8 April 2021

Consumer Protection Project Team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

To: interbankconsumerprotection@psr.org.uk
Cc:

FDATA Response to Payment Systems Regulator Consumer Protection in Interbank Payments: Call for Views (CP21/4)

FDATA appreciates the opportunity to respond to the PSR's Call for Views on Consumer Protection in Interbank Payments. We address the questions contained in the CfV, and have also provided an overview of our analysis of PSR CP21/4. Below the question responses, please find a table addressing section by section assumptions listed in the CfV for which FDATA members have a rebuttal.

FDATA Response Overview:

- While we recognise that this exercise is forward looking, it is based on the assumption that consumers are underprotected when using faster payments/PISPs and experience problems in the receipt of goods and services; FDATA questions the lack of evidence presented by the PSR as to the scale of the problem, as well as the immediate response in going so far as to consider legislation to require PISPs to join protection schemes.
- FDATA notes the lack of discussion of any collaboration with the FCA or HM Treasury on this work, despite the interrelation with the PSRs 2017, which HM Treasury owns and the FCA oversees.
- The term 'payment protection' is used throughout the Call for Views and defined in Table 1 as the equivalent of a card chargeback option; this conflates measures required when a payment goes wrong (which is already addressed by the PSRs 2017), and measures required when there is a problem with goods and services, Which could be more accurately described as 'buyer protection'.
- FDATA notes the lack of acknowledgement that the reason card schemes have chargeback/buyer protection schemes is because the card schemes have market power/dominance. There is very little risk that issuers will be left out of pocket given the incentives for merchants to refund issuers: merchants face sanctions or expulsion from the scheme if they do not refund issuers. PISPs have no such market power.
- Imposing a chargeback or similar scheme on PISPs would likely make PISP payments uncompetitive against card payments. FDATA notes the lack of acknowledgement in the Call for Views of this likelihood; rather, it appears the PSR assumes the opposite.

- FDATA also notes that a chargeback equivalent for errors with goods and services (i.e., buyer protection) is absent from Direct Debit payments (see CP21/4 footnote 48, page 29), and yet there is no discussion about requiring additional buyer protections for Direct Debit payments but there is deep scrutiny of PISP buyer protection additions and a change in the liability arrangement to accommodate them (see CP21/4 footnote 51, page 29).
- The PSRs 2017 support PISPs in order to inject competition into the payment market, particularly to provide alternatives to cards, yet many of the measures being considered in this Call for Views constitute additional burdens, obstacles, or impediments to PISPs becoming viable competition against cards.
- FDATA notes some sweeping statements that lack validation - or showcase erroneous assumptions - that misstate PISP business objectives. For example, "PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection" (pg 15, paragraph 3.8). FDATA would ask the PSR to provide evidence to back up this assertion,
- FDATA notes the asymmetric discussion of possible problems with PISP payments, while there is no commentary on the reduction in errors, improvements in security, or existing obligations of the PISP/ASPSP as regulated entities in context of consumer protection measures; FDATA proposes that this imbalance in emphasis implies PISPs are not taking their responsibilities seriously in providing a highly regulated and supervised service to consumers and paints them in a poor light.
- FDATA suggests the following be noted in regards to reduction in PISP payment errors:
    - Errors made by the payer should not be conflated with consumer initiated bank transfers where amounts and beneficiary details can be entered incorrectly. PISP payments encode the amounts and beneficiary details to prevent data entry errors
    - Errors made by a PISP or ASPSP are already under obligation to be investigated
    - Errors with goods and services fall under two types of categories:
        - Caused by bad actors (merchants): PISPs follow onboarding processes like KYC/AML and are required to do customer due diligence in all cases; PISPs have every incentive to work with reputable merchants in order to reduce bad-actor risk in the delivery of goods and services. PISPs in the FDATA community are open to additional risk mitigation mechanisms for merchant onboarding
        - Caused by bad products/services: resolution for this appropriately remains between the merchant and consumer, however PISPs acknowledge that both the PISP or merchant can offer insurance at the point of sale to mitigate this risk; this allocates cost of buyer protection fairly rather than overinflate the entire cost of the payment provision for all PISP end customers

Call for View Questions

Questions related to why we think additional protection may be needed

1. **Do you agree that there are insufficient consumer protections for interbank retail payments?**

No. We strongly disagree.

The PSRs provide strong legal protections for consumers using interbank payments, including via payment initiation service providers (PISPs):

- Each payment initiated, must be strongly authenticated by a customers bank (with two forms of banking credential)
- Irrespective of what type of payment is executed (cards, bank transfers, or payment initiation services), if money is taken from an account without authorisation, the customer is entitled to a refund from their bank (see FCA website)
- If a payment does not reach the recipient as per instruction to the payment provider, again irrespective of payment method, the customer is entitled to a refund from their bank

Where a consumer is not happy about an interbank payment - whether initiated directly or via a PISP - PSPs are required to provide well sign-posted, complaints procedures (see Chapter 11 of the FC's Payment Services Approach Document).

Furthermore, a consumer can escalate a complaint about an interbank payment service (whether initiated directly or via a PISP) to the Financial Ombudsman, who can award compensation to a consumer.

In terms of **buyer protections**, which come into play once a consumer has **authorised** a payment to a merchant, consumers have strong **legal buyer protections** under the Consumer Rights Act 2015. Regardless of the payment method used, the protection entitles consumers to:

- Goods that are of satisfactory quality, as described, fit for purpose, and last a reasonable length of time
- return goods within 30 days and receive a full refund
- where a refund is not given payments can be disputed in the small claims court

In addition to these requirements, card issuers can offer *additional* buyer protections. Where the merchant refuses a refund, you can additionally ask your bank (the card issuer) for a refund, known as a 'chargeback'. Card schemes have been able to voluntarily introduce buyer protection in the form of chargeback because of their dominance and market power.

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

Just because card schemes have the ability to offer this additional, voluntary buyer protection to consumers, does not mean that there are *insufficient* consumer protections for interbank payments. The following table demonstrates the high degree of consumer protection offered by interbank payments (including those initiated by PISPs). Chargeback/ Section 75 is the only differentiator.

