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Treasury Committee

Scam reimbursement: pushing for a better solution

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Authorised push payment (APP) scams occur when a fraudster tricks someone into transferring money into another account. It is a common crime and causes untold misery. In 2021 victims were defrauded of at least £583 million as a result of APP scams. Once someone realises they have been scammed it is often too late to stop it.

In 2016, the consumer organisation Which? made a super-complaint to the Payment Systems Regulator (PSR) in which it argued that banks could do more to protect consumers from APP fraud. In 2019, a voluntary code for reimbursement of victims was developed, to which ten banks and other payment services providers (PSPs) are currently signatories. In the face of growing harm from APP fraud, the Treasury Committee called in November 2019 for the code to be made mandatory. Following up that recommendation, in February 2022 our *Economic Crime* report called for urgent legislation to make reimbursement mandatory.

The Financial Services and Markets Bill currently making its way through Parliament will require the PSR to establish a system for mandatory reimbursement of APP fraud over the Faster Payments system. We recommend that system should be fully implemented by the end of 2023.

The PSR recently consulted on its proposals for the mandatory reimbursement system. They were considered by our Sub-Committee on Financial Services Regulations. Rather than using its own powers as a regulator to direct banks and other PSPs to reimburse victims of APP fraud, the PSR proposes to ask Pay.UK, the Faster Payments system operator, to make, maintain and enforce reimbursement rules.

We have three major concerns about this approach:

i) Pay.UK is an industry body. It is a company guaranteed by the very banks and other PSPs it would be asking to reimburse fraud victims.

ii) It is a recipe for further unacceptable delay. Pay.UK's governance structures and lack of regulatory powers provide opportunities for banks and other PSPs to continue to drag their feet on reimbursement.

iii) Pay.UK is not a regulator. It lacks the necessary powers to enforce its rules. It would need to fall back on the PSR to ensure compliance.

We therefore recommend that the PSR use its powers of direction to banks and other payment service providers. This will give the PSR more control over the reimbursement process and result in better outcomes for consumers.

Authorised Push Payment Fraud

The harm caused by Authorised Push Payment fraud

1. Fraud is the most common crime in England and Wales, with Authorised Push Payment (APP) fraud losses making up a significant proportion of the total value of losses.[1] Fraud is also one of the most reported crimes in Scotland.[2] Not only is it widespread, it can also have a significant impact on victims' lives. On average fraud victims lose £1,731 rising to £2,697 for victims aged 65 and over.[3]

2. The Payment Systems Regulator (PSR) describes APP fraud[4] as "when fraudsters trick someone into sending a payment to a bank account controlled by the fraudster. Once a victim realises they've been scammed it's often too late to stop it."[5] A victim's money is often transferred out of the fraudster's account before the money can be recovered. Data reported to UK Finance shows around 196,000 consumers lost £583 million to APP scams in 2021.[6] According to Age UK, one in 12 older people fall victim to scams every year.[7]

3. Fraudsters target consumers in a wide variety of ways. These are some examples of APP scams:

- A purchase scam - a fraudster may advertise a product online and convince the victim to pay via bank transfer, after which the fraudster disappears without providing the product.
- An investment scam - the victim may be cold-called by a fraudster and pressured or enticed with promises of high returns to transfer money into a fictional investment.
- An impersonation scam - the victim is contacted by someone claiming to work for either their bank or the police and convinced to make a payment to another account.[8]

4. The Financial Ombudsman Service (FOS), which adjudicates disputes between customers and financial service firms, described the experience of Anna who fell victim of an impersonation scam:

1 UK Finance, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, 9 December 2022
2 16,536 fraud offences out of 286,464 total recorded offences in 2021–22. Scottish Government, Recorded Crime in Scotland 2021–22, 28 June 2022
3 Which?, One in five fraud victims send money to criminals via cryptocurrency, 21 September 2022 <accessed 19 January 2023>
4 An authorised push payment can be defined by considering its component parts: 'Authorised' refers to payments made by the accountholder and not by someone else who accessed their account without permission; 'push payment' refers to a transfer of funds initiated by the payer rather than being pulled at the instruction of the payee.
5 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 1.2
6 UK Finance, 2022 Half Year Fraud Update, page 21. Which?, Response to PSR's consultation on Authorised push payment (APP) scams: Requiring reimbursement, 9 December 2022 – notes "This figure accounts for 33 UK Finance members only, thus the scale of the problem involving smaller PSPs is not fully known."
7 Age UK, Consultation response to Authorised push payment (APP) scams: Requiring reimbursement, November 2022, page 3
8 UK Finance, Annual Fraud Report 2022, pages 52, 54 and 64

Anna contacted her bank after realising she'd fallen victim to an authorised push payment scam. A fraudster, pretending to be her bank, had tricked Anna into sending £14,500 to what she thought was a safe account but was actually an account controlled by the fraudster. Anna transferred the whole of her current account balance to the fraudster–in essence the payment cleared her account.

