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By email: interbankconsumerprotection@psr.org.uk

15 April 2021

Dear Jeroen

Re: EMA response to PSR CP21/4 - Consumer protection in interbank payments: call for views

We welcome the opportunity to comment on these issues of great significance to the UK payments system as well as participants and users.

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response

Question 1: Do you agree that there are insufficient consumer protections for interbank retail payments?

We do not think that the case has been made that there are insufficient protections for interbank retail payments. We would also welcome clarification from the PSR regarding what is meant by the term “consumer protections”. In the interests of completeness, we have addressed both statutory consumer protections, as well as redress mechanisms in the paragraphs that follow.

Existing consumer protections include:

- (i) consumer protection legislation;
- (ii) statutory redress mechanisms such as the small claims track and Money Claim Online; and
- (iii) government-funded bodies providing free advice to consumers such as Citizens Advice.

The PSR Call for Evidence does not appear to assess why these existing consumer protections are insufficient to remedy the issue identified by the PSR (i. e. consumers incurring loss from unsatisfactory purchase of goods and services). In order for stakeholders to make an informed decision regarding the measures proposed by the PSR, a full assessment should first be conducted of these existing protections. If they are considered insufficient, their shortcomings should be set out in detail along with supporting data. This will provide a more informed basis from which to consider policy options regarding any further necessary measures for consumer protection in interbank payments.

Please see below for a high-level assessment of existing consumer protections, which are already fairly comprehensive:

(i) Existing consumer protection legislation

Please note the following consumer protections from existing UK law:

- The consumer may cancel a distance or off-premises contract at any time in the cancellation period (within the first 14 days of entering into the contract) without giving any reason, and without incurring any liability unless a narrow exception applies.¹ [regulation 29(1); Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013]

¹ Exceptions are: (a) *regulation 34(3) (where enhanced delivery chosen by consumer)*;

(b) *regulation 34(9) (where value of goods diminished by consumer handling)*;

(c) *regulation 35(5) (where goods returned by consumer)*;

(d) *regulation 36(4) (where consumer requests early supply of service)*

- The consumer is afforded the following statutory warranties:
 - o Goods to be of satisfactory quality [section 9; Consumer Rights Act 2015]
 - o Goods to be fit for a particular purpose [section 10; Consumer Rights Act 2015]
 - o Goods to be as described [section 11; Consumer Rights Act 2015]
 - o Goods to match a sample [section 13; Consumer Rights Act 2015]
 - o Goods to match a model seen or examined [section 14; Consumer Rights Act 2015]
 - o Installation as part of conformity of the goods with the contract [section 15; Consumer Rights Act 2015]
- The consumer has the following remedies in cases where the trader breaches these statutory warranties:
 - o Right to reject (including a refund without undue delay) [section 20; Consumer Rights Act 2015]
 - o Right to repair or replacement [section 23; Consumer Rights Act 2015]
 - o Right to price reduction [section 24; Consumer Rights Act 2015]

There are significant protections afforded to a consumer in the form of statutory warranties and remedies (including reimbursement) as set out above. If a trader breaches a statutory warranty and does not offer the consumer a remedy (i.e. the trader does not comply with law), this is not within the ambit of the PSP; PSPs are not regulators or law enforcement.

(ii) Existing statutory redress mechanisms

Small claims track

The small claims track is a statutory redress mechanism specifically designed to allow consumers to bring small claims against defendants (such as traders).

Practice direction 26 provides a description of the small claims track:

8.1 (1) (a) The small claims track is intended to provide a proportionate procedure by which most straightforward claims with a financial value of not more than £10,000 can be decided, without the need for substantial pre-hearing preparation and the formalities of a traditional trial, and without incurring large legal costs. (Rule 26.6 provides for a lower financial value in certain types of case.)

(b) The procedure laid down in Part 27 for the preparation of the case and the conduct of the hearing are designed to make it possible for a litigant to conduct his own case without legal representation if he wishes.

(c) Cases generally suitable for the small claims track will include consumer disputes, accident claims, disputes about the ownership of goods and most disputes between a landlord and tenant other than opposed claims under Part 56, disputed claims for

possession under Part 55 and demotion claims whether in the alternative to possession claims or under Part 65.

