will be important to analyse throughout the PSR's process.
 - **Competition v central coordination** – The PSR have noted through their Call for Views that they do not think the competitive market will solve the problem of consumer protections. We think specific consideration should be given to this through the analysis of responses, and through considering the current offerings in the market, along with approach and markets of other territories. [See question 3].
 - **Commercial models** – The commercial model and funding behind any protections is a key area which will need to be resolved, and has been a long-standing concern of our consumer protections working group [see question 6]. This is an important issue that

will need to be resolved before the introduction of any protections, and will need engagement with all areas of the industry.

- **Costs** – There will, of course, be costs associated with any protections. If Pay.UK were to undertake a role in running or governing protection, this could create a significant cost to Pay.UK.

82. Whilst there are a number of areas which need consideration, it is important to Pay.UK that FPS is a trustworthy system for consumers.

Call for Views question #27

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

83. The most significant costs and benefits will likely depend on the design of the model. This should be explored further as the PSR undertakes its process and analysis.

Call for Views question #28

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

84. Our End-User Advisory Council has been clear that it would not be fair for customers who, for example, routinely make payroll payments through FPS, to bear the cost of the consumer protections regime, whether directly or through the increase in fees and charges from a customer's bank. This is a key reason why we think an overlay could be a suitable solution, as it would mean the identification of FPS payments for the purchase of goods and services, and allow other transactions not to be affected by the protections for retail payments.

Call for Views 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?

85. Costs to Pay.UK would be depends on model introduced. Pay.UK currently doesn't provide protections or have a role in governance, and so if this were to change, significant costs would be involved.

Annex A – Secondary research into other territories

86. Our secondary research explored international markets and their approaches, uptake and management of real-time payments systems. For the purposes of this research, we focused on three territories currently using real-time payments for retail transactions; Singapore, Australia and the Netherlands:

- **Singapore's** retail payments landscape is predominately split between cheques, eGIRO, card payments, and real-time payments, made through the country's Fast and Secure Transfers (FAST) Service.

As in the UK, real-time payments were originally rolled out in Singapore as a peer-to-peer transfer system, with the intention of moving the country away from cash and cheque payments. Also, as in both the UK and the Netherlands, retail real-time payment transactions do not have any built-in consumer protections in Singapore at present.

- **Australia's** payments landscape is similar to the UK, with debit cards accounting for the majority of transactions (in volume), followed by credit cards, cash, and bank transfers.²⁷ However, Australia is frequently distinguished from other markets by its high internet and smartphone penetration, and the willingness of consumers to adopt digital and electronic payment systems. Australia's real-time payments scheme, the New Payments Platform (NPP) was launched in February 2018. Like Singapore, Australia is making use of proxies and aliases for real-time payments. Consumer payment protections in Australia are similar to those available in the UK, and though there are no built-in protections for real-time retail payments, real-time payments are covered by consumer retail protection law.
- **The Netherlands** has one of the most advanced use-cases of real-time payments for retail transactions – the e-commerce payment system, iDEAL. The Dutch payments landscape differs from the UK in that credit card transactions are comparatively low, due to a cultural emphasis on saving and a resistance to debt.

As in the UK, retail real-time payments have no built-in consumer protections in the Netherlands – this is significant, as the Dutch market for retail real-time payments is much more developed than the UK equivalent.²⁸

²⁷ Merchant Services Insight Report – Australia. JP Morgan. 2019. <https://www.jpmorgan.com/merchant-services/insights/reports/australia>

²⁸ <https://www.wearepay.uk/wp-content/uploads/Consumer-Protection-Summary-Paper.pdf> (p.16-17)

Plaid



Plaid's response to the PSR's CP 21/4

Executive Summary

This document is Plaid's response to the [Payment System Regulators CP 21/4 consultation on Consumer protection in interbank payments: call for views](#).

Plaid Financial Ltd. (Plaid) is an authorised payment institution regulated by the Financial Conduct Authority under the Payment Services Regulations 2017 (Firm Registration Number: 804718) for the provision of payment services. Plaid builds technical API infrastructure that connects consumers, financial institutions, and fintech developers - giving consumers greater control over their financial data. By enabling fintechs and developers to build creative PSD2-compliant solutions on top of open banking infrastructure, Plaid focuses on ensuring the success of the goals underpinning open banking and PSD2. Plaid is looking to build on its experience of creating digital financial infrastructure to deliver best in class API experiences and data security for our clients and their consumers.

Founded in 2012, we currently connect 11,000+ financial institutions and 4,500+ FinTechs in the UK, EU, US and Canada. Plaid APIs are leveraged across various fintech verticals, from personal finance and lending to brokerage and consumer payments. As a result of our global footprint, we have experienced open banking initiatives across the UK, EU and the US, giving us an understanding of the potential barriers and opportunities in different markets. We are working with our clients to leverage open banking while also looking to develop new use cases under open finance.

We think the consumer protection framework under the Payment Service Regulations (PSRs) is sufficient to ensure consumers are protected if something goes wrong with a payment. There is still a risk to consumers at the payment network level, where the payments are being executed. Because Payment Initiation Service Providers (PISPs) sit outside this level, any new consumer protections should be introduced and funded by participants executing the payment transactions. New requirements at the PISPs level would not provide appropriate protective benefits to consumers.

PISPs were introduced to give consumers more choices in payments, specifically alternatives to the card networks. This goal of consumer choice and increased competition should be borne in mind while considering the cost of any new



requirements. PISPs cannot recover costs as quickly as Account Servicing Payment Service Providers (ASPSPs) because card issuers can directly charge and recover costs from ASPSPs. As a result, the costs of the additional requirements would have to be passed directly on to consumers, making PISP payments more expensive and undermining the choice and competition goals of the PISP framework.

Plaid supports consumer protection and actively develops products to help consumers understand and make the most from open banking; however, we want to make sure consumer protections are being put in place where they are needed and help consumers against harm.

Below is our response to the consultation. We would be delighted to work with the Payment Systems Regulator (PSR) and discuss our views in more detail.

Annex 1: Detailed response to CP21/4 question

Questions related to why we think additional protection may be needed

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

We disagree that there are insufficient consumer protections. The PSRs provide legal protections for consumers in the event of a wrongly executed payment regardless of the payment type. The consumer is always entitled to a refund by their bank if 'something has gone wrong with the payment' and it was the payment service provider's (PSP's) fault. The table below sets out the relevant consumer protection regulations under the PSRs.

PSRs Consumer Protection Regulations	
67	Consent and withdrawal of consent
74	Notification and rectification of unauthorised or incorrectly executed payment transactions
76	Payment service provider's liability for unauthorised payment transactions
83	Revocation of a payment order
91	Non-execution or defective or late execution of payment transactions initiated by the payer
92	Non-execution or defective or late execution of payment transactions initiated by the payee
93	Non-execution or defective or late execution of payment transactions initiated through a payment initiation service
94	Liability of payment service provider for charges and interest
95	Right of recourse
97	Consent for use of personal data
101	Dispute resolution

Under regulation 67 of the PSRs, consumers need to provide their explicit consent for the PSP to do anything. Because of this base requirement, consumers need to be



more engaged in the payment process. While we understand that alone does not guarantee consumers will be better protected, it does encourage consumers to check the payments being made from their account actively. As stated previously, if something goes wrong with the transaction, regulations 74, 76 and 91-93 state that if the customer did not properly authorise a payment transaction, the PSP concerned must refund the full transaction amount to the payer.

A refund must be provided to the customer as soon as practicable and in any event by the end of the business day following the day on which the PSP becomes aware of the unauthorised transaction (i.e., if a customer notifies the PSP on Monday morning, the refund must be made as soon as practicable and, in any event, by the end of Tuesday).

If an unauthorised, non-executed or defectively executed transaction is initiated through a PISP, it is the ASPSP's responsibility to provide a refund in line with regulation 76 and regulation 93 of the PSRs 2017. If the PISP is liable under regulation 76 or regulation 93 of the PSRs 2017, the ASPSP can then seek compensation from the PISP, which must, on request, provide that compensation immediately. The amount of compensation should cover the full amount which the ASPSP was required to refund to the customer. We note that PSPs may put in place voluntary arrangements for the settlement of such liabilities between themselves.

Finally, in the event of a dispute, consumers have the right under regulation 101 to raise a dispute with their PSP, and it is the PSP's responsibility to have a system in place to manage these disputes. The PSP must also respond to the dispute within 15 business days.

PSPs are at liberty to offer increased protection to customers concerning unauthorised transactions and other areas, e.g., participation in industry schemes such as the Direct Debit Guarantee Scheme. Any such protections apply in addition to the minimum protections that PSPs are obligated to provide under the PSRs 2017. Given the clear consumer protection framework within the PSRs, we do not agree with the Call for Views and think there are adequate consumer protections.

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

We disagree with the PSR. We would welcome clarification regarding the desired level of protection. In our view, if a PSP complies with all applicable legal obligations, they are offering an appropriate level of consumer protection.



As discussed above, the PSRs clearly define what consumer protections PISP and ASPSPs need to provide to consumers. If something goes wrong with a payment, the consumer has the right to claim redress with their ASPSP.

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)?

As outlined in question 1, we think the PSRs provide an adequate consumer protection framework. Based on data from the Open Banking Implementation Entity, PISP transactions account for 0.76% of all API calls made, but it is our incentive to grow.¹ However, to grow we need to increase consumer education and trust. As outlined in our response to question 18, we are supportive of any initiatives to grow consumer education around PISP. With more education, consumers will better understand PISP and the market will grow. Given the market's current size and regulations, the initiatives are already there to let the market build consumer trust. Taken together, the increased consumer education and increased trust incentives required to grow adoption will, by necessity, also reduce any potential harm that comes with increased adoption that isn't already accounted for by existing regulations.

¹ <https://www.openbanking.org.uk/providers/account-providers/api-performance/>



Questions related to which payments might need additional protection

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

No comment.

Question 5: Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

No comment.

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)?

As discussed in question 1, the PSRs introduce a liability waterfall through regulations 74, 76 and 91-93, such that the ASPSP is, by default, liable to the customer for non-execution, defective or late execution of payment transactions involving a PISP, regardless of whether it or a PISP is at fault.

Under regulation 76, the payer's ASPSP must refund the payer the amount of any unauthorised payment transaction immediately (and in any event no later than by the end of the following business day) after noting or being notified of the transaction, except where it has reasonable grounds for suspecting fraud and communicates those grounds to its national regulator in writing.

Similarly, under regulation 93, the payer's ASPSP must refund the payer the amount of a non-executed or defective payment transaction initiated through a third-party provider (TPP) and, where applicable, restore the debited payment account to the state it would have been in had the defective transaction not taken place.

As a PISP, we do not think this liability model needs to be changed. If the liability were revised so that PISPs would be liable for non-payment and fraudulent transactions, PISPs and consumers' impact would be detrimental. Such a liability shift would likely increase Faster Payments' cost for payment service users as PISPs



would seek to recover the costs of compliance and credit guarantees. This would limit the demand for PISPs in the market and negatively affect payment service users benefiting from innovative new products and services.

We think the liability should remain with the ASPSPs. PISPs are a technical layer that provides instructions. We do not execute payments. It is very challenging to build redress into a technical layer. The liability model under the PSRs does this by first placing responsibility on the ASPSP to refund the consumer and then work with the PISP to determine who is at fault. This model works and should be replicated in other areas of the payment network where there is a technical instructing layer.

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

No, the current payment protections are sufficient to protect consumers. In the case where the customer has given their consent for a series of payments, they have the right, at any time, to withdraw consent for future transactions in the series. While the PSRs do not specify how such withdrawal of consent should be given, regulation 83 sets out the time limits for revocation. The customer has withdrawn consent for either a specific payment transaction or a series of payment transactions, including the payment transaction in question. It should be treated as unauthorised and therefore subject to the requirements under regulations 74, 76 and 91-93.

PISP only instructs the payment order with the consumer's explicit consent and has no other role in completing the payment. We do not believe that PIS payments, regardless of whether they are recurring or variable recurring, should have additional payment protection arrangements.

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

As summarised in our response to question 8, we do not believe that recurring or variable recurring payments require additional payment protection. As a PISP, we only initiate payment orders with the consumer's explicit consent and are not involved in the flow of funds.

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?



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)?

Article 11 and Article 16 of the UK SCA-RTS set out specific payment protections based on thresholds. We would not support the PSR introducing any additional threshold-based payment protections, as this could confuse firms and consumers.

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

If we initiate the payment, we can tell if it is a recurring payment or a single initiated payment.

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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. The number of merchants using interbank payments to accept payments is still deficient to identify risks, if any, that are not covered by existing regulation.

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?

We are not able to distinguish between a business, organisation or 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)?

No, all payments should be protected. While different payer and payee types are targets for different types of fraud, all payments are at risk of fraud and should be protected in the same way.



Questions related to how consumers might claim protection

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

We do not think a consumer protection governance process would benefit interbank payments in their current form. The proportion of interbank payments being used for purchases of goods and services is still low. Setting up a governance process to oversee consumer protections involving liability on PSPs sending payments would also require additional scheme rules and infrastructure such as a dispute mechanism, a communication framework between parties, etc.

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)?

To improve consumer confidence in using interbank systems for payments, information regarding available consumer protections must be clear and concise, regardless of whether the interbank payment is made through the open banking infrastructure or otherwise. While a standardised process is vital in ensuring that consumers have confidence and trust in payment systems, a clear liability framework must be communicated to consumers, emphasising the different circumstances under which claims should be escalated. For example, payment orders may be sent by PISPs; however, liability for these payments correctly lies with the payers' ASPSPs as they are responsible for executing the payment orders with the consumers' explicit consent.

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?

Plaid's mission is to unlock financial freedom for consumers. Plaid is supportive of any consumer awareness or marketing campaign led by the industry, which attempts to educate consumers on the differences between different payment schemes and how their payment protections vary. While this should be guided by industry, particularly the industry actors responsible for the movement of funds, regulators should continue to ensure that consumers are provided with accurate information that doesn't harm competition in the industry.



We are currently inputting into the dashboards naming work with the Open Banking Implementation Entity (OBIE) to better communicate the financial data that TPPs such as Plaid can access. This collaboration across the industry is crucial to continue to drive more substantial consumer outcomes. However, we do not believe that a trust mark would help promote consumer confidence because the FCA already sets out treating the customer fairly requirements, among other conduct regulations. Implementing a trust mark in the industry can confuse consumers further, mainly if payment protection varies across payment rails.

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

The industry should lead this to ensure that there are opportunities to build credibility and trust with consumers. The marketing campaigns should be organised in collaboration with other industry participants, with sufficient oversight from regulators, to ensure that any consumer awareness content is not biased or anti-competitive.

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

In our experience, consumers generally refer queries and complaints to their fintech app provider and ASPSPs in the first instance to resolve any disputes.

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

As outlined throughout this response, we believe that the existing consumer protection framework under the PSRs 2017 is fit for purpose. Whilst we understand the PSR's concern about the potential for mass migration towards PISP-initiated payments for goods and services, there is little evidence to indicate this will occur in the immediate future. If it does, new requirements may be necessary, but those requirements should apply at the payment scheme layer, as they do today, not at the PISP layer which merely handles payment instructions rather than the movement of funds. PISP are not in the payment network, and we do not participate in the flow of funds, and even if interbank payments increase, these two points will not change because of the type of services a PISP can provide to consumers under the PSRs. As previously stated, the proposal to shift liability from the merchant to the PSP would likely increase Faster Payments' cost. The PISP payment proposition would no longer be economically viable.



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?

When consumers raise issues with us, our response will ultimately depend on the underlying problem. Generally, complaints will rest with our client, the consumers' fintech app, or the consumers relevant ASPSP. We inform the consumer and, where appropriate, work with our client or the ASPSPs to resolve the issue.

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?

Paragraph 5.18 is incorrect. PISP initiated interbank payments are regulated by the FCA under the PSRs. In the event a PISP breaches the PSRs, the FCA can impose sanctions and fines.

We do not agree with paragraph 5.19, payment rails, which include pushing funds from one account to another. PISPs only provide instructions to initiate a payment; we do not push funds or execute transactions ourselves. Therefore, we are not direct participants in a payment scheme. We strongly disagree that a legislative change is required in this regard. The PSRs provide the legislative vehicle for PISPs in the UK; these include extensive rules for firms to follow to participate in the UK.

We disagree with the proposals in paragraphs 5.21 - 5.24. The consumer protection requirements under the PSRs provide consumers with end-to-end protection and ensure the liability model is in place if a consumer raises a dispute about a transaction. Any additional consumer protections or governance models would potentially confuse participants and consumers.

It is worth noting that the OBIE dispute management system, mentioned in paragraph 5.25, does not solve issues consumers face with goods and services. It is a mechanism that ASPSPs can use to reclaim any compensation they have paid out to a consumer in the case of unauthorised payments, where these can be shown to have been the fault of the PISP.

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

The FCA should enforce any consumer protection between PISPs and PSPs, as the FCA is the regulator responsible for overseeing compliance with the PSRs. If the PSR,



or another regulator, were to begin governing payment protection, it could confuse the industry and introduce consumer redress delays.

The PSR, as the payment scheme regulator, should enforce interbank consumer protections at the execution level. Because PISP does not get involved in the payment execution, PISP should remain outside the regulatory perimeter of the Payment Systems Regulator. Initiatives like Confirmation of Payee and the New Payments Architecture are good examples of the PSR introducing and enforcing consumer protections at the execution level and on the right parties involved in the payment execution.

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?

We do not think there needs to be any legislative or regulatory interventions introduced. As outlined in this response, the current liability and consumer protection requirements under the PSRs are adequate and ensure consumers are protected.

As discussed in question 1, regulation 101 provides a mechanism for consumers to raise a dispute with their PSP if something goes wrong or the consumers were mistreated.



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?

We agree with the assessment; however, it is worth noting that any introduction of new payment protection schemes could have a detrimental impact on the ability of PISPs to compete with card payments. It should also be noted that replicating the card scheme chargeback model would likely make interbank payments uncompetitive with card payments, further entrenching Visa and Mastercard's duopoly and ultimately undermining the objectives of PSD2. PISP was designed to compete with cards by offering a faster, cheaper and more secure payment option for consumers and merchants. Additional costs imposed on PISP would undermine that goal and make it very hard for PISP to compete with cards.

Where we see the potential harm is at the payment network rail (i.e. Faster Payments). The PSR has already started addressing some consumer risks associated with payment networks through initiatives like Confirmation of Payee and the APP Scam Code. Both identified a pivotal risk to consumers and introduced additional requirements on ASPSPs that consumers must complete before the ASPSP executes the payment transaction. Both of these initiatives sit alongside and in harmony with PISP payment transactions and offer consumers a very high level of protection in the event of fraud. But the payment network rail is where the PSR should be introducing additional consumer protections, not outside the rail such as at PISP providers.

Whilst we understand the PSR's concern about the potential for mass migration towards PISP-initiated payments for goods and services, adoption so far has been gradual. Many other existing barriers currently prevent PISPs from offering the kind of services that might become a genuinely viable alternative to cards. PISP and ASPSPs already have both regulatory requirements (questions 1 and 2) and market incentives (question 3) to protect consumers as they migrate. As previously stated, the proposal to shift liability from the merchant to the PSP would likely increase Faster Payments' cost, harming the economic viability of PISP payments.

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

The majority of the costs highlighted in the consultation will harm PISPs. There are already significant barriers to entry for PISP; amongst other things, they must meet (and subsequently maintain) capital requirements to meet baseline FCA



authorisation obligations. Adding additional funding requirements could make it more difficult for PISPs to enter the market, ultimately reducing competition within the market, which causes harm to consumers.

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

For the reasons outlined throughout our response, we do not agree that there is a need for additional consumer protection. Any additional costs associated with new consumer protection would negatively impact PISPs.

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

As noted above, replicating the card scheme chargeback model would likely make interbank payments uncompetitive with card payments, further entrenching Visa and Mastercard's duopoly.

The Consumer Council for Northern Ireland

The Consumer Council for Northern Ireland response to the Payment Systems Regulator (PSR)'s consultation on CP21/4 Consumer protection in interbank payments: call for views

1. The Consumer Council

- 1.1 The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

2. Consultation Response

- 2.1 The Consumer Council understands that the term inter-bank payments covers a wide range of potential transactions. Our response will focus on the first three questions in the consultation.

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

- 2.2 Those who are using these payments are not always legally covered for loss and are at the mercy of payment providers who can make the ultimate decision whether to refund or not. The Consumer Council has concerns therefore that consumer protection in the payments landscape is patchy and inconsistent.
- 2.3 For instance, if the fault lies with the provider, such as a mistake in a payment from a bank, consumers often don't know who to complain to or how. Where goods or services purchased via a credit card. The card provider affords much better protection than a debit card if buying something between £100 and not more than £30,000 as these rights apply under "Section 75" which puts the liability squarely on the shoulders of the payment provider.¹
- 2.4 According to UK Finance, 98% of UK adults have a debit card². Unfortunately chargebacks on debit cards are harder to achieve than a credit card refund and can take up to 120 days³ to process. That's a long time to wait for your money and you may never receive it because (unlike Section 75), chargeback is not a legal right. The process for managing claims is determined by your provider and there are no guarantees nor any current incentives for firms to settle claims in a consumer's favour.
- 2.5 If a person makes an error, it may take time for them to realise their mistake and longer still to sort it out with a bank or building society. For example a warning text that a customer is approaching their payment limit may be the first indication of something going wrong.

