

DRAFT ~~General~~Specific Direction
[X] ~~to all~~ PSPs participating in
Faster Payments ~~to~~ which provide
payment accounts to payment
service users in the UK to reimburse
APP scam payments and comply
with the scheme rules
on reimbursement

~~General~~Specific Direction [X]:
APP scam reimbursement
requirement

[Month] 2023

This is a comparison version of the draft general direction (from CP23/4, July 2023) and the draft specific direction (from CP23/10, September 2023). Additions are in green and underlined. ~~Deleted text is set in red and shown struck through.~~ It has been prepared by the PSR to assist users of the direction.

~~General~~ Specific Direction [X]: APP scam reimbursement requirement

1 Recitals

Whereas:

- 1.1** Authorised push payment (APP) scams happen when a ~~scammer~~person tricks someone into sending money to an account outside of their control.
- 1.2** The Financial Services and Markets Act 2023 (FSMA 2023) places a statutory obligation on the Payment Systems Regulator (PSR) to introduce a reimbursement requirement for APP scams in Faster Payments by the end of February 2024.
- 1.3** In September 2022, the PSR consulted on proposals for placing this requirement on payment service providers (PSPs).
- 1.4** Following this consultation, the PSR has decided to implement a policy that requires APP scam victims ~~—excluding those who have committed first party fraud—~~ to be reimbursed by the sending PSP. This is known as the reimbursement requirement.
- ~~**1.5** — There will be a consumer standard of caution exception to the reimbursement requirement to ensure that consumers take appropriate care when making payments.~~
- 1.6**1.5 The PSR has decided to implement this policy by requiring the operator of Faster Payments to put the new reimbursement requirement into the Faster Payments rules. The operator is required to do this through the PSR's specific requirement to make a specified rule change pursuant to section 55(1)(b) of the Financial Services (Banking Reform) Act 2013 (FSBRA). These are known as the reimbursement rules.
- ~~**1.7**~~1.6 The PSR has also decided to use its powers under section 54 of FSBRA to direct ~~participants~~PSPs participating in Faster Payments, which provide payment accounts to payment service users in the UK, to comply with the reimbursement rules. This is to ensure that these rules apply to both direct and indirect participants in Faster Payments, to ensure that all participants in Faster Payments and their customers are, as far as possible, placed on an equal footing.

2 Powers exercised and purpose

2.1 The PSR gives this ~~general~~specific direction in accordance with section 54(1) and (3) of FSBRA.

2.2 The PSR has had regard to the following provisions of FSBRA:

a. Sections 49 to 53 (General duties of regulator)

b. ~~The general~~Section 62 (Duty to consider exercise of powers under Competition Act 1998)

2.3 This specific direction ensures that the PSR complies with its duty under section ~~68~~72(5) of FSMA 2023 to introduce a reimbursement requirement for APP scams in Faster Payments.

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Direction

NOW the PSR gives the following ~~general~~**specific** direction to all PSPs participating in Faster Payments: which provide payment accounts to consumers in the UK

~~3~~ **Direction to all PSPs participating in Faster Payments**

3 The reimbursement requirement

Reimbursement requirement

- 3.1** Any reimbursable APP scam payment reported by a victim to their sending PSP must be reimbursed to the victim by the sending PSP in full, subject to the ~~maximum level of requirements set out in the~~ reimbursement and claim excess rules. This is known as the reimbursement requirement.

Scope of reimbursement requirement

- 3.2** The reimbursement requirement applies to all reimbursable APP scam payments executed after the implementation of this scheme. The date of implementation is ~~2 April 2024~~. the date on which this specific direction comes into force.

