the payments association

connecting the future

A new reimbursement requirement

Faster Payments APP scam reimbursement rules and operator monitoring

Consultation Paper

PSR

July 2023

Response from

The Payments Association

August 2023

Introduction

The Payments Association welcomes the opportunity to contribute to the PSR Consultation Paper "*A new reimbursement requirement Faster Payments APP scam reimbursement rules and operator monitoring*".

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 and Robert Courtneidge, Advisor to the Board. 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.

Tony Craddock
Director General
The Payments Association

Members' "responses to the questions" set out in the consultation:

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

1. **Does our proposed package of the three legal instruments outlined above (and published in the annexes to this document) give full effect to the policy set out in our policy statement PS23/3? If not, why, and what changes are necessary in order for it to do so?**

Yes, the proposed package of the three legal instruments is well covered in the policy as set out in the policy statement PS23/3. However our position remains unchanged in relation to our thinking on CP22/4 where we stated the following:

"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 provides 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 an adjunct 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 which can then be claimed as fraudulent. This is fraud enacted both by the payer and the fraudster. This could have the unintended consequence of indirectly incentivising consumers to be party to fraud.
- **Reduced competition**: if all firms 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 should take some responsibility in identifying the fraud and initiating the process on behalf of the client".

2. **Do you agree with our proposed timeline for implementation and the feasibility of the 'go live' date of 2 April 2024? If not, why and what alternative would you propose?**

Whilst we understand the PSR desire to go live on 2nd April 2024, it may not be feasible for the various parties implicated by the changes to implement them and be business ready by that date. Indeed, until PSPs have sight of the Faster Payments rules and what data to report to Pay.UK, it will be difficult for them to implement a business readiness plan or system changes. The end of Q2 2024 may offer a more practical timeline, considering that the new requirements will not be published until December 2023. Furthermore our members believe it may still be a challenge for some businesses to meet this timeframe and would welcome a 6-12 month transition period after the go-live date.

Separately, consideration should be given to the fact that entities that are not signed up to Contingent Reimbursement Model "CRM" Code (c.400 other PSPs) will be disadvantaged by these proposed changes, as the signatory organisations will already have the processes and procedures in place to handle APP Fraud claims. It will take non-signatory businesses longer to implement new processes and procedures for claims handling and secure new resources including claims agents and fraud investigators. Lasty, it is not clear if this Code will continue after the changes or become integrated into them.

Finally, the risk of rolling out this new regime too early is the insolvency and/or disorderly failure of a proportion of PSPs currently active in the UK market, caused by a flood of APP Fraud claims that the businesses simply cannot afford to pay and a lack of preparedness for the new regime. A longer time period for implementation would allow market participants to ensure that their tools and operations are sufficiently robust, ensure their commercial arrangements including price rises are implemented, or, where they are not able or willing to continue to provide their service, to exit the market in the usual ways by selling portfolio/arranging for customers to be transferred.

Note: *New and improved systems for fraud detection, monitoring and compliance reporting need to be made available by industry players and will take time to be commercially available. These services are especially important for smaller industry participants as they allow access to wider set of typologies and risk factors. Our members believe this process could take a significant period of time.*

3. Do you have any comments on the frequency of reporting to Pay.UK? Would a different reporting frequency strike a balance between the cost and burden of reporting and sufficient data coverage?

We believe reporting is extremely important, and we would like it to be introduced as of 2024, both monthly and annually.

4. Do you have any comments on what data Pay.UK should gather?

In addition to the proposed list, some members have suggested the following data:

- The total number of APP scam claims reimbursed.
- Percentage exceptions used by category, e.g. vulnerable customers.
- Total value of scam claims per month and per annum.

5. Do you have any comments on the approach and principles for Pay.UK monitoring compliance?

The proposed approach for Pay.UK to monitor compliance via data and reporting seems appropriate.

6. Do you have any other comments on the section 55 specific requirement on Pay.UK?

We agree that the PSO's rulebook is the most practical tool for addressing the harms from fraud across the payment system. It is likely that system changes will be needed for PSPs to comply with the proposed reimbursement policies which will be embedded into the Faster Payment rules but it remains to be determined how this will be tested and over what timeframe.

