Consultation Response

Authorised push payment scams: The consumer standard of caution

Payment Systems Regulator (PSR)

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About this consultation

The Payment Systems Regulator (PSR) proposes three requirements for a standard of care which payment service providers (PSPs) can expect consumers to meet to be eligible for Authorised Push Payment (APP) fraud reimbursement. The standards will apply to Faster Payments - the near real-time receipt of digital payments sent and received by PSPs in the UK. The right to reimbursement would exist for consumers, micro-enterprises, and charities. Sending PSPs will be mandated to reimburse victims of APP frauds, with two exceptions: suspected cases of first-party fraud and gross negligence. The latter does not apply if the victim is a vulnerable consumer.

The three requirements for a standard of care that PSPs can expect consumers to meet to be eligible for reimbursements are:

- *A requirement to have regard to warnings* - Consumers should have regard to specific, directed warnings raised by their PSP. These must occur before an APP is executed and make clear that the intended recipient of the payment is 'likely' a fraudster.

- *A prompt reporting requirement* - Consumers who learn or suspect that they have been a victim of an APP scam should report the matter promptly to their PSPs and no later than 13 months after the fraud took place.

- *An information sharing requirement* - Consumers should respond to any reasonable and proportionate requests for information made by their PSP.

Where a PSP can demonstrate that a consumer has, through gross negligence, not met the requirements, it is not obliged to reimburse the consumer.

The regulator is seeking views on its approach to the consumer standard of caution, suggestions for additional standards of care that consumers might be expected to meet concerning APPs, and views on its proposed policy document (Annex 1) and the accompanying draft guidance (Annex 2).

Key points and recommendations

- Age UK has consistently advocated for a robust and consistent definition of the standard of care. Having clear and standardised expectations set by the PSR ensures that consumers are treated fairly and consistently across all PSPs.

- While we support the PSR's initiative to specify an exhaustive standard of care, it's crucial that these standards are both comprehensive and compassionate, taking into account the varied experiences and challenges consumers face.
- We firmly believe that the burden of proof should fall on the PSPs to demonstrate that a consumer has failed to meet the standards through gross negligence.
- We concur with the PSR's position that PSPs should not be able to introduce, through their contractual relations with consumers, terms and conditions that shift the burden of proof onto consumers or seek to reduce the burden on providers.
- While warnings are a valuable tool in the fight against fraud, they should not be the sole determinant of consumer negligence. It is crucial to consider the broader context, the nature of scams, and the potential implications for specific demographics, especially older consumers.
- Scammers are very adept at persuading people to ignore warnings from other parties, so they will fail to provide sufficient protection without additional measures.
- While the intent behind the policy and guidance is commendable, ensuring that the language is clear and consistent is crucial to leave no room for misinterpretation. We recommend that the PSR addresses these concerns to ensure the final policy and guidance are effective and fair.
- While we see the value in prompt reporting, we urge the PSR to consider the emotional and psychological challenges scam victims face and ensure that the final policy is compassionate and practical. We urge the regulator to impose an inclusive design of reporting services and vulnerability training on all PSPs to ensure non-discriminatory practices occur.
- Given our considerations on the prompt notification requirement, an extended timeframe would be more appropriate, especially for specific scams like investment and romance. A longer window would give victims a better opportunity to recognise the fraud, overcome any associated stigma, and report it to their PSP.

About Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money, enjoy life and feel well, receive high-quality health and care; are comfortable, safe, and secure at home, and feel valued and able to participate.

Introduction

Age UK welcomes the opportunity to give views on a new consumer standard of care that PSPs can expect consumers to meet to be eligible for APP fraud reimbursement. It is fundamental that the development of these new standards is based on the reality of victims' real-life experiences in which they believed they were acting appropriately at the time and places the burden of proof on firms to establish exceptional circumstances to the mandatory reimbursement requirement.

APP fraud is a persistent threat, causing many victims significant distress and financial losses. As we continue to face the challenges of rising inflation and costly living, consumers must be protected to feel confident about using and adopting new payment systems. We strongly support the PSR's proposals on mandatory reimbursement of victims of APP scams and believe they will lead to better outcomes for victims.

