

RESPONSE TO AUTHORISED PUSH PAYMENT SCAMS PUBLISHED ON 07 NOVEMBER 2017

The Fraud Advisory Panel welcomes the opportunity to comment on *Authorised push payment scams: PSR-led work to mitigate the impact of scams, including a consultation on a contingent reimbursement model* (CP17/2) published by the Financial Conduct Authority Payment Services Regulator on 07 November 2017, a copy of which is available from this [link](#).

This response of 12 January 2018 reflects consultation with the Fraud Advisory Panel's board of trustee directors and interested members from our fraud prevention and detection group. This group brings together representatives from the public, private and voluntary sectors who have specific interest, experience or expertise in this area.

We are happy to discuss any aspect of our comments and to take part in all further consultations on the issues we've highlighted in our response.

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Established in 1998 we bring together fraud professionals to improve fraud resilience across society and around the world.

We provide practical support to almost 300 corporate and individual members drawn from the public, private and voluntary sectors and many different professions. All are united by a common concern about fraud and a shared determination to do something about it.

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MAJOR POINTS

1. The Fraud Advisory Panel is pleased that the UK banking sector has taken on-board the concerns highlighted in the super-complaint made by the consumer group *Which?* last year and is taking a much more proactive approach in addressing the serious problem of authorised push payment fraud (APPs) to better protect customers.
2. We remain concerned about the continued use of the word ‘scams’ to describe fraud which we consider lessens both the seriousness of the crime and its harmful effects on victims. Our use of language in this area is crucial to ensuring that positive initiatives such as this one are given the priority they deserve.
3. We support the introduction of a contingent reimbursement model, subject to the caveats outlined below. In our experience, many APP victims find it difficult to navigate the fraud landscape in this area: to know who to make immediate contact with at their bank or a recipient bank to raise their concerns, to know what their rights are, who they can turn to for advice and support, the level of service they can expect to receive, and the likelihood of recovering monies lost. We applaud the proposed introduction of a suite of initiatives to better protect customers from falling victim in the first place and to better support them if they do.
4. Whilst we have tried to respond to the consultation questions as fully as possible, the short timescale for response over the Christmas period has meant that we have not had the opportunity give the consultation as much detailed consideration as we would have liked. We would welcome the opportunity to be involved in further discussions surrounding the final design, implementation, management and administration of the scheme.

RESPONSES TO SPECIFIC QUESTIONS

A. BEST PRACTICE STANDARDS

Q1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSP’s respond to reported APP scams? Please provide reasons.

5. We believe the universal adoption of a set of best practice standards by all Payment Service Providers (PSPs) is an essential element of the overall framework to improve the response to APP fraud and the experiences of victims. These standards should be widely available, clearly communicated, and measurable to encourage PSPs to adopt systems and processes that facilitate prompt action and to hold them to account where they do not. Furthermore, we believe that compliance with the standards should be subject to ongoing monitoring with the results published so that customers can see how well individual PSPs are performing and identify those who fall below industry standards (for example, response times once on notice that a fraud is alleged).
6. The standards developed by UK Finance are a good starting point and we particularly welcome proposals for the introduction of a single point of contact and 24/7 access. These address the

very real nature and timing of when many APP frauds are discovered, namely outside normal business hours and over the weekend.

7. However, we believe that the standards might be further strengthened if PSPs are required to adopt a consistent approach to signposting victims to the correct access points (telephone numbers and/or points of contact) to enable them to report suspected APP fraud promptly. In our experience some victims who have discovered they have been defrauded within 24 hours of the transfer being made have been delayed in reporting because of poor signposting and too much automation. Victims often want and need to speak to a real person and this may be especially important for certain groups of vulnerable people. In addition, it is important that the person who is spoken to at a PSP is knowledgeable about APP fraud and can react appropriately internally.

B. INTRODUCING A CONTINGENT REIMBURSEMENT MODEL

Q2: Should a contingent reimbursement model be introduced? Please provide reasons.

8. Yes. We agree that a contingent reimbursement model should be introduced and that all PSPs should participate in it. For many APP victims the only route of redress available at present is to obtain a court order to follow the money and/or seek a freezing injunction over the recipient account. Typically, the victim is blind as to whether these steps will yield a successful recovery outcome and therefore may find themselves even further out-of-pocket as a result.
9. We also believe that the model will be beneficial in cases where there is no other identifiable party who could be held liable and from whom recovery of the loss could be sought.
10. In circumstances where a PSP reimburses a victim and is subsequently able to identify the location of the stolen monies we suggest that the PSP should have the right of subrogation and be permitted to recover such monies – in essence to have an assignment of the right of recovery in place of the victim.
11. More generally we believe the proposed model should act to incentivise the banking industry to better protect customers and also encourage better communication and cooperation between individual PSPs. Such measures may also result in an overall reduction in financial crime by making it more difficult for the perpetrators to funnel the proceeds into other unlawful activity such as terrorism or trafficking (arms/drugs/people).

Q3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

12. Yes. Please see our response to question 2 above.

Q4: 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.

13. The advantages and disadvantages of a focus on consumer protection are set out below.

Advantages

- PSPs are incentivised to regularly review their systems and processes using data from previous APP frauds to ensure continual development and improvement.
- Recognises that the closure of branches and drive to toward electronic banking must be matched by greater protection and assurance for consumers who use online platforms to transfer money.
- Enables innocent victims to seek redress and avoid potentially financially crippling situations.
- Acknowledges that customers generate revenue for the industry and should be protected.

