

OPEN BANKING

VARIABLE RECURRING PAYMENTS AND SWEEPING CONSULTATION PHASE II

Feedback Summary Document
15th March 2021



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1 EXECUTIVE SUMMARY

1.1 Introduction

This document summarises the feedback provided in the second phase of consultation into Roadmap items Sweeping (A10) and Variable Recurring Payments (VRPs, A2(b)(i)).

The second consultation closed on 12 February 2021. We received 27 responses to this consultation (54 responses in phase 1). The responses in the second phase were from a range of organisations and individuals, which break down into the following categories¹:

- 8 of the CMA9
- 15 TPPs and non-mandated ASPSPs
- 3 other organisations including trade associations and consultancies
- 1 combined response from the independent SME and Consumer representatives

1.1.1 OBIE's Approach to Reviewing Consultation Responses

As instructed by the Trustee, OBIE has carefully analysed all of the responses using the following methodology:

- OBIE has summarised responses objectively, to faithfully represent the views expressed by stakeholders.
- OBIE has provided a high-level summary of these responses to help participants understand the main issues raised, and to help the IESG with its discussions.
- OBIE has then provided a response to the issues raised.

¹ Many organisations hold multiple roles, such as being an ASPSP and a TPP. For respondents who act in multiple categories OBIE allocated them to their principal activity in this breakdown. A full list of respondents is in Appendix 2.

1.2 Summary of Feedback

There are a number of areas where there continue to be significant divergence of views across the ecosystem and these are laid out below:

1.2.1 Definition

The modification of the definition made by OBIE following Phase 1 consultation, to include sweeping between accounts at the same institution, was widely welcomed. However, there remains significant divergence on the proposed definition of Sweeping as summarised below:

Restrictions on scope

The CMA 9 were generally of the view that the scope of Sweeping should be limited.

Options proposed were to limit Sweeping to:

- i. just between PCA's and BCA's; or
- ii. accounts that can support two-way sweeping; or
- iii. accounts with a sort code and account number where the destination account name was in the customer's name.

Some of the CMA9 felt that the definition as proposed goes beyond the scope of the CMA Order because:

- i. the purpose of the Order was to address competition in the current account market only; and
- ii. there were specific references to the purpose of sweeping to facilitate switching or moving funds between current accounts to avoid fees.

One of the CMA9 also felt that the requirement for sweeping transactions to be automatic was not in the Order.

TPPs, and their representatives, took a contrasting view, welcoming the broad range of use cases proposed to be supported by Sweeping which would maximise the value and utility to PSUs. One Trade Association felt that limiting the definition to two-way sweeping would not address the competition issues in the current account market.

At the workshop on the consultation several TPPs highlighted that limiting sweeping to between PCAs and BCAs or to two-way sweeping would stop the development of innovative savings propositions.

Ensuring accounts are in the same name

The ability to prove that both accounts are in the name of the same PSU was a concern raised by several of the CMA9 as well as by the Consumer and SME Representatives. More clarity was requested on how this impacts liability for APP scams. TPPs also raised concerns that name matching could be problematic when there were, for example,

spelling errors or variations on middle names, and others sought clarification on what would happen with name matching regarding joint accounts. Some TPPs felt that further clarification was required to make it clear that Head Office Collection Accounts were in scope of the definition.

Enabling e-commerce

A number of respondents (a CMA9 ASPSP, a TPP and the Consumer and SME Representatives) raised the issue that under the current definition VRPs could be used for point of sale credit and e-wallets for purchases. One respondent suggested that this means there is counter party risk in the transaction which is currently excluded from the analysis.

1.2.2 OBIE response regarding Definition:

Restrictions on scope

The CMA's objective for Sweeping is to enable people and businesses to benefit from better features offered by other providers, for example higher interest rates on credit balances and lower interest rates on debit balances. Clearly, this cannot be achieved by restricting the destination account to current accounts, accounts enabling two-way sweeping, or accounts with a sort code and account number and account name in the customer's name.

OBIE believe that it is vital that the definition of Sweeping accommodates the ability to offer automated movement of funds. OBIE held interviews with 4 providers of sweeping services in the UK and they all asserted that being able to initiate transactions automatically was a core part of the proposition and that is why they use Direct Debits and debit card continuous payment authorities today, despite the limitations of these payment methods. Therefore, OBIE concludes that being able to support unattended transactions is a requirement to support the development of Sweeping.

Ensuring accounts are in the same name

The objective of the definition is to enable a PSU to move their money between their accounts automatically to promote competition. There are a number of different ways to codify this for example "in the name of the same PSU" or "belonging to the same legal person". Given the challenges around the name on collection accounts there is merit in modifying the definition to "belonging to the same legal person".

OBIE believes that TPPs can validate that the destination account belongs to the same legal person (and that the transaction is, therefore, "Sweeping") irrespective as to whether the account has a unique sort code and account number or uses a collections account to accept funds. This is outlined by the two operating models of a TPP providing Sweeping:

i. **TPP has a contractual relationship with the destination account provider**

In this instance it is reasonable to expect the TPP to develop a mechanism to enable them to confidently determine the identity of the owner of the destination account as part of their contractual arrangement. This will enable the TPP to confidently attest that the transaction is Sweeping.