(d) A case involving a disputed allegation of dishonesty will not usually be suitable for the small claims track.

(2) The court may allocate to the small claims track a claim, the value of which is above the limits mentioned in rule 26.6(2). The court will not normally allow more than one day for the hearing of such a claim.

As set out in the Practice Direction above, the small claims track:

- (i) is intended for small value, straightforward claims;*
- (ii) does not involve substantial pre-hearing preparation and formalities of a trial;*
- (iii) does not lead to the consumer-claimant incurring large legal costs;*
- (iv) is specifically designed for the consumer-claimant to represent themselves;*
- (v) is generally suitable for consumer disputes.*

Please note rules and procedures applicable in the small claims track are designed to be less formal and therefore make it easier for consumer-claimants to represent themselves. Civil Procedure Rule 27.2 provides the parts of the Civil Procedure Rules that do not apply to small claims:

27.2 Extent to which other Parts apply:

(1) The following Parts of these Rules do not apply to small claims –

(a) Part 25 (interim remedies) except as it relates to interim injunctions;

(b) Part 31 (disclosure and inspection);

(c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);

(d) Part 33 (miscellaneous rules about evidence);

(e) Part 35 (experts and assessors) except rules 35.1 (duty to restrict expert evidence), 35.3 (experts – overriding duty to the court), 35.7 (court’s power to direct that evidence is to be given by single joint expert) and 35.8 (instructions to a single joint expert);

(f) Subject to paragraph (3), Part 18 (further information);

(g) Part 36 (offers to settle); and

(h) Part 39 (hearings) except rule 39.2 (general rule– hearing to be in public) and rule 39.8 (communications with the court).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.

(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

CPR 27.2 sets out the exceptions that apply to the small claims track. These exceptions make it significantly easier for a consumer to represent themselves. We have highlighted two main examples above; part 31 (disclosure) and part 32 (evidence).

For part 31 (disclosure), this means that consumer-claimants are not subject to the usual procedure for the preparation of a case (i.e. disclosing documents). It is therefore generally quicker and cheaper to bring a claim on the small claims track as there is no need for substantial pre-hearing preparation and the formalities of a traditional trial.

For part 32 (evidence), this means a consumer-claimant in the small claims track may present their claim without being restricted by the rules of evidence. This makes it significantly easier for consumers to present the facts of their case and set out the relevant evidence (e.g. a copy of their contract with a trader) without being concerned whether evidence is admissible.

These exceptions make it straightforward for a consumer to bring a claim in the small claims track; they do not need any legal training and the process is not comparable with standard litigation.

Money Claim Online

There is an even simpler option for consumers to access redress against traders. As an alternative to issuing proceedings in County Court, small claims for specified sums can be issued at Money Claim Online. This enables users to pay court fees by credit or debit card and then monitor the progress of their claim online. The court fees are set at a level commensurate with the value of the claim, and can help to prevent the lodging of spurious claims. Documents generated can be printed off and also stored electronically. Defendants are also able to respond online.

This is a straightforward process; consumers may view the Money Claim Online user guide published by HM Courts and Tribunals Service available [here](#).

(iii) Government-funded consumer support

Citizens Advice

Citizens Advice, a charity whose work is financed by the UK government, offers extensive consumer protection advice, including how to access the small claims track / Money Claim Online². Consumers who have sustained loss from an unsatisfactory purchase of goods or services can access advice and assistance to bring a claim against a trader from Citizens Advice.

It is unclear from the Call for Evidence why existing consumer protection for consumers in the UK i.e. the small claims track, is not considered sufficient; this is a statutory redress

² <https://www.citizensadvice.org.uk/law-and-courts/legal-system/small-claims/making-a-small-claim/>

mechanism specifically designed for the problem for which the PSR has launched a Call for Evidence.

Further, the Call for Evidence does not substantively refer to the small claims track, and does not mention Money Claim Online or Citizens Advice. This information should form a fundamental part of any consideration of whether the current protections available to consumers are adequate; it is unclear why it has been omitted from the Call for Evidence. Prior to implementing any measures, the PSR should assess the efficacy of the small claims track and Money Claim Online.

