

The logo for Which? is a red square with the word "Which?" in white, bold, sans-serif font. The question mark is slightly larger and more prominent than the word.

Which?, 2 Marylebone Road, London, NW1 4DF

Date: 20 March 2017

Response to: Payment Systems Regulator consultation on *Preventing and responding to authorised push payment - Draft terms of reference*

APP scams project team
Payments Systems Regulator
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About Which?

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

- We welcome the PSR's commitment to tackling the significant consumer harm caused by bank transfer fraud, following our super-complaint.
- There is more that payment system operators (PSOs) and payment service providers (PSPs) could do to minimise the consumer harm from Authorised Push Payment (APP) scams.
- Given the increasing volume and size of transactions made via CHAPS and the Faster Payment Scheme (FPS), the PSR is right to consider the need for further action, including the introduction of rules that provide greater consumer protection against fraud or scams, similar to those that are in place for other payment methods use by consumers, such as credit or debit cards.
- Scammers will inevitably adapt their methods to changes in industry practice and protections. It is therefore important that the PSR looks at the incentives for PSOs and PSPs to take effective action to prevent scams, not only now but also in the future.
- As the PSR considers what incentives apply to PSOs, PSPs and the payment system as a whole, it should also examine how strong those incentives are, evidenced by the actual outcomes that those incentives ought to prevent.

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We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.**
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- The PSR must be sure to focus on outcomes (the effectiveness of actions in reducing harm), not just the number or range of actions PSOs and PSPs are taking.
- It is critical that the PSR acts as quickly as it can, and outlines the action it proposes to take as soon as possible. There have been no discernible developments or improvements to protect consumers from APP scams since we issued the super-complaint, and until further effective action is taken, we are concerned that people will continue to lose significant amounts of money to APP scams.

Scope

The scope of the project, focusing on APP scams which target consumers, is appropriate. Our super-complaint suggested that the payments industry should play a greater role in preventing and responding to APP scams, and the PSR is right to consider what actions PSOs could take, or new requirements that the operators might place on PSPs using their systems.

The PSR states that “where APP scams do occur we want to increase the chance the victim will be able to recover their funds.” While Which? is supportive of work being done to return any money lost through an APP scam to the victim, such as the work on fund repatriation being led by the Joint Fraud Taskforce, we have been made aware of the challenges that can make it difficult to trace and return funds. The PSR’s focus should be on preventing APP scams from occurring in the first place, or at least preventing the funds from arriving into an account operated by a fraudster or being moved from that account after the scam. Repatriation is only necessary if attempts to stop the scam have failed at each of these previous steps, and should be seen as a final safety net within an overall approach to tackling APP scams.

Questions the PSR will focus on

The key questions that the PSR proposes to focus on in this project seem sensible and useful. However, it is important that the PSR is clear about what it intends to achieve, so that the outcome is not only an increased understanding of different practices but also possible actions that could be taken to address the detriment that Which? and the PSR has already identified.

For example, it will be useful for the PSR to compare other countries’ practices towards APP scams, but there is a risk that other countries may also not do enough to protect consumers. This would not justify inaction in the context of UK APP scams. Similarly, the problem of APP scams might not be as prevalent in other countries, or the data available on the scale and types of APP scams may be of equally poor quality as it is in the UK, and again this should not lead the PSR to conclude that no further action in the UK is needed.

The PSR may choose to consider how operators in non-payment network industries such as telecommunications protect their end-users, but it should be clear that the scope of the project is to focus on the role of the payments industry, and not on the role of other industries, in protecting consumers from APP scams. In addition, as with its consideration of other countries approaches, and other payment systems, the PSR’s examination of non-payment networks should be used to generate possible actions to take to address detriment, rather than be used to justify what may be appropriate in the context of UK APP scams. For example, it would be wrong for the PSR to conclude that because telecoms network operators do not currently set rules relating to nuisance calls, no action is needed on payment systems.



When considering the economic incentives for preventing and responding to APP scams, the PSR should examine not only what incentives apply to PSOs, PSPs and the payment system as a whole, but also how strong those incentives are, evidenced by the actual outcomes that those incentives ought to prevent. Which? remains wholly unconvinced that the actions currently taken by PSPs to protect consumers from losing money to APP scams are sufficient, and these limited, often ineffective actions cannot be used as evidence that reasonable incentives are in place for banks to address the consumer harm. That the banks have not yet put in place better systems and measures to identify potential APP scams, despite seeing customers losing significant amounts of money to APP scams, indicates that there are not adequate incentives on them to do more to address the detriment and protect consumers from losing money. We are aware of a wide range of actions that individual banks have said that they take to try to prevent their customers from being defrauded, or to ensure that fraudsters do not use their accounts. But our focus, and the PSR's focus, should be on outcomes, not inputs.

As Which? highlighted in its super-complaint, the PSR needs to consider the fraud and scam prevention practices of other UK PSOs, such as Mastercard and Visa, as part of its work. This should include an analysis of the consumer outcomes from these practices. For example, the PSR should consider the scale of fraud that is prevented as a result of Visa and Mastercard's practices, what the impact is on consumers in terms of their use and trust when using payment systems, and compare this with PSOs and PSPs' practices towards APP scams.

We are pleased that the PSR is considering what actions it can take as a regulator to expand the role of CHAPS and FPS in APP scams. While this should include what actions the PSR could take to expand the role of PSOs in relation to current methods of scamming, it should also explicitly include actions that encourage PSOs to adapt as scammers inevitably change how they operate. Paragraph 3.46 of the PSR's response to our super-complaint recognises how APP scams have evolved:

"We have been told that an important driver of this recent growth has been the increased security measures introduced by PSPs around payment channels such as internet banking (for example, the use of two-factor authorisation). This has led scammers that have traditionally focused on scams involving unauthorised payments to transfer their efforts onto APP scams, with consumers themselves now viewed as the 'weakest link'."

If scammers changed the route of their attempted scams (from hacking to persuasion) in response to tighter security measures, it is reasonable to expect that they will change how they go about that persuasion in response to further changes. Even if the PSR was able to stop 100% of APP scams in the short term by expanding the role of PSOs, scams could return in different guises and further measures may be needed. The PSR should therefore make it clear that the role of PSOs could be expanded not just to prevent and respond to existing scams, but also future APP scams. Rather than ask the question "What actions can we take to expand the role of PSOs in APP scams?", the PSR should be posing two complementary questions: i) "What more could PSOs do (either themselves or through requirements on PSPs using their system) to improve prevention and responses to APP scams, now and in the future?" and ii) "What could incentivise PSOs to take those actions or monitor whether PSPs using their system are meeting those requirements?"

Timings



Which? notes that the PSR intends to publish the findings of its work in the second half of 2017. While this will be reliant on collecting and examining evidence, and engagement with key stakeholders, Which? is keen that this work is undertaken swiftly.

In its response to our super-complaint, the PSR acknowledged the considerable consumer harm caused by bank transfer scams and recognised that the industry is not doing enough. Since we raised our concerns, banks have made no significant developments or improvements to protect consumers from APP scams, aside from reminding consumers to be more vigilant, an approach which has previously proved to be inadequate. Until further effective action is taken, we are concerned that people will continue to lose potentially life changing amounts of money to APP scams. It is critical therefore that the PSR acts as quickly as it can, and not wait until late 2017 before outlining the action it proposes to take.

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