



THE FUTURE DEVELOPMENT OF OPEN BANKING PAYMENTS:

Variable recurring payments



In association with



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1. FOREWORD

The UK has a world-leading open banking infrastructure. There are now over one million open banking payments a month and an increasing number of major UK merchants now offer open banking payments as a way to pay.

This infrastructure has been driven by regulatory and legislative action, through the Retail Banking Market Investigation Order 2017 (CMA Order) and the second Payment Services Directive (PSD2), derived from Europe and implemented in the UK through the Payment Services Regulations 2017 (PSRs).

Yet there remains a shared vision across the market that more can be done to unlock the potential of open banking.

This vision is shared by regulators who are increasingly seeing interbank payments as a way of boosting competition between different payment systems, envisaging a future where customers could just as easily pay for their groceries using interbank payments as they can by using their cards today¹. Key to unlocking the potential opportunities of interbank payments is open banking. HM Treasury (HMT), the Competition and Markets Authority (CMA) and the Payment Systems Regulator have all identified open banking payments as a new way of paying that offers greater choice to customers and merchants.

One area in particular that currently remains undeveloped is the ability for customers to make regular recurring payments such as subscriptions and monthly payments to utilities and digital content providers. To support such payments, the industry is looking at the use of Variable Recurring Payments (VRP).

VRPs are payments initiated by a payment initiation service provider (PISP), using a long-held consent where the timing or amount of each payment can be variable. The payer can define the boundary parameters (such as the maximum payment amount, frequency and end-date) for ongoing payments to be made out of their account by a PISP.

UK Finance asked Addleshaw Goddard LLP (AG) to consider, on behalf of members, a blueprint for an industry framework that would enable VRPs to operate commercially, outside of the mandate of the CMA Order.

In November 2021 UK Finance established the Open Banking Payments VRP Working Group (Working Group), facilitated by AG, with the aim of considering how to enhance the benefits of and go beyond the revised CMA Order and PSD2 for the provision of innovative and competitive payment initiation services (PIS).

The Working Group has sought to:

- establish the industry appetite to standardise some of the arrangement for the provision of VRPs in the market;
- explore what standardisation might mean and how standardisation might be implemented; and
- understand the benefits and concerns with standardisation and how standards might successfully be introduced into the market on a pro-competition and pro-access basis.

This report sets out our vision for the future direction of VRP and the basis for developing a governance framework. It also highlights different views on how VRP should develop.

While our conclusions do not reflect unanimous agreement across the market, nor are they endorsed by all participants in the Working Group, the conclusions do command broad support and therefore reflect a majority view.

At this stage we do not know how regulators may intervene on open banking payments, consequently we have not taken this into consideration in the report. Instead, we have focused on how to realise the commercial opportunity of VRP, given the emergence of open banking payments, the imminent conclusion of the final CMA Open Banking Roadmap and the absence of any detail on further regulatory intervention.

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2. EXECUTIVE SUMMARY

The use of open banking payments is increasing and is now being seen as a way to introduce more competition into the payments market, particularly in relation to retail payments.

One area that remains undeveloped by open banking payments is the ability to make regular / recurring payments where the amount and timing of the payment can vary. These types of payments are often made in respect of subscriptions, digital content and utilities (water, gas electricity).

To support these payment types, payment service providers are looking at the use of VRP as an alternative payment methodology. VRPs are regular / recurring payments from an account initiated by a PISP using a long-held consent obtained from the account holder, where the timing and/or amount of each payment need not be fixed. The account holder can define the parameters of their consent for these payments to be made from their account, such as maximum payment amount, frequency and the duration of the mandate.

In the UK, there are currently two regulatory regimes which require account providers to enable their customers to grant authorised PISPs access to their accounts for the purposes of initiating payments. These are:

- a) the CMA Order; and
- b) the PSRs.

Pursuant to the CMA Order, some ASPSPs, known as the CMA9, will be obliged to allow access to their VRP API for the purposes of sweeping (as detailed below). However, outside of this, in our view and whilst the long-term regulatory framework remains to be set out², there is no general regulatory obligation on an account servicing payment service provider (**ASPSP**) to permit a PISP access to its VRP API (should it have one). Therefore, should an ASPSP choose to implement or open up access to its VRP APIs, it is likely to want to enter into a written arrangement with a PISP setting out the terms of such access.

Discussions are already taking place between PISPs and ASPSPs wishing to collaborate to enable VRPs for a variety of use cases. However, even with the best intentions, fully negotiated agreements take time to agree and implement.

Consequently, there is a desire amongst industry participants to develop a framework to: (i) harmonise the approach to the provision of non-sweeping VRPs; and (ii) establish a clear basis for consumers to use VRPs with confidence. The alternative is a series of bilateral agreements between participants that would be freely negotiated. However, such bilateral agreements take time to implement and are likely to fail to create clear standards and improve user confidence.

There are different approaches to the creation of any non-sweeping VRP framework. This report considers the industry appetite for standardisation and the means by which standardisation might be achieved.

Vision and mission

The vision is to enable UK consumers, small businesses and corporates to benefit from open banking payments and VRPs in particular.

VRPs will enable new use cases and will introduce competition into retail payment models which until now have been limited to existing recurring card payment and direct debit payment models.

An industry framework enables market coordination and harmonisation; this should keep the costs of market entry down and enable easier participant access, build merchant and customer engagement and trust through consistency and avoid the expense and complexity of fully negotiated bilateral arrangements.

Key outcomes

There was a general consensus in the Working Group that since CMA9 participants in open banking payments have built VRP standards for sweeping in compliance with existing Open Banking standards, the industry framework should also follow these standards where appropriate, rather than requiring participants to build new standards.

Given the uncertainty of the future of OBIE at this time, the Working Group members were reluctant to discuss possible contractual mechanisms to gain access to and for the ongoing maintenance of open banking standards and

² <https://www.gov.uk/government/publications/joint-statement-by-hm-treasury-the-cma-the-fca-and-the-psr-on-the-future-of-open-banking>

infrastructure for the purposes of non-sweeping VRPs. Given this will be fundamental to the continued ability to offer VRPs, we recommend further discussions are held once the model and operations of the future open banking entity become clearer.

The Working Group wants to be able to build on the existing infrastructure and standards to implement VRPs quickly. This report considers what is needed in addition to the basic infrastructure and standard to enable this to happen.

The Working Group considered a range of matters which could be standardised in a framework. However, the Working Group felt that some elements of VRP should be left to the market and individual commercial arrangements, in particular, issues such as pricing and anti-money laundering controls.

The Working Group concluded that standardisation would be helpful in the following key areas (subject to competition law controls):

- Payer consent to mandate
- Dispute management
- Liability
- Adherence to existing open banking standards
- TPP on-boarding
- Governance, compliance and change management
- Information Security
- Service levels
- Price considerations

Out of these, the two key areas flagged as being the most beneficial to achieving the aims of the project were liability allocation and dispute management. Therefore, we have summarised the findings in these areas below.

Liability

The Working Group considered that the allocation of liability provisions in the PSRs, for when transactions were processed incorrectly or were unauthorised, was generally clear and well understood.

However, the nature of VRP transactions could give rise to alternative types of complaints which are not currently

addressed in the PSRs. While there was some desire within the Working group for providing greater protections through the industry framework, it could not reach consensus on how these additional protections would operate. Further discussions will be needed to achieve an agreed approach when it comes to drafting the standards.

The majority of the working group were also of the view that the need for standardisation around buyer protections (relating to disputes with a merchant rather than a payment being processed incorrectly) should be kept under review. If it becomes apparent consumer harms are beginning to arise, the industry will be expected to look to implement arrangements to ensure protections are offered in those cases.

In the meantime, we encourage PSPs to improve customer understanding and knowledge of payments (by making sure they are aware of their rights and the different level of protection available when using VRP) in order to alleviate potential customer harms if something does ultimately go wrong.

The Working Group also believes that there are circumstances where a PISP may want to pass liability onto a merchant/payee (e.g. if a customer believes they have cancelled the mandate but the payee continues to request payment). It did not reach a consensus on whether the approach to payee/merchant liability should be standardised. Some were of the view that this decision should be left to the commercial agreements and pricing arrangements of a PISP.

Disputes

The Working Group reached a consensus that processes for managing disputes should be standardised, and that processes for sharing information, the types of evidence that can be used in disputes handling and Service Level Agreements (SLAs) would be helpful. There was reluctance to replicate the dispute and chargeback processes set out by card schemes which were seen as cumbersome. A lighter approach similar to the BACS Direct Debit Scheme appears to be more palatable.

The final section of this report considers the options on how to structure a framework in order to achieve standardisation of the matters outlined above.

Conclusions

The Working Group concluded that there are a number of key areas where standardisation would be helpful to enable market coordination and harmonisation to keep market entry costs down, facilitate participant access and enable innovation in open banking payments.

There are some areas where consensus is yet to be reached, specifically in relation to liability allocation above existing regulatory obligations. We are of the view that the development of VRPs for different use cases is still in its infancy. We suspect that once a critical mass of the industry starts looking at enabling such payments, there will be a greater drive for standardisation.

The Working Group also concluded that a policy-based approach to standardisation was appropriate. A policy-based approach would enable standardisation principles to be stated and could be adapted and evolved as the use of VRPs developed.

