

# PSR Card-Acquiring Market Review (CAMR) Remedies *Provisional Decision Consultation*

## UK Finance Response

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UK Finance is the collective voice for the banking and finance industry.

Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

Our response to the Payment Systems Regulator's (PSR) consultation on its Provisional Decision in respect of CAMR remedies is made following detailed engagement with our Payment Acceptance Policy Group, which includes major UK banks, long established international payment services providers and newer entrants to the market.

### INTRODUCTION

We welcome the opportunity to respond to this consultation, as part of our ongoing engagement with the PSR on this topic. Payments are a fundamental part of the UK economy, and ensuring businesses can accept payments from their customers, with ease and adequate protection from default risk, is important.

We are grateful that the PSR has been responsive to the card payments industry in shaping its remedies, both in:

- moving away from the remedy of Point-of-Sale interoperability which was overly prescriptive and technically unfeasible; and
- the mandating of Digital Comparison Tools, which are primarily suited to comparing linear customer products, rather than complex business needs.

Below we set out our responses to the revised remedies in the Provisional Decision – summary boxes; trigger messages; and set contractual arrangements with Independent Sales Organisations (ISO). Given the relatively short consultation period (six weeks), we have not been able to provide detailed scrutiny in respect of the Cost Benefit Analysis or the Draft Direction Orders as set out in the accompanying annexes. We regret that the PSR did not allow sufficient time for this.

However, we look forward to working closely with the PSR as we move into the careful planning and implementation of the final remedies. Ultimately, the presentation of any future *Final Remedies Notice* should reflect the industry's contribution in producing a clear, realistic, and robust set of technical specifications that the industry can help deliver.

## RESPONSES

Given the consultation has no prescribed set of questions we have aligned our responses to the points raised at Paragraph 3.1 of the Provisional Decision Consultation Paper.

### COMMENTS ON APPROACH

#### Implementation Period

- We disagree that a three-month implementation period for the remedies (to commence from publication of the Final Remedies Notice) could have been considered reasonable. At the recent PSR Roundtable Discussion (20 July), participants from across the card payments value chain raised material concerns and outlined unnecessary pressures that this timeframe would place on the ecosystem. When the industry and the PSR have been working to identify the potential harms in the market over several years, it is not proportionate to seek to implement remedies over such a short period.
- The three key constraints that the PSR should consider include:
  - **Effective business planning:** participants require sufficient notice to plan changes into their budget and business planning cycles. If the Final Notice is published by November 2022, firms would expect to be able to plan in the changes for the next business year which normally runs January - December.
  - **Technical changes and customer testing:** participants will already have technical changes in train for 2023. Implementing the remedies will need to be planned into firms' schedules and will divert finite engineering and other resource from pro-consumer initiatives such as product development. In addition, while it is welcome that the PSR has conducted testing with merchants already, firms may want to conduct their own customer testing (e.g. on differing forms around the most appropriate and effective communication method).
  - **Regulatory changes: firms are always balancing across a number of regulatory initiatives** and other specific requests. In particular, 2023 will see the implementation of the FCA's Consumer Duty regime, which marks a significant shift in the regulation of firms' approach towards customers. We anticipate that this will also impact acquirers' relationship with small merchants.
- Acquirers will need to consider the impact of the contractual changes, which will require negotiation with different providers on timing. According to the draft Directions, each acquiring firm will also need to formulate an effective 'oversight model' across the value chain that is capable of requiring other participants to support changes.
- More specifically, further thought is still needed at properly deciphering what compliance obligations the "*acquirer-of-record*" should be placed under, when servicing a number of entities operating across an ever-complex value chain; in particular Payment Facilitators whose arrangements under the draft Directions remain unclear.
- We believe all of the above considerations require a minimum of twelve months from the Final Remedies Notice publication. We would therefore not expect the PSR to require implementation until January 2024 at the very earliest.

## Scope of directions

UK Finance aims to represent the full spectrum of its member views. We aim to achieve meaningful consensus where possible but will also note divergent views if necessary.

