

Imran Gulamhuseinwala
Implementation Trustee
Open Banking (by email only)

From: Adam Land
Senior Director, RBFA

26 July 2021

Dear Imran

Sweeping/Variable Recurring Payments

Further to your letter of 28 May 2021 the Competition and Markets Authority (CMA) has considered the report and recommendations made by the Open Banking Implementation Entity (OBIE) to mandate variable recurring payments (VRPs) as the mechanism for implementing sweeping under item A10 of the [Revised Roadmap](#).

As set out in the Revised Roadmap, the CMA is to consider whether OBIE's recommendation for implementing sweeping is appropriate and proportionate prior to implementation. The CMA has reviewed the report from OBIE on VRPs as well as representations from members of the CMA9, who would be subject to these obligations, and has engaged with other stakeholders, as appropriate, in order to take a decision on this matter.

The CMA has considered the recommendation and has decided that implementing sweeping through VRPs is appropriate and proportionate. The CMA also agrees that OBIE's proposed definition of sweeping is appropriate.

In summary, the CMA agrees with OBIE's assessment that VRPs are the sole method that meet the relevant criteria for sweeping and therefore considers that VRPs are the only effective method for achieving sweeping. Making effective provision for sweeping is an important element of the open banking remedy and it is important that sweeping provisions include the ability to move funds out of current accounts into accounts earning a higher rate of interest, and conversely enables customers to access

alternative and cheaper sources of short-term credit. Sweeping brings benefits to customers and helps to address the adverse effects on competition identified in the CMA's [Final Report of the Retail Banking Market Investigation](#). The CMA takes the view that the required data standards would not be able to meet the objectives and intended outcomes of the Retail Banking Market Investigation Order 2017 (the Order) if they did not provide for sweeping functionality to be available.

We note the range of estimates for implementation and operational costs provided to OBIE as well as the financial benefits to customers of having VRPs in place. Given the likely scale of benefits of sweeping, the absence of effective alternatives and its importance to the open banking remedy we consider it proportionate to mandate VRPs to implement sweeping.

In addition to the consultation carried out by OBIE and reflected in the recommendation, the CMA received a number of representations directly from members of the CMA9 prior to reaching this decision and has considered these in detail prior to taking this decision.

Vires to mandate VRPs

Some members of the CMA9 took the view that the CMA could only mandate sweeping for payments between current accounts but not from a current account to a different type of account (such as a savings account). They took the view that payments to other types of destination accounts is outside the scope of the Order and the Final Report.

The CMA takes the view that it does have vires to require OBIE to mandate VRPs for sweeping. Issues of vires have previously been raised by members of the CMA9 in response to the CMA's consultation on the Revised Roadmap in February 2020. The scope of the CMA's vires in relation to mandating sweeping and its implementation has been previously addressed in its Notice of [7 April 2020](#).

In addition to the points set out in the Notice of 7 April we note that the Order should be understood in the context of the decision on remedies set out in the Final Report, whose aims include "*facilitating the emergence on a large scale of new service providers with different business models offering innovative solutions to consumers and SMEs*".¹ The Final Report clearly and expressly supports the adoption of sweeping and there is no express limitation in the Order or the Final Report on the type of destination account for sweeping.

The open banking remedy is focused on increasing competition to the benefit of SMEs and personal current account customers and to allow for easier switching. It was also envisaged in the Final Report that in doing so, it would unbundle products typically

¹ Final Report, para. 13.7.

sold together such as current accounts and overdrafts as well as overcoming demand-side issues by “*transferring cash from current accounts paying low or no interest to higher interest earning ones or transferring money into accounts that are about to go into overdraft.*”² The intent here was for customers to have the ability to move funds out of current accounts into deposit or savings accounts that were also payment accounts in order for customers to earn more interest. Sweeping is not limited to moving funds between low interest current accounts (or from one current account overdraft facility to another) but to a range of products to the benefit of consumers.

