
CMA Retail Banking Market Investigation:
Notice of Possible Remedies

Response from The UK Cards Association

20 November 2015

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The UK Cards Association (UK Cards) is the trade body for the card payments industry in the UK, representing financial institutions which act as card issuers and acquirers. Members of UK Cards account for the vast majority of debit and credit cards issued in the UK - issuing in excess of 55 million credit cards and 95 million debit cards - and cover the whole of the payment card acquiring market.

UK Cards promotes co-operation between industry participants in order to progress non-competitive matters of mutual interest; informs and engages with stakeholders to shape legal and regulatory developments; develops industry best practice; safeguards the integrity of the card payments industry by tackling card fraud; develops industry standards; and co-ordinates other industry-wide initiatives such as those aiming to deliver innovation. As an Association we are committed to delivering a card payments industry that is constantly focused on improved outcomes for the customer.

Summary

- UK Cards welcomes the opportunity to respond to the CMA's notice of possible remedies. Our response concerns only Remedy 10 - where the CMA is considering the inclusion of Continuous Payment Authority (CPAs) relating to debit cards in the Current Account Switching Service (CASS).
- At the outset of setting up CASS, UK Cards and our members were involved in discussions about whether to include CPAs in the service. It was decided that, as CPAs are processed by the competing card schemes MasterCard and Visa, and not through a centralised system like Bacs, it would be too difficult to provide the switch service for CPAs.
- We do not think there is evidence of a consumer requirement for CPAs to be included in CASS, or that it would generate any additional switches. Indeed the FCA's own review of CASS found that it was not something that arose as a major issue in their consumer research and not something that directly impaired the effectiveness of CASS.

Definition of Continuous Payment Authority (CPA)

The proposed remedy of including CPAs in the CASS may arise from a misunderstanding of the difference between a CPA and a Direct Debit (DD).

CPAs are transactions that occur when cardholders provide their card details to retailers in contemplation of single or regular payments at a future date. They differ from DDs in several ways as listed below.

- a) Unlike a DD, the mandate provided by the customer for a CPA payment is not given to the card issuer, but is given exclusively to the retailer who originates any future payments under the terms agreed with the cardholder. While this provides a great deal of flexibility to both parties, it does mean that the card issuer is only retrospectively aware of a CPA after receipt of a payment (if appropriately identified by the originating retailer), which makes providing details to cardholders of any CPAs related to the account particularly challenging (and therefore unlikely to be achieved consistently making its inclusion within an account switch guarantee unrealistic).
- b) While CPAs are frequently used for recurrent regular payments (e.g. subscriptions) they can also be used for one-off future payment (e.g. a loan repayment or for contingent payments such as if a DD fails). This wide range of transaction types covered under the umbrella term CPA can inevitably be confusing to cardholders.
- c) CPA transactions are processed by MasterCard and Visa rather than Bacs. These are two competing schemes utilising completely separate systems and processes, independently clearing and settling transactions, which causes additional complexity for interoperability. This is particularly relevant to the development of personal current account switching solutions, where the cardholder may receive a Debit MasterCard replacing a Visa Debit card or vice versa when undertaking a switch. It is also worth noting here that the card schemes are also competing with Bacs for transaction volume.
- d) The international reach of debit card transactions means that CPA can be originated by retailers outside the UK. This provides the opportunity for UK cardholders to set up regular cross border payments, opening up a wide range of purchasing opportunities. However, it also results in UK-specific rules, legislation or policies not having complete reach over CPAs.
- e) CPAs are not subject to the DD guarantee, but customer protection is instead provided through the extensive chargeback and dispute resolutions which apply to debit card transactions.

Rationale for the exclusion of CPAs from the CASS proposition

Considerable thought was given to this issue at the time of the development of the business requirements for CASS. There was a genuine desire on the part of the banking industry to develop a switching service proposition that encapsulated the widest possible transaction types that arise on a personal current account.