This will likely reduce the risk of both types of APP scams². Malicious payee fraud should not occur as both accounts belong to the PSU. As the TPP has confirmed the destination account belongs to the same PSU the risk of misdirection fraud is also mitigated. This control should provide an equivalent level of protection as Confirmation of Payee provides, where utilised. To deliver this level of protection the payee details need to be immutable by the PSU in the domain of the TPP as they are already immutable in the domain of the ASPSP. It will be the responsibility of the TPP to ensure the payee details are immutable in this model.

ii. **TPP does NOT have a contractual relationship with the destination account provider**

OBIE believe that it is unlikely that any TPP will develop this type of sweeping proposition as it does not appear to be in the TPP's commercial benefit to do so and there could be unnecessary risk if the TPP were to incorrectly attest that a transaction was sweeping. In the absence of a contractual relationship with the destination account provider, the TPP would have to find other ways to satisfy itself that the destination account was in the name of the same legal person as the sending account. This could include:

- a. Confirmation of Payee (CoP) if the destination account is CoP addressable; or
- b. Confirming this as part of an account information service AIS (if the destination account is AIS addressable) and the TPP also has explicit permission to undertake this task; or
- c. Reviewing the customer's statement(s) of the destination account.

Enabling e-commerce

OBIE notes the concerns raised about the potential use of VRPs to fund e-wallets that support e-commerce. However, in this instance the VRP is not being used for e-commerce but to fund an account belonging to the same legal person. These wallets are funded today via other open banking payments as well as by Direct Debits and by debit card Continuous Payment Authorities. The further development of this type of use case will be a result of competition driving new propositions which may impact how customers manage their money.

Therefore regarding proposed Definition the OBIE is minded to recommend that the definition remains broad and is enhanced to clarify that Sweeping could include moving

² The [OBIE consultation on CoP and the CRM Code](#) identified the two principle types of APP scams: Malicious Redirection and Malicious Payee

money into accounts where a sort code and account number is shared amongst several separate accounts, but the unique identifier links to an account belonging to the same legal person.

1.2.3 Suitability of Existing Payment Methods:

There was a significant divergence of opinions regarding this analysis and its conclusions. The CMA9 respondents continued to request that the analysis consider costs to all parties (rather than just to the Sweeping Services Provider) and expressed particular disagreement on the consumer protection assessment of VRPs relative to other payment mechanisms. Several also questioned the requirement for sweeping to be undertaken without customers' specific involvement. By contrast, the TPP community and their representatives strongly supported the analysis and its conclusions. Providers of sweeping services who responded to the consultation also supported the view that existing payment mechanisms had limitations.

1.2.4 OBIE response regarding Suitability of Existing Payment Methods:

OBIE believe that the analysis provided in the Revised Sweeping Evaluation Consultation Paper highlights the challenges of the existing payment methods and concludes that these are unlikely to meet the objective of the Order. OBIE are currently of the view that VRPs would be effective in delivering more sweeping services to the market. However, further analysis is required to determine whether a recommendation on the CMA9 to implement VRPs for Sweeping would be proportionate.

OBIE notes that there are already providers of sweeping services in the UK and conducted interviews with 4 providers, 3 of which provided written feedback into the consultation process. These providers use existing payment methods, namely Direct Debits or debit card continuous payment authorities (CPAs) but point out the shortcomings of those payment mechanisms:

- i. the delays in both the set up and operation of Direct Debits provided a barrier to people starting savings, particularly those customers who had no savings and so would benefit the most from developing a savings habit.
- ii. SSPs using CPAs on debit cards cited the cost as a constraint on offering the services more widely. One provider of an alternative product to an overdraft indicated that the cost of CPAs was equivalent to an APR uplift of ■■■ which significantly undermines the ability to compete with overdrafts.

1.2.5 Customer Protection:

This appears to be the most contentious issue for the CMA9 and their representatives and is also a concern for the Consumer and SME Representatives. In contrast the TPPs that responded generally believe the existing regime provides an appropriate regulatory framework to enable satisfactory protection, and the current operators of the sweeping services feel they already appropriately protect their customers within the existing regulatory environment. The consumer protection concerns from the feedback are highlighted below:

Sweeping is not low risk.

The CMA9 felt that the proposed definition of Sweeping means that some use cases are not low risk. The nature of the destination account means that some transactions are not easily reversible, e.g. payments to mortgage or loan accounts or ISAs or pensions. The consequential impacts of incorrect sweeping to non-reversible accounts could be significant. One respondent highlighted that payments between accounts in the same name was a known fraud case.

Lack of clarity around the protections afforded by regulation and the conduct of users of VRPs.

Many of the CMA9 expressed concern that the PSD2 model did not go far enough to ensure consumer protection and that more work was needed to clarify obligations relating to customer protection, customer servicing and customer complaints. One respondent felt that this might be further complicated as not all parties may have aligned incentives. One respondent felt that mapping out customer journeys to demonstrate the flavours of different issues would be helpful, and another stated that DD's and CPAs had well established paths to offer refunds and this was missing for VRPs.

The link with the CoP/CRM work and the risk of authorised push payment (APP) scams was raised by a number of the CMA9 and also by the Consumer and SME Representatives who felt that the proposed definition could enable wider use cases which could inadvertently facilitate more APP scams.

The Customer and SME Representatives also identified lack of clarity on protections as a concern and would welcome clarity and socialisation regarding the protections in the FCA's Consumer Credit Sourcebook (CONC) and other consumer credit legislation. The use of VRPs within the provision of credit was widely raised in the initial consultation by many of the CMA9 and several respondents again reiterated those concerns in their feedback.

The TPP community felt the existing framework afforded appropriate levels of customer protection and one noted that many of the risks raised were independent of payment method.

Timing / process challenges.

Several the CMA9 respondents questioned the consultation running concurrently with consumer research into Sweeping and also work on Consumer Protection. Another noted

that the PSR is considering introducing enhanced protection within the Faster Payments scheme rules and they believe that industry level protection requirements would lead to better consumer outcomes.

