



PSR CP22/4 APP  
scams: Requiring  
reimbursement -  
Pay.UK response

15/12/2022

Classification: Public

## A model for effective implementation

Pay.UK welcomes the steps taken by HMT to enable the 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 want to support participants in our schemes to tackle fraud. As PSR are aware, we have a programme of activity underway to develop and roll-out prevention and detection tools, including the Enhanced Fraud Data project being taken forward by industry under PSR's Measure 2. We want to look at fraud prevention and mitigation across all our schemes, considering how we can leverage the NPA to deliver improvements.

We are also ready to play our role to support reimbursement for scams which result in FPS payments, which represent the highest volume of APP scams. We think that the design of the reimbursement requirement should be set by the public authorities. We will work with the PSR and the payment firms to put effective reimbursement arrangements in place for FPS payments as soon as possible. It will be key for the industry to work together to ensure an effective regime is implemented to the timelines set out by HMT and the PSR. We believe this can be achieved through the annexed model – which we are proposing as the most effective way to deliver the government and PSR's policy outcomes. We have engaged actively with PSR throughout 2022 and hope to continue that close working, along with the payments industry, in 2023.

In our response, we have referenced this proposed model which we have been exploring together, for the implementation of the PSR's proposed reimbursement requirements (this focuses on the “how” in the PSR consultation paper). We think this model can provide for effective reimbursement of consumers in a reasonable timeframe, given the urgent need to act. It needs to be tested with more stakeholders – especially payment service providers (PSPs) who will need to develop new processes and procedures – but our belief is that it could be progressed alongside existing plans to improve tools for prevention and detection, which the payments industry is keen to bring to delivery in 2023.

The model represents an evolution of our role - it provides for us to have new rules which bind our customers to outcomes in relation to their interaction with end-users. It also suggests that we would collect and monitor data from all relevant PSPs, not just our direct customers in our schemes or overlays. This would be enabled by PSR in its role to establish the liability framework and set the requirement on PSPs. It will be key for the PSR to be clear on what outcomes it wants to achieve, agreeing appropriate KPIs for monitoring, and undertaking ultimate enforcement through its regulatory powers. Implementation of the 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 not a small task, but if everyone can get behind a model which builds on the existing powers, experience and competencies of different parties, then it should be possible to act swiftly for the benefit of consumers.

This consultation will gather views on Pay.UK's role in reimbursement and also PSR's long term vision for Pay.UK. We expect the PSR to give appropriate weight to Pay.UK's response when considering its role, capacity and powers in these areas, especially where there may be differing expectations from other stakeholders.

## Delivery of policy outcomes

The PSR has set out its desired outcomes from its proposals. We share the PSR's desire to reduce the number of APP scams and for consistent protection for consumers, regardless of their PSP. Further, we think victims of scams should be entitled to appropriate reimbursement regardless of the type of payment that the scammer requests, and it is therefore important to ensure the arrangements the public authorities put in place now for FPS are flexible and adaptable for the future. The importance of this point was recently underlined by our End-User Advisory Council.

We want to support PSPs' efforts to prevent customers making the payments that result from scams. We agree that these outcomes would prevent any potential erosion of confidence in FPS as a system, or in the payment instruments used to create FPS transfers. We support the public authorities putting in place requirements that will be effective in supporting these outcomes (in an equivalent way to the approach taken to unauthorised fraud).

There are aspects of some of the options discussed in the PSR's consultation that, if implemented, would not lead to an effective solution. However, we believe that these would all be addressed in the model that we have proposed and discussed with the PSR. Key to this is our view that the requirement to reimburse should be placed directly on to the firms responsible, which is most effectively done via a direction from PSR under Section 54 of FSBRA. This will achieve the most comprehensive coverage for the requirement. FPS rules can further bind those who are subject to them into this requirement, including more detail on the precise operational expectations.

Alongside the policy outcomes identified in your consultation, we also think our proposed model supports addressing the following issues – which we believe may arise with other options in the consultation - which we and other stakeholders consider to be important:

- Consistency for consumers
- Level playing field across payment providers
- Credible enforcement
- Management of legal risk to PSO and IAPs

The PSR should consider the market consequences of the proposals as part of its Cost Benefit Analysis, as advocated by our End User Advisory Council. (We appreciate the PSR having taken time to present and discuss its proposals at the EUAC).

## Disaggregating the implementation of an effective reimbursement regime from PSR's long term vision for Pay.UK

PSR's longer-term vision for Pay.UK merits discussion with us and other stakeholders in the round and is broader than APP scams. We are clear that it is important to disaggregate the discussions of the longer-term vision for Pay.UK now, in order not to jeopardise the delivery of an effective reimbursement model. We share some of the long-term ambitions of the PSR, but these are complex areas that will need to be worked through alongside our other priorities and in discussion with our regulators.

It is important that the decision on our role for the on-going design and enforcement aspects of the reimbursement regime should not be made until there has been an evaluation of the operation of the model: we therefore strongly support the PSR's proposed post implementation review.