If the small claims track / Money Claim Online are not found to provide effective redress for consumers, we would welcome further analysis by the PSR regarding the limitations of this statutory redress mechanism. This will then provide a more informed basis on which the PSR and stakeholders can work together to develop a solution. One option to consider would be proposing reform of the small claims track / Money Claim Online to the Ministry of Justice, or a specific small claims track for e-commerce disputes, perhaps under a different name/brand in order to give consumers more confidence in pursuing a claim through this avenue.

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

Please note that Payment service providers (“PSPs”) are authorised and in the business of providing payment services; which are set out in part 1, schedule 1 of the Payment Services Regulations 2017 (UK). The role of a PSP is to provide these payment services to the payment service user. In the case of interbank payments, the PSP’s role and purpose is to facilitate the transfer of funds from their customer’s (payer’s) account to a payee’s account. This is the primary purpose of their role – it is not to provide an insurance policy with respect to every payment made by the payment service user. It would be excessive and disproportional to levy liability on PSPs for loss arising from consumer dissatisfaction with a purchase, as the loss is not causally linked (whether factually or legally) to the PSP’s provision of payment services.

In addition, PSPs are subject to a comprehensive regulatory regime that ensures that the payment services they offer are secure and guaranteed, that AML, fraud and IT security risk is managed, and that data is protected. These requirements include the safeguarding of funds, the holding of capital to provide a buffer against financial loss, the protection of customer data, the guarantee that a payment instruction by the user will be correctly applied, and a variety of other consumer rights.

Paragraph 3.8 states: *PSPs and PISPs may offer less consumer protection than desirable because they might not fully recognise the value of providing consumers with that protection.* It is unclear on what basis this assertion - that PSPs and PISPs offer less consumer protection than desirable – is made. We would welcome clarification regarding the desired level of protection. Permitting that a PSP complies with all applicable legal obligations, we consider that they have offered an appropriate level of consumer protection.

To a large extent, consumers do demand the level of protection they deem appropriate by choosing a payment service provider that offers such protection i.e. by voting with their feet. Some payment service providers and payment methods do provide higher levels of protection than others, and this is advertised as part of their product offering. Offering consumer protection (in addition to mandatory protections) to payment service users is a value-add; a strategy that PSPs – and the card schemes - use to compete within the market for payment services. Competition within the market for payment services ensures PSPs must offer what consumers demand, or face reduced customers and therefore reduced revenue. Consumers (and merchants) are free to choose which payment method to use. These market forces keep the cost of such protections competitive and ultimately manageable from the PSP's perspective, whilst providing the consumer with the protection they demand.

Please note that the protection mandated by section 75 of the Consumer Credit Act 1974 (UK) applicable to lines of credit was introduced in response to consumer harm suffered as a result of the consumer's exposure to a line of credit for a trader's breach of statutory warranties (i.e. if goods were faulty or did not arrive in the first instance). The policy decision was taken that consumers should not be required to continue to pay off a debt for a faulty or non-existent good or service. The legislative intent of section 75 was well evidenced at the time, and the impacted industry participants were better able to recover the cost of this additional protection. There does not appear to be a similar level of evidence for the appropriate consumer protection for interbank transfers in this Call for Evidence, so it is difficult to agree with the assertion that consumers have insufficient protections. The impact of any increase in cost is felt much more by PSPs that offer payments as service, as they do not benefit from the cross-subsidisation afforded by entities offering credit, and it is much harder for them to absorb the cost of shared liability with the merchant.

Please further note the background to chargebacks. A 'chargeback' for card payments was designed by the card schemes as a process to support dispute resolution between scheme participants where a cardholder raises a complaint about a particular transaction. The chargeback mechanism was not initially created with the intent of protecting consumers; but this became a consequence in jurisdictions where consumer protection laws could be supported by the feature. As a result, chargebacks have become an important element in addressing card fraud by enabling card issuers to recover fraud losses from acquirers/merchants. Faster Payments in the UK currently experiences a much lower fraud rate, so the evidence base for a similar type of mechanism for interbank payments is less convincing.