1.2.6 OBIE response regarding Customer Protection:

The OBIE response to each concern is set out below:

Sweeping is not low risk

OBIE consider there are two elements of the risk articulated in the consultation responses:

The first is the reversibility of the transaction. If there was potential detriment as a result of a sweeping transaction, then this is easily mitigated if the transaction can be quickly reversed. OBIE does not believe this risk is any different for VRPs versus other automated payment transactions. The Direct Debit Guarantee provides protection if the payment transaction is not executed properly rather than the nature of the destination account. Similarly, for Sweeping transactions the chargeback mechanism on CPAs is unlikely to provide any additional protection beyond statutory protection for all payment types as the purpose of the transaction is the transfer of funds between a PSU's own accounts so claims for goods and services not received are not relevant here.

The second risk is the risk associated with the destination account, e.g. equity investment accounts will have a different set of risks than a savings account backed up by the FSCS guarantee. This risk is not a function of the payment type.

The risk arises as a result of the type of account that the SSP chooses to sweep to. If the SSP is a regulated firm, which they have to be for VRPs, this could provide additional protection versus other payment types, as the SSP has an obligation to consider the risks to the consumer from the services they provide and adequately mitigate against them. In summary the OBIE believes this risk exists in the market today and is not increased by requiring the CMA9 to provide TPPs with access to VRPs to deliver Sweeping.

Lack of clarity around the protections afforded by regulation and the conduct of users of VRPs.

OBIE believes that the existing regulatory framework provides appropriate consumer protection and notes that existing sweeping providers, as regulated firms, have established processes to manage customer complaints when they arise. However, OBIE acknowledges that additional clarity could be provided regarding the regulatory framework and the obligations this places on participants, particularly in the provision of credit.

OBIE is developing a way to provide more clarity and granularity on how it believes the regulatory framework provides a structure for conduct risk management and will engage

with the FCA to determine how this can be shared with the Open Banking ecosystem.

As set out in OBIE's response regarding Sweeping definition (section 1.2.2) OBIE believes that the PISP has an obligation to conduct appropriate checks that the destination account belongs to the same legal person as the source account if they wish to use VRPs for Sweeping. This provides a similar level of surety as a Confirmation of Payee check, and if the account is not owned by the same legal person and the ASPSP suffers a loss from an APP scam then the ASPSP should be able to make a claim for damages against the PISP. If the ASPSP has signed up to the CRM code, then the PSU will be protected as per the code irrespective as to whether the payment was an open banking payment (including a VRP) or any other Faster Payment.

Timing / process challenges.

OBIE regularly conducts research with consumers and shares the insights from any research with members of IESG and beyond. The research will inform OBIE how to ensure VRPs are as effective as possible and has been run concurrently with the consultation process.

The Consumer Protection Working Group (CPWG) (co-chaired by the Trustee and the MD of the Payment Systems Regulator) is considering how to ensure that consumers are appropriately protected when using any open banking payment mechanism, existing payment mechanisms as well as VRPs. Any recommendations will apply to all payment mechanisms, including VRPs, and we do not believe that there is a dependency on finalising the report of the CPWG before a recommendation on the use of VRPs for Sweeping is made.

There are also a range of industry consultations on Consumer Protections in Faster Payments underway. Any recommendations from these consultations will apply to VRPs and other open banking payments that are made over Faster Payments. These should not delay any recommendation regarding the use of VRPs for Sweeping.

1.2.7 Fragmentation:

A major concern of the TPP community is that if VRPs for Sweeping are mandated, but other uses of VRPs are subject to contractual access agreements, there will be barriers to entry for using this new payment capability for non-sweeping use cases. This is likely to result in a fragmented marketplace. Non-CMA9 banks may not offer VRPs, and the CMA9 may offer restrictive access to their customer bases for non-sweeping use cases which could hinder the development of competition as TPPs may not be able to offer whole of market propositions. The Consumer and SME Representatives felt that development of multi-lateral controls and a scheme for non-sweeping use cases could enable a level playing field and ensure consumer protection.

1.2.8 OBIE response regarding Fragmentation:

OBIE recognises that access to VRPs for uses outside of Sweeping is beyond the scope of the Order. OBIE believes that use of VRPs beyond Sweeping could deliver benefits across the ecosystem, providing PSU's with more visibility and control than existing payment methods as well as providing the potential to offset future investment in the NPA. Whilst OBIE expects the market to leverage the benefits of VRPs, given the concerns of raised by the TPP community OBIE is minded to recommend that OBIE and/or its successor organisation is instructed to work with both the PSR and Pay.UK to develop a roadmap for how VRP capability could be more broadly utilised.

1.2.9 Use of VRPs:

There were a number of queries raised in the feedback on the VRP proposition in addition to the themes above about the practical use of VRPs for Sweeping and Non-Sweeping use cases. These are laid out below:

i. **Compatibility with PSD2.**

One ASPSP felt that the authorisation and checking of the VRP consent was not compatible with PSD2.

ii. **SCA Exemption**

A number of respondents identified that the SCA exemption cannot be relied upon and that there was no obligation for ASPSPs to apply this in all circumstances.

iii. **VRP Consent Parameters**

Several respondents would welcome further clarification around what are acceptable parameters, or further clarity on how the parameters would work if there were refunds. One CMA9 respondent proposed that the SSP should be responsible for ensuring that payments are within the VRP Consent Parameters, so that the ASPSP does not need to build this.

