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Consultation Response

The Payment Systems Regulator's consultation *CP21/10 Authorised push payment (APP) scams consultation paper*

Summary

- Which? welcomes the PSR's proposals to require the largest payment service providers (PSPs) to publish comparative data on their performance in relation to APP scams. Which? has long argued that better transparency can help to drive better outcomes in terms of the prevention of APP scams and the treatment of victims.

- The PSR's proposals on firm-by-firm data will, though, only provide a partial picture which could be misleading. Which? therefore sets out a series of recommendations further below. These include that all PSPs should be required to report and publish data (potentially subject to a de minimis threshold for the very smallest and/or newly-authorised PSPs), and that data should be included on the time taken to resolve complaints and the stage at which complaints were resolved, including data from the Financial Ombudsman Service (FOS).

- Greater transparency will not directly help protect consumers from the urgent and growing harm caused by APP scams. Which? therefore remains concerned about the lack of progress being made by the PSR on data sharing between firms and consumer protection. In both areas, the PSR continues to consider voluntary measures, when these have repeatedly been shown to have failed to tackle the harm caused by APP scams.

- We are especially concerned that the PSR is currently ruling out amending the balance of liabilities within the existing CRM Code for any new system. This would mean that the CRM Code's five overlapping and poorly understood exclusions for reimbursement would be copied and pasted under a new system for PSPs to be able to pick and choose from. This will not address the longstanding issues of low and inconsistent reimbursement rates identified by the PSR over the past two and a half years since the CRM Code was launched.

- The CRM Code was devised by an external steering group when the PSR could not intervene to make reimbursement mandatory, and the policy parameters set by the PSR were specific to that context. This context will change once the Government legislates and so should the PSR's approach.

- Which? is calling on the PSR to urgently commit to establishing mandatory industry-wide standards for fraud data sharing and consumer protection, including a fair and effective

system of reimbursement that is underpinned by legislation. While it is not the focus of this consultation, we also call on the PSR to make Confirmation of Payee mandatory for all PSPs, given the PSR's separate findings that fraudsters are exploiting the partial adoption of this vital preventative measure.[1] In particular:

- **The PSR should set out a deadline for the joint working group on fraud data sharing to propose industry standards, and make clear that the PSR will review these standards and then make finalised standards mandatory for all PSPs.**
- **The PSR should rule out any option involving voluntary reimbursement standards (as included in the proposed Measure 3B) and commit to mandatory industry-wide standards of reimbursement based on a revised and simplified consumer standard that is underpinned by legislation.** The Government should set out the liability regime for reimbursement in legislation so that this is given the strongest legal effect and not constrained to Faster Payments, now and in the future. This should mean that the reimbursement obligation covers CHAPS and on-us transactions, which are already covered by the CRM Code, as well as international payments, which the PSR determined were out-of-scope for the CRM Code but had said should be kept under review.
- **The PSR should direct all PSPs to introduce Confirmation of Payee as soon as is practically possible.** Where firms provide strong evidence to demonstrate that they need more time than others, the PSR should set out a series of deadlines.

PSP data on APP scams

Which? welcomes the PSR's proposals to require the largest PSPs to publish comparative data on their performance in relation to levels of APP scams, reimbursement levels for APP scam victims and which PSPs their fraud payments have been sent to. The existing aggregate industry data on APP scams currently published by UK Finance provides helpful insight into the overall picture for most of the industry, however it does not show how APP scams have impacted customers of particular firms or how these firms have treated their customers who have been victims.

We agree with the PSR that firm-level data could be used by consumers to make decisions about which firms they bank and make payments with. We also agree that firm-level transparency will provide strong incentives for firms to do more to prevent APP scams from taking place and to protect customers when they do fall victim. We therefore welcome the PSR's

[1] See Which?'s submission to The Payment Systems Regulator's consultation on CP21/6 - Confirmation of Payee - Phase 2 Call for Views (June 2021). Available at: https://www.which.co.uk/policy/money/3552/consultation-responses-payments.

proposal for directed PSPs to publish data comparisons prominently on their websites as well as for the PSR to publish collated data, as this will allow for better transparency for consumers that want to find this information, and will enable third parties to more easily compare providers.