Anna was unable to resolve the complaint with her bank as it felt it wasn't liable as she authorised the payment. This left Anna feeling like she was to blame. She was also embarrassed as she'd had to borrow money from friends and family in order to pay her rent and bills. She was left feeling really frustrated and worried about having to repay the money. She'd also been left suffering with anxiety and struggles to trust other people after what happened to her. The whole situation went on for several months and had a big impact on Anna's day to day life. She told the bank she felt like everything was on hold and had been struggling to sleep at night.[9]

The history of Authorised Push Payment fraud reimbursement

The Consumer Reimbursement Model Code

5. In September 2016, the consumer organisation Which? made a super-complaint to the PSR regarding APP fraud. It was concerned that "many consumers lose large sums of money to fraudsters […] and never recover this money" and that "the conduct of banks […] contributes to this harm - if the banks faced different incentives, protection for consumers would improve".[10] In response, the PSR set up a steering group to develop a voluntary Contingent Reimbursement Model (CRM) Code.[11] This took effect in May 2019 and set out the circumstances in which a Payment Services Provider (PSP)—such as a bank or building society—should reimburse a customer who falls victim to APP fraud. Ten PSPs are currently signatories to the CRM Code.[12]

6. Prior to the introduction of the CRM Code, victim reimbursement was around 19 per cent of losses (by value).[13] Following its introduction, according to UK Finance data,[14] the value of victim reimbursement by CRM signatories was 48 per cent in 2021 and has risen to 60 per cent in the first half of 2022,[15] with some inconsistency in the reimbursement rates of different PSPs.[16] However, victims holding accounts with banks outside the voluntary

9 Financial Ombudsman Services, Consumer complains after a fraudster tricks her into transferring funds from her bank account <accessed on 19 January 2023>

10 Which?, 'Which? Super-complaint Consumer safeguards in the market for push payments', 23 September 2016

11 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, Paragraph 2.4

12 Lending Standards Board, Written evidence (FDF0050) to the House of Lords Committee on the Fraud Act 2006 and Digital Fraud, 22 April 2022. Current CRM Code signatories: Barclays Bank UK plc, The Co-Operative Bank plc, HSBC UK, Lloyds Banking Group, Metro Bank, Nationwide Building Society, NatWest Bank plc, Santander UK, Starling Bank and Virgin Money UK.

13 Lending Standards Board, Review of the Contingent Reimbursement Model Code for Authorised Push Payment Scams, January 2021

14 UK Finance, 2022 Half Year Fraud Update, pages 21 and 22

15 ibid

16 Which?, Banks wrongly denying fraud victims compensation in up to 8 in 10 cases, 11 November 2021: FOS 2020/21 data shows that the Ombudsman overturned 74 per cent of Nationwide Building Society and 86 of NatWest's fraud decisions."

scheme received lower levels of protection, with victim reimbursement standing at 27 per cent in 2021 and 44 per cent the first half of 2022.[17] Victims with accounts at non-CRM signatories represent around 20 per cent (by value) and 7 per cent (by quantity) of total APP fraud losses in 2021.[18]

7. Richard Lloyd, Interim Chair of the Financial Conduct Authority (and former executive director of Which?), described the progress parts of the industry had taken to improve APP scam reimbursement but recognised the need for the Government and the PSR to take further action because some firms "who were in the room frankly did not get involved or engage effectively". He said:

> [The CRM Code] led to a very large number of people getting reimbursed who previously would not have been. It also led to people at the most senior levels of the industry taking this seriously. However, it is right that this be now brought into legislation, that formal powers be given to the Payment Systems Regulator, and that we follow up […] not least because a weakness of the voluntary code that […] it did not reach far enough across the industry.[19]

Previous Treasury Committee recommendations

8. The previous Treasury Committee called for the Contingent Reimbursement Model Code to be made mandatory in November 2019.[20] Our February 2022 *Economic Crime* report welcomed the Government's "clear intention to make reimbursement mandatory" but noted that, in nearly three years since the 2019 recommendation, "authorised push payment fraud has increased, causing significant harm".[21] We called on both the Government and the PSR to act with urgency to introduce mandatory reimbursement for APP fraud victims:

> We recommend that the Government urgently legislates to give the Payment Systems Regulator (PSR) powers to make reimbursement mandatory, and that the PSR then take rapid action to protect consumers. We recommend that the PSR and Treasury accelerate their consultation processes to enable quicker implementation of measures to protect consumers from fraud.[22]

Current proposals to reform Authorised Push Payment fraud reimbursement

The Financial Services and Markets Bill

9. The PSR said the Payment Services Regulations 2017 ("the 2017 Regulations") have "played a key role in limiting [its] actions to date".[23] The PSR explained that, under the 2017 Regulations, provided a PSP processes a customer's sort code and account number