Protection	Credit Card	Debit card	Faster payments	Payment Initiation Service
Consumer protections				
Legal protection for **unauthorised transaction**	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer
Legal protections for wrongly executed transactions	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer	PSRs: Bank must refund consumer If it is found to be PISPs fault, PISP must then refund bank
Security	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication (not enforced until 14 September 2021)	Strong customer authentication	Strong customer authentication

Buyer protections				
Legal protections for **<u>authorised</u> transactions** where a customer does not receive goods or services satisfactorily	Consumer Rights Act: Customer entitled to a refund from merchant Consumer Credit Act 1974 - bank must refund customer	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant	Consumer Rights Act: Customer entitled to a refund from merchant
Voluntary protections for authorised transactions where a customer does not receive goods or services satisfactorily	Chargeback	Chargeback	No industry wide voluntary scheme	No industry wide voluntary scheme

2. **To what extent do you agree that currently the industry does not provide and consumers do not demand appropriate levels of protection?**

<u>Industry provision of consumer protection</u>

Requirements

We strongly disagree that the industry does not provide appropriate levels of protection. PSPs (including PISPs) must meet stringent requirements for consumer protection (as described above), in order to become and remain authorised. Where levels of consumer protection are deemed to be lacking, the Financial Conduct Authority, which has a Consumer Protection Objective, will take supervisory or enforcement action against individual firms.

The FCA has recently bolstered its ability to supervise PSPs against consumer protections requirements (including PISPs) by extending its principles for business to payment and e-money firms (these principles already applied to banks). These principles include that PSPs must:

- observe proper standards of market conduct.
- pay due regard to the interests of its customers and treat them fairly.
- pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

Incentives

In addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs take steps beyond the legal requirements to further the interests of their users.

This includes:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, setting out the expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to prompt;y receive refunds (e.g. through using payment refund functionality developed by OBIE)

Evidence

No evidence has been presented by the PSR or other regulators of specific issues arising from the levels of consumer protection currently provided by PISPs.

Consumer demand for consumer protection

Consumer representatives (such as Which?) have long demanded that aspects of interbank payments that are open to fraud and scams be tightened up. The concerns raised by the Which? Super Complaint about authorised Push Payment Scams have been borne out with UK Finance highlighting that APP scams rose from £345m in 2018 to £456m in 2019. Rightly, this area of consumer harm has been addressed with initiatives such as Confirmation of Payee and the Contingent Reimbursement model. This demonstrates that clearly, consumers (represented by organisations like Which?) do demand high levels of consumer protection. This is particularly the case in the UK which has been the first country in Europe to introduce initiatives to tackle APP fraud.

Moreover, PISPs are competing with the card schemes and issuers who are actively ensuring consumers are educated about the additional buyer protections they offer, increasing the demand for this type of protection e.g. Visa How You Pay Matters; Barclaycard, Get Credit Confident, Protect your purchases

The high degree of consumer protection demanded by UK consumers, and the highly competitive market for providing payment services in retail and e-commerce, strongly incentives PISPs to ensure consumers trust the new payment methods they are introducing. This supports a market led approach to addressing any gaps in buyer protection, where those gaps are deemed to be preventing take-up of PIS.

3. **Will there be any changes to consumer or industry behaviour that would reduce the size of harm without the need for intervention? Why (not)?**

As noted above, in addition to the current consumer protection requirements, PISPs are strongly incentivised to ensure good consumer outcomes. They are largely new to the payments market and must build trust with consumers as part of encouraging adoption, if their businesses are to remain commercially viable. This means that PISPs will take steps beyond the legal requirements to further the interests of their users.

This will include:

- Rigorous onboarding of merchant clients (through which they provide PIS)
- Contractual agreements with merchant clients, e.g. setting out expectations regarding customer disputes
- Operating customer care teams to deal with queries, complaints and payment disputes
- Ensuring customers are able to promptly receive refunds (e.g. through using payment refund functionality developed by OBIE)

Questions related to which payments might need additional protection

4. **Do you foresee any difficulties with providing the same protection for on-us payments as those that use an interbank system?**

No.

5. **Should payment protection be introduced for use cases related to paying for purchase transactions and/or any other use cases? Why (not)?**

FDATA does not fully understand this question.

However, we would like to point out that the Consumer Rights Act 2015 Section 20(16) notes that "If the consumer paid money under the contract, the trader must give the refund using the same means of payment as the consumer used, unless the consumer expressly agrees otherwise.'

This clearly applies to PISP payments, and would continue to apply to any current and future use cases for PISP interbank payments. We fail to see how adding additional payment protections atop the current Consumer Rights Act provisions would bolster consumer protections; especially considering there are no additional provisions for the choice of cash as a payment instrument, and yet consumers continue to pay with cash despite not having additional payment protections beyond those provided for in the 2015 Act.

While this nascent payment method is working to build trust with consumers, there is still a degree of responsibility borne by consumers when transacting. For those consumers who use cash, there are limits to the protections afforded then when a good or service is faulty or subpar; yet consumers still choose cash for some transactions. To mandate that PISPs bear full responsibility for educating and meeting a theoretical level of informed consent about the risks attached to using PISP interbank payments is disproportionate. Measuring fully informed consent across all consumers is an impossible task, let alone an impossible standard to meet. Consumers must accept a certain degree of responsibility for their choices, and PISPs must meet a reasonable standard of informed consent. To mandate otherwise is unenforceable and unmeasurable regulation.

Speaking to the shift in liability framework, any proposed additional liabilities borne by PISPs will certainly come with additional costs built into the service. This additional cost is either carried by the PISP directly, or passed on to the merchant client or end consumer. In either case, this diminishes the competitive advantage PISP has against card payments. The additional buyer protections under the chargeback mechanism are funded by merchant fees, scheme fees, and interchange fees, as well as annual fees paid by the end consumer. The PIS business model currently does not have these additional fees built in, and any attempt to force PISP to assume liability would create a distinct barrier to entry for a number of PISPs, and increase cost overheads for those already in the market to a point that either 1) forces a number of PISPs to exit the market, or 2) force PISPs to increase fees thereby diminishing the competitiveness of PISP against cards, thereby frustrating the aim of PSD2, and failing to provide an alternative to the chokehold card schemes have on the market.