The CMA therefore takes the view that the sweeping from current accounts to savings and other accounts is within scope of the Order. The ability to use VRPs to sweep from a current account to other account types is not inconsistent with the aims of the Order and the Final Report.

Application of the Payment Services Regulations 2017 (PSR 2017)

Some members of the CMA⁹ made representations that VRPs are outside the scope of the existing regulatory framework for payments and especially the PSR 2017. They noted that it was problematic to determine whether a customer had consented to a payment. This meant consumer protections could be circumvented and where risk and liability lay in the event of an unauthorised or defective payment was unclear.

The CMA has considered these issues and notes the following:

1. The CMA has not seen evidence to indicate that the PSR 2017 would not apply, as a matter of principle, to VRPs in the same way as to other payments. Our view is that the regulatory regime under the PSR 2017 applies to VRPs.
2. The CMA notes that a key issue for the PSR 2017 is that the consent parameters are appropriately crafted and sufficiently narrow to say that a customer has consented to that transaction. Whilst the CMA cannot advise on the application of the PSR 2017 requirements in all circumstances we are sufficiently assured that the guidance produced by the OBIE appropriately sets out the need for narrow consent parameters in order to ensure that consent is properly given in line with the PSR 2017 and FCA requirements.
3. The CMA further notes that the firms in the payment chain for sweeping are regulated by the FCA and bound by the relevant conduct regulations. The CMA has not seen evidence to suggest that VRPs allow participants to circumvent existing customer protections. For example, the CMA is sufficiently assured that, as a matter of principle, VRPs fall under the definition of a continuous payment authorities under the FCA Handbook.

² Final Report para 13.8(c)

Consumer Detriment, Liability & Redress

Members of the CMA9 have raised the concern that allowing VRPs will result in consumer detriment. They note that there is insufficient clarity as to which redress mechanisms apply and where liability between different ASPSPs and PISPs lie. They consider that there are insufficient mechanisms in place to protect consumers in the event of unauthorised or defective payments or in the event of fraud. They also note there is insufficient communication to consumers on the routes of redress.

We have reviewed the representations regarding potential consumer detriment in detail. The CMA is satisfied that the existing regulatory framework which governs questions of liability and redress in the event of unauthorised or defective payments applies to VRPs. Consequently, as a matter of principle, the same mechanisms for redress and the assignment of liability between ASPSPs and PISPs should apply to unauthorised and defective payments in the same way as other payments. We note that the OBIE has also set out practical examples in its guidance on sweeping on where liability sits in the event of an unauthorised or defective transaction.

Furthermore, sweeping service providers will be required to be FCA-regulated firms and comply with the relevant conduct requirements. FCA regulated firms are also expected to design products and solutions in line with the FCA Handbook and statutory regulatory requirements. The FCA Handbook requires firms to consider various conduct risks and harms as well as consumer detriment. Firms are expected to design and implement appropriate mitigations to any risks to consumers. Furthermore, firms operating in this space are required to have a clearly defined complaints process for customers. As such, customers benefit from the same protections and redress mechanisms when using sweeping services as they would for other payment methods.

We further agree with OBIE that the fraud risk for VRPs is not greater than any other payment method.

We agree that it is important that consumers are properly and clearly informed of routes for redress. We note OBIE's guidance for sweeping which sets out important aspects of best practice to ensure consumers are treated fairly. In particular, we note that OBIE's guidance sets out the importance of ensuring vulnerable customers are treated fairly and OBIE's commitment to ensure this is prominently drawn to the attention of sweeping service providers and other relevant parties.

Next Steps

As set out in the Revised Roadmap, a period of 6 months would be appropriate to implement sweeping. I will leave it to you to determine an appropriate date during January 2022, by which the CMA9 must implement these requirements.

I am copying this letter to the members of the Implementation Entity Steering Group and we will publish a copy on the CMA website shortly.

Yours sincerely



Adam Land,
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