



# Sub-Committee on Financial Services Regulations

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Chris Hemsley  
Managing Director  
Payment Systems Regulator

via email

28 October 2022

Dear Chris,

## **CP22/4 - Authorised push payment (APP) scams: Requiring reimbursement**

The Treasury Sub-Committee on Financial Services Regulations recently met to discuss the PSR's consultation on 'Authorised push payment (APP) scams: Requiring reimbursement' (CP22/4).

Your consultation states:

"We propose that there should be a consumer caution exception – but one set at a high bar [...]. A high bar exception would signal to consumers that there remained a degree of risk that they may not be reimbursed – to provide incentives to continue to take care – while ensuring that victims are reimbursed in the vast majority of cases.

[...]

"We propose that the consumer caution exception to mandatory reimbursement should be triggered where the consumer acts with 'gross negligence'. Gross negligence is already an exception to PSP liability for unauthorised frauds under section 77(3) of the PSRs 2017, and is one of the exceptions to reimbursement in the CRM Code.

"Gross negligence is a high bar. The FCA has said in guidance: 'In line with the recitals to PSD2, we interpret "gross negligence" to be a higher standard than the standard of negligence under common law. The customer needs to have shown a very significant degree of carelessness.

"It could still be appropriate, in some cases, for a PSP to reimburse, or partially reimburse, a consumer who had acted with gross negligence if the PSP should clearly have detected and stopped the payment. Ultimately, this would be for FOS to determine on the circumstances of the case.

[...]

"The FCA has provided high-level guidance on the interpretation of gross negligence. We do not propose to provide additional guidance".

The Sub-Committee would be grateful for answers to the following questions:

1. Your consultation states it will be the Financial Ombudsman Service's (FOS) responsibility to rule on gross negligence in each individual case. How will you ensure there will be a consistent interpretation of what constitutes gross negligence?
2. Will reimbursement of a consumer be delayed if a firm claims the individual has been grossly negligent?
3. Will you set a time limit on how long a FOS decision on gross negligence can take?
4. Does the FOS have sufficient resources to take on this caseload?
5. Who will be responsible for ensuring that firms do not routinely allege consumers have been grossly negligent in order to delay repayments?
6. Who would impose sanctions on a firm were it to routinely and incorrectly allege gross negligence by consumers in order to delay re-imburement payments?
7. What proportion of authorised push payment fraud cases do you envisage will be reimbursed within 48 hours of being reported?
8. What proportion of authorised push payment fraud cases do you envisage will be reimbursed once the dispute process has been settled?

In line with the Committee's usual practice, I will be placing this letter and your response in the public domain. I would be grateful for a reply by 11 November.

Yours sincerely,

A handwritten signature in black ink that reads "Angela Eagle". The signature is written in a cursive, flowing style.

**Dame Angela Eagle MP**  
**Interim Chair of the Treasury Sub-Committee on Financial Services Regulations**