6. **To what extent should payment protection be introduced for retail purchases with the liability for refunding the consumer imposed on either sellers or the seller's PSP or PISP?**

We strongly disagree with imposing liability for refunds for retail purchases onto PISPs. Rather, any buyer protection coverage should fall upon the merchant to provide.

This Call for View is in danger of conflating merchant risk with payment instrument risk, and the two must be dealt with separately. High risk merchant risk - such as airlines - is not the same as high risk payment instruments, of which PIS is low risk, as it is not actually a payment instrument but an instruction to initiate a payment. If the PSR is intent on examining the question of buyer protection, then it must separate that discussion from PIS risk, and apportion the accountability for making the consumer whole if something goes wrong with the delivery of the good or service to the merchant providing that service rather than the chosen payment method. Moreover, the Consumer Right Act of 2015 provides for customer redress for all payment instruments if something goes wrong with a purchase properly authorised by the end-consumer - redress provided by the merchant, not the payment service provider.

It should be noted that the vast majority of online merchants have well established refund and dispute resolution processes and procedures. Chargeback is a last resort option, where the customer has not been granted a refund by the merchant. We would like to see more evidence from the PSR about the proportion of purchases which actually do end-up being disputed, and which result in chargeback claims.

Chargeback is flawed and prone to fraud

According to the British Retail Consortium, instances of fraudulent chargeback claims (aka friendly fraud) more than doubled between January and June 2020. This is because it is now easier to commit than ever before. Consumers are cloaked by anonymity when shopping online, and merchants aren't always present at the point of exchange to confirm if goods arrived safely. Imposing liability on PISPs would shoulder PISPs with the burden of investigating both genuine and fraudulent disputes, adding costs and barriers to entry for PISPs. Individual PISPs would not have the resources or economies of scale that card schemes and card issuers have to investigate this type of abuse.

Chargeback is available to card schemes because of their market dominance

With two major card brands dominating payments, the card issuers can afford to refund customers out of pocket. Through card scheme rules, the issuer who has refunded the customer can claw back the cost of the refund by charging it back to the merchant. If the merchant refuses, ultimately they can be kicked out of the card scheme, meaning they won't be able to accept the major card brand. The threat of not being able to accept a major card brand removes any risk that the issuer won't be made whole again by the merchant and makes chargeback efficient and low cost for card issuers.

PISPs could enact rules that ensure a merchant can no longer accept PIS payments where they fail to refund the PISP. However, a merchant could easily switch to another PISP, or back to accepting cards - they are not incentivised to accept any particular type of PISP, and there are currently over 70 PISPs in the UK (according to the FCA register). While it is unlikely that merchants would refuse to refund PISPs, they could negotiate more favourable refund thresholds with PISPs, than they can in card schemes. This would ultimately drive-up the costs of individual PISP transactions.

Imposing liability on PISPs is contrary to existing law (the PSRs)

The PSRs ensure that there are strong consumer protections for the correct execution of bank transfers, including where those bank transfers are initiated by PISPs. Consumers are entitled to a refund from their bank if something goes wrong with the payment. The PSRs do not impose liability for the successful sale of goods and services on the bank or the PIS. Imposing liability on PISPs would contradict the liability framework set out in the PSRs.

Imposing liability on PISPs would also contradict the policy intentions of the PSRs. The EU directive PSD2, which forms the basis of the PSRs in the UK, was revised in 2017 in part to address the dominance of the card schemes by supporting new types of payment providers into the market. By imposing liability on PISPs, the PSR will increase PIS transaction costs so that they are uncompetitive with those of the cards (which they are able to keep low due to their dominance and market power). This will further entrench the dominance of cards as a payment method in the UK.

Alternatives to PIS liability should be left to the market to develop

It should be left to PISPs to develop their own commercial propositions for building consumer confidence in PIS as a retail payment method. There are a range of options for PISPs and merchants to consider, some of which are already being implemented in the market, as alternatives to taking on liability for refunds:

- PISPs working with merchants to provide extra sign-posting to merchants' existing refund policies and procedures
- PISPs could work with merchants to offer insurance for purchases (which may be especially appropriate for high value purchases, such as airline tickets)
- In extreme cases, where there is a refund dispute, a more streamlined process for small claims court claims could be developed, where some of the burden is removed from the customer, e.g. by the merchant or PISP.

7. **Would changing the liability framework so that sellers or their PSPs are liable for loss lead to a change in commercial relationship between sellers and their PSPs? Why (not)?**

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes' dominant position, and frustrating the competition aims of the Payment Services Regulations.

8. **Should any new payment protection arrangements be extended to recurring and variable recurring payments? Why (not)?**

No. The Open Banking Implementation Entity has consulted extensively on measures to ensure that consumers would be highly protected when using variable recurring payments. The OBIE points to the existing legal protections in place under the PSRs, and has developed additional measures to protect consumers using VRPs.

The FCA's Approach Document is also clear (section 8.230) that existing variable recurring payment methods, such as direct debit and continuous payment authority are covered by a requirement for the consumer to be fully refunded '*If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances'.* There is no reason why this guidance should not apply to variable recurring payments initiated by PISPs.

9. **To what extent do you think payment protection for recurring and variable recurring payments should be extended beyond the last payment?**

There is already clear consumer protection for recurring and variable recurring payments under the PSRs, as outlined in the FCA Approach Document at section 20.53 onwards, and in the OBIE consultations on variable recurring payments mentioned above.

We do not agree with imposing liability on PISPs for a whole series of variable recurring payments. This would be extremely financially burdensome for PISPs, and would create barriers to entry for new PISPs.