It will be imperative that the policy is coupled with an overall commitment by those who voluntarily come into the arrangement to use the policy and not to attempt to negotiate policies away. While there would be no set sanction for non-adherence, encouragement to conform would need to come from the industry and possibly the forum set up to create and manage the policy.

This policy approach was also favoured by many as it lends itself better to developing more easily into a more comprehensive arrangement (e.g. a non-sweeping VRP Rulebook) in the future. A Rulebook style approach to VRP, and even the future of open banking payments more generally, is something that many are already considering in order to drive innovation in this area. However, the consensus was that a policy style approach coupled with a commitment to adhere to the policies, would move the industry forward more quickly and create the right environment to enable all participants in payments to maximise the commercial opportunities arising from VRPs.

Other considerations

The recommendations in this report are dependent on the maintenance of the standards and any other key infrastructure needed to deliver VRP. Consequently, the future governance of open banking will be of importance to the development of VRPs going forward.

Next steps

The next step would be to start considering and drafting the policy framework and consulting on the content and governance approach to this. Further considering will need to be given to the creation of a working group to help drive this forward.

3. THE AIMS

The use of open banking payments is increasing and is now being seen as a way to introduce more competition in the payment space, particularly in relation to merchant payments. Open banking payments have the potential to offer greater choice to customers and businesses, and a number of major UK merchants now offer open banking payments as a way to pay.

Market participants are now considering how open banking can be used to provide new ways to make regular payments, where the amount can vary. These types of payments are often made to providers of services such as subscriptions, digital content providers and utility services.

Proposals are currently focused on using open banking variable recurring payments (VRP) APIs.

There is a desire amongst industry participants to develop a framework to:

- enable market co-ordination and harmonisation to keep market entry costs down and facilitate participant access; and
- establish a clear basis for consumers to use VRPs with confidence.

This report considers the industry appetite for standardisation of VRP and the means by which standardisation might be achieved.

The alternative is a series of bilateral agreements between participants that would be freely negotiated. However, such agreements may be time consuming to implement and may fail to create clear standards improve use confidence.

4. OUR APPROACH

Methodology

In November 2021 UK Finance established the open banking payments VRP Working Group (the **Working Group**) which Addleshaw Goddard LLP (AG) was asked to facilitate. The aim of the Working Group was to consider:

- industry appetite to standardise some of the arrangement for the provision of VRPs in the market;
- explore what standardisation means i.e. the models for standardising; and
- understand the benefits and concerns with the possible models and how they could be successfully introduced into the market on a pro-competition and access basis.

The Working Group met on five separate occasions to discuss the future vision, direction and industry governance for developing an industry framework for VRP usage commercially. The sessions broadly covered the following topics:

1. the infrastructure needed to enable VRPs and how to access such infrastructure going forward;
2. why standardisation would be helpful for the development of non-sweeping VRPs;
3. the areas, topics or approaches that participants would find helpful to be standardised;
4. consideration of consumer protections and liability allocation, particularly in the context of when payments go wrong and when purchases are not as expected; and
5. the different approaches that could be taken to standardisation.

We recognise that competition regulators are likely to take an interest in commercialisation of VRPs so it was important that we ensured this project did not present competition law concerns. Therefore, we ensured:

- the project did not unfairly discriminate against certain market participants (e.g. we ensured no particular group was excluded and that the working group was also made available to non-UKF members); and

- the working groups did not involve competitors colluding/sharing sensitive information.
- Before each meeting we reminded working group members of the need to ensure discussions did not 'spill' over into anticompetitive topics, to be careful about any discussions involving pricing/ other matters concerning future strategy.

This report summarises the Working Group's vision for standardisation and provides a platform from which to take discussions to the next stage.

In order to ensure that any industry collaboration is compliant with competition law, the key considerations to consider will be:

- the degree of standardisation i.e. whether the standardisation is light-touch (i.e. option 1 below) or more extensive (i.e. option 4 below);
- the rationale/benefits of the standardisation for the industry and service users;
- whether participation in the industry framework is voluntary or mandatory (see below) and whether everyone who wants to participate is allowed to (and, if not, what the participation rules or membership criteria are);
- whether any standards, policies or standard terms developed are voluntary or mandatory, and whether there will be scope for competing standards/ policies/ standard terms to be developed (and if not, why not);
- whether the procedure/timeline of the industry collaboration is transparent (and if not, why not);
- whether any standards/policies/standard terms developed are accessible to all on fair, reasonable and non-discriminatory terms (and if not, why not);
- the scope and reach of any standards/ policies/ standard terms;
- who will be responsible for overseeing compliance with the standard/ policy/ standard terms (if applicable).

5. CONTEXT

Before we look at the approaches to standardisation and the possible models for enabling this, it is important to explain the background to this work as this will aid understanding of what we are trying to achieve.

Background

On 9 August 2016, the CMA published its Retail Banking Market Investigation: Final Report (the **Report**), in which it concluded that there were some adverse effects on competition (**AECs**) in each of Great Britain and Northern Ireland in relation to personal current account, business current account and SME lending and that it should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them. In order to address the AECs and resulting customer detriment, the CMA determined that an integrated package of remedies should be imposed.

One of the cross-cutting foundation measures involved requiring “banking services providers” to adopt and maintain common application program interface (API) standards through which they will share data between themselves, with other providers and with third party service providers (**TPPs**) including price comparison websites, ASPSPs and PISPs.

The Report also highlights that the CMA required the main UK banking services providers (known as the CMA9) to set up an entity that was to be tasked with agreeing, implementing, maintaining and making widely available open and common API and data sharing standards to a project plan and timetable approved by the CMA (known as the “Roadmap”).

The CMA gave effect to its package of remedies in the CMA Order. In this the CMA further elaborates on what the standards need to cover. These include:

- a) an Open API standard;
- b) data format standards;
- c) security standards, including in relation to authorisation, authentication, permissions and whitelisting;
- d) governance; and
- e) customer redress mechanisms.

The CMA Order also mandated that an implementation entity shall be set up by the CMA9. This entity has to “agree, consult upon, implement, maintain and make widely available, without charge” the Standards. Open Banking Limited (which is known as the OBIE) was the entity set up to be the Implementation Entity.

In addition, supporting documents have been created to facilitate widespread use of open banking-enabled products and services. These include the OBIE’s Customer Experience Guidelines (the CEG); the OBIE’s Operational Guidelines and a number of checklists and other ‘how to’ guides in relation to the OBIE API standards and specifications.

One of the Roadmap items is the creation of standards to enable VRPs in the context of ‘sweeping’.

Market players are now keen to start using VRPs outside of the sweeping use case that has been mandated.

What we mean by VRPs

VRPs are defined by the **OBIE**, as “a series of payments initiated by a PISP using a long-held consent (“VRP Consent”), where:

- the VRP Consent must be authorised by the Payment Service User (“PSU”) via Strong Customer Authentication (“SCA”) at their ASPSP (“VRP Consent Setup”), however each individual payment instructed (“VRP Payment”) using the VRP Consent does not require SCA of the PSU by the ASPSP; and
- the timing or amount of each payment is subject to the constraints of certain parameters (“VRP Consent Parameters”), agreed between the PISP and the PSU, which are enforced by the ASPSP.

“Thus, VRPs are a series of payments initiated by a PISP using an ongoing consent where the timing or amount of each payment need not be fixed.

In broad terms, the scope of this work is to consider the options for an industry framework for VRP use cases other than in the context of sweeping. At the time of writing this report the definition of sweeping pursuant to the CMA Order has been defined by the CMA. This is helpful as we now have a clearer idea of what uses cases an industry

framework could help to facilitate³. We will refer to VRP use cases other than in the context of the regulatory mandate as “**non-sweeping VRPs**”.

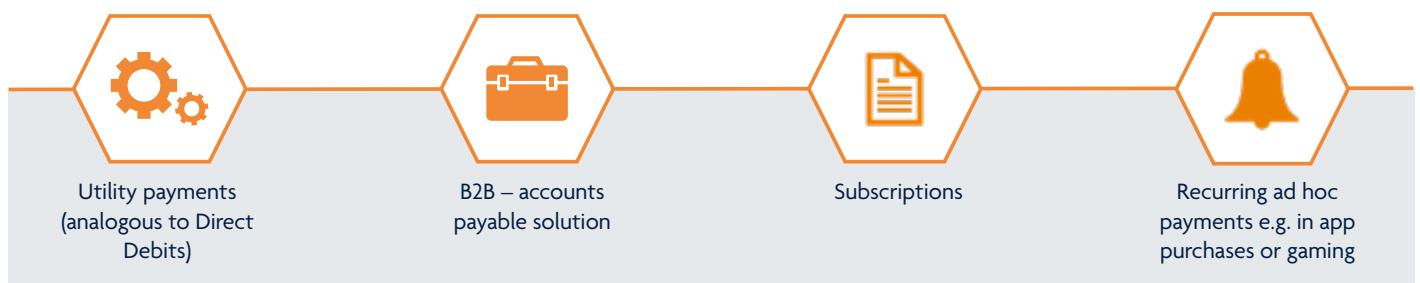
What non-sweeping VRPs could look like

What this looks like in practice can be explained through an example use case. Say a customer wants to pay their electricity bill each month and the payment amount will be different each month depending upon electricity usage. The utility service provider will have the option of accepting payment via different methods. VRP will give the utility provider an additional payment option. VRPs can be enabled where a PISP offers its services to the utility company which will effectively enable the utility company to ask for the amount of money it is due under its agreement with the customer. The PISP will then arrange with the customer to make the payment by bank transfer from its bank. This works by the PISP entering into a separate agreement with the customer under which the customer agrees with the PISP that it can hold an ongoing authority from the customer to access their bank account in order to make the payment from its account to the utility provider's bank account for the amount that the utility provider request.