1.2.10 OBIE response regarding Use of VRPs:

i. **Compatibility with PSD2**

OBIE agrees that an ASPSP is not permitted to check consent for PISP, AISP, and CBPII services as outlined in the FCA Approach Document, para 17.142, however, the objective of this prohibition relates to the creation of unnecessary obstacles in the customer journey, for example, seeking additional confirmation from the PSU prior to either sharing account information with an AISP or initiating a payment via a PISP. Ensuring that a payment order is within agreed VRP Consent Parameters i.e., ensuring that a payment order is within specific limitations already agreed by the PSU (especially since the PSU will not be present in the subsequent journey) should not constitute a replay of consent. Regarding revoking of consent at the ASPSP, the PSU may revoke VRP access via an ASPSP's access dashboard, enabling the ASPSP to mark the status of the consent object as 'Revoked' but not the VRP consent. Revoking of consent will remain in the PISP domain.

ii. **SCA Exemption**

OBIE has added updates to the CEGs to enable the use of a range of exemptions where this is deemed appropriate, for example, the "payment to self" exemption, where a payment is made between accounts held at the same ASPSP belonging to the same person. We are reluctant to include reference to merchant-initiated transaction, as it is our understanding that the ability not to apply SCA to a merchant-initiated transaction following the initial set up is because they are considered payee-initiated. In the context of VRPs, including subsequent VRP payments, the payments are being initiated by the PISP on behalf of the payer (even if they are acting for both the payer and payee in the wider context).

iii. **VRP Consent Parameters**

OBIE recognises that providing further clarity on what would be considered acceptable parameters would be beneficial. As part of the proposed work on clarification of the regulatory framework for VRPs (see OBIE response in Section 1.2.6) OBIE will aim to provide further clarity on acceptable parameters for VRP Consent Parameters. The Standard requires both the PISP and the ASPSP to ensure the transaction is within the VRP Consent Parameters, so that payments are made in accordance with a PSU's instructions.

2 FEEDBACK ON SWEEPING EVALUATION CONSULTATION PAPER

2.1 Feedback on the revised definition for Sweeping.

CMA9:

- There was widespread agreement to the inclusion of sweeping between accounts at the same institution.
- Most respondents challenged the revised definition and felt that it was too broad in scope and went beyond the CMA order.
 - One respondent stated that the CMA Retail Banking Market Investigation (Final Report) promoted sweeping as a means to facilitate current account switching and as a mechanism for moving funds between current accounts to avoid fees
 - Another respondent felt the broader definition went beyond the intent of the Order with respect to driving competition in the Current Account market
- A number of alternative restrictions on the type of destination account were proposed by the respondents including:
 - Needs to be a PSR account to ensure that the PSU is in control of the destination account
 - Needs to be a PCA/BCA to align with the scope of the CMA Order
 - As a minimum needs to be fully flexible to allow customers to move money back to reduce risk of customer detriment (i.e. cannot be lending, investments, non-flexible savings account or pension)
 - Needs to have its own sort code and account number and be in the name of the PSU to avoid use for credit collections or retail proposition
- The other main concern raised with the definition was around enforcement of the definition, who was responsible for this and the consequences if the definition was not enforced. This was felt to be a critical safeguard. A particular challenge is when a corporate account is used to provide services to customers (e.g. Building Society roll number accounts)
- A number of additional issues were raised including,
 - the need to use the own account exemption rather than the Trusted Beneficiary exemption for transfers between accounts at the same institution and
 - more clarity required on whether multi-authorisation accounts were excluded, and the implication on which BCA accounts were included or not

TPPs and TSPs:

- TPPs and TSPs generally took a contradictory view to the CMA9 and welcomed the revised definition and the ability serve a broader range of customer needs.
- Some TPPs felt that further clarification of the definition would be beneficial

- One respondent felt that when funds were held in omnibus accounts (credit cards, and some investment solutions) these may be excluded from the definition or exist in an area of ambiguity that would dissuade TPPs from participating in this market
- Two felt that the requirement for both accounts to be in the same name was appropriate but further clarification was required. One requested a more rigorous definition whilst another recommended developing a naming convention to minimise the risks of rejecting legitimate sweeps.
- One TPP felt that the definition was not clear and required further clarification as they felt the definition was incompatible with the proposed use cases where funds were held in omnibus accounts
- One TPP recommended that the definition of account should be clarified to funds under a users control rather than a specific sort code account number and account name
- One TPP also highlighted the risk of use for e-commerce and thought that requirement that funds were provisioned in some way to ensure that catalog/store credit was out of scope
- Several TPPs questioned how name could be validated, for example on roll number accounts
- The idea of a two-way sweeping only constraint was raised in the consultation workshop on February 3rd, (but not in the issued consultation papers) and received a strong negative reaction from the TPP community during the consultation workshop.

Consumer/SME Representatives:

- Have reservations with the revised definition. They continue to support a narrower definition unless appropriate controls are in place.
 - Payments to mortgage, investment and pension accounts do include counterparty risk and so cannot be considered Low Risk
 - Definition of sweeping supports point of sale credit and e-wallets for purchases which again creates counter-party risk so cannot be deemed low risk

Others:

- One trade association questioned how expansion of the definition to include sweeping within accounts held at the same ASPSP was consistent with the original CMA order
- Another trade association is concerned that the definition is implied to be limited to two use cases, avoiding overdraft charges and enabling PSUs to benefit from higher interest rates and welcomes the broader examples. They highlight the danger of limiting the definition to two-way sweeping as this significantly reduces the end user benefits.
- Another trade association welcomed the updated definition but highlighted that name matching remains problematic, and “in the same name” requires further

clarification. For example, what happens when the destination account uses a Building Society Roll number or a Head Office Collection Account (HOCA).