17 UK Finance, 2022 Half Year Fraud Update, pages 21 and 22
18 UK Finance, 2022 Half Year Fraud Update, pages 21 and 22
19 Oral evidence taken on 7 November 2022, HC (2022–23) 142, Q386
20 Treasury Committee, Third Report of Session 2019, Economic Crime: Consumer view HC 246, para 114
21 Treasury Committee, Eleventh report of session 2021–22, Economic Crime, HC 145, para 117
22 Treasury Committee, Eleventh report of session 2021–22, Economic Crime, HC 145, para 116–118
23 Payment Systems Regulator, Authorised push payment (APP) scams - Call for views, February 2021, paragraph 2.12

correctly "it is not liable to reimburse that customer for any resulting loss", in turn preventing the PSR from requiring PSPs to reimburse APP scam victims.[24] Clause 68 of the Financial Services and Markets Bill (FSM Bill), as passed by the House of Commons and introduced to the House of Lords,[25] makes the following provision about APP fraud reimbursement:

- clarifying the interpretation of provisions in the 2017 Regulations to remove legislative barriers to the PSR taking action to require APP fraud reimbursement by PSPs;[26]
- requiring the PSR to draft and consult on proposals for the reimbursement of fraudulent Faster Payments[27] within two months of the FSM Bill coming into force.[28]
- requiring the PSR to impose such requirements for reimbursement within six months of the FSM Bill coming into force.[29]

The Payment Systems Regulator's consultation

10. The PSR published its 'Authorised push payment (APP) scams: Requiring reimbursement' consultation ("the consultation") in September 2022.[30] The stated aims of the proposal are to:

- "require reimbursement;
- improve the level of protection for APP scam victims; and
- incentivise PSPs to prevent APP scams, whether as a sending PSP (which has the account the payment is made from) or a receiving PSP (which has the account the payment is made to)."[31]

11. To meet these aims, the PSR proposes that:

- All PSPs sending payments over the Faster Payments System will be required to fully reimburse APP scam victims, including consumers, micro-enterprises and charities.[32] There are exceptions for fraud or gross negligence by the payer as well as a £100 lower threshold and £35 excess for reimbursement.[33]
- The sending PSP will have to reimburse the victim as soon as possible, and no more than 48 hours after the fraud being reported.[34] If the PSP has evidence or

24 Payment Systems Regulator, Authorised push payment (APP) scams - Call for views, February 2021, paragraph 2.13
25 Financial Services and Markets Bill (HL Bill 80, 2022–23)
26 Financial Services and Markets Bill, clause 68(11)
27 Faster Payments is a common payment type that transfers funds between accounts with little delay.
28 Financial Services and Markets Bill, clause 68(5)-(7)
29 Financial Services and Markets Bill, clause 68(11)
30 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022
31 ibid, para 1.15
32 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 1.16
33 ibid, para 1.17 and 1.19
34 ibid, para 1.18

reasonable grounds for suspicion that the alleged victim acted either fraudulently or with gross negligence, it will have more time to investigate and can delay the reimbursement.[35]

- The costs of reimbursement will be allocated equally between sending and receiving PSPs, with a default 50:50 split.[36] PSPs can use a dispute management process to adjust the allocation to better reflect the steps each PSP took to prevent the scam.

PSR's approach to establishing the reimbursement regime

12. Clause 68 of the FSM Bill specifies that the PSR must introduce the reimbursement regime by exercising either one or both of two powers under the Financial Services (Banking Reform) Act 2013:[37]

- section 54 - to give "directions" to participants in a payment system (incorporating both PSPs and Pay.UK) to require or prohibit specified actions or set standards;[38]
- section 55 - to require the payment systems operator (in this case Pay.UK) to establish or change rules for the operation of a payments system.[39]

13. In its consultation, the PSR states that it intends to exercise its section 55 power to require Pay.UK, as the Faster Payments system operator, "to undertake the role of making, maintaining, refining, monitoring, and enforcing compliance with" reimbursement rules.[40] The PSR explained that it chose this approach, rather than itself directing PSPs under section 54 to reimburse fraud victims, because of Pay.UK's operational expertise and the flexibility offered by using scheme rules:

> The alternative would be for the PSR to make directions on PSPs. But it is [Pay.UK] that has the operational oversight, the expertise on system rules and what works in practice, and the ability to coordinate across participants, which are needed. Scheme rules can be managed and refined more efficiently and quickly than regulatory instruments. Like other payment system operators and system operators in other sectors, who manage their system rules and the consequences for breaking them, Pay.UK's rulebook is the most practical tool for addressing the harms from fraud in the payment system.[41]

35 ibid, para 1.18
36 ibid, para 1.22
37 Financial Services and Markets Bill, clause 68(5) and (10)
38 Financial Services (Banking Reform) Act 2013, section 54
39 Financial Services (Banking Reform) Act 2013, section 55
40 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 6.5
41 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 6.6

Committee concerns with the current proposals

14. On 28 October 2022 the Treasury Sub-Committee on Financial Services Regulations ("the Sub-Committee") wrote to the PSR[42] to request information regarding its consultation.[43] The PSR responded on 9 November.[44] On 13 December we held an oral evidence session with witnesses from the PSR, Pay.UK and the FOS.[45] This Report sets out the Sub-Committee's view of the evidence we received about the PSR's consultation proposals on APP fraud reimbursement.