VRPs could offer a useful alternative to existing methods of making regular payment of variable amounts, such as continuous payment authorities on cards and Direct Debits. They offer the following advantages over the other payment types:

- potentially providing a better, frictionless, user experience;
- faster settlement to the merchant using the Faster Payments System; removes the uncertainty and delay in knowing when a payment has actually cleared;
- potentially lower costs for merchants because of different charging models applied by PISPs; and
- potentially easier for the merchant to implement as a third party will be managing the payer consent.

For illustrative purposes, the below diagram highlights some use cases where non-sweeping VRPs might be used and which the Working Group had in mind during discussions. However, as the market progresses other use case could emerge and therefore, any framework developed will need to be flexible to also provide for those.



³ https://assets.publishing.service.gov.uk/media/622ef71fd3bf7f5a86be8fa4/Sweeping_clarification_letter_to_be_sent_14_March_2022_.pdf

Regulatory framework

As explained above, in the UK there are currently two regulatory regimes which require account providers to enable customers to grant authorised PISPs access to their accounts for the purposes of initiating payments. These are:

- a) the CMA Order; and
- b) the PSRs.

The CMA Order has mandated the use of VRPs for the purposes of sweeping. This obligation applies to the CMA only. Consequently, this means two things:

1. there is no CMA Order obligation on ASPSPs (except the CMA9) to implement VRP APIs for the purposes of sweeping; and
2. there is no CMA Order obligation on any ASPSP to permit PISPs to access its VRP APIs for non-sweeping purposes.

Under the PSRs and RTS-SCA an ASPSP must allow access to a PISP to initiate a payment and to commence the authentication of the payer as part of that payment initiation. The VRP API standard, however, goes beyond these requirements, insofar as it provides an additional layer on top for payment initiation services, and allows the payer to set up a long-lived consent with the PISP. This additional type of account access goes beyond the PSR obligation on an ASPSP (i.e. to enable access to a PISP for the purposes of payment initiation). Furthermore, it is worth highlighting that the provisions in the PSRs relating to open access were designed to facilitate customers being able to initiate payments via a PISP which they can initiate online directly with their account provider. But there is no equivalent to VRP in most direct channels

Consequently, in our view, if a ASPSP does implement a VRP API and wants to grant access to it for non-sweeping use cases, it is able to enter into a written agreement with a PISP setting out the terms of such access.

For the purposes of the report, it is also helpful to understand that the initiation of each variable recurring payment will still be a regulated payment service pursuant to the PSRs. The initiation of each payment can then only be performed by an authorised PISP.

The actual initiation of the payment and the provision of the service to do the same, such as those for VRP, are therefore governed by and subject to specific requirements set out in the PSRs and delegated regulation known as the Regulatory Technical Standards on strong customer authentication and secure communication (the **RTS-SCA**).

More specifically, the relevant information requirements of Part 6 PSRs will apply to PISPs when initiating these payments. Given the enduring relationship between the customer and PISP, it is necessary to consider how this changes the nature of the arrangement to the extent that the information requirements for framework contracts are invoked rather than those for single immediate payments. Further discussion on this is outside of the scope of this report.

In addition, the conduct obligations in Part 7 PSRs will apply to PISPs. There are some key provisions that are particularly important for these types of arrangements.

First, all PSPs will particularly need to consider the impact of VRPs on liability allocation and burden of proof. We discuss the application of the provisions relating to liability in further detail in Annex 1.

The other key area is the requirement to perform strong customer authentication (SCA). Under Regulation 100 of the PSRs, a payment service provider (PSP) is required to apply SCA when a payer, amongst other things, initiates an electronic payment transaction (including through a PISP). SCA is essentially a means of validating the identity of a payer based on the use of two or more authentication factors known as knowledge, possession and inherence. In order to meet this obligation, there are essentially two ways of enabling VRP payments to take place within the context of VRP. Either:

- The payer's ASPSP may choose to use an exemption set out in the RTS-SCA.

The most likely exemptions which would be available to be applied by the ASPSP for non-sweeping VRPs are those under:

- Article 13 - Trusted beneficiaries
- Article 16 - Low-value transactions
- Article 18 - Transaction risk analysis; or

- The payer's ASPSP can agree to delegate SCA to the PISP, who would then be responsible for authenticating the payer in respect of each individual payment.

ASPSPs and PISPs, when collaborating to set up VRP arrangements will need to agree an approach to compliance with the SCA requirement, either by using an exemption or by delegating SCA.

Future Entity

We acknowledge that work is currently taking place to consider how the Open Banking Implementation Entity should evolve to support the service requirements of the CMA9 and the obligations of the CMA Order and the needs of the PSD2 community.

The outcome of this work by the CMA and other regulators through the Joint Regulatory Oversight Committee will undoubtedly have an impact on the development of VRPs; in particular, how access to the open banking infrastructure is maintained.

For the purposes of this report, we have not attempted to pre-empt the future direction or future state for open banking. Instead, the focus (given the emergence of open banking payments, the imminent conclusion of the Final Open Banking roadmap and the absence of details on further regulatory intervention) is on how best to create the most desirable operating framework to enable all participants in payments to maximise the commercial opportunities arising from VRPs.

6. INFRASTRUCTURE

Use of existing infrastructure

The API standards which have been developed for VRP by the OBIE, are operationally and technically capable of delivering more than just sweeping. The Working Group discussed the extent to which this existing infrastructure would be utilised to enable VRPs to operate outside of the regulatory mandate and the sweeping use case. There is a clear desire from the Working Group to use this existing infrastructure and API specifications as far as possible. There does not appear to be any desire to change or renegotiate existing standards at present.

Given the desire to utilise existing open banking infrastructure for VRPs as much as possible, the industry will need to keep on top of developments that take place concerning the future of the OBIE as these discussions will be integral not only to the ability to continue using the existing infrastructure, but how the standards are maintained and the way in which standards can be accessed and utilised for purposes other than those required by the CMA Order.

Given the uncertainty of the future of OBIE at this time, the Working Group members were reluctant to discuss possible contractual mechanisms to gain access to and for the on-going maintenance of the open banking standards and infrastructure for the purposes of non-sweeping VRPs. Given this will be fundamental to the continued ability to offer VRPs, we recommend further discussions are held on this once the model and operations of the future open banking entity become clearer.

As the Working Group want to be able to build on the existing infrastructure to enable VRPs to operate commercially as quickly and with as much ease as possible, this report considers what is needed in addition to the basic infrastructure to enable this to happen.

7. STANDARDISATION

Introduction

As mentioned above, discussions are already taking place between PISPs and ASPSPs to explore using VRPs for a variety of use cases outside of sweeping. It may be that parties want to put an agreement in place to help govern arrangements between them. From the Working Group we can deduce that there appears to be industry appetite to standardise some of the arrangements for the provision of VRPs and explore what standardisation could look like. The concept of an ‘industry framework’ is being used to describe this standardisation.

The use of an industry framework could provide benefits to the development of open banking VRP payments outside of sweeping. One of the key benefits of an

industry framework is that it enables a level of market co-ordination and harmonisation. This would help to keep market entry costs down and facilitate participant access; build merchant and customer confidence and engagement through a level of consistency; and avoid the costs and complexity of fully negotiated arrangements.

Matters to be standardised

The Working Group considered a broad range of matters which could potentially be standardised. Although, it was recognised that competition law advice would be required before progressing further.

This section sets out the areas in which a consensus of the Working Group considered that there would be benefit in standardising.

Matter	What could be standardised?	Why standardise
1. Payer consent to mandate	<p>To set out standards to manage the uncertainty of what consent covers and for how long within the payer's VRP mandate.</p> <p>These standards could cover:</p> <ul style="list-style-type: none"> • Capture of consent – this could include the means of agreeing the consent or even prescribing the form of the consent • Revocation of consent - this should be in a manner reasonable and proportionate to the nature of the underlying transaction and use case • Communication with the payer before a VRP payment is taken – this could be consistent with the existing regulatory framework and CEG • Data retention requirements – this could help manage customer challenges about the VRP payment 	<p>Standardising the user consent to the mandate could help:</p> <ul style="list-style-type: none"> • provide a consistent customer experience; • build customer and merchant engagement and trust in non-sweeping VRPs; • help participants in arbitrating disputes on liabilities; • communicate with the customer before a payment is taken and the amount can reduce complaint risk by keeping the payer informed, • the less likely they are to request a refund; and • drives confidence in the use of VRPs. <p>While standardisation of the user consent to mandate may be helpful, consensus emerged that it would need to be done in a manner reasonable and proportionate and based on the use case so as to not inhibit innovation and future development of VRP use cases.</p>