It is difficult to reconcile the various positions put forward in the Call for Evidence paper. On the one hand, the PSP has successfully executed a payment transaction in accordance with the payment service user's instructions (i.e. the PSP has provided the payment service to an appropriate standard and completely discharged their obligations under their contract with their customer, the payment service user.) Separately, it is then proposed that the PSP is held responsible for a trader's breach of statutory warranties (i.e. providing faulty goods or services). These two positions are irreconcilable. The conduct of the trader is not within the PSP's control; it would therefore be unreasonable to hold the PSP liable for such conduct.

Paragraph 3.32 states that “empowering consumers to mitigate problems themselves is unlikely to ensure consumers are properly protected when they make payments. In insurance markets such as for home and motor insurance, there is a mandatory requirement for consumers to insure themselves.”

However, it is important to acknowledge that policy decisions to mandate insurance in the UK have their origins in clear and substantive evidence of far-reaching legal and/or societal issues, manifested in the absence of that insurance. The policy objective is usually to reduce the risk related to undertaking an activity sufficiently enough to make it viable e.g. driving a car, or taking on an employee. This has been achieved primarily by mandating insurance cover for liability against third party claims. For example:

- The mandatory part of motor insurance is third party liability (TPL) cover, as it allows victims of road accidents to claim against the insurer of the perpetrator. Individuals are not required to purchase insurance to cover loss to themselves or their own property;
- Home insurance is not mandatory, but individuals who have purchased a property with a mortgage will usually be required by the lender to purchase buildings insurance in order to protect the lender against loss;
- Employers’ liability insurance is mandatory in the UK as it protects employees from a loss due to work-related activities, and employers by extension from the cost of settling any claims.

The equivalent application to the issue raised in the PSR’s Call for Evidence would be to require merchants to purchase insurance to cover the cost of customer claims due to the merchant’s negligence or any other reason the goods or services are deemed unsatisfactory by the customer.

Question 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)?

The “size of harm” set out in the Call for Evidence does not appear to be quantified in any way, so it is difficult to provide any indication as to whether such harm could be “reduced” through consumer or industry behaviour. There does not appear to be any data underpinning the assumptions set out in the Call for Evidence, nor is there an indication of what constitutes this “size of harm”. There does not appear to be any data indicating how many consumers suffer (non-APP fraud-related) loss, specifically arising from a lack of protection in relation to purchases of goods or services when using interbank methods, nor the value of such loss.

Given the PSR’s objective of promoting the development of and innovation in payment systems we understand the concern about the potential for mass migration towards interbank payments for goods and services. However, we consider that the proposal to shift liability from the merchant to the PSP could very likely increase the overall cost of Faster Payments such that new PISP payment propositions may no longer be economically viable, thereby

undermining the PSR's wider objective of promoting effective competition in the markets for payment systems and services

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

Any consumer protections provided for interbank payments should also apply to on-us payments. However we do not think that there is sufficient evidence – either that the existing consumer protections are insufficient, or that there is a harm that must be addressed - to justify the need for any additional protections for interbank payments at this stage, thus there is no need for additional protection for on-us payments.

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

No, we do not consider that there is any substantive evidence to indicate that payment protection (in addition to that already set out under Q1, and provided by legislation levied in PSPs e.g. safeguarding of funds, IT security measures, prudential requirements etc.) is needed for use cases related to paying purchase transactions or any other use cases. The volume of transactions over the interbank payment rails that involve purchases for goods or services is currently low, and shifting liability for consumer loss arising from unsatisfactory purchase of goods and services is hugely disproportionate in relation to the expected, or assumed, “harm” set out in the Call for Evidence.

Paragraph 3.15 of the Call for Evidence includes an assumption that “*merchants who choose to use Faster Payments may be doing so due to the lower costs of accepting payments, which could, in part, be due to less stringent checks on merchants in Faster Payments compared to card schemes*”.