- Another respondent identified that there were lessons to be learnt from the CoP implementation such as challenges on name matching for single and joint accounts, and full first name, shortened name and initials

2.2 Feedback on revised assessment criteria.

CMA9:

- Several respondents highlighted that any assessment needs to consider the costs for the ASPSPs, both development and operational
- Some respondents challenged whether automatic payment initiation was a necessary criterion
- Several respondents challenged the ratings given to the different payment methods, particularly around the consumer protection and transparency and control ratings given to VRPs
- Some respondents questioned how the assessment can be complete when there had not been an assessment of existing sweeping providers, and the consumer research had not been completed

TPPs and TSPs:

- All TPPs agreed with OBIE's assessment. Some expanded on the shortcomings of existing payment mechanisms, for example the extra fraud risks on card payments as they cannot be directly linked to a specific account and the subscription trap resulting from the difficulty in cancelling CPAs on debit cards
- One TPP highlighted that Strong Customer Authentication, the protections offered as a regulated activity under FCA supervision and the PSRs provide an adequate customer protection framework even though a "guarantee" does not exist

Consumer/SME Representatives:

- The Consumer and SME representatives did not comment on the assessment criteria but provided a perspective on how the standard could be improved, this included:
 - Customer pre-notification of payments to be made (as is required for direct debits)
 - Additional guidance on the appropriate values for VRP Consent Parameters, and monitoring that they are being set in a way that is meaningful and appropriate
 - A requirement for an expiry date to each VRP Consent, so that consents that are not used have a natural expiry date within a 3 year period
 - Enabling the customer to set a parameter around whether payments can be taken from an overdraft or not

- More guidance to ensure effective consent and access dashboards, taking account of VRPs.

Others:

- One respondent felt that more consideration for the NPA, Request to Pay and the Bank of England's RTGS Renewal Programme was merited.
- One Trade Association strongly supported the analysis and its conclusions, highlighting the weaknesses in the existing payment mechanisms to deliver sweeping. When considering cost, the respondent recommended that full lifetime costs were considered and also offset against future revenue streams generated from non-sweeping use cases
- Providers of sweeping services also highlighted the challenges of using debit card based CPA's. These included their perceived high cost and an increased fraud risk as the card number is not directly linked to the funding account.
- Sweeping service providers felt that the introduction of VRPs for sweeping would significantly enhance the savings and borrowing propositions that they could offer to their customers enabling more customers to save or lower the cost of borrowing. One respondent stated that the delay in transfers associated with Direct Debits reduced trust in the service which was a big issue for novice savers and another stated that the delays made it harder for customers to budget and save. The delay in initially setting up a Direct Debit was also seen to undermine trust in the SSP. The OBIE was told that these delays generate many customer queries and, particularly for customers with limited financial resilience, could provide a barrier to customers signing up for sweeping services and developing a savings habit. A user of CPAs noted the cost made it difficult to offer competitive borrowing rates for customers and this put them at a significant competitive disadvantage to incumbent overdraft providers.

2.3 Feedback on Consumer Protection.

CMA9:

- Consumer protection was a major concern for the CMA 9 in their response feedback and a number of themes were identified across the different respondents:
- Many respondents said that the wide definition of sweeping means that sweeping is not low risk. Monies may be swept to accounts that have different user profiles / mandates, payments to loan accounts and mortgages are not easily reversed and VRPs could change the way lenders collect monies were themes raised.
- The lack of a defined dispute process and mechanism by which PSU can recover funds was also raised by several respondents. It was felt that the PSRs alone were not enough to provide effective protection. DD's and CPA's were felt to have defined paths to offer refunds and this was contrasted with VRPs. It was felt that without these in place it would not be possible to make a decision regarding the use of VRPs for Sweeping
- Several respondents questioned how VRPs link with Confirmation of Payee and ways to reduce the risk of APP scams including where liability sits in this situation

TPPs and TSPs:

- TPPs generally in agreement with the proposal that the consent parameters, obligations as Regulated firms, and ability to raise disputes with the FOS enabled VRPs to offer PSUs similar levels of protections for Sweeping as other payment mechanisms
- One TPP stated that many of the risks associated with the underlying credit transfer were not unique to VRP
- Another TPP called out that the Direct Debits guarantee and card protections are well managed and have robust procedures and rules in place to quickly address any issues.
- One TPP raised the issue that with card funding for sweeping there is an extra fraud risk as cards as it is not easily for a TPP to check the link between a card and a specific account.

Consumer/SME Representatives:

- The consumer and SME representatives felt that there were several areas where consumer protection could be improved:
 - The broad definition enabling payments into company accounts could facilitate APP scams and PISPs would be liable for attesting the company and the customer account was legitimate
 - OBIE should seek clarity from the FCA that VRPs are within the scope of the FCA's definition of Continuous Payment Authorities and socialise with PISPs and their customers the requirements on lenders using CPAs
 - OBIE should confirm that VRPs are within the scope of the CRM code

- The representatives note purchase protection was being considered through various other initiatives across the ecosystem but are concerned that lack of consistent protection across all use cases will create detriment for customers

Others

- One trade association cited customer protection as a key concern of many, but not all, of their members. They cited several scenarios where they felt it was not sufficient or appropriate for responsibility to sit entirely with the TPP including:
 - Multiple, and potentially conflicting sweeps, all of which are within their individual consent parameters
 - Conflicts with CMA text alerts which are not synced to an impending sweep that alters the account balance
 - Payments to an account where funds cannot be immediately released or refunded
 - Sweeps leading to insufficient funds for a subsequent payment
- One trade association referenced the obligation under the Roadmap *“to determine how customers should be protected and disputes managed, including implications for DMS”* and felt that at present it was not clear who a PSU complains to, who is liable and who addresses the complaint. This was seen to compare negatively to Direct Debits, and card based Continuous Payment Authorities where there are defined customer protection recourse paths for consumers to receive funds.
- Another Trade Association felt the case for aggressive debt collection was not made as this activity is not in the interests of TPPs. Furthermore the respondent felt that the *“aggressive collections”* is actually an inherent feature of overdrafts as the debt is collected as soon as a deposit is made into the account
 - The respondent identified that using Smart AIS algorithms to facilitate forecast expenses coupled with appropriate VRP parameters, over which the customer has full control, provides the opportunity to sweep debt repayments within an affordability bandwidth, something banks cannot do with overdrafts
- One Trade Association agreed with the Consumer and SME Representatives that notification before sweeping payments are initiated is a reasonable and rationale requirement and that dashboards enabling cancellation at both the ASPSP and the TPP make good sense to enhance consumer control and protection
- One Trade Association referenced that TPPs must adhere to the definition of sweeping and follow the rules, as to be in breach of these items risks license revocation and loss of customers and so there is no incentive to mis-use Sweeping Access
- Another respondent felt that consumer confidence and market adoption would be dependent on a strong customer based guarantee (reference DD Guarantee and CASS guarantee)