Matter	What could be standardised?	Why standardise
2. Dispute management	<p>Standardising user complaint management. For example:</p> <ul style="list-style-type: none"> • making it clear to payers how they can complain and to whom; • some basic mechanics for the exchange of information between participants to assist with the investigation and resolution of disputes; • the timeframes for dealing with disputes; and • what information should be used as evidence. <p>N.B. The Working Group were of the view that means of dealing with the complaint at the customer level should be left for participants to define in line with their own complaint handling processes and in accordance with how liability is allocated under the existing regulatory framework.</p>	<p>A consensus emerged that there would be merit in standardising user complaint management as it would:</p> <ul style="list-style-type: none"> • give payers clear line of sight of how they can complain and to whom, building confidence in the use of VRPs; • help participants streamline their processes for exchanging information and encourage more speedy resolution of issues; and • generate a more consistent approach to dispute resolution. <p>Standardising the user consent to the mandate could help:</p> <ul style="list-style-type: none"> • provide a consistent customer experience; • build customer and merchant engagement and trust in non-sweeping VRPs; • help participants in arbitrating disputes on liabilities; • communicating with the customer before a payment is made with details such as the amount can reduce complaint risk by keeping the payer informed meaning they are less likely to request a refund; and • drives confidence in the use of VRPs.
3. Liability	<p>To manage liability between the participants regarding liability for disputed payments that are not currently protected under legislation. Annex 1 discusses this further.</p> <p>See section Annex 1 for a discussion of how liability is allocated between the participants under law.</p> <p>However, the Working Group also concluded that it is not desirable to immediately standardise approaches to dealing with payer disputes with merchants. This should be kept under review.</p> <p>See below for further discussion on this.</p>	<p>Standardising the treatment of liability for disputed payments, over and above the existing regulatory framework could help:</p> <ul style="list-style-type: none"> • offer customers equivalent protections to payments which appear similar in nature but which the regulatory framework does not yet provide for; • enable liability allocation to be tailored to specific use cases.

Matter	What could be standardised?	Why standardise
4. Adherence to existing Open Banking standards	To require participants to adhere to applicable Open Banking standards relating to VRPs in the context outside of sweeping. These would include: <ul style="list-style-type: none">• API specifications• Customer Experience Guidelines (CEG)• Operational Guidelines	<p>The Working Group agreed that the industry framework should build upon existing Open Banking standards applicable to VRPs, where appropriate.</p> <p>The industry framework would therefore need to refer to the relevant Open Banking standards and require participants to adhere to them in the context of VRP payments outside of sweeping.</p> <p>Standardising the way existing infrastructure is accessed helps create a level playing field.</p>
5. TPP onboarding	To bring a level of consistency to the eligibility criteria ASPSPs require TPPs to meet in order to onboard them to the industry framework and use the APIs. This could include matters such as regulatory authorisations, technical certifications and information security arrangements. This could be supported by a register of Participants, similar to the Open Banking Directory.	A consensus emerged that there was merit in being clear about what the onboarding requirements are in the industry framework. However, participants were not agreed on the extent to which it is necessary for the onboarding requirements to go further than existing requirements for Open Banking enrolment or the extent to which additional requirements could be standardised. Participants agreed that further work is needed between ASPSPs and TPPs in order to define this.

Matter	What could be standardised?	Why standardise
6. Governance, Compliance and Change Management	<p>To create/enable a governance body to provide overall coordination and to administer and manage changes to the standards.</p> <p>Further work will need to be undertaken to define the detailed roles and responsibilities of the governance body, including:</p> <ul style="list-style-type: none"> • how it would be composed and make decisions • whether responsibility would sit with an existing entity • what the extent of its administration and coordination role would be • how changes to the industry framework standards and documents would be managed • whether it would be responsible for monitoring and enforcing compliance with the standards • how it would be funded <p>It was acknowledged that decisions on the future entity would impact these discussions.</p>	<p>The Working Group considered a governance arrangement would be fundamental to achieve and maintain standardisation.</p> <p>The governance body would have the benefits of:</p> <ul style="list-style-type: none"> • providing a central forum for management; • being open and transparent; and • independent of any one participant.
7. Information Security	To provide a minimum standard of information security for all participants to adhere to.	<p>Robust information security will be fundamental to the successful delivery of the industry framework.</p> <p>A consensus emerged that there is merit in standardising minimum information security requirements in this context and further work will need to be undertaken to define these from a technical and operational perspective.</p>
8. Service Levels	<p>To set out service levels in relation to key metrics such as API availability, response times, and maintenance windows.</p> <p>Volumes data should also be captured</p>	<p>A consensus emerged that there is merit in standardisation around services levels but this needs to focus on additional service levels needed for VRP above those required more generally for open banking. It was generally thought the existing service levels set by OBIE would be acceptable at first but this should be kept under review as new use cases develop and standardised as appropriate and as required by those use cases.</p>

Matter	What could be standardised?	Why standardise
9. Price considerations	<p>A charge may be paid by PISPs to ASPSP for access to their non-sweeping VRP API. This will be a commercial decision for each ASPSP (at no point was pricing discussed in the Working Group).</p> <p>Some general pricing requirements could exist in the industry framework e.g. costs must be proportionate, fair, reasonable and nondiscriminatory.</p> <p>However, pricing principles should not serve as an obstacle to TPP participation in the VRP ecosystem.</p> <p>Pricing methodologies may also be needed to help fund central governance of the standards and costs of operating and maintaining the non-sweeping VRP APIs.</p>	<p>This would enable Participants to earn revenues from the industry framework and contribute towards the costs of operating and maintaining the non-sweeping VRP APIs.</p> <p>Further work will need to be undertaken in relation to price considerations and how these might be reflected in the standards.</p>

Summary

The above sets out the areas where the Working Group considered standardisation would be helpful to avoid some of the costs and complexity of fully negotiated arrangements. Standardisation in these areas could also ensure a consistent approach to the customer journey in terms of capturing consent and treatment should something go wrong. This in turn will help build user confidence in the system.

However, at present while there is a high-level agreement for standardisation in these principal areas, the detail of what this will look like and how it will be managed still needs to be fleshed out. The ability to achieve standardisation in these areas to generate the benefits envisaged will require more detailed discussions and agreement.

We are of the view that the development of VRPs for different use cases is still in its infancy. We suspect that once a critical mass of the industry starts looking at enabling such payments, there will be a greater drive for standardisation.

This means that, while there are some areas where the Working Group agreed standardisation would be helpful, clearly these areas only form part of the commercial arrangements that will need to exist between ASPSPs and PISPs. Therefore, parties will ultimately have to supplement this standard with their own additional terms. Consequently, the industry framework that would give life to this standardisation would not yet drive homogeneity. However, standardising the key areas identified will at least go some way in enabling VRPs to operate with some consistency while giving parties freedom to compete on customer experience and commercials.

Consent management

While matters of liability and dispute resolution are a clear concern, it will be equally important, if not more so, to ensure clear and fair treatment of payers when setting up these payments and initiating them. This is because the greater the focus that is given to ensuring things go right (so the customer has confidence in the use of VRPs), the less likelihood there will be of major liability issues if matters go wrong.

Liability

The allocation of liability between ASPSPs and TPPs seems to be a key topic of contention and concern for most. This is largely because it will directly impact the commercial viability of a VRP proposition and drive discussions on pricing models for VRP API access. Therefore, **Annex 1** explores in more detail how liability would be allocated when a payment is said to have been made incorrectly under regulations and where there are currently gaps which the industry framework could help fill.

The Working Group were generally of the view that the allocation of liability provisions in the PSRs for when transactions were processed incorrectly or were unauthorised were generally clear and well understood.

However, it was acknowledged that the nature of VRP functionality could give rise to alternative types of complaints and new areas of fraud loss giving rise to customer complaints, which are not currently addressed in the PSRs for push payments. Some of these are considered in **Annex 1**. Some members of the Working Group believe that the standards should clearly define who would be liable for solving the issue and who would bear the ultimate liability for these additional scenarios'. Further discussions will be needed to achieve an agreed approach when it comes to drafting the standards.

The discussions on liability also seem to be driving the desire for a standardised approach to dispute management processes. ASPSPs are keen to have a more streamlined approach to handling disputes over mandates because the variable nature of the mandate, which sits with a PISP, means they have very little control.

Ultimately, the issue of liability allocation will become an evidential one, whether following the regulatory position or any agreed new standards. To illustrate this point, if a PISP believes it has initiated a payment correctly, and within mandate, who arbitrates that and what does an ASPSP do to resolve the situation, other than ultimately to settle with the customer if the ASPSP doesn't believe the evidence is strong enough that a payment was initiated correctly. Therefore, dispute management processes will be fundamental to liability management and will need to factor in what to do in such circumstances.

Dispute management

The Working Group discussed whether it would be useful to adopt the use of the Open Banking Dispute Management System (**DMS**) in order to help facilitate communication and exchanges of information between ASPSPs and PISPs/AISPs in relation to enquiries, complaints and disputes arising in the context of non-sweeping VRPs. While the Working Group all considered that the format for managing disputes should be standardised to some extent, there was no consensus that the DMS system should be used.

It was also acknowledged that a system such as DMS only provides a means of communication between the organisations, not a process for assessing and determining claims. What was clear instead was that parties desired a consistent approach to allocating liability between themselves, how disputes will be arbitrated, a clear understanding of how the burden of proof would be allocated, and the type of evidence that could be used to help settle liability claims.

The Working Group was generally of the view that any standardised requirements should not result in ASPSPs needing to alter their customer-facing complaints handling processes, which would continue to operate as usual.