Please note that all regulated PSPs, including PISPs, as financial institutions falling within the scope of PSD2, are subject to anti-money laundering (AML) legislation set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR). This includes the conducting of customer due diligence where (i) there is a ‘business relationship’ with a customer or (ii) where the obligated entity ‘carries out’ an ‘occasional transaction’ (defined as being a transfer of funds of EUR 1,000 in value or amounting to an aggregate of EUR 15,000 if combined with other related transactions).

- A ‘business relationship’ is defined at regulation 4 of the MLR as ‘a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration.’ This is defined broadly and is likely to capture customer relationships for both PIS and AIS providers.
- ‘Carrying out an occasional transaction’ could conceivably include a payment initiation operation, if this amounts to the ‘carrying out’ of a transaction.

Customer due diligence requirements for business customers include the following:

- *Identification of the customer and verification of their identity;*
- *Assessment of, and where appropriate, obtain information on, the purpose and intended nature of the business relationship or occasional transaction;*
- *Obtain and verify the name of the body corporate; its company number or other registration number, the address of its registered office, and if different, its principal place of business;*
- *Reasonable measures to determine and verify—*
 - *the law to which the body corporate is subject, and its constitution (whether set out in its articles of association or other governing documents);*
 - *the full names of the board of directors (or if there is no board, the members of the equivalent management body) and the senior persons responsible for the operations of the body corporate.*
- *Identification and verification of any beneficial owner(s);*
- *Where the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.*

In addition to onboarding requirements, Article 27 (9) part b of the MLRs provides that PSPs must monitor transactions for unusual activity, as this triggers the application of enhanced due diligence measures:

[...] in determining when it is appropriate to take customer due diligence measures in relation to existing customers, a relevant person must take into account, among other things—

(a) any indication that the identity of the customer, or of the customer's beneficial owner, has changed;

(b) any transactions which are not reasonably consistent with the relevant person's knowledge of the customer;

(c) any change in the purpose or intended nature of the relevant person's relationship with the customer;

(d) any other matter which might affect the relevant person's assessment of the money laundering or terrorist financing risk in relation to the customer. [Regulations 27(9)]

Article 33(1)f of the MLRs also similarly obliges PSPs to monitor transactions for unusual activity:

3(f)in any case where—

(i) a transaction is complex or unusually large,

(ii) there is an unusual pattern of transactions, or

(iii) the transaction or transactions have no apparent economic or legal purpose]

These requirements must be met by all regulated PSPs in order for the PSP to maintain their licenced status. If there are concerns about “less stringent checks” on merchants onboarded by PSPs – or PISPs in particular - this should be addressed to the FCA as supervisory authority for PISPs.

With respect to the use case “Paying for goods and services: one off”, one of the examples given in the table in paragraph 4.8 is “travel”. Please note that certain types of travel purchases such as purchases for flights and package holidays are protected by a statutory financial protection scheme (“ATOL”). We therefore consider the use of “travel” as an example for this use case should be qualified to give stakeholders complete information. The PSR should review this protection and consider its efficacy prior to considering measures levied on PSPs. An alternative option in this regard – which is already offered by a number of merchants – could be the purchase of insurance cover against loss.

Question 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?

This question needs to be divided into two sections because it has two answers.

First, to what extent should liability for retail purchases fall to the seller? All loss arising from a retail purchase should be borne by the seller because the seller can affect the outcome of that retail purchase. Even in the case referenced in the Call for Evidence, where the retailer goes bankrupt before the goods are received by the consumer, it is difficult to see why liability should rest with the PSP. There is already a statutory procedure for such a situation. The consumer can register a claim as a creditor and their claim is dealt with by the receiver. Why should a PSP fulfil this role when there is already a statutory mechanism dealing with this specific situation? Consider the case of a PSP servicing a large merchant that experiences insolvency; the PSP would then be liable for all orders made to that merchant that have not been fulfilled. It is disproportional to levy such liability on a PSP. The PSR’s measure may also result in a rise in fraud as a consumer may be able to claim twice (i.e. once as a creditor in the course of insolvency proceedings and again against the PSP).

Second, to what extent should liability for retail purchases fall to the PSP or PISP? No liability arising from a retail purchase should be borne by the PSP or PISP because neither of these parties can affect the outcome of a retail purchase.