### ➤ Market coverage

- There is a recognition amongst our members in limiting the scope to participation in Visa and Mastercard payment systems is appropriate, but disagreement with the PSR's suggested approach at issuing a specific direction to only 14 participants (12 of whom are UK Finance members).
- Our concern is that issuing a specific direction to only 14 participants creates a disconnect between the PSR's findings, which point toward a perceived set of general flaws in the market in respect of open-ended four party schemes, and its remedies, which focus exclusively on a specific and partial subset of providers operating within these payment systems.
- That seems counter-intuitive and raises an understandable fear that this will create an '*unlevel playing field*' for the provision of Visa and Mastercard card acquiring services, excluding a significant tranche of merchants and a '*long tail*' of acquirers falling outside of the protections as are being offered.
- Additionally, the PSR should also properly reflect upon what the likely second-order effects and potential unintended consequences might be in applying a 'tiered' approach with respect to ISOs. For example, where independent sales organisations (ISOs) have become acquirers who would not be captured under the current proposals; or, are pushed towards 'non-UK based acquirers' who may not comply with a higher standard. This has the very real potential to distort the market to the detriment of consumers and merchants alike
- Which in doing so undermines the outcomes that the PSR wish to see delivered in practice for Visa and Mastercard card acquiring services (i.e. *greater transparency, greater engagement, and ability to change providers easily*) creating an unnecessary level of ambiguity; as to how providers will fall in/out of scope of the remedies and as the market evolves. Reflective of its dynamism, and as characterized, by the existence of multiple markets for different services that operate within it.
- Members recognise that an all encompassing general direction should not be applicable to closed loop three party schemes and a clear exemption should remain with respect to participation in payment systems that possess those specific characteristics, and attributes, that make them operationally distinct to be categorized in this manner.
- More generally, it would be helpful for the PSR to be clearer as to its thinking as to why it deems a *two-tier approach* to be necessary at this late stage – further clarifications would include:
  - If the PSR has identified general harms in the market in relation to card acquiring for Visa and Mastercard, why does it see a specific Direction being more appropriate than a general Direction for the provision of these services?
  - Is the PSR satisfied that using the 2014-18 CAMR data is a sufficient basis for measuring market share of these providers, given the rapid changes to the acceptance market in the intervening four to eight years?
  - How will the PSR continue to monitor the market, and will it seek to extend the Directions if a new participant reaches a certain threshold? When will the PSR gather relevant data, given the data currently being utilised is already 4-8 years old?

➤ Merchant turnover breakpoints

- Turnover breakpoint remains a point of contention around the upper arbitrary limits as being referenced (i.e. £50 million threshold). The data to support any purported view by the PSR in substantiating this range has been consistently highlighted by our members to be problematic, with questions in the robustness of the underlying data set.
- The complexity of payment acceptance needs and commercial sophistication seems to be set against two specific and arbitrary thresholds (i.e. £10 million and £50 million). This continues to present difficulties for members when having to incorporate what are arbitrarily enforced breakpoints as part of their own systems that may be segregated into different portions/ segmentations – based on the merchant types in question – and across different pricing models.
- Such an approach seems inconsistent particularly when attributing this at the higher end of that upper threshold limit. This seems disproportionate nor appropriate to the acceptance needs, and commercial sophistication of those merchant offerings operating at that upper end. Any potential remedies should apply at a much lower threshold.
- Our members would respectfully ask the PSR to consider whether a £10 million limit (to be kept under review) would be a more suitable starting point that could be applied; and, offers a more sensible breakpoint based on how most members have their own portfolios designed around segmentation into SME, corporate and/or large corporate entities.

➤ PSP direction over ISOs and Payment Facilitators (PFs)

- There exist potential inconsistencies as to who the remedies actually apply in the context of trigger messages/contractual termination. The entities involved for each seem to be different. We would argue that the guiding principle of *“same activity, same risk, same regulation”* should be applied here with a general direction being made applicable to all parties and participants across the value chain for the provision of Visa and Mastercard card-acquiring services.
- In addition, the PSR needs to be clear on who has ultimate responsibility for monitoring post-implementation and what reporting obligations (and frequency) will be put in place. In particular, what is the expectation on oversight models that those in scope of the directions should have over third parties – both ISOs and PFs?
- Potential scenarios where this could prove problematic include where an acquirer has a contract with their ISO who in turn offers a broad range of services. For example, where an ISO has obtained terminals from a third-party provider it seems that any contractual enforcement to deliver on the 18-month remedy would fall on the acquirer – yet they would not be involved in the chain – raising a valid question as to whether the onus should rest on the acquirer in having that responsibility.