In order to illustrate how the allocation of liability and dispute management might be approached in non-sweeping VRPs, the Working Group looked at how these topics were dealt with in the rules of existing payment schemes. For example, the Working Group explored whether it would be helpful for any standardised

arrangements to set out the prescriptive details on the processes for dispute management including around timeframes for responses and documentation required to be submitted as evidence (much like the card schemes chargeback rules), or whether it might be helpful to replicate similar customer protections and process requirements to those offered under the Direct Debit Guarantee.

Having reviewed the liability and dispute processes which exist in other payment schemes, there was a general consensus that standardisation to some degree would be helpful, in particular with regard to the processes for sharing information, the types of evidence that can be used, and SLAs around response times. However, there is currently a clear reluctance to replicate the detailed processes set out by card schemes. A lighter approach similar to the BACS Direct Debit Guarantee appears to be more palatable.

The purpose of the BACS Direct Debit Guarantee is to provide assurance to the payer that any monies taken in error by the service user or the paying PSP will be immediately refunded. The scheme does not, however, deal with wider disputes, such as those between a payer and payee/merchant, which in some other schemes can also give rise to PSP liability.

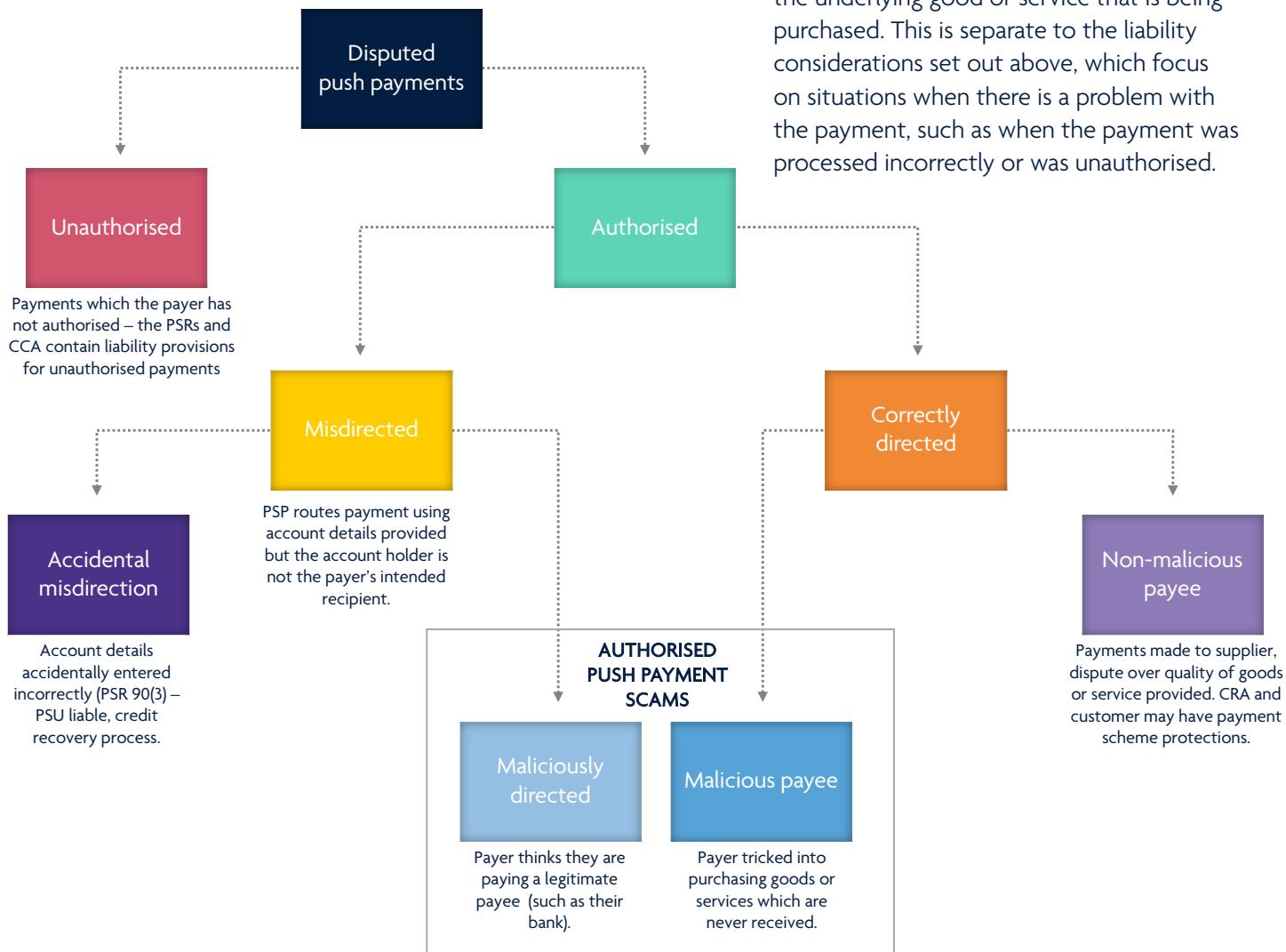
It is also worth noting that under the Direct Debit Guarantee the paying PSP will pay out under the Guarantee for errors and then raise the indemnity claim on the service user/merchant. The merchant can then raise a challenge/ dispute if it disagrees with the claim. Here liability is being passed back to the merchant, largely because the merchant is the party that obtains the payer consent. In the context of VRPs, we would see the PISP standing in the shoes of the merchant as it is the PISP which will capture the consent to the VRP mandate. Consequently, if such an approach were adopted the PISP would need to be sufficient financially stable to absorb such liabilities, both flowing from the PSRs and any additional ones built into the framework.

Merchant liability

Participants were of the view that there will be some circumstances when a PISP may want to pass liability onto a merchant/payee (e.g. if a customer claims the amount is more than they had reasonably expected, even if it is within mandate). However, the Working Group did not unanimously consider that payee/merchant liability should be standardised. Some were of the view that this decision should be left to the commercial agreements and pricing arrangements of a TPP (for example, some TPPs may decide to absorb such liability on behalf of the merchant rather than pass it on).

8. MATTERS WHICH MAY REQUIRE STANDARDISATION IN THE FUTURE

The following matters were discussed by the Working Group and a broad consensus emerged that standardisation may be helpful in these areas in the future as use cases develop but are not immediate priorities, although some members were keen to give consumer protection more immediate priority. These are:



Buyer protections

What we mean by buyer protections

Essentially, when we talk about buyer protections, what we are referring to are the protections in place for customers when there is a dispute relating to the provision of the underlying good or service that is being purchased. This is separate to the liability considerations set out above, which focus on situations when there is a problem with the payment, such as when the payment was processed incorrectly or was unauthorised.

Layered approach to buyer protections

In the case of a merchant dispute (e.g. goods and/or services not as described or not received) consumers have the option to seek compensation through a number of protections:

- legislative protections (e.g. Consumer Rights Act 2015);
- common law (e.g. they can bring a claim for breach of contract);
- retailer protections (e.g. returns policy); and
- personal insurance.

Many members of the Working Group were of the view that sufficient protections already exist for customers and therefore there is no immediately obvious harm arising from the use of VRPs in non-sweeping use cases that need to be addressed.

That said, some participants were concerned with lack of consumer protections in place for customers which has the potential to stifle growth of VRP propositions. Therefore, it would be in the interest of all participants that an agreed standard was set to protect those utilising it.

Another concern raised related to the ability for VRPs to compete with other payment methods such as card payments if similar consumer protections were not offered. In our view, however, there is some difficulty in trying to replicate a card scheme approach to buyer protections for a completely different payment type with different arrangements that exist between each of the participants in the payment chain.

For example, in the context of card payments, the primary liability to pay a chargeback sits with the acquirer, such that the acquirer takes on a potentially significant financial risk by offering merchant acquiring services. In the context of VRPs, a PISP will be taking on a similar risk to that of the acquirer, in the context of the payment errors it is responsible for. There are undoubtedly going to be concerns over whether a PISP will be sufficiently financially equipped to assume this liability. These concerns are increased further if it were also to take on liability for buyer protections, even if it wanted to, which may also become a barrier to entry for some to enter the market.

Furthermore, acquirers' primary tool for recovering chargeback amounts from merchants is through the merchant services agreement (**MSA**) between the acquirer and the merchant which governs the merchant acquiring services. The merchant will normally provide the acquirer with an indemnity against chargeback amounts. Current discussions relating to VRPs have not yet considered the ability to pass liability back to a merchant as there is currently no consensus on whether a PISP would want to do this commercially. Finally, if an acquirer cannot recover chargebacks from its merchants under the MSA then it will still have to pay out the amount of the chargeback to the card scheme. This means the chargeback will have effectively been paid from the acquirer's own funds. This might happen, for example, if the merchant is in financial distress or insolvent. This can represent a substantial credit risk for the acquirer. From an acquirer's perspective, it is therefore essential that they continually monitors chargeback levels and the merchant's financial health, and has adequate financial security (or rights to demand financial security) in place. Such information and financial security rights are commonly included in MSAs. The overall scheme arrangements for cards are far more complex and involved than is currently envisaged for VRPs.

Such complexity and high financial security requirements could potentially act as a barrier to entry for PISPs to offer VRPs. Consequently, attempting to mirror an existing card scheme approach is not currently being advocated by the Working Group members. As a result, a balanced approach specific to VRP use cases must be sought through further discussions on standardisation.

Buyer protections in other schemes.