## Next steps

To deliver this change in its role, Pay.UK will require the support from PSR in three main areas to:

1. ensure that Pay.UK has the necessary legal powers and protection to take on its responsibilities;
2. provide clear and specific guidance on the desired outcomes and expectation on Pay.UK for the PSR to ultimately review and approve; and
3. support the operational delivery with industry through its convening powers and ability to direct firms to deliver the desired outcomes.

In our proposed model, Pay.UK would work with industry to deliver the requirements. Alongside the introduction of new rules, this will involve substantial effort to develop the necessary operational processes and guidance, underpinned by standards and technology, to enable PSPs to deliver consistent reimbursement outcomes to consumers. Pay.UK will also lean in to provide data collection and monitoring, so that the effectiveness of the PSR's proposed requirement can be assessed, and action taken where firms are found to be falling short.

We recognise that the PSR's proposals will evolve through consultation and that and it is therefore important that our work and planning keeps aligned to PSR thinking and expectations of our role. As such we will want to continue the close engagement we have had this year with PSR, to support our business assessment and implementation planning.

# Responses to PSR questions

## 1. Do you have views on the impact of our proposals on consumers?

We welcome the intention to introduce mandatory reimbursement requirements. This, coupled with the existing work across the industry on prevention and detection of scams, should help to address the urgent issue of the level of harm done to consumers by these crimes. The payments industry can only intervene in an APP scam once the victim has decided to make a payment – we want to support those interventions to make them timelier and more effective. Consumers will benefit more from interventions earlier in the development of a scam, and we recognise that actions to address this are outside of the direct sphere of influence of PSR.

We agree there is an urgent need to act in relation to FPS, which sees the highest volume of payments resulting from APP scams: We are ready to play our role in implementation. We will work with the PSR and the industry to put effective reimbursement arrangements in place for FPS payments as soon as possible.

We continue to advocate that any reimbursement interventions need to be effective in the long term, and solutions should be comprehensive and consistent, for the benefit of consumers. There are consequences for consumers (and the market) of requiring reimbursement of FPS payments and not for other forms of payments. Having different levels of protections for different forms or channels of payments does not create a consistent basis for consumers to be reimbursed and could prove confusing for them and lead to further detriments for some consumers. The reimbursement requirement should be cast as widely as possible.

Consumers experience detriment not only when they lose funds through an APP scam, but merely by being a target of such fraud. We are concerned that fraudsters may target consumers who use FPS to make payments, in the hope that the reimbursement promise will cause consumers to be less vigilant and take less caution in their payments. This creates a risk of moral hazard and, even if a moral hazard does not materialise, the perception of one will bring a greater volume of attempts at fraud with the attendant distress for victims.

Our End-User Advisory Council<sup>1</sup> were keen that PSR should place more emphasis on prevention (rather than reimbursement) and should consider the risk that the cost and burden for reimbursement might be shared across FPS in such a way that is detrimental to the consumer and other end-users, such as small businesses. They also requested that any requirements should be broadened out, or retrofitted, to other payment methods to ensure consistent protections for consumers.

We agree with the PSR observation that an impact for consumers could be that they experience more delays or challenge from sending firms before payments are submitted and/or that funds may not immediately be applied to receiving accounts. Pay.UK does not have visibility of this aspect of the bank/customer relationship so PSR should give thought to how it could capture information from sending and receiving firms to measure the impact of its proposals in this regard.

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<sup>1</sup> [End User Advisory Council - Pay.UK \(wearepay.uk\)](https://www.pay.uk/wearepay)

## 2. Do you have views on the impact of our proposals on PSPs?

PSPs will be able to supply PSR with a better view of the financial and operational impact of these proposals on their business. We are cognisant that the implementation of the PSR's proposal will be a significant task for PSPs, and will have an operational impact in both implementation and then ongoing BAU. We are keen to support PSPs in this, through coordination, the introduction of operational processes and guidance, systems and automation of data reporting, as needed. This central work by Pay.UK will also require funding.

It is important to note that the same PSPs are also engaged in work to broaden participation in CoP, to introduce prevention and detection measures such as Enhanced Fraud Data and the Pay.UK Fraud Overlay project. We are also engaged heavily with industry on NPA development. We anticipate that there will need to be extensive discussions with industry about their capacity to support this implementation alongside existing commitments in 2023. We imagine this will be a focus for discussions in early 2023, ahead of the finalisation of PSR proposals.

There is a lack of clarity and analysis on the competition impact of the proposals. It will be important for the PSR to work through the impact on PSPs, in particular considering different business models. As LSB and others who are closely involved will most likely explain in their own responses, this is a learning from the initial formulation of the CRM Code, the design of which reportedly impacted on the ability for universal adoption and the further development of the Code.

It would be a concern for us if PSR's final proposals changed the incentives for PSPs to execute payments across FPS or if the cost of reimbursement were to materially affect pricing and access to payments across the board. This is something that needs more exploration by the PSR, to ensure that any unintended consequences of the proposals have been considered and mitigated to the extent possible.

