

## **APPENDIX 4c iii**

### **OPEN BANKING IMPLEMENTATION ENTITY**

### **VARIABLE RECURRING PAYMENTS AND SWEEPING CONSULTATION**

### **FEEDBACK SUMMARY AND RESPONSE DOCUMENT**

**JANUARY 20 2021**

**Disclaimer:** The contents of document do not constitute legal advice. Whilst Responses have been drafted with regard to relevant regulatory provisions and best practice, it is not a complete list of the regulatory or legal obligations that apply to Participants. Participants are responsible for their own compliance with all regulations and laws that apply to them, including without limitation, PSRs, PSD2, GDPR, consumer protection laws and anti-money laundering regulations.

# TABLE OF CONTENTS

## Contents

1	EXECUTIVE SUMMARY .....	3
1.1	Introduction .....	3
1.2	The Consultation Process .....	4
1.3	Summary of Feedback .....	6
2	SWEEPING EVALUATION.....	12
2.1	Sweeping .....	12
2.2	Evaluation of payment methods .....	17
2.3	VRP for Sweeping Customer Protection .....	28
2.4	VRP for Sweeping Risks .....	32
2.5	Other comments received .....	35
3	VRP PROPOSITION.....	36
3.1	VRP Concepts .....	36
3.2	Regulatory treatment of VRP .....	37
3.3	Risks & mitigations in VRP activity.....	42
3.4	Other comments received .....	48
4	APPENDIX 1 – LIST OF CONSULTATION RESPONDENTS .....	49
5	APPENDIX 2 – LIST OF CONSULTATION QUESTIONS.....	50

# 1 EXECUTIVE SUMMARY

## 1.1 Introduction

On 9 November 2020, the Open Banking Implementation Entity marked the next stage in the development of open banking by launching its consultation into Sweeping and Variable Recurring Payments (VRPs).

There are now well over two million individual consumers and businesses using open banking enabled products and services. Based on this adoption measure, the CMA's open banking remedy, which is designed to increase competition within the retail banking market, has already begun to deliver considerable success. However, the CMA was keen for the open banking remedy to deliver products that directly compete with components of the personal and business current account, and believed that simple, automated, mechanisms for moving funds between these components would support this. The CMA refers to this mechanism for automated funds movement as "Sweeping" within its Retail Banking Market Investigation Report<sup>1</sup>. VRPs provide one way that Sweeping could be undertaken.

VRPs are an emerging and innovative way of securely instructing payments through an API. VRPs enable innovation in payment experiences and the creation of new types of financial services for customers. Under VRP, customers are empowered to grant a long-held consent to a Payment Initiation Service Provider (PISP) for the purpose of instructing payments on their behalf, without the need to authenticate each individual payment with the Account Servicing Payment Service Provider (ASPSP). By enabling PISPs to move money on behalf of customers, VRPs enable new forms of financial automation, improved end-user experiences, and greater levels of consumer transparency and control.

This consultation was issued in two parts. Firstly, in order to meet the requirement under the Revised Roadmap for Open Banking<sup>2</sup> (Roadmap Item A10), a Sweeping Evaluation was undertaken to determine the appropriate mechanism for delivering Sweeping from a range of alternatives, including VRPs. If VRPs are determined to be the most appropriate mechanism, the Evaluation also considers whether to recommend that the CMA9 providers are mandated to implement Sweeping Access under the Order. Such a recommendation would need to include an assessment of its effectiveness and proportionality.

The second part addresses the requirement on the OBIE to develop a VRP Standard as a non-mandatory Standard (Roadmap Item A2(b)(i)). It provides an analysis of VRP activity from a

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-marketinvestigation-full-final-report.pdf>

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/885537/Notice\\_of\\_proposed\\_changes\\_to\\_the\\_open\\_banking\\_roadmap\\_-\\_web\\_publication\\_-\\_cma\\_gov\\_uk\\_---\\_May\\_2020\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885537/Notice_of_proposed_changes_to_the_open_banking_roadmap_-_web_publication_-_cma_gov_uk_---_May_2020_.pdf)

regulatory, risk and product perspective, and distils a set of requirements upon which the materials for a VRP Standard would be based.

This document summarises the responses that were received to the two consultation responses and sets out OBIE's response to the feedback received. It also sets out the next steps.

## 1.2 The Consultation Process

### 1.2.1 Consultation responses and engagement

It is important that this consultation process is as inclusive as possible, and all those that have an interest in VRPs and Sweeping are given the opportunity to make their views heard.

The OBIE sent the consultation to over 600 organisations covering key stakeholder groups and held three stakeholder engagement events. Over 200 companies registered to join the launch event and a further two stakeholder events were hosted to address questions people raised.

The initial consultation response period closed on 4 December 2020. We received 55 responses from a range of organisations and individuals, which break down into the following categories<sup>3</sup>:

- All of the CMA9
- 6 non-mandated ASPSPs
- 26 TPPs and TSPs
- 14 other organisations including charities, trade associations and consultancies

### 1.2.2 Continuing Consultation and Next Steps

The feedback received from stakeholders was summarised in a previous version of this document and discussed with the Open Banking Implementation Entity Steering Group (IESG) at its meeting on 17 December 2020. Following that discussion, the OBIE has amended the Sweeping and VRP Proposition Consultation documents and produced this document, which includes the content of the previous version together with OBIE responses.

The amended consultation documents, together with this document have been published as the second phase of consultation on the OBIE website, and further feedback has been requested by 12<sup>th</sup> February 2021. These documents will also be discussed at January's IESG meeting.

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<sup>3</sup> 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.

### **1.2.3 OBIE's Approach to Reviewing Consultation Responses**

As instructed by the Trustee, OBIE has carefully analysed all the responses provided by respondents.

OBIE's approach has been based on the following principles:

- 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 provided a response to the key themes highlighted in the responses to the initial consultation and where appropriate updated the consultation documents.

## 1.3 Summary of Feedback

### 1.3.1 Scope

TPPs responded to the consultation very positively with very wide support for the introduction of VRPs to enable Sweeping and several TPPs recommended mandating VRP availability for all use cases, not just to enable Sweeping. The majority of the CMA9 have expressed a range of concerns about the OBIE's Sweeping proposals, given that it may become a mandatory requirement under the Order. One bank questioned whether this was the best way to address the CMA's stated competition concerns. However the scope of the work to be carried out by the OBIE was set out following extensive consultation by the CMA in its Notice of April 8<sup>th</sup> 2020, resulting in the publication of the Revised Roadmap on May 15<sup>th</sup> 2020. The scope of this consultation and this feedback analysis is limited to the requirements of the Revised Roadmap, so these points fall out of scope.

### 1.3.2 Sweeping Evaluation

The responses to the sweeping consultation were quite polarised. The TPP community firmly believe the development of VRPs is crucial in the further development of the Open Banking Ecosystem, the development of innovation propositions for PSUs and the only way to deliver Sweeping propositions. Whereas the CMA9 community have a view that the case for VRPs as a more appropriate payment mechanism for Sweeping than current alternatives is not proven and it would be unreasonable (and disproportionate) to require the CMA9 to implement VRPs for Sweeping. 98% of TPP respondents strongly agreed or somewhat agreed that VRPs could provide a viable payment mechanism for sweeping whereas 55% of the CMA9 somewhat disagreed or strongly disagreed to the statement.

The emerging themes from the Sweeping Evaluation Consultation Paper responses are outlined below:

#### **Analysis of payment mechanisms.**

There was broad agreement that the selection criteria were relevant and comprehensive although many respondents also believe consumer protection merited inclusion as a specific criterion, and many suggested that the criteria had differing levels of importance.

Most of the CMA9 indicated that they felt that the analysis of alternative payment mechanisms was unsatisfactory and should include overall economic cost, and/or cost to banks to both build and operate (one respondent provided an indicative cost to build VRP capability). Two additional payment mechanisms, Standing Orders and Request To Pay, were identified as potential payment methods that needed to be included in the comparison of suitability of different payment methods.

Some respondents highlighted surprise that an assessment of existing providers of Sweeping services, and the payment methods they used, were not included in the analysis.

**OBIE Response:**

We have taken on-board the views of stakeholders and included Customer Protection as an additional criterion in the analysis of different payment methods. In addition, we have revised the “no-unnecessary obstacles” criterion to reflect the requirement for the PSU not to necessarily be in session for the transaction to take place. The assessment section is also being updated to include additional payment methods.

An impact assessment has been requested from the CMA9 to help us understand in more depth the costs of building VRP capability. In addition, further investigations with existing providers of Sweeping have started, and responses to date have been aligned to the TPP perspective in consultation feedback. When these processes have been completed additional information will be shared with IESG.

**Consumer Protection.**

Whilst TPP responses were confident that they would, and that their status as regulated firms would ensure that they would, provide appropriate protection for their customers, both consumer representatives and many of the CMA9 believe that there are gaps in the consumer protection framework for Sweeping VRPs including:

- **Conduct Risks:** Consumer groups and members of the CMA9 were concerned that Sweeping VRPs could be used for aggressive collection of debts and questioned whether adequate controls were in place to prevent this. One CMA9 respondent was concerned that a SSP would might not act in the best interests of the customer and might move funds to an unsuitable product.
- **Disputes:** Several CMA9 respondents as well as consumer representatives highlighted a lack of clarity around how disputes might be managed, for example, if a Sweeping Services Provider moved funds and this resulted in detriment to a customer as they incurred overdraft fees or missed a payment.

**OBIE Response:**

OBIE believe that PISPs, as regulated firms, are capable of determining and attesting to whether their activity meets the proposed definition of sweeping. The Consumer Protection section of the document has been significantly expanded and specific examples of potential customer harms and the controls to reduce the risk of harm have been included.

OBIE has conducted analysis into the potential conduct risks raised in the consultation feedback and believes that the existing regulatory framework addresses the concerns raised. Additionally, OBIE is working with the FCA to determine how best to provide clarity to participants and users.

**Definition.**

There was a general consensus from both ASPSPs and TPPs that the definition of Sweeping should be between accounts in the same name and that the definition should be broadened to enable Sweeping between accounts held at the same institution.

There were a wide range of views around the types of destination accounts that should be included within the proposed definition of Sweeping. TPPs proposed as wide a definition as possible including to ISA's, pensions, investments, and to pay off credit cards, as this would enable them to maximise the range of Sweeping-based propositions they could develop for customers. Several members of the CMA9 pointed out that to be in the scope of the Order the funding account needed to be a PCA or BCA, and one felt that the destination account also needed to be a PCA or BCA to be in the scope of the Order. Some respondents suggested that the destination account should be sort code and account number addressable and another questioned how identity could be verified if a wide range of destination accounts were allowed.

Defining Sweeping as the **automatic movement** of funds also proved to be a point of disagreement. Several TPPs highlighted the importance of enabling automatic payments, whereas several CMA9 institutions questioned the need for automation, pointing out the benefits of seeking a customer's authority to make a sweeping transaction, and the ease of facilitating this with app-to-app.

The Consumer Representatives welcomed the development of VRPs for Sweeping and the benefits it could bring to consumers but questioned whether the CMA was able to impose the appropriate consumer protection obligations on TPPs needed with the proposed definition. They highlighted how the proposed definition could be interpreted to allow e-commerce. If appropriate controls cannot be mandated, they recommended that the definition was tightened to sort code and account number addressable accounts in the same name as the PCA / BCA.

**OBIE Response:**

As a result of the feedback received, we propose to amend the definition of sweeping so that the source account needs to be a PCA or BCA, and to include sweeping between accounts at the same institution. In response to feedback regarding the fact that there may be use cases which do not require automation, OBIE proposes to amend the definition so that it covers use cases in which transactions need to happen automatically where the customer is not in session, and also those use cases that would benefit from the customer being in session.

