Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

25 November 2022

Submitted online: appscams@psr.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to CP22/4 Authorised push payment (APP) scams Requiring Reimbursement consultation paper

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Consumer Panel strongly welcomes the PSR's proposal to make reimbursements mandatory for victims of APP fraud. We support the two key outcomes the PSR wishes to achieve, namely: to protect people who have experienced APP scams and to identify and address fraud in the Faster Payments System. Both outcomes are necessary to ensure confidence in the payments system.

The growing nature of the APP threat requires the regulator and industry to swiftly address gaps which allow APP fraud to occur. Consumers are suffering undue harm because of the lack of industry-wide commitment and coordination to tackle such scams as well as the uneven distribution of efforts to combat fraud and to reimburse victims. The introduction of the mandatory reimbursement requirement, in conjunction with the PSR's proposed 50:50 default allocation of costs between sending and receiving Payment Service Providers (PSPs) will, we believe, help galvanise the industry into action, increasing the amount of information sharing and collective fraud detection and prevention work.

We expect that parts of industry will push back on the PSR's proposals, arguing for longer implementation timelines. We strongly encourage the PSR to stick with its calendar and resist this pressure. We, like the PSR, would like to see reimbursements mandatory as soon as possible and believe that the proposed end deadline of 2024 gives the industry ample time to implement them. The deadline should help to stimulate concerted action right across the industry and reduce the amount of harm suffered by consumers. The timeline will also give the industry sufficient time to devise more granular means of allocating costs reflecting sending/receiving PSPs' efforts to detect and prevent fraud.

If the industry determines to re-calibrate the cost allocations, penalising those PSPs that fail to take preventative measures, the measures will even further incentivise poorly performing PSPs to address their fraud controls. We fully recognise that more complex cost-allocation rules will need to be devised for multi-generational scams, however this consideration should not delay implementation of the mandatory reimbursement – it is clearly only by putting the cost onus on the industry and scheme operators that such rules will be devised and made operational.

Having robust and effective fraud controls in place should be a condition of operating in UK payment systems. Payments *must* be safe, and they *must* be trusted. Payments are not optional nice-to-have products used only by a sophisticated subset of consumers. All consumers throughout the United Kingdom have to make and receive payments and they need to have confidence in the payments system as well as in their ability to access and use it. With the increased use of e-commerce, the declining availability and acceptance of cash and the closure of bank branches, more and more consumers are required to use Faster Payments. These factors, along with the PSR's stated strategic priority of unlocking account-to-account payments and the move to open banking-initiated account-to-account payments, require all consumers to be able to use the system with confidence.

We have concerns about the £100 lower limit for mandatory reimbursement and oppose the £35 "excess" that the PSR propose consumers could bear. We understand that firms may disapply these limits, but in the interests of protecting every user of the system, we would prefer regulation to maximise coverage. The inconvenience and stress of a misplaced payment, and the importance of smaller sums to many people, particularly those in vulnerable circumstances, may place unnecessary burdens on consumers, deterring them from reporting incidents or seeking redress. The impacts may be detrimental, especially for those who are vulnerable.

Preventing fraud within the payment system is key to ensuring consumer confidence, to minimising consumer harm as well as to reducing criminality overall. By making reimbursements mandatory the PSR will help to restore and maintain consumer confidence, to protect consumers and to help to minimise the extent of fraud within the system.

Our responses are included at Annex A below.

Yours sincerely

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A – Response to Questions

1. Do you have views on the impact of our proposals on consumers?

We believe that implementation of the proposals will have an immediate and significant positive impact on consumers, resulting in a much greater proportion of consumers' losses being reimbursed, increased levels of consumer certainty overall and a reduction in psychological harm being suffered by victims of fraud. Over the longer term the move to mandatory reimbursements should lead to a reduction in the number of successful scams as PSPs individually and collectively step up their efforts to combat fraudsters. In turn this should lead to greater consumer confidence in the system and more uptake of account-to-account payments.