It is well known that the protections afforded by the Direct Debit Guarantee Scheme have been open to abuse, which has been extremely costly for banks. For example, fraudsters have used the scheme to claim back entire series of mortgage payments[1]. We believe it is highly likely that imposing liability on PISPs will attract this type of abuse. However, PISPs, being likely smaller than banks, will be even less able to dedicate the resources required to investigating this type of fraud.

10. **To what extent do you think a threshold value should be used to determine which payments are covered under payment protection, and – if you agree a threshold should be used – what do you think that threshold should be?**

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional 'buyer' protections on PSPs, before value thresholds are discussed.

11. **To what extent are you currently able to identify different types of payments?**

PISPs contract with the merchants they initiate payments for, so are able to identify the types of payments initiated to those merchants. The Open Banking standards allow for PISPs to pass this information to banks, in the form of Payment Context Codes.

[1] https://www.lexology.com/library/detail.aspx?g=46f61ab4-92fd-4e9f-8089-1380b982b49d#:~:text=This%20guarantee%20provides%20that%20if,your%20bank%20or%20building%20society.

12. **Do you think a combination of use case and transaction value should be used to determine which payments are covered under payment protection? Why (not)?**

This question is too granular for a Call for Views. More consideration needs to be given to the necessity of imposing additional 'buyer' protections on PSPs, before value thresholds are discussed.

13. **Do you think the relationship between sellers and their PSPs might be affected if protection is offered on a use-case basis? Why (not)?**

Yes. Imposing liability on sellers or their PSPs, would increase the costs of individual transactions made with non-card payment methods such as bank transfer and PIS. It would likely lead to merchants reverting to using cards as a primary payment method, further entrenching the card schemes' dominant position, and frustrating the competition aims of the Payment Services Regulations.

14. **To what extent are you currently able to identify the different types of payee, including whether the payee is a business, organisation, or consumer?**

PISPs contract with merchants to enable merchants to offer PIS as a retail payment option. Therefore, not only can PISPs identify the payee, and the type of the payee, but PISPs will have undertaken extensive due diligence on the payee, including assessing the payee against acceptance criteria, restricted business lists, reputation and track record as a retailer.

15. **Do you think the identity of the payer and payee should be used to determine which payments are covered under payment protection. Why (not)?**

Payment protection here is equivalent to buyer protection, and therefore confuses the question. All payments are covered by the PSRs 2017 when an error with the payment happens. The question of who makes the customer whole when a good or service is erroneous is one of liability, and according to the Customer Rights Act of 2015 that liability falls on the seller, who in the question above is the payee. We submit that this question as written is moot.

16. **To what extent would a consumer protection governance process be beneficial for interbank payments?**

Giving the consumer clear instruction and guidance when something goes wrong with a payment is good for interbank payments. These instructions already exist, and can be found on the FCA website, and consumers are instructed to contact their ASPSP as a first step in the process, irrespective of the type of payment instrument used.

In terms of a buyer protection governance process, this also already exists under the Consumer Rights Act of 2015, Chapter 2, sections 19-24 detailing those specific rights and protections.

17. **Would having a standardised process for claiming consumer protection make you more confident in using interbank systems or recommending them for retail purchases to your customers? Why (not)? [Merchant pov]**

Again, we refer to the existing processes outlined by the PSRs 2017 and the Consumer Rights Act of 2015 that provide a standardised process for claiming consumer protections.

18. **To what extent can promoting consumer awareness around the level of protection offered, including the suggestions outlined in paragraphs 5.4 to 5.6, help empower consumers to make choices that protect them?**

Consumer awareness is always important. No one single party is best placed to lead on the whole of consumer protections available. Rather, the accountable party for payments is best placed to lead on consumer education (PIS/PSP communication on what happens when a payment goes wrong; Merchant/seller on what to do if a good or service is disputed).

19. **Who do you think is best placed to ensure consumers understand the protections offered them and why?**

PISPs/ASPSPs are best placed to educate consumers on payments and what protections are available if the payment instrument goes wrong; Merchants are best placed to educate consumers on buyer protections if a good or service is faulty. The party accountable for the thing being contracted with the end-customer is best placed to provide insight and overview of what protections are offered.

20. **Which party involved in an interbank payment do you think a consumer is most likely to ask to resolve a dispute and why?**

As per the PSRs 2017 guidance, a consumer is most likely to contact their bank if a payment has gone wrong. Should there be a dispute or defect with a good or service, the first point of contact for resolution is with the merchant. However, it should be noted that PSPs and PISPs are required to make complaint processes clear to the consumer. These procedures can be used to raise issues with the merchants as well; when PISPs provide payment services, they are likely to work with the merchant to assist in resolving the issue.

21. **How, if at all, would your response change if retail purchases through interbank payment systems were to increase?**

Our response would not change.

22. **To what extent do the current communication channels you use allow you to effectively address consumer enquiries and issues with other parties involved in a disputed interbank payment?**

FDATA members each have their specific communication channels; we cannot provide detail on this at an aggregate level.

23. **What do you think about the options outlined in paragraphs 5.18 to 5.27? Are there any alternative options you think we should consider?**

The assumptions presented in the options outlined dismiss the practical incentives for PISPs to ensure that consumers trust and use payment initiation services for merchant transactions, and that any participation in a payment protection governance scheme would have to be mandated and enforced. It also assumes that said payment protection governance scheme is required to provide coverage missing in the current regulations that already provide for consumers to be made whole when a payment goes wrong.

We would also like to point out that the example of Confirmation of Payee as a payment governance system that includes PISPs is misleading. PISPs were not included in the design nor participation of CoP, and PISPs still remain outside the system despite the current OBIE consultation intended to solicit PISP interest in CoP participation.

PISPs have every incentive to coordinate and collaborate to find an industry approach and solution, but so far PISPs have been excluded from the practice. To rush in with a legislative approach first, rather than inviting PISPs to be part of the solution design process, it puts the cart before the horse; it also denies PISPs the opportunity that card providers had: to have a hand in crafting the solution to the challenge.

24. **Who do you think is best placed to enforce interbank consumer protection claims against both payment initiators and payment service providers?**

The FCA is already responsible for supervising and enforcing interbank consumer protection requirements on PSPs and PISPs.