## 3. Do you have views on the scope we propose for our requirements on reimbursement?

We recognise that the duty imposed on PSR in the Financial Services and Markets Bill applies only to scams that result in transfers across the Faster Payments Scheme (FPS). This is therefore the focus of the initial requirements. We understand and agree with the focus on FPS in the first instance, and agree that implementing effective and timely solutions is imperative to providing protections for customers against APP scams. Victims of scams should be entitled to appropriate reimbursement regardless of the payment instrument and resulting type of payment that the scammer requests, and it is important to ensure the arrangements are flexible and adaptable for the future.

We think this means that the PSR's proposals should be designed with all payments in mind, even if PSR choose not to apply them yet across different payment methods, although we note the FSMB provides the powers to do so. This was a key request of our EUAC. The definition of scam in the CRM Code, as an industry- accepted definition, may be an appropriate starting point.

As we further explore in response to question 20, a PSR Direction across PSPs would allow customers to be protected consistently for all scams that results in FPS payments. Such an instrument could be expanded in future to cover all designated payment types. Pay.UK rules will require PSPs to meet that regulatory obligation and support them in operationalising the proposals. This would address some of our concerns set out in response question 1.

It is important to ensure that all victims receive the same level of protection from scams, so we are supportive of the PSR approach to bring into scope all consumer scams that result in FPS payments, regardless of how they are initiated. Criminals adapt quickly. For example, fraudsters have adapted their tactics to exploit the rising cost of living, with new trends in phishing attacks mimicking government support packages such as energy and council tax rebates, or ‘cost of living’ payments<sup>2</sup>. The exclusion of a channel of payment, or category of firm would play into their hands. It is right therefore to include PISPs as well as conventional PSPs.

It is unclear in the consultation document how the proposals will be applicable to PISPs – the PSR must set out its thinking further on this matter.

#### 4. Do you have comments on our proposals:

- that there should be a consumer caution exception to mandatory reimbursement
- to use gross negligence as the consumer caution exception
- not to provide additional guidance on gross negligence?

It is right that the public authorities should set the reimbursement requirements, as they do for unauthorised payment fraud. We will support our customers, the payment providers, to meet those requirements and support their customers.

We believe the industry is best placed to comment on the detail of the requirements in the proposals to work towards such outcomes.

#### 5. Do you have comments on our proposal to require reimbursement of vulnerable consumers even if they acted with gross negligence?

In August 2022, Pay.UK published research on improving the payments system for financially vulnerable people<sup>3</sup> which aimed to understand the changing needs of end users with focus on account-to-account payments. We want to draw the PSR’s attention to this work as it may support your consideration of this issue. Recommendations from this work focus on prevention and detection:

- That banks and building societies adopt the lessons learnt from our benchmarking research into identifying best practice for a more clear and impactful use of the Confirmation of Payee service in customer journeys and messages; and
- Further research into financial abuse more generally and what the payments ecosystem can do to tackle it in order to understand if purpose codes could facilitate better fraud and financial abuse detection.

Findings more generally from this piece of work may help in shaping the PSR’s proposals on vulnerability:

- Our polling found that in the last month, 52% of people had received some kind of request to transfer money, which they believed to be fraudulent, and 60% of financially-vulnerable people had received some kind of fraudulent request.

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<sup>2</sup> [Phishing attacks – who is most at risk? - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/news-and-analysis/news-releases/2022/08/20220816-phishing-attacks)

<sup>3</sup> <https://newseventsinsights.wearepay.uk/media/t35fktsa/financially-vulnerable-research-240822.pdf>

- Younger people were often more likely to be targeted by fraudsters, particularly through letters and adverts, but many older people also reported receiving texts and emails they believed to be fraudulent.
- Our polling found that people in higher socio-economic groups and financially-vulnerable people were more likely to report receiving some kind of fraudulent APP request.
- We found that whilst 92% of the total population take heed of a CoP alert, some people choose to ignore it. 8% said they would make the transfer anyway, and this number is higher for those with a health vulnerability (12%), life events vulnerability (10%) and low financial resilience (14%)

This demonstrates that financially-vulnerable are targeted by scammers, and may be more susceptible to the scam. Vulnerability in the context of scam may look different to the traditional definition of vulnerability, and this should be considered by the PSR.

## 6. Do you have comments on our proposal to use the FCA's definition of a vulnerable customer?

### 7. Do you have comments on our proposals that:

- sending PSPs should be allowed to apply a modest fixed 'excess' to reimbursement
- any 'excess' should be set at no more than £35
- PSPs should be able to exempt vulnerable consumers from any 'excess' they apply?

### 8. Do you have comments on our proposals that:

- sending PSPs should be allowed to set a minimum claim threshold
- any threshold should be set at no more than £100
- PSPs should be able to exempt vulnerable consumers from any threshold they set?

## 9. Do you have comments on our proposal not to have a maximum threshold?

We believe the industry is best placed to comment on the detail of the requirements in the proposals to work towards such outcomes.

The areas set out in questions 4 -9 should be considered in the PSR's post implementation review – it is important that the PSR leads and sets out what outcomes it wants to achieve through these proposals in order for their effectiveness to be evaluated by the PSR.

