**PSR Consultation:**

**Consumer Protection in Interbank Payments**

**(paper CP21/4)**

**Ordo response, 6 April 2021**

Submission to interbankconsumerprotection@psr.org.uk

## Context and Introduction to Ordo

### *Who we are:*

We are Ordo, the trading name of The Smart Request Company Ltd (company number 11338545). We are a fintech start-up and TPP. We are regulated by the FCA to carry out AIS and PIS under FRN 836070

The five founding directors incorporated the business in May 2018, having previously worked together in the Faster Payments Scheme, driving new competition in banking and payments and transforming access to the Systemically Important payment system. Whilst we were the leadership team at Faster Payments, we instigated bringing on new challenger banks and other PSPs such as Monzo, Starling, Atom, ClearBank and Transferwise (as they were then). The team were awarded the Payments and Cards Awards Industry Achievement Award in 2017 by their payments industry peers for their work to allow Transferwise and its customers direct access to the Faster Payments System.

Following our time at Faster Payments, we set up Ordo to build and run Open Banking enabled solutions such as Request for Payment, eCommerce and Account Details Verification services, amongst others. We are backed by Nationwide Building Society, and are fully integrated with the well-known accounts package services QuickBooks, Sage, Xero, and banking platforms such as Contis. We are partnered with CGI to run our platforms.

The first of our solutions, our Request for Payment service, went live on 23 March 2020. Hundreds of thousands of pounds has been transferred using Ordo with thousands of payment requests being sent and successfully paid, helping businesses and consumers pay and get paid easily.

### Ordo's company purpose is:

to improve financial wellbeing of individuals, businesses, social enterprises, charities, community groups and the public sector by helping them to be more in control of their finances. We do this by:

- enabling payers to securely and simply see what they've been asked to pay, trust who's asking, and then choose how and when they make or don't make payments;
- enabling billers to securely, simply and cost effectively provide information to, and request payments from, their customers without having to gather, store and protect payers' private financial information; and
- enabling billers to understand the status of their payment requests and receive settlement irrevocably and without delay from their customers, directly into their bank accounts.

We are leveraging our collective experience in payments, technology, consumer markets and regulation to achieve this.

### *Our view and what we think a secure payments future should look like:*

We are creating a better way to request and make payments with a new, secure competitive end-to-end digital payments overlay services. We believe the solutions we have built are an important part of the strategic long-term solution which will afford all payers, be they individual consumers or businesses of any size, the confidence and assurance that their payment has gone to the intended destination, and businesses to be able to receive payment instantly, securely and at low cost.

If every payment begins with a request from the biller concerned (which could be a consumer or a business) with the biller populating its account and reference information, this significantly lessens the likelihood of a payment going to the wrong destination and being defrauded. A biller's request for payment, be it via a specific Request for Payment service, or via one of our Open Banking enabled eCommerce, QR code or point of sale solutions, will contain the account details for the biller as captured from the biller (directly from their bank account provider), and these are neither revealed to, nor can they be changed by, the payer. The receiving (of the request for payment) potential payer will then only choose to pay the request if they recognise the biller, what the requested payment is for and if it is for the correct amount.

### Preliminary premise – Interbank payments usage for retail

A significant theme of the consultation paper and the first point in the 2021/2022 Annual Plan, seems to be that if only there were consumer protections for interbank payments as there were for eg cards, consumers would use interbank payment systems more for retail payments. This is not the case. The reason consumers do not use interbank payments (presumably Faster Payments as a retailer would not wait three working days to receive payment through Bacs) for retail to date is because there has not been the immediate hardware and technology available for easy to use point of sale or eCommerce retail real time interbank payments. Open Banking, of course, if afforded an environment in which adoption can flourish, will change this, with benefits to be reaped for both consumers and businesses. Interbank payment usage for retail is not held back by concerns about consumer protections (which for example in credit cards only apply to items over £100 and the chargeback protection on debit cards is little known), but by the lack of easy to use interbank payment overlays that make the process work easily and simply for businesses and their customers.

