

FDATA – OBIE VRP & Sweeping Phase 2 Consultation Response

Please provide feedback on the following points:

1. The need for VRP/Sweeping - why it is so much better than any other option for the customer - control, transparency, flexibility, speed, etc.
2. Why this cannot be limited to 2 way sweeping, as this rules out many use cases which offer the most value to customers (eg. sweeping into non-current accounts)
3. How the risks that are being raised by some during the consultation are either nothing to do with VRP or significantly reduced by VRP, and why VRPs actually offer customers better outcomes
4. How sweeping providers will use smart/ethical AIS algorithms and tight/right sized VRP parameters to only sweep money the customer can afford - and why it's 100% aligned to their business model to protect the customer this way
5. How, as regulated parties, TPPs are required to manage risk and look after customers, including if they have complaints

Sweeping Consultation Questions:

1. We have proposed a revised definition for Sweeping. Please let us know whether you support the revised definition and provide reasoning for your answer.

Strongly Agree

FDATA is concerned that the sweeping definition is implied to be limited to two use cases: to avoid overdraft charges, and to benefit from higher interest rates. Although the OBIE sets out potential sweeping use cases that include destination accounts outside of current accounts into pension, investment, loans/credit, and e-money accounts, there is conflict implications in the explanation of the language used in the order and the list of sweeping use cases.

It is imperative that the definition not be limited to 2-way sweeping. To do so is to render this entire exercise moot. The costs of delivering sweeping capabilities, underpinned by VRP functionality, is disproportionate to the limited value 2-way sweeping would bring. To realise its full potential, and to achieve ROI on the implementation, sweeping needs to include payments into non-payment accounts, and be enabled between accounts the PSU has at different institutions. To limit the use cases to overdraft avoidance and negligible interest rate differences in same-institution savings accounts will only result in a non-recouperation of any delivery costs, zero-ROI, and miniscule customer betterment. 2-way sweeping essentially doubles down on the Loyalty Penalty and compounds the problematic results of high Overdraft fees (which the OBIE notes can be 10 times as high as payday loan fees). Sweeping can make a significant dent in these two problems, but those are not the only two use cases that create competitive value; again, to realise the full potential of what sweeping can do, the definition must be “open” rather than a “closed” 2-way approach.

2. We have amended the assessment criteria for considering different payment methods, and revised our analysis. Please let us know whether you support our revisions, and provide reasoning for your answer.

Strongly Agree

FDATA Agrees that VRP is the superior option to deliver sweeping.

Direct debits are an insufficient mechanism for several reasons: the delay between the creation and the first allowable payment; the amounts need to be pre-determined before the payment is attempted, which doesn't provide for the flexibility needed because account balances are dynamic; and there is a delay in the clearing and settlement of transactions that prevents real-time funds transfers. Sweeping, on the other hand, requires immediacy/real-time transfers. DD also pose the risk of opportunity costs (due to the 3-day working cycle delays) for overdraft fees, and lost savings interests. The length of time from initiation to settlement creates a knock-on opportunity cost effect down-stream. Also the double cost penalty associated with being a receiver *and* sender of funds on the Faster Payment rails are punitive and unnecessary under a VRP enabled sweeping cost model.

Continuous Payment Authority isn't a viable option due to its prohibitive costs, the economics of which make it untenable for both high (due to ad valorem fee structure) and low (flat transaction fee) value payments. Moreover, CPAs do not provide adequate transparency or control features for customers. Cost and lack of control make CPAs an insufficient alternative to VRPs for sweeping. The delay in transaction settlement poses similar opportunity cost risk as does DD, and fails the immediacy of transaction criteria.

OB SIPs do not meet the needs for sweeping because SIPs require repeated authentication; repeated authentication does not meet the definition of automated, which is foundational to the criteria of sweeping.

Direct Request may appear to be on par with VRP, however there is no real mechanism to ensure delivery; because it is still conceptual, and no delivery means exists in the market, it cannot be realistically compared to existing VRP capabilities. In fact, VRP may be the obvious rails on which Direct Request capability ultimately will be realized. [It's a bit cart before the horse to propose Direct Request as an alternative to VRP, when VRP is the logical mechanism upon Direct Request would be built.]

