

Harriett Baldwin MP
Treasury Sub-Committee on Financial Services Regulations,
House of Commons,
London,
SW1A 0AA

23 December 2022

Dear Harriett Baldwin,

Thank you for inviting me to give evidence before the Treasury Sub-Committee on Financial Services Regulations on Tuesday 13 December.

I thought it would be helpful to write to the Committee following the hearing.

Implementation of the regime

Pay.UK welcomes the steps taken by HMT to enable the Payment Systems Regulator (PSR) to define a mandatory reimbursement requirement, which will ensure victims of APP scams are not left out of pocket. If done well this, coupled with existing work across the industry on prevention and detection of scams, provides us all with an opportunity to make real progress to help address this urgent issue.

We are also ready to play our role to support reimbursement for scams that result in payment over the Faster Payment System (FPS). We are working with the PSR and payment service providers (PSPs) to put effective reimbursement arrangements in place for FPS payments as soon as possible. This is being made possible by the Government's changes to primary legislation through the Financial Services and Markets Bill.

Once the public authorities set the design of the reimbursement requirement, it will be key for the industry to work together to ensure we can implement an effective regime within the timelines set out by HMT and the PSR. We have proposed a model (attached), which we see as the most effective way to deliver the Government's and the PSR's policy outcomes.

Our model, which we have shared with the PSR for its consideration, provides for us to have new rules that bind our customers (the subset of PSPs that participate directly in FPS) to outcomes in relation to their interaction with consumers¹ regarding the reimbursement of APP scams. Our proposal also sets out that we would collect and monitor data from all relevant PSPs, not just our direct customers.

Our view is that the PSR would enable this by establishing the liability framework and setting the overall requirement on all PSPs. We also expect the PSR to undertake ultimate enforcement through its regulatory powers – including the ability to apply financial penalties to firms that fail to

¹ Consumers refers to consumers, micro-enterprises and charities, in line with PSR CP22/4.

meet the agreed standards. Our data collection and monitoring would support this arrangement and minimise the burden on the PSR.

We think the key focus should be to put in place an appropriate process to support *comprehensive and consistent* mandatory reimbursement for all victims of APP fraud, no matter who they bank with or how they pay. As our FPS rules apply only to our direct customers, of which there are currently 37, we are also calling for the PSR to place a single direction on all market participants. This would then capture both direct and indirect PSPs in Faster Payments, but could also be made to cover consumers who would otherwise not be protected (for example if an APP scam results in a payment over CHAPS). This is a departure from the PSR's proposal. Our understanding is that the PSR intends to require us to amend the FPS rules to capture these 37 PSPs, while it potentially makes a separate direction to capture indirect PSPs. We understand that these directions would only address those APP scams that are settled across FPS.

Implementation of the PSR's final model will require close work with industry to ensure they have the relevant operational processes and guidance, supported by technology where needed, to meet their obligations. This is no small task. If everyone can get behind a model that builds on the existing powers, experience and competencies of different parties, then it should be possible to act swiftly for the benefit of consumers.

Governance

The Committee questioned me on our governance arrangements and whether I felt that these could pose a potential conflict of interest with regards to our guarantors and taking action on non-compliance with our rules, and with the PSR's proposed reimbursement regime.

I understand why this issue was raised, as there have in the past been concerns about the control of payment schemes in the UK and the potential for conflicts of interest to arise. Prior to the consolidation that created Pay.UK, various PSPs owned the separate scheme companies. Those PSPs sat on the scheme company Boards and were responsible for broad aspects of decision making. Importantly, with the creation of Pay.UK in 2018, the PSR and the Bank of England approved a new governance model, which removed the control of the companies operating the interbank payment systems from PSPs.

As you are aware, Pay.UK is a private company limited by guarantee and operating on a not-for-profit basis. We take decisions based on the objectives set out in our [articles of association](#) and we are regulated and supervised by the PSR and the Bank of England. We act transparently including through the publication of our Board minutes and our annual reports.

We have 42 guarantors including a diverse range of banks, building societies and other PSPs, as well as corporates, fintechs and trade bodies. The liability of each guarantor is limited to £1. This is the amount that each guarantor undertakes to contribute to the assets of the company in the event of its being wound up while they remain as a guarantor or within one year after they cease to be a guarantor. The guarantors hold our Board to account at our annual general meeting (AGM). Our guarantors have no say in or visibility of day-to-day operations, issues of compliance or strategic decisions.

Guarantors vote annually on resolutions to: 1) approve our annual report and financial statements; 2) approve and renew Board directors; and 3) approve our auditor. However, any individual guarantor cannot influence the outcome of our AGM – this is why we have an appropriate number and spectrum of guarantors. Under the company's articles of association, a guarantor is expected to act in a manner that this not contrary to the interests of the company as a whole. We consider this mitigates the risk of conflict of interest, and would be happy to answer any further questions you have about our governance arrangements.

I hope this information is useful to the Committee – please do let me know if you require anything further information from us.