### PSR proposal for consumer protection needed for interbank payments

The PSR's position is that consumer protection should be applied to all payments in response to the fact that a very small proportion of transactions go wrong. This will inevitably incur costs across all payments, whether the payment is made legitimately or not, or safely and sensibly or not; such position acts as a cross-subsidy, with a costs-increase for all and sometimes those behaving wisely and/or in low risk areas such as grocery shopping subsidising those that behave without due care and/or in riskier sectors like, for example, travel. This is the case with the protections that are afforded to consumers in purchasing goods and services today, when making a card payment; the cost of everything is increased to accommodate potential losses that the few create by claims on card transactions for goods and services going wrong. Ordo does not agree that consumer protections that drag down the benefits of new low-cost Open Banking technology to a least useful common denominator, especially without analysis of the cause of harm resulting in attributing liability where liability is caused. Furthermore, we agree that imposing blanket protection would create a moral hazard and does not encourage right, or helpful behaviours for the greater good and wider economy.

Small businesses, some of whom have the same characteristics as consumers, suffer great harm today where card payments are accepted and chargebacks made, and for a society to function and flourish with goods and services being bought and paid for efficiently, in a payments world leading economy, there needs to be balance between justified proportionate protections for consumers and an environment in which businesses, and in particular small businesses who are not served well by PSPs or payment services today either, can thrive in selling their wares. Introducing such blanket consumer protections for covering the purchases of goods and services applied at the payment level, would not achieve this; it would only increase costs, inefficiency and uncertainty for all transactions.

Small businesses already suffer a worse deal than large retailers and corporates today; they are afforded fewer options for collecting payment, predominantly at a higher cost, and it is the consumer that ultimately covers this higher cost due to the lack of options smaller businesses have. Now more than ever, in a COVID recovering world, small businesses and consumers need technology that improves efficiency and security, and lowers cost, not the reverse. Therefore, the suggestions in the introduction to chapter 4 of the consultation are refuted. PayPal, for example, already employs delaying payment out to businesses which only serves to cripple small businesses, and increases their need for agile liquidity which, in turn, increases their cost-base. In research Ordo commissioned into what payment problems SMEs face, some SMEs told us that 42% of their payments are received late. Payments are already too hard, too time consuming, too late and too costly for SMEs with a lack of affordable competitive solutions available to them, the PSR's proposals will intensify this pain.

One of the benefits the PSR states for its hypothesis that protection should be overlayed onto Faster Payments where a supplier of goods or services is at fault is that those who face liabilities in a new protective system will work hard to reduce their costs. This does not correlate with the purported main objective of this consultation being to ensure consumers and businesses are not disproportionately affected when a *payment* goes wrong.

The PSR needs to consider carefully the economic dead weight impact of bundling general consumer protection insurance into interbank payments instruments. The risk is that this cost becomes the dominant component, meaning that the economic benefits of really low-cost payments to businesses and their customers from existing and future (NPA) payments systems are obscured and ultimately lost.

### Open Banking - enhanced security for payments

Open banking technology can offer more enhanced security of payment and liquidity management than is available by card or simple bank transfer today, even with CoP (which is an attempt at a preventative step, not a more secure system). In Ordo's PIS, the following checks are incorporated on every single payment request and payment, preventing the harm from occurring in the first place:

- billing party (business or consumer, who will be the payee on any resultant payment) selects the account details of where they want to be paid – extinguishing the risk of mis-typed account numbers (when setting up an account to receive money into, these account details are captured by Ordo directly from the biller's bank, also avoiding mis-keying and confirming account title integrity and ownership);
- invoices and payment requests are sent across our secure platform – removing the risk of emailed invoice interception fraud;
- displaying the biller's exact account title – providing complete certainty to the payer of who they are about to pay. We obtain the account title from the biller's ASPSP and display this directly to the payer, resulting in precise and correct information every time; there are no fuzzy matches or misleading and possibly alarming or disconcerting messages discouraging people from making payment. If the payer doesn't recognise the account title, they decline or ignore the payment request;
- in a glance, on every payment request, a payer can see who is asking them to pay, how much and by when, together with any related attachments. All information is in one place evidencing a complete picture enabling the payer to clearly, comprehensively and conclusively decide whether or not to make payment;
- all information is up to date and accurate because the Ordo service runs on API calls in real time. Users, both those requesting payment and payers, are given immediate notifications of progress updates such as a payment request has been read and what action has been taken (read, paid, declined, extension requested, part payment made);
- payers consent to using a PIS before they are permitted to use it – this is a FCA requirement;
- payers consent and authenticate every single payment in their own bank domain before making the payment; implementing 2 factor authentication which is not otherwise in force today in the UK. Whilst it is true, as per the PSR's consultation at point 2.3 that PISPs have the ability to initiate payment from people's bank accounts, it is only with their consent to PIS and their consent and authentication of every payment, affording more protection and security than card payments today; and
- in the event that a biller sends unwarranted requests for payment, the recipient of these requests can 'block' that biller's requests.

Not everything that goes wrong with a purchase is a problem with the payment. The Payments industry should be focussed on failures in their processes and systems; government should be focussed on helping consumers who have been mis-sold to through existing consumer protection legislation. The bundling of general consumer protection into card payments is an accidental product of their initial incarnation as sources of credit, not because the payment was the best place on which to layer protection.

Therefore, instead of blanket cross-subsiding goods and services protection, in support of Genevieve Marjoribanks' statement during the Annual Plan webinar on 30 March 2021 that the main objective of this consultation is to ensure that "…consumers and businesses are not disproportionately affected if ***something goes wrong with their <u>payment</u>***", we analyse the potential scenarios to be considered where ***transactions*** may not complete as expected, which ones of those transactions are where the ***<u>payment</u>*** has gone wrong, and which party should be liable, including whether insurance could play a part, as follows:

| **Error** | ***<u>Payment</u>* error?** | **Liable party** | **Insurance at end user stage applicable?** |
|---|---|---|---|
| PSP/PISP mistake | Yes | PSP/PISP | No |
| Goods/services not provided or defective | No | Supplier | Yes |
| Consumer mistake | No | Consumer, parties to cooperate to try to resolve | No/maybe – see considerations below |
| Fraud | No | Criminal - fraudster liable<br><br>Who compensates?<br><br>This is typically funded by the Contingent Reimbursement fund – focussed on the actions of the paying ASPSP, largely making no regard to | Consider:<br>(i) consumers insure themselves against theft, damage, lost tickets, missed gigs and travel etc.; and<br>(ii) a house is typically purchased via a mortgage. Insurance against damage to the property or its contents is purchased separately by the property owner. Any damage is dealt with between the owner and the insurance firm, not the mortgage provider. |

| | | | |
|---|---|---|---|
| | | the fraudster acting via the receiving ASPSP where it is the receiving ASPSP that has allowed a fraudster to open an account with it, passing it's Customer Due Diligence efforts.<br><br>Outside the scope of this consultation → APP fraud being consulted on separately. | Insurance is for those that can afford it and comes with incentives to take care such as exclusions, excess payments and increased premiums following claims.<br><br>Ordo is not purporting that insurance is the answer in this scenario; it certainly isn't the "*right*" answer as insurance, despite only being for those that can afford it, is the innocent victim paying.<br><br>Outside the scope of this consultation → APP fraud being consulted on separately. |

**Alternative oversight, protection and enforcement – Trading Standards**

There is, already in place, a package of consumer rights and protections. These range from payment specific credit card s75 and debit card chargeback protections, to trading payment agnostic protections such as the Consumer Rights Act 2015, amongst others.

The main gap it appears the PSR has identified and is concerned about (as APP scams are treated separately) seems to be where goods or services have been purchased and are not as expected or not received. This is a trade and supplier issue, and that harm is best tackled at the trade level, rather than overlaying payment protections onto trade where a consumer is required to be savvy and diligent and persevere with any payment and/or bank process in place to claim compensation for harm done by a business. As Pay.UK's research is cited at point 3.19, consumers do not expect payment protection except where (i) high values are being transferred, (ii) there is low trust in the seller, and (iii) goods are received after payment. Out of these three instances where consumers do expect/would like protection, only the first of these is do with the payment, the second two are supplier responsibilities and it is the supplier that should face recourse where applicable.