Consultation Questions

1. **Do you agree that the PSR should specify the standard of care that PSPs can reasonably expect of consumers? Please provide reasons for your answer.**

Yes, we strongly agree that the PSR should specify the standard of care that PSPs can reasonably expect of consumers. Age UK has consistently advocated for a robust and consistent definition of the standard of care. Having clear and standardised expectations set by the PSR ensures that consumers are treated fairly and consistently across all PSPs. This will enhance consumer protection and clarify PSPs' interactions with consumers, reducing ambiguities and potential disputes.

2. **Do you agree that the standards of care specified by the PSR should be exhaustive, and that PSPs should not be able to introduce additional standards through their contractual relations with consumers? Please provide reasons for your answer.**

Yes, the standards of care specified by the PSR should be exhaustive, ensuring a consistent and comprehensive framework for consumers and PSPs. This will prevent potential ambiguity or inconsistency in the treatment of consumers across different PSPs.

However, while we support the PSR's initiative to specify an exhaustive standard of care, these standards must be comprehensive and compassionate, considering consumers' varied experiences and challenges. Below, we list some of the specific concerns the regulator must consider in order to ensure its proposals better account for consumer needs:

Provision of a warning: We believe that the current mere provision of a warning, albeit ‘specific and directed’, by a PSP should not be used as conclusive evidence of gross negligence on the part of the consumer. Relying solely on a warning as a strict measure of liability for declining reimbursement seems to prove problematic with the Contingent Reimbursement Model Code (CRM Code), as evidenced by the high number of complaints upheld by the Financial Ombudsman Service (FOS)[1].

Moreover, consumers often overlook warnings because fraudsters enchant, coerce, and guide their victims to do precisely what they want them to do without the victim realising what is happening. We could go as far as to say that the victim is being directed by the fraudster and not making a voluntary decision when making the APP. So, it is essential to consider the context in which the warning was provided and its prominence.

For example, current warnings used by PSPs are not specific or directed. Under the CRM Code’s R2(1)[2], firms may choose not to reimburse a customer if it can establish the customer ignored an ‘Effective Warning’, which is given when setting up a new payee, amending an existing payee, and immediately before making the payment. So, we are concerned that the regulator has only added the caveat ‘likely a fraudster’ to its new warning requirement and has not been prescriptive enough about what this constitutes. We question when the PSR would deem that a PSP needs to flag the ‘likely a fraudster’ warning. For instance, it remains unclear whether adding a new payee or amending an existing one would meet this threshold under the PSR’s new proposals. Failing to act properly on a warning alone should never – under no circumstances – be taken as sufficient evidence that a consumer has acted negligently.

This requirement would be more effective if triggering the ‘likely a fraudster’ warning was determined by firms based on transactional data and customer behaviour analytics and the use of fraud data and typologies to identify payments into accounts that are at a higher risk of being an APP scam. Training staff to identify indicators of circumstances around and leading to transactions at a higher risk of facilitating APP scams is also crucial. This would provide reassurance that the warnings are indeed specific and directed.

Moreover, the Lending Standards Board (LSB) has seen warnings appearing as an additional page in the payment journey, with little to differentiate them from other elements. Additionally, it was found that firms do not maintain a record of which scam warning is provided, instead relying on customers to recall what warning was provided or payment type chosen at the point of transaction. For firms where this was the case, customers tended not to be able to recall the warning information provided during the investigation, which impacted the decision for reimbursement[3]. So, if the regulator goes ahead with this provision, we urge the PSR to clarify this guidance and establish an evaluation system to review the effectiveness of the deployed warnings.

Information sharing requirement: While we understand the need for consumers to respond to information requests from their PSPs, PSPs must ensure they are more proactive with their contact methods. Simply sending a letter and assuming it has been received is not sufficient. Many consumers may move residences without updating their addresses promptly or be away from their homes for a period of time. So, we urge the regulator to require PSPs to ensure the consumer has been contacted effectively. The financial services industry has a significant problem with 'gone away customers', and it is unreasonable here for the burden to fall on the consumer to respond to all requests.

