

Authorised push payment scams

Responses to our consultation on the
development of a contingent reimbursement
model

February 2018

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Names of individuals and organisations have been redacted in submissions related to reported instances of authorised push payment scams. Information that may indirectly identify the parties involved has also been redacted. Redactions are marked with a [X]. Unless included in this document, attachments referenced in submissions have not been published.

Part A

Responses from organisations and
parliamentarians

Consultation Response

Ref 0218

Submission to the Payment Systems Regulator consultation
on authorised push payment scams

January 2018

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About this consultation

In November 2017, the Payment Systems Regulator (PSR), the economic regulator for the payment systems industry, published a consultation paper on authorised push payment scams – where people are tricked into sending money to a fraudster.¹ This sets out the PSR's ongoing programme of work to mitigate the impact of such scams, including consultation on a proposed 'contingent reimbursement model'.

Age UK is the country's largest charity dedicated to helping everyone make the most of later life. We help more than 5 million people every year, providing support, advice and companionship for older people who need it most.

We welcome the opportunity to respond to this consultation. We respond only to the relevant questions, use the terms 'scams' and 'fraud' interchangeably for authorised push payment scams, and generally refer to banks rather than 'PSPs'.

Key points and recommendations

1. We welcome the best practice standards for how banks should respond to a reported scam. Banks must keep customers well informed about progress. However, we are unclear how customers will know if banks have followed the standards.
2. We welcome the proposed contingent reimbursement model. The impact of scams can be devastating for older people, and consumers need better protection.
3. We broadly support the principles outlined but cannot fully support the model until we see further detail on the requisite standards of care for banks and customers.
4. The customer requisite level of care should only be breached by a high threshold of gross negligence. It should reflect consumers' 'real world behaviour' rather than theoretical, unrealistic expectations.
5. Banks are in a better position than consumers to spot and design out fraud, so should bear the balance of liability for reimbursement, and be incentivised to improve security.
6. The 'no blame' scenario is challenging but we support victim reimbursement. This will protect consumers and incentivise banks to prevent scams and repatriate lost money.
7. In a 'shared blame' scenario, banks should be liable, as their duty to protect their customers outweighs an individual customer's duty (and ability) to protect themselves.
8. Customer vulnerability – such as dementia and bereavement – should shift the liability balance away from the customer, regardless of whether the bank identifies the vulnerability or not.
9. The scam report response standards should be part of the bank standards. Transaction data analytics and confirmation of payee should be introduced as soon as possible.
10. UK Finance may be in a good position to implement but should not design the model. The PSR should design it, with input from consumer bodies.
11. All banks should adopt the reimbursement model for it to be effective.
12. We broadly agree with the model's scope but are concerned that excluding overseas accounts could severely limit its impact.
13. Banks should have clear audit trails to help solve disputes. Bank communications to victims should explain how they can access dispute resolution and of their recourse to the Financial Ombudsman Service.
14. We support the introduction of the model by September 2018. A phased approach would allow development of the model and additions to the standards.
15. The PSR should carry out further analysis of the risks associated with Open Banking.

Q1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

We welcome the proposed best practice reporting standards, although we have not seen them in detail.

In particular, we welcome the proposal for customers to have a single point of contact through their bank. This is consistent with other areas of consumer law (e.g. retailer liability for defective products) and recognises the unfairness and inefficiency that would arise if consumers had to complain directly to the faulty part of the supply chain. However, even with this single point of contact, customers may be stressed, confused and unsure whether they have in fact been scammed, so it is vital they can easily and quickly find the contact details for contacting their bank 24-7. We welcome the proposal for specialist bank staff to be dedicated to dealing with fraud, and suggest their training includes how to deal sensitively and effectively with customers who may be vulnerable. Ideally, the customer would speak to the same staff member as much as possible.

This is important because some customers have poor interactions with bank staff when worried about a scam. One older woman told us how she suspected she had received a scam call from someone impersonating her bank, but when she called her bank to discuss it she felt the call handler did not take her concerns seriously:

So, I rang [my bank] last week and... and they said 'Well, I don't know anything about the phone call but we wouldn't ask for your bank details if we had rang you', but they were flippant, they were flippant about 'Well, it might have been a scam', they weren't that interested... No, they weren't bothered.²

We also welcome the intention for banks to keep the customer informed about their response to the reported scam. Banks should anticipate and design out 'fraud recovery fraud' risks, where fraudsters impersonate the bank to the customer during this phase.

Many scam victims do not report the incident, because they are embarrassed, don't know who to report to, or don't think anything can be done.³ For the standards to have impact, banks should encourage their customers to report a suspected scam to them. They should encourage customers not to feel embarrassed, by showing that scams are a common occurrence.

Our biggest concern is that it is unclear if or how a customer will know whether their bank has met the standards, following them reporting a scam. Similarly, it is unclear if or how banks will demonstrate compliance with the standards. We ask for clarity on these points.

It is in banks' best interests that the standards work and are seen to work by consumers, given the high levels of mistrust of banks – for example, recent YouGov polling found that 'just 36% of British consumers trust banks to work in their customers' best interests, while more than half (55%) don't.'⁴

We welcome the proposal for the PSR to monitor progress of the package of initiatives through 6-monthly reporting, and the option for regulatory action if progress is slow. We ask the PSR to make public as much reporting information as possible, including on which

banks have and have not adopted the standards. We would like to see the PSR liaising regularly with consumer groups on a 6-monthly basis to discuss progress.

Q2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes. We welcome the proposed model and pay tribute to Which? for drawing attention to this issue through its 2016 super-complaint.⁵

As we have outlined elsewhere,⁶ the financial and health impacts of being scammed can be devastating for older people. Some have suffered serious losses from their life savings, including tens or even hundreds of thousands of pounds. Relatively small losses can still have serious impacts. Older victims' health deteriorates more quickly, and being a victim of a scam increases the chance of going into residential care.⁷

It is not reasonable in every case to expect a customer to spot a scam and shoulder the liability if they don't; many scams are highly sophisticated, perpetrated by criminal gangs. Banks have a unique position and key role to play in preventing scams, such as through spotting suspicious account activity, warning a customer mid-payment in an accurate and effective way, being aware of a customer's vulnerabilities, preventing scammers from opening accounts and identifying mule accounts.

For example, in a case where a customer phoned her bank, concerned she might be a victim of a phone scam, the Financial Ombudsman Service found the bank had missed opportunities to prevent the scam. The bank had inaccurately described the customer's concerns to its internal fraud team, gave inadequate warnings and false assurances that a scam was not occurring, and did not sound sympathetic to the worried customer.⁸

So, given the impact on victims, the sophistication of some scams, and the fact that banks are in a position to prevent scams but do not always do so, we support the introduction of a contingent reimbursement model.

Q3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

We are broadly supportive of the model as outlined. We support the principle that banks should be incentivised to prevent scams, and that victims should be compensated where their bank has not met agreed standards.

However, we cannot fully support the model until more detail is given on 1) the agreed standards for banks, and 2) the requisite level of customer care. If the bank standards are set too low – where many banks already meet them through their current practices – we think this will provide insufficient protection for customers.

On the requisite level of customer care, we look forward to seeing more detail on the proposed level of care. Analysis of real examples of common scams and the customer pathways we might expect to see in response, may help to develop expectations of care that are fair and practical. In the meantime, we make the following points.

Firstly, where a bank warns a customer mid-payment about the risk of being scammed, through an online message or verbal warning, this should not automatically discharge the bank's liability. Generic and/or frequently shown warnings may not register with the customer, for example because it becomes normalised ('part of the wallpaper') or is insufficiently specific, targeted or timely. Scammers often account for bank warnings, building them into their story and instructing the victim on how to respond.

Secondly, in some cases the vulnerability experienced by a customer at the time of being scammed may impair their ability to take reasonable care to protect themselves and therefore reduce their liability. We expand this argument in Q9.

Thirdly, a valid example of customer negligence might be if the customer ignores a mismatch from a confirmation of payee query. However, this requires the bank to provide this service in the first place, and in a way that a wide range of consumers – including those in vulnerable circumstances – can easily understand and act upon. Lack of accessible provision of this tool should represent negligence on the part of the bank, assuming the tool would have highlighted a risk for that particular scam type.

Lastly, given the importance and sensitivity of this issue, the PSR should develop the bank and customer care standards in an open and transparent way, consulting a wide range of stakeholders.

Q4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

The 'no blame' situation is a challenge. Our final view will depend on the detail of the PSP standards. We would not support standards that provide inadequate protection for customers. On the basis of the detail available, we do not support option 2 ('focus on incentives'), under which consumers who have not acted in a negligent way and who may be the victims of a sophisticated scam could still lose potentially life-saving amounts.

Going further, and again depending on the final detail, we think in the 'no blame' situation the victim should be reimbursed. This would provide strong incentives for banks to repatriate lost money to the victim, and to prevent money being sent as part of a scam in the first place, for example by clamping down on criminal use of bank accounts. Where this reimbursement liability falls on the bank and funds are not repatriated, these costs will effectively be shared among all customers, who benefit from a form of risk pooling. Given the catastrophic nature of the impact of many scams compared to the additional cost per customer, this could represent a fair balance of risks and costs.

Another major issue to be clarified is where liability lies in a 'shared blame' scenario, where both the bank and customer fail to act according to agreed standards. Banks have a fundamental duty to protect their customers' money, especially large amounts accrued over decades that older people especially cannot replace (i.e. people's life savings). Therefore, the balance should be towards reimbursing the customer where the bank has failed to meet the agreed standards, irrespective of the customer's actions. On this basis, our initial view is to support reimbursement for victims in a shared blame scenario. This chimes with the principle underlying the PSR's view stated –

Regardless of whether the victim has taken the requisite level of care, in any scenario where a PSP has not met their required standards, it might be appropriate that the model includes some form of fine or penalty on the PSP to ensure it is appropriately incentivised. The funds could potentially be put into a central fund for reimbursing victims such as in the ‘no blame’ scenario. (para 6.12)

As suggested in this quote, reimbursement in the ‘shared blame’ and ‘no blame’ scenarios could potentially be from a central fund, built up either from penalties or indeed an industry levy, or other source.

Further, we are not convinced reimbursing victims in this scenario, when they have not met the standards of care, would necessarily result in many consumers becoming more negligent. While it makes sense in theory that knowing they will be reimbursed regardless of their behaviour means consumers will act with less care, in real life we think 1) not everyone will be aware of where liability lies, and 2) the prospect of going through a stressful and uncertain process to reclaim life-changing amounts of money is such that consumer will continue to take as much care as possible.

We appreciate these are difficult judgements and that we need a model that maintains long-term incentives for banks to prevent scams, while ensuring they do not withdraw their services from customers. The PSR should consider whether a central pot from which reimbursement is made, and the possibility of partial reimbursement, can help balance incentives in particularly challenging cases.

Table 1. Liability in different scenarios

		CUSTOMER	
		Did meet standards ✓	Did not meet standards x
BANK	Did meet standards ✓	No blame <ul style="list-style-type: none"> We support reimbursement. This would incentivise banks to meaningfully improve security. Risk would be pooled among all customers. 	Bank meets standards Customer negligent <ul style="list-style-type: none"> Customer is liable – no reimbursement, unless the funds can be recovered through repatriation. But vital that the requisite level of customer care is set at a fair and realistic level.
	Did not meet standards x	Bank negligent Customer not negligent <ul style="list-style-type: none"> Bank is liable – reimbursement. 	Shared blame <ul style="list-style-type: none"> We support reimbursement. Bank did not reach the standards; customer behaviour is irrelevant.

Q5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Yes. The APP claim reporting standards have a key role and should be included in the in the PSP standards. This should mean more reimbursement occurs through better repatriation of a customer's money. Even where a customer has failed to take the requisite level of care, this should be irrelevant if the bank has failed to meet these reporting standards, and has not done all it can to rescue the customer's money.

In terms of the process, banks should automatically reimburse victims as soon as possible after the scam has been discovered (unless it is clear the customer has been grossly negligent), rather than waiting to see if, for example, the funds can be recovered. This would give banks a meaningful incentive to recover the funds. We think it would also be simpler than keeping customers in limbo and requiring regular updates.

As noted above (Q3), confirmation of payee has the potential to prevent certain scams. Failure by a bank to offer it to all customers, through a range of channels (not just online) and accessible to people in vulnerable circumstances, could constitute failure to meet acceptable PSP standards.

The transaction data analytics measure is key, as it can help banks spot, disrupt and prevent scam payments. For banks to avoid liability, banks should be required to implement an effective transaction data analytics solution.

Finally, we agree with the PSR that the standards should include measures leading to 'better identifying mule accounts used by scammers' (6.8).

We appreciate that these (and other) measures may need time to be developed and tested before being included as required standards in the model. They should be added to the standards as soon as possible at various points after the Sept 2018 starting date.

Q6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

UK Finance may be able to implement the model, but should not design it. It is not appropriate for an industry representative body to design expectations of consumer behaviour. The PSR could design the model, with meaningful representation from consumer bodies. It is in a better position to make balanced judgements to protect consumers.

We are anxious that the organisation implementing the model should be seen to be independent in checking whether bank and customer standards of care have been met. This organisation should publish regular reports, including on the number of scams in each of the four categories listed in table 1 (i.e. customer/bank negligence, shared/no blame).

Q9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

When defining the level of care victims should meet, it is important to look at consumers' 'real world' behaviour. This will help avoid making unrealistic assumptions about what is reasonable and fair to expect customers to do to protect themselves. This is in line with the FCA's aim to 'regulate for the real world and wherever possible our approach will be based on what we know about how consumers really behave'.⁹

As discussed above, we do not think if a bank warns a customer mid-payment about the risk of being scammed, through an online message or verbal warning, this should automatically discharge the bank's liability. Generic or frequently shown warnings may not register with the customer, for example because it becomes normalised ('part of the wallpaper') or is insufficiently specific, targeted or timely.

In the Financial Ombudsman Service (FOS) case study discussed above (Q2), the telephone scam victim's bank argued it had displayed scam warnings when the customer logged in to online banking. However, FOS found in favour of the customer, noting that the bank did not correctly register the customer's concerns or offer accurate advice. This exemplifies how it is easy for a bank to attempt to discharge its responsibilities by giving a generic warning but without effectively engaging with a customer's concerns, picking up on the signs of specific scams, and offering timely and accurate advice and protection.¹⁰

Similarly, banks making available 'scam checker'-type tools is welcome but should not constitute a discharging of liability. Such tools may not be accessible, useable or effective for customers, including people in vulnerable circumstances (discussed below) or those who don't use the internet. Such real-life barriers mean non-use of such tools should not be considered gross negligence. Ultimately, the onus should remain on the bank, which is better-placed than the customer to spot and stop fraud.

