

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Financial Conduct Authority
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By email: appscams.callforviews@psr.org.uk

Dear Sir / Madam,

The Financial Services Consumer Panel (FSCP) 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 welcomes the PSR issuing a call for views on Authorised Push Payment (APP) scams and is broadly supportive of the PSR's initial analysis and the three measures proposed. As stated in the call for views *reported APP scam losses from the first half of 2020 totalled £208 million, with the actual figure including unreported losses likely to be much higher*. The payments landscape is complex and methods for fraud are increasingly sophisticated, significantly increasing the risk of consumer harm.

There is an urgent need for the regulator and industry to address gaps which allow APP fraud to occur and establish a reliable means whereby losses to consumers and SMEs from such frauds are reimbursed. More detailed proposals in future should clearly identify desired outcomes – the extent to which fraud will be reduced and from when.

The Panel is also supportive of greater regulatory oversight of online platforms, such that measures can be imposed to reduce the proliferation of online fraud.

The Panel has the following comments on the three measures proposed by the PSR.

Measure 1: Requiring banks and building societies to publish their APP scam data, including reimbursement and repatriation levels

The Panel is strongly supportive of greater transparency through *all* firms publishing data. Greater transparency:

- i. Enables consumers to make informed decisions;
- ii. Provides an additional incentive to firms to continually assess and improve anti-fraud systems.

It is important that key metrics are defined so that data is consistent and comparable. For example, figures should be reported as a percentage of the customer base, or per 1,000 customers or by number of transactions processed, so that comparisons are relative.

Measure 2: Requiring banks and building societies to adopt a standardised approach to sharing data

The Panel supports this measure, if more effective data sharing between sending and receiving banks helps to drive best practice improvements and mitigate fraud. It is important that data is shared anonymously, maintaining the privacy of individuals.

Measure 3: Extending customer protection across all banks and building societies at a minimum standard by changing payment system rules

The Panel strongly believes that regulation is required to make membership of the Contingent Reimbursement Model (CRM) Code, and reimbursement of APP scam losses, mandatory. The fact that it is not a requirement for firms to participate in the Code has led to unacceptable disparities and gaps in consumer protection, illustrated by the following¹:

- i. Participation in the Code has been low;
- ii. Less than 50% of losses assessed under the CRM Code are reimbursed or repatriated;
- iii. There are significant variations in reimbursement levels between firms. The percentage of total APP fraud value reimbursed by firms has varied from 6% to 63% (May 2019 – Feb 2020), according to statistics published by the PSR.²

Rules to make reimbursement mandatory should be clear, and where there is doubt over whether an exception applies, the consumer should be favoured. Consumers should be reimbursed if they are victims of an APP fraud unless they have been grossly negligent. This is the standard applied to card payments.

Other comments

The Panel supports the PSR's proposal in the call for views that there is a need to strengthen the CRM guidance so that firms are clearer about their roles and responsibilities. This would help to harmonise good practice and improve consistency of outcomes for consumers.

In addition, the move to fast and frictionless payments should be matched by equally fast and strong fraud detection measures at both the paying and receiving ends of transactions. To maintain consumer confidence and appropriately protect consumers, safety must increase alongside speed.

The Panel also makes the following observations and recommendations:

- **Receiving banks should have at least equal responsibility for reimbursing APP victims:** Receiving banks have a responsibility, commensurate with their money laundering and financial crime obligations, to have measures and controls in place to detect fraudulent activity and prevent funds passing through fraudulent accounts. However, measures and controls vary in effectiveness. Increasing the liability of receiving banks in the reimbursement of APP scam losses would incentivise firms to follow best practice.
- **Collaboration with overseas regulators:** There should be greater collaboration with overseas regulators given that fraudulent funds may leave the UK quickly.
- **Lessons should be learned from the CRM code:** The CRM code continues to be ineffective, with low code participation and reimbursement rates. The variations in approach across firms should be used as an opportunity to identify best practice, by understanding what 'good' firms are doing well, and what others

¹ The Consumer Panel provided additional details on the shortcomings of the CRM code in their response to the Lending Standards Board consultation, [here](#).

² <https://www.psr.org.uk/publications/general/authorised-push-payment-app-scams-conference-call-30-march-2020/>

are not. In addition, what can be done to increase consumer awareness of the CRM code, and in future, other consumer protections.

- **Future proofing regulation:** Consumer protections need to be future proofed for new propositions and business models. There are risks to consumer protection beyond banks and building societies. Those running innovative payments companies may be less familiar with regulation and longstanding consumer issues, and the potential for consumer harm is therefore large.
- **Mandatory reimbursement will not make consumers less vigilant about scams:** A review by Which? of 16 research papers and datasets from across the world and UK police found that victims suffer personal harm from fraud regardless of whether they lose money or are reimbursed.³ The emotional harm amongst victims is severe. Which? note that Action Fraud received 241 phone calls between January and November 2020 where a 'threat to life' was flagged.
- **Scope:** The requirements of the CRM code and future legislation should be applied to authorised push payments made by individuals *and* SMEs.
- **Ring-fencing incoming deposits:** The receiving bank ring fencing incoming deposits for a period of time may provide an opportunity for the sending bank to reclaim the funds in the case of a scam. This is something that should be considered.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel

³ <https://www.which.co.uk/news/2021/03/devastating-emotional-impact-of-online-scams-must-force-government-action/>