In the near term, as PSPs put more checks in place and stop more 'suspicious' transactions, consumers may face more interrupted payment journeys. We, like the PSR, believe that the benefits of preventing consumer harm outweigh any inconvenience that may be caused and concur with its view that these methods will be fine-tuned and improve over time as systems are refined.

The PSR notes in its consultation that there is a risk that the measures might cause some PSPs to consider restricting services to certain consumers, such as older consumers, because they may be perceived as more likely to become victims of APP scams. The PSR should monitor for this ensuring that PSPs treat current and prospective customers according to their obligations in the Equality Act 2010.

2. Do you have views on the impact of our proposals on PSPs?

Like the PSR, we believe that the prospect of mandatory reimbursements will increase the cost of APP scams for PSPs and therefore incentivise prevention. In all likelihood, we will see more detection and prevention tools emerge and greater intelligence sharing between PSPs.

By redistributing the costs across both sending and receiving PSPs *and* allowing the industry to fine tune the cost allocations we would expect the worst-performing PSPs – in particular those that receive the most scam payments – to face the greatest costs and therefore the greatest incentives to improve their responses and stop more scam payments.

As we stated in our introduction to this response, we expect that parts of industry will push back on the PSR's proposals, arguing for longer implementation timelines. We strongly encourage the PSR to stick with its timelines and resist this pressure. We, like the PSR, would like to see reimbursements become mandatory as soon as possible and believe that the proposed end deadline of 2024 gives the industry ample time to implement them. The deadline should help to stimulate concerted action right across the industry and reduce the harm suffered by consumers. The timeline will also allow the industry plenty of time to devise (should it wish to do so) more granular means of allocating costs reflecting sending/receiving PSPs' efforts to detect and prevent fraud. It should thereby also serve as a timely incentive for poorly performing PSPs to address their fraud controls.

3. **Do you have views on the scope we propose for our requirements on reimbursement?**

The PSR has proposed that the reimbursement requirements cover all payers who are consumers, micro-enterprises or charities, as defined in regulation 2(1) of the Payment Systems Regulation 2017. The PSR rightly observes that larger business payers can be expected to have greater capability to protect themselves from APP scams, and it would not be proportionate to require PSPs to reimburse such businesses for their losses. Consideration should therefore be urgently given to this extensive and important cohort, including any charities not covered in the PSR's definition, and how they can best be protected and supported.

While we recognise that the PSR is applying the reimbursement requirement to the same coverage of payers covered by the CRM code, we would caution that it ignores the significant number of businesses that are neither micro-enterprises nor larger businesses. Micro-enterprises are defined to be enterprises that employ fewer than ten persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million. Large businesses (those who could be expected to protect themselves or bear reasonable losses) are meanwhile commonly defined as businesses with more than 250 employees. According to the BEIS annual statistics, there are some 247,000 businesses with a combined annual turnover of more than £1,160 billion in the UK that sit between the two categories and who would be unprotected by the proposed measures. Corporates are by no means immune to APP scams, and these middle-size businesses are no exception. They will not enjoy the same resources as their larger peers and will very possibly become the targets of fraudsters given the scope of the new arrangements. Consideration should therefore be urgently given to this extensive and important cohort and how they can best be protected and supported.

We support the PSR's proposals to include all PSPs (whether directed or indirect payment system participants), all Faster Payments and all CHAPs payments. We also support the PSR's expectation that PSPs should reimburse 'on-us' APP scam payments in the same way as payments made via Faster Payments and would encourage the regulator to monitor this area closely to ensure these expectations are met.

As regards the value in scope. As stated in our introductory comments, we would encourage the PSR to consider whether a lower threshold than £100 might be appropriate, and we would discourage the PSR from allowing PSPs to levy an excess on reimbursements. We hope and expect that there will be positive competition between PSPs in both respects, however we would also caution that this competition may not ultimately benefit those most needy of the fuller reimbursements and is far likelier to be targeted at more affluent consumers.