Further, through social engineering, scammers often account for bank warnings, building them into their story and instructing the victim on how to respond. This means that in the 'real world', customers may be convinced that by ignoring a bank's warning they are in fact taking the requisite level of care.

We do agree that 'vulnerability may play a role in defining the requisite level of care from consumers, and so the level could vary' (6.38). We see a number of key vulnerabilities in the scam cases brought to our information and advice service –

- Dementia or other cognitive impairment – see case study 1 in Table 2.
- Loneliness and/or social isolation – see case study 2.
- Recent bereavement – see case study 3.

Other research and practice echoes these as being key vulnerability risk factors.¹¹

Table 2. Customer vulnerability examplesⁱ

<p>Case study 1: Dementia</p> <p>A caller told Age UK about their father, who is around 80. He has dementia, which is worsening.</p> <p>He recently signed up for a 'protective asset trust' from a cold caller, paying around £1,000.</p> <p>The caller says their father is vulnerable and has been pressurised by cold callers.</p>
<p>Case study 2: Loneliness and isolation</p> <p>A caller told Age UK about their mother, who lives in France and has dementia. She was scammed through an online dating agency and has lost more than £10k. They have tried to address this but the mother denies there is a problem. They want her to return to the UK but she doesn't want to, despite being very isolated.</p>
<p>Case study 3: Bereavement</p> <p>A caller told Age UK their mother had fallen victim to a scam. She is over 90 years old and recently bereaved.</p> <p>She has convinced herself that she is in line to win a large amount of money.</p> <p>The mother won't listen when they try to explain that it's a scam. She is fiercely independent.</p>

We welcome the recent progress made in understanding and identifying consumer vulnerability, including the FCA occasional paper on the subject.¹² Banks are in a good position to be aware of vulnerabilities their customers are facing. We note that the recent BSI code of practice on protecting customers from financial harm includes a section outlining how banks should understand and spot customer vulnerability. It states –

*Frontline staff should be trained to look out for potential indicators of customers being in vulnerable circumstances... which can make them more susceptible to fraud or financial abuse, and more likely to suffer financial harm as a result.*¹³

While we welcome this approach to spotting vulnerabilities that can put people at extra risk, not all such vulnerabilities are easily identifiable. Customer vulnerability should nevertheless shift the liability balance away from the customer, regardless of whether the bank identifies it or not.

Further, many scam victims are made vulnerable in the moment of being defrauded, through the deliberate use by fraudsters of pressure, panic, grooming and other psychological tactics. That is why the requisite level of customer care for *all* customers should only be breached by a high level of gross negligence.

Where a bank is aware that a customer has previously been a victim of a (attempted) scam, it should act on this information and take extra precautions. This should shift the liability towards the bank if a further scam incident occurs.

ⁱ Cases taken from Age UK's information and advice helpline. Some details changed to preserve anonymity.

Some customers may want to tell their bank they feel especially vulnerable to scams, and ask it to note this and take extra precautions. We are aware of at least one bank already accepting a short document to that effect from customers. We also note that the BSI code of practice includes a requirement for banks to 'have a process in place to ensure that frontline staff respond consistently and appropriately to customers that wish to make a self-declaration of vulnerability'.¹⁴ Where a customer has made such a declaration, we would expect the balance of liability to shift towards the bank.

While not a vulnerability as such, many older people do not use the internet – 6 in 10 (59%) people aged 75+ are not online.¹⁵ They have less ready access to online information that may help them verify a payee, such as a doorstep trader or financial firm, e.g. the FCA Financial Services Register. This could be a consideration in any judgement about whether or not a customer has met the requisite level of care.

Q10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes, we think it is necessary that all banks providing push payment services to consumers adopt the model for it to be effective. Given the scale of scams and the harm they cause, it should be a basic duty and expectation on banks to do all they can to prevent scams and reimburse customers where they have not done so. We agree with the PSR that fraudsters may target banks that do not adopt the model, seeing them as a weakness in the system. It would also distort competition to have some PSPs outside the model, and potentially lead to a 'race to the bottom'.

Q11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

We agree with the scope as outlined, with one exception. While we appreciate that including payments to or from overseas accounts would add complexity, we are concerned that excluding such payments could severely limit its impact. It would also incentivise fraudsters to move offshore, if they are not already operating from overseas.

We are not in a position to know what proportion of scams involve overseas payments, and ask the PSR to investigate this question. If the proportion is high, we would have major concerns about proceeding with the model without including overseas payments. This could potentially be tackled through a phased approach (see Q14).

Q12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

The organisation overseeing the dispute resolution mechanism should share with the PSR and consumer bodies regular reports to review outcomes and make improvements.

Banks systems should allow clear audit trails to help solve disputes. During dispute resolution, customers should be able to see the steps their bank took to protect them.

The mechanism should be accessible to all customers and well publicised. Bank correspondence with scam victims should explain how to access dispute resolution mechanisms, and remind them of their recourse to the Financial Ombudsman Service.

Q13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes, we agree. We want the model to be in place quickly, to prevent life-changing losses and harm for older people. However, we understand the need to take time to design and implement the model in a way that will be effective in the long term so suggest a process of regular reviews or staged implementation, as set out in Q14.

Q14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

A phased approach could allow the model to be set up quickly, followed by subsequent phases during which more challenging issues could be resolved. This could include introducing wider industry measures, such as confirmation of payee and transaction data analytics, and including payments to or from overseas accounts.

Additional comments

We note the lack of reference in the consultation document to Open Banking. We are concerned about the risk of impersonation by fraudsters, which too often accompanies new regulatory change (as happened, for example, with pension scams following the 2015 pension freedoms). The PSR should carry out further analysis of the associated risks, including whether new payment initiation providers may be included in the reimbursement model, and whether legislation is needed to forestall any problems

¹ https://www.psr.org.uk/sites/default/files/media/PDF/PSR-APP-Scams-report-consultation_1.pdf

² Participant of Age UK workshop, 2016

³ <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Scams%20report%20-%20final.pdf>

⁴ <https://yougov.co.uk/news/2017/05/19/most-brits-trust-banks-dont-think-they-work-custom/>

⁵ <https://www.which.co.uk/policy/consumers/347/consumer-safeguards-in-the-market-for-push-payments-which-super-complaint>

⁶ <https://www.ageuk.org.uk/documents/en-gb/for-professionals/consumer-issues/age%20uk%20only%20the%20tip%20of%20the%20iceberg%20april%202015.pdf?dtrk=true>

⁷ According to the National Trading Standards Scams Team, people defrauded in their own homes are 2.5 times more likely to either die or go into residential care within a year.

See also Age UK's report Only the Tip of the Iceberg, <https://www.ageuk.org.uk/documents/en-gb/for-professionals/consumer-issues/age%20uk%20only%20the%20tip%20of%20the%20iceberg%20april%202015.pdf?dtrk=true>

⁸ <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/135/135-case-studies-about-scams.html>

⁹ <https://www.fca.org.uk/publication/corporate/our-future-approach-consumers.pdf>

¹⁰ Case 135/3 <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/135/135-case-studies-about-scams.html>

¹¹ According to the National Trading Standards Scams Team, people defrauded in their own homes are 2.5 times more likely to either die or go into residential care within a year.

See also Age UK's report Only the Tip of the Iceberg, <https://www.ageuk.org.uk/documents/en-gb/for-professionals/consumer-issues/age%20uk%20only%20the%20tip%20of%20the%20iceberg%20april%202015.pdf?dtrk=true> and

ACTSO (2014) *Summary of Doorstep Crime Report to National Tasking Group, May 2014*. Ruth Andrews.

¹² <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability>

¹³ PAS 17271:2017, Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice, section 7.1.2.1

¹⁴ Ibid., section 7.1.3.3

¹⁵ *Internet Users in the UK 2017*, ONS

Dear Payment Systems Regulator,

Al Rayan Bank Plc Response to Consultation questions: CP17/2 - Report and Consultation re: Authorised push payment scams

<All responses can be treated as non-confidential in nature>

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

For the best practice standards developed by UK Finance to be truly effective they will need to be clearly delivered to all market participants and adopted not just by the PSP members of UK Finance but the wider PSP community (direct and indirect participants). Any initial momentum likely to be created by the early adopters from the direct UK Finance membership, representing a substantial share of the relevant consumer account holders who could be open to such APP scams will ensure the best of starts for this initiative.

During 2018 the refined processes should be available openly for all PSPs and any relevant related parties to adopt, culminating in a mandatory adoption requirement.

A harmonised common approach whereby the PSPs focus on putting the victim(s) (account holder(s)) interests at the heart of all actions and efforts should help drive positive consumer outcomes. Whilst the victim's recovery of funds may not always be possible, the victim will feel in control and have a single point of contact throughout with proactive updates and guidance being provided to them.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

The introduction of a contingent reimbursement model should be introduced to ensure a level of consumer protection exists that not only aligns with other practices within UK financial services payment systems i.e. the four-party card payment systems but also the wider economy i.e. provisions of consumer recourse linked to travel and utilities infrastructure supply services. Such a model will ensure consumer (retail and small business) confidence in the UK payment related financial services industry continues to strengthen and that it is seen as consumer-focused and proactive in nature.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

We agree with the approach as illustrated by the PSR in its high-level principles.

It articulates well how the contingent reimbursement model whilst providing APP scam related victims with a clear transparent mechanism of recourse, is itself focused in its inherent design to incentivise the correct consumer and industry behaviours to drive down the APP scam opportunities afforded to fraudsters. It also brings into clarity what is in scope and what is still to be addressed as other types of frauds and disputes by PSPs through their overarching regulatory requirements to mitigate against the risk of their business from being used to the further financial crime. To that end PSPs involved in APP scam scenarios either or both sending bank (victim's) or final receiving (beneficiary) bank (holding APP scam fraudster's own account or holding a mule account (controlled by APP scam fraudster), still additionally retain the latitude of offering proactive 'goodwill' financial recourse measures to victims.

PSPs making the correct investments that help prevent and equally promote responsiveness to APP scam claims are likely to succeed in thwarting more APP scams (both in prevention and in recovery of funds just in time), address consumer concerns and issues more quickly and be regarded in good light by victims and the wider consumer base alike and that may result in improved business opportunities.

The proposed contingent reimbursement model correctly requires that consumers or their acting Payment Initiation Service Provider (PISP) a type of Third Party Provider (TPP) would continue to take care when making payments because they would need to meet a requisite level of care to be eligible for reimbursement, that itself should help incentivise the correct accountability behaviour by the consumer including any acting TPP.

It should reduce consumer harm by reimbursing victims when they could not have reasonably prevented the APP scam – but their PSP (sending bank), or the PSP (beneficiary/receiving bank) used by the fraudster, had not met the required standards.

Challenges here conceivably would be to ensure that the messages around 'the minimum requisite levels of care required', are effectively communicated by PSPs to consumers including any changing requirements (when significant in nature and warranted under the model overseer's guidance due to evolving threats). In both

circumstances those consumers already identified as vulnerable at each PSP will need to be communicated to effectively ensure certainty of the message being delivered is fully understood. Also, staff within the PSPs fully understand and are competent in the application of the standards including the response routines to APP scam claims (potential or confirmed).

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

The 'no blame' scenario must be carefully considered as it seems incumbent upon the PSPs/UK payments industry that provides such push payment services in the first place, to protect victims of successful APP scams who had taken the requisite level of care. The incentive would be that the focus on consumer (personal and small business) protection would allow better consumer confidence and ensure that the industry continue to treat such victims (who've acted correctly throughout) consistently the same with reimbursement offered.

This approach essentially keeps the focus on the PSPs/UK financial payments industry to work innovatively towards preventing as much as possible the APP scams. Thus, reducing the associated costs of their contribution towards an industry pooled fund scenario or direct costs each time they must pay out with the other PSP (where both acted in accordance with the prevailing requirements but must share the reimbursement costs). This or in certain scenarios the whole costs for themselves for 'on-us payment' related APP scams.

Whilst it may be argued, that this outcome could weaken PSPs' incentives to prevent and respond to APP scams as PSPs who contribute to a pooled fund may continually end up paying/funding for other PSPs victims, settlement of claims where all acting within the standards and still somehow the APP scam fraudsters succeed. Alternatively, they continually lose out where the Payer PSP and beneficiary PSP are sharing the costs of reimbursements. The latter reimbursement cost sharing scenario could lead to continued financial strain on common combinations of PSPs involved in targeted APP scams merely due to their extensive presence in the market.

The PSPs may decide that investing in long term solutions to deter and actively develop preventive measures more aggressively and innovatively could be sacrificed as adherence to the bare minimum requirements will suffice whilst paying out the occasional claims and not being bought to book/accountability as they still operated within an agreed standard. It's a question of balancing equitably the UK payments industry share as a collective pooled fund or the PSPs involved in the claim (sending and receiving) only ever the share the loss for 'no blame' but push for continual improvements to change the status quo.

For consumers to take undue advantage of an 'no blame' outcome scenario being operated within the industry, whereby they know the PSPs will bear the loss, always offering the recourse and puts the victim back into the correct financial position (when the victim has acted within the required level of care), and some make fraudulent 'first-party fraud' claims. This is still a possibility but that would be a direct challenge advising the payments industry that the benchmark to meet the defined requisite level of care to be eligible for reimbursement, is inadequate (at that point in time) and requires updating to meet the new and upcoming threats. Bearing in mind that could be 'moving the goal posts' albeit necessary and this must be accompanied by sufficient time to update consumers to any revised requirements.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Yes, we agree as the range of preventative and responsive measures being developed (and those around consumer awareness already live) should deliver a wholesome approach and bring the PSPs, consumers and the wider stakeholder community closer in focus to the clear objective of maintaining consumer protection and confidence in the use of the UK payment systems. These are affecting domestic payments within the UK, and firms/PSPs are reducing the risk of their services being used to further financial crime.

However, it is very important to recognise that the technological changes around the proposed 'confirmation of payee' in the short term; the suggested data sharing agreements catch all members PSPs; ongoing GDPR, PSD2 and related open banking changes and impacts. This including the arranging of availability of fraud resources 24/7 etc, which have all to be carefully orchestrated to ensure maximum chances of success with reasonable timelines afforded at each stage.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

UK Finance seem to represent the best body to take forward the design and implementation of a contingent reimbursement model. Purely from the involvement evidence hitherto in devising measures focused at preventing in the first place APP scams and opportunities afforded to fraudsters, and in all instances responding efficiently and effectively to the claims of victims of successful APP scams.