i) Pay.UK's conflict of interest

15. Pay.UK, as the Faster Payments system operator, provides payments infrastructure to PSPs so that consumers and business can transfer funds in the UK. In 2021, Pay.UK processed over 10 billion transactions worth £7.9 trillion through Bacs, Faster Payment and cheque Image Clearing Systems.[46]

16. However, as its Chief Executive Officer accepted, Pay.UK is "not a regulator"[47]—it is a company limited by guarantee. Its 42 guarantors include banks, building societies, fintech providers, and payment services providers. All but one of the existing CRM Code signatories are Pay.UK guarantors.[48] Pay.UK's customers, which it charges on a per-transaction basis, are PSPs and payment system users, including its guarantors. Its customers are not fraud victims seeking reimbursement.

17. The PSR consultation sets out that the implementation of APP fraud reimbursement is likely to lead to "significant new costs" for some PSPs:

- "For those PSPs that already reimburse a material share of their customers' losses on the sending side […] their average reimbursement costs, as sending PSPs, are likely to increase, but may not change substantially. However, they will face substantially increased costs on the receiving side.

- For those PSPs that do not reimburse a material share of their customers' APP scam losses at present (as the sending PSP in the transaction), these PSPs will become liable for significant new costs.

- PSPs on the receiving side of transactions now account for a negligible share of reimbursement (less than 5%), and so will face substantially increased reimbursement costs under our proposals."[49]

42 Treasury Sub-Committee on Financial Services Regulations, CP22/4 - Authorised push payment (APP) scams: Requiring reimbursement, 28 October 2022

43 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022

44 Payment Systems Regulator, Letter to the Treasury Sub-Committee on Financial Services Regulations, 9 November 2022

45 Treasury Sub-Committee on Financial Services Regulations, Oral evidence: Authorised push payment fraud reimbursement scheme, HC 939, 13 December 2022

46 Pay.UK, Letter to Treasury Sub-Committee on Financial Services Regulations, 8 December 2022

47 Q3

48 Lending Standards Board, Written evidence (FDF0050) to the House of Lords Committee on the Fraud Act 2006 and Digital Fraud, 22 April 2022 cf. Pay.UK, Our Guarantors <accessed 19 December 2023>. NB: Virgin Money UK became a fully signatory to the CRM Code in February 2022 but is not currently a Pay.UK signatory. (Lending Standards Board, 'Virgin Money achieves full registration to the CRM Code', 28 February 2022).

49 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 2.41

18. We questioned Pay.UK on the apparent conflict of interest of an organisation guaranteed by the firms that will have to pay increased reimbursement being responsible for the reimbursement scheme rules. David Pitt, Chief Executive Officer of Pay.UK, told us:

> The guarantors are […] very limited from a financial point of view. They do not have any impact on day-to-day or strategic decisions in the business. They attend and vote on resolutions at our AGM, but we keep those issues separate to the compliance.[50]

However, Pay.UK's Annual Report 2021 states that "The role of our guarantor members is to hold the Board to account for the continuing fulfilment of our purpose and strategic objectives."[51] Guarantors can vote on the reappointment of Pay.UK directors.[52] Pay.UK is also required to "[consult] with and seek the consensus of, its members before effecting rule changes".[53]

19. David Pitt further argued that Pay.UK, as a payment systems operator, already sets rules and standards regarding Faster Payments without apparent problems relating to conflicts of interest:

> If you look at what we do today, we deal with 10 billion transactions a year, nearly £8 trillion of moving money. […] We do not have any conflicts on that today, making sure that some of those guarantors follow our rules and standards. It is no different to what we are going to do when we get into reimbursement regime. That is why I am confident that there is no conflict.[54]

However, we note that in Pay.UK's existing operations, which it describes as to "oil the wheels of our economy and society", with a "particular responsibility for the robust and resilient operation" of payment services,[55] the interests of PSPs and consumers are aligned. This is not the case with APP fraud reimbursement.

20. We asked Chris Hemsley, Managing Director of the PSR, to explain how the conflict of interest would be managed. He said it would be through a combination of the PSR's regulatory oversight and Pay.UK's corporate governance arrangements:

> It is something that we need to keep aware of, but I am confident that we have the protections in place. There is a set of legal directions on a number of companies, including Pay.UK. That includes obligations to operate the systems in users' interests and avoid conflicts of interest. […] There is that regulatory oversight from day one. That has been there for many years now. We see that in Pay.UK's governance. There is a board structure with independent directors, so that gives us some comfort.[56]

50 Q20
51 Pay.UK, Annual Report and Financial Statements 2021
52 Pay.UK, Articles of Association, 8 September 2021
53 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 6.13
54 Q14
55 Pay.UK, Annual Report and Financial Statements 2021, Chair's introduction, p4
56 Q18