4. **Do you have comments on our proposals:**

- **that there should be a consumer caution exception to mandatory reimbursement**
- **to use gross negligence as the consumer caution exception**
- **not to provide additional guidance on gross negligence?**

While we would agree in theory with the PSR that there could be a consumer caution exception to mandatory reimbursement, provided that it could only be triggered where the consumer acts with 'gross negligence' and that 'gross negligence' remains a high bar, we have severe reservations about this provision.

Firstly, the PSR would need to provide clarity on 'gross negligence' within their guidance to prevent misuse. Secondly, each fraud would need to be judged on an individual, case-by-case basis taking into account both the form of the payment and the individual circumstances of the customer. Thirdly, there is the potential for a large number of disputes to arise – disputes that will add to the Ombudsman's (FOS) caseload and cause consumers further distress and harm.

A final concern here relates to payment journeys and how these are changing. PSPs are designing consumer journeys to be ever smoother, faster, and less visible and the payment process ever less experiential to payers. Given this, we would question whether there *could* be circumstances in which it would be fair to argue the consumer had been grossly negligent.

In summary, the Panel recommends that the PSR should: consider the proposal in light of the prevailing payment trends including the move to embedded payments; provide a clear definition of 'gross negligence'; and consider what could mitigate the risk of PSPs initiating unfair disputes.

5. Do you have comments on our proposal to require reimbursement of vulnerable consumers even if they acted with gross negligence?

The Panel supports a fair and flexible response which takes into account the wide range of different needs, characteristics, and circumstances that individuals may have. Since the needs of individuals can differ, a tailored approached should be required, as a one-size-fits-all approach would not be effective, nor would it lead to positive outcomes. Firms will need to ensure that they have sufficient knowledge of the risk factors and impacts of vulnerability, which should also be embedded throughout the organisation (including frontline staff), so that there is better understanding of the challenges that are being faced by consumers. This should allow for a fair decision to take place.

The FCA published its Vulnerability Guidance under section 139A of the Financial Services and Market Act 2000[1], setting out its view of what firms should do. Firms should comply with their obligation under the Principles to ensure that the treatment of vulnerable customers is fair. In April 2022 the British Standards Institution (BSI group) published BS ISO 22458: Consumer Vulnerability[2] - an international standard that provides guidance for service providers on how to implement inclusive service and how to understand, identify and support vulnerable consumers. The Panel would encourage firms to utilise the guidance. Although the standard is voluntary it can be certified by an independent third party and BSI states that firms who chose to comply with BS ISO 22458 are demonstrating their commitment to 'doing the right thing' for all consumers.

The term 'gross negligence' within the question infers that the consumer is at fault. It is possible that the consumer could have vulnerable traits such as cognitive impairment or a developmental condition – it is likely, then, that they would be less capable of clearly understanding information, communicating, and making informed decisions. We suggest that the PSR consider rephrasing this wording in their final guidance.

---

[1] https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

[2] https://www.bsigroup.com/globalassets/documents/about-bsi/nsb/cpin/bsi_cpin-consumer-vulnerability-brochure_digital2.pdf

In findings from the FCA's latest Financial Lives Survey[3], in May 2022, 47% of UK adults showed 1 or more characteristics of vulnerability, up from 46% in February 2020 – this equates to an increase of 0.9 million adults from 24.0 million to 24.9 million over that period. Evidence from Action Fraud[4] shows that increasing numbers of fraudsters are exploiting recent events and current economic conditions to target consumers with scams.

The Panel's view is that given the ubiquity of payments usage, it would be a reasonable regulatory starting point that in at least 47% of APP scam incidents the consumer might be vulnerable. Firms should take this into account when assessing negligence and regulators should question firms about how they are applying a 'vulnerability lens' to assessments and how this is influencing reimbursement decisions.

6. Do you have comments on our proposal to use the FCA's definition of a vulnerable customer?

The FCA's definition[5] of a vulnerable customer is *"someone who due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care."* The Panel acknowledges the FCA definition, however this must be underpinned by more detail about the wide range of factors that can contribute to vulnerability, the impact that this has on an individual's ability to interact with organisations and how firms can best identify and respond.

