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UK Open Banking: PSR consultation response on Phase 1 expansion of Variable Recurring Payments

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The Payment Systems Regulator (PSR) has published a response to its December 2023 consultation (call for views) which set out initial proposals on how the PSR could support the expansion of Variable Recurring Payments (VRPs) to regulated financial services, regulated utilities sectors, and local and central government ('Phase 1'). Following stakeholder feedback, the PSR has identified a number of issues which it is planning to explore further before publishing a set of updated proposals for stakeholder comment in Autumn 2024. In the meantime, it will continue to seek industry input and support.

Key takeaways

- In December 2023, the PSR consulted on the expansion of VRPs to payments between accounts with different names (non-sweeping VRP) in order to extend the benefits of VRPs to more users.
- The PSR plans to extend the scope of VRPs to additional low-risk use cases (regulated financial services, regulated utilities sectors, and local and central government – 'Phase 1'), as initially committed to in the JROC's April 2023 roadmap.
- The consultation response summarises stakeholder feedback on key areas around VRP expansion, including:
    - **Coordinating expansion through a multilateral agreement (MLA)**: Respondents raised concerns around the need for an MLA and whether it should include a central price. The PSR will work closely with the VRP implementation group to look at what specific rules an MLA should include and who might be best placed to operate it.
    - **Mandated participation**: The PSR agrees with feedback to the effect that it should not focus only on the CMA9 banks. It will continue to assess the necessity and scope of mandated participation.

  - **Pricing principles and possible price intervention**: There were mixed views on how best to price API access for VRPs in Phase 1. The PSR will evaluate different pricing approaches, as well as considering the potential effectiveness of respondents' suggested alternative approaches.

- At this stage, the PSR still thinks that realising the full benefits of VRPs may require some level of regulatory action.

What should firms be thinking about?

- The PSR emphasises that it welcomes input from and will seek further dialogue with stakeholders over the next few months.
- In light of the number of key issues subject to further exploration by the PSR – not least how best to price API access for VRPs in Phase 1 – firms within the OB ecosystem would be wise to participate in the on-going discussions as the PSR shapes its updated proposals.

What's next?

- The PSR aims to publish a set of updated proposals for stakeholder comment in **Autumn 2024,** along with a draft cost-benefit analysis.
- Interested stakeholders who would like to get in touch with the PSR ahead of the autumn publication of updated proposals can email a2a@psr.org.uk.

Read on for a more detailed look at the PSR's consultation response, and an overview of some other recent UK Open Banking related developments.

Background

VRPs allow customers to use Open Banking (OB) to set up recurring payment mandates on the basis of an initial explicit customer consent.

The Competition and Markets Authority (CMA) mandated the CMA9 (ie the nine largest banks and building societies in Great Britain and Northern Ireland based on the volume of personal and business current accounts) to implement VRPs for same-person accounts (sweeping VRP) in July 2021. This followed the Open Banking Implementation Entity's recommendation to mandate VRPs as the mechanism for implementing sweeping under item A10 of the revised roadmap (May 2020) for the Retail Banking Market Investigation Order 2017 (CMA Order) remedies.

The Joint Regulatory Oversight Committee's (JROC) April 2023 recommendations for the future of OB in the UK identified promotion of additional services and unlocking OB's full potential for payments as one of the key priorities. The PSR sees the expansion of VRPs as crucial to fostering continued innovation in OB and ultimately as a step towards account-to-account-based retail transactions.

The PSR's December 2023 consultation looked at expanding VRPs to payments between accounts with different names (non-sweeping VRP) in order to extend the benefits of VRPs (eg fewer misdirected payments, smarter billing and immediate settlement) to more consumers and businesses.