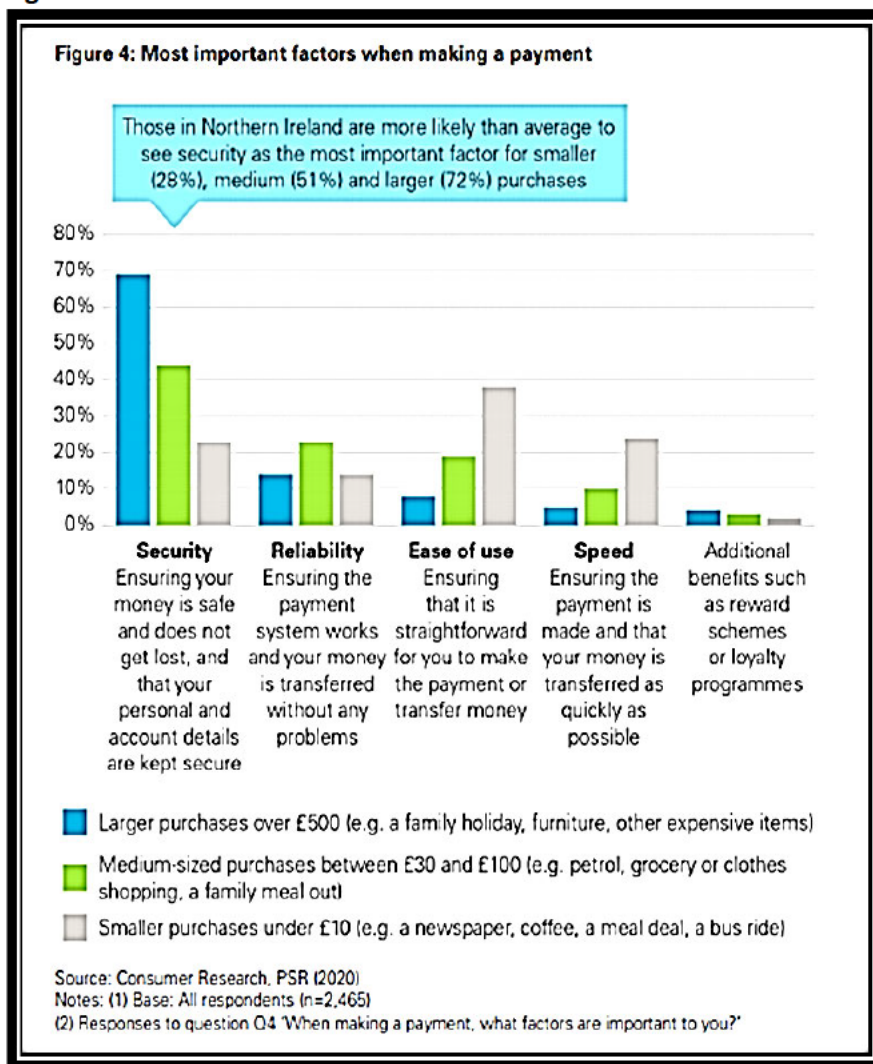
¹ <https://www.ukfinance.org.uk/area-of-expertise/cards/chargeback-and-section-75>

² <https://www.ukfinance.org.uk/system/files/UK-Payment-Markets-Report-2020-SUMMARY.pdf>

³ <https://www.ukfinance.org.uk/area-of-expertise/cards/chargeback-and-section-75>

- 2.6 According to the PSR⁴, Northern Ireland consumers rate security as the most important aspect when paying regardless of the monetary size of the transaction. (See Figure 4)
- In a report from Open Banking⁵ security is one of four influencing factors ultimately affecting whether first-time users choose open banking over other methods such as credit or debit card: The other 3 are convenience, clarity and familiarity. The PSR needs to ensure that confidence in payments is in place and this can only come about through the experience of consistently fair consumer outcomes.

Figure 4.



- 2.7 We note this call for views excludes Authorised Push Payment (APP) scams, however we maintain as we did in our response on APP scams⁶ that much more could be done to protect consumers in the first instance. When a payment goes wrong, whether through fraud or error, consumers should be supported in reaching a fair resolution. We agree therefore with the PSR's analysis that whilst:

⁴ [file:///C:/Users/2339870/Downloads/psr_cp21- consumer protection call for views feb 2021%20\(13\).pdf](file:///C:/Users/2339870/Downloads/psr_cp21- consumer protection call for views feb 2021%20(13).pdf), page 19.

⁵ <PYMNTS-Open-Banking-Report-March-2021.pdf>

⁶ The Consumer Council for Northern Ireland response to the Payment Systems Regulator (PSR)'s consultation on CP21/3 Authorised push payment (APP) scams – call for views

*'Card payments are protected at the card scheme level or by law. In comparison, not every interbank payment is protected in the same way and, at present, there is no agreed process for claiming the protection that is available.'*⁷

- 2.8 We believe that there should be an agreed unified, accessible and fair process for consumers. The current payments landscape has inconsistent rules and is hard to navigate, particularly if a consumer is not financially savvy. This works against all consumer interest.

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

- 2.9 As outlined above, we do not feel consumer protections are robust enough. Currently consumers face a mixed picture of legal coverage versus individual organisation policies. There should be consistency and clarity across all methods so that various gaps in protection are addressed. A current example of why this is needed can be seen in the recent Covid-19 related refund approach over weddings, private events, holiday accommodation, nurseries and childcare provision. Due to a high number of complaints from consumers about cancellations and refunds related to these sectors, the CMA⁸ has stepped in to assess and respond to widespread consumer harm.

- 2.10 **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)?**

- 2.11 Consumer behaviour in payments has changed considerably in recent years. The sharp rise in contactless payments mirrors an almost identical and opposite downward trend in cheque use for example.⁹ However, cash use and cash acceptance remain critical. In its 2020 call for views on cash access, the PSR noted: *'Northern Ireland is the region with the highest number of cash preferers compared to other regions (37%)'*.

- 2.12 Whilst it remains unclear why higher numbers of consumers in Northern Ireland prefer to use cash, their right to do so must be protected as preference for other payments continues apace. Otherwise there is a real danger that cash reliant consumers may be financially excluded. Research carried out by the Consumer Council¹⁰ demonstrated that in Northern Ireland:

- Over half (51%) of those aged 65 or over listed cash as their most used day-to-day payment method.
- Low income households were much more likely to use cash than those in the other socioeconomic groups.

⁷[file:///C:/Users/2339870/Downloads/psr_cp214_consumer_protection_call_for_views_feb_2021%20\(14\).pdf](file:///C:/Users/2339870/Downloads/psr_cp214_consumer_protection_call_for_views_feb_2021%20(14).pdf)

⁸ <https://www.gov.uk/government/news/covid-19-cma-launches-investigation-into-airlines-over-refunds>

⁹ <https://www.ukfinance.org.uk/system/files/UK-Payment-Markets-Report-2020-SUMMARY.pdf>, page 2, Chart1.1

¹⁰ Lending, Savings and Debt Research: Northern Ireland Consumers March 2021

- 49% of social tenancy households relied on cash, compared to 36% of private renters and 31% of homeowners.
- 44% of households with a disabled person compared to 30% of households without a disabled person relied on cash most often.

2.13 Another industry change which arguably occurred in response to consumer behaviour can be seen in the increased limits for contactless payments.¹¹ This has helped consumers make larger purchases like filling their car with petrol but the downside may yet be seen in terms of the increased potential for fraud. It is in situations like this where the convenience of many may be paid for by the misfortunes of a few. Vulnerable cohorts risk being financially 'left behind' if unable to harness such new innovations.

3. Conclusion

3.1 Increasing numbers of consumers have turned to online shopping due to Covid-19 restrictions. In fact, one study reports a 74% growth in online retail purchases¹². This has unfortunately coincided with a rise in chargebacks stemming from various types of fraud.¹³

3.2 In the absence of a binding legal requirement, consumers have no guarantee of a refund in these instances. They may have an anxious and ultimately unproductive wait. This illustrates the need for binding, clear cohesive regulation to protect consumers across all payment markets.

3.3 As the PSR has stated:

*'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.'*¹⁴

3.4 We therefore welcome PSR's vision for consumer protection through robust protection across all sectors, clarity of terms and their commitment to raise confidence in consumers so whatever payment system they use, they can expect fair treatment as the industry standard.

Should you require any further information please do not hesitate to contact me.

Yours sincerely

[Redacted Signature]

The Consumer Council.

¹¹ <https://www.fca.org.uk/news/press-releases/fca-confirms-increase-thresholds-contactless-payments>

¹² <https://econsultancy.com/stats-roundup-the-impact-of-covid-19-on-ecommerce/>

¹³ <https://brc.org.uk/news/finance/a-switch-to-online-retail-has-led-to-increased-chargebacks-here-s-how-to-prevent-it/>

¹⁴ <https://www.ukfinance.org.uk/system/files/UK-Payment-Markets-Report-2020-SUMMARY.pdf>, page 6, Section 1.8

[REDACTED]

15 April 2021

The Money Charity



The Money Charity Response to PSR Call for Views on Consumer Protection in Interbank Payments (April 2021)

The Money Charity is a financial capability charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.¹

We welcome the opportunity to respond to the Payment Systems Regulator (PSR) Call for Views on Consumer Protection in Interbank Payments. We think this is a timely consultation and welcome the fact that the PSR is considering how to extend consumer protection to the growing flow of interbank payments.

In this response, we set out our Key Points, make some overall comments on the issue then answer selected questions from the Call for Views.

¹ See box on back page.

Key Points

1. We support extending consumer protection to interbank payments similarly to the way credit card payments are protected by S.75 of the Consumer Credit Act 1974. We think this is a vital and long-established consumer protection which has the social benefit of ensuring confidence in the payments system to which the protection applies.
2. We think protection should be mandated by rules applicable to all participants (PISPs as well as PSPs), supported by a governance structure that enables the system work as smoothly and efficiently as possible.
3. The advantage of S.75-type protection is that it introduces a powerful third party into the relationship between seller and buyer. Disputed payments are rare as a percentage of the total, while knowledge that a payment can be reversed is an important safeguard for consumers, ensuring that vendors cannot simply “walk away” from a dispute.
4. The rules should apply to both large and small payments, and to recurring as well as one-off payments.
5. Protection should not be restricted by use case (pre- or post-paid) but should apply to all interbank payments made by consumers to businesses for the supply of goods and services.

Overall Comments

As a financial capability and wellbeing charity, we deliver workshops and other educational activities that touch on the different payment channels within the UK payments system. We describe the different types of payment method available, from cash to digital, and the different types of consumer credit, such as credit cards, store cards and Buy Now Pay Later. Credit cards are used as much as a secure means of payment as a means of accessing credit and S.75 sets a standard in consumer payment protection. Chargeback also exists for card payments (debit as well as credit) and some firms have introduced a high degree of automation into the process. For example, Monzo bank has a “dispute this payment” button which allows consumers to seek a refund with one click.

We agree with the PSR that interbank payments are likely to grow as a proportion of total payments, especially with the arrival of apps that interface directly between vendor and buyer accounts rather than working through card schemes such as Visa and Mastercard. In a few years’ time, the standard method of payment for many transactions may be through direct account to account transfers.

Our view is that S.75-type protection (without the £100 threshold) should be extended to all interbank payments for the purchase of goods and services, be applicable to all participants (PISPs as well as PSPs) and be supported by an efficient governance structure. The advantage of standardisation is that consumers and firms need remember and implement only one set of rights and rules.

Payment protection oils the wheels of commerce. Disputed payments are extremely rare as a proportion of total payments, but the knowledge that there is a third-party to come to the consumer's aid increases consumer trust in the system and willingness to use the payment method in question. The boost to trade is likely to have positive effects on profit and productivity that are far larger than the cost of remedying disputed payments.

Answers to consultation questions

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

Yes, we agree. We think protection equivalent to S.75 of the Consumer Credit Act (without the £100 threshold) should apply to 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?

We agree with this. The industry has not spontaneously provided sufficient protection for interbank retail payments. Because consumers are a scattered group it is hard for them to demand something in an organised way. Consumers tend to accept whatever terms and conditions apply to whatever payment channel (or service) they use. For example, Internet commerce has accustomed consumers to “compulsory consent” where ticking the box to accept Ts & Cs is a condition of access to a given service. In our educational work, we see examples of consumers switching payment methods (eg from credit card to PayPal) without realising they are losing S.75 protection as a result of choosing a different channel.

Consumers look to Parliament and regulators to provide the necessary protection where the market does not spontaneously provide it.

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)?

We do not see evidence of this. Indeed, we think the size of harm is likely to grow as more use is made of 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?

No.

Questions 5-10: Use cases, liability and value

In our view, the relevant use cases are **consumer payments to businesses, both one-off and recurring, and low or high value**. For use cases involving straight financial transfers (eg bill splitting) there is no vendor as such and the most relevant consumer intervention, we think, is a reliable system of Confirmation of Payee.

The appropriate procedure for contested payments to businesses, we think, is that a consumer should first take up the contested payment with the vendor then, if no satisfaction can be achieved, take it up with the PSP or PISP. If the consumer can provide evidence that the good or service was not provided as promised or contracted then the PSP/PISP should reverse the payment (or that part of the payment that is in error), similarly to the way S.75 works.

In our view this should apply to both one-off and recurring payments regardless of size. As we said in our Opening Remarks, the great majority of payments proceed without dispute and it is the goal of both consumer and vendor to have a smooth and uncontested process.

The important dimension of the process from the point of view of consumer protection is that by introducing a powerful third party into the equation (the PSP or PISP) the vendor is incentivised not to walk away from the consumer and to remedy the problem as quickly and fairly as it can.

For recurring payments liability should extend to the beginning of the series of payments, not just the last payment. This is because if a payment is in error, it is likely that the error was made either at the beginning of the series or on a review date, eg an annual inflation adjustment, or setting the new rate for the year. The redress procedure should go back to the origin of the problem.

Questions 11-13: should coverage be based on use cases (eg pre-paid purchases above a certain threshold)?

We are not attracted to this idea, for two reasons: (1) it sounds administratively difficult to implement, as it would require the interbank transfer system to be able to distinguish between pre-paid and post-paid purchases, and (2) it would not cover cases where the problem emerges after the good or service has been delivered and the payment made. For example, a manufactured product that turns out later to be defective, but the vendor does not honour the warranty. There can also be mistakes (or sleight of hand): for

example, a rental car charged at the wrong band rate, where the error is only noticed after the car is returned and the payment has been made.

Questions 14-15: identity of payee and payer

From a consumer point of view, it seems to us to make more sense to base the protection on the type of transaction (consumer purchase from business) rather than on the identity of the payee and payer.

Questions 16-17: governance system

We agree that having a proper governance system for payment protection would be beneficial and that a standardised process would make the system more recommendable. In our experience, anything that increases complexity is a turn-off to consumers. It is much better to have a single set of rules and a single process covering as many transactions and parties as possible.

Questions 18-19: promoting consumer awareness

Having a clear set of rules applying to all purchases is the foundation for building consumer awareness. We think that payment protection applied to interbank payments will attract attention from consumer media and money advice sites and will achieve wide recognition over time. The key thing is having universal rules, capable of being simply explained. Once they are in place, we will do our bit to raise awareness in the education work we do.

Questions 20-21: whom will consumers approach to seek redress?

We agree with the assumption made in paragraph 5.12 of the Call for Views:

“Our current theory is that [the consumer] 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.”

This is how the current S.75 process works and it follows the general principle of fixing a problem as close as possible to the point of origin. The PSP/PISP need only step in if the vendor refuses to make good whatever problem the consumer is experiencing.

In terms of whether the consumer would engage with the PSP or the PISP, this would depend on how the interface is presented. If the payment app is branded by the PSP, the consumer would approach the PSP. If it goes by the name of the PISP, this would be the natural place to go. It should be remembered that these distinctions are significant for the

industry, but most consumers would not know whether they are dealing with a PSP or a PISP. They would simply be thinking in terms of the branded service they are using.

In terms of volume, we think that payment protection is relevant at any volume level, but particularly if interbank payments grow as a proportion of all payments, displacing the existing protections provided by the card systems.

Questions 23-25: rules or industry agreement?

We support the rules-based approach, with the regulator setting out clearly what the process will be. This should apply to all participants in the system (PISPs as well as PSPs). Having a rules-based approach has many advantages: it is universal, fair and simple to explain. In our view, this will be an important updating of consumer protection for the era of digital banking and payments

Questions 26-29: costs and benefits.

As said in our Opening Remarks, we think the benefits of payment protection are likely to substantially outweigh the costs, as payment protection builds confidence and oils the wheels of commerce. It is something that should be welcomed by everyone. We note that S.75 protection and chargeback have existed for a long time without being seriously contested on CB grounds. This is strong circumstantial evidence that payment protection for interbank payments will be economically efficient.

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We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote financial capability and financial wellbeing through consultancy, policy, research and media work.

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Transpact

[REDACTED]

From: [REDACTED]
Sent: 07 April 2021 14:44
To: [REDACTED]
Subject: PSR Call for views - CP21/4 Consumer protection in interbank payments

****This email has come from an external source. BE CAREFUL of links and attachments and report suspicious emails****

Dear PSR,

I am writing for my firm in response to the PSR's Call for views – (CP21/4) – 'Consumer protection in interbank payments'.
(see https://www.psr.org.uk/media/5ukcrrap/psr_cp21-4_consumer_protection_call_for_views_feb_2021.pdf).

The reply is all non-confidential.

Please note that all parts of the response below (including both the background paragraphs and the paragraph comments) are part of our firm's response, and should be considered as part of our response to this Call for Views. Please do not only consider the answers to the specific questions – please consider all comment.

Our firm's Background

Our escrow service (now Europe's leading) was commenced in 2009 as a consumer and business total payment protection service, when the confluence of the new Faster Payment Service and the introduction of the Payment Service Regulations 2009 allowed escrow to be regulated by the FCA in the UK. Since then our escrow service has protected many millions of pounds of consumer payments, and ensured that consumers are fully protected in payments. We are an FCA authorised Payment Service Provider (PSP).

A normal payment is a one-step payment – the payer pays the PSP who immediately pays the payee. Escrow is another name for a conditional payment, and in escrow there are two extra steps: i) The payer and the payee first agree together the escrow conditions which will later determine whether the payment is made onto the payee or back to the payer, ii) The payer then pays the PSP, and iii) depending on events that then transpire, the PSP either pays the payee or makes payment back to the payer. An escrow service makes the process quick and immediate with a swift and simple user experience.

Escrow is the only payment method that fully 100% protects both the payer and the payee in a transaction (if the escrow conditions are set correctly).

So whether a consumer is acting as a buyer or a seller or in a deposit situation, escrow can fully 100% protect a consumer's payment.

And with escrow available from only 57 pence per transaction to eliminate risk and ensure full payment protection, it is important that the PSR considers escrow services offered by FCA authorised firms as one of the possible solutions to the problem of consumer protection in interbank payments – especially in relation to Faster Payments.

We were disappointed that the PSR did not include escrow offered by FCA authorised firms as one of the potential solutions in the consultation, and we hope that this response will encourage the PSR to include this low-cost secure answer to consumer protection in interbank payments in further consultation and thinking on this issue. We fully appreciate that consumer knowledge of escrow (conditional payment) solutions is currently very low (often non-existent), and that is probably why the PSR has not included mention of escrow in its Call for Views. However, since escrow is an ideal solution to all that the PSR is consulting about and advocating, we feel that the PSR should be assisting the promulgation of awareness amongst consumers of escrow services offered by FCA authorised firms, to resolve problems in consumer protection in interbank payment.

Paragraph 2.5:

The Call for View lists 4 different situations in this paragraph when a consumer may suffer detriment in payment. These 4 situations are i) fault in payment by the PSP, ii) fault in payment by payer, iii) APP fraud and iv) goods or services purchased are deficient.

The third item is not considered, as it is dealt with by a concurrent PSR consultation specifically on APP fraud.

The first two items are of a totally different nature to the last item.

The first two items are relevant to the PSR, because they deal with the mechanisms of the payment.

The fourth item is of a totally different nature, as there is no fault in payment and the payment works well – instead the fault lies in the underlying goods or services transacted.

As will be apparent from the answers below, it is not appropriate to bundle the first two reasons in a Call for Views with the fourth, as the nature of the issues are so totally different.

Instead, a separate Call for Views is needed, one for the first two items, and a separate Call for Views for the fourth item (if indeed this fourth item falls within the PSR's remit).

Any generalisation in response to this Call for Views caused by lumping together the first two reasons with the fourth reason will be invalid, as apples and pears are being compared.

Paragraph 2.13:

The heading of this section asks 'Why us?' – Why is the PSR carrying out this call for views.

An answer is not actually provided !

The PSR's first (of three) core objectives is 'ensuring the payment systems are operated and developed in a way that considers and promotes the interests of all the businesses and consumers that use them'.

So if payment systems can be developed in a way that provides added protection for consumers, then the PSR is meeting its first core objective by carrying out this Call for Views.

Unfortunately, as we set out in our response, it is clear that attempting to provide added consumer protection to Faster Payments by removing the irrevocability of bank transfers will actually break the payment system in the UK, and cause considerable harm.