Furthermore, if it is not designed with accessibility in mind, the claim process could prove hard to navigate, leading to delayed response to information requests. The process should be as straightforward as possible, with clear instructions and support available for those facing barriers to access. It's essential to recognise that not all consumers have the same level of familiarity with digital platforms or the intricacies of financial systems. A process that might seem straightforward to some could be daunting to others. Therefore, PSPs should proactively offer guidance and assistance, ensuring that all consumers can navigate the process efficiently and in their preferred medium, regardless of their background or expertise.

Prompt reporting: We recognise the importance of promptly reporting any suspected APP scams, as this would help PSPs recoup the stolen monies. However, it is essential to understand that many victims, especially older individuals, may experience internalised stigma because of being scammed. This internalised stigma can lead to feelings of shame, embarrassment, and self-blame, causing a delay in reporting the scam.[4] It is not just about the time it takes to realise they have been scammed; it is about the time it takes to come to terms with the emotional and psychological impact of being victimised. We also know that, initially, some older people may not want to disclose being a victim as they may be afraid of family thinking their mental capacity is declining and, as a result, lose their financial freedom. Therefore, while prompt reporting is ideal, there should be an allowance for those who may take longer to report due to emotional and psychological distress.

3. **Do you agree that the burden of proof should fall on the PSP to demonstrate that a consumer – through gross negligence – has failed to meet one or more of the standards in paragraph 3.2? Please provide reasons for your answer.**

We firmly believe that the burden of proof should fall on the PSPs to demonstrate that a consumer has failed to meet the standards through gross negligence. PSPs have more expertise, resources, and information access than individual consumers. They are better equipped to gather evidence, analyse transaction patterns, and identify potential scams. Shifting the burden to consumers, who may lack the technical knowledge or resources to defend their actions, would be unfair and impractical.

The primary role of PSPs is to provide a safe and secure environment for consumers to conduct their financial transactions. For instance, if older victims constantly worry about proving their innocence in the face of scams, it undermines trust in the payment system. Posing the burden of proof on PSPs reinforces their responsibility to maintain a secure environment and protect consumers. Also, if PSPs bear the burden of proof, they have a stronger incentive to invest in preventative measures, such as advanced fraud detection systems and consumer education. This proactive approach is more effective in reducing scams than a reactive approach, which focuses on assigning blame after the fact.

Moreover, victims of scams often experience emotional trauma. Requiring them to prove their innocence adds to their distress. It is, therefore, crucial to approach such situations with empathy and understanding, recognising the emotional and psychological toll on the victim.

There is also potential for misunderstanding. Older consumers may not always be aware of the nuances of financial transactions or the latest scam techniques. What might appear as negligence to a PSP could be a genuine misunderstanding on the consumer's part.

4. **Do you agree that PSPs should not be able to introduce, through their contractual relations with consumers, terms or conditions that shift the burden of proof onto consumers or seek to reduce the burden on providers? Please provide reasons for your answer.**

We concur with the PSR's position that PSPs should not be able to introduce, through their contractual relations with consumers, terms and conditions that shift the burden of proof onto consumers or seek to reduce the burden on providers.

Allowing individual PSPs to introduce their terms or conditions could lead to a fragmented landscape where consumers face different standards depending on who they bank with, as evidenced by the CRM Code. This inconsistency can create confusion, making it easier for fraudsters to exploit gaps or ambiguities in the system. Additionally, trust is a fundamental component of any financial system. Older consumers may hesitate to use digital payment methods if they feel the system is stacked against them or that they could be unfairly blamed for being APP fraud victims. This reluctance could hinder the broader adoption of digital payments, which can offer numerous advantages in speed, convenience, and security.

Also, If PSPs know they cannot shift the blame, they might be more motivated to educate consumers about potential risks and best practices. After all, an informed consumer base is one of the best defences against fraud. From an ethical standpoint, it is vital to ensure that consumers, especially older people in need of digital skills support, are supported by firms and not disadvantaged by them.

Lastly, allowing PSPs to introduce their own terms could lead to situations where these terms are overly restrictive or unfair to consumers. It is often difficult for consumers to understand the terms and conditions presented to them because they are frequently contained within lengthy, complex documents. This could result in consumers being unfairly denied reimbursement or held responsible for socially engineered situations where they did not clearly understand the foreseeable risk.