**Assurance**

Linked to the definition of Sweeping is the ability to ensure that source and destination accounts belong to the same person or legal entity. Whilst most TPPs were comfortable to be able to determine if this were the case, several banks felt that additional assurance was required. Confirmation of Payee (COP) was cited as an applicable solution by some institutions whilst others pointed out the limitations of COP both in coverage (which markets it is available in, and the types of accounts it covers) as well as cost and availability to TPPs. A number of respondents noted the



absence of commentary around avoiding APP<sup>4</sup> scams when the validity of the destination account has not been proven.

**OBIE Response:**

OBIE believes that it is appropriate that a PISP, a regulated firm, determines and attests to whether a transaction meets the definition of Sweeping. Additional consideration of APP scams has been included in the revised Consumer Protection section of the Sweeping Evaluation report.

**Timing of payments and impact on payment systems**

Several respondents cited concerns around when the Sweeping transactions would be initiated and whether this might impact end of day processing or be impacted by the order in which payments are applied to the account. In extremis, a couple of respondents questioned whether these automated transactions may impact the liquidity of banks or the integrity of the payments system by causing banks to breach their net sender caps.

**OBIE Response:**

The timing of VRP transactions is determined by the PISP and OBIE do not believe that this will impact end of day processing or the order in which payments are applied to accounts at ASPSPs. If there were customer detriment due to the SSP not correcting forecasting incoming / outgoing payments, then this is independent of the payment method and is a result of poor service by a regulated firm<sup>5</sup>. Customers can raise a complaint and refer the complaint to the FOS if they are not satisfied.

OBIE has requested meetings with the PRA and Bank of England to discuss the specific concerns raised about the impact on banks' liquidity from increased competition due to sweeping, and the impact on the underlying payment systems from VRPs. Feedback from these discussions will be shared with IESG but previous discussions with the PRA and Bank of England did not highlight any specific concerns in this regards.

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<sup>4</sup> Authorised Push Payment

<sup>5</sup> An SSP will be using AIS to predict the appropriate balance to transfer as part of a sweep and so will be a regulated firm, irrespective of what payment method is used.

### 1.3.3 VRP Proposition

There was strong support for VRPs from TPPs however the positioning of VRPs as a voluntary Premium API standard with the CMA9 potentially being mandated to implement part of the standard to support Sweeping caused some confusion and concern across all stakeholder categories.

We would highlight the following themes from the feedback received:

#### **Consumer Protection.**

Some respondents were concerned around lack of clarity around the liability model and how disputes would be managed across the firms. This confusion may persist not only between Open Banking participants (ASPSPs and TPPs) but also with PSUs who may expect similar levels of protection to existing payment methods if VRPs are considered an alternative to Direct Debits or card based Continuous Payment Authorities. The Consumer Representatives felt that this lack of an operational framework, coupled with no regulatory mandate for TPPs to appropriately use the control mechanisms inherent in the VRP standard (dashboards, notifications and consent parameters) could lead to the development of a payment regime which exposes consumers to greater risk than they currently experience. They also felt that the lack of consideration of the APP Scams work and the CRM code was an obvious omission. Whilst many respondents commented on the lack of a consumer protection regime for VRPs one CMA9 respondent noted that as this was a voluntary standard ASPSPs and PSPs would want to take responsibility for risks, liabilities and consumer protection for any use cases developed before mutually agreeing to use this standard.

#### **OBIE Response:**

Consumer Protection considerations for VRP under sweeping access are included in the Sweeping Evaluation document.

Consumer protection considerations for broader “non-sweeping” activities are the responsibility of PISPs and ASPSPs operating as regulated firms. As a regulated PISP activity VRPs are under direct supervision of the FCA and, regardless of contractual terms of access, are covered by the liability structures of PSD2. In addition, consumers have access to the Financial Ombudsman Service if they are not satisfied by the firm’s response to a complaint.

OBIE notes that non-sweeping activities require contractual access, and therefore ASPSPs retain full discretion over which PISPs are granted access for what activities and under what terms.

#### **Regulatory treatment.**

Many respondents asked for more details of the FCA’s views, with some querying the OBIE’s interpretation and seeking more clarity around the fit with the PSRs and the UK-RTS, more guidance on parameters including possible limits, and the application of exemptions including

fraud transaction risk analysis. Some felt that the creation of two forms of VRP (with an exemption and with delegated authentication) created unnecessary complexity.

**OBIE Response:** OBIE has considered the relevant regulatory provisions and has provided more detail in paragraph 3.2. In the context of Sweeping Payments, the Trusted Beneficiary exemption has been identified as the most suitable exemption to enable “customer not present” VRP payments following successful VRP set up. OBIE recognises that there may be use cases for broader VRP payments types, where the use of an alternative exemption may be more suitable

**Strategic fit.**

Many respondents, including members of the CMA9, questioned the fit of VRPs with Pay.uk’s New Payments Architecture (NPA), and other initiatives including HMT’s Payments Landscape Review and the OBIE/PSR Consumer Protection Working Group. They suggested that policy and proposition development in these areas were likely to have material consequences that would be relevant to the OBIE evaluation.

**OBIE Response**

OBIE notes that some of the characteristics of Direct Request appear similar to VRP. Direct Request was not considered to be a realistic alternative to VRPs as a mechanism to deliver Sweeping, as it is still at the concept stage and there is no plan or mechanism to ensure its delivery. OBIE believes that the cost of developing and deploying a Direct Request capability would be significantly decreased if it was developed on top of VRPs.

**Fragmentation**

A number of TPPs stated concerns that having to agree multiple bilateral contracts could stop the market from developing or result in fragmentation, with adverse consequences to consumer adoption and outcomes.

**OBIE Response:**

OBIE acknowledges that a wide range of different VRP-based propositions would naturally create a degree of fragmentation. However, the OBIE believes that the market will evolve and that this may lead to a relatively small number of multilateral frameworks.

In addition, OBIE notes that the scope of the Revised Roadmap requires the development of the capability to effectively enable Sweeping, and the development of a VRP Standard. The Revised Roadmap does not require the OBIE to develop an approach for the implementation of and/or adoption of VRPs in the market.

## 2 SWEEPING EVALUATION

### 2.1 Sweeping

2.1.1 **Question 1: To what extent do you agree with the proposed definition of Sweeping?**  
Please give reasons for your answer.

#### **Key Points / Executive Summary:**

- There was widespread support for the idea that the Sweeping definition should be extended to include movement of funds between accounts at the same institution.
- The CMA9 generally wanted a tighter definition of the destination account for Sweeping whereas TPPs wanted a broader definition to incorporate a wider variety of use cases.
- The consumer representatives would like consumer protections (notifications, parameters, dashboards) to be mandated on TPPs and, if this cannot be achieved, to instead have a tight definition of Sweeping to minimise consumer risk.

#### **OBIE Response:**

OBIE have revised the proposed definition of sweeping based on the feedback received.

#### **Stakeholder feedback:**

##### **CMA9:**

There was a range of opinions from the CMA9 regarding the proposed definition. Three respondents strongly disagreed and two somewhat disagreed; however, two respondents somewhat agreed with the proposed definition. There were a variety of themes in the responses.

- Three respondents questioned the need for the payments to be automated. Another felt that an optional alert or approval step could benefit the proposition whilst still enabling the transaction to be automated but giving customers choice about additional control.
- Several institutions noted that the definition should be that the “Sweep” transactions need to be from a PCA or BCA to be in the scope of the Order, and one respondent suggested that source AND destination account need to be a PCA or BCA to be in the scope of the Order.
- Several respondents questioned the limitation for accounts to be held at different institutions.
- There was general agreement that both accounts needed to be in the same name. However, there were a range of views on the other controls on the destination account; one provider recommended the destination account was sort code and account number addressable and another sought clarity about whether investment accounts should be included, and a third suggested that this remedy should focus on overdrafts.

- Several respondents sought clarity on the types of checks that could be carried out on the destination account, and one respondent noted that they did not offer Confirmation of Payee so this validation method could not be relied upon.
- Further clarity was sought on the transaction controls such as frequency and limits and how the mandates and controls for joint accounts and within BCA accounts would be accounted for.

#### **Other ASPSPs:**

Six non CMA9 ASPSPs responded to the consultation; however, some chose not to answer the questions on Sweeping as they are not mandated to implement these and others chose not to elaborate on their numerical answers.

- One ASPSP strongly agreed with the definition of sweeping, two somewhat agreed and three neither agreed nor disagreed. None disagreed with the definition.
- One respondent requested that more consideration should be given to B2B use cases and another respondent requested more specificity in the definition.
- One respondent noted that certain phrases such as “sufficient level of automation” and “unnecessary obstacles” could provide an opportunity for institutions resistant to the development of Sweeping.

#### **TPPs and TSPs:**

In summary, the TPP community was supportive of the development of Sweeping but wanted it to have as wide a remit as possible and one provider stated that they were “ready to make use of the full functionality as soon as it becomes broadly mandated”.

- Most TPPs were broadly supportive of the definition of Sweeping but many felt that the current definition was overly restrictive and so ruled out many use cases that they believed could significantly benefit consumers. The only respondent who strongly disagreed with the definition did so because it was overly restrictive and suggested that the mandated standard should enable all VRP use cases.
  - Many TPPs wanted the definitions expanded to enable Sweeping to credit cards, ISAs and pensions as this would deliver significant benefits to consumers. One TPP wanted to include small businesses and corporate customers within the definition.
  - Another TPP requested that the Sweeping definition be expanded to support international transfers.
- Almost all respondents who provided detailed written responses cited the requirement for Sweeping to be between accounts at different institutions as the proposed definition limited the opportunity for customers to benefit from new sweeping propositions. This was felt to be particularly true for respondents serving business banking users.
- One TPP suggested that there should be a tighter definition about the timing and frequency of sweeping transactions as the current definition could see money moving forwards and backwards multiple times per day.

**Consumer/SME Representatives:**

- The independent consumer and SME representatives did not agree with the proposed definition or approach to roll out, but rather preferred an approach where VRPs are mandated and the appropriate risk controls and protections (dashboards, notifications and consent parameters) are also mandated and applied ubiquitously in the market.
- If this were not possible, in order to limit the risk of consumer harm, a tighter definition of Sweeping was proposed, which limits the potential uses of Sweeping VRPs to the lowest risk use cases.

**Others:**

- There was widespread commentary that defining Sweeping as the movement of funds between accounts at different institutions unnecessarily constrained the proposition and could result in some customers missing out.
- Some recommended that the definition should be expanded to enable Sweeping to non-bank accounts such as credit cards, ISAs and pensions, to ensure this development better aligned with the development of Open Finance.
- One respondent questioned how name checking could work in practice and another questioned the impact on the payments infrastructure, such as Confirmation of Payee.
- Several respondents welcomed the inclusion of joint accounts into the definition but cautioned that more clarity was required on defining consent for joint accounts.
- One respondent thought that cross border payments might become more relevant over time and name on business account may be too restrictive and unique enterprise identifiers may be more relevant.
- One respondent questioned what the most appropriate trigger might be for end of day Sweeping.
- Another noted some of the challenges of the proposal as corporate Sweeping solutions can be quite complex, taking into account available and ledger balances, and at what point in the overnight processing does the Sweep take place.

**2.1.2 Question 2: Are there additional benefits or risks associated with Sweeping that you would like to highlight?****Key Points / Executive Summary:**

- There was agreement that participants wanted more clarity around how disputes could be handled and ensuring customers can get redress when the Sweep results in customers suffering detriment (overdraft charges, missed payments, etc.).
- Potential conduct risks were raised, principally by the CMA9, including lenders using Sweeping VRPs to aggressively seek repayments, or SSPs not Sweeping to products which offer customers better value than the PCA / BCA.