A primary constraint that arises for users of CPAs for recurring payments is that the card number which is essential for the processing of the transaction is not static and will change if the card is replaced when stolen and typically when the card is reissued at expiry. To address this MasterCard and Visa historically developed Account Updater databases which link, in sequential order, newly issued cards with those that they have replaced. Retailers who extensively use CPAs are encouraged to pre-screen future payments using these databases and will be provided updated card details where a card has been replaced. This has made a considerable difference in the number of failed CPA payments, where this facility is used.

In the context of CASS, consideration was given to using these facilities to allow the acquiring bank participating in the account switch to link the new debit card to the existing card, which would have been provided by the previous PCA provider. However, after very careful consideration it was agreed not to mandate the implementation of this solution, for the below reasons.

- a) The lack of systemic interconnectivity between Visa and MasterCard meant that it would not be possible to use the solution where a change of card scheme was involved. The cost of developing a completely new infrastructure to achieve this was disproportionately high and could not have been delivered in time for launch. While a non-interoperable approach might have been sustainable, given the very large market share of Visa Debit cards in the UK, a number of challenger banks have elected to issue debit MasterCard in preference to Visa. The proposed solution, while tenable for all of the largest incumbent banks, would have precluded some new entrant banks from providing this solution as a component of their switching service proposition, preventing the delivery of a level playing field.
- b) Historically, consumers were advised that in order to cancel a CPA they were required to notify the retailer with whom the arrangement had been established. This was because, as set out previously, the card issuer is not party to, or advised of the arrangement. However, the then Financial Services Authority (FSA), post introduction of the Payment Services Regulations 2009, decreed that any consumer had the right under this legislation to cancel a transaction with either the retailer or the card issuer. They came to this conclusion at the time CASS was being developed in 2013. This was

problematic for the industry because at the time there was no systemic means to deliver this requirement. This occasionally meant that where either the bank or customer had difficulty in contacting the CPA originator, or it failed to act on a cancellation instruction, as a last resort the customer might close the account and reopen an alternative account. When reviewing that CASS proposition, the FCA expressed concern that a customer choosing to do this via CASS might inadvertently be disadvantaged if the CPA originator was provided with the new account details.

- c) Cardholders frequently allow e-commerce retailers to store card details to enable them to make repeat purchases without having to re-enter card details on subsequent transactions. No widespread mechanism exists to allow card issuers to automatically update these, and cardholders are very familiar with the need to update these when they have received a new card. Retailers are obliged to authorise transactions with card issuers at the outset of a transaction. Where the account to which a card associated is closed, the transaction will be declined, prompting the retailer to contact the customer to update the details held. Retailers have developed efficient processes to deal with these situations and cardholders are accustomed to the associated processes. CPAs also have to be authorised and originators have also established mechanisms to request updated information where a transaction fails. It was considered that this approach was not unnecessarily burdensome on either party.

- d) Where prior authorisation is not sought before submitting a CPA, and the account has been switched, the card issuer has the ability to charge the transaction back to the retailer or to pass the transaction to the new bank under the CASS arrangements. Switching customers are advised of the terms and duration that apply to this feature of the service.

In view of these considerations, it was decided that switching CPAs should not be included as a core component of CASS. Certainty of outcome, underpinned by a guarantee, is core to the CASS customer proposition. For all of the reasons described, inclusion of CPAs, on a best endeavour basis with a series of complex but technically necessary caveats, would undermine that certainty. This would be counterproductive, potentially discouraging consumers from using it.

Re-evaluation of the exclusion of CPAs from CASS

While the issue of the cancellation of CPAs has now been resolved following introduction of an enhanced stop service capability (in October 2015), the other impediments to inclusion of the CPAs in CASS remain. In particular, the issues

around interoperability between Visa and MasterCard would still be an issue in the market, and increasingly so given that it is likely that MasterCard will expand their debit business in the UK.