## COMMENTS ON SPECIFIC REMEDIES

### Summary boxes

As a trade body it is not within UK Finance's remit of expertise to offer a definitive view as to any preferred format.

We welcome the PSR's assurances that any purported design will be thoroughly tested, and to have those findings shared, so offering our members the opportunity to scrutinize and challenge any wrongful assumptions that may have been made.

Clearly the effectiveness around the remedy being sought is in agreeing to a format that can be made capable of providing a bespoke set of price comparisons, but help offer a genuine like-for-like comparison.

This is something that we will leave to our members to further comment on as part of their own individual responses, in how best to ensure both price and non-price information align with their own commercial models and service offerings.

More generally, we would respectfully refer the PSR to our response to the Proposed Remedies Consultation (dated 6 April 2022) which has pertinence but should be qualified in the context of when those arguments were made (i.e. pre-dating the formulation of the current remedies).

*There are versions of the summary box that may prove workable, and upon which industry could implement, but these will not be without their complexities; and may not have the intended policy outcome of increasing merchant switching. The PSR accepts that evidence on effectiveness of summary boxes is mixed<sup>1</sup>. In the original CAMR report<sup>2</sup> the PSR notes that a large percentage (45%) of small-to-medium merchants never search for providers.*

*Any summary box approach needs to take into account the following considerations:*

- *The ability to agree price points and terminology by which like-for-like comparisons can be made. Acquiring is a complex business and pricing models are largely driven and reflective of market conditions, with many non-pricing elements and services being offered that go far beyond 'acquiring' (e.g. Dynamic Currency Conversion (DCC), Fraud, Gateway Services).*
- *Given the time constraints of many business owners, it is likely that level of engagement that businesses will give to any form of comparison tool for acquiring services will be predicated on the simplicity of that tool. In assessing its options, the PSR should consider this as a critical guiding principle.*
- *Balancing the need for simplicity with the complexities that acquirers are statutorily required to adhere to (e.g. Article 9 – Interchange Fee Regulation<sup>3</sup>).*<sup>4</sup>
- *Ensuring accuracy of the information to allow merchants to make informed decisions and avoid any uncertainty.*

*Overall, we believe there are some important practical questions on price and non-price points related to this remedy's definitions and design elements, which reiterates the importance of focusing on outcomes and testing and trialling different solutions. We also encourage the PSR to avoid prescriptive regulatory requirements and instead let the market compete for the needs of their customers and the best way to present pricing information in an adequate form to different merchants.*

*Finally, as we have said before the unintended consequences to any approach should be considered carefully, particularly for SMEs due to the time constraints they would have to increase engagement with their acquirers on a more regular basis than they currently do.*

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<sup>1</sup> The PSR's data indicates that upwards of 45% of merchant suggest nothing would make them more confident about switching provides measured against 23% who suggest access to more comparable pricing information and less than 10% suggesting more accessible information.

<sup>2</sup> <https://www.psr.org.uk/media/vkbnjgny/psr-card-acquiring-market-review-merchant-survey-results-iff.pdf>

<sup>3</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council <https://www.legislation.gov.uk/eur/2015/751/body>

<sup>4</sup> Raising an inherent tension between (a) simple pricing packages as an aim, thereby making it easier for merchants to compare prices and (b) the transparency requirements of the Interchange Fee Regulation, which are very prescriptive and are solely founded on a transaction-based pricing model.