So it is commendable and correct for the PSR to ask the questions in the Call for Views in regards to changing Faster Payments to introduce consumer protections, but we are alarmed by the prospect as the answer to those questions should be a firm and absolute 'No'.

Paragraph 3.6

This paragraph turns the reality of current payments on its head !

As the paragraph correctly states, PSPs do not earn revenue when initiating or receiving a payment in Faster Payments.

The paragraph then points out that it is unlikely therefore that PSPs making Faster Payments will be interested in accepting liability or cost from consumer protection.

To say that this muddies the waters misses the point.

The truth is that because PSPs making or receiving Faster Payments do not earn revenue from making or receiving such payments, it is fiscally impossible for those PSPs to then bear cost or liability from such payments.

To do so would mean that PSPs would be unable to economically make Faster Payments, and Faster Payments would disappear as no PSP would be willing to make them.

It is possible that some PSPs would cross subsidise loss-making Faster Payments from their other general revenue, and so Faster Payments could continue only through these PSPs.

But such PSPs would only be the largest, and so only the largest PSPs (probably the big-5 banks) would be able to continue to fiscally make Faster Payments under cross-subsidy, and the PSR would have introduced the most anti-competitive measures into the payment market possible.

This is contrary to the PSR's other core principles, and the PSR must not (and is not legally able) to act in such a manner.

Paragraph 3.14

This paragraph correctly states that PSPs will face higher probability of claims due to more loss events than without consumer protection, and as a result a percentage tax will need to be introduced on every UK payment made to offset this protection.

This would be catastrophic for UK PLC.

The UK needs at least one payment method where payment can be made without any percentage cost associated with it.

At present, that one method is bank transfer - Faster Payments (and Chaps).

This MUST continue.

To change Faster Payments into a system where added cost is present on every payment will lead to a much less economic and vibrant UK, and it will act as a significant brake on UK commerce and industry.

It is a step with the best of intentions behind it, but the worst of consequences, and it must not occur.

If the PSR persists and through their policy indirectly introduces charges to payments made by Faster Payment, the reaction and hostility that the PSR faces once these measures become apparent will cause any such changes to be unwound and undone – but the timing may take a year or two, and the damage done to the UK economy will be immense.

Paragraph 3.26

This paragraph is correct, but it raises to the forefront the main issue with the Call for Views.

Rather than asking about how to improve Faster Payments for consumer protection (where doing so would break the UK's payment's system), instead the PSR should be asking how existing debit card chargebacks can be made to work properly for consumer protection – because at the moment they are a swamp of ambiguity and chance.

The Call for Views repeatedly (over and over) makes the point that consumers and businesses need to have clear rules that are understood by all, with respect to consumer protection.

But at this time debit card chargebacks (and credit card chargebacks where S.75 of the Consumer Credit Act does not apply) is a hopeless mess for consumers.

Consumers have no statutory right to a Chargeback – Chargebacks are scheme rules accessible only to participant PSPs involved.

As a result, consumers have no full access to the chargeback scheme rules, and no real idea what consumer protection the chargeback schemes provide them.

I am a payment expert, but I am and others like me do not know if and how any particular purchase with a debit card (or credit card if using chargeback) will or will not be protected under Chargeback scheme rules.

As the Call for Views makes clear – this is an intolerable situation.

Please read **Annex A** (at the foot of this email) for the multiplicity of times that the Call for Views itself makes clear that the current debit and credit-card chargeback system is inadequate and damaging, and not fit for purpose (the many relevant excerpts from the PSR's own Call for Views have been collated there).

The PSR should at this time as a priority be focusing on correcting the debit-card Chargeback system with respect to consumer protection (and where chargeback is appropriate credit-card) so that consumers have clear access to and understanding of the protection it offers and does not offer.

That is the urgent step that the PSR should be taking now.

Only once this priority step has been completed, should consideration be made of adding consumer protection to Faster Payments (and as explained here, rejected for Faster Payments, as it would be a significantly damaging step).

Note: It is important to contrast the consumer protection provided by Credit Card purchases which benefit from Section 75 of the Consumer Credit Act – which is most but not all credit card purchases over £100 (unless certain exclusions apply). This consumer protection is bullet-proof and gold-standard for consumers, and provides the consumer with the best possible consumer protection.

Consumer ignorance and confusion over the difference between debit-card chargeback protection and solid Section 75 credit-card protection makes the appalling lack of proper chargeback protection all the more dangerous.

Paragraph 3.31

See the note above in remarks on Paragraph 3.26.

This paragraph 3.31 needs to be applied to debit-card chargebacks immediately.

Paragraph 3.32

But not if the cost of doing so breaks the Faster Payment market, or introduces a percentage or fixed fee tax on every payment – which would break the Faster Payment system and UK economy.

Paragraph 3.35

If this paragraph is written with Faster Payments in mind, then it is self-evident that lack of consumer protection will not prevent many consumers continuing to make Faster Payments as posited. This is proven by the current situation with chargebacks in debit-cards, because the lack of effective protection using debit cards today has not prevented consumers still using debit cards to make payment in similar circumstances (chargeback protection does not assist consumers in these circumstances). So if this paragraph is written with Faster Payments in mind, then the paragraph is mistaken and wrong at source.

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

On the one hand, the consumer protection for debit card payments (and non-Section 75 credit card payments) is in a hopeless state and requires PSR intervention, so that consumers can have a clear knowledge of their rights under chargeback processes (and a statutory right under the process, something they currently entirely lack). See the comments to Paragraph 3.26 above.

On the other hand, it is critical that one method of payment remains to UK payers and payees that is free from chargeback and allows unencumbered payment.

This method is currently bank transfer (including Faster Payments).

Removing the ability to make unencumbered bank transfer payments without fear of chargeback will cripple the UK economy, as sellers will be unable to sell items with any certainty of retaining payment once received in their bank account (as chargeback may apply). This is currently possible only for bank transfers, but removing this option even from bank transfers will leave sellers without recourse of safe payment and will significantly affect the UK economy.

Further, if cost is imposed on PSPs handling bank transfer payments, so that PSPs have to impose a percentage of added costs to every bank transfer made, then significant harm will be inflicted on the UK economy, and the outrage that results from consumers forced to pay for any and every payment will not only force these measures to be withdrawn, but will harm the PSR's reputation for decades to come.

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

Industry does supply adequate payment protection through low-cost secure automated escrow – a low-cost payment method that provides 100% protection to the payment of both the payer and the payee (if the escrow conditions are correctly set).

At this time, there is little awareness of the possibility of escrow, and so consumers are not demanding its use (as they are unaware of the option).

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)?

The adoption (after awareness is raised of the option) of escrow will not only reduce the harm involved but almost eliminate it. And this will not require other PSR intervention.

Once consumers and businesses become aware that a payer can be guaranteed the goods or services promised via escrow or their money back, whilst payees are guaranteed 100% payment every time via escrow, then escrow's use will become ubiquitous, and consumer protection will be raised by several levels of magnitude (and likewise in deposit type situations).

On the other hand, introducing consumer protection by hamstringing Faster Payment with chargeback provision will wreck the UK payment landscape and cause chaos for years to come.

Chapter 4 Introduction

It makes no sense that liability could attach, as written, only to the seller, the seller's PSP or any PISP.

If liability is applicable on a PISP where a PISP makes the payment, then equally the liability should lay with the buyer's PSP when no PISP is involved.

Why is the buyer's PSP not mentioned here ? There is no reason or rationale that can justify this, and it is nonsensical.

Table 2 – Paragraph 4.2

a) For many Bacs payments, there is no direct debit guarantee as they are pushed by the payer and not the payee. Only where the payee initiates a Bacs payment does the direct debit guarantee operate.

b) If there is an error due to fraud, then FPS and Bacs are not only protected by the PSRs 2017 and the Contingent Reimbursement Model.

They are protected by the changes to the FCA Handbook rules introduced from the 31st January 2019 referred to here: <https://www.fca.org.uk/publication/policy/ps18-22.pdf>.

These rules mean that from 31st January 2019, consumers have protection from fraud if due even partly to a fault or lack of care by either the payer's PSP or the payee's PSP.

In nearly all situations, this FCA Handbook protection is vastly superior to (and trumps any protection from) the Contingent Reimbursement Model (which is actually nowadays irrelevant, except in a situation where neither the payer nor any PSP was at fault – something that in reality almost never occurs).

There is an ignorance in the industry to this state of law, and it is sad to see the PSR repeating and compounding this error in its Call for Views – If you require any further information about this issue, please contact us.

Paragraph 4.5

This paragraph does not match the current legal and liability situation.

It states: 'This is particularly the case for errors related to payments for goods and services.'

If the error is related to an error in payment, then the Payment Services Regulations 2017 already provide good and effective protection for consumers.

If the error is related to the underlying goods and services, then there is no such protection. But then that is a problem with the goods and services, and not a problem 'related to payments for goods and services'.

Paragraph 4.11

If a consumer pays for goods or services via debit card, and those goods or services are provided but turn out later to be sub-standard, then the consumer will struggle to obtain recompense through the chargeback process.

This is because the consumer has no direct right to chargeback, and the goods or services were actually supplied to the consumer (albeit in what eventually turned out to be a substandard manner – so a 'did not arrive' claim will not work).

The PSR needs to correct this anomaly and make debit card payment chargebacks effective for consumers – only when it does so (and corrects the woeful current system) should it consider introducing a similar scheme to Faster Payments – and when Faster Payments are considered, it will on reflection be understood that one payment method not subject to chargeback is essential for a well-functioning economy, and bank transfers and Faster Payments are not suitable mechanisms to introduce chargeback mechanisms.

Question 5: Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

Just as consumers are faced with some bad-apple sellers, likewise sellers are faced with some fraudulent and malevolent consumer buyers.

Sellers require one payment method where they can ensure certainty of payment if they doubt a buyer. This payment method is bank transfer (including Faster Payments).

If this method is taken away by introducing chargeback on bank transfer or on Faster Payment, then sellers in the UK will have no definite way to get paid, and will face increasing fraud and other costs.

This will greatly hurt many sellers, and drive them out of the UK – significantly harming UK Plc.
This cannot be allowed to occur.

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?

For liability on the seller see the answer to Question 5.

PSPs handle payment for revenue of pennies, unrelated to the payment size.

If liability is pushed on to a PSP in the payment chain, then it will not be economical for PSPs to continue to operate in the UK.

It is possible that some PSPs would cross subsidise loss-making Faster Payments from their other revenue, and so Faster Payments could continue only through these largest PSPs.

But such PSPs would only be the largest, and so only the largest PSPs (say the big-5 banks) would be able to make Faster Payments by cross-subsidy, and the PSR would have introduced the most anti-competitive measures into the payment market possible.

There is no workable way for liability for product fault to be pushed on to PSPs.

One further point – if the seller's PSP is targeted with liability (because the seller's PSP does have the chance to check out their client, unlike other PSPs in the payment chain), then PSPs will think very long and hard before retaining clients.

The PSR will have made it almost impossible for small businesses to open or retain bank accounts in the UK, because no PSP will wish to offer a business a bank account – since liability to the bank will then naturally follow – for little revenue.

The UK payment and banking model will become broken.

For all the reasons above, liability must not attach to PSPs for underlying liability from goods or service traded.

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)?

See answer to Question 6.

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

Recurring payments in connection with debit or credit card are currently a nightmare for consumers.

This is because card companies are not required to list for their customers any recurring payment that the consumer has signed up for on their card, so the consumer has no way of knowing what recurring payments they have currently operating.

Consumers desperately need this information, but it is not supplied to them by their card companies.

Compare and contrast this with standing orders and/or direct debits out of a consumer's bank account, which are all shown to a consumer by their bank and readily available to the client from the bank.

So the priority for the PSR is currently to mandate card companies (both debit and credit) to show any recurrent payments that consumers have on their cards – if the recurrent payment is not shown by the card company, it should not be enforceable. This is not the situation today.

With respect to Faster Payments, given the answers in Questions 5 to 7, no further protection should be added to Faster Payments.

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

As an escrow service, we are able to fully identify the type and purpose of every payment.

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)?

No, as it is essential to avoid introducing chargeback type protection to bank transfers and Faster Payments, as that will break the UK payment system and make it unworkable.

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)?

Yes – See the last part to the answer to Question 6.

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?

As an escrow service, we are able to identify the type of payee (business, consumer, sole trader, partner, etc.).

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)?

No, as it is essential to avoid introducing chargeback type protection for any payer and payer types for bank transfers and Faster Payments, as that will break the UK payment system and make it unworkable.

Paragraph 5.2

It is true that consumers know how to make a claim against a card network for chargeback (non-Section 75). The consumer contacts their card company and makes the claim.

But it is untrue that consumers have clear guidelines as to what that chargeback entails – from a consumer's point of view, the consumer has little or no knowledge of exactly what they are entitled to under the chargeback scheme, and whether their claim has any chance of success or failure. The system is broken, and requires remedy.

The claim that consumers have trust in the current chargeback system is absurd.

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

As set out above, attaching bank transfers to a virtual elastic band so that even once payment is in the beneficiaries bank account that payment can be recalled up to many months or years later by the payer, will lead to an inability to conduct effective commerce in the UK, and lead to a significant degradation of the UK economy.

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?

At present, consumers do not approach their PSP if goods or services they purchase through bank transfer are deficient, as they understand that their PSP has no connection to the problem – the problem is between themselves and the seller (except some knowledgeable consumers when using Section 75 of the Consumer Credit Act for appropriate credit card payments).

To change this would mean that PSPs could no longer effectively operate in the UK – it is beyond the remit of the PSR to do so, and to try and do so would leave the PSR open to legal challenge (which would almost certainly be effective due to the irrationality of the actions attempted, despite their good intentions).

Question 21: Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?

If more and more purchases are moved from debit card purchases to bank transfer purchases, then the Government and the Law Commission may wish at that stage to consider consumer protection and its laws.

However, this is most certainly not a job for the PSR – it is well outside of the PSR's remit.

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?

Not at all – we have no way to address payment disputes with any other PSP in the payment chain.

On the other hand, as we are an escrow service, our whole service acts to mediate and resolve disagreement directly between buyer and seller.

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?

Whether chargeback on bank transfers is introduced through payment systems rules or payment governance systems or industry-led schemes, the devastation to the UK economy will be equal.

We suggest that no such chargeback scheme be introduced, so that when a bank payment is received, it is received with certainty that payment cannot be revoked.

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

We believe it is wrong that this question is being asked, and that any prospect that either a PISP or a payer's PSP could face liability will mean that no party will act in future as a payer's PSP.

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?

We would like to answer zero to this question, but that would imply that introducing such intervention would be neutral and not cause damage to the UK economy.

As very significant damage would be introduced by such intervention, then a large negative answer would be required.

Paragraph 6.6

a) Nowhere is the greatest and most significant cost of the proposed measures mentioned – the destruction to the UK economy when sellers (businesses and consumers) can no longer obtain definite payment for their goods and services.

Instead, sellers will have to cope with fraudulent and malevolent buyers (who make up a sub-section of their customer base) paying with payment with a rubber-band attached to the payment, and face the prospect of having to argue for the payment to stay in the seller's bank account when challenged by the malevolent buyer.

Just because a seller is honest and their goods and services well-formed will not prevent multiple chargeback claims under the PSR's proposals – some of which will succeed.

A seller can currently already choose to operate in this environment by accepting debit and credit card payments, or a seller can for reasons necessary to their situation choose to only accept payment by irrevocable bank transfer.

Eliminating this option to honest sellers will greatly harm the UK economy, and have enormous cost to UK PLC. This well-intentioned but fatally flawed elimination of irrevocable payment must not be allowed to happen.

b) In addition, no mention is made of PSPs becoming extremely wary of banking sellers under the proposed regime, and a great derisking and de-banking of sellers occurring.

Many businesses will lose access to a bank accounts as a result, and businesses close due to the tightening. PSPs and banks will be unwilling to bank sellers as they face significant expense and liability to do so, with no revenue.

UK PLC will grind to a halt.

Paragraph 6.9

In reality, the very opposite to what is described here will occur.

As only the largest banks will be able to operate in the proposed environment, and only by cross-subsidising losses and liability from their other general business, competition will be destroyed in the sector, and consumer choice almost eliminated, and innovation ceased.

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

No, not at all. See comments to Paragraph 6.6 and Paragraph 6.9.

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

See comments to Paragraph 6.6 and Paragraph 6.9.

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

No PSP can or should be made to bear liability, since as set out above this will destroy the UK Payments systems, and severely damage the UK economy.

If sellers are made liable, then this is a question unrelated to payment, and rather than being taken forward by the PSR, the issue should be taken forward by Government and the Law Commission.

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?

We would probably have to close our business in the UK, and relocate to the EU or overseas – where bank transfers remained irrevocable and unable to be charged back.

We would not be the only firm to do so, and this behaviour could be expected right across the industry (and also outside the payments sector, as non-payment firms requiring irrevocable payment were forced to locate outside the UK).

Please let us know if you require any additional information or clarification to the above – we will be happy to provide if required.

Best Regards,

[Redacted signature]

[Redacted signature]

Annex A – Extracts from the PSR's own Call for Views which provide evidence that the PSR must amend consumer protection in Chargeback situations for debit-cards (and non-Section 75 Credit-card claims).

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... Consumers and businesses should feel confident using interbank payments, including for retail payments.

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.

2.4 ... 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....

2.6 We want consumers and businesses to feel confident making and receiving payments, regardless of the payment system they use.

2.7 ... As part of that development, we want to see measures that ... and benefit businesses by providing them with certainty about what happens when a payment is disputed.

2.8 Clarity - Understandable, reliable and fair processes are in place that allow participants to resolve disputed claims

3.3 Yet, as things stand, consumers may find they only have limited remedies available to them when something goes wrong with their purchase.

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.

3.21 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

3.26 Consumers do not always understand the degree of protection offered, and have low confidence in making claims, even where protections are established.

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).

3.31 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.

Introduction to Chapter 5 - 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.

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.

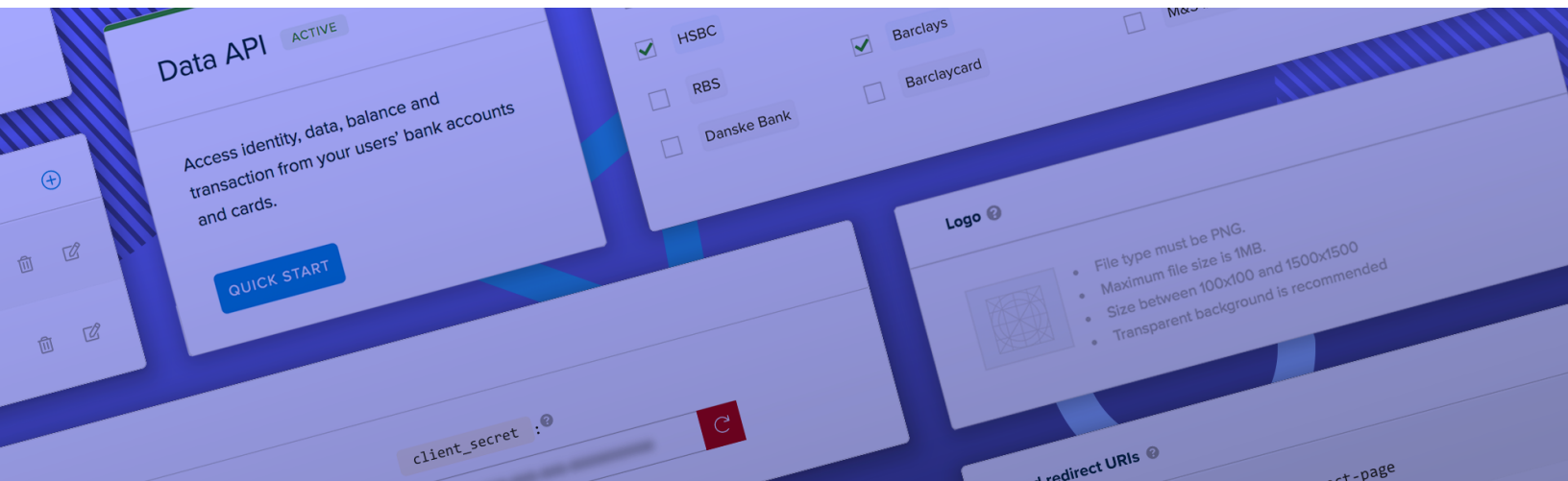
5.7 There are two key prerequisites that ensure businesses and consumers can use the protections available to them. These are:

- a reliable and fair process which consumers can understand and use to claim protection

...

Truelayer

TrueLayer response to PSR CP21/4 - Consumer protection in interbank payments: call for views



8 April 2021



About TrueLayer

TrueLayer is an UK-FCA authorised account information and payment initiation service provider, established in 2016 to leverage new banking data access rights under PSD2, and data standards developed under the CMA's Open Banking remedy (part of it's investigation into competition in the retail banking Market). Both initiatives look to inject competition and innovation into the market for payment services and data, and to empower consumers to engage with their finances in safer and more effective ways. In particular, PSD2 supports alternative payment service provision, as part of the broader 'Payments package' looking to address poor competition outcomes stemming from the Visa and MasterCard duopoly.