In order for such an evaluation to be possible, PSR will need to consider what data it needs to collect and to what frequency – we do not anticipate that all of these data points needed to assess these questions would routinely be collected by Pay.UK as a part of its ongoing monitoring. Whilst the PSR refines its proposals post-consultation, it is important to draw out the data required for the post implementation review and who will collect this.

We discuss the post implementation review further in response to question 18.

10. Do you have comments on our proposals that:

- sending PSPs should be allowed to set a time-limit for claims for mandatory reimbursement
- any time-limit should be set at no less than 13 months?

11. Do you have comments on our proposals that:

- the sending PSP is responsible for reimbursing the consumer

We agree that the firm which has the customer relationship with the victim would seem to be the appropriate one to provide the reimbursement payment.

12. What standard of evidence for gross negligence or first party fraud would be sufficient to enable a PSP to take more time to investigate, and how long should the PSP have to investigate in those circumstances?

13. Do you have comments on our proposal for a 50:50 default allocation of reimbursement costs between sending and receiving PSPs?

We support the idea that receiving firms should face some liability for hosting the accounts into which scam payments are made. It is for industry to comment on the most effective way to ensure that this responsibility is introduced in such a way as to drive more effective detection of fraudulent and mule accounts. A 50/50 split, to be reviewed as part of the PIR in the light of MI collected in operation would seem on the face of it to be a pragmatic way forward.

14. Do you have views on our proposal that PSPs are able to choose to depart from the 50:50 default allocation by negotiation, mediation or dispute resolution based on a designated set of more tailored allocation criteria?

PSPs will need to reflect on what processes they need to establish in the event that they want to depart from the 50:50 split. It may take time to establish common criteria, building on the experience of operation of the reimbursement framework, and the criteria may need to continue to evolve. This dispute mechanism would need to sit outside of the scheme rules, but could be referenced in operational processes as appropriate.

15. Do you have views on how scheme rules could implement our proposed 50:50 default allocation to multi-generational scams?

Multigenerational scams are a complex matter. The industry, in collaboration with public authorities should explore this further and how liability in such scams should be set. We have asked PSR for further discussions on this question. We are unclear as to how FPS scheme rules can implement this aspect, given that fraudsters will seek to move funds across multiple schemes as one of the methods to hide the trail.

16. Do you have comments on our proposal for a 50:50 default allocation of repatriated funds between sending and receiving PSPs?

17. Do you have views on the scope we propose for rules on allocating the costs of mandatory reimbursement?

We agree that the scope of the reimbursement requirement should encompass all firms who initiate payments on behalf of consumers, not just direct participants in FPS. It is not currently possible for such a requirement to be imposed via scheme rules.

18. Do you have views on our long-term vision, and our rationale for the PSO being the rule-setter responsible for mitigating fraud?

Pay.UK has implemented a new Strategy, setting a foundation for the future. It is our vision to be the smartest way to move money, now and in the future. We are looking to do more than we have in the past. This ambition is about Pay.UK and all its schemes, it is not limited to APP scams or to FPS.

We are clear that we should disaggregate the discussions of the longer-term vision for Pay.UK from APP reimbursement in order not to jeopardise the delivery of an effective reimbursement solution for 2024. We have discussed this with you and are pleased you have accepted this. We share some of the long-term ambitions of the PSR, but these are complex areas that will need to be worked through alongside our other priorities and in discussion with our regulators. The focus of this response is on the implementation model for 2024, however we include some overall observations here.

We will follow this up through strategic discussions with the PSR on their vision for Pay.UK more holistically. The NPA is one of the ways we will deliver our new strategy and, combined with our rules and standards, plus associated controls and policies, will give us a powerful platform reinforcing our position of leadership in the payments market globally. It would be better to approach the discussion of Pay.UK's future role on this broad basis, rather than through the lens of APP scams.

The consultation document states that it is the PSO that should make, maintain, refine, monitor and enforce compliance with comprehensive scheme rules that address fraud risks in the system. We agree that a PSO needs to have an effective rulebook and the ability to monitor and enforce compliance with it. Each rulebook of the schemes we operate is different, reflecting the scope of the system in its designation and the particular design, use and evolution of the scheme. In addition, Pay.UK is responsible for the rulebook and data standards for overlays such as Confirmation of Payee (CoP) and Request to Pay (RtP). As PSR is aware, work is underway to design and develop the rulebook for NPA and we look forward to continued engagement with PSR as this is developed.

As we have outlined in previous responses to PSR consultations on APP scams, we think that the relative roles of the public authorities and PSOs are clear. Public authorities should establish the overarching high-level principles, which place liability on individual firms in the discharge of their provision of payment services; PSOs should use their rules, standards and technology to ensure that participants in the schemes meet those obligations. Under FSMB, it is for PSR to determine the terms of the requirement, and what good looks like in its implementation.

This is the principle that exists for unauthorised payment fraud. For example in ICS, Pay.UK documentation includes a Fraud Manual and we undertake monthly monitoring of fraud levels with participants to track trends in cheque fraud across the industry. We do not currently undertake

equivalent monitoring for FPS. This is because the legal framework and related FCA regulatory obligations, supported by industry (UKF) guidance delivers incentives, processes and procedures for PSPs to manage and reimburse for such fraud. The absence of an equivalent comprehensive and consistent set of expectations in relation to APP scams will be rectified by the proposals now being put forward by PSR through this consultation. We think it is right that the public authorities should take on this role.