FDATA supports analysis of possible alternative options for delivering sweeping to the market, and agrees that proportionality requires that the question of cost (including compliance, delivery, consumer protections, and liability) be included in the assessment.

However, our conclusion that VRP is the superior option to deliver sweeping should not be impacted by including costs in the overall analysis of other options. In part this is due to how costs are categorised in the assessment; other options currently in market will be assessed only by their current operational costs, not by the sunk costs required to build the system/scheme in the first place. Any new mechanism comes with a price tag to build the system and infrastructure – VRP/sweeping is no different. However, any existing system has amortised the costs of the initial build over the number of years it's been in the market. We encourage OBIE to ensure that any sunk costs associated with a VRP build be amortised across the average number of years other solutions have been in the market, in order to have an apples to apples cost comparison between those systems. We also encourage the OBIE to consider the possible revenue streams VRP capabilities would enable for ASPSPs, and to discount the costs accordingly against the probable revenue generated – especially since VRP is not mandated and would fall under a commercial-API contractual arrangement. The overall costs should accurately reflect amortisation and profits when compared to existing systems and the revenue they generate for engaged parties.

When it comes to consumer protection features of existing options like Continuous Payment Authority on cards, the caveat is that those protections for card were determined by the market, and not imposed by a regulatory authority. VRP may not come with those exact same protections baked in, but since VRP is currently not mandated, the market has an opportunity to leapfrog to include similar protections as part of a commercial API oriented value proposition – the costs of which are borne by the PISP and the end consumer.

FDATA concludes that VRP is still the best option to deliver sweeping because it provides for real-time transactions, heightened consumer control and consent parameters, and is the lowest cost option for SSPs.

3. We have revised the considerations of consumer protection regarding the use of VRPs for SSPs. We know whether you support our revisions, and provide reasoning for your answer.

Somewhat Agree

FDATA understands the concerns expressed by consumer groups and members of the CMA9 about the potential for aggressive debt collection enabled by sweeping, and the need for adequate controls to be in place to prevent it. However, aggressive debt collection is not in the interest of TPPs, and runs counter to their general attractiveness to consumers at large.

An example of this already occurring in the market is the bank's overdraft product. While it may not be coined 'aggressive', banks routinely take funds to pay back overdraft immediately upon funds hitting the deposit account. While this ostensibly allows consumers to be protected from overdraft fees in the short term, it also puts consumers at risk for future overdraft fees as deposited funds may not cover outstanding payments (or planned payments), for goods and services the customer perceives to be more important than the outstanding overdraft owed to the bank, i.e., mortgage, rent, utilities, etc.

Just because overdrafts have existed for centuries does not mean that they are the most suitable product for the customer at any given moment, and banks routinely take their cut before anyone else to whom the customer owes money gets theirs. Overdraft is equivalent to a sweeping payment, but since it is managed and initiated by the bank, and has the weight of tradition behind it, it is considered acceptable; the bias against TPPs providing a similar service is obvious, and FDATA would like to point out the blatant hypocrisy of ASPSPs calling wolf over potential aggressive debt collection by a third party when they do so as an established practice and have done so for years.

TPPs have every incentive to work with the customer rather than against the customer's best interests to manage their debt via sweeping payments. To aggressively collect debt using sweeping payments runs counter to TPPs incentives to protect customers. The value proposition TPPs offer via sweeping is to manage that automated debt repayment *in a way that maximises the customer's financial position* and protects the customer from additional overdraft debt by keeping payments to what the customer can afford given all the other financial responsibilities that must be met within a given time frame. TPPs have every incentive to protect the customer from aggressive debt collection – to do otherwise would undermine their business model.

Moreover, TPPs have incentive to use Smart AIS algorithms to mitigate against customer detriments and provide protection against harm. Smart AIS algorithms facilitate a forecast of anticipated expenses, and when coupled with appropriate VRP parameters – over which the customer has full control – gives TPPs the functionality to sweep debt repayments within an affordability bandwidth; something that banks cannot and do not use when taking overdraft debt repayments out of customers' accounts.