We agree strongly with the PSR's conclusion that there is no convincing evidence or arguments that publishing PSPs' levels of reimbursement under Metric A would lead customers to take less care when making payments. We also agree that being scammed is always distressing, and publishing PSPs' reimbursement performance will not signal to customers that they will always be reimbursed.[2] Indeed, some firms have already begun publishing data on APP scam reimbursement rates voluntarily.

We welcome the PSR's proposal to include data relating to the performance of both sending and receiving firms, as the latter also play a significant role in APP scams. However the proposal to only cover 14 PSPs means that while the vast majority of payments will currently be covered, this could change quite dramatically in the coming years due to increased competition and innovation in payments, which form a key part of the PSR's five-year strategy. Furthermore, the vast majority of existing PSPs will not be covered, nor will all payments being received by these PSPs. Such a partial picture could therefore provide a misleading reflection of PSP performance.

As the PSR sets out, PSPs already conduct analysis on their APP scam performance to inform their internal decision-making. This is crucially important for firms to meet their wider regulatory requirements including for anti-money laundering. We therefore believe that the cost of requiring PSPs to report data is likely to be low given that existing reporting mechanisms could be evolved for this purpose. Furthermore, the FCA's proposed New Consumer Duty will set a higher expectation for the standard of care that firms provide to consumers, putting a greater onus on firms to consider the design of their services and products and requiring them to focus on consumer outcomes. PSPs should therefore be considering these proposed obligations in terms of how they prevent their customers from becoming victims of APP scam.

To ensure that the proposals for transparency are effective in meeting the PSR's aim of providing strong reputational incentives for PSPs to reduce APP scam losses incurred by consumers, both through preventing APP scams and reimbursing victims, Which? recommends that:

- All PSPs should be required to report and publish data, rather than just 14 of the largest PSPs. This could be subject to a de minimis threshold for the very smallest and/or newly-authorised PSPs. **[Consultation question 1]**
- The stage at which the complaint was resolved (including whether it was an initial decision by the PSP or following a complaint to the firm) and time taken to resolve the complaint should be included. **[Consultation question 1]**

[2] Payment Systems Regulator (Nov 2021) CP21/10 Authorised push payment (APP) scams consultation paper, Para 4.13, p.26

- Data from the Financial Ombudsman Service (FOS) should be included. At present, the FOS does not regularly publish firm-by-firm data on APP scams (and the data category of 'authorised fraud' is slightly broader than APP scams). The publishing of comparable FOS data alongside data from PSPs on how they have handled complaints is essential to provide a comprehensive view of how victims are being treated by firms and how fair and effective complaints procedures are. **[Consultation question 1]**

- The PSR should require PSPs to report on CHAPS payments, international transfers and on-us payments (which involve payments between accounts held with the same PSP) within their scam reporting to more accurately reflect PSPs' performance in relation to APP scams. All three areas are currently covered by UK Finance's aggregate APP fraud data. **[Consultation question 2]**

- The PSR should publish collated data for all PSPs as well as PSPs publishing data prominently and clearly on their websites. This will ensure that third parties can make effective use of scam data as well as individual consumers seeking out this information, which would, in turn, improve reputational incentives on PSPs**. [Consultation question 8]**

Improving intelligence against fraud

Better information sharing between sending and receiving firms is hugely important to prevent APP scams and to help catch fraudsters. This can only be achieved if all PSPs are communicating to each other in a timely and consistent manner. Such collaboration and agreement between firms can be challenging to achieve without clear leadership from policymakers and regulatory intervention.

While we welcome that the PSR has taken on board constructive feedback from industry on how best to share data and further work is planned, the PSR must stand ready to make finalised standards mandatory for all PSPs for this measure to be effective. Indeed, many PSPs called for the PSR to make this mandatory in their responses to the PSR. Similar recent fraud prevention initiatives involving collaboration between PSPs, such as Confirmation of Payee, have only been introduced following the PSR directing firms to implement them and uptake for those not mandated remains slow. The PSR must learn the lessons from these other such initiatives and use its regulatory powers to require firms to introduce greater protections against fraud.