5. **Do you agree that consumers should be expected to have regard to tailored, specific warnings raised by their PSP before a proposed authorised push payment has been executed, where those warnings make clear that the intended recipient of the payment is likely to be a fraudster? Please provide reasons for your answer.**

While we understand the intention behind expecting consumers to have regard to tailored, specific warnings raised by their PSP, we have significant reservations based on our previous arguments and the potential implications for older consumers[5]. It could create the potential for the industry to exploit behavioural biases and the nature of scams in order to excuse themselves of their responsibilities.

As Age UK previously argued to the PSR, there's a risk that PSPs might design their warnings with the primary intent of proving gross negligence rather than genuinely informing and protecting the consumer. Such warnings may be crafted to meet the PSP's requirements but do not effectively communicate the risks to the consumer.

Moreover, the very nature of scams is that they are deceptive. Consumers who are victims of scams often believe the transaction to be legitimate despite any warnings. Relying on warnings as a primary measure of consumer negligence overlooks the sophisticated tactics employed by fraudsters to gain the trust and confidence of their victims. So, if PSPs lean heavily on warnings to determine gross negligence, there is a risk that legitimate victims of scams will be treated negatively. This could deter them from reporting scams in the future, leading to underreporting and a lack of crucial data that could help in fraud prevention.

Additionally, some older consumers, who might not be as familiar with digital payment systems or the nuances of online scams, could be particularly disadvantaged. Over-reliance on warnings might deter them from using faster payments altogether, depriving them of the benefits of modern payment systems. It is essential to strike a balance that protects consumers without making them feel overwhelmed or unfairly targeted.

If consumers feel that PSPs are more interested in protecting themselves than their customers, it could undermine trust in the faster payment system. This lack of trust could have long-term implications, with consumers seeking alternative payment methods or avoiding digital payments altogether. For example, it would be at odds with the bank's approach to engage more older customers in digital banking.

So, while warnings are a valuable tool in the fight against fraud, they should not be the sole determinant of consumer negligence. It is crucial to consider the broader context, the nature of scams, and the potential implications for specific demographics, especially older consumers.

6. **Do you have any other comments on the requirement to have regard to warnings, taking into account the draft policy document in Annex 1 and the draft guidance in Annex 2?**

We have carefully reviewed the draft policy document in Annex 1 and the draft guidance in Annex 2 concerning the requirement for consumers to have regard to warnings. While we understand the rationale behind this requirement, we have some concerns.

The term ‘likely’ used in the draft policy is inherently ambiguous and subjective. What one PSP considers 'likely' might differ from another PSP's interpretation and from one consumer to another. This lack of clarity may lead to inconsistent application across different PSPs.

Given its ambiguous nature, PSPs might use the term 'likely' to their advantage, issuing warnings even in borderline cases to protect themselves. This could result in an overabundance of warnings, which might desensitise consumers to genuine threats – which we’re worried is already the case under the voluntary charter. Moreover, if a transaction is deemed 'likely' to be fraudulent, it places an undue burden on consumers to discern the legitimacy of every transaction. This could again lead to hesitation and a lack of confidence in using payment systems by older consumers.

If warnings are overused, as PSPs may attempt to cover their own backs, it will quickly desensitise consumers, and warnings will be routinely ignored – until it is too late.

In the event of disputes, the term 'likely' could become a contentious point. Determining the threshold for 'likely' in a legal context might be challenging and lead to prolonged disputes. This needs more clarification.

Furthermore, the difference in phrasing between the draft policy document and the guidance could cause issues. The discrepancy might lead to confusion among PSPs and consumers about the exact nature of the warning. Is the warning about the payment being a scam or the recipient being a fraudster? While the two might seem similar, they have different implications. There is also scope for manipulation. PSPs might adhere to the phrasing that best suits their interests, leading to inconsistent guidance application.

While the intent behind the policy and guidance is commendable, ensuring that the language is clear and consistent is crucial to leave no room for misinterpretation. We recommend that the PSR address these concerns to ensure the final policy and guidance are effective and fair.

