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Consultation Response:

# PSR Authorised push payment scams: Requiring reimbursement

Response by the Money Advice Trust

Date: November 2022

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# Introduction

## About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2021, our National Debtline and Business Debtline advisers provided help to over 170,400 people by phone, webchat and our digital advice tool with 1.63 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2021 we delivered this free training to more than 1,000 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org).

## Public disclosure

Please note that we consent to public disclosure of this response.

# Introductory comment

We very much welcome the proposals in the paper from a consumer protection perspective. APP scams can have a devastating effect on victims, including ongoing mental health issues and emotional and financial distress. It is vital that the industry moves away from the attitude that consumers are generally responsible for having been defrauded, in a world where ever more sophisticated scams are developed to deceive people into making such payments.

- ✓ We welcome the proposal to require all payment service providers (PSPs) to reimburse victims compared to the ten firms required to do so under the CRM code.
- ✓ We very much welcome the expectation that all consumers will be reimbursed on a mandatory basis, unless they fall into a very small group of consumers where fraud or gross negligence can be proved.
- ✓ We are very pleased to see the proposal that consumers will be reimbursed in full rather than the current situation where many consumers receive only a partial payment under the CRM code.

We hope that as a result of these proposals, PSPs will be incentivised to prevent APP scams occurring in the first place. We would hope to see improved intelligence-sharing and a commitment to blocking suspicious payments more frequently.

We would like to see extensive and rigorous rules and guidance in place to set out to define gross negligence and how this “high bar” can be reached to minimise the potential risk of firms deciding more consumers fall into this bracket to avoid paying compensation.

It is vital that the PSR ensures that the body chosen to enact the regulatory role is adequately equipped with strong consumer protection measures. We would very much hope that the minimum initial set of rules under the scheme will include arrangements to monitor and enforce the rules on mandatory reimbursement from the start. We consider such monitoring and enforcement to be essential to the success of the scheme.

# Responses to individual questions

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

We very much welcome the proposals in the paper from a consumer protection perspective. Scams have an immense impact on people who are affected, including ongoing mental health issues and emotional and financial distress. We would expect the impact of the PSR proposals to be very positive for most consumers affected by the authorised push payment (APP) scams.

The proposals will be beneficial in a number of ways.

- ✓ We welcome the proposal to require all payment service providers (PSPs) to reimburse victims compared to the ten firms required to do so under the CRM code.
- ✓ We very much welcome the expectation that all consumers will be reimbursed on a mandatory basis, unless they fall into a very small group of consumers where fraud or gross negligence can be proved.
- ✓ We are very pleased to see the proposal that consumers will be reimbursed in full rather than the current situation where many consumers receive only a partial payment under the CRM code.

Whilst the proposals may mean greater “friction” for consumers when genuine payments are put on hold or blocked temporarily, we would have thought this a small price to pay for greater consumer protections. We do not expect the majority of consumers to find this level of protection unnecessarily intrusive. As suggested in the paper, with sufficient incentives on PSPs to improve data sharing, this should minimise the number of payments stopped unnecessarily.

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

We share the expectation put forward in the paper by the PSR that as a result of these proposals, PSPs will be incentivised to prevent APP scams occurring in the first place. We would hope to see improved intelligence-sharing and a commitment to blocking suspicious payments more frequently.

We cannot comment upon whether the proposals will increase the costs for most PSPs for scam reimbursement. However, it would appear reasonable that if costs do increase, this can be minimised by PSPs doing substantially more to prevent scams happening in the first place.

We see no reason to allow badly performing PSPs who have high scam rates to continue to take minimal action to prevent fraud at the expense of consumers, or in comparison to PSPs who are choosing to “do the right thing”.

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

We would like to see the scope for the scheme to be as wide as possible. We would be concerned that any exemptions could lead to loopholes that could be exploited by scammers. For example, the £100 limit could concentrate scam activity to amounts below that limit.

The PSR and FCA should prepare new rules in advance, so that PSPs are not able to refuse to compensate consumers where the scam relates to an “on-us” APP scam payment.

In point 4.13 of the paper, there is a suggestion that mandatory reimbursement will not apply to private civil disputes. We would like to see this clarified to ensure that this exemption does not apply where scammers pretend to be a legitimate supplier of goods and no goods are ever received.