UK Finance seem to have access to the necessary expertise and the initial early momentum to design and implement a contingent reimbursement model, whilst futureproofing it to be agile enough to change with the changing face of APP Scams and ensure it caters for those victims for payments falling outside of FPS within the 'on-us payments' space caught in APP scams, and equally those payments administered via CHAPS.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

Whilst acknowledging the contingent reimbursement model will need to cater for the outcomes from the industry's implementation of the second EU Payment Services Directive (PSD2), whereby payment initiation service providers (PISPs) as a type of third party provider (TPP) could potentially pose a whole new set of challenges overtime. This is especially around ensuring the requisite level of care is maintained throughout their potentially expansive operations in situ for the consumer they act for.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Currently the response follows a process which routes the claim to the fraud team and would look at the particular circumstances and whether the Banks own controls and processes were at fault and if the consumer was clearly not at fault (with any supporting mitigating circumstances which would including looking for signs of vulnerability as part of all information gathering). The Bank would not look to hold up any reimbursement to a victim should the case be clear cut, however, it could be victims have to provide certain confirmations and declarations where matters are unclear in the first instance and thus some cases result in full reimbursement, and others in partial, and conceivably some will not be paid should significant negligence on part of the victim be established. Whilst the Bank has clear internal escalation /referral processes to the fraud specialists who are on hand to handle such claims (limited numbers have been encountered to date though), it aims to treat all customers equally and fairly, but would support an industry set of common standards (including a clear and robust approach to vulnerability). The proactive sharing of information with parity of reimbursement contingent on the actions of PSPs where the failing PSP pays, or if both fail to meet the required standards, both share the costs (sending and receiving PSPs).

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Further views sought from PSPs who are not UK Finance member and new entrants to the market reparenting consumers i.e. PISPs (TPPs).

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes, the fair treatment of the victims of APP scams could be seriously jeopardised where numerous PSPs remain outside the scope. This could prove damaging in their actions if they remain inconsistent in reimbursing victims and that those PSPs' victims of APP scams had no clearly defined expected levels of care to adhere to, set in the first place, to know how to avoid being scammed. Overtime this could erode the consumer confidence in the wider participating PSP payments industry's efforts and possibly cause further fragmentations whilst fraudsters continually target such PSPs with APP scams. Additionally, it may give rise to an increase and in fact be a breeding ground for others to develop APP scams or other fraud methodologies that than impinge back into the mainstay industry PSPs, adhering to the set standards and operating within a contingent reimbursement model in good faith. End state suggests the best outcome would be that all PSPs are mandated (within reasonable timescales) to be brought into the fold and meet the requirements.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

We agree in the main the outlined scope and the consideration of barriers and where the alternatives were considered and assessed as not plausible/viable or not incentivising the correct approach and behaviours.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

We see the UK Finance maybe a good starting point to develop a capability to administer the dispute resolution process as it will fully understand the requirements of the model in place and the standards operating having been integral to its design, build and implementation. It would not necessarily oversee the monitoring and running of the final implemented model that may come part of the NPSO rules and then naturally fall into the NPA future state landscape. Having other independent third-party arbitrators assigned to dispute resolution may deliver an inconsistent and varied range of victim and/or PSP outcomes and experiences that may undermine the consumer confidence in the due process, and industry efforts to combat APP scams and their impacts.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

This seems very aggressive for certain aspects around technology changes to be in place for small PSPs (those that have indirect access to payment systems, and where the market has not delivered off the shelf solutions/APIs for integration to confirm payee at receiving bank etc, ahead of payment release). This is bringing into the fold those PSPs who are non-members of UK Finance and how would they get access to information sharing /data privacy agreements providing a common umbrella in the interim until such time the GDPR changes ripple through to day to day processes and practices. These may prove a challenge should they contradict aspects of the standards to be live by end of September 2018.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

A transitional approach in the implementation of the contingent reimbursement model could prove useful and allow a more successful roll out, whilst victims (where they have acted within the required level of care) still get reimbursed on time from each of the PSPs sharing the costs initially (should a central contributory pool not be in place) and that moves quickly to the apportionment of reimbursement costs falling (contingent upon the actions). This then falls onto the PSP(s) and the use of fines and penalties may be the ultimate deterrent tool to force changes of poor performing PSPs not meeting model standards and requirements, and those funds go towards a central reimbursement fund and/or further research and improvements.

APP Scams – Consultation

https://www.psr.org.uk/sites/default/files/media/PDF/PSR-APP-Scams-report-consultation_1.pdf

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

yes

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes. Could increase incentives and maintain the practices that help prevent and respond to APP scams.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

Yes. It provides incentives for both sides of the transaction to prevent and respond to APP scams.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a ‘no blame’ situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

Disadvantages:

Unfair for victim to bare the loss when they acted reasonably.

Unfair for all PSPs to contribute to a central fund?

Always a loss somewhere, whether to PSP or consumer, even when no blame.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

No. For some of the measures, burden would be too great on PSPs to make these required standards of the Contingent Reimbursement Model and should be down to the industry to implement.

For confirmation of payee there is already products available in the market that confirm the bank details match the name on the account.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

Already considered - money to develop, operate, monitor and arbitrate – and the costs could ultimately be passed on to consumers. Legal barriers, timings in terms of other industry developments

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

n/a

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Should have taken reasonable steps to check they are sending money to the correct person, for example using [REDACTED] product.

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes. It would not be fair if only some were subject to the model. However, it could be to make smaller PSPs adopt the model.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

A contingent reimbursement model must capture a significant majority of, if not all, PSPs that provide push payment services for consumers. This will ensure more consumers are protected.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

In the chargeback process, the organisation which manages disputes is the same as the organisation which manages the rules that set out the liability model. This can allow for efficient interaction between the rules and disputes, such as updating the rules to reflect developments and outcomes of disputes.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Phased approach: The model could incorporate those standards that are developed first, then as each additional standard is developed, or as appropriate changes to legislation occur, these could be incorporated into the model.

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12 January 2017

Payment Systems Regulator
APP scams project team
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Barclays response to PSR consultation on a Contingent Reimbursement Model for Authorised Push Payment scams

To Whom It May Concern,

Summary statement

As a high level proposal, a contingent reimbursement model has merit and seeks to strike a balance between getting a good outcome for customers and the commercials of PSPs. We recognise that PSPs should accept responsibility for customer losses when they have failed to take reasonable steps to protect a customer. The PSR are right to recognise that an industry-wide approach is needed. We believe the model should be assessed as effective when it achieves the following objectives:

- i. **Minimize the financial detriment customers bear when they've fallen victim to scams**
- ii. **Reduce the amount of scams that take place across the industry as a whole**
- iii. **Stop money falling into the hands of the criminal**
- iv. **Drive competition in the PSP space.**

In order to achieve the objectives, we believe the following are critical:

- Repatriation must form part of the model so customers who are ineligible for reimbursement have a chance in getting their money back and funds are legitimately returned.
- Consideration of liability must go beyond PSPs, and look across the customer journey. Retailers, social media and other platforms all have a role protecting customers and the PSR should consider the controls these organisations can deploy to minimise risk. Cooperation between PSR, relevant regulators and the Government should help address this issue
- To minimize the financial detriment to customers and achieve consistency, we believe that the model should be mandatory which would require regulatory underpinning.
- Building on the existing APP standards already in place could act as an effective foundation for the reimbursement model to be built on.

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We believe that there are some key points that must be dealt with so the model is not undermined:

- In no blame scenarios, PSPs taking liability could potentially result in customers not taking the right measures to protect themselves, resulting in increasing overall victims of fraud. PSPs bearing cost in no-blame scenarios may also undermine compliance with the model.
- The current legal underpinnings of repatriation are inadequate and require updating. Lack of legal clarity is undermining industry efforts to repatriate funds and close mule accounts.
- Disproportionate liability could limit participation by smaller PSPs concerned about incurring significant liability and compliance with the model. Unless regulatory, the proposal may struggle to achieve full adherence so not all customers would be covered under all circumstances which would result in an inconsistent and confusing customer experience.
- Any standards should only include measures that have proven impact reducing risk of scams taking place, such that PSPs do not face cost implementing measures that have no tangible impact on reducing customer impact.
- Regardless of whether monies are returned, victims of crime need adequate protection and reassurance post the event, which is currently not addressed by the proposals.
- Barclays favours a phased approach rather than transitional one as a transitional approach may end up setting certain reimbursement precedents that may not be sustained in the future, which would be confusing for customers.

We want to be at the forefront in supporting conversations and thinking in the design of the proposal. We are keen to support the PSR in determining the detail behind the key principles, and to share our end to end scams customer journey so all touch points can be sufficiently explored to underpin the model.

Consultation Questions

1. In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons

Barclays expects the best practice standards developed by UK Finance to be effective in improving the way PSPs respond to reported APP scams for the following reasons:

- The standards will ensure consistency in case handling across PSPs, meaning victims will have a consistent customer experience
- The standards recommend short timescales for case handling further improving the customer experience
- The standards will increase chances for funds repatriation as PSPs will be working to consistent and tight timescales

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- The standards will ensure a dedicated 24-hour support for victims who are customers of PSPs working to the standards.

The improvement in customer experience is the focus of the first phase of the standards (Nov 2017), and a second phase has been planned focusing on facilitating repatriation. Ultimately, the goal of the standards, alongside better customer experience, is minimising financial detriment to customers. Improved case handling is vital to this, but fundamentally a more effective and efficient repatriation framework is required. We believe that PSR has a key role to play in this by bringing together stakeholders to achieve this and address failings in the current legal framework for repatriating funds.

2. Should a contingent reimbursement model be introduced? Please provide reasons.

Fraud and scams are crimes and cause significant financial and non-financial detriment to customers and we welcome the PSRs consideration of the need to minimise customer detriment. We believe it is reasonable to expect PSPs who have not applied adequate controls to accept their share of the responsibility for customer losses and we therefore see merit in the development of a model similar to that proposed by the PSR. However, it is important to clarify the aims of this model, which we believe should be as follows:

- i. Minimize the financial detriment customers bear when they've fallen victim to scams
- ii. Reduce the amount of scams that take place across the industry as a whole
- iii. Stop money falling into the hands of the criminal
- iv. Drive competition in the PSP space.

In order to achieve the above aims, the following considerations are vital:

- Repatriation must form part of the model so customers who are ineligible for reimbursement have a chance in getting their money back.
- Consideration of liability must be wider than simply PSPs, but look across the customer journey. Social media, online retailing, dating websites, as well as companies in the service sector all have a role protecting customers and the PSR should consider the preventative controls these organisations can deploy to minimise risk, rather than focus solely on PSPs. Cooperation between PSR, Government and relevant regulators would be beneficial to address this issue effectively.
- To minimize the financial detriment to customers and achieve consistency, we believe that the model should be mandatory which would require regulatory underpinning.
- Building on the existing APP standards already in place could act as an effective foundation for the reimbursement model.

3. Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons

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We agree with the high-level principles for this proposed model. However we feel these should be expanded further based on the considerations we outline above. Inclusion of these will ensure that the model meets the objectives we suggest in our response to Question 2.

- Repatriation should form part of the model. Clarifying outdated legislation on repatriation will enable those customers who would still lose out under the PSRs proposed reimbursement model to get funds back, as well as deny criminals access to funds. These benefits are significant and we would strongly encourage PSR to pursue them.
- The PSR should consider the role of other parties through which victims are targeted and defrauded. Social media, online retailing, dating websites, as well as companies in the service sector are all exploited by fraudsters to defraud customers. A model considering liability of PSPs alone would not incentivise other organisations to play their role protecting their customers and the wider public. We would encourage the PSR to work with Government and relevant regulators to tackle this matter collaboratively.
- We believe any model should have adherence across industry to avoid gaps in consumer protections developing where some PSPs don't participate because of concerns about costs. To this end we believe the model should be mandatory and the PSR should own its design and implementation. A voluntary model would not afford the public the same universal protections as a mandatory scheme.
- The existing APP standards would be a good base for underpinning standards.

The PSR should also expand on the detail of requisite level of care, as well as provide clarity on the underpinning standards. We have provided further thoughts on requisite level of care in response to Question 9, but to summarise: requisite level of care should be based on key actions customers can take to protect themselves. Separately, it is important to clarify that the requisite level of care applies only to personal and micro-business customers and excludes corporate customers.

4. In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons

Barclays believes that, if expected standards for PSPs and "requisite level of care" for customers are appropriately defined, the incidences of "no blame" scenarios should be exceptions. In these exceptional cases where "the blame" cannot be assigned, we believe first and foremost PSPs should investigate whether funds remain that can be repatriated.

In the eventuality of "no blame" situation where no funds can be repatriated, we believe it would be inappropriate for PSPs to take responsibility for the loss. PSPs absorbing losses could potentially result in an increase of scams taking place. As these are authorised push payments, customers will have given instructions for payments to be transferred. Putting liability on PSPs where a customer has instigated a payment and the PSP has made no error could have a potential negative implication that would be detrimental to the model and to customers:

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- If PSPs, not customers, are responsible for losses in no blame scenarios, it may reduce the incentive for customers to protect themselves, which may increase in prevalence of fraud and scams and exacerbate criminals using these routes to obtain funds.
- PSPs may be disincentivised from compliance with the scheme as they would absorb losses in such instances irrespective of whether they had followed standards.
- We would be concerned that PSPs may add significant friction into all payments to mitigate against any risk of loss. Potentially some PSPs may also consider limiting channel by which certain sizes of payment can be made or charging for certain payments. Such changes could have an impact to the vast majority of customers making and receiving genuine payments.
- We are also concerned at how such an approach would sit alongside innovation such as Open Banking, where certain use cases are predicated on prompt and complex transfers of funds.

However, we recognise that putting liability on customers where they had followed requisite level of care could also be detrimental and an unfair outcome. At present banks hold significant sums in sundry accounts where removed funds from fraudulent beneficiaries that haven't had claims from customers sit in. With appropriate legal clarification, could be used to reimburse customers in these instances.

5. Do you agree that the measures being developed by industry (specifically UKF and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons

The measures the PSR call out potentially have merit for inclusion in the standards underpinning any model. However, their inclusion should be based on the evidence of their effectiveness i.e. that they would improve customer experience, reduce the risk or scale of customer detriment from scams, or enable faster repatriation of funds. The evidence of effectiveness of each measure should be based on a thorough cost-benefit-analysis. Some measures may show as being very costly but their impact may be limited, for example, measures focusing excessively on authentication controls.

Implementing such features may require significant investment, however the benefit in preventing scam may not be material. A consequence of overemphasising authentication measures could be that fraud moves from the unauthenticated into the authenticated space: what is likely to happen is that fraudsters become better at tricking customers into authorising transactions. We have such cases in recent online attacks and increase in scams/app fraud. Ultimately, authentication could be very sophisticated – e.g. including iris scans and thumbprints – yet if a genuine customer has been coerced or conned this type of controls will not make a difference.