- TPPs highlighted some of the risks above but were positive about the development of Sweeping VRPs, noting that they can address the insufficient funds challenge associated with direct debits and also offer more transparency than them.
- Several respondents noted that VRPs could support the development of innovative new propositions for customers

**OBIE Response:**

OBIE notes the positive comments received regarding VRPs and has revised Section 5 - Customer Protection and Section 6 - Other Risks of the Sweeping Evaluation Paper to address the concerns raised in feedback to this question.

**Stakeholder feedback:**

**CMA9:**

- Almost all respondents identified concerns around liability, how disputes could be managed and how customers could get redress if the Sweeping service resulted in detriment (e.g. not being able to meet a mortgage payment or incurring overdraft charges because funds had been swept to another account).
- One respondent also highlighted that the accounts that funds are swept to may not offer better value than the PCA or BCA and examples were provided.
- The risk of creditor SSPs not acting in their customers' interests was raised by two respondents. Some respondents questioned the appetite of customers to adopt Sweeping propositions or highlighted lack of research with vulnerable customers and customers in distress.
- Two respondents commented on the impact on banks' funding positions if Sweeping resulted in the rapid movement of large balances.
- One respondent commented on the potential propositional challenges if the AIS has to be re-confirmed every 90 days coupled with an open-ended Sweeping capability. Another respondent noted the lack of obligation for pre-notification for VRP transactions.
- A number of respondents noted questions around the timing of Sweeps and the potential impact on end of day processing and balances.
- Two respondents noted some potential benefits of Sweeping with one indicating that there may be specific benefits for SME and business customers.
- One respondent challenged the premise for this intervention and cited that the overdraft market had changed significantly with market and regulatory developments, and the considerations on the challenges to competition from these possible remedies had not been fully considered.

**Other ASPSPs:**

- One respondent commented that Sweeping and VRPs could be used to manage subscriptions and help customers move away from "zombie-subscriptions", but an

associated risk is that the consent parameters block the use of services which are relied upon.

**TPPs and TSPs:**

TPPs identified a wide range of risks and benefits.

- The need for a dispute mechanism and clarity on where liability lies was identified. Disputes may arise from individual transactions or from ASPSPs or PISPs blocking Sweeping because the account name is not identical.
- Two respondents suggested that consideration needs to be made on the timing and frequency of Sweeping movements; this may introduce new risks and in extremis cause ASPSPs to reach their Net Sender Caps
- Several respondents identified their support for Sweeping and VRPs. Benefits cited included providing PSUs with more control than direct debits, and addressing the insufficient funds challenge associated with them.
- One respondent also noted the risks of ASPSPs or TPPs declining transactions if there is not an exact name match.

**Consumer/SME Representatives:**

- An identified key benefit is enabling the development of micro-savings propositions.
- Principal risk is associated with using 3rd party credit providers using Sweeping VRPs aggressively to collect debts.
- The risks of other use cases were not fully considered by OBIE, e.g. no consideration of APP scams, loss of purchase protection if Sweeping VRPs are used for e-commerce via an e-money account, and loss of FSCS protection if Sweeping into an e-money account.

**Others:**

- Two respondents highlighted the lack of clarity regarding what would happen if the Sweep resulted in overdraft fees or missed payments as balances had been swept to another account.
- Two respondents called out the benefits that Sweeping VRPs can address regarding the insufficient funds challenge associated with direct debits, thereby reducing risk exposure for PSUs.
- One respondent also highlighted a need for scheduling and coordination with other scheduled payments.



## 2.2 Evaluation of payment methods

### 2.2.1 Question 3: To what extent do you agree with the proposed criteria for assessing the suitability of different payment methods? Please give reasons for your answer.

#### **Key Points / Executive Summary:**

- There was broad agreement that the selected criteria were relevant and comprehensive. However, many respondents believed that consumer protection merited inclusion as a specific criterion that was essential to underpin a robust analysis.
- It was suggested that a deficiency of the current evaluation was that it had not looked specifically at existing Sweeping propositions in the market, which would inform the assessment of the suitability of current payment mechanisms. It is recommended that this analysis is now undertaken.
- The CMA9 questioned the basis of the cost analysis and indicated that it was important from a proportionality perspective that ASPSP costs were considered. It was noted that there would inevitably be a trade-off between cost and consumer protection.
- Some respondents argued that it was inappropriate for the evaluation criteria to be equally weighted.

#### **OBIE Response:**

In response to feedback received OBIE has revised the evaluation criteria and is working with the CMA9 and existing providers of sweeping propositions to assess the costs of implementation and further highlight the benefits and limitations of existing payment methods.

#### **Stakeholder feedback:**

##### **CMA9:**

- A minority of the CMA9 were partially supportive of the criteria used, but there was a universal view that additional considerations such as compliance/costs of delivery/consumer protection/liability and dispute settlement/customer understanding also need to be considered.
- It was noted that there are already some sweeping propositions in market, which could have been more rigorously evaluated to explore the suitability of existing payment mechanisms from a less hypothetical perspective. A number of respondents felt the fact that certain payment types were used in the market was prima facie evidence that they were viable and that Sweeping could successfully be achieved via their use.
- Some respondents questioned the rigour and robustness of the cost analysis. It was generally noted that the question of cost of delivery by ASPSPs was not included as part of the criteria. This was seen as an essential criterion to evaluate the question of proportionality. It was suggested that the opportunity costs of delivering mandatory functionality should be considered.

- There was some criticism of the depth of the analysis. Some respondents felt that more emphasis should be placed on the legal framework/scheme rules that were applicable to different payment mechanisms. They noted that the scheme rules tended to have evolved to address consumer protection issues relevant to where variable amounts to be debited from a payer's account were under a long held consent. It was suggested that these rules and the extent to which they provide consumer protection should be a key element of the assessment criteria. This was likely to be a critical factor for consumer adoption.
- Some respondents were of the view that the assessment criteria appeared to be heavily skewed towards whether payments can be initiated without friction. It was noted that friction could sometimes be positive., and that in some circumstances friction could play an important role in preventing poor outcomes, particularly with payment disputes and fraud. Evidence that customers do not want to be actively engaged in each Sweeping payment had not been shown.
- Several respondents noted that each of the payment mechanisms provides different consumer protections and imposes different levels of risk. It was considered that this should be an important part of the assessment and one respondent noted that specific reference was made to this within the CMA Notice of 7 April 2020.
- It was noted that payments between different accounts in the customer name is a known fraud use case. Potential for APP fraud should be considered within the risk assessment.
- It was also noted that in relation to the immediacy of settlement, PSD2 already provides for a maximum period for payments to arrive at the recipient's bank after the payment order is received. Maximum execution times for all payment types are covered in all ASPSP payment services framework contracts with their customers so these are already transparent. Similarly, PSD2 requires the receiving bank to immediately credit their customer's account.
- In assessing cost, it was argued that the cost to all parties involved in the transaction should be considered, including ASPSPs. ASPSP costs are a relevant factor in the assessment of proportionality. It was noted that issues currently being considered by Open Banking and the PSR on the consumer protection framework may have future cost implications that impact this assessment.
- It was also noted that the evaluation of the costs of CPA and DD payments did not acknowledge the trade-off between cost and consumer protection. For example, no reference had been made in the evaluation to the differential protection offered by card payments in the event of merchant insolvency, and whether PSUs utilising VRPs would be similarly protected.
- Additionally, it was noted that in relation to card payments and DDs, merchant acquirers and the sponsoring banks play a key role in vetting merchants permitted to take payments and this feature of those payment mechanisms had not been identified or sufficiently evaluated.
- It was observed by certain respondents that Pay.uk had launched Request to Pay payment standards that will sit alongside Direct Debit and can be utilised by overlay service providers. It was recommended that this new payment type is assessed for suitability against the Sweeping requirements. It was noted that the lack of consumer adoption of

Request to Pay might be as a result of a lack of demand for a service of this nature and potential unwillingness on the part of consumers to move away from traditional payment methods. This would be relevant to a proportionality assessment.

- Finally, one respondent disagreed that the evaluation criteria should have equal weighting. They argued instead that not all criteria had equal importance. Their suggested hierarchy was:
  - Customer protection
  - Transparency and control
  - Unnecessary obstacles
  - Immediacy of payment
  - Cost to the SSP
  - Cost to the ASPSP

#### **Other ASPSPs:**

- Respondents generally declined to provide feedback on this question on the basis that they will not be mandated to implement these requirements.
- One respondent suggested that security of the payment mechanism should be a further assessment criterion.

#### **TPPs and TSPs:**

- Over 90% of respondents were supportive of the criteria and felt that they form a good basis for the evaluation of Sweeping. Some of these observations had been informed directly by participation in the FCA Sandbox initiative.
- However, a number of respondents suggested the following additional criteria:
  - Customer experience – to be used in the assessment of how easy it is to set up Sweeping payments based on time and effort considerations. The respondent argued that although the immediacy and transparency indirectly inform a view of customer experience, this could be enhanced by exploring the time and effort considerations to better understand the implications of how effective Sweeping could be.
  - Information and Reasoning - which they defined as a criterion based on customer comprehension of payment parameters. The respondent argued that this was incremental to "Transparency & Control", the focus of which was visibility of notification of forthcoming payments and the ability to control the timing or scope of payment. It was observed that current variable payment methods do not give the consumer an adequate level of visibility or control over arrangements they have set up and may discourage consumers from utilising propositions available to them.

#### **Consumer/SME Representatives:**

- Broadly supportive of the criteria but considered that consumer protection should be a specific additional criterion.

- Generally agreed that the rating against the criteria was valid. However, they disagreed that the dual transaction issue in relation to DDs (SSPs would require intermediate accounts to clear payments) was a significant obstacle. It was also suggested that the speed of settlement of DDs had been overstated as an obstacle.
- It was argued that the rating of CPA from a transparency and control perspective was overstated. It was noted that CPAs offer very few transparency and control benefits to consumers – no pre-notification requirement, no dashboard and no effective means to cancel at the bank.
- It was agreed that VRPs provide visibility but offered poor consumer protections, which may put a consumer at risk.
- It was suggested that the analysis of CPAs should include reference to chargeback protection and in the case of credit cards S.75 protection, which could have some relevance to certain use cases.

**Others:**

- Opinion was divided. Some respondents were entirely satisfied that the proposed criteria were suitable. However, others suggested that further analysis was required. In particular it was recommended that existing Sweeping propositions might provide a valuable starting point to assess the suitability of current payment mechanisms.
- Several respondents considered that it would be desirable to assess the cost and timelines for implementation of VRP. It was suggested that there might be viable opportunities to enhance existing mechanisms to make them fit for purpose by adding transparency and control elements or offering faster settlement.
- Additionally, it was suggested that a further criterion, the availability of supporting functionality like dispute management systems, payment reversal / refund capability, would enhance the assessment of different payment mechanisms.

**2.2.2 Question 4: To what extent do you agree that neither Direct Debits nor Continuous Payment Authority on cards, nor open banking SIPs are suitable funding mechanisms for Sweeping as defined by Order? Please give reasons for your answer.**

**Key Points / Executive Summary:**

- There was some general recognition that DDs & CPAs were sub-optimal from an immediacy perspective, but the CMA9 and Consumer Representatives highlighted that these mechanisms had important compensating consumer protection features, which counterbalanced this deficiency.
- It was suggested that analysis of existing sweeping propositions in the market would help to inform the assessment.

- There was considerable divergence between the CMA9 and TPPs on the viability of SIP to support Sweeping. TPPs are of the view that an automated Sweeping solution is absolutely essential. Most of the CMA9 disagree and argue that friction in the customer journey could be beneficial to customers.
- It was suggested that Standing Orders and Request to Pay might be viable alternatives that merit further evaluation.

**OBIE Response:**

OBIE notes the feedback received, has amended the Evaluation Criteria and still concludes that Direct Debits, Continuous Payment Authorities and Open Banking SIPs do not provide a viable payment mechanism to enable Sweeping. For the purposes of Sweeping, OBIE concludes that there is no material difference to the level of consumer protection offered by the different payment mechanisms as the protections under PSR Reg 76 (unauthorised transaction) and PSRs Reg. 93 (defective transactions) apply to all transactions.