There is no legal basis to hold a PSP or PISP liable for loss arising from a retail purchase; all liability must be levied directly on the party causing the loss (i.e. the seller) and the

consumer should use the statutory redress mechanisms available to them (the small claims track and Money Claim Online) to obtain reimbursement.

Question 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)?

Levying liability for retail purchases on a PSP would change the nature of commercial relationship between:

- The consumer and their PSP; and
- The seller and their PSP.

For consumers, their relationship with their PSP would change from strictly a payment service provider to, additionally, an insurer.

For sellers, their relationship with their PSP would change from the PSP merely providing an account to a relationship with similar characteristics and risks associated with merchant acquiring. For example, a seller's PSP may require the seller to establish a reserve account with collateral funds to reduce the risk the PSP will not be able to recover the reimbursement amount from the seller.

This is a real risk for a PSP, which will be ultimately levied on the seller. Could a seller afford to establish two reserve accounts (i.e. one with their merchant acquirer and the other with their bank in which they hold their settlement account)?

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

For the reasons set out above, we do not think any new payment protection arrangements should be extended to recurring and variable recurring payments.

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

For the reasons set out above, we do not think any new payment protection arrangements should be extended to recurring and variable recurring payments.

Question 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?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. We do not have any comment on a

threshold except that, if the PSR were to proceed with their proposals, such a threshold should be as high as possible in order to increase the proportionality of the response.

Question 11: To what extent are you currently able to identify different types of payments?

PSPs are able to identify different types of payments.

Question 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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. We do not have any comment on a threshold except that it should be as high as possible.

Question 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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage.

The number of merchants using interbank payments to accept payments is still extremely low; we therefore consider the PSR's proposal is disproportionate and unnecessary.

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

Where both sending and receiving PSPs are participants in Confirmation of Payee, it should be possible to identify whether the payee is a business or a consumer.

Question 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)?

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage.

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

We do not think a consumer protection governance process would be beneficial for interbank payments in their current form. The proportion of interbank payments being used for

purchases of goods and services is still low. The setting up of a governance process to oversee consumer protections involving liability on PSPs sending payments would also require the setting up of additional scheme rules and infrastructure such as a dispute mechanism, a communication framework between parties, etc.

Question 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)?

N/A

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

We agree that promoting consumer awareness of the protections available to them will go a long way towards addressing this issue. We note that the PSR have not substantively addressed or considered any of the existing statutory redress mechanisms specifically set up for this purpose (i.e. the small claims track and Money Claim Online. (Please see our response to Q1)

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

Citizens Advice UK is a government-funded charity specifically set up to advise persons in the UK of their rights. This includes extensive advice on consumer protection including how to access such protections and redress. The PSR should consider what currently exists with respect to consumer protection, advice and redress before considering the need to levy liability on PSPs.

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

The merchant, as this is the party liable for the goods or services and to whom the consumer has paid.

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

It would not change our response. The volume of interbank payments does not affect the fact that there is no legal basis upon which to attribute liability to a PSP for breach of consumer

warranties by a trader. The PSP is a third-party to the trader / consumer sale and therefore not liable for a breach by the trader.

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

Consumers are directed to their bank or to the relevant merchant to resolve their dispute in the first instance.

Question 23. What do you think about the options outlined in paragraphs 5.18 to 5.27 [payment system rule, payment governance system or industry-led payment protection]? Are there any alternative options you think we should consider?

We consider any option (whether scheme rule, governance system or industry-led payment protection) that functions to hold PSPs liable for loss arising from consumers' unsatisfactory purchases of goods and services is disproportional and punitive. This is because PSPs are not responsible for this type of loss nor can they control when it arises.

We note the counterargument of section 75 rights set out in section 75 of the Consumer Credit Act 1974; this section functions to hold a consumer credit provider jointly and severally liable for breach of contract of misrepresentation by the trader for purchases between £100 and £30,000. If it is established that consumer credit providers can be held liable for this type of loss, why not PSPs? The difference is between each payment method (i.e. a line of credit versus an interbank transfer). When a customer pays a trader with a line of credit, the risk of loss is greater because the consumer is required to repay the credit line; whereas for interbank transfer, whilst the customer may sustain loss, they will not be burdened with repayments to the value of that loss. Accordingly, the risks associated with paying by credit are not present when the customer pays by interbank transfer and the same remedy (levying liability on PSPs) is not justified.