Improving the protection of victims

We are disappointed that the PSR's proposed options for mandatory reimbursement outlined in February 2021 have not progressed significantly and no decisions have been made on a way forward. Moreover, we are concerned that the PSR states in its consultation that it is still considering *whether* to introduce mandatory reimbursement and *if* it is appropriate, given that the purpose of the PSR's February 2021 consultation was to review the evidence on this, and given that the Government has now committed to legislate to make reimbursement mandatory.[3] The PSR should be focused on working with the Government on a plan to implement mandatory reimbursement as soon as possible rather than waiting for legislation to then decide whether to proceed.

The PSR does provide some analysis of stakeholder views and the existing evidence on the voluntary CRM Code, including that it has received no evidence that the balance of liability between consumers and PSPs in the CRM Code is wrong. However, given that we are more than two and a half years into the implementation of the CRM Code and the PSR has concluded that reimbursement rates remain too low and inconsistent, we do not accept that there is insufficient evidence. There is a wealth of evidence on the issues with the current system, such as that found in the PSR's previous publications as well as from industry, consumer groups, the Financial Ombudsman Service and the Lending Standards Board. These include:

- The PSR's Managing Director's March 2020 conclusion that reimbursement rates under the CRM Code were 'well below the levels of reimbursement that I was expecting'.[4]
- The PSR's analysis that between May 2019 and February 2020, half of the signatory firms had fully reimbursed victims in 6% or fewer of cases, with one firm fully reimbursing just 1% of victims.[5]
- The PSR's February 2021 consultation stated that there were 'significant issues' with the CRM Code including that 'reimbursement rates are variable, and arguably too low overall'.[6]
- FOS uphold rates for authorised fraud remaining consistently around three quarters of complaints.[7] This compares to an uphold rate for all types of FOS complaints of 32% in 2020/21.[8] FOS uphold rates for individual firms are as high as 86%.[9]
- The Lending Standards Board found in a series of reviews of the CRM Code that there 'remain inconsistencies in application and outcomes under the Code'[10] and that 'The presumption in the Code that victims should be reimbursed unless there is a clear

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[3] Payment Systems Regulator (Nov 2021) CP21/10 Authorised push payment (APP) scams consultation paper, Para. 3, p.14.
[4] Payment Systems Regulator (2020), Authorised Push Payment (APP) scams conference call – 30 March 2020, p.5
[5] Payment Systems Regulator (2020), Authorised Push Payment (APP) scams conference call – 30 March 2020, pp.23–24
[6] Payment Systems Regulator (2021), Authorised push payment (APP) scams: Call for views, p.18.
[7] In 2019/20, the Financial Ombudsman Service upheld an average of 75% of complaints involving authorised fraud. In 2020/21 the figure was 73%. The latest data, for Q2 2021/22, was 'around three quarters'. FOS, Annual complaints data and insight / Quarterly complaints data.
[8] FOS, Annual complaints data and insight 2020/21. Available at: https://www.financial-ombudsman.org.uk/data-insight/annual-complaints-data.
[9] Which? (2021) Banks wrongly denying fraud victims compensation in up to 8 in 10 cases. Available at: https://www.which.co.uk/news/2021/11/banks-wrongly-denying-fraud-victims-compensation-in-up-to-8-in-10-cases/.
[10] Lending Standards Board (2021), Review of the Contingent Reimbursement Model Code for Authorised Push Payment Scams, p.4.

ground for attributing blame to the consumer was sometimes reversed so that the customer was held liable in many cases where the bank was not.'[11]

- The Lending Standards Board warned CRM Code signatories in June 2021 of 'systemic failings', stating that 'work must be undertaken by signatory firms without delay to ensure the best outcomes for customers.'[12]

- Which?'s 2020 report found that in many cases firms had shown an an over-reliance on victims having ignored warnings without a proper assessment of the circumstances of whether the warning/s met the Code's requirement to be considered 'effective'; unreasonable expectations of how victims should have verified who they were paying; a failure to properly assess vulnerability; and poor communications with victims.[13]

We therefore do not think it is credible to ascribe these persistent issues simply to poor implementation by signatories to the CRM Code, even if stakeholders responding to the PSR's previous consultation focused on the interpretation of the CRM Code's rules rather than the balance of liability set out in those rules, as the PSR points out. While Which?'s submission certainly focused on the poor implementation of the CRM Code, we do not believe that poor implementation can be entirely separated from the question of whether the balance of liability is fair and effective. To be clear, the five existing exclusions in the CRM Code available to PSPs to reject reimbursement overlap with each other and have been misunderstood by firms, which has contributed to the low and inconsistent rates of reimbursement. These five exclusions should not be used for a mandatory system of reimbursement.