**Stakeholder feedback:**

**CMA9:**

- A few respondents agreed to some extent that DD & CPAs were not ideal to support Sweeping, but felt that there had been insufficient analysis of how these mechanisms were being effectively used in existing Sweeping propositions, particularly in the corporate and SME sectors.
- Most felt that DDs were a suitable mechanism for Sweeping on the basis that they offer a high degree of transparency, visibility and customer protection as a result of the Direct Debit Guarantee. Customers are familiar with them. They disagreed with the conclusion that the movement of funds from the ASPSP to the SSP and then back to the customer would result in additional risk and delay.
- It was noted that Pay.uk had launched Request to Pay payment standards that will provide an alternative to direct debit. It was suggested that this new payment type is assessed for suitability against the Sweeping requirements and whether this could be a cost-effective alternative for use in Sweeping.
- Some respondents felt that CPAs could be a suitable mechanism for Sweeping and pointed to examples of existing propositions in market as evidence of this. It was noted that the use of CPAs is subject to various scheme rules that require disclosure of advance payment information to the customer and provide recourse for the customer in cases of unauthorised payments. Existing scheme chargeback arrangements underpin consumer protections, but also provide a robust liability framework that ensures that ASPSPs have redress via the merchant acquirer for any failings on the part of the merchant.

- PSD2 establishes that CPAs can be cancelled via the issuer or merchant up to a working day before the payment is due. The issue of card expiry was seen as advantageous by some respondents in that it will prompt customers to periodically review Sweeping consents.
- Some respondents disagreed with the analysis of the immediacy of CPA settlement. While settlement of transactions is slower than SIP, it was noted that the majority of transactions were settled within 24 hours and that the debit was not actually applied to the payer's account when the issuer authorises the payment. While the funds remain ringfenced in the account and cannot be used for other purposes, the customer will continue to receive interest on those funds until settlement completes. In addition, the payment guarantee at the point of authorisation enables the payee, in many cases, to offer immediate services prior to settlement.
- The majority of respondents stated that they considered SIPs a suitable, cost effective mechanism for Sweeping. They disagreed that SCA was an obstacle and noted that SCA requirements are mandated under PSD2 and are applicable to a broad range of payment types, unless the ASPSP, at its discretion, decides to apply an exemption.
- Friction was not necessarily unwelcome and provided additional control that could be reassuring to PSUs. Some respondents feel that customer intervention is particularly important in certain Sweeping use cases, particularly in relation to vulnerable customers, or those with less financial awareness who could inadvertently be adversely impacted by automation of Sweeping.
- Most respondents commented that the assessment failed to fully address the consumer protection, redress and dispute handling mechanisms, which provide important customer safeguards. It was felt that the consultation did not fully address how VRP will ensure an appropriate level of consumer protection.
- In particular, it was noted that the consultation envisages a consumer cancelling the VRP through contacting the TPP rather than the bank. This differs from the existing options that they have in relation to DD and CPA, which could lead to poor customer outcomes. This might also give rise to liability issues for ASPSPs in circumstances where the ASPSP directs the customer to the TPP to cancel, but further payments are made. In these circumstances future transactions could be classified as unauthorised even if the customer fails to contact the TPP or the TPP fails to act on the request.

#### **Other ASPSPs:**

- Respondents generally did not respond to this question on the basis that they would not be mandated to implement these requirements or did not have relevant experience of CPAs. One respondent agreed that DD and SIP were not optimal mechanisms for Sweeping and would result in additional complexity and a poor experience for PSUs.

#### **TPPs and TSPs:**

- There was unanimous agreement that these methods were sub-optimal for the delivery of Sweeping and broad agreement on the validity of the analysis set out in the consultation. Respondents agreed that their use for Sweeping would greatly impede PSU adoption and

undermine the commercial feasibility of SSP. It was felt that all three options create obstacles for Sweeping.

- Direct debits were identified as problematic because of:
  - the delay between the creation of the mandate and the first allowable payment;
  - amounts need to be pre-determined before the payment is attempted which is insufficiently flexible where PCA/BCA account balances are continuously changing; and
  - there is a delay in the clearing and settlement of transactions that impedes delivery of real-time mechanism to transfer funds, were immediacy is a key benefit of Sweeping.
- Respondents consistently identified prohibitive cost as an impediment to the use of CPAs. Respondents indicated that the pricing model used for CPAs was typically a combination of a flat per transaction and ad-valorem fee. This would make the economics of providing a Sweeping service for both high and low value amounts untenable.
- SIP, while economically viable, required repeated authentication that would not allow an adequately automated service which is considered an essential component of any Sweeping proposition, without which the customer journey would be laborious.
- The lack of transparency and limited control features were also identified as a factor that potentially limit the attractiveness of CPAs to consumers.
- One respondent suggested that the use of Standing Orders should also be evaluated as an option. They noted that existing OB standards allow SOs to be set up, but not amended or cancelled. An enhancement to address this deficiency could provide a mechanism where Sweeping could be achieved by the PSU setting up a SO, and then allowing the TPP (with consent) to amend the order. It was noted that SOs are currently visible to PSUs and can be cancelled at any time.

#### **Consumer/SME Representatives:**

- Respondents agreed that there is no existing payment type that allows a consumer to move variable sums between their bank accounts in real-time in an automated way other than VRP.
- It was noted that there are a number of emerging Sweeping propositions, particularly micro-savings, in market that use DDs. Further analysis is therefore required to establish that DD is unsuitable. DDs have certain strengths, are prevalent and popular both by consumers and billers, although this is not universally the case for consumers who need more control such as those on low or variable incomes.
- It was recommended that OBIE reviews the successful element of DDs that could be incorporated within the design of VRPs. For example, an arrangement similar to the DD Guarantee could be developed to provide comparable consumer protection and instil consumer trust.
- VRPs are considered an improvement on CPAs because they offer increased visibility and control for the consumer.

**Others:**

- Responses were polarised. Some respondents were entirely supportive of the analysis in the consultation paper and fully agreed that the three payment mechanisms were unsuitable. Others suggested that further analysis was required, particularly from a consumer protection perspective.

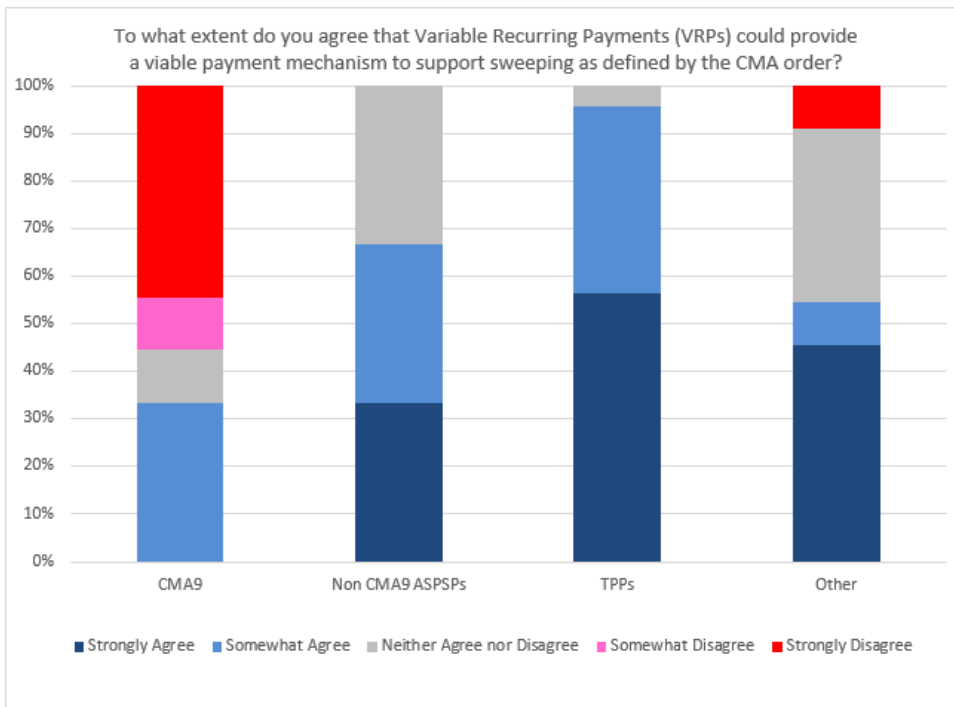
**2.2.3 Question 5: To what extent do you agree that Variable Recurring Payments (VRPs) could provide a viable payment mechanism to support Sweeping as defined by the CMA order? Please give reasons for your answers.**

**Key Points / Executive Summary:**

- CMA9 raised fundamental objections including:
  - cost/proportionality
  - the lack of a trust model
  - risk of customer detriment
- It was felt by some that the ingoing assumption was for VRP-enabled Sweeping without full consideration of alternatives (“cart before the horse”).
- Other respondents, particularly TPPs, argued that VRP was the most appropriate mechanism due to:
  - transaction speed
  - low cost to SSPs
  - consumer control was heightened through consent parameters
- Several of those in favour of the proposition also said consumer protection needed further consideration.

Views were polarised. While three of the CMA9 “somewhat agreed”, the general tone of the CMA9 responses was negative and four providers strongly disagreed with the proposition. This was in stark contrast to the TPP responses where thirteen strongly agreed, nine somewhat agreed and one neither agreed nor disagreed. Other respondents were tentatively positive while noting some hurdles.





**OBIE Response:**

OBIE notes the feedback received and has amended the Evaluation Criteria. We continue to conclude that VRPs are the only effective payment method to enable Sweeping.

Our initial analysis of Variable Standing Orders suggests that this payment mechanism does not offer

**CMA9:**

There were a broad range of objections raised which fell under five categories:

- 1.) **Fundamental concerns:** Several providers argued that fundamental issues need to be resolved first, such as a perceived lack of consumer protection (relative to CPAs and direct debits), limitations if only covering PCA/BCA accounts, and the lack of a defined liability model or economic framework to fund payment protections.
- 2.) **Potential for increased customer detriment:** Three concerns were raised:
  - a. Increased consumer risk and lower transparency/control given
    - i. the PSU will not have full visibility of the transaction amount<sup>6</sup> and
    - ii. the TPP may not have full visibility of other payments that need to leave the PSU’s account.
  - b. Confusion caused by a new payment method involving new features (consent parameters) and an unclear service model, calling into question whether the types of customers the CMA inquiry seeks to help will use it. A need to use consumer-friendly language and a need for research were suggested.
  - c. A need to prevent VRPs being used in e-commerce or to pay off 3rd party credit.

<sup>6</sup> It was also questioned if this meant, as per PSD2, a payment could be “clear, specific and informed”

- 3.) **Reliance on SCA exemptions:** Several respondents noted SCA will never be applied in the same way by all ASPSPs and the reliance on SCA exemptions was seen to be problematic if a particular transaction required SCA (e.g. for risk-related reasons) and failed. A further point was made that if AIS access is required it would need to be refreshed every 90 days under current regulation through SCA, disrupting the automation of payments. Finally, it was argued that some use cases (involving larger sums) should have SCA and not be automated even with consent parameters set by the PSU.
- 4.) **Incomplete consideration of alternatives:** While there was no strong consensus for a specific alternative, several replies requested further analysis, including existing Sweeping-type solutions in market today. It was suggested that Sweeping enabled by VRP has been assumed to be the best solution (i.e. “cart before the horse”) and the absence of a standalone Sweeping standard in the consultation document was noted. Finally, respondents asked for further analysis of the cost of using existing payment mechanisms such as FPS and consideration of the capacity of FPS.
- 5.) **Cost and proportionality of implementation and operation:** Several respondents raised the point that a full cost assessment had not been done and that their estimates of the cost to implement and support its practical operation (including uplifts to access dashboards and MI) would fail the proportionality test. Moreover, the investment could have unintended consequences for pricing and promotion via other distribution channels. The risk of a “two-tier” problem and pressure on non-CMA9 to build the functionality during crisis times. Finally, the cost of CoP calls was highlighted as missing from the consultation considerations.