2.4 Additional comments on the Sweeping Evaluation Consultation Paper

Stakeholder feedback:

CMA9:

- Several respondents highlighted the risk of APP fraud, the need for the ASPSP to carry out standard checks on the destination account, and where liability should sit regarding the CRM code. The lack of a CoP check made sweeping more susceptible to fraud.
- Some respondents questioned the appetite for VRPs and there was a reference to the lack of take up of aggregated polling and reverse payments
- Two respondents questioned the potential different timelines for AIS and VRP consents or if one permission was revoked but not the other
- One respondent felt that sweeping can be met with existing functionality and providing VRP access for free generated unfair advantage for VRPs
- One respondent felt that the VRP Consent should have a time limit / expiry date and frequency should also be a mandated consent parameter
- Some respondents stated that the consumer research needed to be completed and then shared.

TPPs and TSPs:

Commentary

- One respondent felt that some of the risks raised (e.g. aggressive collections) are not unique to VRPs, and conversely VRPs provide customers with a direct and transparent way to control the payment in contrast with other payment methods.

Consumer/SME Representatives:

- The consumer and SME representatives felt that it is important to ensure the appropriate governance for VRPs and recommended the following:
 - Ensure appropriate monitoring of implementation including use of parameters in the short term, expecting monitoring to be taken over by the FCA who will have the authority to compel TPPs to share data too
 - Put in place a Code for Sweeping to strengthen the likelihood of TPP adherence to recommendations such as consent dashboards, meaningful parameters and notifications
 - Put in place multi-lateral controls or a scheme for all participants for all non-mandatory use cases

Others:

- One Trade association reiterated that it is imperative not to limit the definition to two way sweeping as it would limit the customer benefit that sweeping would bring to such an extent would render the whole exercise moot.

3 FEEDBACK ON VRP PROPOSITION CONSULTATION PAPER

3.1 Comments on VRP Proposition revisions

General

- Many respondents requested that unaddressed comments from previous consultations need to be addressed individually.

CMA9:

- Some participants feel that their Consultation 1 feedback was not addressed and would be useful to see individual responses.
- None of them strongly agree to the change. Most of them somewhat agree with a reason.
- Most of those who somewhat agree have no further comments on the changes in the proposition.
- Few accept it because it is optional and could help build innovation by the ASPSPs and TPPs collaboratively.
- One of the ASPSPs view is, the paper suggests authorising of VRP consent is at the ASPSP which is breach of PSD2 and suggests OBIE to seek clarification from FCA on this:
 - Requirement for ASPSPs to authorise VRP consents (section 4.1)
 - Requirement for ASPSPs to check VRP consent (section 3.2) – As regulated entities PISP should be capable to ensure VRP payments are within the parameters. Reference to reg PSD2 Approach document 17.142 where ASPSP is not allowed to check terms of the consent.
 - Requirement to enable revoking consent by PSU at ASPSPs (section 4.1) – ASPSP is not allowed to revoke consent and is only entitled to deny access on its own justified reason.
- One respondent stated that Payer and Payee account must be fixed for Sweeping.

SCA exemption

- More than one think that paper should make it clear that SCA exemption is not guaranteed and the ASPSPs are not required to apply SCA exemption as per EBA Q&A and it is at their discretion. Concern raised that section 4.2.1 is contradicting CMA order. Reference is given to CMA order section 10.25 "Neither the Read-only Data Standard nor the Read/Write Data Standard shall include provisions that are incompatible with the requirements in PSD2.". (Change to Section 4.2.1 is required).

Consumer Protection

- In most of the use cases, PISPs will be acting similar to a card merchant processor. Hence PSU would have little visibility of the PISP and so difficult to get resolution via PISP if something goes wrong.
- Referring to section 6.2, where PISP should ensure the PSUs are aware of Customer Protection under 'contract', and section 6.6, ASPSP right to recover from PISP, this is a regulatory gap
 - When PSU goes to ASPSP, there is limited ability to recover from PISP and the regulatory framework is incomplete.
 - For PISP it is either authorised or unauthorised but under VRP it would be more than that as it would be under consent parameters
 - Regulation does not address 'not in line with expectation' situations.
 - Complaint to SSP offers insufficient protection.

VRP Consent Parameters

- Need more clarity on timing and amount of VRP not being fixed and how does it give the customer more control was a question raised.
[OBIE Clarification: Parameter is daily limit/cumulative limit over 'x' days]
- VRP consent parameters should be fully defined and not as an example set. It is unclear why payer account is not part of the parameter.
- Rejecting the VRP payment based on outside consent parameters should not be permitted. The burden of verifying whether the payment is within the consent should not be on the ASPSP as PISPs are regulated entities.
- More clarity on what metadata is required. This would affect implementation & proportionality of the solution.

