the payments association

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Authorised Pushed Payment (APP) Scams: Requiring reimbursement

PSR

September 2022

Response from The Payments Association

Introduction

The Payments Association welcomes the opportunity to contribute to the PSR Consultation Paper "*Authorised Pushed Payment (APP) Scams: Requiring Reimbursement".*

The community's response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Head of Policy & Government Relations. We would also like to express our thanks to the PSR for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK's payments industry continues to be progressive, world-leading and secure, and effective at serving the needs of everyone who pays and gets paid.

With special thanks to:

- Aoife Hurley, Chief Strategy and Partnership Officer, PPS
- Erik Vasaasen, CTO, Okay
- Fabien Ignaccolo, CEO, Okay
- Ingvar Ülpre, UK General Counsel, LHV
- Jane Barber, Regulatory and Trade Association Lead – Payments, NatWest Group
- Jeremy Evans, Regulatory Change Manager, Modulr
- Julian Brand, Chief Lead and Compliance Officer, PPS
- Marco Magalhaes, Senior Product Manager, Form3
- Nick Fleetwood, Head of Data Services, Form3
- Other members who have preferred not to be listed, as their companies have decided not to respond to this consultation, but have expressed personal views on this topic.

Tony Craddock
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Contents

The section numbering below corresponds to the numbering of the 'questions for respondents' in this paper.

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

APP Scams continue to grow, and we appreciate the PSR is committed to doing more to protect consumers. Nonetheless, we do not believe that measures such as requiring mandatory reimbursement will effectively prevent fraudsters from acting, rather we believe this could create the opposite effect. Whilst the implementation of these measures do provide additional protection for consumers, we highlight four main areas of concern:

- **Friction**: the proposals will slow down the Faster Payment Scheme (FPS) for some payments and this could cause customers to stop using it. Instead, they could revert to using cheques and cash; further, whereas the current EU proposals on the widespread adoption of instant payments are likely to be adopted soon, these proposals take the customer experience in the opposite direction – towards slower or delayed payments.
- **Education of payment users**: educating customers to be careful should be at the core of this approach rather than adjacent to it.
- **Increase in first party fraud**: because most people will be reimbursed from what are claimed to be fraudulent transfers, fraudsters will target consumers and reward them for claiming reimbursement of a transaction that can then be claimed as being fraudulent. This is fraud by both the payer and the fraudster. This could have the unintended consequence of indirectly incentivising consumers to be party to the fraud.
- **Reduced competition**: if all firms will have to reimburse consumers for all APP fraud, the relative burden on smaller firms will be greater. This runs contrary to PSD2 and the goal of opening up the market.

In addition, we observe that the system is still based on the victims' claim to be victims, but there is no mention about the starting point of the claim, and whether PSPs have a responsibility into identifying the fraud and initiating the process on behalf of the client.

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

Most of our members do not believe that requiring mandatory reimbursement is the way to go and that these proposals will be detrimental to PSPs.

We believe that the most immediate impact on PSPs will be the cost of implementation, and the practicalities related to the 48-hour window for reimbursement, as this allows insufficient time to investigate each claim thoroughly and fairly.

In addition, we believe that there is still no focus on inbound transactions screening. At the moment this happens only for outbound transactions.

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

Most of our members do not agree with mandatory reimbursement. Many believe that the scope should not include micro-enterprises and small charities.

We would like to see a framework of how you plan to operationalise the reimbursement process, because the current system via emails poses concerns.

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?

Most of our members would welcome a consumer caution exception rather than just gross negligence. We think customers will be able to make mistakes, which is our main concern. Because of the definition of gross negligence being extremely broad, we believe no one would be effectively considered negligent and this would result in PSPs having to fund consumers' naivety. We would like the definition of gross negligence be narrowed and tighter.

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

Our concern here is that this may cause the unintended consequence of creating more fraud, by malicious people pretending to be "vulnerable" according to the definition of vulnerability, and thus automatically entitled to reimbursement even when they have been acting intentionally and with gross negligence.

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

Our general view is that every potential victim is potentially vulnerable, given the techniques that fraudsters are able to deploy. Nonetheless, it is not fair to suggest that everybody who is considered vulnerable by the definition of vulnerability, is in a vulnerable situation that makes him/her/them unable to make a transfer, hence not to be held responsible. We would like to highlight that, according to the most recent FCA assessment, the proportion of UK adults with characteristics of vulnerability was 53% in October 2020, and the cost of living crisis is likely to make this proportion even larger.

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?

