Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Payment Systems Regulator
12 Endeavour Square
London
E20 1JN

30 January 2024

By email: a2a@psr.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to PSR Call for Views: Expanding variable recurring payments

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of financial services policy and regulation in the UK. Our focus is predominately on the work of the FCA, however, we also look at the impact on consumers of other bodies' activities and policies where relevant to the FCA's remit, which includes protecting consumers. We are therefore responding to this Call for Views from the Payment Systems Regulator (PSR) because it is important the right protections are in place for consumers taking up this new payment option.

We welcome the opportunity to respond to this Call for Views on expanding the use of variable recurring payments (VRPs). We know the Joint Regulatory Oversight Committee (JROC) and the VRP Working Group (VRPWG) have undertaken significant work already looking at VRPs and this consultation is an important first opportunity for consumer-focussed groups to input into the discussion.

Our comments are grouped into four areas:

1. Concerns about the wider context, in terms of firm conduct and the regulatory framework, that Phase 1 would take place in.
2. The importance of sufficiently considering consumer outcomes during Phase 1.
3. Suggested foundational principles for Phase 1.
4. Comments on the PSR's proposals in relation to the scope, governance and pricing of Phase 1.

Our overall position is that we do not believe there is such a thing as a "low risk" use case for commercial non-sweeping VRPs given the proven poor conduct of payments firms, intrinsic incentives on firms and billers, shortcomings in the overall regulatory regime for payments (all covered in section 1 below) and risks specific to financial services (see section 4). We therefore believe that the PSR needs to implement stronger guardrails surrounding Phase 1.

1. The wider context VRPs would be entering into

As a Panel we are gravely concerned about the quality of many firms in the payments sector which, according to the FCA's Dear CEO letter of March 2023, fall short in fundamental areas of prudential and conduct management (including operational resilience, reconciliation and safeguarding, fraud and financial crime controls and governance and leadership). One way to improve the conduct of payment firms would be to strengthen the regulatory framework that applies to them. We believe there should be an overhaul of the Payment Services Regulations and the Electronic Money Regulations to create a regime that is aligned to that created for other financial services firms by the Financial Services and Markets Act 2000. This should precede the scaling up of VRPs and other open banking payments, otherwise the scaling up will likely increase harm to consumers. In particular, we believe this is the only way regulators could reliably prevent the market adopting VRPs in other use cases ahead of the completion of Phase 1.

In our view the PSR should run a controlled pilot with the typical controls and protections a pilot offers e.g. entry criteria, ongoing monitoring arrangements and data collection, close regulatory oversight and an evaluation phase. However, we recognise that the regulatory regime for payments makes it difficult for UK authorities to create a properly controlled "sandbox" environment to trial commercial VRPs. Therefore, we would encourage the PSR to create features of a full pilot wherever possible – importantly an evaluation based on Phase 1 – before sanctioning any further phases.

2. Focussing on consumer outcomes

Throughout Phase 1, and in any future phases, regulators must maintain focus on the outcomes use of VRPs deliver for consumers.

The JROC agenda, which has driven work on VRPs so far, is industry-focused and based on the business strategies of Payment Initiation Service Providers (PISPs), in an environment of low understanding and limited choice for consumers. There has been some acknowledgement of the benefits of VRPs for consumers - such as convenience and flexibility – and we would add to this the benefits on offer for SMEs, including reduced transaction costs, reduced settlement time and therefore greater certainty and lower risk. However, insufficient consideration has been given to the discretion VRPs afford to billers (who, after all, are the primary group whose interests PISPs will seek to serve). Rules on consent and cancellation journeys, visible dashboards, clear standardised descriptions of VRPs on statements and banking apps, including identifying billers, will be crucial to ensuring consumers get safety, control and value from VRPs.

The phasing and regulatory oversight described in the Call for Views is welcome, but still not as secure for consumers as a full pilot would be under a more robust and coherent regulatory regime (as outlined in section 1 above). In our view, the proposals, and the VRPWG's blueprint itself, are the output of a producer-dominated process and regulators need to be highly assertive around the conduct of Phase 1 to safeguard consumer outcomes and ensure the sustainable success of VRPs.

3. Foundational pre-conditions the Phase 1

Given our concerns outlined in section 1, we believe PISPs should be required to demonstrate to regulators (the PSR and FCA) that they can meet the following conditions in order to enter and remain in Phase 1:

a. Prescribed point-of-transaction information for consumers comparing the features and protections of VRPs with alternatives on offer
b. Standardised language and terminology
c. Rules protecting consumers from default parameters or behavioural manipulation in payment choices and VRP consent journeys which will give undue power to billers
d. Enhancements to dashboards to ensure VRPs are consistently displayed, easy to change and cancel
e. Rules for notifying consumers of forthcoming payments and changes in time for them to take action (as is the case with Direct Debits)
f. Dormancy rules stipulating that VRPs will lapse and data be deleted after a specified time, unless explicitly reauthorised.
g. Rules ensuring consumers can identify VRPs, billers and individual transactions on statements and online banking apps
h. Watertight dispute resolution, repayment and liability rules, so consumers know what to do if something goes wrong, including in the event that a PISP fails, and can be confident of how and when they'll be made good. PISPs should be liable if they on-board bad actors.

i. The establishment – as part of Phase 1 – of a pilot purchase protection arrangement with participating billers.
j. The construction by regulators of a full evaluation framework for Phase 1, involving detailed data capture from firms where necessary. Decisions on whether there are lessons from Phase 1 that need to be acted on should not be left to industry.