We also explored buyer protections under payment arrangements available in the market other than the card schemes. Certain firms such as these have developed their own separate buyer protection schemes and dispute management processes, and have incorporated these into their contracts with merchants and customers. It was observed that these protections vary widely between offering protection in situations where goods or services were not received or are defective in some way, to offering certain protections in relation to payment fraud.

Some payment arrangements even try to replicate s.75 CCA liability protections. In summary, s.75 exists because a customer has an ongoing debt liability to pay for something that is defective / gone wrong. The aim of this legislative protection is effectively to stop people being in debt over purchases that the lender had facilitated to be made by providing the credit. Underpinning this protection are the arrangements in place between the finance company and the retailer. The finance company and retailer are effectively profiting in the transaction being financed, so they are expected to share the liability of it going wrong. It is then for the finance company and retailer to allocate liability between them. Card scheme charge back rules essentially grew from covering s.75, but as debit cards grew in use, the chargeback rules evolved.

In contrast, under Direct Debit protections the retailer takes the payment and the banks place trust directly in retailers to operate their permission / mandate properly. If there is any suggestion they have not done so, the bank simply passes the liability back to that merchant.

It is less clear in the case of VRP why buyer protection is needed (other than the competitive commercial one stated above). Perhaps the fact that the merchant will determine the payment amount could give rise to the need to build additional protections, as we have suggested in the Annex 1. However, improving customer understanding and knowledge of payments at the front end would go some way to alleviating potential customer harms and the need for protections if something does ultimately go wrong.

Although the Working Group has not ruled out incorporating buyer protections into any standardised framework for certain specific use cases, the majority of the working group were of the view that they were not needed for day one and that this would need to be kept under review as VRPs developed commercially and in line with market drivers.

In the meantime, it is our view that where the customer is a consumer, payment service providers should be making sure they are aware of their rights and the different level of protection available when using VRP compared to other payment types.

Payment Systems Regulator - Consumer Protections in interbank payments

In February 2021, the Payment Systems Regulator published a call for views on consumer protections in interbank payments. The paper set out the Regulator's vision for consumer protection and explains why consumer protections may be needed, particularly in the Faster Payment Scheme (**FPS**), as this payment method of payment is being used more frequently in the merchant payment space. The Payment Systems Regulator published the responses to this call for views in October 2021 and detailed its intended actions.

Whilst there was acknowledgement that the use of FPS usage has grown steadily in recent years for more varied purposes, the most common form of payments utilising FPS are still person to person (P2P rather than for payments for goods and services. The Regulator's view was that the risks that arise from P2P payments (such as unauthorised transactions or sending a payment to the wrong person) are adequately managed by the PSRs and CCA and in the case of fraud, harm is being reduced by initiatives such as the Contingent Reimbursement Model Code.

Given the use of FPS in the merchant space is currently low, the Regulator is not currently minded to intervene to introduce additional purchase protections into the scheme at this stage. However, the Regulator did remark that they support a market-led approach to improving customer protection. It seems that they hope that increased competition between FPS and card schemes will drive "good protections" in the merchant payment space without regulatory intervention.

The Regulator did, however, express the view that higher-risk transactions such as high-value payments, payments for delayed delivery of goods or services, and payments where there is an increased counter party risk, should be supplemented by robust protection.

Therefore, while the Payments Systems Regulator does not intend to intervene at this stage by mandating buyer protections in the FPS, it will continue to monitor developments, such as increased usage of FPS and differing use cases as well as levels of protections offered by different types of payments.

Summary

As the majority of the working group were of the view that the need for standardisation around buyer protections should be kept under review. If it becomes apparent consumer harms are beginning to arise, the industry will be expected to look to implement arrangements to ensure protections are offered in those cases.

As stated above, in the meantime we encourage PSPs to improve customer understanding and knowledge of payments (by making sure they are aware of their rights and the different level of protection available when using VRP) in order to alleviate potential customer harms and the need for protections if something does ultimately go wrong.

It appears for now that the Payment Systems Regulator has not ruled out intervening in the future, if the market does not address issues themselves, as they arise.

Strong Customer Authentication (SCA)

As explained above, Under Regulation 100 of the PSRs, a payment service provider (**PSP**) is required to apply SCA when a payer, amongst other things, initiates an electronic payment transaction (including through a PISP).

There are two different ways of managing SCA for VRPs:

- VRP payments with an SCA exemption (see above)
- VRP payments with delegated SCA (where the payer's ASPSP agrees that a PISP can perform the SCA check on the ASPSPs behalf).

If an ASPSP decides to delegate the conducting of SCA to a PISP, we would expect the outsourcing of this regulatory obligation to be subject to be clearly documented in a written agreement between the parties. Where delegated SCA is used, the industry framework could provide standardisation around the means by which SCA is delegated.

A Working Group consensus emerged that there is merit in standardisation around delegated SCA but this is not necessary for VRP usage at present. In addition, such discussions will be extremely complex given SCA compliance processes will be different for each ASPSP and each ASPSP will have their own regulatory risk management framework which would need weaving into any outsourcing arrangement. Consequently, for now, such discussions will need to be had on a bilateral basis between an ASPSP and PISP.

Delegated SCA should be kept under review as new use cases develop and then further discussions can be had about the feasibility of standardising the approach to this.

9. POSSIBLE STRUCTURES

Introduction

This section sets out the options considered by the Working Group in terms of how to structure the standardised approach for non-sweeping VRPs.

In summary, a range of approaches has been considered, from allowing the market to drive VRPs by individually negotiated agreements through to a comprehensive rulebook style approach. However, whilst UK Finance acknowledged in its “The Future Strategy for Open Banking Payments” report that any industry framework arrangement would require governance and require legitimacy across the system, the options differ in terms of the levels of central governance and oversight required to help co-ordinate and administer them; broadly speaking, structures with more comprehensive standards will require greater levels of centralised governance and oversight (and the competition law risk will also need to be more carefully managed).

The Working Group has therefore identified three potential options for the contractual structuring of the industry approach to non-sweeping VRP. The options outlined below consider approaches ranging from low to higher levels of central governance and oversight required. For completeness, we have also considered the advantages and disadvantages of fully negotiated agreements, which essentially means no industry standardisation at all.

It should be noted that considerations about how the approaches are funded and any potential fees that may apply between participants to support the industry framework will need separate discussion and are not included in the considerations below at this stage.

Design principles

Before exploring the possible structures, it is helpful to briefly summarise the conclusions drawn by the Open Banking Payments Working Group on the ten key design principles that any industry framework would need to meet. In summary, this concluded that any industry framework should:

1. be supported by an investment case;
2. be pro-competitive and guided by advice on competition law;
3. be accessible to market participants of all sizes;
4. [help] manage liability between participants in ASPSP and PISP roles and disputes - building on the foundations in PS D2;
5. ensure high quality and consistent customer experience;
6. drive conformance to standards;
7. ensure low cost governance, funding and participation model;
8. provide for a voluntary participation model;
9. not duplicate other payments infrastructure development (e.g. New Payment Architecture (**NPA**)); and
10. take into account other regulatory/legal developments, for example in subscription protections.

In addition, it is important that participation in the industry framework will be voluntary. Market support should be achieved by ensuring that attractive market opportunities can be enabled by the industry framework. In order to ensure that any industry collaboration is pro-competitive, careful consideration will also need to be given to the rationale/benefits of the standardisation for the industry and consumers.

In our view, standardisation can only be achieved if there is a commitment from the participants to adhere to the standards agreed, rather than ignore them and negotiate clauses when it suits. Otherwise, once you get into negotiation, the aims being sought from standardisation will be lost. Therefore, it will be imperative that the solution opted for is coupled with an overall commitment by those who voluntarily come into the arrangement to use the standardised approach and not to negotiate on the issues. There will be varying ways to do this depending on the approach taken as we explain below.

The structuring of the industry framework will therefore need to be mindful of these design principles. Concerns about how parts of certain structures may fall short of the design principles, and meet the aims of this review are set out below. Further, while each structure can, in principle, be designed in a way which is compliant with competition law, some structures require more careful management than others.

Possible Structures

1. Negotiated contract approach

Overview

A negotiated contract approach would leave participants free to agree the contractual terms on which VRP payments will be offered. A negotiated contract would not be subject to any external governance or co-ordination.

While this approach would necessarily need to address the matters outlined in this report which have been

identified as benefitting from standardisation, it would not drive conformance to a specific common standard. It is possible that certain market practices may emerge over time although this would be based on market forces rather than co-ordination between participants and the outcome would be less predictable and may result in fragmentation.

In short, this model will not meet the objectives and aims that market participants are seeking to achieve through standardisation. We are aware that bilateral discussions have already begun between a number of PISPs and ASPSPs to enable VRP use cases commercially. But, discussions can be lengthy and protracted and in some cases, ASPSPs are not yet willing to engage in the discussions. We are also aware that some participants have experience in negotiating contracts for open banking type account access in other jurisdictions, where discussions have taken between 1 - 2 years.

Consequently, the Working Group participants were not in favour overall of the negotiated contracts or 'do nothing' approach.

Advantages	Disadvantages
Participants can move to market with a key partner for a specific proposition at will, rather than wait for applicable industry standards to be developed.	Market-led approach may disadvantage smaller players as market initially (or permanently) gravitates towards larger players.
Participants can negotiate competitive pricing models for the provision of their services.	There are no forums to help many industry participants collaborate on mutually beneficial and co-ordinated outcomes, which could lead to fragmentation in the market.
Participants can agree bespoke models for specific propositions developed.	The bespoke nature of a fully negotiated contract may make it expensive and time consuming to agree.