25. **To what extent do you think legislative or regulatory intervention is required to introduce a process that allows consumers to raise an interbank payment dispute?**

We strongly disagree that legislative or regulatory intervention is required. Payment Initiation Services have only been subject to regulation since 2018. No evidence has been presented of any market failure leading to poor consumer outcomes through the use of PISPs. It would be extremely disproportionate and unfair to impose further regulation on PISPs. It would create barriers to entry and likely undermine the competition objectives of the Payment Services Regulations.

26. Do you agree with our assessment of the likely costs and benefits?

We strongly disagree with the assumption that retail interbank payment use will grow more slowly if the PSR's proposed 'buyer protections' are not put in place. No evidence has been presented to support this statement.

The PSR has not discussed any of the harms present in the current card market, and whether the benefits of the introduction of PIS, with its additional security benefits could hugely outweigh any hypothetical purchase dispute issues. Payment initiation services are secure by design. Because they don't involve the sharing of card details, or any banking credentials, they eliminate unauthorised payments.

In 2019 payment card fraud was £671.4 million on a total payment volume of £800 billion or 8bps (about £1 out of each £1000). On the other hand, interbank fraud was £528 million[2] on a total payment volume of £7.4 Trillion[3] or 0.7bps (£0.07 out of each £1000). As such bank fraud is less than a tenth of card fraud.

The PSR has also not discussed the impact that imposing liability as proposed would have on the cost of individual transactions, which would be passed on to consumers, and, as we've discussed above, would make PISPs uncompetitive with the card schemes.
Nevertheless, we agree with the listed costs (although these have not yet been quantified), and believe these will amount to a significant and disproportionate burden on PISPs, which could affect their ability to operate in the payments market.

We do not agree with some of the stated benefits:

- Introducing liability on PSPs and PISPs for purchases will have no bearing on 'payment errors' as PSPs and PISPs are already legally responsible for payment errors. The Payment Services Regulations ensures that consumers are entitled to a refund from their bank if there are errors with a payment.
- We do not believe that a higher proportion of consumers will make claims when things go wrong with purchases. Consumers already make claims against their merchant when goods and services are defective. This would remain the case whether or not additional requirements are imposed on PISPs.

[2] https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202019%20-%20FINAL%20ONLINE.pdf

[3] https://www.bacs.co.uk/NewsCentre/PressReleases/Pages/PayUKProcessesRecordPaymentVolumesValuesIn2019.aspx

27. **Which costs and benefits do you think are likely to be the most significant and why?**

We are most concerned with the PSR's point that an indirect cost to the system would be: "a reduction in payment system participants if PSPs or PISPs stop offering interbank payment services (or decide not to begin offering them)" (6.6).

If the PSR's intervention leads to PISPs leaving the market, clearly, the costs will have outweighed the benefits. The card schemes' dominance will be entrenched, leading to continued high prices for merchants, which are ultimately passed on to consumers. The entire exercise of enabling PISP as a competitive alternative to card schemes will have been for not, not to mention an incredibly expensive exercise that fails to fulfill on the promise of PSD2 and the PSRs 2017.

28. **Who do you think would and should bear the cost of additional consumer protection and/or governance?**

If any payment participant is required to bear these costs, it should be the banks. They have ultimate responsibility for executing inter-bank transactions, and also have the resources to meet the significant costs that would be imposed.

29. **To what extent would consumer protection measures introduce significant costs to your business or the need to change service contracts with your customers?**

FDATA members each have their specific service contracts with their respective customers; we cannot provide detail on this at an aggregate level.

<u>CALL FOR VIEW ASSUMPTIONS / REBUTTAL</u>

Section	PSR Statement	TPP Community Response
1.3	"If people are going to use interbank payments for increasingly varied purposes, adequate safeguards need to be in place that manage what happens when something goes wrong with a payment – and existing protections and liabilities may not be sufficient."	**Consumers are fully protected regardless of payment type under the PSRs when 'something goes wrong with the payment'.** The PSRs provide legal protections for wrongly executed payments regardless of payment type. The Customer is always entitled to a refund by their bank if 'something has gone wrong with the payment' and it was the PSPs fault. (see Regulation 91 of the PSRs 2017. For misdirected payments, under PSRs 2017 Reg. 90(3) The payee's payment service provider must cooperate with the payer's payment service provider in its efforts to recover the funds, in particular by providing to the payer's payment service provider all relevant

		information for the collection of funds.
1.4	Depending on which payment system they use, consumers may find they have more limited options when something goes wrong with their purchase	This statement indicates the consultation is focused on buyer protection, rather than protections when something goes wrong with the payment.
1.5	Consumers could, in these cases, also rely on a PSP's complaints resolution procedure where the Ombudsman scheme is unavailable.	The FOS scheme is always available where a consumer or micro-enterprise wishes to escalate a complaint about a payment service. See Chapter 11 of the FCA Approach Document.
1.5 / 3.0	We think the market is unlikely to improve the current level of protection for consumers on its own due to a number of market features. These include: • misaligned incentives of payment providers • payment initiation service providers (PISPs) not being direct or indirect members of payment schemes • consumers taking less care when making payments if they have payment protection (for example, moral hazard) • difficulties in identifying different use cases and payee types	**The level of consumer protection is already high for consumers.** How has the PSR concluded that providers are not incentivised / have misaligned incentives? Why does PISPs not being direct or indirect members of the schemes mean protection for consumers is unlikely to improve?
1.7	Because we expect retail payments via Faster Payments to continue to grow, and use cases to evolve and become more varied, we are considering how we can ensure that adequate levels of consumer protection are provided for these payments.	The PSRs 2017 provide consumer protection for payments.
1.8	We want to see consumer protection measures that benefit consumers by making it easier to make a claim when something goes wrong, and make it clear to businesses where liabilities lie. This will help us to fulfil our objective to take into account and promote the interests of those who use the interbank systems to make payments. Consumers and businesses should feel confident using interbank payments, including for retail payments. Greater confidence will also support	As above, consumers are entitled to a refund if something goes wrong with their payment under the PSRs 2017.