As part of strategic discussions of Pay.UK's future role, we would also like to better understand PSR's view with regard to the role of the card scheme rules. The PSR reference existing rules in the card schemes in relation to prevention of authorised fraud. However, we are not aware of such rules and would be interested to understand this reference. Our understanding from engagement with customers is that they do not report authorised scam levels to the card schemes or UKF and are not required by scheme rules to reimburse these. The scale of authorised card scam across the industry is therefore not known. Our analysis suggests that the card scheme rules implement operational arrangements to allow scheme members to meet their legal and regulatory obligations in relation to unauthorised fraud. We believe that the model we are proposing here aligns to this approach

It is right that we, as a PSO, can do more to support participants in our schemes to tackle fraud. As PSR are aware, we have already implemented CoP and have a programme of activity underway to develop and roll-out other prevention and detection tools, including the Enhanced Fraud Data project being taken forward by industry under PSR's Measure 2. We want to look at fraud prevention and mitigation across all our schemes, what we do and how we can do it better, considering how we can leverage the NPA to deliver improvements. We will also use our rulebook to support better reimbursement outcomes under the proposed PSR framework.

There are challenges to Pay.UK taking on some of the proposed roles set out by the PSR in the near term. We are limited by our existing powers and reach. For example, our ability to undertake enforcement action is limited, and it is not possible for us to require actors in the ecosystem outside of our direct participants to submit to our rules. Analysis of Pay.UK's powers and reach in the context of the proposed roles is necessary to ensure that these are appropriate, both considering legal feasibility and balancing against our core responsibilities. As a Payment Systems Operator, Pay.UK manages the central infrastructure for its payment systems, undertaking a systemic risk manager role whilst providing choice and provision of services to the UK economy – any new roles must not introduce disproportionate risk to this.

We may want to be more interventionist in the future in order to support the management of our system. Our strategy sees us taking a position of leadership in the payments market, and addressing concerns will be a key aspect of this. There may be other concerns which arise in the coming years which require us to act, and we want to ensure we have the powers to do this effectively.

Your consultation is clear that the PSR will undertake a post-implementation review of the interim reimbursement arrangements ahead of transition to NPA. We consider that this should be a full review of the effectiveness of the measures taken, rather than of the FPS rules alone. This will then feed into how reimbursement requirements should look, and our role, in the future.

It is important that the decision on our role for the design and enforcement aspects of the reimbursement regime should not be made until there has been an evaluation of the operation of the model: we therefore strongly support the PSR's proposed post implementation review.

It will be important for the PSR to be specific in defining what good outcomes look like in each area of its proposals, to not only support their operationalisation, but the post-implementation review.

We would welcome clarity on what Pay.UK's role will be in the post-implementation review.

## 19. Do you have comments on the minimum initial set of Faster Payments scheme rules needed to implement our mandatory reimbursement proposals?

We recognise that the PSR's proposal will evolve through consultation and it will be important that our work and planning remains aligned to PSR thinking and expectations of our role. Our work in this space has moved into a design and delivery phase, so we are prepared to operationalise the PSR's final decision. We must work closely with the PSR between its consultation closing and final decision being made in order that we are able to plan, resource and deliver work required of us in an effective and timely way. We will need time to reflect any changes in PSR policy positions. As such we formally request sight of consultation responses and regular updates from the PSR in its thinking to support our business assessment and implementation planning.

It is right that public authorities set out the reimbursement framework to be implemented by PSPs. This is not within the PSO remit and nor an area of expertise for Pay.UK. We will, as proposed in the consultation, transpose those requirements into FPS rules to require participants' adherence to them as a condition of participation in the scheme. We have proposed to the PSR a more detailed model (Annex A) which explains the role we expect to play in delivering the reimbursement regime and our understanding of what the PSR and PSPs will also do to support delivery of the regime.

We are focusing our work on developing an effective reimbursement model to the expected timelines. Alongside rules, which will set out outcomes and responsibilities, we will need to work with industry to develop operational guidance and processes to enable them to meet the requirements of the rules. Some of these may best form part of the set of FPS operational documents, and be maintained and governed by Pay.UK but others may be broader in nature and require separate governance. For example, we do not anticipate that Pay.UK would develop guidance related to conduct and consumer relationships – this is outside of the payment system and not areas of expertise for Pay.UK. We think it would be necessary to identify the full set of guidance to be developed and agree responsibility for each part across the industry, LSB, UK Finance and PSR. This includes consideration of what should be included, governance and ownership. We need to carefully consider how these will interact with our rules. At a minimum there will need to be requirements on firms related to how they demonstrate adherence to the rules, and operational processes to support that. The content and level of guidance and processes will be dependent on the final decision of the PSR, for example of the level of monitoring and enforcement appropriate for us.

We will also need to secure funding from our customers. Our expectation is that the PSR would be supportive of us requesting this funding from our customers.