### 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?

We agree with the PSR under point 4.19 that a “*consumer caution exception could put inappropriate responsibility on consumers to spot sophisticated scams, risk PSPs blaming genuine victims for not taking sufficient care and limit the incentives on PSPs to take steps to detect and prevent fraud*”. We are therefore not entirely sure that there is a requirement for a consumer caution exemption due to gross negligence.

We are concerned that even though this is intended to be a “high bar”, some firms already try to argue that consumers have been grossly negligent to avoid paying compensation for scams. We think there will be an increase in cases where firms use gross negligence arguments in the future.

We do not agree with the conclusion reached in the paper that there is no need for the PSR to provide guidance on the application of gross negligence to APP scams. We would like to see extensive and rigorous rules and guidance in place to set out to define gross negligence and how this “high bar” can be reached to minimise the potential risk of firms deciding more consumers fall into this bracket to avoid paying compensation.

Such guidance would need to be easy to amend, and frequently reviewed to ensure future developments in fraud are reflected. If the decision is taken not to provide high-level guidance at this point, we feel this should be reviewed at a very early stage post-implementation, taking into account any rise in gross negligence cases, to ensure that this is the right decision.

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

We welcome the proposal to allow an exception to the gross negligence rules to require reimbursement of vulnerable customers in all cases. However, we are still of the opinion that there should be a gross negligence definition, at least to clarify what would NOT constitute gross negligence.

It will be vital that there is a wide definition given to vulnerability in such cases to avoid firms trying to restrict the number of occasions when they have to reimburse consumers.

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

We welcome the proposal to use the FCA's definition of vulnerability. This makes sense as firms should already be using the FCA's definition when complying with FCA rules. We would also expect firms who are authorised by the FCA to reflect on their obligations under the forthcoming FCA consumer duty in addition to the vulnerability guidance.

### Question 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?

We do not support these proposals as they stand. We are concerned that minimum claim thresholds and minimum compensation levels will deter more vulnerable consumers from making a complaint in the first place.

In addition, we do not see how PSPs could exempt vulnerable consumers from any excess amount that they apply. It is difficult to see how this would work in practice. It is more likely that the excess would be applied across the board and anyone vulnerable would not even know that they could have been exempt from this. People in vulnerable circumstances are less likely to be in a position to raise their concerns or make a complaint.

We also worry that this proposal would apply to each payment made by a consumer. If someone was making a series of payments for what they thought was a legitimate purpose, would the effect of the excess mean that £35 of each payment would be lost? This could amount to a substantial amount for someone on a limited income.

#### 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 are not comfortable with supporting this threshold. We are concerned that minimum claim thresholds and minimum compensation levels will deter more vulnerable consumers from making a complaint in the first place.

We note that the proposed £100 threshold matches the minimum purchase amount under section 75 of the Consumer Credit Act (CCA). It would therefore constitute an equivalent level of protection. However, this does reduce the potential compensation for smaller scams significantly. People who are on low incomes and in vulnerable circumstances are not in a position to lose even small amounts of money. We worry that a scam where someone is misled/coerced into transferring their own money is not the same as a willing purchase using a credit card under the CCA.

We are concerned that scammers will turn their attention to high volume smaller fraudulent activity that would disproportionately impact upon the people who are most vulnerable and on the lowest incomes. This group has the most to lose. An equivalent scenario would be the rising levels of online broker fraud scams, where people desperate for a small loan, are paying broker fees for a loan that never materialises.

Once again, we do not see how PSPs will be able to exempt vulnerable consumers from any threshold set. It is difficult to see how this would work in practice. It is more likely that the threshold will be applied across the board and anyone vulnerable would not even know that they could have been exempt from this.

We welcome the proposal that this minimum threshold be reviewed in the post implementation review with a view to reducing or eliminating the threshold.

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

We agree there should not be a maximum threshold for compensation payments put in place, as it is entirely reasonable to expect PSPs to have strong safeguards for large payments already.



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 are not entirely sure why the time limit needs to be set at 13 months if the time limit for consumers to complain to the Financial Ombudsman Service is up to six years. We recognise that FOS will be able to exercise discretion, but this relies upon the eloquence of the person complaining to explain why their case is exceptional. This may not be possible for people subjected to extended and complex scams where they can become traumatised as a result.

We would like to see a longer time limit on claims as it is entirely possible that people in vulnerable circumstances may not be aware of having been a victim of a scam within that timescale. In addition, people may move in and out of vulnerable circumstances, and for example suffer a period of mental ill health that puts them outside the time limit for a claim. We think there should at least be an exemption put in place in the rules to cover exceptional cases.