In terms of developing the scams prevention toolkit, an effective and sustainable solution would require a multi-layered control framework that includes for example behavioural monitoring, biometrics, device profiling, payment profiling, customer education AND strong authentication

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but managed in such a way that it is done in the background and does not interrupt the customer journey unless really needed.

We note that many of the interventions the PSR call out will not be operational by September 2018. Given this and the timescales the PSR is looking for a model to be operational by, we suggest keeping the initial standards to just those agreed by industry within the best practice standards and building on these as new measures are developed and agreed across industry. We have given further comments on implementation in response to Questions 13 and 14 below.

6. If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons

We believe that to ensure compliance across industry and avoid gaps in consumer protection, the PSR should develop and design the model and sit it within regulations. A mandatory model owned by the PSR would have greater consumer confidence than a voluntary industry scheme. Should the PSR pursue a voluntary scheme, a body such as the Lending Standards Board could own the model once developed, with UK Finance playing a key role in its development. Given the PSRs proposed timescales, calling on the NPSO to take ownership would be inappropriate as they are not currently skilled or staffed to do so.

7. In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons

Barclays believes there are a number of key areas that must be dealt with so the model is not undermined.

- **“No blame” scenarios:** In “no blame” scenarios, PSPs taking liability could potentially result in customers not taking the right measures to protect themselves, resulting in increasing overall victims of fraud. Further, PSPs bearing costs in no blame scenarios may undermine compliance and lead to additional unwanted friction and channel restriction for genuine payments, inhibiting competition and causing unnecessary customer detriment.
- **Law on repatriation:** The current legal underpinnings of repatriation are inadequate and require updating. Lack of legal clarity is undermining industry efforts to repatriate funds and close mule accounts. Addressing this would significantly benefit customers.
- **Disproportionate liability:** Disproportionate liability could limit participation by smaller PSPs concerned about incurring significant liability and compliance with the model. Unless regulatory, the proposal may struggle to achieve full adherence, which would not be a consistent experience for customers.
- **Effectiveness:** Any standards should only include measures that have proven impact reducing risk of scams taking place, such that PSPs do not face costs implementing measures that have no tangible impact on reducing customer impact.
- **Continued support to victims:** Regardless of whether monies are returned, customers have still been victims of crime and need adequate protection and reassurance post the

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event, which is currently not addressed by the proposals. Crime causes detriment beyond financial harm and this is currently overlooked by the proposals.

- **Innovation implications:** Any model would need to be reflective of innovation in payments, including the onset of Open Banking. It should be designed to ensure innovation does not lead to gaps in customer protection, but also such that it does not itself act to stifle innovation and competition.

8. Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include assessment of vulnerability?

Before considering reimbursement, we will always endeavour to repatriate the funds and return them back to the victim. Unfortunately, this is not always possible. When we cannot repatriate the funds back to the customer, we measure each scam on a case by case basis. When reviewing whether or not we should reimburse a customer, we will always take into account a range of factors, including how we acted operationally, and whether or not the customer is in a vulnerable situation.

With new industry drivers and the complexity of scam cases rapidly increasing, we are in the process of developing and moving to a more sophisticated model to assess a set of factors against each case which will allow us to make a decision on whether we should reimburse the customer. These include the level of sophistication of the scam, abnormality of the transaction, compliance with servicing standards, and vulnerability.

As outlined above, as well as in our submission to the PSR in October 2016 following Which?'s initial super-complaint, PSPs face significant challenges repatriating funds to victims because of outdated legislation. We welcome recognition of this issue from the PSR and would encourage the PSR to bring together stakeholders to develop clear guidelines or legal understanding to enable easier repatriation of funds.

9. Are there any factors that should be considered when defining the requisite level of care victims should meet?

We believe defining the requisite level of care should have a basis in averting customers from facilitating and falling victim to scams. Barclays has developed the following top messages on fraud and scams, which underpin our on-going digital safety public awareness campaign. Analysis of our fraud data has indicated that if customers followed these tips we could reduce fraud significantly. We suggest these could feature as a strong foundation for any definition of requisite level of care.

- Avoid letting someone you don't know have access to your computer or laptop- especially remotely
- Don't click on any links or open attachments from unsolicited email. Doing so could allow fraudsters to access your information or infect your device with a virus.

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Alongside these messages, we believe the definition of “requisite level of care” should also encompass some of the wider key messages PSPs already deliver to customers around fraud and scams. For example, we believe it would be inappropriate, in most instances, for a customer to be seen as following “requisite level of care” if they had:

- Transferred funds out of their account at the request of an unexpected caller.
- Made a substantial payment (eg for purchase of a property) without confirming payee details with the recipient.
- Purchased goods online without checking they were buying from a reputable website or vendor. For example, transferring money to a builder without completing the relevant checks to ensure they’re legitimate first.

Although explicitly excluded from scope, it is important to stress that the “requisite level of care” expected of corporate clients would be substantially higher and very different to personal or micro-enterprise customers. We believe the PSR should be explicit in excluding corporate entities as these clients will have dedicated functions whose role it is to make payments and would be expected to have controls around how payments are made and to whom, meaning that the “requisite level of care” for these type of customers should be higher.

10. Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

Barclays believe that, in order to avoid partial compliance and gaps in consumer protection, the model should be mandatory and as such should be based in regulation. A voluntary model would not achieve universal adherence as smaller PSPs may be concerned about incurring significant liability and compliance with a model. A mandatory model would ensure customers knew whichever PSPs were involved in a payment and were afforded protections under the model.

We would also encourage the PSR to consider the role of other organisations in the payment journey: i.e. wider organisations through which fraudsters target customers, but also Payment Initiation Service Providers (PISPs), that will start making payments through Open Banking. It is vital PISPs are included in the scope of the model as otherwise fraudsters may exploit lesser protections for these payments, which could undermine the success of open banking and the enhanced competition it intends to enable.

11. What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider

Broadly we agree with the scope of the model the PSR has outlined. However, there are a number of areas where we believe the scope should be expanded.

- We would encourage the PSR to be bolder in considering the involvement of PSPs in the model and making the model mandatory.

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- We believe repatriation has wider benefits to customers and the PSR should expand the scope to clarify legislation on repatriation of funds such that these benefits can be realised.
- We believe the PSR should expand the scope to consider the role of other organisations through which fraudsters target and exploit customers, as well as PISPs making payments through Open Banking. Such a model would afford customers greater certainties and protections than a voluntary model restricted only to those PSPs who sign up.
- We agree that the model should apply only to personal and micro-enterprise customers, excluding larger corporate entities that will have processes and functions in place to manage payments. As outlined above, we feel the model would benefit from explicitly defining larger corporate entities as out of scope. We believe this is important as otherwise there is risk that subsidiaries of some corporates fall within scope of the model, when this is not the intention.
- Whilst we agree with the geographic scope proposed, we believe the PSR will need to consider the potential consequences of future trade deals the UK makes after leaving the European Union, as well as the international nature of fraud and the criminal gangs who perpetrate it. Empowering PSPs and law enforcement to trace and repatriate funds going overseas has clear benefits to customers and denies criminals the proceeds of their activity.
- Whilst we agree the model should begin by covering only the first transaction, with the onset of open banking and potentially more complex payments it allows, this simple framework may be difficult to maintain. For example, a customer could have an aggregator app, combined with PISP app and may make a payment that automatically pulls funds from one account in their name to another and then out to a payee via the PISP. Should this customer fall victim to an APP scam it can be expected that resolution of liability will be more complex, especially if PISPs are out of scope and the PSPs involved lack sight of the full payment journey.

12. In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons

Dispute resolution should sit with a body that is credible and has expertise in resolving complex cases. The most logical organisation with the necessary expertise would be the Financial Ombudsman Service. We do not believe UK Finance should have any role in dispute resolution, as it would be a conflict of interest for them to adjudicate in disputes between PSPs and act as the representative body of PSPs. We also feel it would be inappropriate for the NPSO to act as the adjudicator of disputes as they lack expertise in either fraud or dispute resolution.

13. Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain and 14. Should a phased or

Restricted - External

transition approach be used to implement a contingent reimbursement model? Please explain

We welcome and support the prompt establishment of an industry wide model to ensure consistency of outcomes for customers. If a model is to be implemented promptly, it needs to be mindful of timelines for implementation of underpinning standards. Whilst the best practice standards will be in place by September 2018, we note a significant portion of the other measures the PSR call out will not be live by this date.

Given this, we would encourage the PSR and any organisations involved in the development of the model to base the initial phase on the best practice standards and add additional measures as they are developed. To that end we believe the model should be implemented in a phased approach. We would be concerned that a transitional approach may end up setting precedent for reimbursement of customers when PSPs are not at fault, which would have the same risks as we outline in our response to Question 4 on no-blame scenarios.

Barclays would welcome the opportunity of a meeting with the PSR to discuss our above views and how we can best work to ensure a model is a success. Please contact:

Jim Winters, [REDACTED] Managing Director, UK Fraud Risk

Samantha White, [REDACTED], Director Customer Advocacy

Yours faithfully,

Jim Winters
Managing Director
UK Fraud Risk

Samantha White
Director
Customer Advocacy

Restricted - External

Our Ref MC/JP/PD
Your Ref
Date 12th January 2018

Clydesdale Bank PLC
57 Queen Street
Glasgow
G1 3ER

Tel 0141 2423769

APP Scam PSO Project
Payment Systems Regulator

Dear Sir

Report and Consultation on Authorised Push Payment Scams

We thank you for inviting us to respond to the consultation: *Authorised Push Payment Scams*. Clydesdale Bank notes that this consultation document has been prepared to seek views on the best way to mitigate the harm to consumers resulting from authorised push payment (APP) scams and in particular whether a contingent reimbursement model should be adopted.

As a smaller full service bank with a retail-focused customer base, we are cognisant of the impact that APP scams can have on victims and therefore the need to review what can be done to mitigate against this increasing risk. In this regard, we welcome the opportunity to support the development of the PSR's proposals.

We agree that there is no single solution or 'silver bullet' to prevent APP scams but do have some comments on the proposal for a contingent reimbursement model. Firstly, we understand that the Joint Fraud Taskforce is already engaged in work to consider regulatory and legal changes to develop more effective counter-fraud procedures. In order to support a more holistic approach we would recommend that the PSR align any proposals with the work already being carried out in this area. It is noted that the two jurisdictions that have adopted a scheme to reduce APP fraud have done so by introducing specific legislation and this is something that may merit further consideration as part of this consultation process.

Whilst we would not discount the proposal for a contingent liability model, the PSR does need to avoid any unintended consequences such as creating adverse incentives that could result in an increase of first-party fraud or encouraging new scammers who see this as an easy target.


Experience tells us that with change, often comes opportunity and we believe that if the PSR and the banking industry can work collaboratively and determinedly to achieve a positive outcome, we will succeed in creating a payments system that remains fit for purpose whilst reducing the impact of APP scams.

We look forward to continuing to work with the PSR and the payments community as work continues to refine the proposals. It is vital that robust cost benefit and risk analysis is carried out for the proposed initiatives and that all options that may arise from the detailed analysis and investigation are explored. This analysis should also be mindful of the other major

industry changes likely to be ongoing over the same time period including the changes brought about by the creation of the New Payments System Operator (NPSO).

Finally, we would re-iterate that in implementing any changes as significant as some of those proposed, and in particular the cost of funding the contingent reimbursement model, it is of key importance that the PSR do not underestimate the challenges and complexity of any changes, which may penalise smaller, challenger banks or impose unnecessary demands or disproportionate costs on them.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Mark Curran', with a long horizontal stroke extending to the right.

Mark Curran
Director of Payments and
Open Banking Strategy

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Payments Systems Regulator
APP Scams Project Team
25 The North Colonnade
London
E14 5HS

9 January 2018

By email: app-scam-pso-project@psr.org.uk

Dear Sir / Madam

Financial Services Consumer Panel response to Payment System's Regulator's consultation on a contingent reimbursement model

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Panel welcomes the opportunity to respond to the Payment System's Regulator's (PSR) consultation on a contingent reimbursement model for victims of Authorised Push Payment (APP) scams. This is an area where urgent action is required, so we are pleased that the PSR has responded positively to the Which? supercomplaint and has put forward proposals to strengthen consumer protection.

A contingent reimbursement model would be a step forward and the high-level principles will place incentives on banks to protect consumers from APP scams. However, we have concerns about requiring consumers to take certain steps in order to benefit from protection. Protection of credit card payments does not appear to lead to customers failing to exercise sufficient caution. We recommend that the PSR reconsiders this element of its proposals, unless it has hard evidence of moral hazard.

The PSR should require banks to undertake additional steps to prevent scams. In addition, the PSR should also work with the Law Society to investigate additional measures which could be taken to prevent fraud associated with house purchases.

The Panel's responses to the questions posed in the consultation document are set out below.

Yours faithfully,

Sue Lewis
Chair, Financial Services Consumer Panel

ANSWERS TO CONSULTATION QUESTIONS

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Yes. These will help to provide a more consistent and improved experience for customers who report an APP scam. We are pleased to see that the standards include provision of 24-hour helplines for reporting suspected fraud, and that the customer's PSP will remain their sole point of contact throughout the processing of the claim.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes. This will be an improvement on the current situation, though it is not clear what impact the proposals will have on the amount of money refunded to victims of APP fraud. It is intolerable that at present APP scam victims can suffer significant financial losses and only get their money back if their PSP offers a goodwill gesture. This creates unequal treatment for victims of scams.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

In general, yes. However, it is not clear that the proposals will lead to a better outcome for consumers than the current discretionary approach. We urge the PSR to set out how many more people it estimates will receive a reimbursement under the proposed approach.

In addition, imposing a requirement on consumers to take whatever steps they reasonably can to avoid becoming a victim of an APP scam is fraught with difficulty. The consultation suggests that this can be achieved "*by defining the requisite level of care victims are expected to meet to be eligible for any reimbursement*" and goes on to state that this "*should be high enough that consumers have an incentive to be careful of scams, but should not be unreasonable for them to meet*". This will be difficult to operationalise. Efforts to define the appropriate level of care should involve consumer representatives, and those who understand the needs of the most vulnerable.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

In a 'no blame' scenario, the victim should be reimbursed by PSPs. Otherwise a victim of an APP scam could face significant financial loss despite having done what is asked of them. To make matters worse, another customer who acted in an identical way could find that they are reimbursed because their PSP failed to meet the standards. This arbitrary outcome cannot be right and would call the entire contingent reimbursement model into question as it would fail to offer adequate consumer protection.