## 20. Do you have comments on the minimum initial set of Faster Payments scheme rules needed to implement our mandatory reimbursement proposals?

PSR has multiple options for how to require PSPs to implement a reimbursement framework. Below we set out our thinking on the most effective option. Regardless of the vehicle the PSR decides to deliver the requirements, Pay.UK will take an active role in supporting PSPs in their reimbursement

requirements. We will undertake the same role and activities, to implement rules, systems and processes to support our customers in operationalising the reimbursement framework. Our preferred option is based on our belief that it will deliver better policy outcomes; we do not expect that it will impact the activity we will undertake.

The PSR proposes to use their powers under Section 55 of FSBRA to require Pay.UK to amend FPS rules. The PSR notes that the requirements could be imposed on PSPs through directions, but dismiss this as incompatible with the long-term vision. However, we still see merit in this approach as being an effective mechanism to place the liability to reimburse directly on the affected parties – the entity making the payment for the consumer and the entity holding the account on behalf of the criminal.

We think that a PSR Direction on PSPs is a more appropriate vehicle for a number of key reasons:

- A wider range of PSPs could be required to provide reimbursement.
- The requirement could apply to multiple payment channels.
- A regulatory requirement is likely to create a very strong incentive to comply and invest in prevention and detection to reduce fraud overall.
- PSR has effective enforcement arrangements (underpinned by statutory powers) in place, should action be needed.
- It would likely minimise competitive distortions that could occur if Faster Payment rules alone were used.

A working example of where the PSR have utilised this approach is that of Confirmation of Payee. Through Specific Direction 17, the PSR has required all relevant PSPs, both direct and indirect, to put in place and use a system to provide CoP so that a greater number of CHAPS and Faster Payment users benefit from it. In addition, as with Specific Direction 10, the wording of the direction that requires CoP check to be made where a customer provides ‘the necessary information about a new payee’ means that PSPs have applied CoP to ‘on-us’ payments, as well as Faster Payments and CHAPS.

If PSR were to make such a direction in relation to its reimbursement proposals, this could still be supplemented by a Section 55 requirement on Pay.UK to amend the FPS rules to make this operational for those PSPs subject to the rules and caught by the requirement. This is line with our proposed model in Annex A.

Any Section 55 will need to specific and set out clearly the outcomes that PSR want the rule to achieve. We will need to work with the PSR to ensure the Section 55 enables Pay.UK to act lawfully and within its power when implementing the rule.

- It is a requirement of the PSR’s General Direction 4, that Pay.UK, as operator of FPS, actively seek the views of service-users in making decisions concerning FPS rule changes. Under FPS rules, Pay.UK is required to consult ‘as appropriate, will all relevant Participants and other external stakeholders as well as the appropriate Board Committee, on FPS rule changes.<sup>4</sup> However, if we are implementing a rule change which the PSR has fully specified, it is less likely that a consultation will be needed. The composition of the Section 55 will impact on this.

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<sup>4</sup> FPS Rule 10.2

- In order to undertake the monitoring role as set out in the PSR’s consultation, the PSR would need direct PSPs to provide their payments data to Pay.UK to be used for fraud analytic purposes, and in a unified format. Whilst the data will be dependent on the outcomes the PSR wants its requirements to achieve, and the KPI’s they set out as an indication for the need for escalation/enforcement, the PSR should grant Pay.UK the power to determine the PSP payment data we consider appropriate for monitoring of the rule.

## 21. Do you have views on how we propose that allocation criteria and dispute resolution arrangements are developed and implemented?

PSR proposes that a set of arrangements be designed in Faster Payment rules, with Pay.UK responsible for ensuring they are in place and operating effectively.

We see the allocation criteria, for which the dispute arrangement would be based upon, should be developed by the industry, as this is where the liability for scams sit. These will likely need to adapt in response to developments in relation to the fraud landscape, and therefore by their nature would not fit within scheme rules. A Code may be more appropriate.

We would propose that the dispute resolution arrangements are not run by Pay.UK. We understand that the CRM Code dispute resolution arrangements requires the Sending Firm to act as a case handler, chose a dispute resolution firm and manage the process. This could be one approach, or the dispute resolution firm could be sourced by us with a preferred provider. This is an approach currently used with other areas Pay.UK are responsible for, and we believe this would be a balanced and effective approach.

It is important for the PSR to be specific about the outcomes it is looking to achieve and the expectations it has for Pay.UK in achieving those outcomes. It would be imperative for the PSR to further define what ‘operating effectively’ would look like, in order for the implementation of arrangements to have the desired outcome (and for Pay.UK to be able to manage any compliance risk).

As the PSR notes, it would be important for any given criteria to be applicable fairly to all relevant types of PSPs. Similarly, it would be important that all relevant types of PSPs could be a part of the development of allocation arrangements, and would be able to access dispute resolution. This would mean direct, indirect PSPs [and PISPs]. It may mean that the PSR (with support from UKF) would be best placed to develop and implement these, given their convening powers, and reach across the different payment providers, with Pay.UK supporting implementation to direct participants.