However, firms cannot work from the FCA's definition alone and will need to understand how to practically apply this within their own businesses. As mentioned in Q5, BS ISO 22458 provides detailed guidance to service providers on how to understand, identify, and support vulnerable customers. The PSR could encourage firms to apply this guidance to demonstrate their support for all consumers in vulnerable situations.

7. Do you have comments on our proposals that:

- **sending PSPs should be allowed to apply a modest fixed 'excess' to reimbursement**
- **any 'excess' should be set at no more than £35**
- **PSPs should be able to exempt vulnerable consumers from any 'excess' they apply?**

The Panel does not believe there is a need for an excess and does not agree with the rationale the PSR sets out for having an excess hold. The Panel believes that instead there should be a much lower, zero and/or minimum limit as opposed to the £35 excess hold.

8. Do you have comments on our proposals that:

- **sending PSPs should be allowed to set a minimum claim threshold**

---

[3] https://www.fca.org.uk/data/financial-lives-2022-early-survey-insights-vulnerability-financial-resilience

[4] https://www.actionfraud.police.uk/news

[5] https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

- **any threshold should be set at no more than £100**
- **PSPs should be able to exempt vulnerable consumers from any threshold they set?**

The Panel understands the rationale for setting a minimum threshold – namely keeping administrative costs 'proportionate' for PSPs and limiting the caseload of APP scam claims that need to be processed. The Panel would however encourage the PSR to consider setting a lower threshold, possibly as low as zero, bearing in mind that *all* UK households – including those on very low incomes – use payments. For many of those, the loss of £100 will be unaffordable. There is also the risk that fraudsters will migrate to areas where protections are weakest, so the effect of a £100 minimum will be fraudsters targeting sub £100 transactions.

The Panel would hope that there will be competition in this area with some PSPs not setting any threshold, however we would caution that the competition may target more affluent consumers not the most in need of this service. The PSR could perhaps consider whether PSPs providing services to consumers with lower balances/ lower monthly payment values could calibrate down (or altogether eliminate) the thresholds.

9. Do you have comments on our proposal not to have a maximum threshold?

The Panel support this proposal. PSPs should exercise caution on all payments, particularly higher value payments – and most especially payments that are of sufficient size to have prudential implications for them.

10. Do you have comments on our proposals that:
- **sending PSPs should be allowed to set a time-limit for claims for mandatory reimbursement**
- **any time-limit should be set at no less than 13 months?**

The Panel supports the proposed 13-month minimum time limit, on the understanding that customers would have recourse to the FOS if they believe the time limit has been unfairly applied. This time limit should not be shortened.

11. Do you have comments on our proposals that:
- **the sending PSP is responsible for reimbursing the consumer**
- **reimbursement should be as soon possible, and no later than 48 hours after a claim is made, unless the PSP can evidence suspicions of first party fraud or gross negligence?**

The Panel supports the proposal that the sending PSP should be responsible for reimbursing the consumer as well as the 48-hour time limit set for that reimbursement. Extending the time limit could have a significant impact on consumers on low incomes as this may compromise their abilities to pay bills or do essential food shops.
This time limit should not be extended.

12. What standard of evidence for gross negligence or first party fraud would be sufficient to enable a PSP to take more time to investigate, and how long should the PSP have to investigate in those circumstances?

The standard of evidence for 'gross negligence' or first party fraud should be set sufficiently high to dissuade PSPs raising unnecessary, harmful, and costly disputes which will lead to consumer psychological harm. The investigation should be time-limited to ensure that honest victims of fraud can secure quick reimbursement. To mitigate against first-party fraud and avoid the risk of proliferation of first-party fraudsters we would recommend the PSR further encourages information-sharing between PSPs as well as close cooperation with law enforcement.

We would welcome further clarity from the PSR about the experience consumers can expect in cases where a PSP suspects they have been grossly negligent. As well as limiting how long investigations can take, the PSR should offer rules or guidance on what communications consumers can expect. Firms need to avoid people feeling stigmatised or even "criminalised" at a time when they may be feeling vulnerable. Communications and service in this area should meet the high standards expected under the FCA's new consumer duty.