We also provide API connectivity to many PSD2 regulated open banking companies. TrueLayer clients include fintech firms such as Revolut, savings and investment platform Nutmeg, and the UK Government's Crown Commercial Services. According to data from the CMA9 - our platform routes over half of all UK open banking traffic.

We consider ourselves to be actively promoting the competition objectives of PSD2 and the CMA Order.



Executive summary

- **Consumer harms in cards outweigh harms in interbank payments**

There are strong consumer protections required by the Payment Services Regulations for users of interbank payments and payment initiation services, which are equivalent, if not stronger than those required for users of cards. There are also strong consumer protections for making purchases using these methods in the form of the Consumer Rights Act.

Indeed, the PSR has not discussed any of the harms present in the current card market, and whether the benefits of the introduction of PIS, with its additional security benefits could hugely outweigh any hypothetical purchase dispute issues. Payment initiation services are secure by design. Because they don't involve the sharing of card details, or any banking credentials, they eliminate unauthorised payments.

Even taking directly initiated interbank payments as an indicator of consumer harms from fraud - interbank payments perform much better than cards. In 2019 payment card fraud was £671.4 million on a total payment volume of £800 billion or 8bps (about £1 out of each £1000). On the other hand, interbank fraud was £528 million¹ on a total payment volume of £7.4 Trillion² or 0.7bps (£0.07 out of each £1000). As such bank fraud is less than a tenth of card fraud.

- **The focus should shift to buyer protection**

The core question in the Call for Views is not whether these consumer protections are adequate. Rather, it is whether the additional buyer protections which the card schemes/ issuers have introduced voluntarily (chargebacks), or as part of lending (Consumer Credit Act), should be replicated in interbank/ PISP payments.

We would ask the PSR to narrow the focus of further investigation to an analysis of whether regulatory intervention is needed to replicate card scheme buyer protection in interbank payments.

- **Replicating card scheme buyer protection will have unintended consequences and harm competition**

¹

<https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202019%20-%20FINAL%20ONLINE.pdf>

²<https://www.bacs.co.uk/NewsCentre/PressReleases/Pages/PayUKProcessesRecordPaymentVolumesValuesIn2019.aspx>



This narrow question will need extremely careful consideration. As we discuss, it is likely that replicating buyer protections available within dominant card schemes for PISPs, would render PISPs uncompetitive with card payments, and further entrench the dominance of the card schemes.

Imposing liability on PISPs would contradict the policy intentions of the PSRs. The EU directive PSD2, which forms the basis of the PSRs in the UK, was revised in 2017 in part to address the dominance of the card schemes by supporting new types of payment provider into the market.

- **Regulators need to be more joined up on this investigation**

We believe the Financial Conduct Authority, as the competent authority for payment services under the Payment Services Regulations (and the supervisor for both banks and PISPs), should be more closely involved in any further investigation into buyer protection in interbank payments. The FCA has objectives to promote competition and consumer protection and so is well placed to advise on the appropriate balance in the context of interbank payments.



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?

No. We strongly disagree.

The PSRs provide strong legal protections for consumers using interbank payments, including via payment initiation service providers (PISPs):

- Each payment initiated, must be strongly authenticated by a customers bank (with two forms of banking credential)
- Whether a customer is using cards, bank transfers, or payment initiation services - if their money is taken without authorisation, then they are entitled to a refund from their bank (see [FCA website](#))
- If the customer is using any of these payment methods and the payment does not reach the recipient they instructed the provider to pay, the customer is entitled to a refund from their bank

Where a consumer is not happy about an interbank payment (whether initiated directly or via a PISP), PSPs are required to provide well sign-posted, complaints procedures (see Chapter 11 of the FC's Payment Services [Approach Document](#)).

Further to this, a consumer can escalate a complaint about an interbank payment service (whether initiated directly or via a PISP) to the Financial Ombudsman, who can award compensation to a consumer.

In terms of **buyer protections**, which come into play once a consumer has **authorised** a payment to a merchant, consumers have strong **legal buyer protections** under the Consumer Rights Act 2015. Regardless of the payment method used, the protection entitles consumers to:

- Goods that are of satisfactory quality, as described, fit for purpose, and last a reasonable length of time
- return goods within 30 days and receive a full refund
- where a refund is not given payments can be disputed in the small claims court

In addition to these requirements, card issuers can offer *additional* buyer protections. Where the merchant refuses a refund, you can additionally ask your bank (the card issuer) for a refund, known as a 'chargeback'. Card schemes have been able to voluntarily introduce buyer protection in the form of chargeback because of their dominance and market power.



With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

Just because card schemes have the ability to offer this additional, voluntary buyer protection to consumers, does not mean that there are *insufficient* consumer protections for interbank payments. The following table demonstrates the high degree of consumer protection offered by interbank payments (including those initiated by PISPs). Chargeback/ Section 75 is the only differentiator.

Protection	Credit Card	Debit card	Faster payments	Payment Initiation Service
Consumer protections				
Legal protection for <u>unauthorised transaction</u>	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer
Legal protections for wrongly executed transactions	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer



Security	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication	Strong customer authentication
Buyer protections				
Legal protections for authorised transactions where a customer does not receive goods or services satisfactorily	Consumer Rights Act: Customer entitled to a refund from merchant Consumer Credit Act 1974 - bank must refund customer	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant
Voluntary protections for authorised transactions where a customer does not receive goods or services satisfactorily	Chargeback	Chargeback	No industry wide voluntary scheme	No industry wide voluntary scheme



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

Industry provision of consumer protection

Requirements

We strongly disagree that the industry does not provide appropriate levels of protection. PSPs (including PISPs) must meet stringent requirements for consumer protection (as described above), in order to become and remain authorised. Where levels of consumer protection are deemed to be lacking, the Financial Conduct Authority, which has a Consumer Protection Objective, will take supervisory or enforcement action against individual firms.

The FCA has recently bolstered its ability to supervise PSPs against consumer protections requirements (including PISPs) by extending its principles for business to payment and e-money firms (these principles already applied to banks). These principles include that PSPs must:

- observe proper standards of market conduct.
- pay due regard to the interests of its customers and treat them fairly.
- pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

Incentives

In addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, setting out the expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)



Evidence

No evidence has been presented by the PSR or other regulators of specific issues arising from the levels of consumer protection currently provided by PISPs.

Consumer demand for consumer protection

Consumer representatives (such as Which?) have long demanded that aspects of interbank payments that are open to fraud and scams be tightened up. The concerns raised by the Which? Super Complaint about authorised Push Payment Scams have been borne out with UK Finance [highlighting](#) that APP scams rose from £345m in 2018 to £456m in 2019. Rightly, this area of consumer harm has been addressed with initiatives such as Confirmation of Payee and the Contingent Reimbursement model. This demonstrates that clearly, consumers (represented by organisations like Which?) do demand high levels of consumer protection. This is particularly the case in the UK which has been the first country in Europe to introduce initiatives to tackle APP fraud.

Moreover, PISPs are competing with the card schemes and issuers who are actively ensuring consumers are educated about the additional buyer protections they offer, increasing the demand for this type of protection e.g. [Visa How You Pay Matters](#); [Barclaycard, Get Credit Confident, Protect your purchases](#)

The high degree of consumer protection demanded by UK consumers, and the highly competitive market for providing payment services in retail and e-commerce, strongly incentivises PISPs to ensure consumers trust the new payment methods they are introducing. This supports a market led approach to addressing any gaps in buyer protection, where those gaps are deemed to be preventing take-up of PIS.

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)?

As noted above, in addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)



- Contractual agreements with merchant clients, e.g. setting out expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using [payment refund functionality](#) developed by OBIE)

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?**

N/A

- 5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?**

We do not understand this 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?**

We strongly disagree with imposing liability for refunds for retail purchases onto PISPs.

Most merchants refund customers themselves - chargeback is a last resort

To begin with, it should be noted that the vast majority of online merchants have well established refund and dispute resolution processes and procedures. Chargeback is a last resort option, where the customer has not been granted a refund by the merchant. We would like to see more evidence from the PSR about the proportion of purchases which actually do end-up being disputed, and which result in chargeback claims.

Chargeback is flawed and prone to fraud

According to the [British Retail Consortium](#), instances of fraudulent chargeback claims (aka friendly fraud) more than doubled between January and June 2020. This is because it is now easier to commit than ever before. Consumers are cloaked by anonymity when shopping online, and merchants aren't always present at the point of exchange to confirm if goods arrived safely. Imposing liability on PISPs would shoulder PISPs with the burden



of investigating both genuine and fraudulent disputes, adding costs and barriers to entry for PISPs.

Chargeback is available to card schemes because of their market dominance

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

Imposing liability on PISPs is contrary to existing law (the PSRs)

The PSRs ensures that there are strong consumer protections for the correct execution of bank transfers, including where those bank transfers are initiated by PISPs. Consumers are entitled to a refund from their bank if something goes wrong with the payment. The PSRs do not impose liability for the successful sale of goods and services on the bank or the PIS. Imposing liability on PISPs would contradict the liability framework set out in the PSRs.

Imposing liability on PISPs would also contradict the policy intentions of the PSRs. The EU directive PSD2, which forms the basis of the PSRs in the UK, was revised in 2017 in part to address the dominance of the card schemes by supporting new types of payment provider into the market. By imposing liability on PISPs, the PSR will increase PIS transaction costs so that they are uncompetitive with those of the cards (which they are able to keep low due to their dominance and market power). This will further entrench the dominance of cards as a payment method in the UK.

Alternatives to PIS liability should be left to the market to develop

It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method. There are a range of options for PISPs and merchants to consider, some of which are already being implemented in the market, as alternatives to taking on liability for refunds:

- PISPs working with merchants to provide extra sign-posting to merchants' existing refund policies and procedures
- PISPs could work with merchants to offer insurance for purchases (which may be especially appropriate for high value purchases, such as airline tickets)



- In extreme cases, where there is a refund dispute, a more streamlined process for small claims court claims could be developed, where some of the burden is removed from the customer, e.g. by the merchant 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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes' dominant position, and frustrating the competition aims of the Payment Services Regulations.

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

No. The Open Banking Implementation Entity has [consulted](#) extensively on measures to ensure that consumers would be highly protected when using variable recurring payments. The OBIE points to the existing legal protections in place under the PSRs, and has developed [additional](#) measures to protect consumers using VRPs.

The FCA's [Approach Document](#) is also clear (section 8.230) that existing variable recurring payment methods, such as direct debit and continuous payment authority are covered by a requirement for the consumer to be fully refunded '*If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances*'. There is no reason why this guidance should not apply to variable recurring payments initiated by PISPs.

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

There is already clear consumer protection for recurring and variable recurring payments under the PSRs, as outlined in the FCA Approach Document at section 20.53 onwards, and in the OBIE consultations on variable recurring payments mentioned above.

We do not agree with imposing liability on PISPs for a whole series of variable recurring payments. We believe this would be extremely financially burdensome for PISPs, and would create barriers to entry for new PISPs.



It is well known that the protections afforded by the Direct Debit Guarantee Scheme have been open to abuse, which has been extremely costly for banks. For example, fraudsters have used the scheme to claim back entire series of mortgage payments³. We believe it is highly likely that imposing liability on PISPs will attract this type of abuse. However, PISPs, being likely smaller than banks, will be even less able to dedicate the resources required to investigating this type of fraud.

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?

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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

PISPs contract with the merchants they initiate payments for, so are able to identify the types of payments initiated to those merchants. The Open Banking standards allow for PISPs to pass this information to banks, in the form of Payment Context Codes.

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)?

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional ‘buyer’ protections on PSPs, before value thresholds are discussed.

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)?

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes’ dominant position, and frustrating the competition aims of the Payment Services Regulations.

3

<https://www.lexology.com/library/detail.aspx?g=46f61ab4-92fd-4e9f-8089-1380b982b49d#:~:text=This%20guarantee%20provides%20that%20if,your%20bank%20or%20building%20society.>



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

PISPs contract with merchants to enable merchants to offer PIS as a retail payment option. Therefore, not only can PISPs identify the payee, and the type of the payee, but PISPs will have undertaken extensive due diligence on the payee, including assessing the payee against acceptance criteria, restricted business lists, reputation and track record as a retailer.

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)?

If by payment protection, the PSR means an equivalent to chargeback should be applied based on the identity of the payer or payee, we do not agree. As discussed above, imposition of refund liability on PISPs will make this payment method uncompetitive with cards and further entrench the card schemes' market dominance.

If such 'buyer protection' was to be imposed, we do not consider the identity of the payer to be relevant, because any payer can make purchases. Chargeback rights in cards do not vary depending on the payer's identity.

With regard to determining buyer protection based on the identity of the payee, we struggle to understand how this would be feasible. In terms of direct payments, consumers can use internet banking to instruct inter-bank payments to any payee. The customer might be paying a friend, a charity or a plumber - they input the payee details. In order for the bank to recognise which of these payments requires buyer protection, all banks would have to maintain a registry of which of their customers were merchants. This would be difficult, for example, with sole traders, and part time merchants who might use their bank accounts for personal and business purposes.

In terms of PISPs, who are able to identify merchant payees, because they have contracts with them, the merchants themselves will provide buyer protection and refund customers when goods and purchases do not meet expectations. It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method.

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

The card schemes can maintain centralised governance, rulebooks and dispute management because of their size and market dominance. Attempts to replicate this for



interbank payments, and for PSPs (and PISPs) at different levels of the payments chain, would increase the costs of interbank payment transactions, making them uncompetitive with cards.

Fundamentally a governance framework would not be appropriate to govern interbank payments, because interbank payments are not part of a payments network. There is no agreement between all banks and all merchants regarding how interbank payments and purchases should be handled by each party. An interbank payment occurs between two banks, governed by the Payment Services Regulations.

We dispute the idea that a payment system wide governance framework is required in order to ‘give the consumer more trust in using the payment method’. Paypal is not part of the visa and mastercard scheme rules, and has instead developed [its own approach](#) to ensuring good consumer outcomes. That said, PayPal is also a dominant PSP, with the scale and market power to be able to maintain an efficient charge-back type system.

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)? [Merchant pov]

Merchants are frustrated at the high costs of card acceptance. They are very interested in being able to use PIS as a payment method, but would be less likely to if regulatory intervention, and layering of governance frameworks and buyer protection increased the costs of PIS so that it becomes uncompetitive with cards.

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

We agree that consumers should be aware of the protections in place. When using PIS, consumers should be fully aware that:

- if something goes wrong with the payment, they can contact their bank for a refund (as per the [FCA's website](#))
- If something goes wrong with the purchase, they can contact the merchant (as per their rights under the Consumer Rights Act)

PSPs, and PISPs are already legally required to provide information to consumers on their rights and obligations when a payment goes wrong, including how to complain and escalate to the Financial Ombudsman. See Chapter 11 of the [FCA Approach Document](#).



Customers using PIS to pay merchants will have a primary customer relationship with the merchant. The merchant will be their first port of call when there is a dispute about goods and services. We are supportive of working with merchants to ensure there is clear signposting to complaints and dispute management processes offered by the merchants.

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

It is the PSP/ PISP's legal responsibility to ensure consumers understand what to do if something goes wrong with a payment.

The merchant is best placed to ensure the consumer understands the protections that are offered to them if something goes wrong with the purchase (i.e. goods and services are not as expected).

Any sharing of those responsibilities needs to be carefully managed between the PSP/PISP and the merchant, to ensure there is no room for consumer confusion.

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

If the dispute is about a purchase (i.e. goods and services are not as expected), the consumer is most likely to ask the merchant to resolve the dispute. This is because the consumer will have the primary customer relationship with the merchant, and will expect the merchant to address any issues in the first instance. This will be the case whether or not the consumer uses cards, or interbank payments to pay. Indeed, most banks expect the consumer to have tried to resolve a purchase dispute with their merchant, before beginning a chargeback claim.⁴

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

The customer's primary relationship would still be with the merchant, so customers will still most likely contact the merchant for help with a purchase dispute.

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

TrueLayer has close communications with our merchant clients. If something goes wrong with the payment, the merchant passes the customer to us, to resolve the issue. If

⁴ <https://www.barclays.co.uk/help/cards/debit-card/visa-debit-card-problem/>



something goes wrong with the purchase, the merchant resolves the issue. If the customer contacts TrueLayer about the disputed purchase, TrueLayer makes sure the consumer is put in touch with the appropriate resolution team at the merchant.

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?

The interbank payment system operators have no experience of managing disputes between consumers and merchants. It would require a huge overhaul to introduce this kind of responsibility into the operator.

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

The FCA is already responsible for supervising and enforcing interbank consumer protection requirements on PSPs and PISPs.

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?

We strongly disagree that legislative or regulatory intervention is required. Payment Initiation services have only been subject to regulation since 2018. No evidence has been presented of any market failure leading to poor consumer outcomes through the use of PISPs. It would be extremely disproportionate and unfair to impose further regulation on PISPs. It would create barriers to entry and likely undermine the competition objectives of the Payment Services Regulations.

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

We strongly disagree with the assumption that retail interbank payment use will grow more slowly if the PSR's proposed 'buyer protections' are not put in place. No evidence has been presented to support this statement. TrueLayer processes more than half of the open banking volume in the UK giving us a unique perspective on this topic.

We've found that:

- open banking (PIS) payments typically reach 30% share of checkout (vs cards) within a few months of launch — and for some of our clients, it's as high as 80%
- the total value of open banking payments we've processed has increased by 250x in the last 12 months



- at the current rate of growth, 60% of the UK population will have tried open banking by September 2023

The PSR has not discussed any of the harms present in the current card market, and whether the benefits of the introduction of PIS, with its additional security benefits could hugely outweigh any hypothetical purchase dispute issues. Payment initiation services are secure by design. Because they don't involve the sharing of card details, or any banking credentials, they eliminate unauthorised payments.

In 2019 payment card fraud was £671.4 million on a total payment volume of £800 billion or 8bps (about £1 out of each £1000). On the other hand, interbank fraud was £528 million⁵ on a total payment volume of £7.4 Trillion⁶ or 0.7bps (£0.07 out of each £1000). As such bank fraud is less than a tenth of card fraud.

The PSR has also not discussed the impact that imposing liability as proposed would have on the cost of individual transactions, which would be passed on to consumers, and, as we've discussed above, would make PISPs uncompetitive with the card schemes.

Nevertheless, we agree with the listed costs (although these have not yet been quantified), and believe these will amount to a significant and disproportionate burden on PISPs, which could affect their ability to operate in the payments market.

We do not agree with some of the stated benefits:

- Introducing liability on PSPs and PISPs for purchases will have no bearing on 'payment errors' as PSPs and PISPs are already legally responsible for payment errors. The Payment Services Regulations ensures that consumers are entitled to a refund from their bank if there are errors with a payment.
- We do not believe that a higher proportion of consumers will make claims when things go wrong with purchases. Consumers already make claims against their merchant when goods and services are defective. This would remain the case whether or not additional requirements are imposed on PISPs.

5

<https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202019%20-%20FINAL%20ONLINE.pdf>

⁶<https://www.bacs.co.uk/NewsCentre/PressReleases/Pages/PayUKProcessesRecordPaymentVolumesValuesIn2019.aspx>



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

“a reduction in payment system participants if PSPs or PISPs stop offering interbank payment services (or decide not to begin offering them)”

If the PSR’s intervention leads to PISPs leaving the market, clearly, the costs will have outweighed the benefits. The card schemes’ dominance will be entrenched, leading to continued high prices for merchants, which are ultimately passed on to consumers.

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

If any payment participant is required to bear these costs, it will need to be the banks. They have ultimate responsibility for executing inter-bank transactions, and also have the resources to meet the significant costs that would be imposed.

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

Buyer protection measures would introduce very significant costs on TrueLayer. We are undertaking further work and research on these costs, which we will provide to the PSR, FCA and HM Treasury in due course.

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Stockholm 2021-04-16

PSR: CP21/4 - Consumer protection in interbank payments: call for views

Trustly Group AB ("Trustly") is a Swedish licensed payment institution providing payment initiation services throughout the EU and UK.

Trustly welcomes the opportunity to provide input on the PSR's consultation on consumer protection in interbank payments (CP21/4).

Executive summary

Trustly would like to highlight that there are already strong consumer protections in place as required by the Payment Services Regulations (PSRs) for users of interbank payments and payment initiation services (PIS). These are equivalent to, if not stronger than, those required for users of cards. There are also strong consumer protections for making purchases using these methods in the form of the Consumer Rights Act 2015.

Trustly believes that the PSR is seeking to solve problems that do not currently exist and has not offered sufficient evidence of specific issues arising from the levels of consumer protection currently provided by payment initiation service providers (PISPs). No evidence has been presented of any market failure leading to poor consumer outcomes through the use of PISPs.

Moreover, we feel that the Call for Views fails to take into account that fraud levels in PISP interbank payments are much lower compared to card payments since strong customer authentication (SCA) is already applied. Furthermore, Trustly applies robust Know Your Business (KYB) processes that further limit consumer exposure to merchant risk (e.g. through strict customer onboarding and due diligence processes, and regular risk assessment refreshes). We expect other PISPs to also maintain high standards in their KYB procedures. Any measures employed to protect consumers should be commensurate with the risk.