	our competition and innovation objectives as it may help increase the competitive potential of Faster Payments.	
1.9	We are considering whether there should be further rules or arrangements around liability on purchases to ensure that consumers can easily be refunded when something goes wrong with their purchase. We are also considering how these cases could be identified.	Is the PSR also considering the impact on competitiveness of payment methods if liability is shifted? The card schemes can afford charge-back because of their dominance and market power. Imposing equivalent systems onto PISPs would likely make PIS un-competitive with cards and defeat the PSRs 2017 objectives.
1.10	Regardless of the level of protection offered, for that protection to be effective, consumers need to understand where protection is available and, if so, how to use it. This includes knowing who they should approach when something goes wrong. Any additional process is likely to need a level of governance. Ways of ensuring effective governance and adequate protections in all circumstances include, for example: • embedding formal provisions in the payment system rules • including consumer protection under a new payment governance system • creating a voluntary industry-led process	Guidance is already very clear (e.g. FCA website). If something goes wrong with a payment, customers should contact their bank (regardless of whether the payment was initiated by a PISP).
1.11	Improving the effectiveness of consumer protection in interbank payment systems is likely to generate direct costs. We will assess the proportionality of any action we propose against the expected benefits they bring.	The card schemes can afford charge-back because of their dominance and market power. Imposing equivalent systems onto PISPs would likely make PIS un-competitive with cards and defeat the objectives of the PSRs 2017.
2.3	[PISPs] make transactions on the consumer's behalf while providing nearly instant payment to the merchant, potentially reducing the costs associated with accepting payments. We think incentives like this could continue to improve opportunities for retail payments over interbank payments, and especially over Faster Payments.	PISPs do not 'make' i.e. execute transactions, they only submit payment orders to the customer's bank on their behalf; the bank then executes the payment.
2.4	In comparison, not every interbank payment is protected in the same way5 and, at present, there is no agreed process for claiming the protection	The PSR needs to be much clearer about what protection they are talking about. At the moment two things are being conflated:

	that is available.	● Consumer Protection when something goes wrong with the payment ● *Buyer protection* in case goods and services do not arrive
2.5	This includes assessing whether consumers are protected when there is: • a fault in the service provided by a PSP or a PISP • a fault with goods or services purchased • a mistake with the payment due to an error caused by the payer • a fraudulent act that causes consumers harm	● There is clear legal protection when there is a fault in the service provided by the PSP or PISP (i.e. Reg 91 of the PSRs 2017) - bank must refund customer ● This is buyer protection and needs to be separated out from the functioning of the payment service ● There are clear legal protections for misdirected payments, and the PSR's own initiative for maliciously misdirected payments ● A fraudulent act that causes the customer harm - is very vague - the PSR needs to be clearer here.
2.8	"Payers can dispute their payments when something goes wrong"	There are already clear legal requirements for disputing interbank payments, including those initiated by a PISP, under the PSRs 2017.
2.9	We realise enhanced confidence in interbank payments may also help increase the competitive potential of these systems against other more traditional retail payment methods (for example, card payments). We are, however, aware that consumer protection by itself will not be sufficient and that other measures are likely to be necessary to enable greater competition between retail payment methods. For that reason, we will not focus in detail on promoting competition through this call for views.	The PSR has stated that improving consumer protection in interbank payment systems will have direct costs. It must consider whether these costs will impact the effectiveness of competition in the payment services market. The PSR must also consider that if they've conflated buyer protection and consumer protection if a payment goes wrong - any costs associated with buyer protection are disproportionate and shift the liability to the PISP - this changes the very nature of the business model, damages the competitive offering against cards, and has a down-the-line impact on the liability model already established in the PSRs 2017.
3.1	Faster Payments was used for recurring payments set up by consumers via standing order, and for one-off low-value, low-risk payments, such as those between consumers.	Is it true that standing orders are used by consumers? Most recurring payments to merchants and businesses are by Continuous payment authority (cards) and direct debit. Merchants are very unlikely to ask consumers to set up standing orders to make payments.
3.4	Currently, consumers cannot claim payment protection from their PSP or PISP when using interbank payments for retail purchases. We think the existing protections and liabilities do not always give consumers an appropriate level of protection when they make interbank payments.	'Payment protection" is a vague term, and risks confusing situations when something goes wrong with a payment, with situations when something goes wrong with a purchase. Despite defining the term 'payment protection' in Table 1 as the equivalent of a card chargeback option, the

		term itself implies that it covers the payment alone. We suggest the PSR use the term "buyer protection" if they are referring to protections when something goes wrong with the purchase of goods and services. Using payment protection confuses things with the existing legal protections that consumers do have under the PSRs 2017 if something goes wrong with the payment itself.
3.5	The market is, however, unlikely to provide enough protection for consumers on its own due to a number of market features, including problems with incentives, the ability to identify retail payments, and consumers taking less care when making payments if they have payment protection (for example, moral hazard).	This is an incredibly sweeping statement. PISPs have every incentive to ensure good consumer outcomes. They are new to market and must build trust as part of an encouraging adoption, if their businesses are to remain commercially viable.
3.6	First, unlike issuers in card payments, PSPs do not earn revenue when initiating a payment in Faster Payments. This means the additional cost related to providing more consumer protection for these payments isn't directly balanced with additional revenue. The incentive to provide an appropriate level of consumer protection for retail payments, therefore, is not as significant for interbank payments as it is for card payments.	PISPs do earn revenue when initiating faster payments. However, if PISPs were required to take on liability for defective goods and services, providing PIS would soon become unprofitable.
3.6	The incentive to provide an appropriate level of consumer protection for retail payments, therefore, is not as significant for interbank payments as it is for card payments.	The reason card schemes can provide chargeback is because they have a duopoly. There is extremely low risk that the issuer will not be reimbursed by the merchant, given the risk to the merchant of being kicked out of the payment scheme, and unable to accept Visa or Mastercard. There is every incentive for PISP to ensure that customers can trust in their offering, however they are up against a duopoly scheme with enforcement mechanism that do not yet exist for PISP.
3.7	Second, even where a PSP (or a PISP) wants to provide effective protection, it will require the cooperation between the PSPs of both the payer and the payee at the very least. These are unlikely to have an interest in coordinating with each other, because by doing so the payee's PSP may actively be assisting the payer's PSP, a competitor, and its customers. At the same time,	It is not true that protection would always require the cooperation of the payee and payer's PSPs. A PISP could provide a refund directly to a consumer, and be reimbursed directly by the merchant (with which it has a commercial arrangement). However, it is also untrue to state that PSPs are unlikely to have an interest in coordinating with each other. PSPs coordinate with each other already, when fraud occurs,