## **Trigger messages**

- As we recognised in our response to the Interim Remedies consultation, the concept of a trigger message as an ‘annual prompt’ for the merchant to look around could be a positive development that may encourage merchants to think about their current contractual arrangements by reminding the customer that they may not be getting the best possible deal.
- They have also been delivered to good effect in other business-to-business markets when policies are renewed (e.g. insurance).
- We would like to reiterate the need to avoid ‘*race-to-the-bottom*’ pricing. Providers compete not just on price but also on the quality/functionality of the service offering. The trigger message should therefore reflect the integrity and relationship between an existing supplier and supporting merchant.
- At the PSR roundtable, it was noted that the most useful first-step for a small merchant would be to engage directly with their existing acquirer on whether their service package can be improved, for example to better suit a changing business model from the customer’s end. Trigger messages should avoid simply stating that the merchant could get a better deal elsewhere.
- The format and delivery mechanism of the trigger messages need to be properly tested and evaluated. For example, the assumption is that electronic messages (email, text) will be more accessible. Dashboard notifications will be most appropriate for online merchants who engage via dashboard. The timing of messages is also important and should be considerations to be factored in; and further evidenced, not least as to whether the frequency of receiving such messages has the overall effect of leading to merchant disengagement.

## **Point of Sale (POS) contracts**

- As stated in our response to the Interim Remedies consultation, and reiterated elsewhere in this response, many of our members consider that a contractual remedy is most appropriate for addressing a potential contractual harm, and we support the change in direction away from POS interoperability.
- At the PSR roundtable on 20 July those ISOs present felt enforcing a maximum duration of 18 months on POS terminal lease and rental contracts with a maximum monthly renewal would reduce the choice being made available to merchants / ISOs.
- However, other of our members would strongly disagree with that contention perhaps reflective of the commercial differences that exist between business models operating in the market.
- The PSR should be encouraged to provide further detail on the benefits that it believes maximum POS terminal lease and rental contracts can create for innovation and competition which we anticipate would be reflected and further refined in the direction order as drafted so as to prevent circumvention and ensure effective application to support the PSR’s proposal in this instance.
- Finally, the PSR should be under no illusion about the practical implications and associated costs that the monitoring of compliance will place on providers.
- Those considerations should include;

- What level of monitoring function this will actually entail – the onus should be on the PSR to provide that level of detail.
- What specific metrics are likely to be measured; including data, with consideration as to the frequency and format of such requests being placed on the industry.
- For the PSR to be cognisant of comparable reporting requirements that providers have experience of when dealing with other regulators (e.g. *CMA / FCA*) which in reality takes up considerable internal resource, time and effort in achieving full compliance.
- For the PSR to be more specific in how it intends to monitor its compliance obligations – particularly when applied to certain segments of the market that do not fall under the PSR’s jurisdiction or regulatory scope.

### **Concluding remarks**

At a time of economic uncertainty, and with a wide-ranging set of regulatory and legislative initiatives being introduced, there needs to be a heightened focus in ensuring any changes will be effective in addressing the underlying concerns that have been identified during the review.

We want to work closely with the PSR in the next phase – formulating the Final Remedies Notice – to ensure that the remedies introduced will improve consumer and merchant outcomes.

In particular, we want to work with the PSR to progress trials that can contribute to understanding of merchant circumstances and so that its approach is consistent with the Competition and Markets Authority’s expectation that regulators should test and trial potential remedies before implementation where possible.

We would also expect the PSR to set out how it intends to monitor and evaluate the remedies prior to its Final Remedies Notice, and we will work with the PSR in the creation of an effective evaluation framework.

Part of that evaluation needs to factor in what are very clear concerns which our members have raised as to the purported timescales. Not least how this then manifests in terms of the operational impacts, change management processes, technical build specifications and likely testing phase that will be needed.

This seems at odds to how this was deemed a ‘low impact of concern’ for firms, when referenced (at page 50) in the recent publication of the FCA’s Regulatory Initiatives Grid (May 2022)<sup>5</sup>. The purview of that document is to capture, as a forward look, any significant regulatory initiatives likely to be occurring over a 24-month period which members seem to be clear this would constitute.

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<sup>5</sup> <https://www.fca.org.uk/publication/corporate/regulatory-initiatives-grid-may-2022.pdf>