Rather than another form of ***payment*** protection for where suppliers are at fault, we propose that an already established form of oversight, regulation and enforcement, namely Trading Standards, be resourced and empowered to more effectively respond to this isolated need. This would place powers with regulatory bodies and not expect consumers to be willing and able to negotiate the small claims court, as the PSR, rightly in Ordo's view, notes.

**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. As per our opening view, where there is a payment error, the institution committing the error is liable and should compensate; where there is a supplier issue, there should be redress against the supplier, that be the expected course of redress and a framework in place to allow consumers to effectively utilise this route against the perpetrator.

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

   See answer to Q1

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)?

   We see that our view, concentrating consumer and business minds on who is responsible for the payment and the delivery of goods and services, reflects reality, would encourage the right behaviour and see the correct party liable when transactions go wrong, rather than the moral hazard and increased costs for all that will result from applying blanket interbank payment protection to all transactions.

**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?

If our view is understood, that protection should be obtained from the liable party which will be, in the instance the PSR appears to be focussed on, the supplier whereby there is no difference for on-us payments.

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

Please see previous answers.

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?

   Please see previous answers.

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. Please see opening view on small businesses and, for example, PayPal delaying payment.

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

It is irrelevant whether the payment is recurring or not. The party that is liable should be the party that did not perform its duty. The table above applies equally to recurring and variable payments.

Variable recurring payments have the ability to transform how people manage their finances, giving them immediate knowledge of what they have available to spend. VRP also allows a consumer to set parameters as to what they are happy to be paid without specific consent. If a consumer has a concern with a particular business, they will be able to amend (rather than cancel) their mandate – lowering the amount/reducing the number of transactions that can be paid without specific consent. It will also transform businesses and supply chains, for the better, through improved liquidity and real time information. To overlay a misaligned payment protection would stifle this innovation and development for consumers, businesses and the UK.

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

Please see previous answer.

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?

Please see opening view and previous answers.

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

We built our service to have privacy at its core and designed it around only collecting the minimal amount of data necessary to run our services. Consequently, it is irrelevant to Ordo what people's payments are for, and all payment requests paid through Ordo are paid using Faster Payments.

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)?

    Please see previous answer.

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. Please see opening view and previous answers regarding harm suffered particularly by small businesses in obtaining PSP services and by the likes of PayPal in delaying payment.

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?

    We built our service to have privacy at its core and designed it around only collecting the minimal amount of data necessary to run our services. We also did not want to charge consumers for requesting or sending money as largely they do not pay to request or send Faster Payments today. We charge businesses a maximum flat fee of 20p to securely request a payment through Ordo and for the communication and management of the payment of that request. To support that commercial model, we see whether those requesting money through Ordo (who could be businesses or consumers or both with multiple profiles) link a personal or business account to be paid into. Where a business account is linked we charge the user to send payment requests, where a personal account is linked it is free (subject to a common fair usage policy).

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)?

Please see our opening view.

**Questions related to how consumers might claim protection**

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

    Please see our opening view.

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)?

No. Please see our opening view. Open Banking is an enhancement of payment availability today. It brings with it benefits of liquidity, financial management, lower cost, speed, security and efficiency. It should be celebrated as such with liability placed where liability is incurred and society educated to take advantage of these technology advances, not stifled and drag all payment methods down to an unnecessary ill-fitting equality where ultimately the consumer is worse off through poorer notifications, slower services, and increased costs through subsidising bad businesses

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?

Marketing of the benefits and advantages of Open Banking, namely, that it is more secure and will allow consumers and businesses to better be able to manage their finances, in real time, lower costs and improve liquidity for businesses is being carried out by TPPs and ASPSPs in respect of their own services, today. Consumers generally do not care about the technology but rather what they stand to gain from it, which is the benefits as listed.