Refunds

- A point of clarification raised by one of the CMA9 is how will payments per period be calculated, if refunds are made during that period as refunds are processed independently from VRP?

TPPs and TSPs:

- No incentive to ASPSPs to adopt to the standard.
- Most of the TPPs somewhat agree with the changes and one agrees with mandating additional parameters for sweeping.
- One TPP has objections and feel that their feedback has not been addressed, however they do agree that the definition of VRP structurally achieves its intended purpose.
- VRP should not be limited to 2-way sweeping
 - Must allow all product types like investments, savings, pensions.
- Attestation of sweeping activity by PISP is an existential challenge as there is no viable way to verify control of the destination account as CoP solution is not full proof and Parties endpoint is not mandated.

- Proposal by one of them is the PISP is liable for source account attestation by the PSU and further the PSU attesting that they control the destination account.
- The current stance would otherwise require the ASPSPs to produce alternate name validating APIs.
- Highly unlikely to implement if this still applies as they work with enterprise clients and their condition is to contract under zero regulatory risk.

Mandating VRP & Sweeping

- One of the TPPs feels that VRP should be mandated to ASPSPs and treated as SIP and not Premium APIs to increase adoption across UK market. Key issues include:
 - Fundamental barrier to making premium APIs is the ASPSPs becoming monopoly provider of VRP to their customers.
 - TPPs and other customers will be relying on the ASPSPs for supporting VRP and doing so in a fair and non-discriminatory manner.
 - Service provided to one PISP by different ASPSPs could differ.
 - Less incrementation cost and very significant consumer benefit of enabling VRP as majority of the technical & operational work to support sweeping will be already done.
 - FCA and the PSR should independently consider their regulatory locus for this.
 - Opens competitive alternative to Direct debits for ASPSPs, reducing the need to fund NPA.
 - Some core use cases such as paying employees, suppliers and collecting regular payments will not be supported via OB route.
 - Value of VRP and sweeping will be realised only if all product types like investments, savings, pensions is allowed and not limited to 2-way sweeping.
- Not mandating sweeping will fragment delivery of capability to the market and less than optimal value proposition to the end consumer and contravenes the purpose of including sweeping in the CMA order.

Consent Parameters

- One TPP interpreted the consent parameters to be flexible to take risk-based approach instead of mandatory set of parameters for each use case. *This can be clarified in response.*
- Some consent parameters are highly restrictive and present potentially unintended barriers to use and overall adoption if they are applied in a blanket and mandatory way. Contradiction of who enforces the parameters. (e.g., cumulative payment per day/month).
- More clarity is required on who enforces consent parameters without detriment to PSU experience and general VRP use.

SCA exemption

- One TPP agrees with the clarification that SCA exemption may not be applicable for every transaction and ASPSP will apply one where possible.

Consumer/SME Representatives:

- Standards should require
 - Prenotification before each payment
 - Additional guidance on payment parameters for VRP.
 - Specific expiry date within 3-year period.
 - Additional parameter to allow consumer to set whether payment can be taken from their overdraft or not.
 - Refine standards to ensure effective dashboards at both ASPSP and PISP.

[OB Clarification: These were also raised under CEG consultation feedback and have been addressed].

Others:

- Consultation focus is on VRP mechanism and not on 'scheme' offering and protection which is vital for adoption.
- One participant wants to reiterate that the definition should not be limited to 2-way sweeping. All product types (pension, investment, savings) across institutions should be included.
- VRP need to be considered in context of DD & NPA and Direct request and not in silo.

Consent Parameters –

- Too many parameters which is difficult for the consumer to understand and may restrict adoption.

Consumer Protection –

- Consultation Paper is naïve relying on FCA regulation, supervision but for market adoption it would require something centrally managed and strong like DD Guarantee, CASS guarantee and not to be left on individual participants.
- Section 6.4.10 mentions that PISP should afford CP to PSU under contract, however for E-commerce use cases PISPs may mitigate counter party risk for the payee (merchant) and not for the payer. Further explanation is required on this.

SCA exemption –

- Agree that SCA exemption may not be applicable for every transaction
 - Further analysis on other SCA exemptions available and its implications is required.

- More analysis is required to include MIT (merchant-initiated transaction) exemptions where payment is initiated by PISP on behalf of merchant.

3.2 Additional comments on the revised VRP proposition consultation paper?

CMA9:

- Key point is there is no associated benefit to develop VRP proposition with/without PISPs and innovate as the liability still sits with them and with additional operating cost (including infrastructure cost).
 - Strong recommendation to revise current position on liability & CP.
 - FCA/CMA should consider.
 - TPP adhere to standards that reduce risk of customer detriment caused because the customer unknowingly consented without clear understanding.
 - FCA consultation CP21/3 is underway which have a range of repercussions to OB and UK payments.
- The disclaimer suggests that the paper does not provide legal guidance, however the amount cap/range is referenced to PSR63(3)9(h). This isn't right unless the owner of PSRs have advised.

[OBIE Clarification: - OBIE is unable to provide legal advice on specific legal issues, however, OBIE has carefully considered the relevant legal considerations to help shape the understanding on how these provisions will apply when implementing VRPs.]
- Regulatory monitoring and reporting and supervision of PISP activity along with dispute mechanism like FOS need to be covered in the law to cover strong consequences and accountability by the PISP who do not provide sufficient protection to the customer or control risk.
- One of the CMA9 feel that current proposition does not fully align to PSD2 and two alternate options are suggested:
 1. Consent is between SSP and PSU and for SSP to ensure payments are within the consent. ASPSP does not store or access the consent parameters but simply addresses the TB between the PSU and the payer account. Thus, unauthorised payments fall within the PSRs regime.
 2. Amend the proposal to limit ASPSPs involvement in enabling TB exemption for sweeping. PSU agrees to set of parameters by SSP and hence limit the use of TB. Revoke consent also lies with the SSP as they are regulated and would prevent further payments taken. To remove full TB arrangement, PSU will need to do so on ASPSP channels.
- One ASPSP cannot support VRP to corporates as it is incompatible with their existing channel.