Failure to reimburse the customer in a 'no blame' situation would also represent a much weaker level of protection to that which applies when making payment by credit card. For credit card payments, customers are reimbursed even though they may not even be aware of the protection offered; under one possible outcome of the contingent reimbursement model the customer would not be reimbursed even though they may have taken all the steps that could be reasonably expected of them.

If PSPs know they will have to reimburse consumers, this will give them an incentive to improve security, which should prevent more scams occurring in the first place.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Yes. We are particularly keen that strong incentives are placed on PSPs to implement Confirmation of Payee as soon as practicable. If either the sending or receiving PSP has not implemented Confirmation of Payee once it is made available then this should be taken into account when considering whether a PSP has taken all reasonable steps.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

UK Finance, together with Financial Fraud Action - FFA UK are best placed to develop and implement proposals for a contingent reimbursement model. However, it is imperative that the PSR has a clear role in:

- providing leadership to the project;
- ensuring that what is developed meets the objectives set by the PSR and is delivered in a timely fashion; and
- ensuring that consumer interests are properly represented.

The Financial Ombudsman Service (FOS) also has an important role to play in delivering the dispute resolution part of the model.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

No.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Not applicable.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

We do not agree with the assumption that consumers must have an incentive to take steps to avoid becoming a victim of an APP scam in order to protect against 'moral hazard'. This requires some hard evidence. Customers currently receive protection for payments made by credit cards¹ yet we are not aware of any evidence that this has led to a reduction in the care that consumers take over such payments.

Under the Payment Services Regulations, consumers are held liable where they have acted fraudulently or failed, with intent or gross negligence, to comply with their obligations. Otherwise they are reimbursed. Consumers who are victims of online push payment fraud should benefit from the same level of protection since their actions could not be described as grossly negligent.

If victims are to be required to demonstrate they have taken reasonable care, then their individual circumstances need to be taken into account. What is reasonable for one person may not be for another. People can be more vulnerable to scams for a variety of reasons, from physical or mental disability to more transient illness or stress.

¹ For section 75 to apply, it is a requirement that - among other things - the cash price of the goods or services bought must be no less than £100, and no more than £30,000

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes, otherwise PSPs may offer different levels of protection. This would put the onus on consumers to investigate which PSPs adhere to the contingent reimbursement model in order to receive protection. This would impose unacceptable burdens on consumers, and make the communication of simple messages to consumers more difficult. All PSPs should adopt the contingent reimbursement model. If they will not do so voluntarily then it should be mandated.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

We agree that the model should cover payments made from consumer accounts as defined under PSD2, which includes small businesses.

The model should also cover instances where the scammer moves the money to multiple accounts. The consultation states that extending the model in this way would add complexity due to difficulties in allocating responsibility. However, under the PSD2 regime the sending PSP has responsibility for reimbursing the customer, and it can then approach the other PSP or third party to reclaim the money. This delivers a much better customer experience. The same principle should therefore apply to the operation of the contingent reimbursement model.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

We understand that consumers can already complain to the Financial Ombudsman Service (FOS) about an APP fraud under DISP 2.7.6. This should continue to be the case. Allowing consumers to make use of an established dispute resolution service would mean it was able to take advantage of experience and expertise already acquired. This approach would also have the benefit that consumers would be more likely to be aware of the organisation, and to have confidence in its ability to reach a fair and balanced decision on cases brought before it.

We presume that the dispute resolution mechanism referred to in the consultation paper and referenced in Question 12 relates to disputes between PSPs. If this is the case, then we agree that it will be important for a mechanism to be established, but we do not have a strong preference about which organisation should fulfil this role.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Changes should be made to the current system as soon as possible.

We agree that it is not necessary to wait until all new standards and initiatives are in place.

RESPONSE TO AUTHORISED PUSH PAYMENT SCAMS PUBLISHED ON 07 NOVEMBER 2017

The Fraud Advisory Panel welcomes the opportunity to comment on *Authorised push payment scams: PSR-led work to mitigate the impact of scams, including a consultation on a contingent reimbursement model* (CP17/2) published by the Financial Conduct Authority Payment Services Regulator on 07 November 2017, a copy of which is available from this [link](#).

This response of 12 January 2018 reflects consultation with the Fraud Advisory Panel's board of trustee directors and interested members from our fraud prevention and detection group. This group brings together representatives from the public, private and voluntary sectors who have specific interest, experience or expertise in this area.

We are happy to discuss any aspect of our comments and to take part in all further consultations on the issues we've highlighted in our response.

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The Fraud Advisory Panel (the 'Panel') is the UK's leading anti-fraud charity.

Established in 1998 we bring together fraud professionals to improve fraud resilience across society and around the world.

We provide practical support to almost 300 corporate and individual members drawn from the public, private and voluntary sectors and many different professions. All are united by a common concern about fraud and a shared determination to do something about it.

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MAJOR POINTS

1. The Fraud Advisory Panel is pleased that the UK banking sector has taken on-board the concerns highlighted in the super-complaint made by the consumer group *Which?* last year and is taking a much more proactive approach in addressing the serious problem of authorised push payment fraud (APPs) to better protect customers.
2. We remain concerned about the continued use of the word ‘scams’ to describe fraud which we consider lessens both the seriousness of the crime and its harmful effects on victims. Our use of language in this area is crucial to ensuring that positive initiatives such as this one are given the priority they deserve.
3. We support the introduction of a contingent reimbursement model, subject to the caveats outlined below. In our experience, many APP victims find it difficult to navigate the fraud landscape in this area: to know who to make immediate contact with at their bank or a recipient bank to raise their concerns, to know what their rights are, who they can turn to for advice and support, the level of service they can expect to receive, and the likelihood of recovering monies lost. We applaud the proposed introduction of a suite of initiatives to better protect customers from falling victim in the first place and to better support them if they do.
4. Whilst we have tried to respond to the consultation questions as fully as possible, the short timescale for response over the Christmas period has meant that we have not had the opportunity give the consultation as much detailed consideration as we would have liked. We would welcome the opportunity to be involved in further discussions surrounding the final design, implementation, management and administration of the scheme.

RESPONSES TO SPECIFIC QUESTIONS

A. BEST PRACTICE STANDARDS

Q1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSP’s respond to reported APP scams? Please provide reasons.

5. We believe the universal adoption of a set of best practice standards by all Payment Service Providers (PSPs) is an essential element of the overall framework to improve the response to APP fraud and the experiences of victims. These standards should be widely available, clearly communicated, and measurable to encourage PSPs to adopt systems and processes that facilitate prompt action and to hold them to account where they do not. Furthermore, we believe that compliance with the standards should be subject to ongoing monitoring with the results published so that customers can see how well individual PSPs are performing and identify those who fall below industry standards (for example, response times once on notice that a fraud is alleged).
6. The standards developed by UK Finance are a good starting point and we particularly welcome proposals for the introduction of a single point of contact and 24/7 access. These address the

very real nature and timing of when many APP frauds are discovered, namely outside normal business hours and over the weekend.

7. However, we believe that the standards might be further strengthened if PSPs are required to adopt a consistent approach to signposting victims to the correct access points (telephone numbers and/or points of contact) to enable them to report suspected APP fraud promptly. In our experience some victims who have discovered they have been defrauded within 24 hours of the transfer being made have been delayed in reporting because of poor signposting and too much automation. Victims often want and need to speak to a real person and this may be especially important for certain groups of vulnerable people. In addition, it is important that the person who is spoken to at a PSP is knowledgeable about APP fraud and can react appropriately internally.

B. INTRODUCING A CONTINGENT REIMBURSEMENT MODEL

Q2: Should a contingent reimbursement model be introduced? Please provide reasons.

8. Yes. We agree that a contingent reimbursement model should be introduced and that all PSPs should participate in it. For many APP victims the only route of redress available at present is to obtain a court order to follow the money and/or seek a freezing injunction over the recipient account. Typically, the victim is blind as to whether these steps will yield a successful recovery outcome and therefore may find themselves even further out-of-pocket as a result.
9. We also believe that the model will be beneficial in cases where there is no other identifiable party who could be held liable and from whom recovery of the loss could be sought.
10. In circumstances where a PSP reimburses a victim and is subsequently able to identify the location of the stolen monies we suggest that the PSP should have the right of subrogation and be permitted to recover such monies – in essence to have an assignment of the right of recovery in place of the victim.
11. More generally we believe the proposed model should act to incentivise the banking industry to better protect customers and also encourage better communication and cooperation between individual PSPs. Such measures may also result in an overall reduction in financial crime by making it more difficult for the perpetrators to funnel the proceeds into other unlawful activity such as terrorism or trafficking (arms/drugs/people).

Q3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

12. Yes. Please see our response to question 2 above.

Q4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

13. The advantages and disadvantages of a focus on consumer protection are set out below.

Advantages

- PSPs are incentivised to regularly review their systems and processes using data from previous APP frauds to ensure continual development and improvement.
- Recognises that the closure of branches and drive to toward electronic banking must be matched by greater protection and assurance for consumers who use online platforms to transfer money.
- Enables innocent victims to seek redress and avoid potentially financially crippling situations.
- Acknowledges that customers generate revenue for the industry and should be protected.

Disadvantages

- Compels PSPs to compensate customers regardless of the circumstances of the fraud.
- Dilutes incentives for PSPs to strive for best practice.
- It may be worthwhile considering the introduction of a 50% compensation mechanism for no blame deadlocks which could either be adjudicated or scaled from 25 – 75% but offers some redress but does not place all the penalty on the PSP. It may be that for no blame cases a central fund is the source of compensation.

14. The advantages and disadvantages of a focus on incentives are set out below.

Advantages

- Emphasises the need for much greater consumer education. In our opinion, this should be coupled with an obligation on individual PSPs to take proactive steps to educate their customers. For example, (and this is relevant to other questions in this consultation), if a consumer is compelled to take a five-minute interactive training session (or to watch a short video) explaining APP risks, methods and prevention best practice every six months or so when logging onto their online banking, the PSP would be able to show in a uniform manner that they have aided awareness and education. The training could be updated on a periodic basis to reflect changes in the risks to customers.
- Ensures continued improvement across the industry as a whole.

Disadvantages

- May lead to inconsistent outcomes for customers who have behaved in the same way.
- A PSP who ends up having to pay compensation in any event, may have no incentive to improve its systems. The extent to which cases are determined to be a 'no blame' outcome will depend on how high the bar for requisite level of care on the part of the consumer is set. If too low then this may have unintended consequences for the behaviour of PSPs as set out above. If too high then the aim of consumer protection is undermined.

Q5: Do you agree that the measures being developed by industry (specifically UK Finance and the forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

15. Yes. We agree that the measures being developed should form the defined 'standards' of the contingent reimbursement model, perhaps with the addition of the proposed online training for customers (see our responses to questions 1 and 4 above). This is because the standards deal with practical issues (such as communication) which will be viewed positively by victims and should improve outcomes for them.
16. The standards should be easily accessible, readable (i.e. written in plain English) and published somewhere logical to victims (perhaps on the Financial Conduct Authority and UK Finance websites or available physically at a branch of a PSP for those with limited or no internet access or use). Performance by individual PSPs against the standards should be published to improve transparency and inform consumer choice.

C. DESIGNING AND IMPLEMENTING A CONTINGENT REIMBURSEMENT MODEL

Q6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

17. In our opinion UK Finance is best placed to design and implement the system given its significant knowledge and understanding of the financial services industry and fraud. However, we believe that they should consult widely on the final form of the model to ensure it is fit for purpose and will meet its aims and objectives from both PSP and customer/victim perspectives.
18. To this end consideration should be given to establishing a panel of external experts to independently review and challenge. This should include those that act on behalf of, or represent the views of, victims including private sector fraud professionals (such as lawyers and accountants), law enforcement and consumer groups. PSP victims should also be consulted.

D. BARRIERS TO IMPLEMENTATION

Q7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

19. Other potential barriers may include political barriers and whether PSPs may view the new model as a penalty upon industry at a time where there is already uncertainty about Brexit and whether certain institutions will retain UK head offices.
20. We also suggest that consideration should be given to potential other 'add-ons' which could aid protection and reimbursement, such as introduction of specific insurance products and some of the other enhanced services mentioned within the consultation paper (e.g. automated delay in transactions to allow for time to protect and reverse a transaction).

E. OTHER DETAILS TO CONSIDER

Q8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

21. Not applicable.

Q9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

22. The suggested definition of eligibility seems sensible, namely whether the customer has been warned that a specific transaction is suspect or has been advised that the payee name does not match. This is not the same as simply having a general passive warning on an online banking platform.

23. Other mitigating factors might include vulnerability of the victim, the material time of the transaction, and whether the victim had ignored any education or training offered by their PSP.

Q10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

24. To be truly effective all PSPs should be required to sign-up to the scheme. The reasons are twofold:

- a. financial transactions run through a chain of PSPs. Therefore, if one fails to meet the required standards but is not signed up to the scheme the victim may be left without redress (see paragraph 5.43 of the consultation paper); and
- b. the model calls for a uniform standard across the banking industry which would require all PSPs to adopt the standards.

Q11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

25. We believe the proposed scope is too limited. The model should be available to all victims – not just consumers or small businesses. Larger organisations include some charities and housing associations which have also been the victims of APP frauds. Their monies are used for important social causes and they should be afforded the same rights to redress. Rather than exclude them a better approach might be to consider the introduction of a cap on the maximum compensation available to larger organisations.

26. We also recommend that longer term consideration should be given to dealing with other jurisdictions.

27. We agree that the model should not be retrospective and should only apply to frauds perpetrated on or after the date of model's commencement.

Q12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

28. We believe that it may be that a single-party arbitration is desirable as a dispute resolution mechanism if a cost effective solution could be created. Ideally a specialist tribunal or arbitration function could be created to deal with such disputes (or using a pre-existing arbitration centre) but that would need to be funded by the parties as would be the situation in a civil court case. The above would be a self-contained and not overly time-consuming process where parties could file a claim, a defence, file documents and statements simultaneously and then have an arbitration hearing of no longer than one day (the issues should be narrow enough for this timeframe to be appropriate). Parties could represent themselves or engage professional advisers.
29. UK Finance, if it is responsible for designing and implementing the model, should have a cradle to grave supervisory role for ensuring that the model works fairly for both victims and PSPs.

Q13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

30. September 2018 would be desirable though it seems very ambitious. Therefore our view is as soon as reasonably practical but no later than June 2019.

Q14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

31. We recommend a universal start to the contingent reimbursement model. Otherwise it will create a lottery if only certain PSPs are engaged and others are not.

