The Money Charity Response – Authorised Push Payment Scams: Requiring Reimbursement (November 2022)

The Money Charity is a Financial Wellbeing charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.[1]

We welcome the opportunity to respond to the Payment Systems Regulator's consultation on Authorised Push Payment (APP) Scams: Requiring Reimbursement.

In this response, we make some overall comments on the issue then answer the questions posed in the Consultation Paper.

[1] See box on back page.

Overall Comments

As the UK's Financial Wellbeing charity, The Money Charity are delighted to see the introduction of a set of radical new proposals that will have a wide-reaching positive impact on the financial wellbeing of consumers across the UK. The proposals for mandatory reimbursement set out in this consultation mean that a much greater number, in fact the vast majority, of APP (authorised push payment) scam victims will be entitled to a significant level of reimbursement. This in turn will incentivise PSPs to act to prevent more scams from happening in the first place. The beneficial impact that these measures will have upon consumer financial wellbeing cannot be understated and come at a time when critically needed; in the first half of 2021, £4 million per day was stolen from people in the UK via scams, with less than half of this money being refunded by banks[2]. In our responses to the consultation questions, in some instances we suggest that the proposals don't go far enough, for example, we suggest that there could be further measures to protect specific groups of consumers who are more likely to fall victim to scams. However, we are well aware that these proposals will face considerable opposition from banks and PSPs, so we are keen to support the proposals in their current form if necessary.

Answers to consultation questions

Question 1: Do you have views on the impact of our proposals on consumers?

We warmly welcome the proposals outlined in this consultation, as we believe that they will have an extremely positive impact on consumers. The proposals mean that the vast majority of APP scam victims will be entitled to a significant level of reimbursement. We celebrate these measures not only from a financial wellbeing perspective, but also in the interests of consumer emotional wellbeing. Falling victim to a scam can be a distressing experience. Incentives that work to prevent more scams from happening in the first place will also help to protect consumers from the negative emotional impact that is associated with scams.

We are satisfied that due to the Equality Act 2010, PSPs will be unable to restrict services to certain groups who may be more likely to fall victim to scams, such as elderly people. However, we think that more could be done to address the underlying reasons that cause groups such as elderly people to be more likely to become victims of scams. A reliance on anti-discrimination laws in this instance presents only a symptomatic solution; while it is illegal for banks to discriminate against elderly

[2] UK Finance, September 2021 https://www.bbc.co.uk/news/business-58649698?mc_cid=97ef893b22&mc_eid=4c7424401b

customers and prevent them from making payments, there is no evidence that any thought has been given as to why elderly customers are more likely to become victims of scams. Elderly consumers may be equally entitled to reimbursement, but they will continue to become victims of scams at a higher rate until the root causes are addressed. This also means that they will continue to experience the emotional distress that is associated with scams at a higher rate than other groups. In the spirit of incentivising PSPs to stop scams from happening in the first place, it makes sense for there to be further measures to protect groups who are more likely to fall victim to scams, as these groups surely represent a significant proportion of the overall losses caused by scams. Preventative protections could perhaps come in the form an education initiative on money safety, targeted at these specific groups. The Money Charity has a depth of experience in delivering money safety workshops to a wide range of audiences. PSPs may find a solution such as this to be more attractive and cost-effective than simply continuing to reimburse these groups.

Question 2: Do you have views on the impact of our proposals on PSPs?

The costs that PSPs may expect to incur as a result of the proposals, while likely to be unpopular with PSPs are a necessary part of protecting the financial and emotional wellbeing of consumers. Ultimately, if the proposals are effective, PSPs will be incentivised to prevent a larger number of scams than are currently being prevented, and therefore incur less reimbursement costs than are currently being paid.

Question 3: Do you have views on the scope we propose for our requirements on reimbursement?

We agree that the proposed scope is appropriately inclusive. PSPs should not be expected to reimburse large businesses for losses caused by scams. All directly connected PSP participants sending payments over Faster Payments, as well as PSPs indirectly connected via an indirect access provider, should be obliged to reimburse consumers under the scheme. No category of APP scam should be excluded from mandatory reimbursement.