~~4~~ **Compliance Requirement to comply with Faster Payments scheme the reimbursement rules**

- 4.1** By ~~2 April 2024~~ the date on which this direction comes into force, all directed PSPs ~~who~~which are ~~direct participants in~~ members of Faster Payments are to comply with the provisions of the ~~Faster Payments scheme rules (as amended by the operator of Faster Payments pursuant to the Faster Payments specific requirement and as relevant by the provisions below), which contain the reimbursement requirement, and any provisions of the Faster Payments scheme rules connected or ancillary to the reimbursement requirement~~ rules.
- 4.2** By ~~2 April 2024~~ the date on which this direction comes into force, all directed PSPs who are ~~indirect participants in~~ not members of Faster Payments are to comply with the provisions of the ~~Faster Payments scheme rules (as amended by the operator of Faster Payments pursuant to the Faster Payments specific requirement and as relevant by the provisions below), which contain the reimbursement requirement, and any provisions of the Faster Payments scheme rules connected or ancillary to the reimbursement requirement~~ rules.

5 Reporting APP scam case data

- 5.1 ~~All direct and indirect participants participating in Faster Payments~~ All directed PSPs are to report APP scam case data to the Faster Payments operator.
- 5.2 This shall be done in the form, with the frequency, and for the data, which may be specified by the Faster Payments operator (with the agreement of the PSR), from time to time in its rules and/or operational guidance.
- 5.3 This reporting obligation shall apply from ~~2 April 2024~~ the date this direction comes into force.

~~Direct participants are~~ Indirect Access Providers ~~to inform~~ provide information about their indirect participants of obligations ~~PSP customers~~

- 5.4 By ~~2 April~~ 31 March 2024, and annually thereafter, all ~~PSPs who are direct participants in Faster Payments are to draw to the attention of any indirect participants to whom they access providers must provide access to Faster Payments~~ the PSR with a complete list of all of their indirect participants' obligations under: PSP customers for the previous calendar year.
- ~~a. this general direction~~
 - ~~b. the reimbursement rules~~
 - ~~c. the reimbursement requirement~~
- 5.5 ~~All PSPs who are direct participants in Faster Payments who are obliged to inform indirect participants of information under paragraph 3.8 are to keep a record of having done so. The PSR may ask to see these records.~~

6 Application

- 6.1 This ~~general~~ specific direction applies to all PSPs participating in Faster Payments which provide payment accounts to consumers in the UK.

7 Commencement and duration

- 7.1 This general direction comes into force on ~~[X-December-2023].~~ 7 October 2024.
- 7.2 This general direction ~~shall~~ will continue in force until such time as it is varied or revoked by the ~~-~~ PSR.

8 Citation

- 8.1 This direction may be cited as ~~General~~Specific Direction [~~XXX~~] (APP scam reimbursement requirement).

9 Interpretation

- 9.1 The headings and titles used in this specific direction are for convenience and have no legal effect.

- 9.2 The Interpretation Act 1978 applies to this general direction as if it were an Act of Parliament, except where words and expressions are expressly defined.

- 9.3 References to any statute or statutory provisions must be construed as references to ~~that~~ statute or statutory provision as amended, re-enacted or modified, whether by statute ~~or~~ otherwise.

- 9.4 The following definitions shall apply in this general direction:

- **Account controlled by the consumer** means a Payment Account which a consumer can access and from which they can make payments. It is not sufficient for it to be in the consumer's name.
- **Authorised push payment** or **APP** means a consumer payment, initiated by the sending PSP in accordance with an authorisation given by its consumer.
- **APP scam (authorised push payment scam)** means where a ~~scammer~~person manipulates or deceives, by way of fraud or dishonesty, a consumer into transferring funds from the consumer's ~~bank~~payment account to ~~an~~a payment account not controlled by the consumer, where the payment is not made to the recipient intended by the consumer, or the payment is for a purpose other than that intended by the consumer. -For the avoidance of any doubt, where the person is party to any fraud or dishonesty referred to above, this is not an APP scam for the purpose of the reimbursement requirement or the reimbursement rules.
- **APP scam case** means a fraudulent act, or a fraudulent course of conduct, that leads to one or more APP scam payments.
- ~~APP scam payment means a payment instruction, made~~ **APP scam case data'** means such data as the payment systems operator of FPS requires, from time to time, in order to discharge their obligation, under paragraph 5.1 of SDXX, placed upon them by the PSR.
- **APP scam payment for the purposes of this direction** means an APP, authorised by a victim as part of an APP scam, which has all the following features:
 1. It is executed through Faster Payments.

