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Payments Systems Regulator
APP Scams Project Team
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By email: app-scam-pso-project@psr.org.uk

Dear Sir / Madam

Financial Services Consumer Panel response to Payment System's Regulator's consultation on a contingent reimbursement model

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 Panel welcomes the opportunity to respond to the Payment System's Regulator's (PSR) consultation on a contingent reimbursement model for victims of Authorised Push Payment (APP) scams. This is an area where urgent action is required, so we are pleased that the PSR has responded positively to the Which? supercomplaint and has put forward proposals to strengthen consumer protection.

A contingent reimbursement model would be a step forward and the high-level principles will place incentives on banks to protect consumers from APP scams. However, we have concerns about requiring consumers to take certain steps in order to benefit from protection. Protection of credit card payments does not appear to lead to customers failing to exercise sufficient caution. We recommend that the PSR reconsiders this element of its proposals, unless it has hard evidence of moral hazard.

The PSR should require banks to undertake additional steps to prevent scams. In addition, the PSR should also work with the Law Society to investigate additional measures which could be taken to prevent fraud associated with house purchases.

The Panel's responses to the questions posed in the consultation document are set out below.

Yours faithfully,

Sue Lewis
Chair, Financial Services Consumer Panel

ANSWERS TO CONSULTATION QUESTIONS

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Yes. These will help to provide a more consistent and improved experience for customers who report an APP scam. We are pleased to see that the standards include provision of 24-hour helplines for reporting suspected fraud, and that the customer's PSP will remain their sole point of contact throughout the processing of the claim.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes. This will be an improvement on the current situation, though it is not clear what impact the proposals will have on the amount of money refunded to victims of APP fraud. It is intolerable that at present APP scam victims can suffer significant financial losses and only get their money back if their PSP offers a goodwill gesture. This creates unequal treatment for victims of scams.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

In general, yes. However, it is not clear that the proposals will lead to a better outcome for consumers than the current discretionary approach. We urge the PSR to set out how many more people it estimates will receive a reimbursement under the proposed approach.

In addition, imposing a requirement on consumers to take whatever steps they reasonably can to avoid becoming a victim of an APP scam is fraught with difficulty. The consultation suggests that this can be achieved "by defining the requisite level of care victims are expected to meet to be eligible for any reimbursement" and goes on to state that this "should be high enough that consumers have an incentive to be careful of scams, but should not be unreasonable for them to meet". This will be difficult to operationalise. Efforts to define the appropriate level of care should involve consumer representatives, and those who understand the needs of the most vulnerable.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

In a 'no blame' scenario, the victim should be reimbursed by PSPs. Otherwise a victim of an APP scam could face significant financial loss despite having done what is asked of them. To make matters worse, another customer who acted in an identical way could find that they are reimbursed because their PSP failed to meet the standards. This arbitrary outcome cannot be right and would call the entire contingent reimbursement model into question as it would fail to offer adequate consumer protection.

Failure to reimburse the customer in a 'no blame' situation would also represent a much weaker level of protection to that which applies when making payment by credit card. For credit card payments, customers are reimbursed even though they may not even be aware of the protection offered; under one possible outcome of the contingent reimbursement model the customer would not be reimbursed even though they may have taken all the steps that could be reasonably expected of them.

If PSPs know they will have to reimburse consumers, this will give them an incentive to improve security, which should prevent more scams occurring in the first place.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Yes. We are particularly keen that strong incentives are placed on PSPs to implement Confirmation of Payee as soon as practicable. If either the sending or receiving PSP has not implemented Confirmation of Payee once it is made available then this should be taken into account when considering whether a PSP has taken all reasonable steps.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

UK Finance, together with Financial Fraud Action - FFA UK are best placed to develop and implement proposals for a contingent reimbursement model. However, it is imperative that the PSR has a clear role in:

- providing leadership to the project;
- ensuring that what is developed meets the objectives set by the PSR and is delivered in a timely fashion; and
- ensuring that consumer interests are properly represented.

The Financial Ombudsman Service (FOS) also has an important role to play in delivering the dispute resolution part of the model.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

No.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Not applicable.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

We do not agree with the assumption that consumers must have an incentive to take steps to avoid becoming a victim of an APP scam in order to protect against 'moral hazard'. This requires some hard evidence. Customers currently receive protection for payments made by credit cards¹ yet we are not aware of any evidence that this has led to a reduction in the care that consumers take over such payments.

Under the Payment Services Regulations, consumers are held liable where they have acted fraudulently or failed, with intent or gross negligence, to comply with their obligations. Otherwise they are reimbursed. Consumers who are victims of online push payment fraud should benefit from the same level of protection since their actions could not be described as grossly negligent.

If victims are to be required to demonstrate they have taken reasonable care, then their individual circumstances need to be taken into account. What is reasonable for one person may not be for another. People can be more vulnerable to scams for a variety of reasons, from physical or mental disability to more transient illness or stress.

¹ For section 75 to apply, it is a requirement that - among other things - the cash price of the goods or services bought must be no less than £100, and no more than £30,000

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes, otherwise PSPs may offer different levels of protection. This would put the onus on consumers to investigate which PSPs adhere to the contingent reimbursement model in order to receive protection. This would impose unacceptable burdens on consumers, and make the communication of simple messages to consumers more difficult. All PSPs should adopt the contingent reimbursement model. If they will not do so voluntarily then it should be mandated.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

We agree that the model should cover payments made from consumer accounts as defined under PSD2, which includes small businesses.

The model should also cover instances where the scammer moves the money to multiple accounts. The consultation states that extending the model in this way would add complexity due to difficulties in allocating responsibility. However, under the PSD2 regime the sending PSP has responsibility for reimbursing the customer, and it can then approach the other PSP or third party to reclaim the money. This delivers a much better customer experience. The same principle should therefore apply to the operation of the contingent reimbursement model.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

We understand that consumers can already complain to the Financial Ombudsman Service (FOS) about an APP fraud under DISP 2.7.6. This should continue to be the case. Allowing consumers to make use of an established dispute resolution service would mean it was able to take advantage of experience and expertise already acquired. This approach would also have the benefit that consumers would be more likely to be aware of the organisation, and to have confidence in its ability to reach a fair and balanced decision on cases brought before it.

We presume that the dispute resolution mechanism referred to in the consultation paper and referenced in Question 12 relates to disputes between PSPs. If this is the case, then we agree that it will be important for a mechanism to be established, but we do not have a strong preference about which organisation should fulfil this role.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Changes should be made to the current system as soon as possible.

We agree that it is not necessary to wait until all new standards and initiatives are in place.