We strongly disagree with a further trust mark.

All ASPSPs and TPPs are required to be regulated by the FCA. All regulated entities have a FRN. This is a trust mark enough and it is all that is required by law to operate a PIS. No additional layering of regulation should be added to this. We refer to our numerous letters and countless conversations with the PSR regarding Pay.UK's attempt at purporting to authorise request to pay providers in their request to pay service. Such overlaying of unnecessary regulation will stifle competition and innovation. What would a trust mark look like, who would administer it, how will the trust mark be marketed, made familiar to consumers and be trusted, how will the organisation managing the trust mark be recognised? Or will it be an unrecognisable mark administered by an unrecognisable body to UK consumers who will be none the wiser but who will bear the cost of the exercise?

The FCA is a well-known and established body. Operators of regulated services are required to be regulated by the FCA and their FRN is an understood mark of trust. No further overlay is required.

We are in dialogue with the competition and enforcement team at the FCA regarding Pay.UK's activity in this area.

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

Please see our previous answer regarding the FCA, with consumer support and route of redress to the Financial Ombudsman.

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

A consumer's first port of call, where goods or services have not arrived as expected, should be the supplier. Where an error occurred with the *payment*, they should contact their bank or PISP. If the consumer is using a PISP, they will be aware of this as they will have consented to using PIS, as per FCA requirement.

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 enquires and issues with other parties involved in a disputed interbank payment?

In being authorised by the FCA we are required to have complaints processes, policies, time lines and officers in place with which we comply. We are required to collect data and report on this regularly to the FCA.

Via OBIE's service desk, we are able to raise technical and operational issues related to PIS transactions. To date these have, without exception, been of a technical nature (an ASPSP's user journey failing, for example). We are also building up direct relationships with a number of ASPSPs. OBIE has also set up a PISP Forum, which Ordo contributes to, which is a place where PISPs can share their experiences regarding how ASPSPs operate/fail to do so correctly.

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?

    If our view is understood, that protection should be obtained from the liable party which will be, in the instance the PSR appears to be focussed on, the supplier, such options are not applicable. Solution options should be resourcing and empowering Trading Standards, and insurance.

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

Where something has gone wrong with the *payment*, which is the only circumstance the payment providers should be liable, the FCA.

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?

    The FCA has jurisdiction over ASPSPs and PISPs for payments. Trading standards should regulate trade.

**Questions related to what we will take into account before suggesting any action**

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

As has been mentioned in this response, for the framework and solutions suggested, burden and liability is being placed on parties not at fault where there is a failure to provide goods or services as expected. This will increase costs for all, ultimately including consumers, and those increased costs and the regulatory burden will damage deeply small businesses, which includes PISPs.

We do not agree that these misaligned remedies will heighten take up of interbank payments for the reasons stated in our opening paragraph regarding the preliminary premise of the consultation.

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

Please see previous answer. Any increase in costs and unnecessary addition to the regulatory burden will stifle competition in a nascent PIS market which is still trying to gain awareness and adoption. More regulation over and above being regulated by the FCA will have significant effects on those operating in the market today.

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

Please see our previous answers and opening view, including the table for where liability lies. The only correct answer to this question is that the party that causes the loss should bear it. Where insurance could play a part, the cost of the insurance should be borne by the party that caused the loss, which would be the receiving ASPSP in the case of fraud.

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

Consumer protection measures would increase our cost base significantly, and consequently the cost at which we could provide our Open Banking enabled services to businesses. It would render us helpless in being able to compete with the goliaths that are MasterCard, Visa and Amex to the detriment of small businesses and consumers. It would likely mean Open Banking could not compete with the card schemes and Open Banking would not be able to flourish in the UK.

We are a commercial TPP providing multiple Open Banking enabled competitive solutions and are live in the market today. We have been running our *Request-for-Payment* solution for over a year, more than £2 million has been requested and we have saved businesses [redacted] on every transaction. We are connected to 97% of the banking market. See our range of solutions, learn more or try for free today.

[redacted]