SSPs use of smart AIS algorithms, used in conjunction with tightly framed, right-sized VRP parameters, mean SSPs only sweep money the customer can afford. The affordability principle is inherent to SSPs' business model, and has built-in consumer protections – something that overdraft repayment models do not. In any case, an SSP will need to use AIS functionality to predict the appropriate balance to transfer as part of a sweep, and therefore will be regulated and licensed by the FCA, irrespective of what payment method is used.

However FDATA agrees with consumer protection groups and the CMA9 that notifications before sweeping payments are initiated is a reasonable and rational requirement for SSPs. We also agree that consent dashboards – with revocation of sweeping payments at both the ASPSP and SSP end – make good sense to enhance consumer control and protection.

TPPs are regulated parties, and therefore subject to supervision and enforcement. To assert that TPPs are in a position to abuse consumers and consumer trust is tantamount to calling into question the regulatory decision to license and supervise a firm, essentially calling into question the regulator's wisdom. It suggests that the current

regulatory framework is insufficient, risky, and incapable of overseeing the actors in the ecosystem in a meaningful way.

FDATA rejects that the current regulatory framework is insufficient to protect customers. Instead, FDATA reminds the OBIE that all regulated parties in the ecosystem have an obligation to manage their risk and look after their customers. As a regulated financial institution, PISPs are required to have risk controls in place, something registered with and supervised by the regulators. These include risk assessment, governance, and complaint processes that are all submitted to and reviewed by the regulators. A robust regulatory framework already exists to further this end. This includes the management of customer complaints and redress. As regulated and licensed firms, TPPs who provide sweeping services are required to follow these rules lest their license be revoked and their business shut down.

SSPs will have to operate within the FCA's definition of sweeping, and will need to comply with the transparency requirements required by the regulators. To be in breach of these requirements risks license revocation and loss of customers; there is no incentive for any TPP SSP to run that risk.

Furthermore, as a regulated PISP activity, VRPs are under the direct FCA supervision and are covered by PSD2 liability structures. Even if VRPs end up being delivered via commercial API, irrespective of any contractual agreement between individual PISP/SSPs and ASPSPs, those supervision and liability structures remain applicable.

Sweeping and non-sweeping (VRP) still remain within regulatory and PSD2 frameworks, and therefore are subject to the same consumer protection, liability, complaint and redress systems as other payment types. The level of consumer protection currently provided under PSR Reg 76 (unauthorised transaction) and PSR Reg 93 (defective transaction) apply to all payments, VRP included – and therefore no material difference exists in the level of consumer protection for direct debits, CPA, or OB SIPs as compared to VRPs.

FDATA does not support a bilateral or multilateral contractual access framework for sweeping (and by extension VRP) as it is in direct violation of the principles of Open Banking and established regulated non-contractual access. It also violates the consumer's right to direct their data via any regulated actor of their choice. By requiring bilateral contracts, or even multiparty contracts, this limits the consumer's ability to exercise that right. Contractual access may also prove limiting as a barrier to market entry to some TPPs, despite their regulatory and licensed status. If additional work has to be done to provide consumer protections for VRP in the regulated, non-contractual access framework, then FDATA would support that route to ensure that no contractual agreement access is preserved.

4. Would you like to provide any additional comments about the revised Sweeping Evaluation consultation paper?

Several of the risks raised by other respondents to this consultation are strawman arguments, and have little to nothing to do with VRP. These include:

- Liquidity impact due to timing of automated transactions
- Banks's risk of breaching net sender cap
- Pressure/stress on faster payment systems

The potential impact on banks' liquidity due to the timing of payment initiation has little to do with the definition of sweeping/VRP nor the execution of the service; rather it is an argument meant to detract from assessing the best way to deliver sweeping to the market, and instead shifts the focus to questioning the CMA's decision to mandate sweeping, a moot exercise as sweeping has been mandated.