HSBC BANK PLC

AUTHORISED PUSH PAYMENT (APP) SCAMS – CONSULTATION

RESPONSE TO CONSULTATION CP17/2

10 JANUARY 2018

PRIMARY SUBMISSIONS

1 Introduction

- 1.1 HSBC welcomes the opportunity to review and comment on the Payment System Regulator's (PSR) Report and Consultation CP17/2 on Authorised Push Payment (APP) scams.
- 1.2 HSBC supports the PSR's intention to improve the outcomes for consumers who suffer from APP scams. It is, however, important to ensure that any proposed changes strike the right balance between consumer protection and the efficient functioning of the overall UK payments market. Any detrimental effect on the effectiveness and speed of payment systems would have a very severe impact on consumers and businesses.
- 1.3 HSBC is also supportive of the work undertaken by the industry to obtain improved data on APP scams and to introduce best practice standards for victims contacting their Payment Service Provider (PSP), along with actions to be undertaken by the receiving PSP. Further increasing co-operation and collaboration at industry level will help to reduce opportunities for fraudsters and those looking to exploit consumers, businesses and the payment systems. This can particularly focus on areas such as the ability of fraudsters to set up and operate "money mule" accounts.
- 1.4 HSBC recognises that further work being undertaken through the Payment Strategy Forum and industry regulatory developments will also have a potentially beneficial impact on APP fraud.

2 General Observations on the Consultation

- 2.1 The majority of the questions posed in the Consultation relate to the possible introduction of a Contingent Reimbursement (the 'CR model'). For the reasons outlined in this paper, HSBC does not believe that the CR model is an appropriate response to APP scams and is likely to give rise to a number of very serious issues for consumers and PSPs.
- 2.2 HSBC recommends the other APP scam initiatives currently in train take precedence to the proposed CR model. In particular:
 - There is substantial work already being undertaken on industry standards and other developments as noted in chapters 3 and 4 in the Consultation, which have the potential to have a positive effect on the volume and impact of APP scams.

- There is work being undertaken by the Joint Task Force on a proof of concept for funds repatriation in the event of scams. This is a project initiated by the industry and VocaLink to repatriate second, third and fourth generation funds back to victims.
- There is the option to increase the level and consistency of goodwill payments across the industry. HSBC will always carefully assess the circumstances on a case by case basis to determine whether a goodwill payment is appropriate.

3 The Legal Position

3.1 As set out in the HSBC response to the PSR's request for information and documents to the Which? super complaint, it is critical to consider the nature of the legal relationship between a customer and a banker. The relationship is one of debtor-creditor and governed by the mandate provided by the customer to the bank.

3.2 As indicated in HSBC's response to the PSR's request for information and documents to the Which? super complaint there has, unsurprisingly, been a reluctance to interfere with the contractual relationship between a banker and customer because of the impact it might have on the free flow of trade and on banks' abilities to meet customer demand for faster payment processing. Making changes to the relationship is likely to lead to significant unintended consequences. These include (but are not limited to) the following:

- For payments initiated by the payer (push payments, including CHAPS, Faster Payments and 'on-us') where the payments in question have been legally authorised by the customer, the PSP is under a legal obligation to transfer the funds. A failure to pay the funds may give rise to a claim from the customer for damages for breach of contract and/or conflict with the Payment Services Regulations.
- For push payments, PSPs often have no underlying knowledge of the contractual agreement between the payer and the beneficiary. As outlined above, the primary duty of the PSP is to make payments as instructed by our customers in accordance with the mandate. Even if PSPs do flag a suspicious transaction and contact the customer, it is not uncommon for the customer to deny that a scam is being perpetrated and to insist that the payment is made. A failure to comply with a customer's instructions could lead to a claim for damages.
- Authorised payments may be subjected to extended fraud checks that will inevitably delay the processing of transactions.

- In order to minimise losses banks would effectively be compelled to screen a much larger proportion of consumer payments before sending. This will significantly impact the ability of users to make real-time payments that they have come to expect, with legitimate transactions delayed due to the need for banks to make more extensive checks before payment. This will severely compromise the current speed and efficiency of modern payment systems, such as Faster Payments. It would also call in to question the ability to deliver many of the initiatives planned by the Payment Strategy Forum, including the real-time basis of the proposed New Payments Architecture.
- PSPs will be forced to refund the payer in circumstances where the fraudster continues to retain the proceeds of the fraud. In the circumstances, Consumers, knowing that PSPs faced complete liability for APP scams, could change their behaviour in ways that would make APP scams more common. For example, consumers could become less vigilant in their attempts to identify and prevent APP scams. It would also increase the risk of consumers being targeted more by fraudsters, with the associated consequence of increasing the financial gain of serious organised criminality, for example through terrorism, human trafficking and drugs.
- Further, there is a very real risk that the proposed CR model will be targeted by organised crime who will very quickly appreciate that manufactured APP scams will generate significant returns from PSPs who will simply be required to indemnify the alleged victim.

3.3 HSBC is surprised that in certain parts of the Consultation, the CR model provides an outcome similar to the Which? recommendation in the 2016 super complaint, that PSPs should be liable and effectively indemnify the payer in respect of APP scams. This is particularly apparent in section 6.10 (“no blame scenario”), if the option ‘focus on customer protection is followed’. It is also reflected in section 6.60, which suggests that in a transition period PSPs shall be liable irrespective of whether they have complied with standards. In these situations the PSPs are being held liable for something that they cannot control. There is no causal link between the conduct of the PSP and the loss suffered by the customer but notwithstanding this the PSP is required to indemnify the customer. This is in our view inequitable and at complete variance to the comments made by the PSR in their December 2016 response to the Which? super complaint:

“8.21 We think that a wholesale shift in liability to PSPs that requires them to reimburse victims of APP scams, even with an exception where the victim has not acted fraudulently or with gross negligence, is inappropriate. We have observed little support for such a change through the course of investigating the issues raised in the super-complaint.”

3.4 Further, in its December 2016 response the PSR (correctly in our view) acknowledged that a range of unintended consequences would flow from a CR model. These were noted in section 1.21 and expanded on in section 5.57 and throughout section 8 of the PSR commentary. In summary the key risks and issues identified are as follows:

- Friction in payment systems as PSPs attempt to reduce fraud relating to both initiators of payments and to account opening processes.
- Delays in making real-time payments as PSPs undertake increased scrutiny of certain transactions, noting that such investigations will almost certainly also delay genuine transactions. This area was particularly highlighted in the PSR's response dated 16 December, 2016. The extract from item 8.8 is shown in full below as it is an accurate representation of the implications of introducing this mechanism:

"8.8 APP scams relate to only a small percentage of total push payments, with the vast majority of payments being completed without issue or dispute. When considering any potential action, we are sensitive of the need to minimise the harm experienced by a relatively small group of users (though significant to the individuals affected) that is caused by APP scams against the introduction of additional frictions that will adversely impact users of the large majority of payments that are made without incident."

- Potential impact on genuine customers, where the other party to a transaction claims that the recipient of the funds committed a scam, in order to recover their funds. This leads to increased first party fraud as disputes over provision of goods and services are presented to the PSP as a scam rather than a dispute, to try to secure the return of funds. This was highlighted once again in the December 2016 PSR response in section 8.11.
 - The risk that the approach does not reduce the level of losses from APP scams in the UK.
- 3.5 The PSR gives examples in section 5.18 of action taken by South Korea and Japan relating specifically to APP scams. These examples, however, introduce significant friction into the payments process. In South Korea, payments above a certain amount are delayed by thirty minutes and in Japan, ATM credit transfers are capped. Introduction of the CR model could lead to similar friction being introduced to the UK payments ecosystem. It is interesting to note that there is no equivalent of the proposed CR model in Europe.

4 Practical Considerations Relating to the Proposed CR Model

- 4.1 HSBC is concerned that PSPs are being invited to comment on proposals that lack sufficient detail to enable a meaningful evaluation to be undertaken. In this regard, HSBC consider that if a CR model is implemented it must have a clear rulebook and process, perhaps analogous to MasterCard and Visa chargeback rules, or the Bacs Direct Debit Indemnity Guarantee. This would need to include as a minimum key areas such as:
- Clear rules on minimum customer care required to gain financial cover
 - Clear rules on the allocation of liability between paying and payee PSP
 - Clear rules on evidence
 - Processes to avoid non-scam disputes and collusive claims
 - Agreement of a clear dispute resolution process
 - Management and reconciliation of payments arising from claims
- 4.2 In short there must be clearly defined and measurable risk standards to enable PSPs to implement appropriate risk management systems, which if properly followed would provide safe harbour against legal liability. HSBC considers this to be a major piece of work that needs to be undertaken. Furthermore there are likely to be significant operational and technical impacts, both on PSPs and the organisation overseeing the CR model.
- 4.3 The owner of the CR model responsible for rules enforcement, adjudication and administration will also need to be identified. The scope would include CHAPS, Faster Payments and 'on-us' transactions and the owner would need to be seen to be independent of stakeholders. We believe that there is no current natural domicile for the administrator of a contingent reimbursement model and that this would be a major challenge for all parties should the case for this type of model ever be proven.
- 4.4 If notwithstanding our primary submission, should a decision be taken to introduce a CR model, we believe that an implementation date of September 2018 is wholly unrealistic. It does not allow sufficient time to implement other preventative APP scam measures already in development or deployment by the industry or to formalise the details of the model and its operation.
- 4.5 HSBC does not support the concept of a transition phase as set out in section 6.60, which would make the PSPs liable for APP scams, irrespective of the actions taken by the PSPs. There is no legal basis for this proposal, it is inequitable and would place an unreasonable burden on PSPs. As set out above this would also have a wide-ranging impact on the banker customer relationship and lead to a range of unintended consequences.

1. **Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.**
- 1.1 Yes. HSBC is fully supportive of the APP Best Practice Standards. We have worked closely with UK Finance to develop the standards and a consistent industry approach. We believe that they can have a real impact in addressing APP scams. The impact will be fully appreciated once the standards are in place.
- 1.2 The development of a 24 hour, Single Point of Contact within each organisation provides the victim with direct contact to a specialist team who will take ownership of the claim and manage expectations. The victims will receive regular contact to ensure they are updated throughout and that the outcome is clearly communicated to them. This delivers much needed support to victims and gives them comfort that their claim is being handled seriously and that the industry is working collectively to return any remaining funds to them. Whilst this will inevitably be a stressful time, this approach helps remove additional and unnecessary stress.
- 1.3 With enhanced bank to bank communication, including 24 hour availability and an agreed mechanism for reporting APP Scams this will enable the industry to act effectively and block funds more efficiently, reducing the time available for scammers to both move on victims funds and continue to utilise the account to receive further funds from other victims.
- 1.4 The impact of these standards and associated initiatives by individual PSPs cannot be fully evaluated as they are in the process of development and deployment. The changes already rolled out have been made quickly and efficiently by the industry but it is too early to show how this is improving customer experiences. We have every reason to believe that if implemented effectively and carefully adhered to, these changes will reduce the scale of losses and improve the customer experience. In the circumstances we believe it is premature to deploy any CR model before the effectiveness of these initiatives have been evaluated.
- 1.5 It is also critically important to ensure in relation to all proposals that there is a common understanding of what data can be shared under current, and forthcoming data protection legislation in 2018 (GDPR). It is expected that a Data Sharing Agreement would be required for the participating PSPs.

2. Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

2.1 HSBC does not believe that the CR model proposed by the PSR is the right approach to address these issues.

2.2 HSBC is supportive of a process that will help prevent APP scams and support victims. The introduction of a CR model will not reduce the number of APP scams as it focuses on the reimbursement of funds without tackling the root cause. HSBC would note that:

- There is substantial work already being undertaken on industry standards and other developments, as noted in chapters 3 and 4 of the Consultation, which have the potential to have a beneficial impact on the level of APP scams.
- There is work being undertaken by the Joint Task Force linked to a proof of concept for funds repatriation. This project has been initiated by the industry and VocaLink to repatriate the proceeds of scams and enable the return of second, third and fourth generation funds to victims.
- There is scope to increase the level and consistency of goodwill payments across the industry that are made by PSPs to victims of scams. As we have referenced in our primary submission, HSBC will always carefully assess the circumstances on a case by case basis to determine whether a goodwill payment is appropriate.

2.3 HSBC believes it is premature to introduce a CR model before the effectiveness of industry initiatives have been evaluated.

2.4 Without prejudice to its primary contention that the proposed CR model would not be appropriate in all the circumstances, HSBC's view is that if a CR model was developed, it is vital that that the provisions of section 1.14 are adhered to namely that,
"reimbursement depends on whether the PSPs involved have met required standards, such as measures and processes that help prevent and respond to scams, and whether the victim has taken the requisite level of care".

2.5 While standards for PSPs could be agreed, PSPs will have varying systems and operational solutions that may lead to inconsistencies, making the determination of liability difficult to achieve.

2.6 As indicated in the primary submissions above, HSBC considers that the Consultation provides very little detail on the level of care and the relevant parameters for all parties. If the levels of care required by the victim is not clear, then there will be a wholesale shift in liability to PSPs requiring them to reimburse victims of scams, unless there is fraud or gross negligence.

- 2.7 The CR model is likely to have a wide-ranging impact on the banker/customer relationship, with the risk of adverse unintended consequences and/or incentives being provided to organised crime (please see paragraph 3 in the primary submissions above).

3 Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

- 3.1 As will be apparent from the primary submissions in this response, HSBC does not believe that it is appropriate to introduce a CR model.
- 3.2 HSBC acknowledges that the PSR would like to encourage good behaviour, where customers take greater care prior to providing a payment instruction and banks offer enhanced protection. Without, however, a clear definition for the requisite level of care, consent and proposed standards for PSPs, there is insufficient information available to provide certainty that this will be the case.
- 3.3 In particular clarification is needed on whether high level principles will mean that if a PSP meets the required standards, then it is not liable for the loss arising from an APP scam.
- 3.4 HSBC believes that the victim should be eligible for reimbursement only when they meet the requisite level of care and the PSP has failed to meet the required standard. To establish the level of care required would require considerable work. In practice we believe that this is unlikely to be achievable and will generate an unacceptable level of disputes.
- 3.5 HSBC is also concerned that some of the proposals stray away from these high level principles and come close to implementing the Which? recommendations where PSPs effectively indemnify the payer, unless the payer is fraudulent or grossly negligent. This is described in section 6.10 in the 'no blame scenario' where the victim is reimbursed by the PSP in circumstances where the payer PSP, the payee PSP and the payer have taken reasonable care to avoid the scam. In our view there is no reasonable basis for the imposition of liability on the PSP in these circumstances.
- 3.6 HSBC has described fully in the primary submissions and in answers to specific questions that there are a range of unintended consequences from adopting the CR model. These are material and illustrate why a great deal of care and thought needs to be given to the principles and the impact that they would have on the payments system.