## 22. Do you have comments on our preferred short-term implementation approach of requiring Pay.UK to implement an effective compliance monitoring regime, including a reporting requirement on PSPs?

It is important for the PSR to define what an ‘effective compliance monitoring regime’ would look like, including what outcomes it should achieve, to support our monitoring activity.

We understand there are three aspects to monitoring and enforcement

- I. PSPs reimbursing in accordance with the required timescales
- II. Reimbursement is being made in all cases of APP fraud, recognising exceptions
- III. Payment of shared liability is being made in all cases

In order to implement effective monitoring of these aspects, all relevant firms will need to provide data on a regular basis on their performance on reimbursement.

A refund by a bank to its customer does not go across Faster Payments, therefore it would not be possible for Pay.UK to extract data in relation to reimbursement directly from the Faster Payments System to support a monitoring regime. A monitoring system would have to be based on reporting from PSPs.

A data set would need to be determined, in collaboration with the PSR and the relevant firms, with a clear reporting template and set of definitions. We need to understand what good looks like for the sending and receiving banks in meeting the requirements. This will aid the identification of data to support the monitoring regime. Thresholds would then be set for the data we receive from each firm, and this would allow us to identify where action may need to be taken.

As noted in response to question 20, it will be imperative that PSR direct relevant firms to provide us with data necessary to monitor compliance with the requirement – including those beyond our direct customers. It is also a key assumption that the data we collect will relate to volumes and values, collected at firm-level, and we would not hold any personal consumer data.

In relation to point II, we understand from discussion with PSR that there would not be a 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 LSB and UKF guidance.

### 23. Do you have views on the costs and benefits of Pay.UK implementing a real-time compliance monitoring system and when it could be introduced?

As set out above, we envisage in the short term that monitoring would be based upon PSP reporting of data. The frequency of this reporting will need to be agreed and should relate to the intensity of monitoring required - we do not see anything intrinsic to the proposals that indicates the need for real-time compliance monitoring. Scams are reported by customers once it becomes apparent that the basis for the payment was false and the next step is the decision by the paying bank on whether reimbursement is appropriate. We would ask the PSR to set out why a real-time monitoring system would be necessary, in order for us to understand what such a system would do and requirements for its build. This would inform an assessment of costs and benefits.

Our Fraud Programme is currently investigating how we could automate PSP reporting in order to support monitoring. There would be significant operational impact if we were expected to gather data from indirect PSPs and PISPs without automation, due to the individual reporting nature of our processes. We will keep PSR abreast of our progress.

### 24. Do you have views on the best option for short-term enforcement arrangements?

Due to our current powers, it would not be possible for us to undertake effective enforcement in the short term. As set out in the PSR's options, we could include escalation to the PSR as a part of our post-monitoring activity. We are able to undertake the appropriate monitoring to identify where PSPs have hit KPI's or thresholds, set out by the PSR, however we could not be the party taking action.

We are seeking guidance from the PSR on KPI's and thresholds, and to report to them so they can act. It would also be important for us to understand the extent the PSR would want Pay.UK to undertake any activity prior to reporting to the PSR, as this could have an impact capacity and capability.

If a PSR were to impose the overall high-level requirements on PSPs through a consistent, market-wide Direction, this would remove any questions around enforcement and allow the PSR to undertake this directly, including on the basis of information escalated to it by Pay.UK. We continue to consider that the significant threat of regulatory enforcement would place appropriately strong incentives on firms with minimal regular overhead for the PSR once the arrangements are operational.

## 25. Do you have views on the best way to apply the rules on reimbursement to indirect participants?

The most effective approach would be for the PSR to direct all firms which initiate payments over FPS for consumers to implement the reimbursement requirement. The other proposals suggested by the PSR to place the reimbursement obligation on firms are unlikely to be viable. Our engagement has shown that neither indirect access providers, nor indirect participants, were supportive of this obligation being put in place via a contractual business relationship. It is also unclear how enforcement would work in this regard.

As set out in response to question 20, a direction on all PSPs would be our preferred approach, which would also capture indirect participants. This has a range of benefits from a public policy and legal perspective. This approach has been undertaken by the PSR in relation to Confirmation of Payee, as noted in response to question 20.

We understand in the long term the PSR aspires all PSPs to be captured by a PSO rule, likely through the NPA. We don't think there is a credible way we can capture the full range of relevant firms via the FPS rules.

We have focussed in the model proposed on the implementation of an effective solution. We do not think that the constraints we currently have should prevent comprehensive reimbursement for the benefit of end-users. We recognise that PSR has consideration of the future model in developing the current requirements and implementation, however, should impact on – whilst it may seem that Pay.UK maintaining responsibility for reimbursement requirements throughout the short and long term would provide some level of consistency, we think it is more important to focus on what will provide the best outcomes for consumers. In this case, the PSR directing all PSPs now will provide the most effective solution, and would not preclude the NPA rules housing reimbursement requirements in the future.

## 26. If it was necessary for us to give a direction, what are your views on whether we should direct indirect PSPs or IAPs?

Our engagement with payment providers suggests it would be preferable for liability to sit with the firm who initiates payment on behalf of the consumer and that there would be considerable complexity and risk to deliver this via contract between IAPs and their customers. This supports our view that there is a need for broad direction of PSPs.