As OBIE has noted, the timing of VRP transactions will have no impact on end of day processing (hence, no impact on liquidity), nor the order in which payments are applied to accounts at ASPSPs. And in no previous discussions between OBIE and the PRA and Bank of England was the risk to liquidity due to increased competition due to sweeping raised. If the PRA and Bank of England do not consider this a risk, ASPSPs have little merit on which to base this assertion.

As adoption of Open Banking services have shown, it is a gradual process, and therefore any immediate uptake in sweeping payments would be highly unlikely. As it is, Faster Payments was built with significant capacity and already manages peak volumes on a routine basis that do not overwhelm it, proving its resilience. To fret that Faster Payments will not be able to handle sweeping volumes is a strawman argument.

We believe the current standards as outlined, alongside the understood legal and regulatory framework means VRPs lead to better outcomes for the consumer.

We believe that risks of unscrupulous lenders taking advantage over consumers have been over-exaggerated. There is no doubt that the Lending Standards Board and the FCA would have oversight of lenders registered, licensed, and deploying AISP services, and the regulatory oversight, rules, and enforcement would curb exploitative practices, serving as a deterrent to bad practices. FDATA believes that the Consumer Credit sourcebook (CONC) rules also apply to VRP/sweeping payments in the same way as they apply to card based payments; therefore, lending regulations already apply to VRPs, and this provides consumer protection.

As we will point out later in our response, there is little incentive to do harm to the customer, even in loan repayment sweeping payments – as 1) it risks losing that customer because of harm, and 2) risks increased regulatory scrutiny and punishment, and 3) the deployment of smart AIS algorithms to ensure proper and appropriate treatment of deposits/timing/other payment obligations are essential to TPP's business models and treating the consumer fairly by providing protections aligns perfectly to the TPP/SSP value proposition. Therefore, the overhyped risk is also a strawman argument.

We also disagree with the notion that a scheme is called for to manage VRP/Sweeping. A scheme would require contracts – something about multilateral contract management costs & difficulty to orchestrate (additional costs that would be baked into the system). The only viable way to manage fair and equitable access is to have VRP be mandated. A scheme negates requires management, legal, and operations, all of which incur costs. As sweeping is a mandated activity, is it appropriate to require the CMA9 to fund the scheme setup in order to meet the CMA Order?

VRP Consultation Responses

1. We have only made minor changes to the VRP Proposition. Please let us know whether you support our revisions, and provide reasoning for your answer.

Somewhat Agree

FDATA reiterates that it is imperative that the definition not be limited to 2-way sweeping. To do so is to render this entire exercise moot. The costs of delivering sweeping capabilities, underpinned by VRP functionality, is disproportionate to the limited value 2-way sweeping would bring. The only feasible means of delivering value under VRP/Sweeping is to ensure that all product types (including pension, investment, savings) be included, and that it cannot be restricted to products within the same provider – it must be cross-institutional in scope.

2. Are there additional comments you would like to make about the revised VRP proposition consultation paper?

FDATA has great concern over a noted response from a prominent non-CMA9 bank indicating they had no interest in the standards or framework as proposed because they would not be bound by them (page 30 of the OBIE Consultation Feedback Summary). This attitude poses significant risk to the ecosystem, and underscores the importance of mandating VRP/Sweeping for all banks in the market, not just the CMA9. If banks who are not bound by the CMA Order choose to offer VRP/Sweeping, they will not be subject to the same requirements and therefore run the risk of diverging from the framework's consumer protection mechanisms. This divergence may lead to

consumer harm, dissolution of trust in the ecosystem, and reduce the uptake of the VRP/Sweepi proposition in the market – all of which compound consumer harm both in opportunity cost and opportunities lost.

To not mandate VRP to deliver sweeping will result in a fragmented delivery of the capability to the market, eventually. Not only will this mean a disjointed and less-than-optimal value proposition to the end consumer, it contravenes the purpose of including Sweeping payments in the CMA Order. The intent of the CMA order is to orchestrate a harmonious, standardized, and effective means of providing sweeping payment services to the UK market under an open framework. A fragmented market is not an open market; nor is a fragmented market a competitive market.