	they could potentially harm their commercial relationship with their own customer, the merchant.	or as required under PSRs 2017 Re.90(3) when a customer misdirects a payment.
3.8	Third, PSPs and PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection. PSPs and PISPs that provide protection promote end-user trust in the whole interbank system and not just the services they provide.	Stating that PISPs might not fully recognise the value of providing consumers with protection is an incredibly misguided view of how PISPs operate. PISPs' strategy is to compete with cards by offering a more attractive consumer payment method. Anything that can increase the trust of a consumer is incredibly important to PISPs.
3.9	Card payments schemes have rules for parties involved in the payment, with sanctions (for example, imposing fines) for those not adhering to the rules. This is likely to solve the coordination and conflicts of interest problems between participants. We considered whether the centralised schemes in interbank payments could perform a similar function. We have identified two potential problems:	Card schemes can maintain chargeback rules only because they have market power and dominance. The merchant has everything to lose from being kicked out of the card scheme. PISPs have no such market power. A centralised scheme would pass on costs to PISPs and make PIS payments uncompetitive with card payments.
3.10	Our view is, however, supported by the difficulties experienced in response to APP scams and the development of Confirmation of Payee. Both required coordination by payment providers and ultimately resulted in our intervention.	CoP PSPs are the ASPSPs - PISPs have not been included in CoP, and are still outside the tent despite the current consultation OBIE is running to solicit PISP interest. This statement about coordination issues should be put in context: it was ASPSPs who frustrated that process, as PISP were not involved. PISPs have every incentive to coordinate and collaborate to find an industry resolution, but so far have been excluded from the practice. We cannot know for certain that they wouldn't have a positive influence on industry coordination.
3.11	Payments initiated by a PISP require additional coordination. PISPs may interact with both the payer and the payee, as they have the ability to initiate a payment from a payer's account and contract with a payee to ensure it is paid. This suggests they may have the incentives and ability to provide some coordination. A PISP would, however, need to coordinate with both the payer's and payee's PSPs. Although the PISP may have a contractual relationship with the payee, it does not have any formal relationship with the payee's PSP. For similar reasons to those outlined in paragraph 3.7, the payee's PSP may lack the	This misunderstands the relationships between PISPs and Payees. PISPs contract with payees in a similar way to how acquirers contract with payees - i.e. to enable payees to accept a form of payment - in this case, PIS as a form of payment. Why is a formal relationship with the payee's PSP needed in order to coordinate with the merchant to provide the consumer with a refund, for example? The OBIE has already developed a standard for enabling refunds in PIS payments. https://standards.openbanking.org.uk/customer-

	incentives to coordinate.	experience-guidelines/pis-core-journeys/payment-refunds/latest/
3.13	First, PSPs may not currently have the technological capabilities required to identify different use cases or payee types in Faster Payments. We discuss these issues in more detail in Chapter 4.	PSPs have the capability to understand payee types in PIS initiated payments because the OBIE API standards provide Payment Context Codes (PCC) which TPPs provide when they initiate a payment. This enables a PSP to understand whether a payment is • BillPayment • EcommerceGoods • EcommerceServices • Other • PartyToParty See: https://openbanking.atlassian.net/wiki/spaces/DZ/pages/645367011/Payment+Initiation+API+Specification+-+v3.0
3.15	Third, PSPs may also expect that merchants who choose to use Faster Payments may be doing so due to the lower costs of accepting payments. This could, in part, be due to less stringent checks on merchants in Faster Payments compared to card schemes. If PSPs are unable to scrutinise payees in a similar way to card schemes, they may be unwilling to provide adequate consumer protection for interbank payments.	Merchants who choose to use PISPs are likely doing it because of lower costs, as well as less friction in consumer journeys, than cards. However, PISPs are required under AML legislation to undertake due diligence of merchants (with whom they have a business relationship).
3.29	Payment protection doesn’t exist in isolation: consumers also look towards other forms of protection, such as retailer protections, before they expect to fall back on payment protections. Preventative measures that change consumer behaviour and stop issues arising in the first place are the most effective way of saving costs for both the victims and their PSPs or PISPs, who currently face the cost of investigating errors. 34	Again, the term ‘payment protection’ here is misleading; the PSR has defined the term to be equivalent to chargeback options under the card schemes, and therefore is essentially buyer protection.
3.31	Payment protection doesn’t exist in isolation: consumers also look towards other forms of protection, such as retailer protections, before they expect to fall back on payment protections.Preventative measures that change consumer behaviour and stop issues arising in the	Given that buyer protections such as chargeback have been developed in the commercial space by the card schemes, would it be competitively fair to new entrants such as PISPs to make customers aware of the commercial features of one payment type (cards) over the the lack of commercial features of others (such as PISPs)?