Provided the excess is applied to recovered funds then we generally believe this is acceptable. Some members have suggested that we should apply the same mechanism here that operates for credit card chargebacks, where the charge is paid by the merchant. However, the view of the majority is that the current figures would not make much difference even though they are not enough to force consumers to take care in the way they should.

8. Do you have comments on our proposals that:
• sending PSPs should be allowed to set a minimum claim threshold
• any threshold should be set at no more than £100
• PSPs should be able to exempt vulnerable consumers from any threshold they set?

Most of our members believe that a £100 threshold would still not be enough to make consumers more careful about their transfers.

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

Whilst most members disagree with the view that requiring mandatory reimbursement is the appropriate way to beat the fraudsters, they agree with the general principle that, if there has to be a reimbursement, there should not be a maximum threshold.

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?

We agree with a limit, but we would appreciate the PSR to set standards on this, not the PSPs.

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 48-hour window is really difficult to implement, and it leaves insufficient time for proper investigation. Further, there is no clarity of what should happen in case of suspicion. Also, more guidance on when and how PSPs can turn the 48-hour timer off would be appreciated. A consistent and balanced technical standardised framework should be provided to avoid further unintended consequences.

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 type of evidence should be dependent upon what information is shown to the payer when approving a transaction. If PSPs show the wrong name for an IBAN, then the liability should be on the PSP. But if PSPs show the correct owner of an IBAN, and the payer still approves the transaction, an argument can be made that the payer should have verified the recipient more closely.

Further, we believe that investigations are likely to require the involvement of multiple institutions and significant bureaucracy, so 15 days (or 30 days in most complex cases) should be allowed. Our members believe that standards for gross negligence or first party fraud must at least consider:

- Ignoring warning during the payment journey;
- Misleading controls when questioned i.e. advising they are happy with the payment.

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

It is our view that, if this has to happen, then we agree with the proposal.

Nonetheless, some members have pointed out – as an addition to our answer to question 12 – that if the receiving PSP is unable to provide an API for verifying the IBAN, more of the responsibility of the reimbursement should be on the receiving PSP because:

- Having the allocation dependent upon what the user sees will help educate users and motivate PSPs to implement user interfaces that better informs end users;

- Having verification of IBANs as part of the reimbursement allocation calculation will motivate PSPs to provide APIs so that their IBANs can be verified, and for more competition in the IBAN verification space.

Also, a remitting bank can do absolutely nothing wrong, and act on the instruction of their customer (as it is an authorised payment) and then still be punished. If this takes place, then there will be an increased level of friction and delay in payments as banks will seek to do something to mitigate their losses. For example they may:

a) Raise the amount of due diligence undertaken on new current account customers; and
b) Monitor these accounts more vigilantly

While these may be seen to be appealing changes, this will increase the cost of opening and running current accounts and reduce the ease with which accounts can be opened. The first of these will reduce the profitability of current accounts and therefore reduce competition in the current account market. The second of these outcomes does not bode well for solving the problem of access to current accounts, which has been a persistent challenge for our industry in recent years.

Finally, if issuers are more cautious about opening marginal accounts because they are concerned that they may have to accept 50% of the costs of any APP scams, they will be less likely to open accounts for low income, disadvantaged, technologically challenged, older or vulnerable consumers. This goes counter to our society's objectives of including more vulnerable consumers into our financial system.

Note:
Some members have suggested that it may not be easy to find the right balance of loss distribution. Their suggestion is a PSP rate/indicator based on a previous period of activity. (i.e. a receive side PSP with a strong protection and a high level of scrutiny would have a lower proportion of the loss if the send side PSP had a more relaxed approach to their responsibility and vice versa).

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?

We envision that departing from the 50:50 default allocation would add an extra layer of complication, but we would need to evaluate the possible set of rules regarding the negotiations before making a final judgment.

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

Applying the same logic, there should be no difference, because the intermediaries should be responsible for the refund.

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

We agree with the proposal.

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

We do not wish to comment.

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

We are supportive of rules being set for all to adhere to as long as the process is consultative and we are able to consider the practical application and timelines effectively with differing business models.

19. Do you have comments on the minimum initial set of Faster Payments scheme rules needed to implement our mandatory reimbursement proposals?

Some of our bank members are supportive of the Faster Payments scheme rules being used to incorporate the PSR's plans to ensure scammed customer reimbursement, and they would like direct and indirect firms to go live at the same time, which may mean that this is late 2023. Time will be needed to allow smaller firms to familiarise themselves with what is required.

However, EMIs tend to be critical of this way forward, as they believe that Faster Payments Scheme rules cannot be applied to those indirectly using the scheme and all rules should be applicable to anyone accessing the Faster Payments Scheme.