#### **Other ASPSPs:**

Few respondents chose to respond to this question. Those that did were strongly supportive of mandating VRPs and stating the importance of a standard framework and harmonised regulatory framework

#### **TPPs and TSPs**

TPPs were in favour of VRPs and their responses focused on four themes:

- 1.) **High speed:** Particularly compared to direct debits but also cards given settlement issues, the speed offered by FPS was put forward as the main benefit of VRPs to support Sweeping and seen highly likely to increase rather than decrease customer benefit.
- 2.) **Low cost:** Many replies noted the cost benefit to SSPs of using FPS when compared to the cost of card payments. Aside from interchange it was also noted that an SSP would not have to establish a merchant-acquirer relationship in order to deliver Sweeping, another reduction to business cost. Risk cost, particularly compared to cards, was also seen to be much lower. Ultimately the cost benefit was seen to promote innovative new use cases and drive customer choice with improved outcomes.
- 3.) **Ease of use / flexibility:** It was said that the setting of parameters offers a flexible method for Sweeping funds. By allowing the PSU to set limits on the amount swept they would have greater transparency and control (contra to the arguments against set out above). It was agreed that the consent and access dashboards would be important in enabling this, but if delivered appropriately would allow a much smoother cancellation process compared to e.g. CPAs. Several respondents in favour of VRPs emphasised the fundamental importance of consent parameters and the ability of PSUs to understand, adjust and manage them on an ongoing basis with ease. Some did express the need to test with consumers to ensure

they understand consent parameters. Explaining clearly to the PSU how the Sweeping service would be affected by any change made to the "consent parameters" was suggested. One respondent proposed the use of notifications in advance of a payment being a useful feature.

- 4.) **Supports a wide range of use cases:** VRPs are seen to have another benefit of being "extensible" due to their flexibility, and thereby the universe of propositions available for customers would be significantly expanded by supporting Sweeping through VRPs. In this context it is important to highlight replies that mentioned a need to widen the types of products in scope of Sweeping.

**Consumer/SME Representatives:**

- Felt that VRPs could be a good solution to support sweeping as they can potentially combine the immediacy of CPAs with the transparency and control of a Direct Debit. However significant work is required to ensure this promise is delivered upon, and a effective consumer protection regime is put in place.

**Others:**

- Most responses were supportive of the use of VRPs, but one respondent challenged the approach and reiterated many of the concerns highlighted in the CMA9 responses

**2.2.4 Question 6: Do you see alternative ways to provide a funding mechanism to deliver Sweeping as defined by the Order? If so, please describe.**

**Key Points / Executive Summary:**

- Reference to existing Sweeping propositions in market implied it was being done today without VRP and several CMA9 responses supported Sweeping done via SIPs with app-based authentication.
- Only two alternatives were put forward:
  - adjustable Standing Orders
  - the NPA and the potential for faster direct debits
- Many non-CMA9 respondents forcefully argued that VRP was the most or only appropriate funding mechanism to deliver Sweeping and concluded it was necessary to mandate it.

**OBIE Response:**

OBIE notes the responses received, and does not consider that additional payment methods should be evaluated.

**Stakeholder feedback:**

**CMA9**

- The CMA9 mentioned existing payment mechanisms and in particular app to app-based SIPs. Several rehearsed arguments in favour of existing direct debit/card propositions or SIP-based propositions with minimal friction journeys but requiring customer authenticated, thereby circumventing any potential problems cause by SCA.
- Several responses also pointed to the fact that Sweeping services exist in market today that are not delivered by VRP, and it was suggested that the ecosystem could first try Sweeping based on SIP to gather learnings before committing to VRP-enabled Sweeping.

**TPPs and TSPs:**

- Many TPPs stated there was no other suitable alternative and reaffirmed their view that VRP was the most appropriate or indeed only way to deliver Sweeping as defined, and therefore supported it being mandated. Several respondents reiterated the benefits of VRPs in terms of cost and speed compared to e.g. CPA arrangements, and emphasised that other options would not support the economics needed for SSP business models
- One final point made was the need to not only mandate Sweeping but to preclude non-Sweeping VRPs from becoming optional premium APIs (i.e. paid-for) as this would damage competitiveness in UK retail banking.
- One TPP suggested that an adjustable standing orders could also be used for Sweeping and should be evaluated

**Consumer/SME Representatives:**

- The New Payments Architecture considered a faster alternative to direct debits, this could provide an alternative means to deliver sweeping.

**Others:**

- A mixed response in line with the comments above, some saw VRPs as the only viable mechanism whereas others felt that current payment methods were suitable

## 2.3 VRP for Sweeping Customer Protection

### 2.3.1 Question 7: To what extent do you agree that the existing control framework provides appropriate consumer protection for Sweeping? Please give reasons for your answers.

**Key Points / Executive Summary:**

- CMA9 strongly disagreed, citing insufficient consumer protection measures against a wide-ranging scope of potential risks, disputes, enquiries and complaints, as well as having to bear the first instance of compensation burden should consumers have a complaint.
- Non-CMA9 banks had very little input, except for one significant player which indicated that they were disinterested in the consumer protections as they were not bound by the requirements.

- TPPs and TSPs were largely in agreement with the framework, believing that there were sufficient protection measures in place.
- Other responses echoed the opinions of both the CMA9 and TPPs/TSPs.

**OBIE Response:**

OBIE notes the responses received and has revised and expanded the Consumer Protection section of the Sweeping Evaluation. Whilst the OBIE still believes that the current consumer protection framework is adequate, we are working with the FCA to understand better potential consumer risks and ensure that they are appropriately addressed.

**Stakeholder feedback:**

**CMA9:**

There was widespread strong disagreement from the CMA9. Five banks strongly disagreed and two somewhat disagreed, with only one bank agreeing with the question and one bank remaining neutral. The one bank that agreed did so conditionally, with suggestions for improvements and noting that there is insufficient data about how the markets or malicious actors will evolve and therefore further analysis is required.

Among the disagreeing responses, the main challenges included:

- Sweeping and the VRP Standard will increase the volumes and ranges of disputes, enquiries and complaints, but there are no additional requirements on SSPs to mitigate these risks. The current mitigations were not designed for the risks that Sweeping introduces.
- ASPSPs have to compensate consumers before seeking reimbursement from SSPs. Customers will expect the same level of protection with Sweeping as they would of current payment mechanisms and this is not true. The burden will therefore fall on ASPSPs. Furthermore, it is still unclear where the ultimate burden for compensation or liability falls.
- There are insufficient protections for vulnerable customers and the framework does not sufficiently protect users from potentially harmful use cases, e.g. gambling and payday lending. There is insufficient protection from SSPs simply being FCA regulated.
- There is insufficient protection from scenarios where merchants or SSPs withdraw amounts that exceed what the consumer could have reasonably expected, and a lack of clarity around the controls that consumers have to limit the amounts that can be withdrawn (and the impact that may have).
- Sweeping between a customer's own accounts should not be considered low risk, as the use and control level of those accounts by the customer will affect riskiness. An automatic sweep of funds into an overdraft provider's account may also be sweeping away from a loan or utilities payment. There are also situations where there may be conflicting sweeps (how will they be prioritised?) and other unintended consequences.
- Open Banking should be used as a platform to encourage customers to engage in their financial planning, not to create products that encourage them to delegate.

Among the suggestions for improvements offered, the key points were:

- SSPs should be required to pre-notify the customer when a Sweeping transaction has been initiated, similar to how banks are required to notify prior to a debit. Consumers currently may not know in advance how much money will be swept. This should be matched with stronger warnings and alerts, on top of customer ability to both prioritise upcoming sweeps as well as cancel upcoming payments through either their ASPSP or SSP.
- There needs to be increased FCA and CMA oversight of SSPs as well as increased contribution from SSPs to remedy funds; currently there are insufficient controls and SSP oversight is funded by the CMA9, disincentivising SSPs from acting responsibly.
- Controls and consent management should be weighted stronger towards PISP responsibility (away from ASPSP responsibility) as that will shift the accountability to the firm enacting the Sweeping.

#### **Other ASPSPs:**

There was very little response from non-CMA9 banks. One response agreed with the framework and another response indicated that more detail was required (but did not elaborate on what detail was missing).

There was one response by a prominent non-CMA9 bank that indicated that they had no interest in the framework as they will not be bound by them. This could be a concern if the intended behaviour of this bank diverges significantly from the framework's protections and may lead to consumer harm.

#### **TPPs and TSPs:**

TPPs and TSPs were generally in agreement that the control framework was suitable, with 18 of the 23 responses agreeing and only two responses disagreeing. The main comments featured:

- The control framework is generally adequate and protection measures afforded by the FCA's Principles of Business, PSR regulations and OBIE/FOS dispute management system are sufficient for the level of risk that Sweeping generates. A protection layer similar to s.75 or the Direct Debit Guarantee is unnecessary due to the level of PSU control.
- On the other hand, some responses noted that the multitude of potential contracts and the current level of protections afforded by the PSR and FOS may be confusing to customers and discourages take-up. A simple, comprehensive protection framework, similar to s.75 or the Direct Debit Guarantee, may be more readily accepted by customers and give greater confidence in the Sweeping system.
- The relative risk is low given that Sweeping transfers are limited to between a customer's own accounts and there are sufficient controls in place to allow customers to revoke VRP consents in multiple places.

- Additional clarity and definition of where liability lies with regard to communication and facilitation of payment instructions, and any issues that arise as a result of payment failures or delays.
- Additional analysis and clarity on the risks and liabilities regarding Sweeping from joint accounts to sole accounts may be necessary.

#### **Consumer/SME Representatives:**

Consumer/SME Representatives recognised the value of Sweeping but highlighted concerns regarding the level of protection offered. Key points raised included:

- Do not agree that the existing consumer protection framework is sufficient because the definition of Sweeping is too broad and open to arbitrage.
- Consent parameters are a useful control but concerned as they appear to be optional in the VRP Standard. Care needs to be taken on how these are presented to consumers to ensure they are properly understood.
- Only way to safely bring VRPs to market is to mandate customer protection as there is a risk of exploitation if non-Sweeping use if voluntary.

Some recommendations were made, such as mandating VRPs for Sweeping across all providers, and increasing the level of consumer protection offered.

#### **Others:**

There was a split in agreement among other responses, with one strong agreement, three somewhat agree, four neither agree/disagree, one somewhat disagree and two strongly disagree. Given the inherent interests of some of the responding bodies, such conflicting opinions is to be expected. Comments offered (some directly conflict with each other given the wide disparity in perception of the appropriateness of existing customer protections):

- Current protections and FCA supervisory regulation (mainly Principles of Business) are sufficient and stringent enough to ensure that Sweeping has adequate consumer protection.
- There are a potentially large number of other operational situations and scenarios where risks could arise that are unclear at the moment and need addressing. Until these are addressed or resolved in test cases, there will be uncertainty that will hamper customer take-up as well as PISP ability to operate.
- Liability and redress positions needs to be clarified for certain scenarios, e.g. where money is swept out of a current account and into another account from which it cannot be returned.
- Fraud and complaints scenarios and liability needs clarification, particularly in assigning redress to ASPSPs or PISPs.
- Additional analysis and clarity on the risks and liabilities regarding Sweeping from joint accounts to sole accounts may be necessary.

- Lack of additional and clearer protection and liability models will hinder user adoption.