In addition there is no substantive evidential basis for concluding that consumers are dissatisfied with CASS or choose not to use it because of its inability to provide a switching facility for CPAs. This is not an issue that banks have reported any complaints in relation to, and the FCA review of CASS concluded that "*that this is not something that arose as a major issue in our consumer research and not something that appears to have directly impaired the effectiveness of CASS*".

We do not concur with the FCA's assertion in the CASS review that usage of CPAs will increase considerably as a result of the wider use of e-commerce. While all categories of debit card transactions are projected to grow, e-commerce is predominantly comprised of single purchase transactions. CPAs will continue to be a reasonably niche category of debit card transaction used by sectors where regular payments are a key retailer requirement. Indeed the new legislative requirements stemming from the Payment Services Directive 2 (PSD2) will require stronger customer authentication for e-commerce transactions and are likely to constrain future growth of CPAs.

Response to specific questions

Our response sets out the substantive issues that arise in relation to the proposed remedy. However we also set out below responses to the particular questions raised in the CMA notice of potential remedy set out in at para 114.

(a) Is the remedy practicable? Can BACS reliably identify and distinguish CPAs, for example?

Bacs play no role in the provision of CPAs or their processing. Visa and MasterCard undertake the processing of CPAs and the rules applicable to them. The proposed remedy would require those international card schemes, card issuers and a network of over 15 million global retailers who accept cards payments, to play a role in implementing the remedy. This is not practically achievable. As set out above, the fact that the card issuer has no prior knowledge of the CPA or the nature of the arrangement entered into between the cardholder and the retailer makes the task of identifying CPAs difficult and it is impossible for the card issuer to determine if future payments will occur.

(b) If, for technical reasons, Bacs could not guarantee that all CPAs would be transferred, would target of less than 100% or 100% guarantee limited to payments in excess of that particular monetary value be adequate to address this risk?

The transaction processing for CPAs is the same irrespective of the value of the underlying payment. Consequently, it is not feasible to address the issue with reference to a particular value limit. In our view, it is important that consumers have complete certainty, without reference for complex caveats or uncertainty regarding the fate of certain subcategories of CPA. Explanation of these complex conditions would be unintelligible to prospective users of the service. Introducing uncertainty would inevitably undermine the overall value of CASS to consumers in a way that would be contrary to the objectives that the CMA is setting out to achieve.

(c) Is the remedy of more relevance to consumers than SMEs? Do SMEs use CPAs as a payment (as opposed to a billing) process?

We have no data relating to the use of CPAs by SMEs.

(d) What technical difficulties, if any, would be involved in its implementation and how could these be overcome? Would, for example, providing the acquiring bank with the customers transaction history make it easier for them to identify CPAs? How long would it take to implement the remedy?

We have set out in some detail some of the issues relating to the identification of CPAs. However, identification of CPAs does not address the mechanism for their redirection, which poses a further series of complex technical issues. Where a CPA can be identified, ultimately the retailer who holds payment details would need to update those details to reflect the switch. While there are tools that enable this information to pass to those retailers who commonly use CPAs, they have been primarily designed as a value-added service to those retailers and there is a consequential cost to them for using them (thereby adding to their costs of doing business). This means that they are not universally used. The remedy relies on universal adoption by the retailers, which would be difficult (if not impossible) to achieve (and it is certainly something over which Bacs has no control). In addition as set out in our response, existing infrastructure would not support inter-scheme switches.

(e) To what extent of the purpose of the remedy be achieved if customers with CPAs revised or warned not close the rolled accounts until the CPAs had been set up on their new debit cards?

In normal circumstances originators of CPAs are required to authorise those transactions prior to entering them into clearing and settlement. When an account is closed the issuers decline that authorisation request prompting the retailer to contact the customer to resolve the issue. Retaining the account would preclude this intervention and increase the likelihood of further transactions arising, an unsatisfactory outcome for all parties.