The PSR proposed to extend the scope of VRPs to additional low-risk use cases (regulated financial services, regulated utilities sectors, and local and central government – 'Phase 1'), as initially committed to in the JROC's April 2023 roadmap. More specifically, the consultation proposals were aimed at giving effect to the JROC VRP Working Group's comprehensive blueprint on implementing commercial VRP (cVRP). For more on the consultation and the blueprint, take a look at our Engage article 'UK Open Banking: PSR consultation on variable recurring payments and JROC update on progress'.

What's in the consultation response?

The PSR received consultation feedback from across the OB ecosystem. At this stage, it still thinks that realising the full benefits of VRPs may require some level of regulatory action, but it highlights that it will continue to seek industry input and support.

According to the consultation response, key areas on which the PSR will focus in its updated proposals include:

Coordinating expansion through a multilateral agreement (MLA)

Concerns were raised around the need for an MLA (given the low-risk nature of the Phase 1 use cases) and whether it should include a central price. The PSR currently believes an MLA may still be necessary. It will work closely with the VRP implementation group to look at what specific rules an MLA should include and who might be best placed to operate it, including seeking the VRP implementation group's input on which roles and responsibilities Pay.UK and OBL could have in relation to a Phase 1 MLA.

Mandated participation

The PSR remains concerned that the financial incentives necessary to motivate a sufficiently large number of sending firms to voluntarily provide TPPs with access to their VRP application programming interfaces (APIs) may make Phase 1 VRPs uncompetitive. However, it agrees with feedback that it should not focus only on the CMA9 in relation to mandated participation, as the legal basis for the CMA Order which created the CMA9 concept is different from that for the proposals currently under consideration. It will continue to assess the necessity and scope of mandated participation. As it does so, it will engage with potentially in-scope sending firms on any potential concerns.

Pricing principles and interaction with the FCA's Consumer Duty

While the PSR does not intend to revisit the pricing principles for commercial frameworks for premium APIs – which were published in a joint PSR/FCA (JROC) paper in June 2023 – it will clarify how they inform its policy proposals when the updated proposals are published. On the interaction with the FCA's Consumer Duty price and value outcome, the PSR is currently of the view that its pricing principles do not create any conflict with the Duty and can therefore be considered 'supplementary'. It will continue to work closely with the FCA to ensure that any interaction between its updated policy proposals and the FCA Consumer Duty is clearly understood.

Possible price intervention

There were mixed views on how best to price API access for VRPs in Phase 1. The PSR had proposed a cost-recovery approach, under which the Faster Payments charge for sending firms that initiate Phase 1 VRPs would be removed if it established that this was the only relevant marginal cost. It also proposed to set at zero the price that the sending firms could charge payment initiation service providers (PISPs) for access to payment accounts and payment initiation during Phase 1. However, some feedback suggested that there may be other relevant costs. The PSR is therefore now reconsidering its approach. While it maintains its view that regulatory action on a VRP access price may be warranted, it will also consider the potential effectiveness of respondents' suggested alternative approaches, keeping in mind the relevance of VRP API access market dynamics. Alternatives currently under consideration are:

- access prices based on pricing models in other payment systems;
- pricing based on a cost-recovery approach (including a price cap to allow a return on investment for sending firms); and
- an arbitrated price (including a 'black box' or regulator-led approach).

Stakeholders will have another opportunity to provide feedback on the PSR's reasoning and evidence for any potential intervention when it publishes its updated proposals.

Next steps

- The PSR aims to publish a set of updated proposals for stakeholder comment in **Autumn 2024**, along with a draft cost-benefit analysis. The updated proposals will explain:
    - the specific rules and provisions an MLA should include - if the PSR continues to believe that one is required;
    - which organisation the PSR thinks may be best placed to operate any such MLA;
    - the PSR's view on whether mandated participation may be required and whom it may mandate to participate in Phase 1;

  - the PSR's plans for determining a VRP API access price – if it decides that this would be required; and
  - the costs and benefits it expects from any proposed intervention – if it decides that this would be required.