Yours sincerely,



David Pitt
CEO

Pay.UK's proposed Implementation Model for the PSR's Reimbursement Proposals

Implementing an effective Reimbursement Model – roles and responsibilities

Component of model	Pay.UK action	PSR action	PSP/PISP Action	Comment
Liability framework	Pay.UK would not have a role in setting the liability framework.	PSR would specify the requirements within the direction to PSPs and in the Section 55.	Liability framework would apply to all parties subject to the direction	Pay.UK may include the liability framework within FPS rules, but the composition of “the what” would be the responsibility of the PSR.
Mandating adoption by direct participants	Pay.UK would implement FPS rules to reflect the reimbursement requirement for qualifying PSPs of qualifying payments, in accordance with framework in PSR direction.	PSR would direct all relevant firms which initiate FPS payments for consumers* to implement the reimbursement requirement. PSR would require us to implement an FPS rule to support FPS direct participant compliance with direction.	The regulatory requirement would apply to all firms which initiate FPS payments for consumers. FPS rules could supplement this for direct participants, by inclusion or reference to expectations around adherence to operational processes and industry guidance.	This approach – of introducing the liability for reimbursement via a PSR direction, supplemented by FPS rules will deliver a consistent approach for all FPS payments. It is supported by the PSP community. We will support this in our response.
Mandating adoption by indirect participants	No role for Pay.UK at this stage.	The PSR would direct all firms which initiate FPS payments for consumers* to implement the reimbursement requirement.	The regulatory requirement would apply to all firms which initiate FPS payments for consumers*	This approach is supported by the PSP community and should therefore make resolution of this difficult aspect easier for PSR.
Operational Processes & Guidance	Pay.UK would work with industry to put in place the necessary process framework for them to deliver reimbursement.	PSR would specify outcomes and expectations that should be met.	Firms would need to support the development of processes & guidance (contributing their knowledge and experience) and then implement into operation.	Some may be FPS operational documents, others may require separate governance, with assurance to be agreed. UKF and LSB have both offered to support this significant task.

* Consumers refers to consumers, micro-enterprises and charities, in line with PSR CP22/4

Effective Reimbursement Model contd.....

Component of model	Pay.UK action	PSR action	PSP/PISP Action	Comment
Data requirements	Pay.UK would receive data from all relevant firms for consumer reimbursement, 50:50 allocation of funds and where this is disputed.	PSR would direct firms to provide Pay.UK with data required to monitor adherence to the requirement, in a unified format.	Firms would collaborate with Pay.UK to develop and submit standardised reporting of the relevant data (as required by PSR direction).	If, as proposed, we gather data from all firms, not just our customers, this will require automation. We will seek PSR agreement on the required data points for each aspect.
Monitoring	Pay.UK would produce MI to assess data against KPIs to be agreed with PSR, relating to their required policy outcomes.	PSR would work with us to agree KPIs for monitoring of the direction/rule and receive regular MI reporting on firm performance.	Firms would receive MI reporting on their performance against KPIs.	The degree to which reporting and MI can be automated is to be investigated by fraud programme in coming weeks. Some level of automation would be necessary to monitor the full set of firms.
Enforcement	Pay.UK would engage with direct participants not meeting KPIs, to explore reasons. This information would be shared with PSR at an agreed frequency.	PSR would use information provided by Pay.UK, supplemented by own engagement to undertake enforcement it sees necessary.	Firms would be expected to provide Pay.UK/PSR with explanations and plans to remediate non-compliance with FPS rules and PSR direction.	We do not currently have the power to undertake the direct financial enforcement necessary for this rule to be made effective. This is something which will be explored further in the longer term / NPA.
Post-implementation review	Pay.UK will provide PSR with the necessary information and support to undertake the review.	PSR will lead a post-implementation review after 2 years of operation ahead of transition to the NPA.	Firms will engage with PIR to provide their perspective on how well the requirement is operating.	In the long term, PSR expect Pay.UK to keep the effectiveness of requirements under review once they are in NPA rules.

Assumptions in the Effective Reimbursement Model

Given where PSR are in the process of finalising their requirements, we have had to base our model on various assumptions developed from our working level discussions with PSR. Divergence from these assumptions would likely create additional activities or risks for the Pay.UK to mitigate. The assumptions are listed below.

Assumptions	
#1 PSR implements decisions in manner that does not increase Pay.UK legal risk.	#6 The 50:50 allocation dispute process is not run by Pay.UK. For example, as per the CRM Code which requires the Sending Firm to act as a case handler, chose a dispute resolution firm and manage the process. Alternatively, this could be sourced by us with a preferred provider.
#2 The PSR will undertake directions to bring all PSPs and PISPs in scope of the reimbursement requirement.	#7 There is no role for us in the provision of consumer-facing guidance, or in disputes between PSPs and consumers. This would be managed as is currently, through the banks' own complaints procedure and the Financial Ombudsman Service, supported by industry guidance.
#3 The PSR will direct relevant firms to provide us with data necessary to monitor compliance with the requirement – including those beyond our direct customers.	#8 The data we collect will relate to volumes and values, collected at firm-level. We would not hold any consumer data. We currently do not hold personal data.
#4 PSR will establish KPIs for firms' performance in relation to reimbursement and liability sharing.	#9 We will consider how any data collected can be leveraged to support better tools for prevention and detection of fraud by PSPs, but this will not be on the critical path for delivery of reimbursement model in 2024.
#5 PSR will consider taking enforcement action against firms who have not complied with the directions.	#10 The PSR – supported by us - will understand, assess and establish stakeholder support for our role through its consultation process.