2. Policy approach

Overview

A policy approach would involve development of a Policy Guide by the industry which sets out the principles of the matters to be standardised.

The Policy would contain a set of principles in key areas identified as benefiting from standardisation, rather than being rules-based; in effect, it would be outcomes-based. This would mean it would not be too prescriptive and allow a degree of flexibility as to the means by which the principles can be achieved by the participants in any given use case. This distinguishes the policy approach from the standardised clauses and rulebook approaches, explored below, which are more specific and definitive about how matters are standardised.

The Policy Guide would not in itself be binding or based on a multilateral contract. Participants would give legal effect to the Policy bilaterally by incorporating it into contracts agreed between themselves in relation to VRP. The Policy would therefore provide a baseline position and guiding principles from which to negotiate. This would help retain the advantage of being able to move to market at will with a key partner, but reduce some of the costs and time associated with agreeing a fully bespoke contract.

A policy approach requires some central oversight and co-ordination and so a governance body would need to be established with responsibility for creating, maintaining and updating the Policy.

Although, compliance with the Policy would be voluntary, in order to achieve the design principle of helping to keep market entry costs down, enable participant access, and provide consistency in areas such as allocation of liability, the expectation would be that participants would make a formal commitment to adhere to the Policy. It will be imperative that there is an overall commitment by those who voluntarily come into the arrangement to use the standardised approach and not to negotiate on the issues, otherwise, the aims of standardisation may not be realised. There have been industry commitments given before to UKF and others to adhere to guidelines (e.g. in relation to implementation of SCA in e-commerce and access to cash) and a similar approached would be advised here.

Furthermore, in order to achieve the design principle of driving conformance to a standard, the Policy would need to be overseen by a governance body who would be responsible for updating it as required to ensure they are appropriate for the range of use cases. This governance body would, in line with competition law, need to be independent, unbiased and transparent in its decisions and procedures while also having the requisite expertise to effectively implement the Policy. Competition law input would, therefore, be critical in setting up this entity and its functions.

This approach has a further advantage of providing a stepping stone to a more comprehensive set of standards as VRP use cases develop and the market matures over time. Effectively, the Policy approach lends itself well to developing into that more comprehensive arrangement (e.g. a Non-sweeping VRP Rulebook - see below).

Advantages	Disadvantages
Reduce negotiation time and therefore costs of entry.	May not achieve full standardisation as participants may interpret the requirements differently.
Participants benefit from having guiding principles to form baseline positions in key areas identified as benefiting from standardisation, whilst also being able to negotiate the specifics of an agreement.	Using a forum to arbitrate disputes over the Policy could introduce additional cost and delay.
Any central oversight body may also be able to issue guidance on how the Policy should be used and interpreted.	Using a forum to arbitrate disputes over the Policy could introduce additional cost and delay.
Principles-based approach enables flexibility in how participants achieve the Policy outcomes.	Competition law risk to participants. The Policy and overseeing body would need to be in compliance with competition law principles.

3. Standardised clauses approach

Overview

This approach would provide a set of model contract clauses for each matter which is standardised. The standardised clauses would be drafted and maintained by a governance body.

Standardised clauses would be more specific about how matters should be standardised, which would mean they can be more comprehensive about how specific matters are dealt with than the Policy approach would be.

The standardised clauses would not in themselves be binding. As with the Policy approach, participants would give legal effect to standardised clauses bilaterally by incorporating the relevant clauses into contracts agreed between themselves in relation to VRP. In order to achieve the design principle of helping to keep market entry costs down, enable participant access, and provide consistency in areas such as allocation of liability, the expectation would be that participants would make a formal

commitment to use the standardised clauses rather than negotiate, otherwise the aims of standardisation are at risk of not being met. Such a commitment could be given to UK Finnce or a central oversight body. As explained above, such voluntary commitments are not uncommon.

The standardised clauses approach also requires central oversight and co-ordination and so a governance body would need to be established and be responsible for maintaining and updating them. As use of standardised clauses would be voluntary, participants would remain free to adapt them or agree more bespoke terms as required if they are not appropriate for use in certain circumstances. However, in order to achieve the design principle of driving conformance to a standard, the expectation would be that the standardised clauses would be updated by the governance body as required to ensure they are appropriate for the range of use cases. As above, this governance body would need to comply with competition law, so competition law input would be critical in setting up this entity and its functions.

STANDARDISED CLAUSES APPROACH

Advantages	Disadvantages
This would help retain the advantage of being able to move to market at will with a key partner, but reduce some of the costs associated with agreeing a fully bespoke contract.	A forum to create suitable standardised clauses could introduce additional cost and delay into the introduction of VRP.
Participants can easily understand the terms which can apply to any engagement that they propose.	Managing changes to standardised clauses once in use may be complex.
Participants have model clauses developed by industry specifically for VRP to form a baseline position and can negotiate commercial arrangements of an agreement in addition.	Competition law risk to participants. The standardised clauses and overseeing body would need to be in compliance with competition law principles.
More comprehensive nature of standardised clauses reduces the risk of disagreement about how they are interpreted.	Gives participants less flexibility in approach taken over the matters standardised.

4. Non-sweeping VRP Rulebook

Overview

This approach would involve the establishment of a comprehensive document setting out the standards for all of the matters agreed to be standardised (the **Non-sweeping VRP Rulebook**). The Non-sweeping VRP Rulebook would need to be co-ordinated, administered and enforced by a governance body.

The Non-sweeping VRP Rulebook would set out a comprehensive set of rules for the operation of non-sweeping VRPs. The Non-sweeping VRP Rulebook would be kept under regular review to ensure it is appropriate for all applicable use cases and circumstances within which the participants operate. In contrast to the approaches outlined above, there would be very limited scope for negotiation or deviation from the Non-sweeping VRP Rulebook. Where a change is agreed, this would be because the specifics of particular circumstances or a use case requires it.

The Non-sweeping VRP Rulebook would be based on a multilateral contract which willing participants can join

on a voluntary basis. The Non-sweeping VRP Rulebook would therefore be binding in itself. Participants would join the multi-lateral agreement through an on-boarding process and agree to comply with the Non-sweeping VRP Rulebook as part of this.

The Non-sweeping VRP Rulebook approach requires strong central oversight and governance and so a suitable governance body would need to be established to perform this role. Since the Non-sweeping VRP Rulebook approach does not allow for individual negotiation of the standards, the governance body would also need to have a role in monitoring compliance and enforcement of the standards. This is important to ensure all participants are properly upholding the standards. The governance arrangements necessary to support a Non-sweeping VRP Rulebook approach could be complex and costly to agree, and this approach should therefore be mindful to the design principle of a low cost governance, participation and funding model. As above, this governance body would need to comply with competition law - and because the entity would have a more expansive role than that envisaged above, this would need to be even more carefully managed.

NON-SWEEPING VRP RULEBOOK APPROACH	
Advantages	Disadvantages
Enable a level of market harmonisation which would help to keep market entry costs down and enable participant access.	Developing a Non-sweeping VRP Rulebook and supporting governance arrangements could be time consuming and costly, potentially delaying the introduction of VRP.
Participants can build a common service with multiple other participants based on clear, common and binding rules.	Participants will have limited scope to negotiate changes to the Non-sweeping VRP Rulebook which could potentially cause friction or delay in how quickly new functionality can be brought to market.
Centralised oversight, governance and co-ordination of the Non-sweeping VRP Rulebook reduces the risk of market fragmentation and strongly drives conformance to a standard.	Enforcement of the standards is likely to involve sanctions which could have more far reaching impact on a participant.
Centralised approach can help ensure the multi-lateral framework works fairly for all participants and does not gravitate towards any particular group.	Competition law risk to participants. The Rulebook and overseeing body would need to be in compliance with competition law principles.

Summary

There was a general consensus within the working group that a policy-style approach was the preferred method for standardisation at this point. This was because it has the advantage of being able to help participants move to market at will with a key partner more quickly and reduce some of the costs and time associated with agreeing a fully bespoke contract.

However, as stated above, for this approach to achieve the aims and objectives of standardisation, it will be imperative that the Policy is coupled with an overall commitment by those who voluntarily come into the arrangement to use the standardised approach and not to negotiate on the issues. While there would be no set sanction for non-adherence. Encouragement to conform would come from the industry.

This Policy approach was also favoured as it lends itself better to developing into a more comprehensive arrangement (e.g. a Non-sweeping VRP Rulebook) in the future, should that be necessary. This is important as there was a good proportion of the Working Group that were in favour of a Rulebook approach. Consequently, in our view, a policy style approach coupled with a commitment

to adhere to the principles, would act as a good first step to help move the industry forward in order to create the most desirable operating framework to enable all participants in payments to maximise the commercial opportunities arising from VRPs.

Broadly speaking, such an approach could be designed in a way which is compliant with competition law provided participation in the collaboration is unrestricted; the procedure/timeline is transparent; the eventual standards developed are non-mandatory; and access to those standards are available on fair, reasonable and non-discriminatory terms.

