

Open Banking

Clarification of the definition of sweeping:
summary of submissions

14 March 2022

Background

1. On 26 July 2021, the CMA [approved the recommendation](#) 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 [Final Roadmap \(May 2020\)](#), implemented pursuant to the [Retail Banking Market Investigation Order 2017](#) (the Order).
2. Following the CMA's approval of VRPs for sweeping, questions were raised by certain stakeholders with the OBIE as to whether or not certain use cases fell within the approved definition. At the November 2021 Implementation Entity Steering Group (IESG) meeting, the OBIE presented a paper setting out potential clarifications of the sweeping definition for discussion.
3. In the IESG paper, three potential methods for clarifying the definition of sweeping were presented by OBIE to facilitate discussion and submissions:
 - (a) Option A: the destination account should be protected by the [Financial Services Compensation Scheme \(FSCS\) guarantee](#), or is a lending agreement covered by the Consumer Credit Act 1974, or a regulated mortgage.
 - (b) Option B: the destination account needs to be an account in the customer's name and provided by a regulated firm.
 - (c) Option C: specific propositions need to be ruled in or ruled out of sweeping use cases.
4. At the December 2021 IESG meeting, the OBIE invited stakeholders to submit written representations on whether there should be clarification of the definition, and if so, what those clarifications should be. In January 2022, the OBIE provided the stakeholder representations it received to the CMA for consideration.
5. This paper summarises the 14 responses submitted to the OBIE and reviewed by the CMA when considering how best to clarify the scope of sweeping in line with the intent of the [Retail Banking Market Investigation Final Report](#) (the Final Report) and the Order.

Summary of responses

6. Stakeholder responses relate to general points about the scope of the Order and promoting competition, as well as more specific comments related to use cases for sweeping, including comments on the options presented by the OBIE

at the December IESG meeting. A number of respondents provided their views on the scope of the Order and what can legitimately be included as a sweeping use case. Others focused on how a wide definition would promote innovation and competition in the retail banking sector. Respondents also raised points around the need for minimising and managing disputes over sweeping access going forward as well as points around consumer protection.

General and scope of the Order

7. There were a number of submissions as to the nature of the destination account that should fall within scope of sweeping.
8. Some respondents set out concerns that a clarification of the definition of sweeping should not mandate use cases that go beyond the issues articulated in the Final Report and Order. One respondent's view was that sweeping can only be mandated under the Order to current accounts and not to savings accounts. That respondent further stated that in the event the CMA's clarification did not limit sweeping destination accounts to current accounts, the destination account should at least be confined to payment accounts. Others consider that sweeping to a destination account that is a current or savings account protected by the FSCS would be consistent with the Final Report and Order.
9. One respondent stated that the use cases for sweeping in the CMA's Final Report were not exhaustive and that whether a transaction is within scope of sweeping should be determined on the basis of whether the transaction supports the broad improved customer outcomes identified in the Final Report. One respondent stated that, in their view, the purpose of VRPs for sweeping was to reduce the cost of short-term credit and increase the efficiency of savings and that this should be the main criteria to assess whether a proposition qualifies as sweeping.
10. Another respondent supported this and suggested that sweeping access should be evaluated on the basis of principles to determine whether it is faithful to the purpose of the Order as set out in the Final Report.
11. Some respondents suggested that this principles-based approach could be used in addition to the other potential criteria the OBIE put forward for discussion as to whether a payment is within scope.

Sweeping to e-money accounts providing current account like services

12. Several respondents noted that e-money is a component of many new financial services in the market and to not be able to sweep to e-money accounts would

stifle innovation. Some submissions explained that e-money accounts have a range of uses and are used by recent market entrants to provide current account-like solutions to personal and business customers. Some respondents submitted that requiring the destination account to be within the FSCS scheme would exclude these providers (as all e-money accounts are not included in the FSCS scheme) and goes against promoting innovative solutions by preventing new market entrants from using sweeping.

13. These respondents noted that to exclude e-money current account-like providers is overly restrictive on customers who choose to use these products as an alternative to current accounts from traditional providers due to the enhanced benefits they can provide, and that these customers form a substantial and rapidly growing segment of the UK retail banking marketplace. These respondents noted that to the customer there is no material difference in functionality, and it would be overly restrictive to exclude sweeping to all e-money accounts on customers who choose e-money providers for current account functionality instead of traditional banking providers.
14. Additionally, some respondents noted that even though funds held in an e-money account are not FSCS protected, all e-money account providers are FCA regulated as electronic money institutions under the [Electronic Money Regulations 2011](#).
15. One respondent said that the use case for “topping up” e-money accounts using Open Banking has proven successful to date and there is therefore an expectation that account holders can sweep to them.

Sweeping to e-commerce and me-to-me-to-business accounts

16. The CMA received a number of responses about whether transactions which facilitate e-commerce are within scope of sweeping. Some respondents stated that the purpose of sweeping after a “me-to-me” transaction should not be a relevant factor and such transactions should be within scope as long as the destination account was in the same person’s name or control. Some submissions argued that sweeping should be use case agnostic with no restrictions on what type of regulated firm can operate the recipient account. One respondent noted that to prescribe how funds are to be used subsequent to the initial me-to-me sweeping transaction may set an overly restrictive and anti-competitive precedent.
17. Other respondents stated that in addition to me-to-me-business destination accounts, the biggest value to consumers will be from using sweeping to facilitate recurring payments to businesses. These respondents raised concerns that if me-to-business payments are not mandated through sweeping,

it is likely that not all banks will allow this functionality even on a commercial basis. Some also raised concerns that the banks that do provide this service can increase the price of access should revenue from other payments be lost. As a solution to these issues, these respondents proposed that sweeping access should cover me-to-me-to-business payments. One respondent added that sweeping would be the most efficient and affordable payment method for retailers and businesses.