## 27. Do you have comments on our cost benefit analysis at Annex 2 or any additional evidence relevant to the analysis?

The key benefit of these proposals is identified to arise from a consequent improvement in controls within payment firms resulting in a fall in the number of scam payments made by up to £150million. Our EUAC cautioned that there might be an increase in the number of scam attempts made by criminals in the hope that customers would be less vigilant in the expectation of reimbursement. EUAC said that in this case, even if the PSP were able to intervene at the end of the scam lifecycle, to prevent the ultimate transfer of funds, the victim would still suffer the distress of the social engineering or harassment of the fraudster. There may be fewer successful scams and consumers face less financial loss, but a greater number of potential victims. Whilst costs to consumers would be reduced there is likely to be at least some increase in costs to PSPs.

In terms of these costs, EUAC were clear that the PSR take proper account of the likelihood that PSPs would need to pass on the cost of reimbursement (and of increased investment in fraud prevention and detection) to their whole customer base, including the bulk participants in FPS and corporate users who do not benefit from the reimbursement promise. The CBA acknowledges the cost to PSPs, but does not consider how they might recover this cost and the consequential impact on payments service users.

## 28. Do you have any other comments on the proposals in this consultation?

Whilst we understand the PSR has an obligation placed upon it by HM Treasury, and the industry want to reach an effective solution to the reimbursement of end users in the case of APP scams, we think the PSR should focus on what is the most effective route to meeting its policy outcomes, and consider if it is the best approach.

The legislation specifies Faster Payments, but does not restrict the PSR's actions. You should consider whether better policy outcomes would be produced if the obligation were applied to all push payment methods (including, for example, CHAPS). As noted in response to Question 1, we are also concerned that fraudsters may target consumers who use FPS to make payments, in the hope that they will be less vigilant and take less caution in their payments with the knowledge that they will be reimbursed.

There is also an additional risk that our customers will move to utilising a different payment method to fulfil the role Faster Payment currently holds, for example Direct Credit, as this means they are not held to a reimbursement requirement.

One of the PSR's proposed outcomes from this consultation is "agile payment scheme rules". We do not agree that this should be included as an outcome PSR want to see as a result of the introduction of APP scam reimbursement. We share the ambition - as PSR know - but consider this to be a broader deliverable, which relates to the entirety of the role of us as the PSO.



# Annex A

## Implementation Model – roles and responsibilities

Component of model	Pay.UK action	PSR action	PSP/PISP Action	Comment
<b>Liability framework</b>	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.
<b>Mandating adoption by direct participants</b>	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.
<b>Mandating adoption by indirect participants</b>	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.

Component of model Pay.UK action	PSR action	PSP/PISP Action	Comment	
<b>Operational Processes &amp; Guidance</b>	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.
<b>Data requirements</b>	Pay.UK would receive data from <b>all relevant</b> 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.
<b>Monitoring</b>	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.

Component of model Pay.UK action	PSR action	PSP/PISP Action	Comment
<p><b>Enforcement</b></p> <p>Pay.UK would engage with direct participants not meeting KPIs, to explore reasons. This information would be shared with PSR at an agreed frequency.</p>	<p>PSR would use information provided by Pay.UK, supplemented by own engagement to undertake enforcement it sees necessary.</p>	<p>Firms would be expected to provide Pay.UK/PSR with explanations and plans to remediate non-compliance with FPS rules and PSR direction.</p>	<p>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.</p>
<p><b>Post-implementation review</b></p> <p>Pay.UK will provide PSR with the necessary information and support to undertake the review.</p>	<p>PSR will lead a post-implementation review after 2 years of operation ahead of transition to the NPA.</p>	<p>Firms will engage with PIR to provide their perspective on how well the requirement is operating.</p>	<p>In the long term, PSR expect Pay.UK to keep the effectiveness of requirements under review once they are in NPA rules.</p>

## Assumptions

Given where PSR are in the process of finalising their requirements, we have had to base the above 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 business to mitigate. The assumptions are listed below.

- |                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>#1</b> PSR implements decisions in manner that does not increase Pay.UK legal risk.</p>                                                                                   | <p><b>#6</b> 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.</p> |
| <p><b>#2</b> The PSR will undertake directions to bring all PSPs and PISPs in scope of the reimbursement requirement.</p>                                                       | <p><b>#7</b> 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.</p>            |
| <p><b>#3</b> The PSR will direct relevant firms to provide us with data necessary to monitor compliance with the requirement – including those beyond our direct customers.</p> | <p><b>#8</b> 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.</p>                                                                                                                        |
| <p><b>#4</b> PSR will approve KPIs for firms' performance in relation to reimbursement and liability sharing.</p>                                                               | <p><b>#9</b> 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.</p>                                                              |
| <p><b>#5</b> PSR will consider taking enforcement action against firms who have not complied with the directions.</p>                                                           | <p><b>#10</b> The PSR – supported by us - will understand, assess and establish stakeholder support for our role through its consultation process.</p>                                                                                                                                               |



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