We note that some of these are conditions are noted as "pre-pilot" requirements in the VRPWG blueprint, but too many are not. The blueprint also assigns too many of the actions to resolve "pre-pilot requirements" to industry (PISPs and industry groups, such as UK Finance). Regulators must closely and actively supervise industry's completion of these actions to ensure that consumers' interests are safeguarded. Consumer representation in the work would be helpful, though given the resource constraints on consumer advocates, it is unlikely this alone will be sufficient.

4. Comments on the PSR's proposals

Scope of Phase 1

We welcome the exclusion of unregulated investments from Phase 1 and suggest this is expanded to include high-risk products and investments, such as crypto, Long Term Asset Funds and Money Market Funds, which have a higher potential for harm and unexpected losses for consumers.

We would also like to see debt recovery excluded because of the vulnerability of the consumers in this space and the potential for significant and long-lasting negative consequences should the use of VRPs go wrong. This is not unlikely as VRPs have been deemed to be a type of Continuous Payment Authority (CPA). There are specific rules mitigating some potential harms from CPAs in the high cost short term credit market, but not elsewhere. and we think the best way of avoiding harms from VRPs is to exclude debt collection from phase 1[1].

The Call for Views deems regulated finance services as a "low risk" use case because of the protections that exist by virtue of regulation. As we argue throughout this response, we do not think there is such a thing as a "low risk" use case and in addition to the broader points made under Section 1

[1] In the case of Safety Net Credit, for example, the combination of CPAs and access to consumer account information via Open Banking allowed the firm to make unaffordable collections from customers. This case should be examined for lessons to be learned, including, if necessary, clarification of the CMA guidance on the use of sweeping VRPs for debt collection. Lessons should be learned before commercial, non-sweeping VRPs are allowed in this space.

above, bring to the PSR's attention the following risks of VRPs specific to financial services:

- Biller verification – the idea seems to be that in financial services PISPs can mitigate the risk of the payee being a "bad actor" by cross-referencing with the Financial Services Register. We have longstanding concerns about the usability of the Register which may hinder PISPs' ability to verify firm names, especially where similar names are used and/or when fraudsters clone the name of a legitimate firm. It is important that where errors are made, firms bear liability for the error and not consumers.
- Switching – it is our understanding that VRPs will not be included in the Current Account Switching Service. This could be confusing for consumers who may (reasonably) view VRPs as being the same as Direct Debits, which are included. This increases the risk that consumers do not make alternative arrangements to switch their VRP to a new account and therefore may incur additional costs for failed payments. Should this problem prove to be widespread, it could also undermine overall consumer trust in VRPs (and we have consistently argued that trust in payment systems is vital to their utility).

Governance

The Panel supports a centralised multilateral agreement (MLA) for Phase 1 and urges regulators to retain this option for future phases. If regulators did not intervene, the expanding use of VRPs would likely maximise commercial interests d with little or no consideration of consumer interests.

The PSR's intervention is therefore welcome, though we do have concerns about their reliance on industry-led governance. We believe that industry-led governance arrangements have been sub-optimal for consumers[2] and we are cautious about Pay.UK's ability to do better here. If the PSR continues with Pay.UK as the operator of the MLA for Phase 1, then Pay.UK should establish a properly resourced reference group representing the interests of retail consumers as part of its governance.

Pricing

The PSR's selected approach to pricing must not distort commercial incentives (on any businesses, including billers) to adopt VRPs over other payment options. Nor must it artificially advantage VRPs over other payments using the faster payment system, or non-FPS alternatives, or lead

[2] We have raised concerns about industry-led governance to the Competition and Markets Authority in the context of [the future governance of Open Banking]() and to the FCA in our [response to their Credit Information Market Study interim report]().

to under-investment in the FPS itself. By insisting on the full package of consumer protection measures discussed above, regulators can create a more level playing field with established payment options that include such features. The Panel is also mindful that the costs of payments (and banking services in general) is already highly opaque and includes multiple cross-subsidies and complex trade-offs. In principle, the Panel would prefer VRPs to start scaling on the basis of completely transparent and explicit payment and recovery of costs. Any inefficiencies and undue costs in such an approach can be removed later, once the true costs and incentives are understood. Full independent evaluation of Phase 1 on the basis of market data is particularly critical here. Given the sensitivity of the data likely to be required, we assume that regulators would need to conduct such an evaluation.

Conclusion

In conclusion, we welcome the development of new payment options to bring benefits for consumers and SMEs but the guardrails in place around Phase 1 are not sufficient to protect consumers. There is heightened risk of harm to consumers in the payments sector due to a poor behaviour by firms and a less comprehensive regulatory regime. We therefore do not agree with the PSR that Phase 1 is "low risk" and encourage them to strengthen their proposed controls accordingly.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel