

OPEN BANKING

OBL Trustee Response to CP23/12 - Expanding Variable Recurring Payments

Call for views

January 2024

Introduction

This is a pivotal year for both open banking and Open Banking Limited (OBL). It will also be a year of change as we begin to move beyond the CMA Order to a sustainable commercial model and new long term regulatory framework that will unlock the full potential of open banking. I therefore welcome the Payment System Regulator's (PSR's) ambition to pilot the first ecosystem-wide expansion of additional functionality beyond the current regulatory baseline.

As referenced in Joe Garner's *Future of Payments Review*: "*The UK has the opportunity to create a world-leading payments environment long into the future. But to do this we need to cut through the complexity and work towards a new shared vision consistently over the long term.*"

The collaboration we have seen from the industry, in contributing their views to the Joint Regulatory Oversight Committee (JROC), has been exemplary. Maintaining the momentum is important as we progress the various activities set out by JROC to enable open banking to continue to develop ahead of the implementation of the long-term regulatory framework and achieve our shared goal of broadening out the open banking use cases and ultimately creating account-to-account retail transactions (A2ARTs).

The pilot to extend variable recurring payments (VRPs) into additional low-risk use cases is an essential first step to better understand and establish the tools and capabilities required for the long-term future of open banking payments, as well as a multitude of new products and services based on commercial arrangements. As we move towards new models that support the extension of open banking, this pilot will be essential in providing the learnings as a first step towards successfully expanding open banking-based products and services.

In my capacity as open banking Trustee, I have set out a detailed response to the call for views on the development of VRPs and the proposed pilot. I have consulted both with colleagues and stakeholders. I have considered the CMA Order in its wider context, and outlined how best to ensure benefits of open banking are sustained for the public good as we begin to transition to a sustainable commercial model and new long term regulatory framework.

Summary

I am highly supportive of the PSR's vision and ambition to accelerate the expansion of VRPs as a key enabler for A2ARTs that will deliver benefits to end-users through enhanced innovation, choice, and competition. However, this pilot is also an opportunity to assess and refine a commercial model for the broader expansion of open banking via a broader set of APIs. In effect, I believe there should be two objectives of this pilot: first, to achieve the PSR's vision of driving innovation in payments and moving towards the successful expansion of A2ARTs; second, to develop a commercial and operational model that can be used to unlock the full potential of open banking.

I support the PSR's proposal in principle. However, it should be refined to maximise the future success and sustainable development of open banking and achieving the PSR's long-term goals. In my view, the pilot as detailed in the Call for Views:

1. Is a missed opportunity to establish the pilot for the expansion of VRPs as a stepping stone to the wider development of additional use cases and ultimately as an enabler for A2ARTs. To achieve this, we need to progress towards a sustainable commercial model for the future development of open banking rather than to perpetuate a free-to-access model for third party providers (TPPs) which removes incentives for account servicing payment service providers (ASPSPs) to invest and innovate.
2. Does not provide the foundations and opportunities for learnings as a first step in delivering a pathway to successfully expanding open banking, growth of the ecosystem and the range of new products and services offered. The long-term future of open banking will be delivered through several multilateral agreements (MLAs), not just for payments functionality but for data as well.
3. Fails to take the opportunity to move beyond the CMA Order. Non-sweeping VRP's were specifically excluded from the Order. The proposal to effectively extend the CMA Order requirements on the CMA9 banks is unnecessarily narrow and a missed opportunity not to use the VRP pilot to seek broader participation.
4. Does not meet JROC's ambition to create the necessary skills, and capabilities for the future entity to develop MLAs, future standards and schemes.

Creating the framework for the expansion of open banking as an enabler for A2ARTs

The development of a sustainable commercial model is crucial to the future development of the open banking ecosystem and new propositions. Both JROC's previous report of 17 April 2023 and the Future of Payments Review Report published in November 2023 (the Garner Report) were clear on the need to establish commercial models which create the right incentives for all parties to achieve the PSR's long-term goals of developing and broadening open banking-based payment propositions.

The VRP pilot is the ideal stepping stone on the journey to achieving this. However, the PSR's pricing proposal, while it may be pragmatic in a low-volume, low-risk initial environment, does not deliver the long-term strategic, sustainable solution that is needed to move open banking forward. By granting free access to TPPs, it creates market expectations that will be difficult to reverse in subsequent phases of the VRP roll-out or in future A2ART payment development. Further, it is a missed opportunity

for policymakers to learn and inform future pricing structures applicable to other payment use cases.

During 2023, the PSR set out its principles for the pricing of access beyond existing regulatory requirements and for future schemes. I welcome these as a sound basis for future development, but I am concerned that the PSR's subsequent proposals in the Call for Views do not fully take account of these principles.

In contrast to this approach, there seem to be lessons that the UK could take from the work that the European Payments Council (EPC) is progressing with the SEPA Payment Account Access (SPAA) scheme. This alternative cost-based framework sets out a well-considered long-term approach to the creation of a sustainable commercial model with incentives for all participants.

The pilot is an ideal opportunity to gather learnings and data to act as a stepping stone towards the PSR's long-term vision.

Provide the foundations for delivering a pathway to successfully expanding open banking

JROC has clearly articulated that the ultimate success of open banking will be attained by the development of new and innovative products and services beyond existing regulatory requirements through the introduction of premium APIs. While I am supportive of maintaining the status quo in respect of free access to the APIs mandated by the Payment Services Regulations (PSRs), I believe that only by allowing ASPSPs to commercialise APIs offering broader or superior access will we succeed in enabling the development of the innovative and market-led solutions that would drive widespread consumer adoption

The VRP pilot is only the first example of a Premium API development. It is a missed opportunity not to use the pilot as a testbed for the approaches needed to deliver sustainable and scalable open banking propositions beyond payments. In the case of Premium APIs that relate to access to data, cost recovery by removing the marginal costs of Faster Payment Systems (FPS) charges will not present a viable long-term approach.

While I understand that the approach may be tactically attractive, it misses the opportunity to test and learn from a pilot experience in a way that is extendible to a broad set of use cases that would be valuable for the attainment of a core objective of the Committee.

It is critical that the pilot supports the development of future use cases well beyond VRP and payments to deliver a model that is scalable for future data sharing propositions which is needed to fully unlock the potential of open banking.

Moving beyond the Order

For the purposes of the pilot, I support the PSR's approach of mandating sending bank participation in the VRP pilot if voluntary participation cannot be achieved. However, limiting mandatory participation to just the CMA9 is unnecessarily narrow and backward looking. This proposed approach is at odds with the objective of moving to broad-based participation under the long-term regulatory framework. It also fails to take account of the competitive changes in the current account market that have occurred since the CMA9 banks were defined by the CMA where certain other ASPSPs now have more current accounts than some CMA9 banks.

It would be a missed opportunity not to use the VRP pilot to seek to expand participation beyond these nine organisations across a wider pool of firms that expands the ecosystem in a way that better aligns to JROC's objectives

Creating the right foundations for the future entity

To date, JROC has been clear that it sees a critical role for the future entity in the next development phases of open banking. By electing not to put OBL at the centre of the VRP pilot development, I believe we are missing an opportunity to build on existing capabilities and ensure that these can evolve to respond to future needs to develop data and payment based propositions. In the process, valuable learnings may be lost.

Moreover, the proposed approach is likely to lead to duplication, inconsistencies, and increase the costs to participants. The two key areas this will impact are, firstly, the development of the underpinning MLA; and secondly, in the supporting disputes management functionality.

The first area of developing an MLA is crucial to future development of new open banking propositions and the VRP pilot provides an ideal opportunity to start that process. I see MLAs as a critical requirement underpinning an array of new future services brought to market. Given the critical importance of MLAs to the future of open banking and beyond, it is essential that OBL plays a key role in bringing the first MLA to market as it transitions to the future entity. This will ensure that the organisation captures the learnings and builds the capabilities to drive forward the development of a broad range of open banking-based solutions.

In relation to the development of the VRP MLA, I contend that OBL already has highly relevant experience for this work. OBL has effectively built the product proposition and written the standards for VRP. It also has a track record of delivery, for example, the managed roll out of the sweeping VRP functionality and well-established relationships with both TPPs and ASPSPs. The product proposition and requirements defined in the Standard (e.g., the Customer Experience Guidelines (CEGs)) will be inextricably linked to the MLA and dispute management and cannot easily be disaggregated. Attempting to do so would create the risk of divergence between the MLA, the Standard and Disputes management.

The second key area relates to the development of the disputes management process. The work already undertaken by OBL in relation to the JROC roadmap has demonstrated a broad ecosystem consensus for the need for a disputes management process for all open banking payments, as well as data propositions.

It is also clear that there is a need for a disputes management process which can evolve as open banking-based propositions become more sophisticated and that the future entity has a key role to play in developing this functionality. In this context, I believe that by asking Pay.UK to develop the disputes management process for VRPs, we do not create the right foundations for future success. It will give rise to potential duplications and inefficiencies which could lead to poor ecosystem and customer outcomes. Leveraging the existing OBL disputes management framework offers a faster route to launch, and would provide participants with a familiar and easy to use interface, which in turn is likely to increase adoption.

The PSR report suggests that OBL does not have the capability to take forward the development of the MLA or the creation of a disputes management function for the pilot. However, I contend that OBL already has the foundations of the functionality in its technical support and monitoring functions from which this work could be developed expediently and efficiently, potentially using Pay.UK experts as part of an integrated team.

In summary, I believe the VRP pilot provides the ideal opportunity to set out on the right foot to support the future development of open banking. To not take advantage of this opportunity risks sacrificing achieving the PSR's goals of open banking's long-term success for short-term expediency.

Responses to questions

Q1. Do you think the pricing principles as published in June 2023 support delivery of a sustainable commercial model for Phase 1?

I believe that the previously published pricing principles are well-considered and should apply to the development of a sustainable commercial model for Phase 1 of VRPs and beyond.

Principles 1 and 2 suggest that pricing should reflect sending banks' long-term costs, while also providing an incentive for investment and innovation in APIs. Principle 3 focuses on the need to encourage take-up by consumers and businesses. These principles make good sense. We note that the PSR has elected to use mandated participation as a key measure to address network effects.

However, the current proposal to set the payment processing price at zero, despite the associated measures that are intended to make this cost-neutral to ASPSPs, are not aligned to these principles. As a result, we miss an opportunity to create a "a sustainable, safe commercial model that results in prices that are fair value, transparent and promote competition."¹

I am acutely aware that without providing a sufficient degree of commercial incentive to ASPSPs, this first development of open banking will be seen merely as an extension of the CMA Order which is "all stick and no carrot". My experience to date is that this can, unfortunately, act as a drag on implementation and make some steps of the process unnecessarily confrontational, while favouring strict compliance over innovation, functionality and outcomes.

In its vision, JROC has specifically noted the critical importance of the creation of sustainable economic models to encourage competition and innovation in a more sustainable manner than previous regulatory-driven approaches have allowed. This is predicated on new commercial arrangements between participants, in which both ASPSPs and TPPs can make a commercial return for access to premium APIs.

In my view it is therefore a missed opportunity that, in the first opportunity to action the principles, the PSR has proposed not to promote a commercial model that enables ASPSPs to make any form of commercial return in Phase 1. Rather, the proposed approach is not significantly different from the existing approach that underpins sweeping VRPs.

I am concerned that this approach does not build a coherent pathway towards the attainment of JROC's ambitions for the long-term evolution of smart data and payments. While the approach may be expedient from a tactical perspective, enabling the pilot to get underway in 2024, it does not meet the strategic objectives of establishing and testing a sustainable commercial model. Such a model should be designed to underpin the continued development of open banking, provide opportunities for a fair return to all participants, incentivise the entire ecosystem to invest in new functionalities, collaborate

¹ Principles for commercial frameworks for premium APIs, June 2023, Page 8.

to form a well-functioning network and progress premium API development beyond payments. This jeopardises the potential attainment of key benefits to end-users.

While the PSR, within the consultation, is very clear that the proposed approach is aimed at scaling VRPs swiftly, I am concerned that it sets an unhelpful precedent and market expectation from which it will be extremely difficult to deviate in the future. The pilot needs to provide a runway to the rollout of VRP across a more comprehensive set of use cases, which are inherently more complex, as well as developing learnings for other data sharing commercial arrangements. There is a significant risk that pilot commercial structures are difficult to subsequently unwind and are therefore likely to stay for the long-term, or that the absence of a commercial incentive discourages the allocation of resource to development and results in an inferior end product that meets the bare minimum requirements.

Instead, I consider that it would be helpful to establish a methodology that is intended to apply from the outset to future phases of VRP rollout as well as to the development of a broader range of premium API services more generally.

This could be on the basis that the fee is intended to recover only relevant costs (potentially with the addition of a margin to incentivise ASPSP commitment to innovation, possibly including a cap). I agree that the Faster Payment System (FPS) may be the only relevant cost in Phase 1 given that the initial pilot is specifically designed to minimise costs of dispute resolution, fraud prevention and fraud reimbursement, and the use cases are largely predicated on substitution of Direct Debit and bank transfers.

However, it seems important to flag to the market from the outset that fees are expected to be revised on a periodic basis as operational costs are quantified and the market develops.

Q2. Do you think that cross-industry coordination is necessary for Phase 1 and that an MLA is the appropriate vehicle to achieve this?

As Trustee, I have always considered that the best way to expand beyond the CMA Order mandated implementation of open banking is via the development of a “*rulebook, scheme or multilateral agreement*.”² VRPs are the first obvious area for development, but should be seen as the first of many expansions and enhancements that are needed to fully realise the value of open banking to the UK economy and society.

I therefore wholly endorse the use of an MLA as the most appropriate vehicle to achieve cross-industry coordination and it should be one of the core objectives of the pilot to build learnings and experience in how best to develop and structure effective MLAs to expand open banking functionality.

However, in Phase 1, which is limited to low-risk use cases, a very limited MLA is required. The work currently underway in UK Finance to develop an initial MLA could deliver against this. It is encouraging to see collaborative industry activity such as the UK Finance initiative and it would be beneficial for regulatory activity to support continuation of this.

Q3. Do you think Pay.UK is best placed to operate the MLA for Phase 1?

² Trustee End of Implementation Roadmap Report, January 2023.

The primary reason set out in the consultation for the decision for Pay.UK to operate the MLA for Phase 1 is expediency and Pay.UK's existing experience in managing MLAs. I believe there are several other important considerations that need to be taken into account before this important decision is confirmed.

My view is that assigning this work to Pay.UK is a missed opportunity to drive the long-term development of open banking, both payments and data, which would be better served by keeping the MLA development together with the management of the Open Banking Standard. This is not to say that Pay.UK does not have a role to play, but that mandating Pay.UK alone would create unnecessary divergence and operational challenges for participants. I believe instead that OBL and Pay.UK could work together, harnessing the expertise of both organisations, to develop a model based on the existing Open Banking Standard and dispute management processes. This could generate greater industry and consumer benefits at pace.

My rationale for this position is as follows:

Long-term strategic development of open banking: it is clear to me that the long-term future of open banking will be delivered best through several MLAs, not just for payments functionality but for data as well. This is the clearest and simplest way in which new functionality can be rolled out beyond the regulatory requirement, while also creating appropriate liability models, commercial conditions for TPPs and ASPSPs and protection for consumers. The expertise in developing these MLAs should reside in the future entity.

JROC agrees with my position on this, as I note in the JROC Recommendations report that JROC *"expect the future entity to convene and promote ecosystem discussions with a wide range of stakeholders where appropriate, and act as a facilitator in circumstances where collaboration between open banking participants and key stakeholders (including consumers and businesses) is required. For example, this would include supporting the development of multilateral agreements for new services and premium APIs, such as VRP for non-sweeping use cases."*³

As clearly envisaged above, the assumption is that the future entity would assume responsibility for MLAs which add incremental functionality or expand the scope of open banking beyond the regulatory core. This is, therefore, a critical function and yet for the duration of the pilot it is planned that the MLA for the VRP pilot will be developed and operated by a separate entity. Rather than building the capability for this within OBL and the future entity, the learning and ownership is fragmented. Potentially, there is a view that this MLA will be transferred to OBL in the future, but this simply creates another complex dependency and complication to the transition process.

Given that the ability to develop MLAs is considered an important function of the future entity, allocating this work to Pay.UK alone is a clear lost opportunity to build the skills and experience needed in OBL and the future entity.

Stakeholder engagement: OBL has over seven years' experience of engaging with a broad range of stakeholders and balancing their needs. We have well-established relationships with all the large TPPs and banks, and have convened multiple large ecosystem working groups over several years as well as incorporating the views of consumer organisations and small business. We have worked hard to build consensus across these diverse communities (TPP, ASPSP and end-user) and are broadly

³ Recommendations for the next phase of open banking, Para 3.5.

acknowledged to have succeeded in this. Pay.UK's engagement is typically much narrower, and it has very limited relationships with TPPs.

Relevant experience: I acknowledge that Pay.UK has experience of managing payment schemes and rulebooks. However, its experience of open banking is much more limited. VRPs under the pilot will be made using the Open Banking Standard and framework. Many elements of the MLA can be found in the VRP Customer Experience Guidelines and additional guidance, which will need to be translated into legal requirements on participants as part of the MLA. This experience is highly relevant.

I would also point out that UK Finance's work on model clauses will provide clauses for the MLA to cover where there are gaps in regulation and will also provide explanatory notes on how dispute-handling can be managed so much of the legwork for a successful VRP MLA pilot will have already been done.

It would also be entirely possible for Pay.UK's experts in developing and managing MLAs to work with OBL, either as part of the broader team or to be seconded to OBL to transfer knowledge and help to build a vital centre of excellence for the future. It is worth highlighting the very successful collaboration on JROC Workstream 4 between OBL and Pay.UK, where Pay.UK technical experts made valuable contributions to OBL-led workstreams.

Divergence between the VRP Pilot and the Open Banking Standard: as Trustee, I have significant concerns that a divergence could emerge between the VRP pilot and the broader Open Banking Standard. We need to minimise divergence and the most effective way of doing this is by ensuring that a single body oversees both the Standard and the MLA. This would be best achieved if OBL manages the MLA for the VRP pilot, using Pay.UK experience where needed in technical areas.

There are broader divergence risks if OBL does not develop the MLA. The way in which VRP operates today, the experience, the proposition and the limitations, are set out in the CEGs, part of the Open Banking Standard. The MLA must logically be an extension of these guidelines and any divergence would cause confusion, undermine the validity of the Open Banking Standard and cause issues for entities using the Standard.

Disputes: the PSR has prioritised expediency for this pilot. One important functional requirement for the pilot is a simple, effective disputes system to ensure that consumers can obtain redress and liability can be effectively assigned between participants, cases forwarded to the appropriate party and disagreements on liability between participants can be resolved. Given that the volume of disputes in the pilot is likely to be low, OBL has an existing ticketing system and monitoring function which we believe can meet the dispute and arbitration requirements of the VRP pilot. Disputes and the MLA need to be seamlessly managed by the same organisation. In addition, the OBL-led JROC Workstream 3 on consumer protection identified as a gap the lack of a dispute management process across all of open banking (both payments and data). Given the overlap, it would make commercial and economic sense for OBL to develop the dispute process for the pilot which could then be built on to develop a wider dispute process for open banking payments and data.

Payment-agnostic: the Open Banking Standard is payment system-agnostic. This reflects PSR requirements which require that any payment instruction that can be initiated directly by a customer via online banking has to be available via open banking. This should include internal transfers, FPS, BACS, CHAPS, SEPA and SWIFT.

While the majority of VRPs will likely pass through FPS, that is not always the case. In particular, a significant minority of VRPs are expected to pass through banks' own internal systems (where the sending bank is the same as the receiving bank). Pay.UK, as

the payment systems operator for just FPS and BACS, is not well placed to create an MLA which is payment system-agnostic. It could be problematic from, for example, a competition law perspective for Pay.UK to set rules for internal bank transfers or other competing payment systems.

Q4. What do you think of our current view of the market structure and sending firms' position in it? What do you think we could do to mitigate risks or overcome misaligned incentives?

I understand the PSR's view about the potential control and dominance that the sending firms would have in the market, given an ability to control access and charges to the payment initiation service providers (PISPs). I note the PSR's position that sending firms' position of relative strength could lead to sub-optimal outcomes in terms of the growth of VRPs, such as limiting PISP access. As the PSR suggests, this could limit innovation in the market and slow the adoption of VRPs by billers.

In the first phase, I understand the need for regulatory intervention to provide impetus for the rollout of VRPs. Without this it will be difficult to compete against existing, well-established payment methods. In this context, aligning the prices for sending firms with competing payment methods and mandating sending firm involvement is a useful way to overcome the concerns highlighted by the PSR. However, we question whether this provides a sustainable, longer-term approach to address the concerns.

In terms of the infrastructure around VRPs, it is critical that access is provided by ASPSPs on a non-discriminatory basis and charging is fair. We note that there is precedent in payments legislation for the creation of rules requiring access to infrastructure e.g., payment systems, to be made available to authorised participants on a proportionate, objective and non-discriminatory (POND) basis. The combination of imposing a similar requirement, along with strict controls on the cost of access, would in my view also overcome the concerns highlighted without distorting the market or creating perverse incentives to stifle or delay innovation.

Q5. Do you think there are relevant sending firm related costs we have not yet considered?

While I broadly agree that the relevant costs are likely to be those identified by the PSR, an explicit purpose of the pilot phase should be to quantify any other relevant costs that may be identified. While, by design, the pilot is intended to limit the incidence of consumer dispute by exclusively focusing on low-risk use cases, some dispute management will inevitably be required. Similarly, VRPs may result in an increased level of customer enquiries due to it being a new, unfamiliar payment mechanism.

The pilot approach should be used as an opportunity to identify sending firm related costs that can be identified and included within the baseline cost recovery mechanism in the future. Establishing a price-setting methodology that is capable of evolution as new costs are identified during the expansion of VRPs beyond initial limited use cases will be important. While consumer protection and dispute resolution costs are, by design, limited in the first phase of rollout, these will become more relevant on the path to expanding VRPs and facilitating full A2ARTs. The model currently proposed by the PSR does not appear to be capable of expansion in this way.

This limited tactical approach to the setting of the commercial model in the UK stands in stark contrast to the approach adopted by the EPC for the SPAA scheme.

The EPC has taken a multi-stakeholder approach, underpinned by independent economic evaluation, to develop a cost-calculation methodology using anonymised and aggregated data collection to establish default fees to be used where alternative bilaterally agreed fees do not apply. It appears that this approach has been embraced by market participants. Our view is that this more strategic approach to price setting which will evolve in line with the market is more sustainable in the long term.

The UK should consider adopting a similar approach to ensure the basis for expansion of VRPs as an enabler for A2ARTs and as the basis for the evolution of premium APIs beyond payments. This is a key next step in the continued innovation in open banking.

It should also be noted that the Garner Report recommendations make a compelling case for the inclusion of a margin that incentivises investment by ASPSPs and breaks the cycle that requires regulatory intervention to deliver expansion.

Q6. Do you think allowing sending firms to charge for FPS related costs or removing the costs where possible is a better approach?

I support the PSR proposal to remove FPS costs as an enabler for the pilot. However, it is not a sustainable model for the future and a focus on evolving the commercial model for the future is essential.

I consider that enabling firms to recover costs is the preferable long-term sustainable model. Costs cannot be removed, they will simply be displaced. While the proposed tactical approach ensures that sending firms do not bear the relevant cost, presumably some underlying cost of the transaction is ultimately carried by Pay.UK.

While this has no appreciable effect in the Phase 1 pilot, where the volumes are envisaged to be small, if open banking payments were to expand in line with the JROC ambition, limiting cost recovery from the relevant end beneficiaries of a transaction will be more problematic. The proposed approach introduces the prospect of cross-subsidisation, which does not appear to be a sustainable future-proofed approach.

I believe that, wherever possible, approaches established from the outset should be designed in a way that enables progressive evolution to meet envisaged future needs rather than a short-term tactical approach that will need to be significantly revised at a later date.

Q7. Our current preference is to remove FPS ‘price per click’ charges from sending firms for VRPs. Do you think this charge should be switched to the receiving side or recovered through wider Pay.UK charging, and why?

Sending bank costs are not the only relevant costs and the PSR needs to look holistically at costs across the chain, including the receiving bank costs.

We understand that ASPSP charges for FPS acceptance are an issue for many PISPs which operate settlement accounts or otherwise to billers themselves. In order for the PSR to achieve its long-term objective of creating a credible alternative to other payment mechanisms, including cards and Direct Debits, it is necessary that the VRP pricing is lower than that for competing payment mechanisms. This is the critical for the

long-term future success of VRPs and the attainment of the PSR's long-term objective to promote wider choice.

Q8. Do you think there are relevant OBL related costs we have not yet considered?

Some initial work has been undertaken by OBL to quantify potential costs to facilitate the initial launch of a pilot as well as an outline of subsequent costs that might be required if more substantive developments are considered necessary in relation to the development of a disputes management system or some of the functional requirements outlined in the VRP Working Group blueprint.

It is envisaged that these initial estimates will be revisited in light of findings from the Pay.UK and OBL-chaired implementation groups. OBL costs are expected to be modest given the limited requirements for Phase 1.

OBL is always completely transparent about its costs and where they are incurred. The current non-CMA Order approval arrangements mean that costs are forecast and subsequently tracked.

However, relevant costs that extend beyond OBL should be captured and considered. Costs are not the primary driver for decisions around the allocation of responsibility for pilot deliverables and the entities best placed to progress certain activities. However, if they are to be considered within the mix it does not seem sensible or appropriate for cost assessment to be exclusively limited to OBL costs.

Q9. What alternative commercial models could better deliver a sustainable commercial model for Phase 1 of VRPs without risking scalability, and why?

I understand the PSR's rationale for an expedient commercial for the purposes of the phase 1 pilot. However, I do not consider this to be a sustainable model for the long-term development of VRPs or open banking more broadly. It is important from the outset for the PSR to signal the how pricing is likely to evolve in phase 2 and beyond in order that all parties can see the necessary incentives for their business.

By not adopting the longer-term commercial model for the phase 1 pilot we potentially miss the opportunity to test and learn.

The commercial model in the long-term need not be predicated exclusively on cost recovery as set out in the Garner Report, but acknowledge that cost recovery is an important component. The Strategic Working Group process identified that misalignment or lack of commercial incentives was likely to impede the attainment of the widespread extension of open banking payments to the full range of use-cases, especially A2ARTs. It seems important that any commercial model specifically aims to encourage ASPSPs to invest in open banking payments. A model needs to ensure that there are viable commercial incentives for all parties to achieve the promotion and extension of open banking payments I do not consider that an approach which merely seeks to make ASPSP participation cost neutral achieves this.

The European approach should be informative. While the UK was the first country to develop an Open Banking Standard, many other countries are developing their own models. They have often looked closely at the UK experience to inform their approaches.

However, there is equal benefit in the UK looking to other markets to inform our blueprint for the development of consumer-controlled data access regimes.

The approach to commercial model development by the EPC for the SPAA scheme is useful. Its starting point is rather different in that they have identified value-added ('premium') services rather than VRP use cases as implementation objectives. However, it has adopted a pricing approach based on the ability of ASPSPs to recover costs, based on robust cost studies. This model is more likely, in my view, to drive the innovation that JROC desires.

I believe that open banking will become increasingly widely adopted as the functionality it enables increases. We have successfully delivered the plumbing for the system, and the next steps require consumer benefits to be available that make it worthwhile to use it.

Not all of these can be delivered by regulatory mandate. The commercial model needs to be able to cater for an array of future premium services if open banking is to achieve its full potential. Taking an exclusively tactical approach at this time, focused on delivering only VRPs and driven largely by timeline considerations, is a missed opportunity.

Q10. Do you think that a large number of consumers with accounts that support VRPs in Phase 1 will sufficiently incentivise PISPs and/or billers to invest in offering VRPs?

VRPs have attractive features and benefits that will incentivise use of the VRP-related propositions. I am highly supportive of the PSR's vision and ambition to accelerate the expansion of VRPs as a key enabler for A2ARTs that will deliver benefits to end users through enhanced innovation, choice, and competition.

There are different approaches to ensuring the expansion of VRPs, and this includes a sufficient level of mandated participation and consumer coverage – including beyond the CMA9 - in the pilot that will enable and incentivise use by PISPs and merchants. However, the real incentive to meet the long-term objective of increasing competition, consumer choice, and innovation is to move towards a sustainable commercial model and beyond mandating participation, which can be counter-productive in the long term.

Q11. What number or share of consumer accounts do you think need to support VRPs in Phase 1 to incentivise sufficient PISP and/or biller investment to realise network effects?

I consider that the findings set out in the VRP Working Group Blueprint Report are compelling. This suggested that a 60%-70% coverage would be the absolute minimum requirement to enable billers to consider implementation of VRPs. For a pilot to proceed and fulfil its purpose of delivering learnings which inform future developments, adequate biller adoption is necessary.

Q12. Should we mandate the CMA9 banks to participate in Phase 1 of VRPs?

I strongly challenge the proposed approach of effectively extending CMA Order requirements on the CMA9 banks. The CMA9 is a concept of the CMA Order, and it would be a mistake not to use the VRP pilot to seek to expand participation beyond these nine organisations particularly given the potential of VRPs to promote competition.

Limiting mandatory participation to the CMA9 seems unnecessarily narrow, particularly given the competitive changes in the current account market that have occurred since the CMA9 banks were defined by the CMA e.g., other ASPSPs may now have more current accounts than some CMA9 banks. The Committee is already talking to a wider pool of banks regarding the funding of Workstream VRP related work to progress key activities set out in the Response to the Blueprint.

While we agree that mandatory direction may be required at first in order to achieve the coverage threshold set out in our response to Q11 above, I believe there is a better basis for that mandate. An alternative basis for the mandate could be directing any ASPSP that has the technical capability to support sweeping VRPs by Q3 2024 to participate in the pilot, subject to an adequate cost-benefit analysis.

A further alternative would be to mandate participation on the basis of market share. I agree that it would be challenging to require any ASPSP which doesn't have the capability to build it prior to the target date, but I see no reason why firms who currently have capability would not be reasonably expected to participate.

Q13. If we do not mandate the CMA9 banks, how do you think we can ensure a sufficiently large number of customer accounts will support Phase 1 to realise its full potential?

As set out in our response to Q12 above, I support the concept of mandatory participation, but do not consider that this should be exclusively restricted to the CMA9.

Q14. What do you consider to be the main risks and costs of mandating participation in Phase 1? How could such risks and costs be mitigated?

I do not think there will be significant risks and costs for those banks already offering sweeping VRPs.

Q15. Do you see advantages in any alternative models?

For the purposes of the pilot, I support the PSR's approach of mandating sending bank participation in the VRP pilot if voluntary participation cannot be achieved. It is encouraging that twelve participants are working together to develop the MLAs under the UK Finance initiative which indicates willingness to participate on a voluntary basis, including beyond the CMA9. It is essential for the long-term development of open banking that we move away from mandated participation and towards a commercially incentivised model. It is absolutely critical to create incentives for participants to commit and invest in the development of VRPs. It is very important for regulatory intervention to be a catalyst for the development of a long-term sustainable model.

Not all the areas where we believe improvements are required should necessarily be mandatory for banks to provide free of charge to TPPs. For some additional services, it may be useful to have standards, set uniformly across the market, for which commercial fees are applicable. This will increase the incentives for banks to develop their offerings further.

In contrast to the regulatory APIs that open banking currently provides, which the CMA9 are required by law to provide free and without contract, premium APIs are intended to

open up myriad new opportunities beyond regulatory compulsion to the mutual benefit of ASPSPs and TPPs. This will deliver future revenue opportunities to both.

Open banking has to date been focused on the mandatory provision of a relatively small number of standardised APIs linked to payment accounts.

Allowing banks to charge for premium APIs is a pragmatic move, to increase cooperation and bring about the changes needed more rapidly than if banks were required by law or regulation to do so. Much evidence suggests that this approach is mutually attractive to both TPPs, which could develop much richer product offerings, and could offer a significant potential revenue stream to banks that has so far been missing from open banking. This provides the real potential to support the roll-out of new services to customers that the core APIs do not allow for.

The Committee recognises that resolving a misalignment of incentives that underpins many of the barriers to the attainment of a well-functioning and expandable ecosystem is a key priority. For instance, in the Strategic Working Group (SWG) process, ASPSPs often claimed that there was limited incentive for them to invest further funds to deliver more than the regulatory minimum. However, many TPPs urgently require further improvements in performance to support wider adoption of open banking, new functionality and access to additional datasets.

For open banking to successfully develop we need to move beyond being a competition remedy and look to harness commercial incentives. It will be a missed opportunity for open banking if the first attempt to implement a premium API makes no attempt to align participation incentives. This will erode the value of a pilot and the application of learning from it to facilitate delivery of a broader set of premium APIs.

Q16. Do you think there are additional risks associated with our proposed commercial model that we should consider? Do you have additional insight on how we best mitigate the risks identified or any additional risks you may want us to consider?

We have already covered our views in the responses to other questions

Q17. Do you agree with our proposed list of use cases for inclusion in the cost benefit analysis?

I agree that the three proposed use cases are appropriate. However, I would highlight that the pilot use cases are very close to existing VRP sweeping use cases defined by the Open Banking Standard. There will be considerable overlap between these and there needs to be consistency in approach across all other types of open banking payments.

It is important to ensure that there is consistency between sweeping and non-sweeping VRPs. If this does not happen, there is the risk of divergence between sweeping and non-sweeping VRP functionality and customer experience. This needs to be effectively managed both from a participant and customer perspective. Failure to do this could lead to customer confusion and affect the uptake of both sweeping and non-sweeping VRPs.

Given how close sweeping and non-sweeping use cases are (for example, a secured loan is non-sweeping, an unsecured loan is sweeping), it is essential that there is no divergence in the customer experience or functionality between these two products.

Q18. Do you agree with these initial assumptions for the cost benefit analysis?

I have no comments in relation to this question.

Q19. What do you think are the key benefits of VRPs for each of the components of the value chain: consumers, merchants, the PSO, PISPs and sending firms? How should or could these be measured?

We have already covered our views in the responses to other questions, but believe there should be greater focus on the definition of the pilot's objectives and success measurement.

Q20. What do you think are the key costs of VRPs for each of the different components of the value chain: consumers, merchants, the PSO, PISPs and sending firms? How should or could these be measured?

The pilot approach can inform long-term strategic view on pricing and the relevant heads of costs, for example, should give us some indicative data on the extent of disputes etc.

Q21. How do you think our proposals might affect people with protected characteristics? What approach might better serve their interests?

I agree with the PSR's view with that the proposals do not disadvantage anyone with protected characteristics.

Q22. Do you think our current policy proposals poses any risks to the scalability of VRPs and open banking beyond Phase1?

I am highly supportive of the Committee's ambition to accelerate the expansion of VRPs as a key enabler for A2ARTs, and as a first step in delivering the pathway to successfully expand open banking to move to a new, economically sustainable phase with new products and services.

I also fully understand the desire to drive progress towards these objectives as quickly as possible. However, it is imperative that the approach is fully aligned to achieving the stated long-term objectives set out by the Committee. I have concerns that the proposed approach set out in the PSR's consultation fails to achieve this purpose and may actually impede the attainment of the ultimate ambitions for the evolution of smart data and payments.

The Committee clearly articulated the importance of the development of a sustainable commercial model that will underpin the next phase of the evolution of open banking in a way that secures its future. Notably the Committee set out that:

- ***“The development of premium API propositions that facilitate and incentivise ongoing innovation for the benefit of businesses and consumers is an important part of moving to an economically sustainable and scalable open banking ecosystem.”⁴***
- ***“In order to encourage competition and innovation in a more sustainable manner, the ecosystem must encourage and facilitate new commercial agreements to emerge between participants, in which data holders can charge for access to premium APIs.”⁵***

I fully endorse this premise.

The premise of VRP to date is that some categories of VRP justify regulatory underpinning. In July 2021, the CMA mandated the use of VRPs as the mechanism for implementing sweeping as envisaged by the Retail Banking Market Investigation Report.

It was broadly expected that VRP for use cases beyond the CMA Order would be subject to an alternative approach which gave ASPSPs a commercial return for providing access. Such an extension fully aligns with a key observation made in the JROC report which states that, *“While recognising that the regulatory driven approach to-date, underpinned by free access to data remains pivotal to democratising access to data as well as to supporting innovation and competition to take this to the next level we need commercial arrangements that are fair and proportionate for a multitude of new products and services...”*⁶

This is also entirely consistent with one of the key recommendations emerging from the Garner Report which states that: *“Open Banking now has the technical potential to: a) create a viable alternative to the card schemes and b) improve the bank transfer payment journey – but only if the current commercial arrangements are changed.”⁷*

In fact, the Garner Report argues that the approach articulated in the Committee’s Report published in April 2023 does not go far enough. It recommends that a commercial model should be extended across all open banking-initiated payments rather than just commercial VRPs, and argues that a sustainable commercial model will be required to fund consumer protections and provide adequate consumer protection.

It was noted that without a sustainable commercial model there was little incentive for ASPSPs to invest and support it. The report was particularly critical of any approach that relies on costs being funded from profits generated elsewhere. Their view was *“this creates cross-subsidy and replicates the problems created by the ‘free if in credit’ banking model.”⁸*

Set against these aspirations, the PSR’s proposed approach for what is the first example of premium API development fails to deliver a substantively changed commercial model and essentially extends the obligations to provide access for non-sweeping use cases on the same terms and at no cost to TPPs. This misses the opportunity to test and learn from a pilot experience in a way that would be valuable for the attainment of one of the Committee’s core objectives.

Moreover, the proposals disregard what the Committee set out as key capabilities needed of the future entity. Again, the Committee’s report published in April 2023 clearly articulated a number of expected capabilities required of the future entity. Pivotal to this was the role of the future entity as a *“facilitator in circumstances where collaboration between open banking participants and key stakeholders (including consumers and businesses) is required. For example, this would include supporting the*

⁴ Recommendations for the next phase of open banking, Para 4.50

⁵ Recommendations for the next phase of open banking, Para 2.13

⁶ Recommendations for the next phase of open banking, Para 2.6.

⁷ Future Payments Review – Conclusion 7 pg. 71

⁸ Future Payments Review – Conclusion 7 pg. 71

development of multilateral agreements for new services and premium APIs, such as VRP for non-sweeping use cases”.

There is no doubt that the future entity will need the tools and capabilities to manage MLAs.

We noted in our response to Q9 that the SPAA scheme is focused on the development of MLAs for several potential premium services. This includes what it refers to as dynamic recurring payments (the equivalent of VRP).

It is notable that in establishing SPAA, the EPC had consciously chosen to position the MLA as relating exclusively to the exchange of payment account-related data and to the facilitation of the initiation of payment transactions between PISP and the sending bank. The underlying payment is not part of the Scheme, and the Scheme is payment scheme and infrastructure agnostic.

Our view is that even in the case of payment initiation, the MLA can and should sit outside the payment scheme as it relates to just the initiation of the payment. As set out in the diagram below (which refers to FPS only), the MLA is between the TPP and the sending bank. It may refer to obligations on the merchant or customer, but these are dealt with in back-to-back contracts with the TPP. The MLA does not include the receiving bank.

The obligations that arise between sending and receiving bank are entirely governed by their existing arrangements via their participation in the PSO and the scheme rules that apply. We consider that these arrangements are entirely suitable to sustain any “payment overlay” services.

OBL has effectively built the product proposition for VRPs and has established VRP consent that restricts the way in which it can be used to initiate payments. A core part of the Standard CEGs that govern the interplay between the TPP and the ASPSP, providing customer control in a secure environment.

The guidelines prescribe the information that customers need to be given, the permissions they are providing, and the service they will receive. The product proposition and rules defined in the Standards CEGs will be inextricably linked to the MLA and dispute management and cannot be sensibly disaggregated. Attempting to do so would create the risk of divergence between the MLA, the Standard and disputes.

This suggests to us that OBL and the future entity are the obvious candidates to orchestrate MLAs across both payment and data schemes in future and, irrespective of any decision taken in relation to VRPs, will need the capability to do so.

It is disappointing that the PSR has come to an initial view that it would be difficult for OBL to stand up the capability to take ownership of an MLA and a disputes mechanism system in the time available.

I disagree with this analysis. As set out in our response to Q2, OBL has existing capabilities that are relevant and, importantly, has existing relationships across all parties to an MLA, a deep and comprehensive understanding of the VRP proposition and how it operates, experience from the successful delivery of the managed rollout of sweeping VRPs, and an existing system which could enable intra-party disputes to be raised and processed.

My view is that these current capabilities provide an excellent starting point for the initial VRP pilot requirements to be delivered quickly, efficiently, and economically. The alternative approach that the PSR suggests will add complexity and additional time involved in standing up the VRP pilot.

I also note that, in just six years, OBL has successfully created a world-leading open banking Standard and ecosystem, as required by the CMA Roadmap, demonstrating our ability to deliver on, and quickly adapt to, short-term and long-term objectives, in many

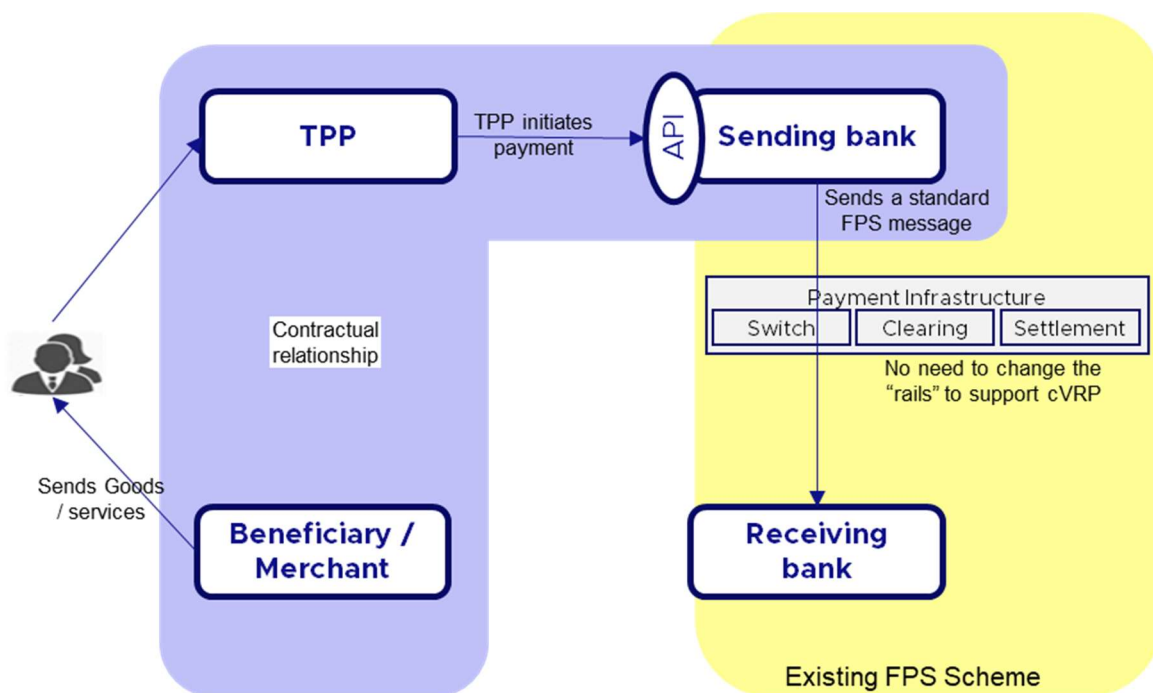
cases under challenging circumstances. However, irrespective of whether the approach is tactically justified, the future entity most certainly needs MLA development and dispute management capabilities to achieve the expectation and purpose that has been set for it.

The development of improved or new open banking propositions is inextricably linked to the evolution of premium API services. This is recognised by the Committee. It makes little sense to take a short-term decision on this point, which could *“not be seen as determinative of any future decision on who would operate other open banking payment systems”*.

Achieving that objective from the outset reduces the cost and complexity of downstream change as well as equipping the future entity with the essential capabilities that it needs. To do otherwise not only adds cumulatively to the expense and complexity of developing open banking, but risks introducing fragmentation, an inability to reuse key learnings from the pilot in other uses cases and sectors, resulting in duplication.

My concern is that cumulatively this may significantly impede the progress towards the outcomes that industry and regulators are striving to achieve.

The diagram below shows a VRP being sent on FPS rails:



- New responsibilities impact these parties
1. Agreed levels of customer protection
 2. Price for access
 3. Functionality (e.g. how sending bank and TPP interact with each other)

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