21. We questioned how Pay.UK would respond to being challenged by one of the major firms which guarantee it:

> Andrea Leadsom MP**:** If one of your guarantors—let us say a very powerful one, which is very involved in one of your sectors that you are monitoring and enforcing on—is not happy with how you are enforcing the payment systems rules, and if they were to bring that up at a meeting of guarantors, what happens there?
>
> David Pitt: That is why it is really critical […] that we are not the regulator. That is where Chris [Hemsley] plays his part and the PSR.[57]

22. Chris Hemsley agreed that should Pay.UK be challenged by its guarantors it would be the PSR's role to step in:

> Ultimately, if […] we were worried about the influence of a large guarantor, which today we are not, our powers are really broad. We could direct changes to Pay.UK's governance. We could intervene directly against that participant if that was appropriate. There is a system in place today. It is reflected in Pay.UK's corporate governance. If my view changed and this became an issue, we can do something about it.[58]

23. **Pay.UK is an industry body. Its role in authorised push payment fraud reimbursement proposed by the Payment Systems Regulator has inherent conflicts of interest. These are particularly acute where Pay.UK is responsible for ensuring that the banks and building societies that are its own guarantors pay out large sums of money in reimbursement to consumers.**

24. **We are concerned that the Payment Systems Regulator's current position, confident that its proposals will work well but reserving the right to react with direct intervention if they do not, ignores the extent to which Pay.UK is conflicted.**

ii) Speed of action

25. The implementation of a process for reimbursing consumers for APP fraud has been painfully slow. Which? first raised its concerns in 2016 and the CRM Code did not take effect until May 2019. In February 2022 we called for the Government to legislate "urgently" and for the PSR to take "rapid action".[59]

26. Chris Hemsley wrote to us setting out the PSR's timetable for implementation.[60] He expects to publish its final regulatory requirements in September 2023 with the implementation period starting at the same time. That implementation period is expected to last into 2024 but no end date has been set yet.[61] Customers of PSPs not signed up to

57 Q15
58 Q18
59 Treasury Committee, Eleventh report of session 2021–22, Economic Crime, 2 February 2022, para 118
60 Payment Systems Regulator, Follow up letter to the Treasury Sub-Committee on Financial Services Regulations, 9 January 2023
61 Payment Systems Regulator, Follow up letter to the Treasury Sub-Committee on Financial Services Regulations, 9 January 2023

the CRM Code will have to wait over seven years since the Which? super-complaint to receive APP fraud reimbursement protection. The PSR's timeline also relies on PSPs not deliberately delaying the implementation of the scheme.

27. The consultation acknowledges that Pay.UK is not currently equipped to undertake its extended responsibilities:

> some elements of our vision for Pay.UK's role on APP scams represent a significant change from the current position on Faster Payments, and there are constraints on Pay.UK's ability to implement them right from the outset.[62]

28. Unlike a regulator such as the PSR—which can unilaterally impose arrangements unpopular with the industry—Pay.UK governance arrangements require it to "consult with and seek the consensus of, its members before effecting rule changes".[63] Responses to the PSR's consultation from trade bodies suggest parts of the industry are fundamentally opposed to requiring reimbursements. The Payments Association, a trade body representing payment institutions, said:

> Most of our members do not believe that requiring mandatory reimbursement is the way to go and that these proposals will be detrimental to PSPs.[64]

UK Finance, a financial services industry body, said:

> We strongly advocate the PSR continuing to work with UK Finance, its members, and HM Treasury to develop an alternative model to ensure that the ultimate model strikes a better balance between consumer protection and the commercial viability and competitiveness of the sector.[65]

29. UK Finance also noted the difficulty of Pay.UK introducing rules quickly without industry support:

> Pay.UK do not have the necessary powers to enact a scheme change without significant support from their participants, as well as the regulator–if mandatory reimbursement is to be brought in quickly, it will require detailed Directions from the regulator on PSPs and Pay.UK unless the proposals have widespread support.[66]

62 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 3.8
63 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 6.13
64 The Payments Association, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, September 2022, page 3
65 UK Finance, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, 9 December 2022, page 24
66 UK Finance, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, 9 December 2022

30. If Pay.UK is able make the necessary changes to its scheme rules it will then need to ensure PSPs comply with its arrangements in a timely manner. However, as we note later in this report and Pay.UK has acknowledged, it has no practical remedies for enforcing compliance other than to refer suspected breaches to the PSR.[67]

31. **The PSR's intention to require Pay.UK to use scheme rules to implement APP fraud reimbursement creates an opportunity for guarantors and other payment service providers—some of which oppose reimbursement—to delay its implementation, including through influencing the Pay.UK board.**

32. **Pay.UK is less well-equipped than the PSR to deliver mandatory reimbursement quickly. Pay.UK requires a consensus of its members to change its scheme rules, whereas the PSR can exercise its powers of direction unilaterally. Pay.UK also lacks effective regulatory tools to ensure the swift compliance of PSPs. If the PSR leaves these proposals in the hands of Pay.UK it risks losing control of its timetable and increases the likelihood that mandatory reimbursement—which has already been unacceptably delayed until 2024—could be delayed yet further.**