7. **Do you agree that consumers should be subject to a standard to promptly notify their PSP when they suspect they have, or may have, fallen victim to an APP scam? Please provide reasons for your answer.**

While we understand the rationale behind expecting consumers to promptly notify their PSP upon suspecting an APP scam, we believe it is essential to consider the broader psychological and societal factors at play.

Fraud, especially when it involves personal finances, carries a significant stigma. Victims often feel a sense of shame, embarrassment, and self-blame. This internalised stigma can be a barrier to reporting, as victims might fear judgment or embarrassment. Being a victim of a scam can be emotionally traumatic. The immediate aftermath might involve feelings of shock, disbelief, and distress. Expecting victims to report in such a state promptly might be unrealistic and insensitive to their emotional well-being. Some victims might fear potential repercussions from the fraudster and authorities. They might worry about being held responsible or facing financial penalties.

Moreover, not all consumers are well-versed in identifying scams. Some might not even realise they've been scammed until much later, primarily if the scammer used sophisticated coercive and grooming tactics.

Given these factors, while it is beneficial for consumers to report suspected scams promptly, it's crucial to approach this standard with empathy and understanding. PSPs should provide a supportive environment for reporting, with clear communication channels and assurances of confidentiality and support. Public awareness campaigns by firms can also help reduce the stigma associated with fraud and encourage more victims to come forward.

So, while we see the value in prompt reporting, we urge the PSR to consider the emotional and psychological challenges scam victims face and ensure that the final policy is compassionate and practical. We urge the regulator to impose an inclusive design of reporting services and vulnerability training on all PSPs to ensure non-discriminatory practices occur.

8. **Do you have any other comments on the prompt notification requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?**

As mentioned, we recognise the need for a defined timeframe within which consumers should report suspected APP scams. However, we have reservations about the proposed 13-month period for several reasons.

As evidenced by the Financial Ombudsman Service (FOS) data, there has been a significant increase in APP scam complaints. Specifically, the FOS received 10,985 APP complaints in the 2022/23 financial year, a 17% increase from the 9,370 APP scam complaints received in 2021/22. Over a third of the APP scam complaints were about investment scams, up from a quarter in 2021/22[6]. Investment scams often involve longer time horizons, with victims realising they've been scammed only when they attempt to withdraw their investments or receive returns. A 13-month timeframe might be insufficient for these types of scams, as victims might only become aware of the fraud after the investment matures or when they face issues retrieving their funds, which could be over 13 months after the last relevant payment was authorised.

Given our considerations, an extended timeframe would be more appropriate, especially for specific scams like investment and romance. A longer window would give victims a better opportunity to recognise the fraud, overcome any associated stigma, and report it to their PSP.

9. **Do you agree that consumers should be subject to a standard to respond to reasonable and proportionate information requests from their PSP, where those requests are necessary to establish whether the consumer is the victim**

of an APP scam, or where they are necessary under our 'stop the clock' policy? Please provide reasons for your answer.

Age UK deems that while consumers should cooperate with their PSPs, the process should be designed with the victim's well-being in mind. PSPs should ensure their information requests are reasonable and proportionate, and interactions should be handled with care and understanding. Additionally, clear guidelines should be provided to consumers about the information required, why it is needed, and how it will be used.

As we have already pointed out elsewhere, older people are often on fixed incomes, and any financial loss may harm their well-being. We urge the PSR to ensure that 'stop the clock' does not become a mechanism by which consumers lose out due to length, irrelevant investigations, or prolonged complicated correspondents.

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[1] https://www.financial-ombudsman.org.uk/news-events/financial-ombudsman-service-warns-increase-hybrid-scams
[2] https://www.lendingstandardsboard.org.uk/wp-content/uploads/2019/05/CRM-code.pdf
[3] https://www.lendingstandardsboard.org.uk/wp-content/uploads/2022/09/CRM-22-Summary-report-Final-0922.pdf
[4] Correlates of susceptibility to scams in community-dwelling older Black adults
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[5] https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/money-matters/consultation-response-cp22-4-authorised-push-payment-app-scams-requiring-reimbursement-the-payment-systems-regulator.pdf
[6] https://www.financial-ombudsman.org.uk/news-events/financial-ombudsman-service-warns-increase-hybrid-scams