Finally, some participants were of the view that a more comprehensive set of standards is required at the outset, such as supplementing the policy with example clauses which could act as a baseline approach. While we agree that there may be some merit in a hybrid approach, in some respects, the benefits of a policy-style approach will be diluted by supplementing the Policy with standard clauses. Consequently, the forum set up to help create the Policy will need to weigh up the benefits of having base line clauses against the additional time it will take to agree these (as explained above).

10. NEXT STEPS

The Working Group is of the view that the present report would benefit from being shared with the Payment Systems Regulator, the FCA, OBIE and Pay.UK to inform them and to allow for obtaining initial feedback.

After this, the market should continue its dialogue on how to move forward with the development of a policy style industry framework.

As an initial next step, a new working group could be created with the aim of developing a prototype of the industry framework, containing principle-based direction in the key areas identified as benefiting from standardisation, as well as continuing the discussions on liability allocation in addition to the PSR requirements, buyer protections and the need for payer notifications.

Although, the adoption of any standards and policies developed by the Working Group would be voluntary, a binding commitment to adhere to the principles would be expected if the policy is to meet the aims and objectives of standardisation. Therefore, consideration will also need to be given to how this is achieved, looking at past experiences in this regard.

Furthermore, the engagement to develop a framework should be broadened to include other parties such as merchants.

At the right time, the oversight of the policy could evolve into more formal governance. The task will then be for the market to agree where the oversight and governance role will sit.

There could be benefit in the body responsible for VRP oversight also taking on a more general role in helping the industry drive forward innovation and help shape the future of open banking payments. In this respect, VRP will be the pilot for greater industry collaboration helping to ensure the UK remains at the forefront of innovation.

We would expect the above to take place in full knowledge of relevant regulators.

Finally, in order to ensure that any industry collaboration is compliant with competition law, the working groups should ensure:

1. participation in the working group discussions is voluntary so that everyone who wants to participate is allowed to (or alternatively make the participation rules or membership criteria available);
2. any standards/ policies/ standard terms are voluntary, making it clear that there will be scope for competing standards/ policies/ standard terms to be developed;
3. the procedure/timeline of the industry collaboration is transparent; and
4. any standards/ policies/ standard terms developed are accessible to all on fair, reasonable and non-discriminatory terms (and if not, be able to explain why not).

Regulators will be concerned with where responsibility for overseeing compliance with the policy/ standard terms will sit. Therefore, integral to this will be the creation or appointment of the oversight and governance role.

ANNEX 1

Liability - When a payment goes wrong

First we will explore liability flowing from situations when something has gone wrong with a payment, for example where the payment has been processed incorrectly by a payment service provider (**PSP**) or the payee or was unauthorised.

When payment transactions are processed incorrectly or the customer claims they have not authorised a payment, the primary source of legislative protection for customers is set out in the PSRs. The PSRs detail who is liable in different circumstances and where the burden of proof lies. They also detail who is responsible for refunding a customer in circumstances when a PSP is liable.

These legislative provisions are replaced by largely similar requirements in the Consumer Credit Act 1974 (CCA) when the payment transaction takes place using an overdraft. Although, the liability provisions set out in the CCA are not exactly the same as those in the PSRs, the nuances are not material in terms of allocating liability between a payer's PSP and a payer for the purpose of this report. However, the CCA does not deal with allocation of liability in the circumstances when a PISP is used to initiate a payment, with the result that this remains covered by the PSRs. Therefore, we have only set out the legislative protections in the PSRs for the purpose of highlighting the scope of the legislative protections and allocation of liability.

PSR liability position

Liability under the PSRs consists of:

1. liability for unauthorised payment transactions (regulations 76 and 77);
2. liability in certain situations where the transaction was initiated by the payee (regulations 79 and 80);
3. liability for non-execution or defective or late execution of payment transactions (regulations 91, 92, 93 and 94); and
4. right of recourse (regulation 95).

In addition to liability under the PSRs, a PSP may also have liability under common law.

Where a PISP is involved in the disputed transaction, the obligation to refund remains on the ASPSP which must follow its normal procedures. However, a PISP will need to provide evidence to an ASPSP that it was not responsible for the error and will be held responsible as a matter of law if it is unable to evidence that it was not.

If a PISP is responsible for the unauthorised transaction, it must immediately and fully compensate the ASPSP for its losses in dealing with the customer refund. This will involve the PISP paying the amount of the unauthorised transaction, the amounts paid to the customer in compensation and the ASPSP's (reasonable) internal costs in investigating and dealing with the refund.

In addition, if any defective transaction was made utilising a PISP, the ASPSP should still follow the usual procedures as set out above with regard to ensuring the customer is refunded. It will then be for the PISP to prove that it carried out all elements of the payment initiation which were within its "sphere of influence" correctly. We would take this to mean that the PISP needs to be able to demonstrate that the instruction was properly made and that all processes and infrastructure that is within the control environment of the PISP was operating as it should. If it cannot do so, the PSPs who have made the account adjustments should make a request to the PISP to compensate them. The PSPs should each set out how the respective loss is calculated and the PISP should make payment to the PSPs immediately in accordance with any agreed informal arrangements between the PSP and the relevant PISP.

By way of example, the following types of disputes would be dealt with under the PSR regime:

Scenario	PSR position
Unauthorised payments <ol style="list-style-type: none">1. A payer has not given authority to the PISP for the payment transaction.2. Customer has cancelled the VRP consent but payment is still taken.3. The PISP initiates a payment outside the scope of the mandate	As VRPs are initiated through a PISP, the starting position under the PSRs is that the PISP will be liable unless it can prove the transaction was authorised: <ul style="list-style-type: none">• The ASPSP must refund the customer Reg 76(1) if it can't prove it was authorised.• The PISP is liable to refund the ASPSP unless it can prove the transaction was authorised / processed correctly within its sphere of competence (Reg 75(2)).
Payment made incorrectly i.e. <ol style="list-style-type: none">1. The payment is made for the wrong amount2. The payment is not made on time	As above, the starting position under the PSRs is that the PISP will be liable unless it can prove the transaction was executed correctly: The ASPSP must refund the customer Reg 91 and 93(2) if cannot prove the payment was executed correctly. The PISP is liable to refund the ASPSP, unless it can prove transaction was authorised/ processed correctly within its sphere of influence (Reg 93(3)).

However, there are some disputes that could arise specifically in the context of errors being made with the payments due to the nature of VRPs, which are not currently provided for under the legislative framework. We have identified some of these below. While there

was some desire within the Working group for providing greater protections through the industry framework, further discussions are needed on the extent of these protections and where such liability will sit.

Scenario	PSR position	Any need to consider additional provisions for VRP?
What if the payment is within the consent parameters, but the customer says the amount they were charged is incorrect / more than what they expected / was taken too frequently?	<ul style="list-style-type: none"> As the payment that has been made is within the consent parameters set up by the customer, arguably the customer has consented to the payment under Reg 67 PSRs. Where the customer has consented to the payment, then they will have no protection under the PSRs, as they would do if the payment was not authorised or executed incorrectly. Customer would need to determine if it has any other legal recourse to the merchant. 	<ul style="list-style-type: none"> Do ASPSPs want to offer to refund the customer in any event (much like they would do if the transaction were payee-initiated under Regulation 79 PSRs)? If so, what recourse might the ASPSP have to the TPP? Will the TPP want to pass this back to the merchant? <p>We acknowledge that there may be scenarios where a payee is responsible for communicating the payment details incorrectly to the PISP, and the PISP then uses those incorrect payment instructions to initiate the payment. These issues may be more correctly considered a buyer protection type dispute, which the PISP will need to agree how to manage with both ASPSPs and merchants. For simplicity we have considered all payment-type errors here, and deal with buyer protections in relation to issues with goods and services elsewhere in this report.</p>
If pre-notification is made a standard requirement and a payment is made but the payer was not pre-notified of the amount of the payment.	<ul style="list-style-type: none"> The customer has consented to the payment under Reg 67 PSRs. Customer will have no protection under the PSRs. No legal right of recourse to PISP or merchant 	ASPSPs and PISPs will need to consider whether they want to refund the customer in this scenario, as they would need to do under similar arrangements for Direct Debits. The extent to which an ASPSP may wish to do this will depend on what is agreed in terms of whether any pre-notification of amounts is required or not and whether a PISP will accept liability in such circumstances.

There are also some types of disputes where the legal position could be enhanced by an industry framework. For example, if a customer claims a payment has been made outside of mandate, as the ASPSP will check payment against VRP mandate parameters it has been notified of in accordance with the requirements of the OBIE VRP API standard, the Working Group discussed whether liability could then sit with or be shared with the ASPSP if it lets a payment proceed outside of mandate. This point remains open for discussion.

Would a consistent approach to refunding customers in these scenarios be helpful?

If ASPSPs and PISPs were to adopt a consistent approach to refunding the customer in the scenarios listed above, then this would no doubt help to improve customer confidence in non-sweeping VRPs and potentially drive further uptake by consumers.

However, the design of the liability allocation in these circumstances outside of the regulatory framework could take some time to agree. Careful consideration would also need to be given as to whether the PISP would be able to accept liability in these scenarios, and the extent to which any liability could be passed back to a merchant.

The appetite for these types of liability provisions which extend beyond those set out in the PSRs may also depend on the size and resources of the PISP.

Alternative models would also be available, for example where liability is undertaken by the ASPSP and then priced into a commercial agreement it has with a PISP. Finally, if a standardised approach was not agreed, parties could be free to agree liability allocation for these scenarios bilaterally.