Question 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?

These proposals appear to make sense and to be entirely reasonable. We would have thought the vast majority of scams are sufficiently routine to allow for reimbursement within this timescale. An extended timescale runs the risk of PSPs using the extra time to just delay the inevitable outcome, causing extra stress for the consumers concerned.

We believe therefore, that the timescale should not be extended further, except in cases that meet a very high hurdle of evidence and cause for gross negligence or first party fraud.

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?

It is difficult to comment on the standard of evidence for gross negligence or fraud that would be acceptable to meet the threshold in these cases. It is vital for the success of the scheme that PSPs do not set the bar too low so that too many cases are sent for further assessment. There should therefore be a high standard of evidence required to prevent this from happening and to prevent individual firms making inconsistent decisions.

We would suggest that the scheme rules should set out some standards initially, which can be reviewed if not sufficiently robust or effective in preventing misbehaviour by any PSPs. At the very least, guidance should make it very clear to PSPs and to consumers what should not be treated as gross negligence so that there is less incentive for firms to drag out paying compensation in cases where there is no potential for a gross negligence finding. This should help to minimise the inconsistency in approach between different firms operating under the current code. This inconsistency demonstrates that firms need mandatory rules that are applied across all cases and firms should not be using their own rules and variable quality of discretionary decisions in fraud cases.

We welcome the requirement on the PSP to notify Pay.UK in cases where they believe there is a need for more time to investigate a case. This will allow Pay.UK to monitor firms to ensure that firms do not exceed the envisaged “small minority of cases” that are reasonable to be investigated.

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

It would appear entirely reasonable for the default allocation of reimbursement costs to be split between the sending and receiving PSPs equally. We accept the point that this incentivises both parties to quickly increase protection for consumers against this type of scams.

### 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 do not have any views on these proposals as long as there is no resulting harm for consumers if PSPs depart from the default allocation as described.

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

We do not have any views on how these rules could work for multi-generational scams, as we are not part of the payments industry.

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

We would support this proposal from a consumer perspective. We note that there will be a greater incentive on the receiving PSP to act to recover funds due to the 50:50 default allocation rules. This would appear to be a beneficial step forward in making sure firms put in place robust scam prevention measures. This measure should help to tackle an unacceptable level of inaction by some PSPs currently.

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

The proposals on the scope for rules on allocation seem sensible. The scope should be as wide as possible to ensure all PSPs have incentives to detect and prevent APP scams.

### 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 are mainly concerned with consumer protection, so it is vital that the PSR ensures that the body chosen to enact this role is adequately equipped with strong consumer protection measures. This means that as well as rule-setting provisions, Pay.UK must be able to monitor and enforce compliance with the rules, and be given strong sanction powers against PSPs who do not follow the rules. It appears that this is not currently the case.

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

We would very much hope that the minimum initial set of rules under the scheme will include arrangements to monitor and enforce the rules on mandatory reimbursement from the start. We consider such monitoring and enforcement to be essential to the success of the scheme.

The lack of monitoring and enforcement would directly impact upon consumers in our view. If these elements are missing, then there is no way of measuring the scheme outcomes or put right any problems with individual PSPs.

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

We are unable to comment on this question.

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

We believe this is best agreed between the PSR and Pay.UK using the CRM code standards as a basis. We can only urge the parties to ensure that the rules and criteria are developed as soon as practicable to ensure that consumers are protected from the start of the scheme.

**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 do not have any suggestions on these proposals beyond reiterating that whatever monitoring regime is put in place is effective from the outset of the scheme.

**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 do not have any further comments on these proposals.

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

We do not have any suggestions on these proposals beyond reiterating that whatever enforcement regime is put in place must be effective from the outset of the scheme.

We do not want to see an enforcement regime that has fewer enforcement powers being put in place as this will undermine the scheme. If it is more effective and faster for the PSR to take on the enforcement role rather than Pay.UK, then we do not see why this could not be put in place, at least for the start of the scheme.

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

We are not close enough to the current rules and practices within industry to comment on the best way to apply the rules on reimbursement to indirect participants.

**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?**

Again, we are not close enough to the sector to comment.

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

We do not have any comments on the cost benefit analysis.

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

We welcome the proposals for a post-implementation review by the PSR to assess the success of the initial scheme.

For more information on our response, please contact:

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