18. Some respondents said that as sweeping under the Order was not intended to be used for paying for goods or services this must extend to any indirect method attempting to work around the exclusion. One noted in particular that this restriction is not about limiting the full functionality of sweeping for third parties to offer end users but about what is provided without charge under the Order.
19. Another respondent said that sweeping to e-commerce accounts which are transitory accounts has the effect of widening the scope of sweeping to a fully-fledged recurring payments system which was not the original intent of the CMA's remedy.
20. Other relevant points raised by some respondents are that the premium API¹ market for VRPs is not yet established and free access sweeping undermines this future premium API market.
21. One respondent also said that sweeping to e-commerce accounts raises consumer protection concerns as it will also have implications for fraud and protection measures as banks would have no notification of the ultimate use or destination of the second payment from the e-commerce account.

Investments and pensions

22. There were limited representations on sweeping to investment accounts and pension accounts. Some respondents noted that such destinations were not envisaged in the Final Report, with one noting that these products were not intended to be included in the market investigation and that there are existing and proven methods to repay them. It was also noted that investments have a different risk and/or liquidity profile to interest on cash balances.
23. Other respondents referred to these accounts as valid and potentially beneficial sweeping destination accounts.

¹ APIs or application programme interfaces are the basis for providing Open Banking which requires the development of open APIs through which the largest banks in GB and NI would be required to make data available for third parties to use to provide services to consumers and businesses.

Loans and mortgages

24. One respondent said that neither loan accounts covered under the [Consumer Credit Act 1974](#) nor regulated mortgages were valid sweeping destinations. This was on the basis that these products were not intended to be included in the market investigation and that there are existing and proven methods to repay them.
25. Other respondents disagreed and referred to sweeping to destination accounts to pay down loans or other debts as valid sweeping destination accounts.

The FSCS scheme and Consumer Credit Act 1974

26. Some respondents raised the concern that identifying whether a destination account was within scope of the FSCS scheme is technically difficult for payment initiation service providers.² There was also a concern raised that introducing FSCS coverage as a criteria for sweeping would entrench the position of incumbent banks.
27. Some respondents noted that sweeping to destination accounts which were FSCS protected would be beneficial from a consumer protection perspective. Others queried the benefit of FSCS protection on the basis it does not cover erroneous or fraudulent payments. Similarly, one respondent queried the relevance of the [Consumer Credit Act 1974](#) as a potential sweeping requirement stating it would not add additional consumer protection should funds be swept in error.

Destination accounts in a person's "name" or "control"

28. There were several responses on what is considered an account in the same person's name or control.
29. Some respondents noted that use cases such as loans present a challenge as often a single collection account is used.
30. Some respondents said there are technical difficulties in identifying whether an account was in the same person's name. For example, SMEs may particularly have issues as a business can hold a range of accounts with different naming conventions. Some respondents raised the concern that many propositions are

² A payment service initiation service provider (PISP) is defined in section 2 of the [Payment Services Regulations 2017 \(legislation.gov.uk\)](#) see also [Account Information and Payment Initiation Services \(fca.org.uk\)](#)

not within scope of 'confirmation of payee' which makes it difficult to check the destination account.

31. Some respondents suggested amendments to the definition of sweeping that a destination account should be one which has the same name as the source account or that the credit agreement that the sweeping payments are addressing has the same name as the source account. Others suggested whether the same person has control (ie legally owned by the customer) should be the decisive criteria as this would include building society accounts and e-money accounts.

Consumer Protection

32. One respondent said that sweeping to accounts which do not have the capability to sweep back in the event of fraud or error is problematic as there is a lack of suitable dispute resolution process should that occur. Others were not concerned about the reversibility of payment as long as the payment was made within scope of the consent given by the customer; they considered it would be on the sweeping service provider to resolve this for the customer should there be an issue. Another respondent noted that sweeping for alternative credit purposes means reversible payments is not a limitation on sweeping in the Final Report as noted in the CMA's letter of July 2021.

Vetting specific use cases

33. Some respondents raised a concern that if the CMA mandated specific use cases that were in scope of the definition as opposed to taking a principle-based approach or other rule-based approach, it would not be a practical solution as new products came to market. They argued that ongoing ambiguity would introduce barriers to market entry. Others noted that such an approach would discourage product development because of the administrative time and cost involved.
34. Some respondents queried what the timescale would be for vetting new products and who would be responsible for arbitrating which use cases fell within scope on an ongoing basis.
35. One respondent said that sweeping service providers will have the burden of determining whether the destination account is within the specific use case. This will require manually collection information from customers which will increase friction and waiting times which undermines the intent for sweeping to be a quicker and more convenient method for moving funds.

36. Some respondents stated that any criteria including or excluding specific use cases should be published. They noted that if the CMA adopts a set of principles to arbitrate what cases are in scope then the market can just as easily apply those principles.

Dispute resolution

37. Some respondents raised the need for there to be a dispute resolution procedure in place for sweeping access disputes. One respondent said that any sweeping definition needs to be clear enough to avoid disputes between participants. They stated that sweeping will be a “non-starter” if too many payments are rejected due to differing interpretations of sweeping. However, they considered that the definition should not be so strict that it stifles innovation.
38. Another respondent said that even following clarification there is potential for disputes about sweeping and a dispute resolution process should be put in place to ensure disputes are resolved easily and help minimise customer detriment.