While the PSR seeks to create more competition in UK payments, there is a risk that over-regulation or an imposition of a costly scheme mechanism, without a profound analysis of any potential consumer protection issues in relation to PISP interbank payments, could easily stifle this nascent market segment. This will limit

competition and hinder innovation that ultimately will be to the detriment of the consumers the PSR seeks to protect, in terms of choice, convenience and security. There will be limited competition if PISP interbank payments ends up like cards with a scheme and all the associated costs.

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For an impact assessment on the need for consumer protection or scheme solutions, we would invite the PSR to consider other countries where PISPs and similar interbank payment solutions have existed for a long time, without a demand for a dispute mechanism. In particular, the Netherlands, Germany, Poland and Finland have introduced interbank payment schemes without the need for a chargeback functionality, since all payments require SCA beforehand. This has worked successfully in the Netherlands (iDEAL) and the Nordics since the early days of eCommerce, and is strong evidence that chargebacks are not required in a system with two-factor authentication for all payments.

The introduction of mandatory strong customer authentication significantly decreases the fraud risks for which chargeback rights are relevant (i.e. a consumer's card is stolen/phished and then used). Historically, a key reason why chargeback rights exist is because of the relatively lower security with cards (no SCA). Rather than accepting that fraud is built into the system by accepting no SCA for payments (and deal with the problem by reimbursing the consumer, to the cost and detriment of everyone except the fraudster), SCA should be strictly applied. SCA is almost always applied for PIS and so that way of "solving" the problem of consumer protection must also be permitted.

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?

No, we disagree. Interbank payments through PISPs are much more secure than cards: there is lower fraud and good KYB (Know Your Business) processes used by PISPs reduce the risk of Authorised Push Payment (APP) scams. Indeed, the use of PISP services can decrease the risk of faulty merchants, since they are acquired after a thorough onboarding process.

Consumers already have strong payment protection regardless of payment type under the PSRs when 'something goes wrong with the payment', e.g.

- The PSRs provide legal protections for wrongly executed payments regardless of payment type. The Customer is always entitled to a refund by their bank if 'something has gone wrong with the payment' and it was the payment service provider's (PSP's) fault. (see Regulation 91 of the PSRs 2017).
- For misdirected payments, the payee's PSP must cooperate with the payer's PSP in its efforts to recover the funds, in particular by providing to

the payer's PSP all relevant information for the collection of funds (see Regulation 90(3) of the PSRs 2017).

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Furthermore there are buyer protections under the Consumer Rights Act 2015 that apply irrespective of the payment method used. Disputes can be directed through the small claims court or other redress mechanisms such as Money Claim Online.

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

2.1) We disagree that the industry does not provide appropriate levels of protection.

Regulated PSPs/ PISPs must meet stringent requirements for consumer protection in order to become and remain authorised. Further to the response above, when consumers use PISPs (regulated entities that act as the merchant acquirer) there is often additional security since the IBAN is fetched from the API and the merchant is vetted and checked by the PISP. This reduces the potential for error or fraud for the end user.

Furthermore, no evidence has been presented by the PSR or other regulators of specific issues arising from the levels of consumer protection currently provided by PISPs.

2.2) We disagree that consumers do not demand appropriate levels of protection.

Consumer champions, such as the Consumers' Association (Which?) have long campaigned for consumer protection in interbank payments, leading to industry and regulatory action, e.g in addressing APP scams.

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)?

A quantification of the size of harm, nor how many consumers have been or are likely to be affected, has not been presented in the Call For Views. Therefore it is difficult to comment on the effect of any changes to consumer or industry behaviour and, without such an assessment, there is a risk that any intervention may not have the intended outcome or be disproportionate in nature.

PISPs, as regulated entities, are already undertaking a number of key activities that protect consumers from harm, e.g.

- As already indicated above, stricter KYB processes and improved fraud management by the regulated PISPs help to minimize consumers' exposure to risk.
- PISPs payments are typically only initiated when using strong customer authentication (SCA), therefore also significantly reducing fraud risk.

Questions related to which payments might need additional protection

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

No. We expect the level of protection, which we believe to be currently sufficient, to apply equally to on-us payments.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

No. We believe that many use cases are already covered sufficiently and there is no substantive evidence that additional payment protection is required.

However, for some types of purchase, participants (e.g. payer's bank, merchant or PISP) could recommend or voluntarily offer an insurance product. This is already common in some use cases (e.g. paying for a holiday) and is independent of the payment method used.

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?

We strongly disagree with imposing liability for refunds for retail purchases onto PISPs. The responsibility for a successful retail purchase rests with the retailer, so liability for refunding the consumer for an unsuccessful purchase also rests with the retailer.

For the scenario where a retailer goes bankrupt before goods or services are received, there is no basis to shift liability to the retailer's PSP or to the PISP that facilitated the payment. Here, the consumer should pursue the statutory redress mechanisms available to them.

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)?

Yes. Imposing liability to either seller, PSPs or both will increase costs since liable parties will need to insure for any losses in some way. This may lead to increased costs to the consumer or will make PISP solutions less attractive to sellers. This is contrary to the aims of the PSRs to foster interbank payments as a viable alternative to cards.

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

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No. These are the same as a direct debit (merchant initiated) payments. Furthermore, the Open Banking Implementation Entity (OBIE) has consulted extensively on measures to ensure that consumers would be protected when using variable recurring payments. The OBIE points to the existing legal protections in place under the PSRs.

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

None, for the reasons set out above.

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?

As set out above, we do not believe there is sufficient evidence to support the need for additional payment protection for PISP interbank payments at this stage.

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)?

As set out above, we do not believe there is sufficient evidence to support the need for additional payment protection for PISP interbank payments this stage.

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)?

Yes. Imposing liability to either seller, PSPs or both will increase costs since liable parties will need to insure for any losses in some way. This may lead to increased costs to the consumer or will make PISP solutions less attractive to sellers. This is contrary to the aims of the PSRs to foster interbank payments as a viable alternative to cards.

As set out above, we do not believe there is sufficient evidence to support the need for additional payment protection for PISP interbank payments this stage.

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?

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[REDACTED]

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)?

As set out above, we do not believe there is sufficient evidence to support the need for additional payment protection for PISP interbank payments this stage.

Furthermore the costs associated with mandating transaction risk analysis may make PISP solutions less attractive to sellers or might lead to increased costs to the consumer. This is contrary to the aims of the PSRs to foster interbank payments as a viable alternative to cards.

Questions related to how consumers might claim protection

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

We do not believe a consumer protection governance process would be beneficial for interbank payments at this point in time. PISP interbank payments is a nascent market segment in the UK and payment volumes are still very low compared to cards. Such a governance process would make the market unattractive to new entrants having to deal with the costs and regulatory burden, thus stifling innovation and rendering the market uncompetitive.

The card schemes can maintain centralised governance, rulebooks and dispute management because of their size and market dominance. Attempts to replicate this for interbank payments, and for PSPs (and PISPs) at different levels of the payments chain, would significantly increase the costs of interbank payment transactions, making them uncompetitive with cards.

For an impact assessment on the need for consumer protection or scheme solutions, we would invite the PSR to consider other countries where PISPs and similar interbank payment solutions have existed for a long time, without a demand for a dispute mechanism. In particular, the Netherlands, Germany, Poland and Finland have introduced interbank payment schemes without the need for a

chargeback functionality, since all payments require SCA beforehand. This has worked successfully in the Netherlands (iDEAL) and the Nordics since the early days of eCommerce, and is strong evidence that chargebacks are not required in a system with two-factor authentication for all 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)?

Sellers are frustrated at the high costs of card acceptance and so are very interested in being able to use PIS as a payment method. However, this interest would be tempered if regulatory intervention, and layering of governance frameworks and buyer protection, increased the costs of PIS so that it becomes uncompetitive with cards.

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?

Marketing and direct messaging to consumers will help improve awareness of any risks but should be consistent and from trusted sources. We agree that consumers should be aware of the protections in place. When using PIS, consumers should be fully aware that:

- If something goes wrong with the payment, they can contact their bank for a refund.
- If something goes wrong with the purchase, they can contact the seller.

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

The merchant has the direct customer relationship and is best placed to ensure the consumer understands the protections that are offered to them if something goes wrong with the purchase (e.g. goods and services are not as expected).

Furthermore, consumer champions such as Which? and Government-funded bodies such as the charity, Citizens Advice, are able to advise on how consumers can access the protections available to them.

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

In the first instance, consumers will likely approach the seller since the consumer has a direct relationship and the seller has the responsibility to supply the goods or services purchased. If satisfaction was not achieved, consumers would then likely approach their own bank or the PISP involved.

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

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Our response would not change. The volume of PISP interbank payments has no bearing on the customer's direct relationship with the merchant, and the merchant's liability for the provision of goods and services to the consumer.

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

In the first instance, consumers are directed to their bank or to the relevant seller to resolve their dispute.

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?

We do not believe additional consumer protection measures are currently needed in the UK.

We do not have any comment on alternative options except to invite the PSR to consider other countries where PISPs and similar interbank payment solutions have existed for a long time, without a demand for a dispute mechanism. In particular, the Netherlands, Germany, Poland and Finland have introduced interbank payment schemes without the need for a chargeback functionality, since all payments require SCA beforehand. This has worked successfully in the Netherlands (iDEAL) and the Nordics since the early days of eCommerce, and is strong evidence that chargebacks are not required in a system with two-factor authentication for all payments.

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

We do not believe additional consumer protection measures are currently needed in the UK, thus regulation is not required. The FCA is already responsible for supervising and enforcing interbank consumer protection requirements on PSPs and PISPs.

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?

We disagree that legislative or regulatory intervention is required at this stage. PISP interbank payments is a nascent market segment in the UK and payment volumes are still very low compared to cards. The model is currently working satisfactorily with no major problems reported so far, and no evidence has been

presented of any market failure leading to poor consumer outcomes through the use of PISPs.

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It would be disproportionate and unfair to impose further regulation on PISPs. It would create barriers to entry and would be contrary to the aims of the PSRs to foster interbank payments as a viable alternative to cards.

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?

We disagree with the assumption that retail interbank payment use will grow more slowly if the PSR's proposed consumer protections are not put in place. No evidence has been presented to support this statement. We believe it is more likely to have the opposite effect: the additional cost burden on PSPs, PISPs and sellers makes interbank payments less attractive to sellers and will stifle the growth of what is currently a nascent market.

The primary reason that PISP interbank payments have not taken off yet in the UK is due to the nascent nature of the market. The APIs provided by banks were only able to deliver a viable payment experience from summer 2020. Merchants have only been considering the product in the last 6 months and most retail merchants have a 6-12m development pipeline to deliver a new payment method.

Trustly sees enormous demand in the market from merchants, nonetheless, that will only materialise in the next 6 to 12 months as eCommerce business are able to bring the solutions live. Consumer awareness and use of PISP interbank payments will then follow as they are given options to use the service from a broad range of merchants.

Although we broadly agree with the list of costs incurred and the associated benefits listed, there has been no real assessment nor quantification of the cost vs benefit. A more thorough quantitative assessment is required before any meaningful consideration can be taken.

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

The cost of implementing a liability framework within the Faster Payments scheme is likely to add significant layers to the current scheme governance, infrastructure, and processes, and thus cost the industry overall.

Specifically, as the Call for Views notes, there is a risk that higher costs will deter new PISPs from participating (either by leaving the market or by not entering in the first place). The barriers to entry will be higher and the market will be less attractive to participate in. This will stifle innovation and hinder competition in UK consumer payments overall.

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

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The sending and receiving banks are best placed to bear any costs.

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

We do not believe additional consumer protection measures are currently needed in the UK.

Many PISPs are small or medium sized enterprises so any new protection measures will have a significant financial impact. These impacts can be either direct (through upfront or ongoing running costs) or indirect (sellers cancelling contracts or not offering interbank payment acceptance at all since the proposition would offer fewer benefits over card payments).

UK Finance

UK Finance response to Payment Systems Regulator Call for Views on Consumer Protections in Interbank Payments

Date: 08 April 2021

Address: Consumer Protection Project Team
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[REDACTED]

UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

If you have any questions relating to this response, please contact:

[REDACTED]

Introduction

UK Finance welcomes the PSR's call for views on consumer protections in interbank payments. The industry understands the importance of ensuring customers are protected when making a payment and has been working hard to understand the complexities that underpin consumer protections in the interbank payments space.

In February 2021, UK Finance published its Future Ready Payments 2030¹ report. Written in conjunction with PwC, this report considers the opportunities and challenges for the UK payments industry over the next ten years and sets out a vision for the payments industry in 2030. The UK payments industry has long been regarded as being at the forefront of innovation and best practice. Over the next decade the potential in our sector is enormous, as advances in new technologies and evolving customer expectations, underpinned by strong protections, will drive change in the market. These changes will further enable competition, innovation, choice and opportunity for consumers.

Ensuring consumers are protected when they make payments will be key to ensuring the success of this forward-looking vision. Through regulatory collaboration, industry cooperation and increased scrutiny and research of the market, industry will be able to provide greater clarity, confidence and consistency across consumer protections

The use of faster payments continues to grow, with consumers increasingly using it to make payments to businesses rather than just for person-to-person payments as was mainly the case in

¹ <https://www.ukfinance.org.uk/system/files/Payment-future-report-150221-compressed.pdf>

the past. As usage increases, protections must evolve to ensure consumers can pay safely. However, more time should be awarded to allow the market to react to these trends and to explore different protection options.

Before coming to any final solutions, there are a number of issues for the PSR to consider and explore in more depth:

- The commerciality of consumer protections for interbank payments needs to be fully understood where the payment is for the purchase of goods and services, and the merchant has a contractual obligation to supply. Regulators and firms need to work together to understand what commercial models may function within the market.
- Consumer protections need to be considered alongside emerging future payments developments and we need to understand the economic models that will underpin this. Cards and direct debits, which have been in mainstream use for 50 years, provide the greatest range of protections whilst protections on more recent innovations tend to be at various stages of development. As the UK payments landscape continues to evolve, with new players utilising the existing payment market infrastructure to deliver new ways to pay, it is vital that the industry remains focused on making sure payment systems and consumer protections associated with them remain fit for purpose. This is for the benefit of consumers, businesses and the UK economy as a whole.
- The role of competition is also crucial. Competition may naturally allow for protections to evolve in the market, or regulators or other bodies could introduce agreed protections. As work continues to identify the appropriate consumer protections for different payment types, it will be important to keep in mind the various options to deliver protections in different use cases. There does not have to be a blanket approach adopted across all payment types, and whether competition or central coordination should facilitate the emergence of protections may differ in each instance. Furthermore, regulation should be considered carefully and should be proportionate to the levels of potential customer harm.
- We need to consider how to ensure consumers understand the various protections available. PayUK's research² into consumers' understanding of consumer protections showed that consumers are aware of the key features of the payments they use, but not necessarily the protection each payment offers. Furthermore, public information concerning protections outside of card payment and direct debits is inadequate. Whilst many providers have placed helpful information for consumers on their websites as part of their COVID-19 responses, there is also a need for clear, impartial consumer advice related to consumer protections to help the public make informed choices about protections afforded by different products or payment services. The Money and Pensions Service has a remit to provide guidance concerning consumer protection and could play a more active role.
- There are a number of customer protection initiatives from the industry and public authorities, including HM Treasury's Payment Landscape Review, the PSR's strategy review on consumer-

² <https://www.wearepay.uk/wp-content/uploads/Consumer-Protection-Summary-Paper.pdf>

to-business interbank payments and the PSR/OBIE working group on consumer protections within Open Banking, that are looking at issues in isolation. We would encourage regulators to provide leadership and coordination to ensure policy initiatives deliver the right outcomes for consumers and businesses, and avoid unintended consequences, through a framework that will produce clear, effective, fair and commercially viable outcomes. Respective regulators' responsibilities should be clearly understood and aligned, to avoid duplication of effort and conflicting outcomes.

- Conversations between regulators, government and industry should be joined up with those on the New Payments Architecture (NPA) to form a short-medium term strategy to ensure future payment systems work well for end users. There are a number of areas where conversations between regulators and industry should look to align including on data sharing capabilities; the development of ISO messaging; the development of instant payments; considerations of consumer protections; and consumer communications. Alignment will allow for more streamlined investments and help maximise outcomes.
- There is an opportunity for the PSR, other regulators and government to consider the opportunities within consumer protections that don't just cover faster payments. A longer-term vision should include a bigger, more wholesale review of protections. Regulators should look at all examples of consumer protections across the market, reviewing the role of all stakeholders (including merchants), rather than addressing use cases for only FPS or Open Banking. The financial sector is evolving, with new players and business models entering the market that are transforming how customers access services and engage with providers. Regulators should remain mindful of new innovations to ensure they serve the needs of consumers. Lessons should also be taken from past experiences to avoid unintended consequences, for example looking at the history and development of card protections and the challenges they faced. We will engage separately with more detail and examples.

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

FPS was launched in May 2008 and for the first time it gave consumers the option of making account-to-account payments, 24 hours a day, seven days a week. Since launching, the number of remote banking payments processed using FPS (or cleared in-house by banks) has continued to rise. In 2019 there were nearly 2.5 billion payments made via FPS. As it continues to grow, consumers are increasingly using it to make payments to businesses rather than for person-to-person payments as was mainly the case in the past. Whilst faster payments never prevented a business being paid through FPS, many businesses did not initially use faster payments, or ask to be paid in this way.

As FPS developed, a number of protections were made available. There are payment protections available with faster payments which are set out in the PSRs and have been in place since 2009. More recently, there have been additional payment protections introduced within FPS, which have focused on creating strong and secure customer authentication, implementing credit recovery in the case of payment errors, protecting against accidental misdirection, and combating fraud. There are also a number of protections offered by the merchant. There are currently no scheme based consumer protections which apply when goods or services are defective/not delivered when consumers use FPS to pay for goods and services, in part because the lower online use of online

payments and different retail sales models, combined with gradual take up and low consumer harm, did not drive a need for new consumer protection.

The lack of scheme-based consumer protections relating to defective goods/services or non-delivery is particularly evident when making a comparison between faster payments and cards. Card protection is arguably the best understood and most well-known by consumers. There is a long and developed history around consumer protections in cards which has grown over time to specifically work in a retail payment environment. Cards currently offer a high level of additional payment protection which is not offered with faster payments. However, card protections are underpinned by economic and commercial models which do not currently exist in interbank payment systems such as FPS.

Open Banking has also opened up the opportunity for FPS to be used for more than personal payments. Payment Initiation Service Providers (PISPs) are now able to connect to their customer's bank accounts to initiate payments on their behalf, making it easier for consumers to use FPS to purchase goods and services. As the market continues to grow, using Open Banking services to route payments through FPS, payment providers may offer additional protections as part of their competitive offering. However, as the market is relatively nascent, these new protection propositions are at various stages of development. The advent of open banking including payment initiation services (PIS) introduces an additional layer of complexity. Now you have a situation where the 'push' can come from a Payment Initiation Service Provider (PISP), acting on behalf of the payer yet whose primary relationship may be with payee (e.g. a merchant) and the PISP may also be relying on a technical service provider.

From a regulatory perspective, PSD2 addresses liability and dispute resolution for unauthorised or incorrectly executed payments. It makes the payer's PSP (the account servicing PSP) the first port of call for the customer, with the responsibility to provide a refund and then seek recompense from the PISP who must prove they were not at fault. The use of PIS to initiate a Faster Payment may also bring with it an interplay between voluntary use of the dispute resolution mechanism³ developed by the Open Banking Implementation Entity versus the Pay.UK-managed Faster Payment scheme rules. Under card consumer protections there is an expectation that the customer will have approached the seller to seeking consumer protection. We would expect payers to continue to approach payees first in any future faster payment's consumer protection model. The merchant is the best place to resolve the dispute quickly, for example with a replacement good or refund as appropriate. They also have ultimate liability for supplying defective goods or services as set out in the Consumer Rights Act.

Additionally, how the market achieves what the industry and authorities feel is needed in terms of the level of consumer protection and further building of trust with PISPs needs to be considered. The approach taken here needs to strike the right balance between achieving an appropriate level of consumer protection and such measures not inhibiting development of the PISP market or stifling innovation while also ensuring that it remains viable from a long-term perspective.

The global perspective is also important. When drawing comparisons between other countries, UK consumers enjoy a level of protection which compares favourably with many other countries

³ <https://www.openbanking.org.uk/providers/dispute-management-system/>

around the world, delivered through a mix of legislation, payment scheme rules, retailer protections and personal protections such as insurance.

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

Consumer protections are not standardised across each payment method and have grown in a fairly piecemeal way across the market. As FPS evolves and continues its trajectory away from its intended use, the assumption that protections should be as developed as other payment methods, such as cards should be avoided. Whilst FPS is being used more frequently for low value transactions, these payments are not necessarily those that need regulatory oversight. Larger, systemic problems for example high value losses are where the customer will be most at risk, rather than low-level commercial transactions. We do however recognise that whilst preserving the convenience of faster payments as a person-to-person payment mechanism is needed, determining the value of losses here is difficult to solidify. The PSR will need to examine this issue in more depth before agreeing any solutions.

Whilst a gap has been identified for consumer protections relating to defective goods and services in FPS, there has not been sufficient time for the market to react and build necessary protections, therefore, it is difficult to undertake a thorough analysis of the appropriate levels of protection. There is currently market-led consumer protections emerging and it is likely that over time, more protections will emerge, increasing competition in the market which in turn will offer innovative solutions and more consumer choice in how they protect their payments.