## 2.4 VRP for Sweeping Risks

**2.4.1 Question 8: To what extent do you agree that requiring the Sweeping Service Provider (SSP) to attest that a transaction is sweeping provides an appropriate level of assurance of the use of Sweeping Access? Please give reasons for your answer.**

### **Key Points / Executive Summary:**

- Whilst there was agreement that the SSP would set the transaction type flag to “Sweeping” for Sweeping transactions there was a wide variety of views around what further evidence was required. The CMA 9 felt additional assurances would be required. Some TPPs raised concerns around the coverage and impact of using of COP checks and / or AIS, whereas others highlighted the risks associated with lack of ability to definitively confirm a particular transaction qualifies as Sweeping.

### **OBIE Response:**

OBIE notes the responses received and continues to conclude that it is appropriate for the PISP to attest that a transaction is Sweeping. It should be noted that providers of the source account and the destination account, and the provider of Sweeping Services are all regulated by the FCA, and as there is a requirement for the destination account to be in the same name as the source account there is no counter party in the transaction.

### **Stakeholder feedback:**

#### **CMA9:**

- Most respondents felt that the SSP should attest to the nature of the transaction but further assurances would also be necessary as no evidence would be provided. Two respondents questioned how the SSP could properly detect that accounts were held by the same person, with one noting that this would become even more difficult for e-money accounts, savings, loans and decoupled overdrafts.
- Another respondent asked what would happen if the SSP misused Sweeping Access.
- One respondent stated that common language might be helpful so that customers could properly understand the nature of the service they were adopting and perhaps a logo specifically for Sweeping may support this development.

#### **Other ASPSPs:**



- A respondent agreed on the basis that there was no practical alternative as the ASPSPs is not in a position to make this assessment, and another suggested that assurances can be sought by user testing, combining with other services that are offered.

#### **TPPs and TSPs:**

A wide range of views were included in the responses, ranging from not wanting to separate Sweeping from other VRP use cases and so mandating access for all VRP use cases to agreement with the proposal.

- Several respondents cited that the proposed methods of validation had limitations both in coverage and the obstacles they put in front of the PSU, whereas some thought the validation methods could be included in the definition.
  - One TPP suggested that the burden of attestation should be on the consumer and in some cases this was the only workable solution.
  - One TPP highlighted that self-attestation by TPPs was open to abuse and it was not clear what the consequences of falsely attesting that something was not Sweeping.
  - A different TPP suggested that the FCA could take appropriate regulatory action if a TPP was falsely attesting that a use case was Sweeping and in a similar vein the FCA / CMA could take regulatory action for anti-competitive behaviour if ASPSPs were falsely block Sweeping payments.
- Another TPP highlighted the issue that conduct risks associated when money was shifted from a joint account to a single user account needs to be addressed.

#### **Consumer/SME Representatives:**

- Do not agree that self-attestation is a sufficient level of assurance. COP was cited as one way to improve assurance and it would work with a tighter definition of Sweeping.

#### **Others:**

- Most respondents stated that it was appropriate for the SSP to attest that the transaction was Sweeping but that additional controls would be required. Suggestions for these include a strong oversight framework, a strong validation and a method to enable ASPSPs to ensure that the SSP is legitimate.
- One respondent highlighted the difficulties of relying on Confirmation of Payee due to partial and non-matches and system unavailability.
- Fraud risks were highlighted by a number of respondents, including; how could the ASPSP know the SSP was legitimate and, the rules and liability for managing potential AML risk.
- Conduct risk around joint accounts was also raised if both parties did not consent to sweeping funds from a joint account into a single user account.

## 2.4.2 Question 9: Are there other risks associated with Sweeping and Sweeping Access that need to be considered?

### **Key Points / Executive Summary:**

- The need to consider fraud and fraud detection was consistently raised across the ecosystem.
- Several respondents sought a better understanding of the timing of when Sweeping transactions would take place as it might impact either end of day processing or even the Faster Payments system itself

### **OBIE Response:**

OBIE notes the responses received. The Revised Roadmap already contains a Roadmap item that requires impact of Confirmation of Payee (CoP) and the Contingent Reimbursement Model Code (CRM) for PIS transactions to be addressed. We propose that VRP transactions be explicitly included in-scope of this Roadmap item. We note that our sweeping analysis shows that although CoP/CRM represents a potential efficiency gain for PISPs in managing risk, it is not a prerequisite for delivering sweeping since other sufficient mechanisms are already available.

### **Stakeholder feedback:**

#### **CMA9:**

- Several respondents highlighted the need to examine fraud and fraud detection in more detail. One respondent highlighted the need to understand how COP and CRM fit in.
- Another questioned the risk of not being able to recover funds from SSPs for unauthorised or defective transactions.
- One respondent sought clarity on whether movement of funds needed to take place after ASPSPs complete their end of day process. Another risk raised was that some businesses may face additional charges from Sweeping due to the faster payments charges involved.

#### **Other ASPSPs:**

- One respondent raised the fact that Sweeping and VRP more generally could be seen as an alternative to direct debits and so there were implications on the needing to set up new consent parameters on expiry of the old ones when this is used to support essential services.
- Another risk raised was the dependency on a consistent implementation of VRPs for sweeping by the mandated banks.

#### **TPPs and TSPs:**

TPPs provided a broad range of risks:

- Several respondents raised issues around different limits at different ASPSPs, with one suggesting that ASPSPs publish their FPS limits.

- Some respondents cited the restrictions on the system such as savings accounts not being generally supported through ASPSP APIs, or limiting use to pure Sweeping as limiting the benefits to wider society of this new development.
- Another provider suggested that for Sweeping the risks are low as the account is in the same name and SCA reduces fraud risks, but overlooked was risk of technical failures and downtime at ASPSPs.
- Risks associated with methodologies over asserting accounts have the same owner were also cited.

**Consumer/SME Representatives:**

- Risks have been identified in responses to other questions.

**Others:**

- One respondent noted the dependency of Faster Payments and questioned whether the implications of that had been considered (capacity, settlement, collateral and outages) particularly if Sweeping occurred at end of the day.
- One respondent highlighted that fraud needed to be considered.
- Another respondent raised a number of issues around the detail of the potential Sweeping services provided by the SSP: what balance is used (available, ledger, value dated), who recompenses the customer if they incur costs due to incorrect Sweep amount.

## 2.5 Other comments received

### 2.5.1 Question 10: Any other comments on the Sweeping Consultation?

Many rehearsed familiar concerns, particularly regarding consumer protection and the risk of fragmentation if the Standard is not adopted universally.

Some, including non-CMA9, argued for more detailed analysis on cost and alternative mechanisms. One CMA9 provider concluded that VRPs should be an optional standard in the premium API space, but others argued against this because it would lead to a patchwork of integrations, adding complexity and cost to TPPs. In a similar vein, the point was made that if the contractual route is favoured then there would need to be a mechanism to ensure standardised contracts with regulatory oversight.

From those in favour of VRP-enabled Sweeping, several expressed their belief that VRP should be extended to other use cases given it has benefits over direct debits (particularly speed), and mention was also made of a need to cater for B2B use cases with higher value limits. Several reiterated the need to include all accounts and products, noting not all savings accounts are (currently) accessible via API.

## 3 VRP PROPOSITION

### 3.1 VRP Concepts

#### 3.1.1 Question 1: To what extent do you agree with the definition of VRP? Please give reasons for your answer.

##### Key Points / Executive Summary:

- There was broad agreement on the definition across stakeholders.
- Concern from ASPSPs that the definition should acknowledge that they “may retain the need to ‘step-up’ and apply SCA” as per RTS.
- Concerns from TPPs over ASPSP rejection of VRP Payments and need for guiding principles in keeping with those established for SIP.

##### Stakeholder feedback:

###### **CMA9:**

- Need to clarify VRP Payments are SIPs and therefore the “holding, control, and validation of the consent should sit firmly with the PISP”.
- The A2(b)(i) roadmap item is optional, but the paper (section 2.1) infers the specification is a required deliverable.
- VRP’s definition has no prescribed expiry (i.e. “90 day reauthentication”).
- One respondent proposed an alternative definition, but further clarification is required to understand how this differs from a SIP.

###### **Other ASPSPs:**

- Indicate that further work is required to understand what could be considered consent within the constraints of the parameters agreed and therefore the definition itself may need to be altered depending on how consent is considered within the legal context.
- Would like to see a clarification confirming the full extent of consent parameters that qualify. Based on the parameters that allow for an SCA exemption, the respondent would prefer the definition was explicit about what consent parameters do and don't fall under the definition of VRP.

###### **TPPs and TSPs:**

- Broadly agree with the definition
- Concerns over ASPSP rejection of VRP Payments and need for guiding principles in keeping with those established for SIP.
- Parameters should be categorised into those that are:
  - Mandatory: i.e: Payee name, Payee Bank details, expiry date.
  - Variable based on use cases: e.g. payment value ranges; payment frequency range, maximum payment volume etc. The variable parameters should all be

optional but rules set on how many must be applied as a customer risk mitigation step.

- The RTS which allows an ASPSP to apply SCA to any transaction which it deems high risk – this would add friction to the proposed methodology. In a Sweeping use case, in order to adequately automate payments, the ASPSP would need to agree to always apply an SCA exemption. This would likely have to be a contractual arrangement since exemptions applied are subject to circumstances and particular use cases. Additionally, these risk calculations are often based on a Merchant’s card chargeback rate and so consideration needs to be given to how an ASPSP would go about calculating transaction risk scores.
- The definition of VRP should encompass that there needs to be a link between the initial consent and all subsequent (prior or future) requests that can be used by the PSU & ASPSP to recognize that a sequence of payments relates to a particular consent, and invalidate future payment requests if consent is revoked.
- One respondent suggested that the benefits of VRP could only be unlocked if it were offered by ASPSPs in a ubiquitous, non-discriminatory manner.

**Consumer/SME Representatives:**

- Consider that the delegated authentication model is not VRP.

OBIE Response:

The VRP Proposition document has been amended to clarify that “ASPSPs may reject individual VRP Payments in exceptional cases where it is deemed SCA is required for that payment.”

We feel that the delegated authentication model fits within the broader structure and definition of VRP and that including it in the VRP Standard is a worthwhile accommodation. We note that implementation and use of the delegated authentication model of VRP is entirely optional.

## 3.2 Regulatory treatment of VRP

### 3.2.1 Question 2: To what extent do you agree with the interpretation of the regulatory treatment of VRP? Please give reasons for your answer.

**Key Points / Executive Summary:**

- There was broad agreement across non-CM9 ASPSPs and TPP/TSPs with the interpretation of the regulatory treatment of VRP. Mixed views from the CMA9.
- A request from all respondent groups for further details of OBIE interpretation of the regulatory treatment of VRP and a regulatory statement from the FCA to validate OBIE’s position.

- Of the responses that indicated a preference, there was consensus in favour of SCA exemptions and a regulated non-contractual access model.
- There was acknowledgement by all that there may be variations in the way SCA is applied, with some suggested mitigants proposed.
- Request for further work on consent parameters to be undertaken
- Further questions were raised around refunds, liability, consumer protection and the interplay with other voluntary codes, schemes and dispute management systems.

### **Stakeholder feedback:**

#### **CMA9**

- There were mixed views on OBIE's interpretation of the regulatory treatment of VRP.
- The interpretation of the regulatory framework provided was considered high level and further legal and regulatory analysis was requested for the proposed use of SCA exemptions, particularly the extent to which the FCA and PSR have verified the use of Article 13 SCA exemption for trusted beneficiaries as applicable to VRP.
- One response indicated that the PSRs were not intended to cater for VRPs and so there is nothing in the PSRs regarding notice to cancel payments as envisaged in the proposition.
- Clarification on the implications of PSR Articles 43, 67, 69 was specifically requested.
- It was suggested that the impact of different ASPSPs applying (or not) different SCA exemptions, and the starting/ stopping of exemptions during a VRP lifetime may cause variations in the ecosystem and lead to disputes.
- SCA exemptions were highlighted as not entirely removing the need for the customer to be present. In one ASPSP's online channel where an SCA exemption is applied, an authentication factor for subsequent payments is required (PSU must swipe).
- One ASPSP suggested that SCA delegation requires further thought in view of the disadvantages of SCA exemption. Another ASPSP stated that as the regulatory obligation to perform SCA would remain with the ASPSP and SCA delegation would still be subject to the ASPSPs own risk appetite.
- Additions to the consent parameters were suggested to:
  - 1) make consents subject to 90-day reauthentication requirements, and
  - 2) make the "valid to date" field mandatory to avoid open ended consents.

reviewed to avoid customers consenting to VRP without knowing how it works and its limitations.