4. **Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a ‘no blame’ situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.**
- 4.1 The two outcomes specified in a “no blame” scenario, where the payer, the sending PSP and receiving PSP have all met required standards, are identified as either the PSPs involved refunding the payer or the payer bearing the loss. This highlights a key weakness in deploying a CR model. Current practice in this scenario is that the account holding PSP would assess the circumstances and would consider a goodwill payment to the customer. This allows the PSP to look at the facts of the case and take appropriate action. The outcomes identified in the CR model force the PSPs to reimburse in a no blame scenario and therefore risk lessening levels of care when initiating payments.
- 4.2 Overall there is a lack of detail as to how any reimbursement would be managed. It is left open in section 6.10 as to whether the reimbursement would come from the victim’s PSP, or a combination of payer and payee PSPs. There is also no clarity on how any sharing of the cost would be calculated. The use of a fund to which all PSPs contribute in anticipation of claims is prone to risk, inappropriate claims and extreme difficulty in managing and overseeing the fund.
- 4.3 A further concern is that reimbursing the payer in a no blame scenario appears very similar to section 6.21 where victims are reimbursed in any circumstance. This option has been rightly rejected by the PSR for a wide range of reasons, which include:
- If there is no risk to consumers, they are unlikely to change behaviour.
 - There is scope for “first party fraud” where victims falsely claim they were victims of APP scams.
 - Scammers would be likely to increase activity given that they would know PSPs would reimburse.
 - An increase in the cost of payment services provided to consumers.
 - The withdrawal or scaling back of the supply of payment services to certain customer segments, for example those thought to be at particular risk of falling victim to APP scams.
 - The introduction of additional frictions to the use of payment services offered, or the scaling back in the capabilities of those services.
- 4.4 Any interference with the contractual relationship between a banker and a customer is likely to create uncertainty, which in turn is likely to lead to an increase in disputes between banks, between banks and their customers and a corresponding increase in litigation.

- 4.5 In the 'no blame scenario' HSBC believes that it is appropriate for the payer to continue to bear the loss with the payer's bank then determining whether a goodwill payment to reimburse the customer is appropriate. This ensures that the payer continues to take ownership and responsibility when authorising payments. We acknowledge that there could be greater consistency in the industry with regard to goodwill payments [*confidential text*].
- 4.6 It would continue to be the responsibility of individual banks to be consistent in the approach that they take with customers in the no blame scenario. HSBC values the importance of its customer relationships [*confidential text*].
5. **Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.**
- 5.1 HSBC supports the standards and related initiatives that the industry is putting in place to help address the problems caused by APP scams. As indicated in our primary submissions, however, we believe that it is premature to introduce a contingent reimbursement model before the measures being developed by UK Finance have been completed and fully deployed. Only then will the industry and regulators be in a position to determine the impact of such measures and the extent to which (if at all) further measures (such as a CR model) are required.
- 5.2 If at any point in the future the need for a CR model is proven then the standards set by UK Finance would provide a suitable reference point.
- 5.3 It is important to note the range of measures in plan to address this issue without recourse to a contingent reimbursement model.
- *Preventative Measures:* Consumer education and awareness, guidelines for identity verification, authentication and risk assessment, trusted "Know Your Customer" data sharing and confirmation of payee initiatives.
 - *Response Measures:* APP claim reporting standards, information sharing in response to APP scams, financial crime data and information sharing and transaction data analytics.
 - *Outcomes and Follow Up:* APP scam statistics and recovery of victims' funds through work on a funds repatriation proof of concept.

6. Questions 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

6.1 HSBC notes that APP scams cover a range of payments: Faster Payments (to be consolidated into the NPSO), CHAPS (now managed by the Bank of England) and on-us transactions. Accordingly, we concur that the NPSO is not best placed to manage the model, especially given the heavy workload in consolidating the PSOs and delivering initiatives agreed by the Payment Strategy Forum.

6.2 In considering the recommendation that UK Finance designs and implements the CR model, HSBC recognises the significant expertise and knowledge of fraud prevention and response at UK Finance.

6.3 HSBC, however, sees major challenges for UK Finance in managing the design and implementation.

- There will be a need to define rules, disputes and arbitration process
- Develop operational processes, such as managing reimbursement between the victim, the victim's bank and the payee bank.

HSBC is concerned that UK Finance, as a Trade Body, has the requisite resource, expertise and positioning to be the ideal choice to manage this process.

6.4 Introducing the CR model would be a major task, especially given the low level of detail provided at present. The choice would therefore seem to lie between using UK Finance with additional resource, or to set up an entirely new body. The latter option is particularly unattractive given the very significant cost, resource and administrative effort that would be required.

6.5 Our view remains that existing UK Finance standards and initiatives should be fully implemented and the impact properly assessed before any other initiatives such as a CR model are considered. Having regard to the very serious consequences that are likely to flow from a CR model it would in our view be prudent to await the outcome of existing initiatives before incurring very significant resources on alternative approaches.

7. Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

7.1 A key barrier to the adoption of a CR model is the level of work required to introduce it in a very short timeframe. This is not helped by the lack of detail and need for agreement on the core principles, definitions, scams covered, rules and dispute process.

7.2 As recognised in the PSR's December 2016 Response to the Which? super complaint in section 8.23, there is a risk of an increase in first-party fraud involving false claims

under the CR model. Likewise the dividing lines between fraud and a scam are by no means clear e.g. the remote takeover of a lap top. This is where the fraudster has made the payment, and the customer may have disclosed their security codes over the telephone to enable the fraudster to do this, or the customer has downloaded software and has been persuaded to disclose or input codes on to false screens.

7.3 There is little, if any guidance given relating to the proposed balance of liability between the payer's bank and the scammer's bank. Further, there is insufficient recognition that the operational and reimbursement processes are complex. The monitoring and oversight of any fund are likely to be equally onerous and challenging.

7.4 As outlined in the primary submissions and in our response to specific questions, insufficient consideration has been given to the consequences of making PSPs liable for scams, even when there is no evidence that the PSP has acted improperly. The PSR recognised in section 8.24 of its December 2016 response to the Which? super complaint, that PSPs may decide to introduce additional hurdles and barriers to making payments, which would create inconvenience and friction for the large majority of payments that are currently made without issue. This is a highly likely outcome, with the impact on clearing systems and real time payments being significant and damaging to a wide range of users both in the personal and business sectors.

8. **Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?**

8.1 [Confidential text].

9. **Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?**

9.1 HSBC considers that a clear, definable and measureable approach to establishing the level of care required by the payer is vital. Without such a definition, there is a risk of confusion and will lead to an increase in disputes between PSPs and customers. Achieving agreement on this definition across the payments industry will be time consuming and complex. An example of this is the sharing of PINs or access tokens.

9.2 HSBC also considers it vital that the requisite level of care must be set so as to give genuine incentives for payers to take proper care when making payments. As the PSR recognised in their December 2016 response to the Which? super complaint in section 8.11, there is a risk that this would encourage behaviour that increases the scale of

APP scams. It was also recognised in section 8.24 that the risk of necessary changes in PSPs' approach to payment decisions and screening could have a negative impact on the majority of consumers not involved in scams.

- 9.3 HSBC does agree with the PSR's recommendation in section 6.27 that if the victim's PSP had warned the victim about the transaction, then there would be no eligibility for seeking reimbursement. We note though, that this may not be easy to prove.

10. Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

- 10.1 As outlined in the primary submissions and responses to other questions in this paper, HSBC does not support the implementation of the CR model. Its likely impact on the level of APP scams is highly questionable and the unintended consequences to the operation of bank accounts and the efficient operation of payment systems will be very significant indeed.

- 10.2 Without prejudice to its primary position as outlined above, if the CR model was introduced HSBC considers that all PSPs would need to be included. Without the involvement of all PSPs there would be an inconsistent experience for consumers and wide variations in reimbursement practices. Further, variations in approach will undoubtedly lead to targeted behaviour from organised crime seeking to exploit the opportunities that a CR model would present.

- 10.3 If the PSR determines that the CR model remains the appropriate way forward, then a realistic timescale for implementation is required. As indicated above, more detail is needed on the proposed rules, disputes and arbitration processes and the development of operational processes such as managing reimbursement between the victim, the victim's bank and the payee bank. This all needs to be considered before any final decision can be made on whether a CR model would be appropriate.

11. Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

- 11.1 HSBC considers that the unintended consequences of implementing any CR model need to be more fully considered. This will have a significant impact on scope and how

the potential model is managed. For example in the situation discussed in question 4 above, where neither the payer nor PSP are at fault but the PSP is required to reimburse the customer, this may encourage spurious claims and give rise to an increased risk of first party fraud. The industry and regulators would then be faced with difficult challenges to manage, including consideration of how to control the new problems created. The PSR recognised this clearly in section 8.21 and elsewhere in the December 2016 response to the Which? super complaint. Equally the scope could be significantly expanded if a CR model led to increased barriers and friction to real time payments and the actions needed to try to mitigate.

- 11.2 HSBC reiterates that if a CR model is to be used it must have a robust set of rules, dispute procedures and operational processes, and these will take a significant time to establish. This will be vital in managing the scope of any model as it will be highly dependent on these structures to be effective.
- 11.3 Further, it should be clarified whether the CR model is intended to cover Basic Bank Accounts. These accounts, aimed at financial inclusion, require a lower standard of customer identification but demand the full availability of payment provisions.
- 11.4 The CR model should take a wider, more holistic view of the various parties involved in the payments value chain. For instance, a data breach can lead to the leak of information, which facilitates APP scams. In this case, it would not seem correct that PSPs should bear the liability arising from an APP scam, but more properly rest where the data breach took place.
- 11.5 HSBC agrees with the comment in section 6.42, that any model should exclude payments made to or from overseas accounts. However, clarification is required as to whether the model includes or excludes Crown Dependencies.
- 11.6 In relation to other points impacting the scope of the CR model, HSBC agrees with section 6.48 that there should be a time limit for claiming reimbursement for an APP scam.
- 11.7 We also agree with section 6.49, that any CR model should not involve retrospective reimbursement.

12. Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

- 12.1 Given the lack of detail on definitions and operation of the CR model, this question is difficult to answer. HSBC does, however, envisage that this is likely to be a complex topic, with numerous disputes arising. It will be critical to address the questions and points summarised below as a minimum but we expect these in turn will generate more uncertainty and issues to be addressed:

- Is the victim subject to a scam covered under the CR model or of a fraud which is outside scope? For example the disputed payment may be a dispute regarding the delivery or quality of goods and services i.e. a trade dispute.
- Has the customer reached due standards of care, which would need clear definition.
- Has the payer PSP and the payee PSP reached due standards of care which once again need clear definition.
- The balance of liability between the payer and payee PSP needs to be set out

12.2 HSBC's view is that there will have to be a thorough and painstaking structure developed, analogous to MasterCard or Visa chargeback rules. This will be an onerous undertaking and out of proportion to the issue that is being addressed.

12.3 Please see question 6 for our observations on which organisation should oversee any structure developed.

13. Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

13.1 As indicated above, HSBC does not believe a CR model should be put in place. Should it be determined, however, that a CR model is put in place, HSBC considers that a timescale of September 2018 is unrealistic given the complexities, issues to be addressed and structures required. Little detail has been provided on which to base any judgement at this stage. Additional work would be needed within PSPs to make system changes, amendments to customer terms and conditions, operational processes and practices and allocation of the necessary resource needed to interface with any new structures.

13.2 For the CR model itself there needs to be clear and measurable descriptions of the level of care required by the payer, of the standards that PSPs must reach, the balance of liability between the payer and payee PSP and the outcome when all parties have reached the standards. This would all take considerable time to resolve.

13.3 As noted in question 12 there would be major work required to define rules, disputes and arbitration processes and develop operational procedures within PSPs. The detail of managing the disputes process and the reimbursement process between the various parties would have to be defined. All this will not be achievable in the proposed timescale.

13.4 Other significant work is needed to identify the owner of any CR Model, and to get the appropriate resource and systems in place to manage the arrangement. As has been noted elsewhere this will not be a simple or easy issue to address.

13.5 Finally it is worth emphasising that the changes to PSP Terms and Conditions are likely to be substantial, given the impact that the model will have on the bank / customer relationship for both personal and commercial customers. These changes will have to be understood and defined by the industry before amendments to terms and conditions can be made.

14. Questions 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

14.1 We do not consider that a transitional approach as set out in section 6.60 to be practical or desirable. It states that PSPs will reimburse the victim provided that the victim has reached a requisite level of care, irrespective of how the PSPs have acted. Aside from the fact that this outcome would be inequitable, we would note that the level of requisite care is not defined and that there is no clarity on how the burden of proof would be discharged.

14.2 In effect section 6:60 would make PSPs liable for reimbursing victims of APP scams. This has adverse consequences, clearly stated in the PSR December 2016 response to the Which? super complaint. Given the clarity of the PSR analysis regarding these risks it is appropriate to quote these sections in full as they continue to be highly relevant. Sections 8.23, 8.24 and 8.25 cover these and are set out below:

8.23 A change in liability would likely create adverse incentives and could actually result in an increase in APP scams. This could manifest itself in several different ways:

- Consumers, knowing that PSPs faced complete liability for APP scams, could change their behaviour in ways that would make APP scams more common. For example, consumers could become less vigilant in their attempts to identify and prevent APP scams.*
- There is also scope for an increase in so-called ‘first-party fraud’, whereby consumers could falsely claim they were victims of APP scams in instances where they were not in an attempt to gain false recompense from their PSP.*
- Knowing that PSPs were liable for losses from APP scams could also embolden existing scammers and prompt new scammers to enter the market.*

8.24 Such a change in liability would also likely result in changes in PSP behaviour that could have an adverse impact on consumers. Possible impacts include:

- *PSPs may decide to increase the cost to consumers of making payments to recover the losses from increased liability.*
- *PSPs may decide to introduce additional hurdles and barriers to making payments, which would create inconvenience and friction for the large majority of payments that are currently made without issue.*
- *Faced with increased liability, PSPs may instead decide to withdraw from supplying certain market segments. This would result in disruption and reduced consumer choice.*

8.25 Given there are a wide range of parties in addition to PSPs that have a role in preventing APP scams, an intervention that transfers liability entirely to PSPs does not appear to be appropriate where other solutions are available. These parties include consumers themselves but also, for example, companies whose legitimate products or technologies are used by scammers to enable APP scams (such as online trading platforms) and law enforcement.

10th January 2018

**LLOYDS
BANKING
GROUP**



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Dear Sir/Madam,

Lloyds Banking Group (LBG) is pleased to be given the opportunity to respond to the consultation contained within your report CP17/2 on Authorised Push Payment Scams.

We take our commitment to fraud prevention seriously and have long shared the concerns expressed by you, Which? and others on the level of harm caused to consumers by authorised “push payment” (APP) fraud. For many years we have invested considerable resources in reducing the incidence of this fraud focused on customer education, preventative and detective controls and processes to repatriate funds to the victim.