33. ***Victims of APP fraud have been waiting more than long enough. The PSR should ensure the payment systems industry has fully implemented mandatory APP fraud reimbursement by the end of 2023. The PSR should provide quarterly updates on progress against that deadline to the Sub-Committee.***

iii) Pay.UK's ability to enforce compliance

34. David Pitt told us that Pay.UK intended to use its "rules and standards" powers to ensure PSPs comply with mandatory reimbursement rules. These could be escalated to board level within firms if necessary, reinforced by the Senior Managers and Certification Regime.[68]

35. However, minutes of a discussion about APP fraud reimbursement at Pay. UK's July 2022 board meeting show misgivings about taking on such responsibilities. They note that "Pay.UK's role was to carry out assurance and not enforcement" and that the PSR seeking to give Pay.UK a "more active role to include carrying out checks and setting fines […] was a step change from the existing arrangements. The meeting considered whether Pay. UK could instead provide the data that would enable the PSR to enforce."[69]

36. David Pitt told us that Pay.UK did not want to "use the ultimate approach, which is to suspend someone or take them off of the payment system. The payment system in the UK is too important for us to achieve that or do that."[70] Instead, where necessary, Pay.UK would refer concerns to "the PSR, as the regulator, to enforce if required to".[71]

37. Chris Hemsley concurred that the PSR will act as a backstop to Pay.UK's scheme rules:

67 Paras 30 to 33
68 Q7
69 Pay.UK, Board Minutes, 13 July 2022, page 5
70 Q6
71 Q7

> If we see firms that have lower reimbursement rates, are being too slow to pay out and those kinds of systematic issues, and Pay.UK is not doing something about it, we would expect to investigate, asking questions of both Pay.UK and that participant.[72]

He accepted:

> Ultimately […] the buck stops with the PSR. Parliament has given us the obligation to protect users of payment systems, so we need to make sure it all works.[73]

38. In its response to the PSR's consultation Which? argued that instead of requiring Pay.UK to create a reimbursement regime, the PSR should use its own section 54 power of direction. Which? said that the PSR could "use its enforcement powers to sanction firms that do not meet its expectations" and noted that the PSR's power of direction would readily extend to "around 350 PSPs which are indirect participants in Faster Payments",[74] which are not directly covered by Pay.UK scheme rules.[75] The PSR acknowledged in its consultation that in the short term "alternative options" may be required to "apply the rules to indirect PSPs".[76]

39. Which? said that such an approach by the PSR "would be similar to the approach the regulator has taken in implementing Confirmation of Payee" (CoP).[77] CoP is a service provided by PSPs to its customers aimed at reducing fraud and misdirected payments by checking that the name of the person the payer intends to send the funds to matches the name of the recipient account. In that instance, the PSR extended protections beyond the initial 33 participants by directing a further 400 firms—mostly indirect PSPs—to implement CoP.[78] Which? argued that a PSR direction on PSPs was "a way to better ensure that the reimbursement requirements apply to all PSPs as soon as they are in place".[79]

40. The PSR's CoP direction is also instructive in its twin-track approach:

- it directs PSPs to "have and use a system to: send CoP requests for its customers [and] respond to CoP requests made to it"; and
- it requires each such system to "send, and respond to, CoP requests in compliance with [Pay.UK's] CoP rules and standards".[80]

72 Q21
73 Q24
74 Which?, Response to PSR's consultation on Authorised push payment (APP) scams: Requiring reimbursement, 9 December 2022, page 6
75 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 6.13
76 Payment Systems Regulator, 'CP22/4: Authorised push payment (APP) scams: Requiring reimbursement', 29 September 2022, para 1.25
77 Which?, Response to PSR's consultation on Authorised push payment (APP) scams: Requiring reimbursement, 9 December 2022, page 6
78 Payment Systems Regulator, Confirmation of Payee: Requirements for further participation in CoP, 24 May 2022, para 3.6
79 Which?, Response to PSR's consultation on Authorised push payment (APP) scams: Requiring reimbursement, 9 December 2022, page 6
80 Payment Systems Regulator, Confirmation of Payee: Requirements for further participation in CoP, 24 May 2022

This therefore places a direct obligation on PSPs, supported in implementation by Pay.UK rules providing a more detailed set of standards. Which? added that the PSR could, if necessary, direct Pay.UK in making reimbursement rules "to ensure that it fully meets its expectations in this regard".[81]

41. UK Finance argued in its consultation response that the PSR using powers of direction on all PSPs would bring "consistency and clarity across all participants" and would mean "the reimbursement rule can be implemented within an expedited timeframe".[82] Similarly to Which?, they saw a secondary role for scheme rules:

> Scheme rules could be used in parallel to set minimum standards for participation. These may then evolve over time with the changing fraud landscape and the introduction of new prevention measures.[83]

42. **Pay.UK is not a regulator. It lacks the necessary independence and enforcement powers to be effective in enforcing compliance with APP fraud reimbursement rules.**

43. **The Financial Services and Markets Bill, as introduced to the House of Lords, instructs the PSR to use:**

- **its powers under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act) to direct payment system participants;**
- **its powers under section 55 of that Act to require Pay.UK to make rules; or**
- **a combination of the two**

to provide for the reimbursement of Faster Payments APP fraud victims. The PSR's current proposal of using section 55 powers alone is a recipe for non-compliance and delay. Mirroring the PSR's approach to Confirmation of Payee protections, making directions to payments service providers supported by detailed scheme rules, is more conducive to effective and timely progress.