Question 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?**

It has been argued that in making reimbursement mandatory, the scheme may cause some consumers to be less cautious in making payments. Therefore, a consumer caution exception may be necessary. We would like to make two objections to this argument. Firstly, and as highlighted in the consultation, the PSR has seen no evidence that when faced with the prospect of guaranteed reimbursement, consumers are likely to act more recklessly when making online purchases. Even more, the prospect of reimbursement cannot completely offset the emotional distress that is often experienced by scam victims. Consumers may want to avoid falling victim to scams altogether, rather than go through the perhaps humiliating process of realising that they've been targeted and then having to make a claim for reimbursement. Secondly, the consultation rightly argues that it is difficult to pin down what kind of actions should count as 'gross negligence', and therefore does not offer any additional guidance on how PSPs should define what kind of consumer behavior could be defined as grossly negligent, other than as having behaved with a very high degree of carelessness. This means that PSPs will be able decide if consumers have acted with gross negligence, in turn opening the possibility of PSPs setting the bar low in order to reimburse as few consumers as possible. There are good proposals for monitoring and enforcing compliance of PSPs, such as requiring PSPs to publish data on APP scams. If it seems that a PSP has reported a very low number of reimbursements, it may be because they have rejected too many claims as being grossly negligent. However, this is solution is not an infallible one, and risks allowing claims to be rejected before data can be analyzed and acted upon. We suggest that the practice of 'gross negligence' as a consumer caution exception be kept under review, as it is crucial to understand whether the caution is having the intended effect. After this review, at which point PSPs may have clear examples of claims they have rejected as being grossly negligent, the PSR may be expected to publish some guidance on what kind of actions can be defined as grossly negligent.

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

We strongly support the proposal that PSPs should be required to reimburse vulnerable customers, even if they have acted with gross negligence.

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

We accept the proposal to use the FCA's definition of a vulnerable customer, as this will ensure that all firms are working to a single definition of vulnerability. However, we would like to make a small amendment, as detailed in our response to questions seven and eight.

Question 7: Do you have any 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?**

Please see below, included with answer to question eight.

Question 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?**

We understand that there are good reasons for allowing PSPs to set an ‘excess’ of £35 and/or a minimum claim threshold of £100, mainly that are beneficial to PSPs, such as helping to ensure that the administrative costs of the proposals to PSPs are proportionate. Despite these reasons, we strongly suggest that both the excess and minimum claim threshold are dropped as proposals. The reality remains that £100, or even £35, is an unaffordable loss for many people, and particularly vulnerable consumers. Indeed, having fixed thresholds means that those who can afford to lose the least are worst affected. If dropping these proposals altogether is unrealistic, at the very least PSPs should introduce an excess that is instead a percentage of the losses and be obliged to exempt vulnerable consumers from any excesses or thresholds that are set. Additionally, the definition of vulnerability should be adjusted to include people who are less financially secure, as scam losses have a disproportionately negative impact on people who have less money and with lower levels of financial resilience. On the other hand, if consumers are more financially secure and able to afford any losses caused by scams, they should not be viewed as being somehow more liable for these losses. Such a view risks slipping into ‘victim blaming’ territory. The moral responsibility of scam prevention should primarily fall on criminals not to commit scams, as consumers have a right not to be scammed. Obviously, this goal is neither likely nor realistic. PSPs must therefore be entirely responsible for scam prevention, which is of course argued in the consultation – however this should not include measures such as setting an excess or minimum threshold, which not only appear to defer blame to the consumer, but also have a disproportionately negative impact on vulnerable consumers.

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

We agree with the proposal not to introduce a maximum threshold, as there are usually already strong protections in place for very large payments. We recognise that most payments made using Faster Payments are typically well below £1 million, making a maximum threshold redundant.

Question 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 that 13 months is a reasonable timeframe for which consumers should be expected to submit reimbursement claims.

Question 11: Do you have comments on our proposals that:

- **The sending PSP is responsible for reimbursing the consumer.**
- **Reimbursement should be as soon as 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?**

We agree that the sending PSP should be responsible for reimbursing the consumer, and that reimbursement should happen no later than 48 hours after a claim is made, unless the PSP can provide evidence that the consumer acted with gross negligence.

Question 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 standard of evidence needs to be sufficiently high to disallow PSRs from unnecessarily delaying payment or playing the consumer in any way.

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

We agree that at 50:50 default allocation of reimbursement costs between sending and receiving PSPs mean that the overall losses should balance out, and so is an appropriate default distribution.

Question 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 agree that PSPs should be able to depart from the default allocation to a more tailored allocation if they so choose.

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

No comments.

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

No comments.

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

We agree that the rules on allocating costs of reimbursements should apply to all directly connected PSP participants sending and receiving payments over Faster Payments, as well as PSPs indirectly sending and receiving payments.

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

We agree that the PSO should be the rule setter responsible for mitigating fraud.

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

No comments.

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

No comments.

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

No comments.

Question 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?

We agree that the short-term implementation approach is the most appropriate option, as it is important that a monitoring regime is implemented as soon as possible after the reimbursement requirements start. However, as detailed earlier in our response, the process of monitoring how many claims are being rejected by PSPs as grossly negligent must be kept under review to ensure that PSPs are not setting the bar too low.

Question 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?

We support the introduction of Pay.UK implementing a real-time compliance monitoring system, and agree that this should be implemented as soon as possible, as this will be crucial in ensuring that an acceptable proportion of claims are being investigated as grossly negligent.

Question 24: Do you have views on the best option for short term enforcement arrangements?

No comments.

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

No comments.

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

No comments.

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

No comments.

The Money Charity is the UK's Financial Wellbeing charity providing education, information, advice and guidance to all.

We believe that everyone achieves Financial Wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote Financial Capability and Financial Wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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