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Lending Standards Board
5th Floor Abbey House
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29 September 2020

By email: crmcode@lstdb.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to the LSB review of the CRM code.

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.

While the Panel welcomes the introduction of the Contingent Reimbursement Model Code (the "Code"), its overall impact thus far appears to have been small and the consumer detriment from Authorised Push Payment (APP) scams remains high.

Trust in payment services is key and the rise in APP scams puts consumer trust in the current system at serious risk. The industry needs to urgently address both the underlying gaps allowing such frauds to occur and establish a reliable means whereby consumer losses from such frauds are reimbursed.

Since the introduction of the Code, the percentage of losses reimbursed has only marginally improved, from 23% of all APP fraud losses reimbursed in 2018, to 25% in 2019.¹ This progress is by no means sufficient to address the significant harm caused by such scams, and most especially when considered against the increased threat level.

The value of (reported) APP scams in 2019 totalled more than £450 million across over 120,000 cases. This represents a 45% increase in the incidence of APP scams and 29% increase in value when compared to 2018.

Firms urgently need to do more both to reduce the likelihood of scams succeeding and in reimbursing customers when protections fail.

The Panel has identified the following key issues:

Code participation

- **Low Code participation domestically:** There are only nine signatories to the Code, representing less than a third of the direct members of the Faster Payments Service (FPS) scheme. To mitigate the risk of scammers succeeding and for consumers to benefit from the intended protections, the provisions of the Code should be adopted by *all* direct members of FPS and apply to *all* FPS payments, whether executed through direct or indirect members.

¹ <https://www.ukfinance.org.uk/system/files/Fraud-The-Facts-2020-FINAL-ONLINE-11-June.pdf>

- **No international participation in the Code:** While domestic adherence to the Code should naturally be the immediate objective, the industry must also focus on the international dimension to APP scams. There has been an increased speed and ease with which cross-border payments can now be made. This, combined with the complexity involved in dealing with cross-border fraud, makes its appeal to fraudsters self-evident. It is imperative that the industry urgently addresses potential consumer harm in this area.

Reimbursement of consumer losses

- **Money reimbursed to victims remains low:** The proportion of losses reimbursed to consumers by Code signatories has risen from 19% to 43% since its introduction. While this is an improvement, it remains inadequate in the face of the significant harm experienced by consumers and the damage to trust in the system. The Code states that victims of APP scams should be reimbursed unless they have not met a reasonable level of care when making payments. Clearly, this provision has not been applied fairly.
- **Recovery should come second to reimbursement:** Where there is no clear evidence of gross customer negligence, customers should be reimbursed in full and on an expedited basis. Consumer reimbursement should not be contingent on the recovery or repayment of the misappropriated funds.
- **Application of the Code has been inconsistent:** Data also shows that Code signatories have rarely reimbursed victims in full, and that the proportion of money lost to APP fraud that was reimbursed varies significantly across firms.² This illustrates that the Code has not been enforced effectively.

Security

- **Firms must innovate to increase security and reduce the number of scams:** If firms bear sufficient risk, such that they must reimburse APP scam victims, they will have increased incentives to monitor, detect and prevent fraud. The evidence suggests that even under the Code, firms are not fully reimbursing victims, while the number of scams has continued to grow. The Panel supports the implementation of rules surrounding Confirmation of Payee, but progress beyond these rules is required from the industry to protect consumers. The implementation of Confirmation of Payee should not be understood to alleviate firms of their responsibilities to treat customers fairly; in particular it must not become a mechanism that operates merely to shift liability from firms to their customers.
- **Higher value payments require particular attention:** With higher value payments now being carried through Faster Payments, particular attention should be paid to them – including to payments that may not be large *per se*, but which may be abnormally large for any given account holder. Pattern detection techniques, such as those used by the card industry, might usefully be applied by both sending and receiving payment providers.

Consumer awareness and understanding

- **Campaign to educate consumers:** The increased number of payment modes and speed with which payments are made (including the increased take-up of real-time payments) provides criminals with additional avenues for perpetrating fraud. Campaigns must be undertaken to increase consumer awareness surrounding the prevalence of fraud, how they can avoid falling victim to such frauds and how they can recover their funds in the unfortunate event they are successfully targeted.

² <https://www.psr.org.uk/sites/default/files/media/PDF/20200330%20APP%20scam%20conference%20call.pdf>

Advertising technology can be used to target consumers who are likely to be particularly vulnerable to this type of fraud. The Panel's [research on digital marketing](#) found that 'adtech' is used to create detailed personal profiles of individual consumers which then enables discrimination, manipulation and exploitation. The Lending Standards Board should engage with relevant regulatory bodies and technology companies to address such practices.

As the Panel has stated in a previous response³, the greater onus for reimbursing victims should fall on the receiving firms that allow funds to pass through fraudulent accounts held with them. Commensurate with their money laundering and financial crime obligations, firms should have measures and controls in place to detect and, where necessary, prevent unusual activity. Where there are persistent signs of abuse at particular firms, actions should be taken rapidly to address shortcomings, including – if necessary – by regulators.

To reiterate, all payments are susceptible to fraud and it is incumbent on payment service providers to mitigate the risks of fraud; this should not be a secondary consideration but a condition of business. Payment providers should build preventative measures into their systems to thwart fraud and educate consumers about the risks and measures they can take to prevent it.

Every consumer should be reimbursed in full unless they have been grossly negligent. It is important that banks do not take too broad an approach to gross negligence. We would therefore encourage the Lending Standards Board to research banks' interpretation of gross negligence, including the outcomes of any disputes on this issue, as part of any future review. Should the industry be unable to design, implement and adhere to a Code that ensures consumers who have not been grossly negligent are reimbursed within a short time frame, action should be taken to impose mandatory reimbursement.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel

³ [https://www.fs-cp.org.uk/sites/default/files/fscp_response_app_scams_steering_group_draft_crm_code.docx .pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_response_app_scams_steering_group_draft_crm_code.docx.pdf)