Other areas of complexity arise with regard to the application of the voluntary approach to the Contingent Reimbursement Model Code (CRM Code) for Authorised Push Payment scams and to Confirmation of Payee. This results in a situation that is confusing for all parties, not least the payment service user.

Legislation underpinning an amended Contingent Code may be the most effective way to approach the APP problem. This will ensure full coverage across the financial services sector and deliver more consistent outcomes for customers, rather than relying on a voluntary approach. Legislation, supported by appropriate statutory instruments and enabling powers, would need to address the weaknesses of the current Code, these are outlined in greater detail within the UK Finance response to “CP21/3 authorised push payment scams – call for views”, but includes greater clarity of the standards expected of the industry and consumers, the disparity in liability between sending and receiving firms and the removal of barriers to ensure that all business models can comply. In addition, the development of a government backed funding solution for the compensation of victims of this kind of crime, where no party is deemed to be at fault, should be progressed.

The volume of PISP payments is relatively small, with merchant payments as the principle use case. In terms of the growth in adoption, there are still a number of technical issues that need to evolve. Therefore, it feels too early to reach a conclusion that the market will not evolve customer protection mechanisms when certain payment arrangements are at an early stage or that the early adopters of this new and innovative payment mechanism will be uninformed about their protections, which of course could be provided by the merchant competitively.

3. 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)?

A higher level of transparency and communication concerning consumer protections (including those available under the CRA) would result in greater demand by consumers for increased protection levels. There is existing guidance in the Open Banking Standards that a TPP should communicate protections, however, as OBIE Customer Experience Guidance is not mandatory for TPPs, there is limited information available concerning the differing levels of protection on offer. A high level of transparency would increase consumer awareness and therefore drive the market towards developing comparative protections. We believe that the industry, regulators and trusted independent public bodies, such as the Money and Pensions Service, working together to increase consumer awareness would reduce the size of harm and reduce the need for intervention.

It is also important that customers are able to choose the level of friction that suits them and that they are offered a degree of flexibility to choose what works best for them. What works for one customer may be different for another especially in relation to buying goods and services and so a degree of choice should accompany protections in FPS. For example, customers may not necessarily need or want added protection, the merchant may protect the transaction or allow the goods or services to be returned after a trial period, and regulatory intervention may not be proportionate, when it comes to low value transactions compared with higher value purchases. Questions arise here around how this would be determined or operationalised and will need more examination by the PSR. Additionally, for this to work well in practice, customers need to be well informed about what protections are available and what they cover. Whilst consumers may be better informed by the protection the merchant offers, the general consumer often finds it difficult to know what protections are currently available for each payment method and what to do when something goes wrong.

It may also be necessary in an environment where consumers can choose their preferred level of friction, to consider whether established banking principles that require a payment provider to allow a customer to proceed with a payment, should be reviewed to give payment providers more protection to stop a payment where they suspect that a fraud or equivalent detriment might occur.

Similarly, with increased competition comes increased cooperation. The industry wants to be able to ensure consumer confidence when using faster payments. Industry is open to working together and with regulators to ensure robust and effective consumer protections for interbank payments. To deliver further customer benefits and provide greater clarity, confidence and consistency in consumer protection it is clear that regulatory collaboration, industry cooperation and increased research of the market will be needed.

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

We do not believe that changes are required immediately, and further education and awareness should be prioritised. If a change is introduced, more information concerning the consumer protections that would be implemented would be needed in order to provide a more accurate view on what the operational impacts of the protections would be. Should higher levels of customer awareness concerning their protection not lead to a market-led development of protections, then we believe the PSR should focus on the inequality of protections offered to determine if intervention is required.

5. Question 5: Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

We believe that it is too early to say whether payment protection should be introduced for purchase transactions. It feels too early to reach a conclusion that the market will not evolve customer protection mechanisms when certain payment arrangements are at an early stage or that the early adopters of this new and innovative payment mechanism will be uninformed about their protections, which could be provided by the merchant.

6. 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?

We believe that liability for faulty goods and services should lie with the payee in line with the Consumer Rights Act. If an inter-bank model were created, for example through a scheme rule change, it would be the merchant's PSP who would be relied on for repayment. As the provider of the commercial bank account, the payee PSP will have a commercial relationship with the payee for them to accept Faster Payments. Responsibility for refunding can be catered for within this commercial/contractual relationship. Rather than an immediate refund, the decision to refund and the challenge should reside with the merchant and its provider not the purchaser's account provider. It is important the latter should not incur liability.

When thinking about payment protection for retail purchases, protections already provided for card purchases are often looked to as examples. Global card scheme rules give consumers rights to chargeback a card transaction from their issuing bank if a merchant breaches a retail contract - for instance if they fail to deliver what was contractually promised. Chargeback isn't a statutory right (unlike s75) but is enshrined in card scheme rules which are contractual in nature. Chargeback can allow card providers to provide refunds to customers in a number of circumstances over and above where refunds are required to be made under the PSRs such as if the customer does not get the goods or services they paid for, including if the company has gone out of business; if goods or services turned out to be faulty, counterfeit, or defective. However, there are no guarantees the card provider will be able to recover the money through chargeback, or that the trader will accept that the customer was justified in having the money back.

Card payments lead in their use for a large part because they offer comprehensive protection, supported by an established and sustainable commercial model all of which balances customer, merchant and provider needs in a way that has evolved over a long time. It is not appropriate to look at these types of protections without a supporting commercial model which also balances the needs of the various parties as cards does.

7. 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)?

Striking the right balance between apportioning responsibility for making a refund and framing protections in a way that still maintains the convenience of FPS is key.

Ultimately, the liability for defective goods and services sits with the retailer in line with the Consumer Rights Act. Careful consideration however is needed where the initial obligation to make the refund to the customer sits. If an interbank model is created, we do not believe that the liability should exist for the payer PSP.

Currently, the card scheme charging model apportions liability to the merchant when there is a failure to fulfil contractual obligations. This framework of liability should continue, whereby failure to fulfil contractual obligations rests with the merchant. There is also an option that Payer PSPs could facilitate refunds for their customers on a best-efforts basis – which would be dependent on a prior refund from the payee or Payee PSP. For example, there could be a rule under which for a business payee to receive payments for goods and services within faster payments, they must agree to either refund or explain non-refund within a certain timeframe. This would remove the Payer PSP credit risk and could cover all of those accepting faster payments today.

In HM Treasury's Call for Evidence on its Payments Landscape Review last year, there was a focus on Faster Payments 'competing' with card payments in the person-to-business space and suggestions that changing the scheme rules could be the answer. We think this is too simplistic because any change to rules that created protection would create costs. The costs would need to be embedded in a new economic model underpinning the scheme. One option that could be explored is the potential for the NPA to incorporate a consumer-to-business sub scheme for merchants to sign up to if they want to receive online payment for goods and services. It could be supported by different but equivalent protections supported by the market or developed by the scheme. This could require a turnover levy to be retained by firms for their own pay outs for example. A merchant may see it as a competitive advantage to be able to offer their customers a selection of ways to pay for their goods or services.

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

Whilst payment protection arrangements for variable recurring payments do not currently exist when purchasing goods and services, it could be reasonable to extend new payment protection arrangements to recurring and variable recurring payments, if these were used to pay for goods/services which are defective or become defective in the future. For example, if standing order was used to pay for such goods or services. However, more rigorous thinking would be needed as to how to operationalise this, especially if recurring payments were used to pay for instalments for goods which were received and successfully utilised for a period of time. In this instance, a full refund may not be appropriate. Consideration would need to be given to both the payer and payee positions and protections based on CRA principles.

The OBIE has developed a draft standard for variable recurring payments which if adopted by industry could offer an alternative way to pay for goods and services, akin to continuous payment authority or a direct debit. However, this would be limited to when a payment is initiated via a PISP.

The implementation of the standard in the market would require a bi-lateral contract between the PISP and the ASPSP on a voluntary and commercial basis. In the UK Finance feedback to OBIE, we said that whilst VRP potentially offers a new way to pay in the PISP environment, more work on the commercial, liability and legal framework is required to land VRPs successfully in the market. Within this work, customer redress would be a key component.

The CMA will ultimately need to consider whether to mandate the use of VRP (for sweeping only) based on whether it believes VRP is the only payment mechanism that can be used to enable sweeping within Open Banking. In the UK Finance feedback to OBIE, some of our members raised concerns with the sweeping mechanism and the proposed automation of payments, in particular how these payments interact with other payment mandates on the same account. There are risks that, as payments are controlled externally, that other key payments such as mortgages may not be paid due to potential faults within that service. Another concern is the potential risk that a payment could be swept that exceeds the reasonable expectation of the customer due to broadly drafted or unclear consent parameters.

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

UK Finance is not in a position to answer this question.

10. 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?

The mechanics behind adding a threshold value for payment protections need to be fully understood. Whilst card scheme rules have created threshold limits for merchants for chargeback protections, there is no similar mechanism for faster payments. This could be a fairly heavy ask that requires a rewriting of messaging requirements and would need a full cost benefit analysis including for consumer communication to explain applicable transaction values. The more layers that are added to consumer protections, the more costs are associated. The convenience and speed of FPS should not be impacted by these additional complexities.

Consumers do not have a standardised view on what value payments should be covered by payment protections. Whilst they have had time to familiarise themselves with transaction limits, acting as a form of protection, their awareness around other forms of protection is arguably low.

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

UK Finance is not in a position to answer this question.

12. 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)?

More work needs to be done to understand the nature of the potential detriment to consumers, given the early stages of usage of consumer-to-business FPS payments, and to identify what harm additional protections may need to address. This will require consideration of different use cases and scenarios, in order to identify plausible solutions and the dependencies to deliver these. If particular use cases are detected, non-payment specific protections may need to be considered as part of a wider review into consumer protections, as mentioned in the introduction. We do however recognise that applying consumer protection as a result of use cases in this context is difficult, for

example the ability to accurately know what the use case is for a payment; determining which use case and value is right for protection and communicating to the consumer which payments are protected.

13. 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)?

Any protection will impact the participants in the payments value chain. These impacts would need careful consideration in the design of any arrangement. The costs of protection would need to be met and underpinned by a liability model and rules.

14. 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?

UK Finance is not in a position to answer this question.

15. 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)?

It is difficult to envisage interbank consumer protection that did not identify the payer and payee. Some payments would be non-qualifying or out of scope under any arrangement, and some payments would be excluded for other reasons, for example, transaction value. Identifying the payer as a consumer (sole trader or small charity) and the payee as a business provider of goods and services, would make identities relevant to the payment. The identity of the payer and payee could also be necessary for other reasons, for example, to mitigate fraud risk associated with protection.

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

Whichever framework is agreed for consumer protection, it must be clear to the customer in which circumstances they are protected. Customers may be making payments via FPS thinking they are protected, however in the retail space, they are not. This would require a clear legal framework and rulebook, along with a dispute's mechanism and some independent oversight.

The absence of a strong governance process making clear all participants roles and responsibilities could make the operation of a consumer protection model, if created, expensive, administratively difficult and not a good experience of end users.

17. 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)?

There is currently no economic model to support the process for claiming consumer protection for interbank payments. The absence of an economic model – if there is an expectation on PSPs to refund – could threaten free in credit banking. Should further protections be established as necessary, significant work would be needed to understand how such protections could be

sustainably delivered, including careful consideration of the economic and commercial models underpinning such protections, and where the money for refunds would come from.

As set out in detail in response to Question 6, we believe that liability for faulty goods and services should lie with the payee in line with the Consumer Rights Act. If an interbank model were created, for example through a scheme rule change, it would be the merchant's PSP who would be relied on for repayment. As the provider of the commercial bank account, the payee PSP will have a commercial relationship with the payee for them to accept Faster Payments. Responsibility for refunding can be catered for within this commercial/contractual relationship. Rather than an immediate refund, the decision to refund and the challenge should reside with the merchant and its provider not the purchaser's account provider. It is important the latter should not incur liability.

18. 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?

The creation of trustmarks require branding and a central structure to administrate. This adds cost to the implementation of a protection mechanism. Clarity on how the trustmark is supported and funded is needed, depending on the model.

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

There is not just one singular party that has a role to play here. We need clear, consistent messages around the protections available for different payment types and also protections that apply to defective goods and services generally in the Consumer Rights Act. Clarity on the payment type being used can help here and payees can also explain protections.

In "Future Ready Payments 2030" industry committed itself to further promote customer education and improve awareness of current payment protections. There is also a potential role for the Money and Pensions Service, which has a remit to provide guidance concerning consumer protection and could play a more active role in ensuring consumers understand the protections offered to them.

Industry players should understand and consider the societal differences in users of payment types, and consumer confidence to seek a refund, including identifying the barriers to educating customers on protections at the point of transaction.

20. 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?

We believe that consumers are most likely to turn to the merchant as the first port of call to resolve a dispute. Pay.UK research⁴ highlights one example of this, where they found that in the case of slow refund returns, consumers will typically complain to the retailer first as they blame the retailer for the cause of the refund not being processed fast enough. This indicates that there are gaps in

⁴ <https://www.wearepay.uk/wp-content/uploads/Consumer-Protection-Summary-Paper.pdf>

consumer understanding of the refund process and the role of the merchant relative to the PSP. Overall, we believe that where appropriate, consumers should be encouraged to speak directly to the payee first to resolve a dispute.

Given the complexity of the UK consumer protections landscape, there is a need to take a holistic view and consider the full range of protections through which a consumer might seek compensation, and not the payment mechanism protections alone.

Communication concerning the different levels of consumer protections should be made transparent across all industry participants. An educated consumer should be informed by all participants to ensure sufficient levels of awareness, which equally, should guarantee that consumers have considered the level of risk they are willing to countenance when undertaking a payment. There is existing guidance in Open Banking Standards that a TPP should communicate protections, however, as OBIE Customer Experience Guidance isn't mandatory for TPPs, there is limited information available concerning the differing levels of protection on offer.

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

This is a material consideration given the relatively low volume of such transactions and data on complaints.

22. 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?

UK Finance is not in a position to respond to this question.

23. 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?

Any approach should look to foster clarity at a scheme level and beyond regarding roles, responsibilities, liabilities and dispute resolution around which firms can put in place appropriate systems and processes to serve their clients. This would make it easier for all concerned to do business and would promote confidence amongst end users. While rules should be customer-driven, they also need to be fair, proportionate and based around a sound economic model.

We see merit in the relevant parties (e.g. trade bodies, PSPs, consumer representatives, regulators) working collaboratively and taking the time to understand and analyse the issues, identify where there may be gaps and then consider how best to address them. This process should think through the new models that are now emerging in the market (e.g. as use of PIS begins to grow). This brings with it a more complex set of interactions with a larger number of players potentially involved in the transaction. Such a review should not be restricted to Faster Payments person-to-business payments but instead should take a more holistic view. It should take into account the existing legislative framework, the various parties involved (different types of payment service users, PSPs, regulators etc.) as well as scheme rules, industry-led voluntary codes, developments such as Confirmation of Payee and OBIE's Dispute Resolution Mechanism

system. There needs to be an alignment of various industry and regulatory Consumer Protections conversations in order to streamline effort and maximise outcomes. These conversations could be joined with others on the New Payments Architecture (NPA) to form a short-medium term strategy to ensure future payment systems work well for end users. For example, ensuring that data sharing capabilities being discussed now; development of ISO messaging; development of instant payments; considerations of consumer protections; consumer communications etc. work together and streamline investments.

Payment protections in the UK do not exist in isolation. They are viewed by consumers in conjunction with and/or as supplemental to legal, personal and retailer protections. Any analysis of consumer protections will need to consider this alongside the wider impact of additional protections on different business models and products for end users as well as the unintended consequences that could arise, for example whether a protection within the payment system rules would constitute an unreasonable barrier to entry. Furthermore, PISPs fall out of scope of payment systems rules, so if this route were to be pursued an extra set of requirements should be considered. Additional functionality would also be needed to be implemented to enable an ubiquitous PISP payment refund method, although there is an OBIE standard. This is currently only implemented and available from CMA9 financial institutions.

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

Any protection mechanism would require governance. Depending on the design of the mechanism, the governance could be provided at different levels, for example by a scheme operator or through a commercial arrangement between a group of market participants. Any mechanism would need to pass competition tests to ensure it did not restrict market access or create an unnecessary barrier to entry but fairly covers the costs, risks and service of all participants.

A competitive market will also deliver consumer benefits. Competition may naturally allow for protections to evolve in the market, or regulators or other bodies could introduce protections. As work continues to identify the appropriate consumer protections for different payment types, it will be important to keep in mind the various options to deliver protections in different use cases. There does not have to be a blanket approach adopted across all payment types, and whether competition or central coordination should facilitate the emergence of protections may differ in each instance. Furthermore, regulation should be considered carefully and should be proportionate to the levels of potential customer harm.

25. 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?

It is still unclear whether legislation is required at this stage. More work needs to be undertaken to understand if and in what circumstances legislative or regulatory intervention is required.

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

There is currently no economic or liability model that reflects the service, costs and risk of all participants – including ASPSPs. The creation of a liability model which places all responsibility on PSPs would be a very significant cost – creating credit risk for these participants – threatening free

in credit banking and possibly creating different scrutiny processes for payees to participate in FPS.

Security and consumer protection standards can inspire trust in payments but if they are prohibitively expensive to provide due to significant infrastructure costs (not just in the centre, but the distributed costs for PSPs to integrate to them), this may inadvertently restrict the market. A careful balance needs to be struck as it is of key importance to customers that sufficiently high standards apply consistently across the industry no matter the size of the provider.

It should be recognised that payments networks serve the business and public sector who may have very different needs. For example, some major international companies are now choosing to move certain types of transaction (e.g. dividend payments) to Faster Payments. In the gig economy, it also suits payment on demand. It will be important to ensure that the scope of any changes, which may be introduced is made clear at the outset. Proposed changes may require other organisations (e.g. merchants) to take action as well as their payment service providers and this needs factoring into any cost-benefit analysis or impact assessment.

To questions around PISPs, if industry and public authorities feel the need to introduce protections for interbank payments, we may find we have to sustain it with pricing that restricts access and competition unless we can come up sustainable commercial foundations that balance service, cost and risk. Furthermore, key drivers for merchants using PISPs are the reduced cost of payments and speed of settlement. Whilst protection is important, how protection impacts the attractiveness of PISP payments and FPS must be balanced.

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

All costs and benefits should be explored by the PSR. It is too early to make a judgement on which is most significant.

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

Currently, regulators and industry are not in a position to suggest concrete solutions in terms of what protections should be suggested and so greater clarity is needed before we can truly understand the economic impacts on firms. However, the PSR should be alert to the fact that the cost of doing business and creating new business models in the payments industry is increasing. This is not just the cost of innovating and implementing both mandatory and non-mandatory change, but ongoing costs for each transaction. Each payment itself is a cost, both for direct and indirect providers. However, on top of this, to be a competitive service, other ongoing and per transaction costs are layered on top such as a confirmation of payee (CoP). There are also the costs related to Open Banking such as participation and change overhead and there are also large infrastructure changes such as RTGS and NPA which are increasing costs for firms. This is expensive enough for established providers, but for new entrants it can pose even greater challenge. Some regulators have recognised that providers should charge for services and indeed we have seen some enter the market that do, but there is significant pressure on many players and especially with the current low interest rate environment, higher costs for consumers may be

inevitable unless more sustainable footing can be found. The no charge model for consumers is potentially under threat and the need to provide payment protection might support this.

29. 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?

Consumer protections come at a cost and so the commercials of protections need to be understood. There is also a need to understand the broader implications for the payments market and be clear what the value chain may be for both consumers and merchants.

Expanding on notion of the cost of payments, it is important to understand that we should not just focus on the cost of the payment product itself. The cost of a payment is linked to credit risk exposure which exists across the payment chain.

If broader protections are to be introduced for Faster Payments, there may be unintended consequences for business customers caught up by not accepting payments in purview of what is put forward by the PSR.

Virgin Money

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?

Virgin Money Response:

There are well established protections in place for Direct Debits and plastic cards. As faster payments have evolved since launch in 2008, the payment model has changed significantly. It was originally intended for one-off low value, low risk payments between consumers, however, with changing consumer and business behaviours and the proposal to increase payment limits to £1m in 2021, this is now no longer the case.

The introduction of Open Banking has further impacted the faster payments landscape. The PISP model has its own dispute management system (albeit this is optional and does not have the level of automation in place as the current chargeback systems does so would not be scalable), which is wider than the Participant to Participant model for recovery of funds.

Credit Payment Recovery was introduced to protect the customer and assist with recovery of funds for misdirected payments due to customer or bank errors, albeit the recovery of funds is on a best endeavours' basis. Confirmation of Payee has also been introduced to help prevent misdirected payments and fraud. New Payments Architecture could also bring further changes.

Changes in the payments landscape need to be taken into consideration when assessing consumer protection to ensure that these are balanced and consider all aspects and impacts across the consumer landscape.

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

Virgin Money Response:

One of Virgin Money's primary objectives is to protect our customers when they transact with us.

As all payment types vary there is not a one size fits all approach to consumer protection. As faster payments evolve in the future and moves even further from its original intended use, the need for consumer protection should be considered against the new use cases. Further detailed analysis is required to understand and agree what form of protection is required and what types of payment are higher risk and require that protection.