Finally, the alternative option is for the PSR to assess the existing statutory redress mechanisms available to consumers (the small claims track and Money Claim Online) and determine whether these mechanisms work effectively for consumers. After carrying out that assessment, and if the PSR finds there are aspects of these mechanisms that are not effective, the PSR should address their concerns and propose reform to the Ministry for Justice.

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

We do not think there is sufficient evidence to support the policy conclusion that interbank payments need additional protection at this stage. Any enforcement mechanism is bound to be very costly, and this will be passed down to PSP participants in the scheme, then to

indirect participants and eventually to consumers. The PISP use case will likely become unviable.

Question 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?

Regulatory intervention could consider the introduction at a high level of some form of consumer protection for payments, but PSPs should be given freedom to meet this as they see fit, and any proposal would need to be evidenced-based as well as undergo a significant amount of scrutiny and cost-benefit analysis.

One potential solution might be to implement a procedure whereby a customer could obtain reimbursement from a PSP for loss arising from an unsatisfactory purchase of goods or services where the customer has first obtained a judgment from the small claims track. In other words, a procedure whereby the trader's PSP would accept a judgment as a basis to reimburse the customer from the trader's account. Please note there must be measures in place to ensure PSPs can rely on such judgments as a basis for effecting reimbursement, without risk of litigation from the trader.

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

We agree that the list of costs is correct; however, the costs themselves do not appear to have been quantified, nor have the benefits. It is therefore difficult to conclude that the benefits of such a shift in liability would outweigh the costs.

Indirect and non-participants in the scheme(s) will have no influence over the level of cost of any additional protections introduced and will therefore be at the behest of the direct scheme participants. Thus increasing the possible barriers to participating in the interbank schemes or accepting interbank payments.

What would be the economic effect on the market for payment services of increasing the cost of Faster Payments transactions? What would be the effect if card transactions and Faster Payments transactions were the same price? It may be the case that issuers start to apply a fee for FPS transactions, as is already the case in the EU with SEPA instant payments, for which banks will usually charge their customers a small fee. It is therefore unlikely that consumers would prefer to pay for a good or service using FPS rather than a card payment (which costs them nothing). Moreover, merchants are unlikely to move to increase FPS acceptance for consumer payments if the price to them is similar to card acceptance, given that the majority of merchants have already invested in physical and digital infrastructure to allow the acceptance of card payments, and given that the use of cards to make payments online is already much more developed and embedded into the UK purchasing culture.

As PISPs only provide their services in the context of credit transfers (and not card payments), they could be disproportionately affected, and the business case for merchant-initiated PISP transactions may disappear before it has had a chance to develop. Industry payment initiatives based on FPS have already failed due to the inability to recover cost let alone make a profit (e.g. Pingit)

The PSR must carry out a more thorough market analysis prior (and consider issues such as those set out above) prior to implementing any measures.

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

The cost of implementing a liability framework within the Faster Payments scheme is likely to add significant layers to the current scheme governance, infrastructure, and processes, and thus cost the industry overall.

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

The PSR and/or traders.

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

With respect to changing service contracts with customers, customers are payment service users and enter into a framework contract with the PSP. The framework contract is a heavily regulated agreement and sets out significant information requirements pursuant to the Payment Services Regulations 2017 (UK). Please note that any changes to a framework contract must be provided to the payment service user at least two months prior to the changes coming into effect. Please further note that during the two-month notice period, the payment service user is afforded an immediate termination right at no charge if they disagree with the proposed amendments. This means any measure implemented by the PSR that requires a change to the framework contract puts PSPs at risk of losing customers who may use their immediate termination right to terminate the contract for other reasons, which would not have otherwise been available. The PSR must consider all aspects of any measures, including economic effects before proceeding.