Conclusion

44. **The PSR's proposal to delegate the mandatory reimbursement of APP fraud victims to Pay.UK through Faster Payments scheme rules is fundamentally flawed on three grounds:**

- **Pay.UK is an industry body and is inherently conflicted;**
- **it is conducive to further delay to an already unacceptably extended process; and**
- **Pay.UK lacks the enforcement powers of a regulator.**

81 Which?, Response to PSR's consultation on Authorised push payment (APP) scams: Requiring reimbursement, 9 December 2022, page 6

82 UK Finance, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, 9 December 2022, page 3

83 UK Finance, Response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams, 9 December 2022, page 3

45. ***We recommend the PSR revise its plans to incorporate its use of directions to payment service providers under section 54 of the Financial Services (Banking Reform) Act 2013. This will give the regulator more control over the process and result in better outcomes for consumers.***

Conclusions and recommendations

Authorised Push Payment Fraud

1. Pay.UK is an industry body. Its role in authorised push payment fraud reimbursement proposed by the Payment Systems Regulator has inherent conflicts of interest. These are particularly acute where Pay.UK is responsible for ensuring that the banks and building societies that are its own guarantors pay out large sums of money in reimbursement to consumers. (Paragraph 23)

2. We are concerned that the Payment Systems Regulator's current position, confident that its proposals will work well but reserving the right to react with direct intervention if they do not, ignores the extent to which Pay.UK is conflicted. (Paragraph 24)

3. The PSR's intention to require Pay.UK to use scheme rules to implement APP fraud reimbursement creates an opportunity for guarantors and other PSPs—some of which oppose reimbursement—to delay its implementation, including through influencing the Pay.UK board. (Paragraph 31)

4. Pay.UK is less well-equipped than the PSR to deliver mandatory reimbursement quickly. Pay.UK requires a consensus of its members to change its scheme rules, whereas the PSR can exercise its powers of direction unilaterally. Pay.UK also lacks effective regulatory tools to ensure the swift compliance of PSPs. If the PSR leaves these proposals in the hands of Pay.UK it risks losing control of its timetable and increases the likelihood that mandatory reimbursement—which has already been unacceptably delayed until 2024—could be delayed yet further. (Paragraph 32)

5. *Victims of APP fraud have been waiting more than long enough. The PSR should ensure the payment systems industry has fully implemented mandatory APP fraud reimbursement by the end of 2023. The PSR should provide quarterly updates on progress against that deadline to the Sub-Committee.* (Paragraph 33)

6. Pay.UK is not a regulator. It lacks the necessary independence and enforcement powers to be effective in enforcing compliance with APP fraud reimbursement rules. (Paragraph 42)

7. The Financial Services and Markets Bill, as introduced to the House of Lords, instructs the PSR to use:

   - its powers under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act) to direct payment system participants;
   - its powers under section 55 of that Act to require Pay.UK to make rules; or
   - a combination of the two

   to provide for the reimbursement of Faster Payments APP fraud victims. The PSR's current proposal of using section 55 powers alone is a recipe for non-compliance and delay. Mirroring the PSR's approach to Confirmation of Payee protections, making directions to payments service providers supported by detailed scheme rules, is more conducive to effective and timely progress. (Paragraph 43)

8. The PSR's proposal to delegate the mandatory reimbursement of APP fraud victims to Pay.UK through Faster Payments scheme rules is fundamentally flawed on three grounds:

- Pay.UK is an industry body and is inherently conflicted;
- it is conducive to further delay to an already unacceptably extended process; and
- Pay.UK lacks the enforcement powers of a regulator. (Paragraph 44)

9. *We recommend the PSR revise its plans to incorporate its use of directions to payment service providers under section 54 of the Financial Services (Banking Reform) Act 2013. This will give the regulator more control over the process and result in better outcomes for consumers.* (Paragraph 45)

Formal minutes

Wednesday 25 January 2023

Members present:

Harriett Baldwin, in the Chair

John Baron

Anthony Browne

Emma Hardy

Anne Marie Morris

Draft Report *(Scam reimbursement: pushing for a better solution)* proposed by the Chair, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 45 read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjourned

Adjourned till Tuesday 31 January at 9.30 am.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 13 December 2022

Chris Hemsley, Managing Director, Payment Systems Regulator; **Abby Thomas**, Chief Executive and Chief Ombudsman, Financial Ombudsman Service; **David Pitt**, Chief Executive, Pay.UK Q1–53