Awareness levels of the protections credit cards give customers through chargeback rights and s75 claims are high. There are no protections that apply system wide for interbank payments. Consumers need protecting to ensure they can make informed decisions about how to pay e.g. which routes have no chargeback rights.

Suggest reviewing FCA claims guidance and subsequent work (CAA review) to help simplify the travel and entertainment claims process. PSR needs to pre-empt the scenarios that could arise as a result of the new payments landscape e.g. PISPs operating as intermediaries as well as considering non receipt of goods and services, not just faults with them.

There is appropriate protection in place for the current scale and level of payments made, however, if the future direction of travel is that faster payments etc. are used similarly to plastic cards then the schemes/merchant acquirers/issuers infrastructure and controls that are currently in place for plastic cards would need to be broadly replicated for payments to ensure consumer and PSP protection and clarity of roles and responsibilities.

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)?

Virgin Money Response:

It is too early to understand how PISP payments will evolve, the volumes are very low in comparison to plastic cards. The different use cases e.g. retail goods and services payments versus consumer to consumer transactions have a vastly different risk profile and therefore require different levels of protection. At this stage, without knowledge of the use cases we do not know what will make up the majority of transaction volumes.

Wider adoption of Confirmation of Payee across the industry may influence consumer behaviour, however, it is too early to understand the benefits. Further collaboration and analysis are required across the industry to understand the problem and provide clarity to consumers as to what protections are available. The need for consumer protection may result in consumers being charged for banking services so any change must be balanced to ensure protection is appropriate. Is it appropriate to provide protection on all purchases whilst most are low risk, or should the focus be on higher value payments?

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?

Virgin Money Response:

No, although would require changes to operational processes to identify these payments and ultimately result in more costly payment processing.

5. Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

Virgin Money Response:

Yes, to ensure a consistent level of protections across payment methods (e.g. Direct Debit guarantee, scheme, interbank retail payments).

Further analysis and collaboration across the industry is required to identify and agree the scope of consumer protection required i.e. low value payments versus high value/higher risk payments.

Key factors in defining protection going forward are cost and consistency balanced against the levels of protection offered.

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?

Virgin Money Response:

All actors within the payment lifecycle would require clear roles and responsibilities. Currently as merchants are not regulated, they do not have any liability in the faster payments process.

If the seller is still trading at the time of any claim, then the seller should be responsible for payment protection for faulty goods/goods not delivered. However, if the fault is with the PSP/PISP they should be accountable. Appropriate technical and legal infrastructure would have to be put in place to implement these changes.

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)?

Virgin Money Response:

Yes, changes in legislation and contractual arrangements between sellers and PSPs would be required to ensure that liability is clearly understood and apportioned.

Would require a robust mechanism across the retail industry with all sellers providing the same level of protection. A lack of consistency will only add additional confusion for the consumer.

Costs and competition would also need to be considered.

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

Virgin Money Response:

Yes, to ensure a consistent level of protections across payment methods (e.g. Direct Debit guarantee, scheme, interbank retail payments).

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

Virgin Money Response:

Clear guidelines and limitations would need to be agreed to ensure the consumer does not try to claim back historical payments as has been seen in the past with Direct Debits.

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?

Virgin Money Response:

The viability and level of a threshold would be subject to credible MI. Generally, thresholds could help avoid disputes for minor amounts, however, any change in this respect would have to consider those who are financially vulnerable.

In terms of simplicity there are no thresholds used for chargebacks or Direct Debit guarantees and this works.

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

Virgin Money Response:

We currently have limited capability to consistently identify different types of payments. There is some limited Open Banking specific MI relating to API calls.

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)?

Virgin Money Response:

In principle, a combination of use case and transaction value would enable clarity for PSPs and consumers on what is protected, and not.

For the Bank to implement use cases may prove extremely difficult and would require an overhaul of payments and dispute systems across the industry.

The cost and time required to do this would be extensive.

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)?

Virgin Money Response:

Introduction of use cases may introduce additional complexities and ambiguity on roles and responsibilities between sellers and their PSPs and require increased definition and oversight from regulatory bodies to ensure clarity and compliance.

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?

Virgin Money Response:

At the moment we are unable to identify different types of payees. Implementation of Confirmation of Payee may provide additional opportunities as CoP Participants distinguish between personal & business customers at mandate creation but not at individual payment level.

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)?

Virgin Money Response:

No, this could become subjective and result in inconsistencies across the industry and loss of consumer confidence.

Questions related to how consumers might claim protection

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

Virgin Money Response:

Virgin Money are committed to consumer protection but for this to be consistently and cost effectively enforced would require something stronger than a governance process.

For example, we would require something akin to the process that exists for plastic cards. The plastic cards infrastructure is significant and includes technology and financial automation of the process of having the funds flow automatically. These have been built over many years at substantial cost and are scalable on a global basis.

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)?

Virgin Money Response:

Greater consistency and clarity for the consumer would increase confidence in using interbank systems for retail purchases.

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?

Virgin Money Response:

Virgin Money are in favour of promoting awareness around customer protection, however, more clarity is required around the levels of protection before a trust mark and associated promotion could be considered.

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

Virgin Money Response:

There should be capability throughout the payments chain, including PSPs and PISPs to ensure customers have an understanding of the protections offered.

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

Virgin Money Response:

In our experience customers will generally raise issues with the PSP they bank with. If customers interact with a brand other than their bank in a PISP model they may ask that firm to resolve the dispute in the first instance (as they currently do in the first instance with any e-commerce disputes).

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

Virgin Money Response:

If retail purchases through interbank payment systems were to increase the expectation is the consumer would approach the seller (or potentially the regulated PISP depending on how the sales journey is branded), as this is the person/entity they purchased the goods from and this is the path with the least friction. However, we feel that any escalations would still be directed to the PSP they bank with.

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?

Virgin Money Response:

We feel that the communication channels used through Credit Payment Recovery can be effective, however, there are difficulties where one of the parties is not a Direct Participant. This can lead to delays and non-responses. Timelines for these investigations are also not in line with the immediacy a customer would expect.

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?

Virgin Money Response:

Pay.UK is not currently structured nor has the required oversight available to manage and enforce sanctions on Participants.

Furthermore Pay.UK only have control over Direct Participants of the payment schemes and would be unable to enforce rules over Indirect Participants (without regulatory change) so full coverage of PSP's would be difficult to achieve.

Significant legislative change would be required to get other parties in the payment chain to participate in providing consumer protection. Any change should therefore be outwith the payment system rules.

A governance system would be preferable to making rule changes in payment systems, however, consideration would have to be given to the level of take up across the wider industry.

As noted in our responses above, the technical infrastructure required to successfully operate consumer protection across the whole ecosystem would be significant and costly. The costs and complexity will be even greater if cross border payments are involved.

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

Virgin Money Response:

Until further clarity is established, we have no specific opinion, however, consideration must be given to any type of enforcement which would be difficult without centralised systems to track disputes between market participants.

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?

Virgin Money Response:

We feel that some legislative or regulatory intervention is inevitable in introducing a new dispute process, however, further analysis is required to understand the extent of the intervention required.

Currently, we are fully reliant on PSRs and this should be reviewed as they do not provide the coverage in an e-commerce type scenario.

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?

Virgin Money Response:

We agree, as stated, that there is likely to be considerable direct and indirect costs in enhancing consumer protection for interbank payments. This is evidenced through existing consumer protection on card transactions. In terms of benefits, it is not clear at this point how a tangible assessment of benefits can be detailed without further clarity on the take up and ubiquity of interbank payments for retail purposes.

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

Virgin Money Response:

We feel that there will be significant costs to technology and ongoing governance. In terms of benefits we don't feel there is enough clarity to understand tangible benefits.

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

Virgin Money Response:

We feel that costs should be allocated throughout the payment chain including sellers, PSP's and PISP's and should not be directed to a set group such as Direct Participants. This is the case for the protection that currently exists in plastic card payments.

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

Virgin Money Response:

As stated above, we feel there would be significant costs from a technology and ongoing governance perspective. A review and possible amendment to customer service contracts would need to take place.

Visa

Visa response to PSR call for views: Consumer protection in interbank payments (CP21/4)

Executive Summary

Fraud is showing no sign of abating and is increasingly becoming more sophisticated. Visa takes fraud seriously, being founded on the promise of securely processing billions of transactions and payment credentials each year to safeguard against unauthorised transactions and fraud.

The PSR and the industry have a common responsibility to ensure consumers are protected now and in future. As of today, a level playing field in this market has led to industry driven innovations and a model for payments that is safe, reliable and secure. Similarly, for interbank payment systems we expect that the industry should prioritise the needs of their customers.

When it comes to consumer protection in payments, we recommend focusing on developing outcomes that guide the competitive environment for convenient and secure interbank payments. Our recommendations for this review are set out below.

- 1. The future of consumer protection across the payments ecosystem must focus on the outcomes that consumers and small businesses want.** Improving customer awareness of the protection principles and expectations around payments is a key priority for Visa and it requires collaborative work across the industry to ensure a level playing field approach and common understanding of these protections.
- 2. Consumer protection costs and additional risks to businesses and consumers need to be considered.** There are inherent trade-offs and additional costs for the industry if new infrastructure or schemes are mandated that risk hindering both businesses and consumers. We have identified below some of the critical issues that this review should consider and highlighted the key drivers of costs that reflect the complexity of faster payments commercial frameworks.
- 3. Existing regulations and commercial frameworks already address consumer protection rights regardless of the payment form used.** Ultimately, both existing commercial framework contracts and regulatory and legal avenues are offering proportional protection to those consumers not receiving adequate responses from the parties with which they hold a relationship in contractual terms.

We urge the PSR and other stakeholders to considering these issues carefully over the coming months, as failure to do so could jeopardise payment innovations and the emergence of competition and new players in the space of retail payments.

Introduction

We welcome the opportunity to respond to the PSR's Call for Views on consumer protection in interbank payments. As the UK's payments landscape innovates and evolves, we believe that a payment system that works well for everyone, include protecting consumers is a priority.

Visa was founded on a simple but transformative idea — to make payments between consumers and businesses simple, reliable and secure. That idea has been at the heart of Visa's success and our values for more than 60 years. A common, convenient, secure and reliable global payment experience requires strong protections built within its system architecture and rules designed to minimise the risks of harm to consumers and market participants.

As of today, a level playing field in this market has led to industry driven innovations and a model for payments that is safe, reliable and secure. Similarly, for interbank payment systems we expect that the industry should prioritise the needs of their customers.

Innovation at Visa

Visa helps provide the capabilities and built-in global interoperability that will allow for continued growth and adoption of new innovations. From blockchain or machine learning, all the way to value-added services that can strengthen consumer protection on new and existing payment rails, we are constantly adapting and adopting new innovations to meet consumer outcomes. For example:

- **Visa can operate on top of any existing RTP network**, providing back-end technology, rules and standards. Visa and the industry as a whole have also deployed many effective solutions to ensure safe and secure Peer-to-Peer Payments (P2P).
- Visa played a critical role in developing the **Request to Pay** message that forms the basis of the Pay.UK standard interbank payments. The service enables billers to provide consumers and businesses additional choice and flexibility by directly requesting funds rather than sending traditional invoices. For each request, for example, receivers are asked whether they would like to pay in full or in part, request an extension, communicate directly with the biller, or decline to pay.
- **Confirmation of Payee** has now been introduced –a new way of checking account details to give customers greater assurance that they are sending payments to the intended recipient. The industry has also invested heavily in ensuring that those consumers subject to **Authorised Push Payments scams** are reimbursed. **Visa transaction controls** allow issuers banks to set the transactions limits to payments, which helps reducing the risks of overdraft of declined transactions for faster payments.

- As part of Visa's ongoing commitment to consumer protection, we established a '**chargeback**' process for banks that can help Visa cardholders get their money back in situations when goods or services have been bought but haven't been delivered, or aren't received in the form as expected. This, together with a wide range of consumers innovations, also helps create the right incentives for participant organisations to align incentives and resources against misuse payments that run on our network.

If the cardholder paid on a Visa debit or credit card, they could make a chargeback claim to the bank that issued their card, and they can then put in a request to the retailer's Acquirer. Unless explicitly allowed by law, a cardholder is not obligated to accept a voucher or other redress (e.g. points for future use) in lieu of a refund. If the cardholder does not wish to accept an alternative to a refund and the merchant fails to offer a refund to the card, a dispute right exists. The first step in such situations is for the consumer to contact the merchant, retailer, or tour operator they made the purchase from to understand whether a bonding authority or insurance scheme covers them. If they are not fully covered, and only partial or no compensation will be paid through this route, they can then speak to the bank that issued their Visa card to look at more options.

- **Visa's dispute rules** often provide an additional layer of protection. Our approach to disputes between cardholders and merchants is governed by Visa's rules (rules we set out for financial institutions who want to issue or accept Visa to help us maintain an adequate and high standard of service), and managed systematically on a global basis. This approach is designed to protect cardholders when merchants anywhere in the world fail to deliver a promised good or service.

Fundamentally, our business is founded on the promise of securely processing billions of transactions and payment credentials each year to safeguard against unauthorised transactions and fraud. In recognition of this responsibility, Visa is relentless in fortifying the security, features and soundness of transactions, utilising our brand and network, and enhancing the security of the broader payments ecosystem to best protect consumers in all aspects of the transaction.



Our Response to the Call for Views

We understand PSR's views that consumers and businesses should have enough protection when they make payments using interbank payments systems, and in particular, faster payments. If we are to meet the needs of consumers and merchants then our focus needs to be on outcomes and to find an effective way to work on these issues closely with the industry to ensure that appropriate mechanisms to make claims are in place and well understood by consumers when something goes wrong with their payments.

Developing a well-structured set of consumer outcomes will provide a strong base for a competitive market response, avoiding prescriptive approaches that may have a chilling effect on innovation and/or distort competition.

Consumer protection goes well beyond payments. When it comes to consumer protection in payments, we recommend developing outcomes that guide the competitive environment for convenient and secure interbank payments. Our recommendations are set out below.

1. The future of consumer protection across the payment ecosystem must focus on the outcomes that consumers and small businesses want

The Covid-19 pandemic has brought unprecedented challenges and widespread economic and social change. It has also accelerated progress, including the shift to e-commerce. However, consumers' expectations and priorities remained the same. Consumers and merchants need to trust that there is enough protection when making payments and being aware that they have a choice when making payments because they recognise that form of protection.

As we look at the current and future payment landscape, it is clear that consumer protection standards are continuing to emerge across different payment methods and use cases. Therefore, to achieve the outcomes that consumers want, consumer protection for retail payments will have to consider these new developments and changing needs in the use of payments. This implies consideration on the different risks associated with consumer's choices and their expectations about the payment method they use. For example, when consumers think the risks of a transaction are minimal because this is associated with a low-value payment, they may be less inclined to choose and want a particular payment method for their form of protection. On the contrary, for high-value transactions consumers are more likely to choose a payment method that offers protection on their purchase in the event that there was a problem. When it comes to new and additional protections, we think that a common baseline to review the expected outcomes by consumers should remain a priority.

Interbank payments play an important role in the future payment landscape. We note the PSR's question on the relevance of promoting consumer awareness around the level of consumer protection in interbank payments using marketing; [REDACTED]

Along with the benefits that interbank payments services provide, there is a responsibility to ensure that consumers fully understand the services they are using and what happens across different scenarios where there is a problem with their payments.

As the PSR has identified in the Call for Views, there are different risks to consumers depending on the payment method used. For example, a key risk for faster payment, is the immediate availability of funds for goods or services not yet received by customers because they are invalid from a processing service point of view – e.g. they are not as described or counterfeit merchandise. It is important therefore that payment systems are designed to help reporting market participants against unauthorised or unsatisfactory transactions so that consumers are the direct beneficiaries of the faster clearing and settlements system. In some instances, instead, P2P do not have scrutiny on the purpose of the transaction for which the payment has been made; and only know about the payee and the party initiating the transaction, which is a necessary but not a sufficient condition for consumers to guarantee a mechanism of redress in a retail payment services.

While it is important to maintain the convenience, speed and security that faster payments offer, it is giving consumers transparency and a clear understanding of their obligations and rights – and under which circumstances, for example, a refund may be possible, or the consumer has been defrauded for lack of due diligence in choosing the right form of payment – that differentiate the consumer protection experience of payment methods for both consumers and merchants.

Working on the core outcomes of consumer protections and enabling the industry to improve customer awareness of the protection principles and expectations around payments is a key priority for Visa. It requires collaborative work across the industry to ensure a level playing field approach and common understanding of these protections.

[REDACTED]

[REDACTED]

[REDACTED]

2. Ensure that the analysis includes the costs of consumer protection and additional risks to businesses and consumers.

We think there are some risks of regulatory intervention for consumer protection that should be assessed. An overly prescriptive legislative and regulatory approach to consumer protection is likely to incur substantial costs for the industry, which hinder innovation, disruption and competition, and is unlikely to support the same variety, innovations and speed of new technology – to the detriment of consumers – compared to a more agile approach that puts consumer outcomes at the heart.

In particular, we think that mandating rules or schemes for faster payments consumer protection could lead to unintended consequences and potential distortive effects to competition between different payments methods. As per our response on the NPA Call for Views, we think it is crucial for the PSR to ensure a level playing field in the market within interbank and between interbank and other payments systems.

A level playing field in payments is critically important if the UK wants to stay ahead as an attractive domicile for internationally active payment innovation and encourage the emergence of competition and new players in the space of retail payments. We believe it is better to promote innovation and set open standards and outcomes that facilitate change rather than building overly prescriptive rules.

There are inherent trade-offs and additional costs for the industry if new infrastructure or schemes are mandated, that risk hindering both businesses and consumers. We have identified some of the critical issues that this review should consider and highlighted the key drivers of costs which reflect the complexity of the commercial frameworks of payment systems.

Moral hazard on both the consumer and merchant side

At the moment some merchants offer retailer protection to their customers. In the event of higher protection by regulation, all customers would pay higher prices rather than just those who value safety and security more highly. Some consumers may be more willing to make purchases in more risky situations, for example, by purchasing plane tickets when an airline goes into administration, taking less care with their payment details, or even engaging in fraudulent activity. This would lead to an increase in claims and higher costs. Potential solutions may be to introduce excess provisions to ensure customers carry some of the cost. As an analogy, excess in insurance products prevents policyholders from making lots of small claims, which would make insurance more expensive for everyone. Similarly, capital requirements for financial institutions play a role in reducing moral hazard of the institutions.

Equally, some merchants may continue accepting payments even in risky situations, for example, if they anticipate going out of business before consumers receive their goods.

Cost of regulatory asymmetry

A further issue to consider is that requiring payment protection of some payment methods and not others could have distortive effects on competition. If consumers “undervalue” payment protection, then unregulated payment methods will receive an artificial competitive advantage. This distortion of competition could also encourage a race to the bottom from market participants.

Impact on the cost of acceptance

It is possible that requiring additional protection on faster payment would increase merchants’ cost of acceptance. This is particularly clear in the case of account-based payment methods that already charge a merchant fee. However, the business model is less clear for some more traditional account-based payments.

Higher costs of acceptance, which merely reflect the cost of providing consumer benefits, are not necessarily problematic. Indeed, they may actually improve economic efficiency by ensuring a more level playing field across means of payment.

However, this could also impact the development of faster payment: one of the drivers for merchants to use Pay by Bank is the relatively low cost of these payments, and one of the unintended consequences of regulatory intervention could be a slower adoption from retailers of these new faster services.

3. Existing regulations and commercial frameworks already address consumer protection rights regardless of the payment form used

We understand the PSR’s view that the scope of consumer protection needs to be clearer. In particular, the system should have the right contractual arrangements with clear liabilities from a flow perspective, while bearing in mind that consumers do have rights also outside the payment flow.

It is too early to determine whether the market will fail to deliver a fit for purpose mechanism to consumer protection. The PSR has recognised there are multiple organisations and policymakers looking at the protection of interbank payments, including the HM Treasury Payment Landscape Review (PLR), Open Banking and Pay.UK. A coherent approach considering market priorities and outcomes for consumers and merchants will therefore be particularly important.

A collaborative approach with the ecosystem can continue to foster the development of new innovative payment solutions and meet the priorities of consumers when it comes to payments. In the UK, Visa is eager to partner and collaborate with new and existing payment infrastructure to explore how Visa's network, capabilities and value-added services could support businesses, the Government and regulators in meeting these objectives.

We think that consumer protection products and solutions available in the market already address the risks of harm to consumers and businesses using existing regulatory avenues, regardless of the payment method used. Ultimately, both existing commercial framework contracts and regulatory and legal avenues are offering proportional protection to those consumers not receiving adequate responses from the parties with which they hold a relationship in contractual terms.

Conclusion

Looking toward the future, a focus on the outcomes-based regulation will enable the industry to focus on what customers want, and to compete and develop innovative solutions to meet these outcomes. As long as consumers see value in payment protection and payment methods are able to monetise this through value to merchants, competition is likely to provide optimal levels of consumer protection. Innovation requires flexibility without overly prescriptive regulation, such as obligations to join specific protection schemes for faster payments that would impact on incentives and agility, which is important in the context of the increasing speed of change.