More generally it was suggested that the consent parameters ~~are~~ should be reviewed to avoid customers consenting to VRP without knowing how it works and its limitations.
- PSD2 was considered to only partially address topics of liability and dispute resolution. Further detail of how VRP will work with CoP/ CRM APP Fraud code liability models, Open Banking DMS and Pay.uk managed faster payments scheme rules was requested.

#### **Other ASPSPs:**

- There was agreement with the high-level interpretation as stated.
- More analysis of consent parameters was requested e.g.:

- One response indicated that the current consent parameters may be too wide to meet the requirements of “clear, specific and informed” consent as set out in the FCA Approach Document to the PSRs 2017.
- Another response indicated that whilst the Standard provides what data can form part of the consent parameters between the PISP and the ASPSP, it would seek clarity on other consent parameters agreed between the PISP and the PSU.
- There was strong agreement in favour of the use of SCA exemptions over Delegated SCA, although more work was necessary to ensure their frictionless, predictable use.
- A suggestion was made for the application of SCA exemptions to be considered on a wider industry basis outside VRP, as SCA exemptions apply equally to SIPs. Another response indicated that OBIE should provide guidance with respect to any Framework Contract amendments.

#### **TPPs and TSPs:**

- There was broad agreement with the interpretation of the regulatory treatment of VRP.
- Of the responses that indicated a preference, there was consensus in favour of a regulated non-contractual access model. Contractual agreements were suggested to be against the spirit of open banking; and if offered selectively, would create barriers to entry for PISPs, introduce new barriers to account switching and in turn reduce competition in retail banking.
- Most responses stated VRP must be mandated for the CMA9 to open-up new use cases. ASPSPs would not support VRP if not required to and if too few ASPSPs offer VRP it will not be able to compete with for example direct debits.
- The underlying technical capability required for Sweeping was considered essentially the same as for VRP, and therefore there would be minimal incremental fixed and variable cost for ASPSP to support VRP alongside its required Sweeping capability.
- One response suggested that in the absence of the regulated non-contractual access model, that a multilateral contractual access model is favoured. Another response stated that ideally a standardised process by which PISPs can enter into an agreement with ASPSPs without undue friction, would address a potential divergence in the consistency of the application of SCA if negotiations took place at a PISP level.
- It was agreed that in both the SCA exemption and delegated SCA models, there may be scenarios where the ASPSP requires reauthentication. It was suggested that consumers should be notified if any ‘consumer not in session’ payments have failed so that they are able to re-authenticate the series of payments.
- To bring additional benefits to consumers, it was proposed that the standard evolves to allow consumers to amend VRP consents.
- There was agreement with the treatment for delegated SCA, that a PSU must authenticate every time, however it was not considered necessary for this to be with the ASPSP. The PSU can initially provide consent and authenticate with the ASPSP, then going forward each individual transaction can be authenticated by the PSU at the PISP.
- There was a concern from one respondent about the level of liability that may sit with the TPP. In the example provided it was suggested where a PSU has two payments to make, but insufficient funds to cover both, the PISP should not be liable for processing either payment order (unless it has guaranteed this to the customer). This is similar to examples such as direct debits, standing orders and card-on-file.

#### **Others**

- How OBIE proposes to meet the requirement under Article 69(3)(e) PSRs, that a PISP must not store sensitive payment data of the PSU. , with some responses indicating their agreement with OBIE's position.
  - From the responses that considered the merits of SCA exemptions vs Delegated SCA, there was strong support for SCA exemptions. Feedback stated that a regulated non-contractual access model to ensure a competitive playing field is needed; and that delegated SCA requires bilateral contracts with each ASPSP which presents a market barrier to entry.
- There was a suggestion that as VRP is critical to Sweeping, which is part of the Open Banking mandate, it follows that VRP should be mandated.
- A separate response sought detail on the SCA exemption(s) that are intended to apply to each VRP payment, with a concern that different exemptions could trigger variations in the ecosystem and lead to disputes.
- Additional detail on the proposed liability model and how VRP will interplay with existing voluntary industry codes, OBIE DMS and the Pay.uk faster payments scheme rules was also requested.

#### **Consumer/SME Representatives:**

- The consumer representatives (CRs) stated that no supporting rationale for OBIE's position that VRPs are within scope of the existing PSRs had been provided. The PSRs were not designed with VRPs in mind and as such there is a gap where the risks to consumers increase, but their protections do not.
  - OBIE had come to the view that no additional permission or authorisation is required for PISPs to undertake VRP, but there is no regulatory statement from the FCA to validate OBIE's position.
  - The CRs recommend that the FCA consult on the regulatory treatment of PISPs.
  - The CRs propose that the risks of VRPs are greater than those of SIPs where customers are present.
  - VRPs significantly broaden the type of transactions which existing PISPs can provide to PSUs, but it is unclear what specific supervisory check there will be to ensure risk controls have expanded appropriately.
  - The CRs also noted that there is no consideration of additional insurance requirements which firms may need. Similarly, VRP is considered a PISP activity and the PSRs liability framework applies, but the rationale and impact are not detailed.
  - The paper is not considered to have addressed consumer protections sufficiently, nor contentious issues, such as whether 90-day re-authentication should apply.

#### **OBIE Response:**

While OBIE is not able to provide legal advice or guidance on VRPs, we have summarised our understanding of the relevant regulatory issues raised, which we hope will provide stakeholders with comfort on how VRPs fit within the framework of the PSRs. OBIE will also share the letter from the FCA addressing VRPs at IESG.

OBIE recognises that VRPs are not explicitly contemplated by the PSRs, however, there is nothing in the PSRs that prohibits them. Once the VRP is set up, subsequent payment orders initiated are the same type of payments that a PSU can initiate directly or via their PISP.



Consequently, we see this as regulated PISP activity falling within the current regulatory framework.

We have summarised the key issues raised into the categories below:

(i) Explicit Consent for Subsequent Payment Orders Initiated by the PISP OBIE's view is that the customer should be treated as having given 'explicit consent' for each payment order within the VRP consent parameters provided that:

- the payee is fixed
- the number and/or frequency of payments is fixed (or capped)
- although the amount cannot be fixed in advance, there are clear parameters around the permitted value, such as maximum individual payment amount, maximum total value in a month or year etc.

(ii) Sensitive Payment Data

We do not believe the token (stored by the PISP and used to initiate future transactions within the VRP consent parameters) falls within the definition of 'sensitive payment data'. This is because any subsequent payment orders initiated by the PISP will be within the consent parameters, which have been both agreed by the PSU and strongly authenticated at the ASPSP. Any changes to those consent parameters will require the PISP to obtain a new VRP consent with the creation of a new token, using SCA.

(iii) Changes to the payment amount

In a VRP payment, the PISP cannot make changes to the agreed VRP consent parameters. The PISP will only be able to initiate payment orders within the confines of these parameters including cumulative amount, maximum amount per transaction and frequency. As explained above, any changes to the consent requirements will require the set up of a new consent, as well as the application of SCA

(iv) Receipt of payment orders by the ASPSP and cancellation of payment orders by the PSU

Following the setup of a VRP consent, subsequent payment orders initiated by the PISP will likely be single, immediate payments and receipt of those payment orders should be treated in the same manner and within the same execution timeframes as typical payment order submitted by the PISP. The VRP standard does not support the cancellation of individual VRP payments orders once initiated within a VRP Consent Mandate and any such cancellations must take place in line with the regulatory requirements in the PSRs. The VRP standard, however, does enable the revocation using the consent and access dashboards, in the same manner as revocation for AISP and CBPII access and there is nothing in the PSRs that precludes this activity.

#### (v) Contracts and Delegated SCA

We would expect PISPs to contract based on the requirements for single payment service contracts but to include such additional terms as are necessary to reflect the enduring nature of the service. For Sweeping, where an account information service is also being provided to the customer, the SSP would need to ensure the contract caters for both payment and account information services.

OBIE agrees that SCA and the decision to delegate SCA remains with the ASPSP, however, SCA delegation is supported both by the EBA and the FCA provided that the appropriate contractual provisions are agreed between the parties. Consequently, the VRP Standard has been designed to support delegated SCA for entities that wish to engage in this activity.

#### (vi) PII and Consumer Protection Attributes

While it is expected that PISPs will need to ensure that their PII cover is suitable for the services they are providing, VRP or otherwise, we believe that it would be advisable for the PISP to communicate any changes within their business model with their insurer directly to satisfy themselves that they have sufficient cover and have provided notification of relevant changes to their business model. Given the complexities of PII and the dependencies on the type of service offered by both the PISP and insurer, we cannot provide generic recommendations in this regard. Further, we do not believe the UK-RTS, Article 10 exemption can be carried across to VRP payments as this exemption is intended to support access to account information (either by the PSU directly or via an AISP). The OB Standard, does however, enable the PISP to include an expiry date within the VRP consent parameters. This can be used a mechanism to limit the length of service based on the PISP's service offering.

### 3.3 Risks & mitigations in VRP activity

#### 3.3.1 Question 3: To what extent do you agree with the analysis of risks and mitigations, including the consumer protection framework? Please give reasons for your answer.

##### **Key Points / Executive Summary:**

- The CMA9 were generally cautious about the risks and mitigations presented by VRPs, largely citing the potential for confusion between VRPs and direct debits, a lack of clarity on process, and the wide range of potential unintended consequences and unforeseen circumstances.
- Other ASPSPs were generally in favour, with a few concerns around clarity on liability and avenue for redress and potentially needing more robust processes and structures.
- TPPs and TSPs were broadly in agreement that the analysis as presented was accurate, although further clarifications and scenario planning was necessary.
- Consumer representatives generally disagreed with the analysis and felt that there were significant unaddressed risks and potential misuse of the system. In particular,

unscrupulous lending activity was cited as a major concern, and there was a strong call for greater clarity around the level of protections afforded to consumers as compared to direct debits.

### **Stakeholder feedback:**

#### **CMA9:**

The CMA9 were generally cautious about the risks and mitigations presented by VRPs, with four of the banks strongly disagreeing with the analysis. No banks strongly agreed and only two somewhat agreed. The main concerns raised were:

- Potential confusion among consumers that VRPs are similar or analogous to direct debits, with the same protections, redress processes and guarantees as DD.
- Lack of clarity regarding where liabilities would fall (ASPSP or PISP) should something go wrong or harm occur, and the expectation that consumers would assume that ASPSPs would be the first port of call.
- Lack of visibility for the ASPSP on transactions and the potential for PISPs to take advantage of consumers. Examples include where a VRP is used to withdraw money from a consumer's account as soon as it is deposited and before other payments, such as utilities bills, can be debited.
- Concern regarding potential unintended consequences and unforeseen circumstances of VRPs once they are set up, such as the use of SCAs, PSU control, maximum/minimum thresholds, re-authentication, impact on vulnerable customers, timing of payment clearing, and stopping of VRPs.

While there were many concerns raised about the potential risks of VRPs, there were limited specific recommendations given on proposed solutions or potential mitigations.