	first place are the most effective way of saving costs for both the victims and their PSPs or PISPs, who currently face the cost of investigating errors. 34	
3.34	Although the use of interbank payments for retail transactions is currently low, we expect them to grow (albeit more slowly than if there were protections in place)	The assumption that interbank payments will grow faster if buyer protections (equivalent to chargeback) are in place, does not take into account that such protections would add significant costs to interbank payments and would make them uncompetitive with card payments.
3.34	...and, given that the existing legal protection provided by the PSRs 2017 do not always apply for these payments, for the potential for harm to increase as a result.	Protections provided by the PSRs always apply to interbank payments. The issue here is that the PSRs do not cover 'buyer protection' i.e. what happens if a payment is made and goods and services are not provided satisfactorily.
3.34	A greater variety of payment providers (including PISPs) offering payment services could lead to an overly complex value chain.	PISPs have been supported into the market by regulation to inject competition into the payments market. **Why does the emergence of PISPs lead to an 'overly complex value chain?**
4.3	We see these protections as the minimum standard for protection, but need to consider whether going to court or reaching out to the Financial Ombudsman is the most effective way for consumers to remedy the consequences of something going wrong with their payment.	Again, the PSR is conflating 'something going wrong with a payment' with 'something going wrong with the sale of goods and services'. If something goes wrong with a payment, there are clear protections, and the consumer is entitled to a refund from their bank.
4.4	Complaints about errors covered by the PSRs 2017 – which set out the extent of, and limitations on, the liability of PSPs and PISPs for the execution of payment transactions – can additionally be brought to the Financial Ombudsman. **Consumers could, in these cases, also rely on a PSP's complaints resolution procedure where the ombudsman scheme is unavailable.** These options are not available for consumers faced with errors with the goods or service they purchased.	This is a misunderstanding of the PSRs 2017. PSPs must make complaints processes available as the first step for consumers to get redress. Then consumers can escalate to the Ombudsman. The option to escalate to the ombudsman is always available to any consumer or microenterprise that wants to complain about a payment service.
4.15	We would like your feedback on the potential effectiveness of providing new or additional liability arrangements within the payment system. This could place the responsibility for ensuring consumers do not lose money over unsatisfactory purchases on the seller, the seller's PSP, or any	Legal responsibility for unsatisfactory purchases already rests with the seller under the Consumer Right Act of 2015. Placing liability on the seller's PSP, or the PISP would require a chargeback framework so that the PSP, or the PISP could reclaim the refund from the merchant.

	PISP involved. We think that such a change, for specific cases, may tackle possible consumer harm and increase consumer confidence in interbank payments.	Chargeback is only commercially viable for card schemes due to their dominance and market power. If a chargeback scheme was imposed on PISPs, it would likely raise the costs of PISP payments above the costs of card payments, and make PISP uncompetitive with cards. This would be counter to the objectives of the PSRs to increase competition in the payments market.
4.18	Consumers will soon also be able to instruct PISPs to initiate variable recurring payments.	This is incorrect. There has been no certainty given that VRP APIs will be made a requirement for banks and therefore will be available to TPPs.
4.19	Recurring payments have different levels of protections, and disputes can be complex. Although consumers may ask their PSP to stop executing a recurring payment at any time, we consider additional liability arrangements may be needed for recurring payments over Faster Payments (similar to our suggestion for one-off purchases). Because errors may only arise after a recurring payment was set up, we consider limiting any changes to the last payment of the series. We think this may tackle some consumer harm, but do not have evidence that it effectively tackles consumer losses. We would like to receive feedback on that point as well as our suggested change to the liability arrangements.	There are clear consumer protections for the cancellation of recurring payments under the PSRs 2017. See Approach Document section 8.156 https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf
4.28	We would like your views on the viability of this approach, and whether the current interbank systems allow PSPs to identify whether a payee is a business, organisation or consumer.	PSPs have the capability to understand payee types in PIS initiated payments because the OBIE API standards provide Payment Context Codes (PCC) which TPPs provide when they initiate a payment. This enables a PSP to understand whether a payment is • BillPayment • EcommerceGoods • EcommerceServices • Other • PartyToParty See: https://openbanking.atlassian.net/wiki/spaces/DZ/pages/645367011/Payment+Initiation+API+Specification+-+v3.0
5.1	In payment systems that have traditionally been used for purchases, such as card networks, payment protection is already well established.	The PSR should be clearer about what it means when referring to 'payment protection'. The card scheme rules around chargeback offer 'buyer protection' i.e.

	These payment systems have a centrally governed process for managing disputes and queries across the entire network. Governance provides a framework to ensure that parties supporting payment transactions can effectively communicate with each other. The benefits of this are most apparent when a transaction is disputed	protection against goods and services that are not satisfactory.
5.3	In payment systems that have traditionally been used for purchases, such as card networks, payment protection is already well established. These payment systems have a centrally governed process for managing disputes and queries across the entire network. Governance provides a framework to ensure that parties supporting payment transactions can effectively communicate with each other. The benefits of this are most apparent when a transaction is disputed	As noted above, replicating the card scheme chargeback model would likely make interbank payments uncompetitive with card payments, further entrenching the Visa and Mastercard duopoly.
5.8	The current interbank payments ecosystem does not have much additional support and governance to protect consumers and service providers.	This is a very sweeping statement - and shows little understanding of the legal requirements of PSPs to ensure consumer protection under the PSRs 2017.
5.9	In all the instances where legal or payment protection is available, the consumer has to ask the liable entity for help. In most cases this is their PSP. For payments related to errors with goods or services, general consumer protection legislation assigns the liability to the seller. When a dispute arises, the seller is liable to make things right and can do so by providing repairs, replacements or refunds. If they do not, the consumer currently has no formal ability to ask their PSP (or PISP) for help.	This is simply not true. PSPs and PISPs are required to make complaints processes known to consumers. Consumers can use these complaints procedures to raise issues with the provision of goods and services. In the case of PISPs, where a customer complains about goods and services, the PISP is likely to work with the merchant to resolve the issue.
5.10	For payments made using open banking, the OBIE has a voluntary code setting out the best practice standards for dispute management. This includes an electronic system connecting the various parties involved in the payment. This system supports the communication and exchange of information about enquiries, complaints or disputes between account servicing payment service providers (ASPSPs) and third-party providers (TPPs), such as PISPs. As these	The OBIE dispute management system does not solve for issues consumers face with goods and services. It is a mechanism that banks can use to reclaim any compensation they have paid out to a consumer in the case of unauthorised payments, where these can be shown to have been the fault of the PISP.

	standards remain voluntary, they cannot be enforced. We discuss the advantages and disadvantages of voluntary standards in more detail in paragraph 5.26.	