- As the PSR develops its updated proposals, it will also continue to engage with the JROC VRP implementation group's work on further developing OB services. In addition, it will monitor the work underway to set out recommendations for Open Banking Limited's (OBL) transition to a Future Entity (see further 'Other recent Open Banking related developments' below).
- Interested stakeholders who would like to get in touch with the PSR ahead of the autumn publication of updated proposals can email a2a@psr.org.uk.

Other recent Open Banking related developments

JROC proposals for design of Future Entity

On 19 April 2024, the JROC published its proposals for the design of the Future Entity for UK Open Banking that will replace OBL, as well as for the establishment of an 'Interim Entity'. The proposals follow consultation with industry through the Future Entity Working Group, which presented its findings to the JROC in December 2023 (see our previous Engage article).

The funding for the five JROC non-CMA Order workstreams being progressed by OBL has been provided on a voluntary basis by the CMA9. However, as these workstreams are for the benefit of the entire ecosystem, not just the CMA9, the JROC considers that a clearer separation of the Order and non-Order activities is now necessary.

Until the long-term regulatory framework is in place and transition to the Future Entity is complete (currently planned to take place within the next two years), the JROC recommends that an Interim Entity is established as a separate legal entity with the purpose of undertaking the JROC non-Order workstreams. This will be a key step to the establishment of, and transition to, the Future Entity. Funding will be voluntary and from firms within the OB ecosystem identified as either having the largest number of customer accounts with consents to use OB, the largest number of API calls, or increasing their use of OB services at an increasing rate to fund the JROC non-Order workstreams.

Initially, the Interim Entity will progress the parts of the non-CMA Order JROC workstreams currently being carried out by OBL. Subsequently, and subject to a long-term regulatory framework, it is intended that the Future Entity will take over the functions of the Interim Entity as well as the CMA Order workstreams carried out by OBL and overseen by the CMA.

In the longer term, the JROC anticipates that legislation will give the FCA powers in relation to data-sharing schemes and relevant interface bodies, including the Future Entity in respect of a future OB Smart Data scheme (see 'Digital Information and Smart Data Bill' below). The PSR will continue to maintain regulatory oversight of designated payment systems and participants within them.

The FCA, the PSR and other JROC members will work closely to ensure regulatory oversight of all aspects of OB is well-coordinated under the long-term regulatory framework.

There is also mention in the April 2024 consultation of potential expansion to Open Finance, and OB payments, as well as the previous government's intention to set out further detail on priorities for the payments ecosystem in the National Payments Vision this year, including responding to the Future of Payments Review recommendations on OB. Next steps on publication of the Vision are awaited from the new government following July's general election.

The consultation closed on 20 May 2024. The JROC's response is awaited.

UK Finance report: Commercial VRPs model clauses

On 22 April 2024, UK Finance published a report containing proposed voluntary, open source commercial VRPs model clauses which could be used in a multi-lateral agreement or bi-lateral contracts.

In contrast to the PSR's proposed regulatory approach for VRPs, as set out in its December 2023 consultation, the report advocates for an industry-led (light touch regulatory) approach to developing and expanding VRPs.

Digital Information and Smart Data Bill

The bills announced as part of the King's Speech on 17 July 2024 included a Digital Information and Smart Data Bill, replacing the previous government's Data Protection and Digital Information Bill).

The new Bill will contain a number of different proposals relating to data. These include providing a statutory footing to new and innovative uses of data, for example Smart Data services (which, like Open Banking, allow the sharing of customer data with third parties at the customer's request).

The accompanying briefing notes explain that Open Banking - being the only active example of a regime comparable to a 'Smart Data scheme' - needs a legislative framework to put it on a permanent footing to allow it to 'grow and expand'.

The proposed Bill has not yet been introduced to Parliament and publication of the text is still awaited.

Building the world's first Smart Data economy is one of the three priority areas for the new government that were identified by Innovate Finance (the industry body representing the UK's global fintech community) in its recently published 'FinTech Plan for Government'.

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