Depending on the platforms and technology used, PSPs may need to make software changes to comply with the rules such as reimbursement limits, claims excess, time limits to reimburse, automating the claims and reimbursement processes, etc. Again, this will have an impact on the implementation timeframes and further consideration should be given to how this will be done.

Finally, there is reference to vulnerable customers. Vulnerability needs to be clearly defined to avoid misunderstanding/misuse of the exception rule (3.10.a).

7. **Do you have any other comments on the section 54 specific direction on Pay.UK?**

We agree that Pay.UK is best placed to create and implement a compliance monitoring regime for all requirements across all in-scope PSPs (including indirect participants). Consideration needs to be given to whether Pay.UK will be able to implement the system changes in time for the PSPs to meet the implementation deadline of 2nd April 2024.

8. **Do you have any other comments on the section 54 general direction on PSPs?**

No other comments.

9. **Do you agree that it is right to follow a similar approach to imposing a reimbursement requirement within the CHAPS payment system?**

Some of our members have suggested that similar rules should be applied to the CHAPS payment system as it is also an account-to-account method of payment. We understand that the PSR has already published that the CHPAS model will, where it can, follow similar rules.

10. **Do you have any comments on the most effective way to do this?**

As CHAPS transactions are generally higher value transactions, any reimbursement requirement should be tailored to the nuances of the CHAPS payment system and processes.

11. **Do you have any other comments on this consultation?**

Our members have made the following comments on the consultation:

- Setting the bar for mandatory reimbursement, except in the case of gross negligence, is likely to drive the wrong behaviour in consumers and provide very little incentive for them to protect themselves against fraud and scams.

- The consumer caution model needs to have a clearer balance between simplicity for consumer understanding and being fit for purpose in the complex scam environment.

- There is an ongoing risk of misalignment between the PSR's regulation and FOS guidance, with the risk that the ombudsman may find against a payment firm even where the PSR regulations have been met in full.

- How does this consultation fit with the Lending Standards Board's CRM code, which has proved valuable in driving improvement in payment firms' operational procedures when handling scam cases?

- The changes proposed could lead to reduced competition in the UK as many of the smaller PSPs will not be able to afford to continue offering services in the UK given the high APP Fraud claim liability. This reduced competition could then lead to customer harms and may push businesses towards other jurisdictions, causing a significant loss of attractiveness for fintech investments to the UK.

- The changes proposed are likely to lead to increased checks on outbound payments. For small business owners and independent traders (e.g. plumbers, builders etc) increased fraud checks will make it more difficult for them to receive money from customers and clients promptly. This may have a negative impact on the move towards a cashless digital society as people are once again driven towards cheques, cash and more expensive solutions to settle their invoices.

- We foresee a high likelihood of a significant increase in spurious and unfounded claims for APP Fraud refunds caused by a largely automated refund regime with a long claim period of 13 months (as has been seen in other industries in analogous situations where there is no obligation upon the "victim" to undertake due care and/or prove the veracity of their claim).

- We continue to be concerned about the slightly unclear scope of what is "APP fraud" under the definition coupled with the sending bank's ability to unilaterally decide on the validity and scope of fraud claims. These two factors could unfairly affect smaller PSPs who typically act as receiving parties to the transactions. This could mean that CRM Code banks may classify unclear "edge cases" as APP fraud so they can share the reimbursement cost (as the consumer's side of the story may be taken at face value) without any opportunity for the receiving PSP to object.

- Sharing of information and personal data between financial institutions is key for the success of the refund scheme as it will help to reduce APP Fraud. A reliable way to share account and personal details of fraudsters to ensure they cannot operate similar schemes over multiple platforms is essential to reduce fraud across the Faster Payment network. Regulatory obstacles currently prevent the receiving bank from holding a Faster Payment for more than one business day; this would need to change so the receiving bank can properly investigate potential APP scam incoming payments.

- To effectively deal with APP fraud, tech companies should also be brought into the equation, both in relation to data sharing to prevent scam and reimbursement requirements. There is no real way to stop a scam if not blocked at its source.

Finally, in the case of exceptions or where the 50/50 rule does not apply, some members have suggested that it may be beneficial to have a payment 'reimbursement attribute' in the payment transaction that indicates the percentage reimbursement that should be applied for that transaction. This could be configured in the Pay.UK system or the Faster Payment rails.

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 PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG 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. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

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