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Future of financial services regulation	HC 141
2nd	Future Parliamentary scrutiny of financial services regulations	HC 394
3rd	The appointment of Dr Swati Dhingra to the Monetary Policy Committee	HC 460
4th	Jobs, growth and productivity after coronavirus	HC 139
5th	Appointment of Marjorie Ngwenya to the Prudential Regulation Committee	HC 461
6th	Appointment of David Roberts as Chair of Court, Bank of England	HC 784
7th	Re-appointment of Sir Dave Ramsden as Deputy Governor for Markets and Banking, Bank of England	HC 785
8th	Autumn Statement 2022 – Cost of living payments	HC 740
9th	Appointment of Ashley Alder as Chair of the Financial Conduct Authority	HC 786
10th	The work of the Sub-Committee on Financial Services Regulations	HC 952
11th	Fuel Duty: Fiscal forecast fiction	HC 783
12th	Appointment of Professor Randall Kroszner to the Financial Policy Committee	HC 1029
1st Special	Defeating Putin: the development,implementation and impact of economic sanctions on Russia: Government Response to the Committee's Twelfth Report of Session 2021–22	HC 321
2nd Special	Future of financial services regulation: responses to the Committee's First Report	HC 690
3rd Special	Jobs, growth and productivity after coronavirus: Government response to the Committee's Fourth Report	HC 861

Session 2021–22

Number	Title	Reference
1st	Tax after coronavirus: the Government's response	HC 144
2nd	The appointment of Tanya Castell to the Prudential Regulation Committee	HC 308

Number	Title	Reference
3rd	The appointment of Carolyn Wilkins to the Financial Policy Committee	HC 307
4th	The Financial Conduct Authority's Regulation of London Capital & Finance plc	HC 149
5th	The Future Framework for Regulation of Financial Services	HC 147
6th	Lessons from Greensill Capital	HC 151
7th	Appointment of Sarah Breeden to the Financial Policy Committee	HC 571
8th	The appointment of Dr Catherine L. Mann to the Monetary Policy Committee	HC 572
9th	The appointment of Professor David Miles to the Budget Responsibility Committee of the Office for Budget Responsibility	HC 966
10th	Autumn Budget and Spending Review 2021	HC 825
11th	Economic crime	HC 145
12th	Defeating Putin: the development, implementation and impact of economic sanctions on Russia	HC 1186
1st Special	Net Zero and the Future of Green Finance: Responses to the Committee's Thirteenth Report of Session 2019–21	HC 576
2nd Special	The Financial Conduct Authority's Regulation of London Capital & Finance plc: responses to the Committee's Fourth Report of Session 2021–22	HC 700
3rd Special	Tax after coronavirus: response to the Committee's First Report of Session 2021–22	HC 701
4th Special	The Future Framework for Regulation of Financial Services: Responses to the Committee's Fifth Report	HC 709
5th Special	Lessons from Greensill Capital: Responses to the Committee's Sixth Report of Session 2021–22	HC 723
6th Special	The appointment of Professor David Miles to the Budget Responsibility Committee of the Office for Budget Responsibility: Government response to the Committee's Ninth Report	HC 1184
7th Special	Autumn Budget and Spending Review 2021: Government Response to the Committee's Tenth Report	HC 1175
8th Special	Economic Crime: responses to the Committee's Eleventh Report	HC 1261

Session 2019–21

Number	Title	Reference
1st	Appointment of Andrew Bailey as Governor of the Bank of England	HC 122
2nd	Economic impact of coronavirus: Gaps in support	HC 454

Number	Title	Reference
3rd	Appointment of Richard Hughes as the Chair of the Office for Budget Responsibility	HC 618
4th	Appointment of Jonathan Hall to the Financial Policy Committee	HC 621
5th	Reappointment of Andy Haldane to the Monetary Policy Committee	HC 620
6th	Reappointment of Professor Silvana Tenreyro to the Monetary Policy Committee	HC 619
7th	Appointment of Nikhil Rathi as Chief Executive of the Financial Conduct Authority	HC 622
8th	Economic impact of coronavirus: the challenges of recovery	HC 271
9th	The appointment of John Taylor to the Prudential Regulation Committee	HC 1132
10th	The appointment of Antony Jenkins to the Prudential Regulation Committee	HC 1157
11th	Economic impact of coronavirus: gaps in support and economic analysis	HC 882
12th	Tax after coronavirus	HC 664
13th	Net zero and the Future of Green Finance	HC 147
1st Special	IT failures in the financial services sector: Government and Regulators Responses to the Committee's Second Report of Session 2019	HC 114
2nd Special	Economic Crime: Consumer View: Government and Regulators' Responses to Committee's Third Report of Session 2019	HC 91
3rd Special	Economic impact of coronavirus: Gaps in support: Government Response to the Committee's Second Report	HC 662
4th Special	Economic impact of coronavirus: Gaps in support: Further Government Response	HC 749
5th Special	Economic impact of coronavirus: the challenges of recovery: Government Response to the Committee's Eighth Report	HC 999
6th Special	Economic impact of coronavirus: gaps in support and economic analysis: Government Response to the Committee's Eleventh Report	HC 1383