Disadvantages

- Compels PSPs to compensate customers regardless of the circumstances of the fraud.
- Dilutes incentives for PSPs to strive for best practice.
- It may be worthwhile considering the introduction of a 50% compensation mechanism for no blame deadlocks which could either be adjudicated or scaled from 25 – 75% but offers some redress but does not place all the penalty on the PSP. It may be that for no blame cases a central fund is the source of compensation.

14. The advantages and disadvantages of a focus on incentives are set out below.

Advantages

- Emphasises the need for much greater consumer education. In our opinion, this should be coupled with an obligation on individual PSPs to take proactive steps to educate their customers. For example, (and this is relevant to other questions in this consultation), if a consumer is compelled to take a five-minute interactive training session (or to watch a short video) explaining APP risks, methods and prevention best practice every six months or so when logging onto their online banking, the PSP would be able to show in a uniform manner that they have aided awareness and education. The training could be updated on a periodic basis to reflect changes in the risks to customers.
- Ensures continued improvement across the industry as a whole.

Disadvantages

- May lead to inconsistent outcomes for customers who have behaved in the same way.
- A PSP who ends up having to pay compensation in any event, may have no incentive to improve its systems. The extent to which cases are determined to be a 'no blame' outcome will depend on how high the bar for requisite level of care on the part of the consumer is set. If too low then this may have unintended consequences for the behaviour of PSPs as set out above. If too high then the aim of consumer protection is undermined.

Q5: 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.

15. Yes. We agree that the measures being developed should form the defined 'standards' of the contingent reimbursement model, perhaps with the addition of the proposed online training for customers (see our responses to questions 1 and 4 above). This is because the standards deal with practical issues (such as communication) which will be viewed positively by victims and should improve outcomes for them.
16. The standards should be easily accessible, readable (i.e. written in plain English) and published somewhere logical to victims (perhaps on the Financial Conduct Authority and UK Finance websites or available physically at a branch of a PSP for those with limited or no internet access or use). Performance by individual PSPs against the standards should be published to improve transparency and inform consumer choice.

C. DESIGNING AND IMPLEMENTING A CONTINGENT REIMBURSEMENT MODEL

Q6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

17. In our opinion UK Finance is best placed to design and implement the system given its significant knowledge and understanding of the financial services industry and fraud. However, we believe that they should consult widely on the final form of the model to ensure it is fit for purpose and will meet its aims and objectives from both PSP and customer/victim perspectives.
18. To this end consideration should be given to establishing a panel of external experts to independently review and challenge. This should include those that act on behalf of, or represent the views of, victims including private sector fraud professionals (such as lawyers and accountants), law enforcement and consumer groups. PSP victims should also be consulted.

D. BARRIERS TO IMPLEMENTATION

Q7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

19. Other potential barriers may include political barriers and whether PSPs may view the new model as a penalty upon industry at a time where there is already uncertainty about Brexit and whether certain institutions will retain UK head offices.
20. We also suggest that consideration should be given to potential other 'add-ons' which could aid protection and reimbursement, such as introduction of specific insurance products and some of the other enhanced services mentioned within the consultation paper (e.g. automated delay in transactions to allow for time to protect and reverse a transaction).

E. OTHER DETAILS TO CONSIDER

Q8: 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?

21. Not applicable.

Q9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

22. The suggested definition of eligibility seems sensible, namely whether the customer has been warned that a specific transaction is suspect or has been advised that the payee name does not match. This is not the same as simply having a general passive warning on an online banking platform.

23. Other mitigating factors might include vulnerability of the victim, the material time of the transaction, and whether the victim had ignored any education or training offered by their PSP.

Q10: 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.

24. To be truly effective all PSPs should be required to sign-up to the scheme. The reasons are twofold:

- a. financial transactions run through a chain of PSPs. Therefore, if one fails to meet the required standards but is not signed up to the scheme the victim may be left without redress (see paragraph 5.43 of the consultation paper); and
- b. the model calls for a uniform standard across the banking industry which would require all PSPs to adopt the standards.

Q11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

25. We believe the proposed scope is too limited. The model should be available to all victims – not just consumers or small businesses. Larger organisations include some charities and housing associations which have also been the victims of APP frauds. Their monies are used for important social causes and they should be afforded the same rights to redress. Rather than exclude them a better approach might be to consider the introduction of a cap on the maximum compensation available to larger organisations.

26. We also recommend that longer term consideration should be given to dealing with other jurisdictions.

27. We agree that the model should not be retrospective and should only apply to frauds perpetrated on or after the date of model's commencement.

Q12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

28. We believe that it may be that a single-party arbitration is desirable as a dispute resolution mechanism if a cost effective solution could be created. Ideally a specialist tribunal or arbitration function could be created to deal with such disputes (or using a pre-existing arbitration centre) but that would need to be funded by the parties as would be the situation in a civil court case. The above would be a self-contained and not overly time-consuming process where parties could file a claim, a defence, file documents and statements simultaneously and then have an arbitration hearing of no longer than one day (the issues should be narrow enough for this timeframe to be appropriate). Parties could represent themselves or engage professional advisers.
29. UK Finance, if it is responsible for designing and implementing the model, should have a cradle to grave supervisory role for ensuring that the model works fairly for both victims and PSPs.

Q13: 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.

30. September 2018 would be desirable though it seems very ambitious. Therefore our view is as soon as reasonably practical but no later than June 2019.

Q14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

31. We recommend a universal start to the contingent reimbursement model. Otherwise it will create a lottery if only certain PSPs are engaged and others are not.