20. Do you have views on how we should exercise our powers under FSBRA to implement our requirements?

We do not wish to comment.

21. Do you have views on how we propose that allocation criteria and dispute resolution arrangements are developed and implemented?

Standardisation of the type of information required to generate a dispute and protect the rights of the consumer needs to be made clearer. This must be done in consultation with all key members and operators in the sector and ensure an understanding of the impacts to different business models.

22. Do you have comments on our preferred short-term implementation approach of requiring Pay.UK to implement an effective compliance monitoring regime, including a reporting requirement on PSPs?

Whilst most of our members are not supportive of mandatory reimbursement in first place, they have made clear that, if this has to happen, they would be supportive of allowing a compliance monitoring regime on the requirements and scheme rules that sets out clear guidelines to help detect and prevent fraud.

23. Do you have views on the costs and benefits of Pay.UK implementing a real time compliance monitoring system and when it could be introduced?

Overall, our comment is that this must be considered against the different business models and capacities to ensure that timelines are realistic and do not put undue pressure on a business.

Some members have expressed the view that they do not see Pay.UK implementing such a system in the short term. Others have considered not just when this could happen but on the fact that once it happens it may see it direct and indirect firms needing to adhere to the scheme rule. To ensure these firms are not bound to all scheme rules, we are aware that some members (who have responded individually to this consultation) have proposed that

Pay.UK adopts a similar approach to Credit Payment Recovery, where the rule/procedures are set out in a document which can be made available to indirect participants. It is their belief that this would also allow Pay.UK to work with/consult firms on its proposals in order to produce procedures which reflect firms' different business models.

24. Do you have views on the best option for short-term enforcement arrangements?

We believe that it is not clear how enforcement should be achieved.

Some of our members have clearly stated that they are unable to support short-term enforcement arrangements for those that are now meeting the scheme rules for reimbursement.

25. Do you have views on the best way to apply the rules on reimbursement to indirect participants?

We have taken the view that this should be the responsibility of the direct participant providing access to the scheme.

26. If it was necessary for us to give a direction, what are your views on whether we should direct indirect PSPs or IAPs?

We believe that the liability should be direct via PSP and not via clearing bank – otherwise this will result in the clearing banks restricting access.

27. Do you have comments on our cost benefit analysis at Annex 2 or any additional evidence relevant to the analysis?

Most of our members have encouraged us to express their unhappiness with this model. They believe the logic of this analysis is flawed and has no basis for real time application of the scheme. It is their view that it will have the unintended consequence of effectively acting as funding fraud, increasing costs for PSPs and undermining their ability to allocate and invest in the relevant prevention tooling. It is their strong belief that this model will also make the payments market unattractive for many of them and reduce competition and innovation. They also believe that the additional costs of implementing and maintaining such a scheme, and providing the reimbursement of what is likely to be an increased level of fraud, will ultimately be borne by consumers who will have to pay for the operation of an intrinsically inefficient system.

Rather than filling the holes in the bucket, this system rewards those who make the holes, rewards them for making them bigger and encourages consumers to join them in the task.

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

We welcome the comment in the Consultation Paper introduction, which says the PSR wants to solve problems through PSPs. But our view is that the PSR should go beyond this proposed system and focus on a much broader arena: the source of the scam (social media, advertisers, social selling, and big tech). Many of our members believe it is simplistic to think that we can resolve this problem by just mandating refunds for scammed victims. While consumers may become protected, the PSPs will become the victims.

We fully support any activities on data sharing within the payment flow which allows for better decision making, as long as this is supported and applied universally. There are a large number of consumer payments which will be impacted by the proposals in this consultation and they have not actively been considered.

A further consideration that some of our members have raised is about the scope of the proposed measures. In particular, they focus on the fact that whilst the consultation does explain that both direct and indirect members of FPS should be covered, it does not look at authorised e-money institutions (EMIs) and authorised payment institutions (PIs) that are neither direct nor indirect members of FPS. Is the position that the obligation to reimburse the clients of these PSPs would fall on safeguarding institutions that handle the payments for these PSPs – even while the safeguarding institutions have no direct contact with and no ability to directly contact the potential victim, who is a client of the authorised EMI/PI? More clarity on the proposed liability for the EMIs/PIs and the safeguarding institutions would be appreciated.

About The Payments Association

The Payments Association (previously the Emerging Payments Association or EPA) is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and awards dinner, CEO round tables and training activities.

We run 5 stakeholder working Project groups: Inclusion, Regulator, Financial Crime, International Trade and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs.

See www.thepaymentsassociation.org for more information.

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