There was a view expressed that the consumer framework was made from a TPP perspective with insufficient consideration given to banks or consumers. However, two banks that agreed with the analysis stated that the framework should only be the starting point and that further work should be done to clarify the risks and mitigations for the above scenarios.

#### **Other ASPSPs:**

Other ASPSPs were generally favourable about the analysis, with four out of six respondents somewhat agreeing and one strongly agreeing. No responses disagreed. The main concerns raised were:

- Clarity around liability and avenue for redress.
- Potential need for more robust processes and structures if VRPs are used for higher risk payment transactions (e.g. social media or wider ecommerce transactions), vs 'me-to-me' sweeping.

One response pointed out that they did not consider there would be an increased risk of customer dispute, only that the mechanism through which disputes are resolved may have to change.

#### **TPPs and TSPs:**

There was broad agreement with the analysis from TPPs, with only five out of 27 responses either somewhat or strongly disagreeing. 19 responses agreed, with seven of those strongly agreeing. Key points raised included:

- The consumer framework is essential to the success of VRPs, but it is incomplete in that it does not sufficiently address all risks. The use of PSD2 should be more strongly integrated. Responses also suggested several ways in which VRP transactions could be segmented or categorised to help improve consumer protection, as well as further specific risk mitigation suggestions.
- SCA consent and risks were identified as underdeveloped in the consumer framework.
- Clarity of where liability lies was identified as an issue. At least one response highlighted the need for multilateral contracts and that individually negotiated contracts between PISPs and ASPSPs could lead to imbalances in consumer protections depending on the terms agreed. It would also address the heavy resourcing requirements associated with individual contract negotiation and management for both ASPSPs and TPPs which if not resolved could hinder the take up of VRPs.
- Concerns that the FCA Principles for Business, PSR and FOS were being relied upon while they are insufficient to ensure adequate consumer protection, and only likely to confuse consumers as to where liability will lie.
- Several TPPs noted that there were a number of risks and scenarios that could arise where the liability or avenue for redress was unclear, and that there are likely to be other unintended consequences or unforeseen circumstances that will arise as VRPs mature.
- International payments were identified as potentially being complex in terms of reducing risk and assuring customer protection.
- There was some disagreement that the risk of customer dispute would increase, with responses pointing out that it is more likely that a change in the dispute settlement process would change (burden of proof shifting).

Overall, TPPs agreed that the analysis as presented was accurate, although further clarifications and scenario planning was necessary.

#### **Consumer/SME Representatives:**

Consumer representatives generally disagreed with the analysis and felt that there were significant unaddressed risks and potential misuse of the system, specifically expressing significant concerns on two main points:

1. The range of potential risks has not been sufficiently explored or mitigated and there are many unidentified ways in which consumer harm could arise.

2. The current mitigations are insufficient for protecting consumers from being taken advantage of by PISPs and other TPPs.

Consumer/SME representatives further noted that insufficient analysis had been performed regarding the risks and that greater understanding of risks, potential harms, and how to deal with them was required.

Unscrupulous lending practices were cited as a major concern, with many responses explaining in detail the potential ways in which VRPs could take advantage of consumers. Lenders utilising AISP services and/or automated deductions to withdraw debt repayments without considering the consumer's circumstances or circumventing FCA rules on payday lending were highlighted as key worries.

A further concern was the lack of clarity around whether consumers could expect similar protections to direct debits, as well as where the burden of liability falls and which body (ASPSP, TPP, merchant, FOS) the consumer should be addressing in the event of a complaint.

There were some additional mitigations that were proposed, such as additional oversight by regulatory bodies and stronger protection mechanisms being introduced. Several representatives suggested that a stronger protection mechanism more akin to the Direct Debit Guarantee or payment card Schemes would be necessary.

**OBIE response:**

The VRP Proposition document has been updated to acknowledge that PISPs should ensure PSUs are aware of the consumer protections provided to them, including the risk that those terms be confused with that of other payment methods.

OBIE believes CONC rules apply to VRP Payments in the same way as with card-based payments, and therefore their application in the lending market is appropriately covered by lending regulations and consumers are protected.

It is noted that PISPs will be required to establish substantial risk frameworks to accommodate VRP activity, however this is the responsibility of the PISP and will depend on the specific activities and business models they are engaged in. The VRP Proposition document provides a set of risk factors and risk control mechanisms that PISPs can use to evaluate the risks of their activity and develop processes and procedures to mitigate.

## 1.1 Requirements for the VRP Standards

- 1.1.1** Question 4: To what extent do you agree with the requirements for the VRP standard?  
Please give reasons for your answer.

### **Key Points / Executive Summary:**

- Specific requirements for Sweeping access under VRP should be extracted from the broader VRP requirements.
- Mandated sweeping access would not be determined by contract and doesn't prescribe specific consent parameters or a specific SCA exemption. Concern from CMA9 that dynamically determining applicable SCA exemption under those non-contractual conditions is infeasible. Inferred that standards for sweeping access could provide guidance by prescribing consent parameters and/or the SCA exemption (ie. Trusted Beneficiary).
- Requirements should cover conditions where ASPSP may need to reject VRP Consents and , e.g. consent could be rejected for underage customers, payment could be rejected for insufficient funds, breach of payment limit, fraud policy.
- Additional consent parameters recommended for standardisation (frequency, maximum per week, maximum per day, cumulative limits).

### **Stakeholder feedback:**

#### **CMA9:**

- Some CMA9 respondents felt that the requirements should prescribe the way in which PISPs deal with the "unhappy path" (e.g. where the customer disputes a VRP Payment).
- ASPSPs must be able to reject VRP consents (underage).
- ASPSPs must be able to reject VRP Payments (insufficient funds, breaches payment limits, fraud policy).
- Additional consent parameters for standardisation: frequency, max per week, max per day, cumulative limits.
- Requirements don't prescribe the flow when payments can't be instructed due to fraud/sanctions screening or rejected for some other reason (lack of funds, etc).
- Ability to identify Sweeping payments "critical" [NB: this is already in the standard].
- A question was raised over that the process would be if the ASPSP in question doesn't offer a TB exemption
- Under PSD2, the ASPSPs only function in a PISP journey is to authenticate. It isn't in the ASPSP's remit to enforce consent parameters. The consent between the PSU and the TPP isn't anything to do with the ASPSP. See EBA Q and A 4309 "As the PIS and AIS services are provided to the PSU on the basis of an explicit consent, the ASPSP does not have to check that consent has been given".
- One respondent wants the FCA to confirm that, in their view, this type of variable mandate constitutes a sufficiently certain payment instruction from the customer. The PSD2 Approach document provides that consent must be "clear, specific and informed" and the respondent wants to understand if the FCA agree that a VRP payment mandate will be specific enough to meet PSD2 requirements?

#### **Other ASPSPs:**

- Respondent[s?] noted that the some of the requirements specified build upon obligations that currently apply to the CMA9 only (such as consent dashboards) and that it may therefore be helpful to understand where VRP obligations on non-CMA9 banks also require further pre-requisites as further fragmentation and additional costs may need to be considered.
- Respondents would like to see limits for the parameters - especially for VRP Standard. For example, more clarity should be given on whether an expiry date could be used which is 01.01.2999, effectively creating an open ended VRP consent, or whether this would be open for each ASPSP to interpret and implement.
- Based on the consultation regarding Sweeping, it was noted that it may also be necessary for the PISP to communicate whether a VRP qualifies as Sweeping to the ASPSP. [NB: covered by standard already]

#### **TPPs and TSPs:**

- Broadly agree with the requirements.
- Requirement 2 states that “ASPSPs MUST optionally enable the following standardised consent parameters” which implies this is optional for ASPSPs.
- A clear set of "mandatory" VRP requirements is needed for each use case if this is to get market adoption and avoid confusion for PSUs.
- ASPSPs must provide sandbox / test capabilities for all API features.
- The requirements do not seem to place a requirement on the ASPSP to display VRP consents within its channels to the PSU and allow a revocation of said consent at any time.
- If a consent is revoked, current reading of requirements understanding is that this would only be apparent to the TPP when the next PIS transaction
- We strongly recommend to enable VRP for international payments (restricted to the SEPA area) too.
- “We have a fundamental objection to VRP being optional.”

#### **Consumer/SME Representatives:**

- The requirements for VRPs should be separate from delegated SCA payments. Given the VRP Standard will in many cases be applied on a voluntary basis, OBIE must do more to explain how the standard will be monitored and enforced

#### **OBIE response**

The requirements have been restructured to separate the requirements for the VRP API from the requirements for Sweeping Access.

The sweeping access standard now prescribes attestation from the PISP the indicate sweeping activity, specific consent parameters, and the application of a trusted beneficiary exemption.

Additional consent parameters have been added.

### 3.4 Other comments received

**Key Points / Executive Summary:**

- VRP is required to enable viable competition to cards for consumer payments journeys because of the limitations of SIP and its impact on customer journey.
- Need for multilateral framework as basis of access for non-sweeping activity to reduce cost for ecosystem and reduce risk of discriminatory access.



## 4 APPENDIX 1 – LIST OF CONSULTATION RESPONDENTS

Account Technologies	Moneyhub Enterprise
AIB	Nationwide
American Express/ Pay with Bank transfer	Natwest Group
Barclays	New City Agenda
BOI	Northey Point Limited
Bottomline	Ordo (The Smart Request Company Ltd)
Bud	Payjinn GmbH
Certua Financial Information Services Limited	Plaid Financial Ltd.
Consumer and SME Representatives	PolyDigi Tech Limited
Currensea	Rebank
Danske Bank	Revolut
Debt Camel	Santander UK
Deposit Solutions	Sentential
Ecospend Technologies Limited	Soldo
Electronic Money Association	Tesco PLC
Excent RIT Services LTD	The Coalition for a Digital Economy (Coadec)
FDATA	The Money Charity
Fronted	TINK
Fygo Technologies Limited	Truelayer
GoCardless	TSB Bank PLC
Hargreaves Lansdown	UK Finance
HSBC	Virgin Money
iban-XS BV	Visa
Kikapay Limited	VOLT Technologies Limited
Lloyds Banking Group	Volt.io
Lyddon Consulting Services Ltd	Xero
MiaPago	Yapily
Money And Pensions Service	

## 5 APPENDIX 2 – LIST OF CONSULTATION QUESTIONS

### Sweeping Evaluation

1. To what extent do you agree with the proposed definition of sweeping? Please give reasons for your answer.
2. Are there additional benefits or risks associated with sweeping that you would like to highlight?
3. To what extent do you agree with the proposed criteria for assessing the suitability of different payment methods? Please give reasons for your answer.
4. To what extent do you agree that neither Direct Debits nor Continuous Payment Authority on cards, nor open banking SIPs are suitable funding mechanisms for sweeping as defined by Order? Please give reasons for your answer.
5. To what extent do you agree that Variable Recurring Payments (VRPs) could provide a viable payment mechanism to support sweeping as defined by the CMA order? Please give reasons for your answers.
6. Do you see alternative ways to provide a funding mechanism to deliver sweeping as defined by the Order? If so, please describe.
7. To what extent do you agree that the existing control framework provides appropriate consumer protection for sweeping? Please give reasons for your answers.
8. To what extent do you agree that requiring the Sweeping Service Provider (SSP) to attest that a transaction is sweeping provides an appropriate level of assurance of the use of Sweeping Access? Please give reasons for your answer.
9. Are there other risks associated with sweeping and Sweeping Access that need to be considered?
10. Any other comments on the Sweeping Consultation?

### VRP Proposition

1. To what extent do you agree with the definition of VRP? Please give reasons for your answer.
2. To what extent do you agree with the interpretation of the regulatory treatment of VRP? Please give reasons for your answer.
3. To what extent do you agree with the analysis of risks and mitigations, including the consumer protection framework? Please give reasons for your answer.
4. To what extent do you agree with the requirements for the VRP standard? Please give reasons for your answer.
5. Any other comments on the VRP Proposition?