SCA exemption

- Payment should be rejected and SSP need to initiate a standard SIP to meet SCA requirement.

TPPs and TSPs:

- VRPs are a fundamental next step in enabling greater adoption of open banking products and services in the industry and could be crucial to drive adoption for open finance.
 - Delegated SCA is pivotal in enabling a larger range of use cases, particularly as consumers automate more of their financial lives.
 - Widespread adoption of VRPs will provide a more secure, competing payment method to the other payment types.
 - Potential to transform the industry and enable newer and innovative use cases which will undoubtedly benefit consumers.
 - VRPs are most effective to enable the sweeping use case as they provide speed, flexibility and transparency.
 - VRPs benefit from controls such as FCA supervisory monitoring, FOS dispute resolution and consent parameters which are strongly authenticated by consumers.
- More clarity if VRP could be considered as merchant initiated for which no SCA is required. This could enable more use cases.

Mandating VRP & Sweeping -

- Concern that if VRP is optional for ASPSPs then,
 - Some core use cases such as paying employees, suppliers and collecting regular payments will not be supported via OB route.
- Some use cases are relevant for PCA & BCA, but it looks less consideration is given to business customers.
- Value of VRP and sweeping will be realised only if all product types like investments, savings, pensions is allowed and not limited to 2-way sweeping.
- Treated as SIP and not Premium APIs to increase adoption across UK market.
- Given that vast majority of technical & operational work required to support sweeping will already be spent and there is less incremental cost and very significant consumer benefit of enabling VRP and the FCA and the PSR should independently consider their regulatory locus for this.
- It also opens competitive alternative to Direct debits and reduces the need for ASPSPs to fund expensive replacement of technologically expensive DD system as part of New payment architecture.
- Concern of the ecosystem is that ASPSPs adopt to the proposal, however there is no incentive to ASPSPs.

Consumer Protection -

- The risks raised for VRP in previous webinars are risks that exist with other payment methods and not specific to VRP and hence should not be used as a case against VRP.
 - VRP provides consumers transparency and control payments and revocation as compared to other payment methods.
- Framework agnostic of payment mechanism will provide better CP. Models like ABTA/ATOL schemes.
- Challenges to bilateral ASPSP-PISP contract
 - ASPSP effectively operating monopolistic access to its account holding PSUs, with PISPs having little negotiating power.
 - PISPs will have to either accept the ASPSP terms or be unable to access that proportion of PSUs.
 - Without clear oversight of terms/price etc., then PISPs will be excluded from fair access to these PSUs, and the market will end up with a mish-mash of differing terms and costs, largely dictated by individual ASPSPs.
 - A cost base or operating model for a VRP payment that is dependent on the ASPSP each individual consumer chooses to pay from mitigates against any ability to establish a commercial proposition for payees.
 - Regulated non-contractual access meeting the needs for fair and open market access.
- VRP outside sweeping would need a framework for use cases like Spotify or Netflix etc to increase customer and merchant confidence and adoption.

Consumer/SME Representatives:

- Already covered under comments on the Sweeping Evaluation Consultation Paper.

Others:

Mandating VRP & Sweeping -

- One participant acknowledges that OBIE scope and mandate is only to develop standards for VRP within the boundaries of CMA order, however,
 - There are gaps in market implementation as mentioned in Phase 1.
 - EMA urged that series of recommendations be made to the trustee on next steps to take VRP beyond sweeping use case.
 - If a route for VRP is not proposed by OBIE the there is a risk of market fragmentation and sweeping becoming standalone compliance driven solution.
 - For VRP to gain traction in the market for consumers and businesses, the ecosystem has to move forwards with a standardised approach, including technical standards, liability models, and dispute resolution processes beyond the lifespan of the CMA Order and OBIE.
- Some respondents stated that if VRP cannot be mandated to deliver sweeping, then,

- It will result in fragmented delivery in the market.
- A fragmented market is not an open market; nor is a fragmented market a competitive market.
- A disjointed and less-than-optimal value proposition to the end consumer,
- it contravenes the purpose of including Sweeping payments in the CMA Order where the intent of the CMA order is to orchestrate a harmonious, standardized, and effective means of providing sweeping payment services to the UK market under an open framework.
- A trade association raised a concern over previous consultation response from a non CMA9 on no interest in the standards or framework and would not be bound to it.
 - This is significant risk to the ecosystem and underscores the importance of mandating VRP/sweeping in the market, not just the CMA9.
 - If the non CMA9 do not follow the same set of requirements or framework then this will lead to consumer harm and dissolution of trust in the ecosystem
 - Will reduce uptake in the market compounding to harm to opportunity lost and opportunity cost.
- Some customer journeys are akin to RtP and should be considered.

4 APPENDIX 1 – LIST OF CONSULTATION RESPONDENTS

Account Technologies
AIB
Bank of Ireland
Barclays
Bud Financial Ltd
Consumer and SME Representatives
Crezco
Eazy Collect, Part of the Access Group / Northey Point Limited
Electronic Money Association
Financial Data & Technology Association (FDATA)
Fire Financial Services Limited
GoCardless Ltd
HSBC
Lloyds Banking Group
MoneyBox
Moneyhub Enterprise
Nationwide Building Society
NatWest Group
OneBanks
Ordo
Plaid Financial Ltd.
Plum
Sage
Santander plc
Truelayer
Virgin Media
UK Finance