Wise

WISE LTD CONSULTATION SUBMISSION CONSUMER PROTECTION ON INTERBANK PAYMENTS

**For the attention of
PAYMENT SYSTEMS REGULATOR**

APRIL 2021



ABOUT WISE

Wise is a global technology company that's building the best way to move money around the world. Whether you're sending money to another country, spending money abroad, or making and receiving international business payments, Wise is on a mission to make your life easier and save you money.

Co-founded by Taavet Hinrikus and Kristo Käärmann, Wise (formerly TransferWise) launched in 2011. It is one of the world's fastest growing tech firms. We're proud to be headquartered in the UK, employing over 2,300 globally, and to have a sustainable business model which has turned a net operating profit for 4 consecutive years.

Over eight million people use Wise, which processes over £4.5 billion in cross-border payments every month, saving customers over £1 billion a year.

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

1. Consumer protections need to be considered alongside emerging future payments developments. Traditional banking with cards and direct debits have been in mainstream use for decades, and therefore offer the most mature consumer protections; however more recent innovations, both in payment rails and with new fintech businesses like Wise entering the market, protections vary due to different stages of development and maturity. As the UK payments landscape continues to evolve, with new players utilising the existing payment market infrastructure to deliver new ways to pay, it is vital that the industry remains focused on making sure payment systems and consumer protections associated with them remain fit for purpose. This is for the benefit of consumers, businesses and the UK economy as a whole.
2. It is also important to recognise that existing consumer protections including chargebacks, Section 70-75 in the Consumer Rights Act and the PSR's own payment services regulations are already extensive. There is a differentiated factor between some of these protections, which were originally created to protect consumers from taking a line of credit and then sustain losses due to misconduct by the seller: the same risk does not apply when making an interbank payment, as users have not taken out a line of credit.
3. In the consultation document, the PSR has also not provided evidence of consumer detriment through existing protection measures, and rather just focuses on the number of claims made. Once a proper analysis of the impact to the consumer is undertaken, ways in which strengthening existing protection measures can be looked at more effectively.

4. The FPS interbank rails have seen additional payment protections introduced from PSPs, focusing on strong and secure customer authentication. Given the relatively new introduction of FPS in the UK and the rise of innovations with interbank payments including Open Banking, consumer protection will inevitably become more complex, as it evolves to changing innovations. The approach must consider the right balance between strengthening consumer protections whilst ensuring innovation in the fintech sector continues.

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

5. It is difficult to define 'appropriate' levels of protection given the FPS system relatively new, and therefore there has not been sufficient time for industry to react and build appropriate protections required. This is still a very much live and moving issue; it is difficult to undertake a thorough analysis of the appropriate levels of protection. Wise, as well as other fintech companies, are currently testing Confirmation of Payee technologies in our systems, which will help tackle fraud - such technologies and future innovations must be given time to mature before making an assessment on 'appropriate' levels of consumer protection.
6. Consumer protection must also be defined more broadly than the redress mechanisms considered in this consultation. By looking at consumer protection through the lens of fraud prevention, there is currently not enough cross-industry efforts to effectively prevent scams from taking place. Wise has two recommendations to help protect consumers in this regard:
 - a. There should be enhanced payment message data to allow for better analysis by any given individual PSP. Sharing and verifying more data naturally provides more confidence to both financial institutions and end users on the validity of payments.
 - b. Fraud detection tools should be developed centrally at the payment system level in order to better handle and catch systemic fraud that utilises networks of participants. At the moment, there has not been enough done on an industry level to properly prevent a scam from happening.

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)?

7. Wise is committed to working with industry to deliver robust and effective consumer protections for interbank payments. We are committed to transparency as a core business mission, and strive to deliver the best payment journey possible for our customers.
8. There remains a complex web of varying consumer protections for different payment methods and products used by consumers. More needs to be done in order to clearly explain different protection levels currently available to consumers.

9. To deliver further customer benefits and provide greater clarity, confidence and consistency in consumer protection it is clear that regulatory collaboration, industry cooperation and increased research of the market will be needed.

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

10. [No answer provided]

Question 5: Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

11. Before any extension of payment protections are considered, how these protections are funded, the burden of proof framework and reasonable liability must be clearly defined. In any case, it is important that there remains a distinction between authorised payments for goods and services, and authorised payments regarding personal financial management. Both carry different levels of risk, and so should continue to carry different levels of liability.
12. Extending payment protection to other use cases also fails to tackle the issue of fraud prevention itself. The PSR must look to work with industry to develop stronger anti-fraud measures at source.

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)?

[Questions 6 & 7 answered together]

13. Payment protection for retail purchases through FPS, taking a similar approach to existing chargeback and credit protection schemes, would risk creating a significant financial burden on non-bank PSPs, though extensive design and implementation costs. Such a shift in liability risks challenging the business models of some PSPs and PISPs, risking sector competition and ultimately innovation.
14. Any change to the liability framework must be carefully considered. The existing model of merchant liability when there is a failure to fulfill contractual obligations is a tried and tested mechanism: shifting liability between consumer and PSP, without considering the seller or merchant for liability, may propagate further bad seller behaviour, and ultimately fail to build trust between all parties involved.

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?

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?

[Questions 8, 9 & 10 answered together]

15. Variable recurring payments already provide a faster, more secure and cost effective alternative to traditional payment methods, which must be considered when studying any changes to payment protection.
16. Consumers have varying degrees of risk appetite, and there is no definitive approach to consumer protection. However, high value transactions hold inherently higher risk than low value transactions, which may make the implementation of a threshold (and increased liability between all parties) beneficial for customers.

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

17. Wise is currently able to use payment reason functionality ('reference') to help us understand the different types of payments made by our customers. In some circumstances, depending on local regulation or partnership requirements, Wise will collect the purpose of a transaction directly from the customer where a payout partner requires this information, which we collect and send on with the payment. Additionally, card payments used on our platform are categorised by pre-defined merchant types.

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)?

18. It remains too early to consider definitive use cases that would be covered under payment protection. Consumer-to-business FPS payments remain relatively new, and so to develop protection mechanisms before maturation of the market risks either high liability on PSPs, or poor consumer protection.
19. Wise continues to liaise with industry and regulators to consider and monitor use cases of our customers. A comprehensive analysis of the sector in due course would be necessary before considering any move to implement payment protection mechanisms through use case and transaction value metrics.

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)?



20. Any protection will impact the participants in the payments value chain. These impacts would need careful consideration in the design of any arrangement. The costs of protection would need to be met and underpinned by a liability model and rules.

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?

21. We are currently able to identify types of payee through whether they are consumer or business accounts; however this does not account for some small businesses who choose to operate from personal accounts.

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)?

22. The identity of the payer and payee is already used for reasons including AML and mitigating fraud risk.

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

23. Any consumer protection framework must make it clear to the consumer how they are protected through each payment system. A clearly defined legal and regulatory rulebook would need to be developed, as well as an explicit dispute resolution mechanism and independent oversight.

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)?

24. While a standardised process may be beneficial for consumer awareness, it would need to carefully consider the various economic and commercial models within the payments sector to ensure that such a claim pathway remains sustainable for industry participants and new entrants.

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?

25. The creation of a trust mark will require branding and centralised administration, which all adds additional cost to the implementation of consumer protection measures, disproportionately impacting smaller PSPs. The consultation document fails to provide information of how a trust mark would be supported, funded and evidence of its potential effectiveness. More information is required.

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



26. Wise is committed to transparency with its customers. We regularly post blogs on our website to communicate and educate customers on understanding their personal finances, as well as highlight behaviours by industry participants around payments and FX markups.
27. While a united, cross-industry approach to educating consumers would be the ultimate solution to reach consumers quickly and easily, this would need to be adopted as a CSR-style campaign or require strict parameters in communication materials in order to be effective, and not confuse the consumer.
28. Regulators, in collaboration with consumer rights groups including Which? and Moneysavingexpert.com could also look to develop an information campaign for the benefit of consumers.

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?

29. Pay.UK research has indicated that in the case of slow refund returns, consumers will typically complain to the retailer first as they blame the retailer for the cause of the refund not being processed fast enough. This indicates that there are gaps in consumer understanding of the refund process and the role of the merchant relative to the PSP.

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

30. This is a material consideration given the relatively low volume of such transactions. If the way we pay were to shift away from cards, and FPS volumes were to increase considerably, the costs of protection could become more manageable.

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?

31. Yes, we are able to address consumer enquiries when it involves a Wise customer. When it involves a third party or non-customer, Wise does not have the right to access their data or information, making dispute resolution more difficult to resolve.

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?

32. Any approach should look to foster clarity at a scheme level and beyond regarding roles, responsibilities, liabilities and dispute resolution around which Wise and other participants can put in place appropriate systems and processes to serve customers. This would make it easier for all concerned to do business and would promote confidence amongst end users. While rules should be customer-driven, they also need to be fair, proportionate and consider the varying economic models of all PSP participants, particularly newer entrants.

33. Payment protections in the UK do not exist in isolation. They are viewed by consumers in conjunction with and/or as supplemental to legal, personal and retailer protections. Any analysis of consumer protections will need to consider this alongside the wider impact of additional protections on different business models and products for end users as well as the unintended consequences that could arise, for example whether a protection within the payment system rules would constitute an unreasonable barrier to entry.

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

34. This will depend on the design of protection measures in place, and could be done legislatively, at the regulator level, scheme operator level or through industry consensus. The PSR must carefully consider the design of any enforcement mechanism, including the possible need for varying claim protections between different payment types, as well as proportionality and barriers to entry for new participants.

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?

35. Before considering legislative or regulatory intervention, more thought needs to be given to the design, proportionality and effectiveness of proposed measures in this consultation.

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?

[Questions 26, 27, 28 & 29 answered together]

36. Security and consumer protection standards can inspire trust in payments but if they are prohibitively expensive to provide due to significant infrastructure costs associated with integration, this may inadvertently restrict the market to larger players. A careful balance needs to be struck as it is of key importance to customers that sufficiently high standards apply consistently across the industry no matter the size of the provider. The industry and public authorities therefore need to consider how to be more creative and fairer with the costs of payment services and overlays moving forward.

37. The PSR must also consider the cost to industry participants, particularly recent start-up and scale-up entrants, in implementing both mandatory and non-mandatory change whilst maintaining ongoing costs for each transaction. Without such consideration it risks stifling innovation, competition and the ability for fintech businesses to scale at pace, and favours established incumbents.

Yapily

Summary

In general Yapily is very supportive of ensuring that consumers are protected when making interbank payments. Consumer protection done in the right way can be a catalyst for the uptake of more Open Banking payments. As such, we are encouraged by the PSR's objectives of placing consumer protection at the heart of a payment journey. We acknowledge that this Call for Views is a first step by the regulator towards initiating a discussion around the topic, however, we remain concerned by the framework used to represent the level of risk that Open Banking/interbank payments actually introduce to the wider ecosystem.

Our detailed response to the Call for Views can be found in the table below.

Do you agree that there are insufficient consumer protections for interbank retail payments?
<p>No. There is a false perception amongst consumers that interbank retail payments do not offer as much consumer protection as other payment methods. This is partly due to the fact that interbank payments were not as common in the past so consumers were not aware of the safeguards placed around interbank payments and partly due to the fact that card payments have always been owned and managed by large commercial institutions that had the resource to advertise and educate consumers of the protections that they offer.</p> <p>Another issue that we consider needs to be clarified is the distinction between buyer and consumer protection in payments. Buyer protection applies regardless of the payment method used. It is possible that concerns around fraud and unauthorised payments have led to the misconception that consumer protection does not apply in interbank payments. The only difference in the levels of protection when making a payment is chargebacks (cards offer that but interbank payments do not offer that facility yet). Having said that, given that refunds are possible for interbank payments, from a consumer point of view, the level of protection against consumer harm is the same.</p> <p>In addition, we have not seen any evidence for this statement to be true. Consumers are protected through a number of mechanisms:</p> <ul style="list-style-type: none"> • legal protection • Escalation mechanisms both at the ombudsman level and through their account provider • Technological developments that mean instances of misdirected payments are minimised. <p>The PSRs provide strong legal protections for consumers using interbank payments, including via payment initiation service providers (PISPs):</p> <ul style="list-style-type: none"> • According to PSD2 each payment initiated, must go through Strong Customer Authentication on the bank side; • Irrespective of what type of payment is executed (cards, bank transfers, or payment initiation services), if money is taken from an account without authorisation, the customer is entitled to a

refund from their bank (see [FCA website](#))

- If a payment does not reach the recipient as per instruction to the payment provider, again irrespective of payment method, the customer is entitled to a refund from their bank

Where a consumer is not happy about an interbank payment - whether initiated directly or via a PISP - PSPs are required to provide well clear complaints procedures (see Chapter 11 of the FC's Payment Services [Approach Document](#)).

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

We disagree with this statement as we haven't seen any evidence internally or externally to substantiate it.

The Open Banking industry is still in its infancy and has every incentive - both reputational and ethical - to build strong consumer protections in order to succeed. This means that the industry has provided and will continue to provide appropriate levels of protection. In addition, the substitution element between cards and interbank payments is very strong i.e. it is very easy to change the preferred method of payment, which means that the industry is under huge competitive pressure to provide at least the same levels of protection as card schemes.

Furthermore, the high degree of consumer protection demanded by UK consumers (being used to the protections levels offered by card schemes), and the highly competitive market for providing payment services in retail and e-commerce, strongly incentives PISPs to ensure consumers trust the new payment methods they are introducing. This supports a market led approach to addressing any gaps in buyer protection, where those gaps are deemed to be preventing take-up of PIS.

Finally, where levels of consumer protection are deemed to be lacking, the Financial Conduct Authority, which has a Consumer Protection Objective, has the ability to take supervisory or enforcement action against individual firms.

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

As mentioned above, we have not seen any evidence of consumer harm in this area. Having said that, we expect that certain technological and regulatory developments are likely to increase competition and put pressure on the entire ecosystem to remain focused on consumer protection.

These include:

- Open Finance
- The introduction of digital ID

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

No, liability flows are sufficiently clear to ensure that consumers are protected regardless of whether the sending and receiving account providers are the same. These are discussed in more detail in [section 2 and 4 of FPS rules](#) and the commercial arrangements between participants.

Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?

We do not see how adding additional payment protections atop the current Consumer Rights Act provisions would bolster consumer protections; especially considering there are no additional provisions for the choice of cash as a payment instrument, and yet consumers continue to pay with cash despite not having additional payment protections beyond those provided for in the 2015 Act.

In addition, since there is no substantial evidence of consumer harm, it would be difficult to justify the cost of introducing additional burden on such a nascent industry as Open Banking.

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?

We would strongly recommend the regulator not to introduce refund liabilities on PISPs. Any refund liabilities should instead be imposed on merchants. Within this context we would like to note that the vast majority of online merchants have well established refund and dispute resolution processes and procedures. Chargeback is a last resort option, where the customer has not been granted a refund by the merchant. This is because:

- PISPs cannot afford at this stage to offer these refunds and are highly unlikely to be at fault for a 'payment gone wrong' since they only initiate a transaction according to PSD2 requirements. We appreciate that card schemes are able to do so as they can also claw back the funds for the refund from the merchant. If the merchant refuses to pay the card schemes then they would be removed from the scheme and thus unable to receive card payments. PISPs do not have that privileged position and a merchant could easily switch from one PISP to the other - there are over 70 registered PISPs in the UK.
- It would contradict the intentions of both the EU Commission and CMA that introduced Open Banking as a viable alternative to card schemes. Increasing operational costs for this industry without sufficient evidence of consumer harm would be disproportionate.
- Imposing liability onto PISPs could be open to abuse and is not warranted in the case of PISPs: instances of fraudulent chargeback claims have more than doubled over the past year according to industry reports. In addition, chargebacks, as discussed above, are an inferior consumer protection mechanism compared to refunds. PISP customers could claim refunds fraudulently. Where the merchant has investigated and does not believe a refund is warranted, PISPs may be forced either to refund or investigate the refund claim itself, which may be more costly than the refund and is a cost that PISPs would have to bear in this scenario.

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)?

Yes. Changing liability flows whereby the merchants' PSPs are liable for loss would increase overall costs to PSPs. The consequence of that would be that PSPs may not be willing to allow their merchants to accept interbank payments or may make it more expensive and as a result the interbank payment acceptance would decrease.

Changing the liability framework to require sellers to be liable for loss would also have a similar effect but possibly less strong as merchants may still have to accept interbank payments if consumers continue to demand it [in the previous scenario they may not even be able to accept interbank payments if their PSPs stop them from doing so]

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

No. The OBIE has consulted extensively on measures to ensure that consumers would be highly protected when using variable recurring payments. It has also developed additional measures to protect consumers using VRPs.

The FCA's Approach Document is also clear (section 8.230) that existing VRP methods, such as direct debit and continuous payment authority are covered by a requirement for the consumer to be fully refunded 'If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances'. There is no reason why this guidance should not apply to VRPs initiated by PISPs.

To what extent do you think payment protection for recurring and variable recurring payments should be extended beyond the last payment?
We appreciate that the regulator is considering a similar guarantee scheme as the one offered by Bacs on Direct Debits. However, this is not appropriate in the context of PISPs. Firstly, the direct debit guarantee has been open for abuse and imposed considerable costs on the participants. . Secondly, there is already clear consumer protection for recurring and VRPs under the PSRs so we cannot see what additional benefit such an extension would bring about.
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?
As discussed above, we do not see any merits to adding payment protection beyond existing measures.
To what extent are you currently able to identify different types of payments?
We are able to identify the type of payment initiated by merchants and pass on that information to the customer's account provider.
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)?
We cannot answer this question as we have not seen any evidence of consumer harm to support additional payment protection.
Do you think the relationship between sellers and their PSPs might be affected if protection is offered on a use-case basis? Why (not)?
It would make interbank payments less competitive by considerably increasing operational costs. This in turn may lead merchants to continue to prefer accepting card payments and stifle an innovative and nascent industry such as Open Banking.
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?
We can theoretically verify the type of account - business v personal - through an Account Information Service call. . Confirmation of Payee has not been implemented on PIS payments yet. We could build a mechanism to identify the type of payee but the demand for this service has not been high and we rely on ASPSPs to conduct these checks.
Do you think the identity of the payer and payee should be used to determine which payments are covered under payment protection? Why (not)?
We cannot answer this question as we have not seen any evidence of consumer harm to support additional payment protection.
To what extent would a consumer protection governance process be beneficial for interbank payments?
Existing legislation already requires payment institutions and account providers to set-up escalation mechanisms and dispute resolution policies. We do not see justifiable merits in additional

governance processes at this stage.
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)?
Consumer protection is already standardised to a great degree through the PSRs and the guidelines developed by the OBIE. We do not see any reason why consumers should not feel confident in using these payment methods.
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?
We agree that a public awareness campaign would support the objective of increasing awareness around the level of protection offered by PSPs. We note that PSPs and PISPs are required to make complaints processes known to consumers. Consumers have the right to use these complaints procedures to raise issues with the provision of goods and service. The trust mark suggested by the PSR as a signalling mechanism for consumer protection could potentially support awareness but a) it is unclear that consumers are engaged with their payment decisions to such a degree that it would make a considerable difference to justify the cost of implementation and b) it is challenging to comment without having sight of the additional requirements that would be expected in order to receive the trust mark.
Who do you think is best placed to ensure consumers understand the protections offered to them and why?
It needs to be a joint effort by regulators (FCA and PSR) and industry (PSPs and PISPs).
Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?
In a simple interbank transaction it would be their account provider. If a PISP is used to initiate a payment the account provider would contact the PISP if the issue stems from the services provided by the PISP. In most cases, PISPs are invisible to consumers.
How, if at all, would your response change if retail purchases through interbank payment systems were to increase?
Our response would be unlikely to change - we have not seen evidence of consumer harm in interbank payments as a result of insufficient consumer protection and therefore we do not consider that payment volume would alter our answer.
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?
Existing communication channels are sufficient to address consumer enquiries (noting that the number of those has been extremely low for PIS).

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?

We consider it disproportionate for the PSR to require FPS to extend its rules to PISPs. Our overarching argument here is that PIS is simply a different way of communicating with the account provider and initiating a payment. PISPs do not handle or hold any funds - they initiate a payment on behalf of the customer. ASPSPs are better placed to address the regulator's concerns. ASPSPs are already captured by FPS rules so insofar as the FPS rules sufficiently cover consumer protection and those rules are implemented by ASPSPs, there doesn't seem to be any additional benefit to extending scheme rules to PISPs.

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

In the case of PIS transactions, we consider that the OBIE (and going forward the Future Entity) in conjunction with the FCA are best placed to enforce such claims given that this expertise has been built over the past 3 years.

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?

As mentioned above, there is already a legal framework in place that looks at settling disputes on interbank payments. This includes the PSRs requirements, escalation mechanisms and the Financial Ombudsman.

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

We agree with the Cost and Benefit framework proposed by the regulator. We note that given the few instances of disputes arising due to insufficient consumer protection we consider it highly unlikely that the benefits would exceed the cost. We also strongly recommend the regulator to consider the effects on competition and commercial viability for PISPs in the proposed framework when assessing any potential regulatory interventions.

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

The set-up costs and the increase in fraudulent claims.

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

ASPSPs would be the only parties that could afford to bear these costs.

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

Both costs and service contracts are likely to change considerably.

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