As referred in question 4, when dealing with gross negligence each fraud should be judged on an individual case-by-case basis as individual circumstances will differ. Clarity should be provided within the PSR's guidance by outlining a clear definition to prevent misuse.

13. Do you have comments on our proposal for a 50:50 default allocation of reimbursement costs between sending and receiving PSPs?

Yes. We strongly support the default allocation of reimbursement costs and fully expect that the industry will, over time, evolve more sophisticated models that will more strongly penalise the less careful PSPs thereby leading to improvements in the safety and security of the system overall.

14. Do you have views on our proposal that PSPs are able to choose to depart from the 50:50 default allocation by negotiation, mediation or dispute resolution based on a designated set of more tailored allocation criteria?

Yes, we support this, but would stress that any such arrangements (or disputes) should not affect the consumer. The consumer should, as proposed, have certainty they will be reimbursed by the sending PSP within 48 hours.

15. Do you have views on how scheme rules could implement our proposed 50:50 default allocation to multi-generational scams?

No, but as stated in our introduction and under Q14, the complexities involved in allocating costs between the PSPs involved in such scams should not result in uncertainty or consumer detriment. Victims of such scams should be afforded the same certainties and the same 48-hour pay-out from sending PSPs as victims of any other frauds. The onus should be on the industry to devise and implement the cost allocation solution to support such pay-outs that it determines is most appropriate – including perhaps by taking a flexible cost allocation approach.

16. Do you have comments on our proposal for a 50:50 default allocation of repatriated funds between sending and receiving PSPs?

The Panel have no particular view on this proposal but would encourage the PSR to monitor how the model incentivises/disincentivises PSPs from seeking to freeze and repatriate funds.

17. Do you have views on the scope we propose for rules on allocating the costs of mandatory reimbursement?

No, but the Panel would encourage the PSR to monitor how the model incentivises/disincentivises PSPs from improving their protection and detection measures.

18. Do you have views on our long-term vision, and our rationale for the PSO being the rule-setter responsible for mitigating fraud?

The PSR's vision is for Pay.UK, as payment system operator (PSO), to run Faster Payments so that consumers are protected, and fraud is prevented from entering the system. In line with that vision, Pay.UK would be the appropriate body, in the long-term, to undertake the role of making, maintaining, refining, monitoring, and enforcing compliance with, comprehensive scheme rules that address fraud risks in the system.

The Panel supports this vision so long as Pay.UK has and gives appropriate voice to consumer representation on its Board and its advisory councils, and capacity to undertake consumer research as part of monitoring outcomes. It must also have sufficient authority over direct and indirect system participants and be able to move with sufficient pace to keep up with the pace of fraud.

19. Do you have any other comments on the proposals in this consultation?

We have welcomed all the PSR's efforts to reduce the risk of and harm caused by APP fraud and noted the recent improvement in both fraud and reimbursement rates – improvements that we believe can be directly attributed to the measures that have been put in place thus far. But more still needs to be done. Reducing the risk of consumer harm, ensuring consumer trust in, and eliminating crime from the payments system are all critical to UK consumers, the UK economy and UK society more widely. Given consumers' increasing dependence on Faster Payments *and* the rapidly increasing complexity of frauds being perpetrated, we would emphasise the urgency of the introduction of the proposed measures and strongly discourage the PSR from extending the proposed implementation timeline in response to industry demands. The industry has been on notice about APP scams for a significant period of time and consumers have been bearing the brunt of the costs involved. The severity of the harms being caused requires urgent remedy.

In parallel, the PSR, the FCA and others need to ensure urgent progress on consumer protection against faulty or non-delivered goods and services (para 4.13 of the consultation paper). This remains a significant imbalance between Faster Payments, including Open Banking payments and cards, and needs to be fixed before the industry is allowed to grow Open Banking payments as it currently intends. Even more urgently, the PSR needs to stop providers from interrupting consumers' card payment journeys and encouraging them to use account-to-account payments without giving clear information on the associated loss of protection. Such providers must make it clear that by choosing to use account-to-account payments, consumers will not be protected in the same way they would be using credit cards.