We continue to strongly oppose Measure 3B, which would include a PSR-approved code. This proposal fails to learn the subsequent lessons of the CRM Code, which has been fundamentally undermined by its voluntary nature and lack of regulatory supervision and enforcement. Taken together with the PSR's view that the balance of liabilities should not change, this is likely to mean that very little would change under this proposal other than extending the CRM Code to more PSPs. We are also concerned with the PSR's finding that many PSPs said they wanted to use this route to 'reset standards' and to lead to 'increased liability for victims'.[14] The PSR should therefore make clear that it rules out any approach involving the continuation of a voluntary code.

We support the proposal for the PSR to require Faster Payments to incorporate a reimbursement obligation into its scheme rules (Measure 3a). Which?'s view is that while the detail of a reimbursement obligation should be set out in Faster Payment scheme rules, the

[11] Lending Standards Board (2020), Contingent Reimbursement Model Code for Authorised Push Payment Scams: Review of approach to reimbursement of customers – provision R2(1) (c): Summary Report, p.2.
[12] Lending Standards Board (2021), LSB issues warning to CRM Code signatories over Authorised Push Payment (APP) scams. Available at: https://www.lendingstandardsboard.org.uk/wp-content/uploads/2021/06/Press-release-CRM-Code-follow-up-review.pdf.
[13] Which? (2020), Reimbursement for authorised push payment fraud: Consumer experiences of the Contingent Reimbursement Model Code p.3.
[14] Payment Systems Regulator (Nov 2021), CP21/10 Authorised push payment (APP) scams consultation paper, Para. 3.40, p.21.

Government should set out the liability regime in legislation. This would ensure that there is the strongest legal underpinning to these protections and would bring authorised push payments into line with unauthorised push payments. Without this legal basis, we are particularly concerned that relying on contract law to establish a reimbursement obligation for indirect participants in Faster Payments could be challenged.

A legislative underpinning to the liability regime would also ensure that other payment methods that exist currently or develop over time are covered, helping to ensure that the protections can stand the test of time. This would include CHAPS payments and on-us transactions, which are currently covered by the CRM Code and would be excluded if the reimbursement obligation only applied to Faster Payments. The reimbursement obligation should also apply to international payments, which the PSR decided should be out-of-scope for the voluntary CRM code but said should be considered for future protections.[15] We believe that excluding sending PSPs from a reimbursement obligation for international payments would not be fair or proportionate given that international payments by their very nature pose higher risk. PSPs should thereforee be subjecting these payments to greater scrutiny and providing sufficient protection to their customers.

The legislative regime should cover all types of APP scams and values of payments, rather than arbitrarily excluding certain types of payments such as purchase scams, which was mentioned as a possibility in the February 2021 PSR consultation but has not been ruled out in the current consultation. We do not believe there are any fundamental differences with purchase scams, as suggested in the PSR's previous consultation. As with other APP scams, purchase scams involve a fraudster operating an account with a receiving PSP and typically exploiting Faster Payments. The Lending Standards Board reached a similar conclusion on the scope of coverage for the CRM Code, when in its review of the CRM Code rejected calls to carve out certain types and values of payments.[16]

About Which?

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions, we're not influenced by third parties and we buy all the products that we test.

[15] The PSR said in February 2018 that: 'We recognise that scams involving international payments can cause harm to consumers. However, expanding the scope of the industry code to capture these would add significant complexity, and make it harder to get the CRM in place in a timely manner. We expect, however, that the design should not preclude the inclusion of APP scams involving push payments with an international dimension at some stage in the future.' PSR (2018) Outcome of consultation on the development of a contingent reimbursement model.

[16] On values, the LSB said that: 'We would not want to see the Code protections withdrawn from customers to whom smaller losses represent huge impacts, such those on lower incomes, nor would we want to create a message for scammers that lower value losses will be disregarded, thus creating the potential for repeated targeting'. Lending Standards Board (2021), Review of the Contingent Reimbursement Model Code for Authorised Push Payment Scams, p.5

Which? works for you

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