2. It is authorised by a PSP's consumer.
 3. It is executed by that PSP in the UK.
 4. The payment is received in an account in the UK that is not controlled by the consumer.
 5. The payment is not to the recipient intended by the consumer or the payment is for a purpose other than that intended by the consumer.
- **Authorisation**, for the purpose of the reimbursement requirement, in the context of a payment means that the payer has given their explicit consent to:
 1. the execution of the payment transaction, or
 2. the execution of a series of payment transactions of which that payment transaction forms part
 - **Consumer**, for the purposes of ~~the reimbursement requirement~~ this direction, refers to in-scope customers of PSPs. These are individuals, microenterprises (an enterprise that employs fewer than ten persons and that has either an annual turnover or annual balance sheet total that does not exceed €2 million) and charities (a body whose annual income is less than £1 million per year and is a charity as defined by the Charities Act 2011, Charities and ~~Trustees~~ Trustee Investment (Scotland) Act 2005 or the Charities Act (Northern Ireland) 2008).
 - ~~Consumer standard of caution~~ is defined by the PSR in ~~[its separate publication PSRX]~~.
 - ~~Consumer standard of caution exception~~ is defined by the PSR in ~~[its publication PSRX]~~.
 - ~~Direct participant~~ Directed PSP means ~~an entity as defined under sections 42(2)(c), (5) and (6) of FSBRA.~~
 - a PSP participating in Faster Payments ~~Scheme~~ or to which this specific direction applies.
 - **Faster Payments** means the Faster Payments Scheme as a regulated payment system designated by Order from the Treasury on 1 April 2015.
 - ~~Indirect participant~~ means ~~an entity as defined under sections 42(2)(c) and (5) of FSBRA, but which does not have direct access pursuant to section 42(6) of FSBRA.~~
 - Indirect Access Provider means a payment service provider with access to Faster Payments that has an agreement or arrangements with another person for the purpose of enabling that other person ('indirect PSP customer') to provide services for the purposes of enabling the transfer of funds using Faster Payments or to become a payment service provider in relation to Faster Payments.

- **Member of Faster Payments** means directly connected settling and directly connected non-settling participants.
- **Operator** has the same meaning as under section 42(3) of FSBRA in relation to the Faster Payments system.
- **Payment Account** means an account which can send or receive Faster Payments, is held in the UK, and which is used for the execution of payment transactions.
- **Payment Systems Regulator** is the body corporate established under section 40 of FSBRA.
- **Payment service provider** or **PSP** has the same meaning as under section 42(5) of FSBRA.
- **Reimbursable APP scam payment** means an APP scam payment where the ~~customer~~consumer standard of caution exception set out in the reimbursement rules does not apply, ~~the victim is not party to the fraud and the victim is not claiming fraudulently or dishonestly to have been defrauded.~~ and the claim was made within the time limit set out in the reimbursement rules.
- **Reimbursement requirement** means ~~any~~the obligation conferred on directed PSPs ~~as a result of the reimbursement rules.~~ under paragraph 3.1 above.
- **Reimbursement rules** means any rules created as a result of the PSR's Specific Requirement [X] on the Faster Payments operator to create and implement rules on PSPs reimbursing their consumers when they fall victim to APP scams.
- **Sending PSP** means a PSP that provides a payment account for a ~~person or persons~~consumer, from which ~~the one or more~~ APP scam ~~payment was~~payments were made.
- **Victim** means a consumer who has made ~~an~~one or more APP scam ~~payment~~payments.
- **Vulnerable consumer** has the same meaning as when the term is used by the ~~FCA~~Financial Conduct Authority in its *Guidance for firms on the fair treatment of vulnerable customers*¹, namely that a vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care.

1 Available here: www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers

Made on [date]

[Name]

[Job title]

Payment Systems Regulator

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