We are confident that our investment in this control framework has resulted in the vast majority of APP fraud targeted at LBG’s customers being unsuccessful. However, we recognise that the impact of fraud can be significant for our customers and we are committed to continuing to work collaboratively with other industry participants to reduce the harm caused by this fraud type even further.

We are generally very supportive of the contingent reimbursement model that you have proposed and believe that it broadly reflects the procedures we have operated for several years when considering compensation for affected customers. We believe that there could be considerable benefits from implementing such a scheme across all Payment Service Providers (PSPs) including:

- Helping to retain consumer confidence in the UK payments system;
- Providing greater certainty to consumers on reimbursement at a time when they are having to deal with the emotional and financial impacts of being the victim of crime;
- Reducing the reputational impact of payment providers not compensating certain victims of APP fraud based on the fact that we could show that we have adhered to an industry-wide reimbursement scheme.

There are, however, a number of additional considerations which will need to be taken into account when designing such a scheme. We have included further details of these in our responses to your consultation questions which follow. Should this proposal be progressed, Lloyds Banking Group is keen to play an active role in its design and we believe we can contribute considerable direct experience in managing this fraud type.

We would note that introducing a reimbursement scheme of any type gives a potential for unintended consequences, including:

- It could create an incentive for PSPs to reduce limits on certain payment types which may be to the detriment of UK consumers. Payments above those limits may need to be undertaken via a different channel (for example in branch) which may decrease the convenience to the consumer.
- It could create an incentive for PSPs to introduce delays or additional checks for certain payment types which will slow down the payment system or increase the burden on consumers in making or receiving payments.
- All banks will currently monitor inbound payments to detect activity that may be related to fraud or financial crime. With the increased liability that could be introduced for the receiving bank, the impact of these processes on genuine customers could increase. For example, banks will have a higher incentive to block accounts which receive large or unusual payments and make it more onerous for customers to continue to operate their bank accounts in these circumstances.
- As you call out in your report, the design of the scheme may increase moral hazard and result in consumers taking less care when making certain payments.

We believe that some of these unintended consequences can be mitigated by designing the scheme appropriately.

We would also encourage the design of the scheme to avoid stifling further innovation in the UK payments industry and we believe that there are complimentary models that could co-exist and should be given further consideration.

For example, we would note that for Lloyds Banking Group 90% of faster payments made by our customers have a value under £500 whilst those relating to scams tend to be much higher. There may be benefit in differentiating the reimbursement scheme between low and high value payments with only those above a certain threshold offering additional protection.

Furthermore, consideration should be given to situations where PSPs could offer payment types which afford even higher degrees of protection (for example account verification or second level checks) and a guarantee of automatic reimbursement should the payment ultimately relate to a scam. We believe it is important that the design of the reimbursement scheme does not stifle industry innovation in this regard. This would also be consistent with the PSR's strategy and duties to promote competition in and between payment schemes. This is discussed further in our response to question two.

We would be pleased to discuss any part of our response with you in more detail.

Yours faithfully,

Paul Davis
Fraud and Financial Crime Director, Retail division

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Lloyds Banking Group has been an active participant in the industry project to develop the new best practice standards and we believe that they will improve the collective response of payment service providers following reports of APP scams. We intend to adopt the standards in full with effect from their implementation date.

That said the standards are targeted only at banks and not other payment service providers (PSPs). Nevertheless, scammers are just as likely to target other PSPs as they are banks and so it is important that solutions to APP fraud are adopted across the whole industry in order to reduce the level of harm to UK consumers.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Lloyds Banking Group takes financial crime prevention seriously and we are committed to reducing the harm caused by all types of fraud. In the case of push payment fraud, we believe our key objective should be to reduce the incidence of this fraud happening in the first place which means creating a hostile environment for fraudsters and stopping them being able to hold onto or benefit from fraudulent payments made to them.

We will continue to work both internally and externally with other banks and in partnership with Financial Fraud Action UK, to continue to improve our defences against this type of fraud. Key to this, we believe, are legislative changes which will enable us to repatriate frozen money back to the original victim.

We recognise the importance of supporting the victims of fraud when it does occur and we broadly support the introduction of a contingent reimbursement model. Indeed, several aspects of the scheme proposed by the PSR are similar in nature to our existing procedures (which we have operated for several years) for considering whether to make ex-gratia compensation payments to victims of APP fraud. However, such a scheme can only effectively work alongside prevention and repatriation, so should not be pursued in isolation.

Whilst it will not directly reduce the incidence of this fraud arising in the first place, we believe that adopting such a scheme across the whole industry could bring additional benefits, including:

- Helping to retain consumer confidence in the UK payments system;
- Providing greater certainty to consumers on reimbursement at a time when they are having to deal with the emotional and financial impacts of being the victim of crime;
- Providing a means of redress to victims of APP fraud subject to this not introducing an element of moral hazard;
- Reducing the reputational impact of banks not compensating certain victims of APP fraud based on the fact that we could show that we have adhered to an industry-wide reimbursement scheme.

The scheme could possibly raise the standards of care by banks, payment service providers and consumers though we believe there are already strong incentives for all parties to not fall victim to, or enable perpetration of, fraud today.

In implementing such a scheme, it will be important to address the following factors:

- Whilst we agree that there is more to be done to help victims of scams recover their money, as an industry we need to be ambitious in sharing more information and intelligence with law enforcement and across financial institutions to spot fraudsters, identify potential victims and to help trace, freeze and repatriate stolen funds.
- Compensating victims should be done after all attempts to repatriate the monies have been exhausted. We believe that legal changes are necessary to enable banks to effectively trace and repatriate stolen funds, thereby removing the funds from the criminals. Specifically, amendments to banking law would be required to enable us to withdraw funds from an account without the consent of the account holder where reasonable suspicion or concern existed that they related to fraudulent

activity, such that they can be returned to the victim. Compensating victims in itself does nothing to reduce the proceeds of crime in the hands of criminals.

Further to the comments in our covering letter, we would also welcome consideration being given to alternative options such as:

- Differentiating the degree of protection afforded to consumers based on payment value. This could avoid any unintended consequences of the reimbursement scheme making the UK payments system slower or more onerous for consumers. For example, the majority of faster payments (being the main payment type affected by APP fraud) are for amounts under £500 though fraudster behavior typically targets much higher amounts. Defining a floor limit above which the scheme will apply would most likely retain the benefits around security whilst not impacting the vast majority of payments.
- Retaining flexibility for PSPs operating within the UK to offer innovative new products to consumers. For example, we would note that the UK postal system has long provided differentiated degrees of protection to consumers through their product offering with higher fees used to offset the additional costs of providing, for example, a Special Delivery service. Such models would effectively be ruled out within the UK payments landscape should a contingent reimbursement model be introduced and any “basic” offering prohibited by an industry regulator.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

Generally speaking, Lloyds Banking Group supports the high-level principles for the contingent reimbursement model proposed by the PSR. In particular, we would support:

- Considering first whether the victim took the requisite level of care, so as to provide an incentive for them to take whatever steps they reasonably can to avoid becoming a victim from the outset. We have long argued that the most effective means of reducing the harm of APP fraud is to stop the scams happening in the first place. This principle of the scheme is consistent with this.
- Secondly, considering whether the customer’s PSP has met an agreed set of standards. This will provide an appropriate incentive for PSPs to protect consumers.
- Only after the customer and paying PSP have concluded that they have met the requisite standard should the recipient PSP come into play. We agree that the recipient PSP should be liable in some cases where their actions have a direct consequence of the fraud being successful. We believe that this will help in stifling mule accounts given that, for the first time there will be a direct motivation for the beneficiaries in a mule chain to chase down tertiary generation mule accounts in order to make recoveries against what would otherwise be their loss. This should foster increased collaboration across the industry over time. However, we do not agree that the paying and recipient PSP’s conduct should be considered in parallel, as the paying PSP is best-placed to prevent the fraud before the proceeds are paid to the recipient PSP.
- Creating a “no blame” scenario where the victim and PSPs have met the required standards. Though as we state later, we should aspire to design the scheme such that these “no blame” cases are the exception and few in number.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a ‘no blame’ situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

Firstly, the primary objective in designing the scheme should be to minimise the number of cases which fall into the “no blame” category. Notwithstanding the effective confidence tricks employed by fraudsters, it is our opinion that the vast majority of APP fraud is preventable provided the consumer and all payment service providers meet a certain standard of care. Therefore, in the vast majority of cases where all parties meet the required standards the fraud should be unsuccessful and the loss zero.

We believe it will be a key objective in designing the scheme to reflect the above point in the documented standards.

That said, we would expand the definition of “no blame” cases to include those where the PSP has not met the standards, but that failure had no impact on allowing the fraud to happen.

Secondly, in the option where the victim is reimbursed by a central fund, the administrative complexities of running the scheme will increase significantly. As we explain in more detail later, a variant of the contingent reimbursement scheme could be implemented at relatively low cost and with low complexity and which could provide more immediate benefits to consumers. However, this would exclude the option of having an independent arbiter reviewing high volumes of cases or a centralised means of providing redress.

For the reasons outlined later, we believe that there are considerable advantages to designing the scheme in this simple manner and with “no blame” cases being assessed as part of the dispute mechanism (and the victim initially not being compensated by either bank) rather than being a core part of the reimbursement scheme.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Firstly, we believe that the requisite level of care required of all parties (consumers and PSPs) needs to evolve over time. This would reflect the fact that fraudster behaviour is constantly changing and that methods of prevention which are initially considered new or innovative quickly become the norm.

Therefore, it is our view that the requisite level of care from PSPs and consumers equally needs to evolve. Standards of control which were cutting edge several years ago will gradually shift into being industry best practice and should be incorporated into the contingent reimbursement model over time.

We believe that the body tasked with drafting the design of the scheme is best placed to consider which factors to include. As per our response below, we see significant advantage to these being documented by UK Finance, being the designated trade body for the majority of potential participants. This would be similar in nature to the recent creation of the Best Practice Standards – a project where UK Finance have acted as an effective broker between multiple banks. We do not believe that it would be a significant barrier in delivering the above for UK Finance to consult with other PSPs which are not included within their membership.

One complication that will arise from a scheme that evolves over time is that consumers, the media and consumer groups will inevitably compare victim outcomes in order to assess whether the scheme is being operated appropriately. Whilst it is entirely the right thing to do, such an evolving scheme will mean that the decision on a particular case will be primarily reliant on the requisite levels of care for victims and PSPs as defined at that time, and not on precedents i.e. how a similar case was decided before. Consumer communications will need to make this point clear.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

There are a number of different aspects of the scheme that would require design and implementation.

In terms of the requisite levels of care, we see significant advantage to these being documented by UK Finance, being the designated trade body for the majority of potential participants. This would be similar in nature to the recent creation of the Best Practice Standards – a project where UK Finance have acted as an effective broker between multiple banks. We do not believe that it would be a significant barrier in delivering the above for UK Finance to consult with other PSPs which are not included within their membership.

If this was the case then UK Finance could count on Lloyds Banking Group playing a fully supportive role.

In terms of the wider aspects of the design of the scheme including the identity and role of an independent arbiter, we believe that this should sit outside of UK Finance on the basis that it would not be in line with its overall remit. Administration and dispute arbitration are matters for a separate body, not least because of the importance of ensuring the public's perception of impartiality.

The Open Banking proposals for an independent dispute resolution service could provide an opportunity for synergies gained by bringing these together in one body. This is discussed further in our response to question 7.

In terms of implementation, again, this would depend on the nature of the implementation.

In its most simple form (and see our response to question 13) the scheme could be operated by PSPs independently in a manner which is simple, low-cost and likely to offer significant benefits to consumers. Under this arrangement, whilst there would be a means of dispute, there would be no central designated arbiter.

Were the above chosen as the means of implementation then there would be no need for a formal role for UK Finance in the operation of the scheme.

Should a more complex form be required (including an independent arbiter and operation of a central funding pot for "no blame" cases) then, as above, the most effective operator of the scheme would most likely be one independent from the industry.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

2018 will see the introduction of Open Banking and the roll out of payment initiation via TPPs.

Open Banking proposals currently include for the provision of an independent dispute resolution service to manage decisions around liability for fraud between 'Payment Initiation Service Providers' and the 'Payment Service Providers' so as to provide a suitable consumer protection framework. There may be synergies to be gained by bringing together this new proposed dispute resolution service with that proposed for APP fraud.

This means:

- Alignment in consumer protection and the requisite levels of care;
- Commonality in dispute mechanism;
- Common bodies administering the scheme.

We also believe that there needs to be a change in the law to enable banks to more easily release funds frozen in bank accounts which are known or suspected to relate to the proceeds of crime so that they can be repatriated to victims. This will support the operation of the contingent reimbursement scheme by reducing the financial impact on PSPs in cases where they have been able to block the funds before they get into the hands of the fraudsters. We believe that repatriation should take place prior to any reimbursement being made in order to support the primary objective of the scheme which should be to take the proceeds of crime out of the hands of criminals.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Lloyds Banking Group considers all cases of APP fraud on a case by case basis when considering whether to offer victim compensation. Cases will be assessed against defined criteria below and then (because they rely on the application of judgement as opposed to being assessed against very specific criteria) will typically be referred to a more senior colleague for approval.

[The specific criteria have been redacted from this version of our consultation response due to commercial sensitivity though have been provided to the Payment Systems Regulator on a confidential basis].

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

In respect of the responsibilities of consumers, we believe that the scheme should take into account the following factors:

- Some APP fraud involves the fraudster purporting to be from a different organisation – normally a bank, telecoms provider or the police. We believe that the scheme should take into account the attempts made by the victim to validate the identity of the caller.
- Furthermore, we believe there should be an explicit obligation on consumers to validate account details being used for payments. Such validation would need to extend beyond simply accepting recipient bank details at face value and would require consumers to use a known and trusted communication channel (i.e. face to face or by a call back to a known number) to verify these with their intended beneficiary.
- Cases where the fraudster is not purporting to be anyone other than themselves would include, for example, romance and investment fraud. In such cases the victim sends money to the intended recipient though only identifies that they have fallen victim to a crime at a later stage. For these situations, the above point around validating the identity of the caller (for example) would not be sufficient. To meet the required standard of care the customer would have to take additional steps to validate the authenticity of the reason for the payment itself and whether its stated purpose is genuine.
- It is common for banks to intervene in the payment process. This could include:
 - Reasonable enquiries of branch or contact centre-based staff as to the purpose of payments;
 - Warning messages being displayed on certain online banking screens around the purpose of payments;
 - Payments being blocked due to being outside of the normal pattern of activity.

Fraudsters typically coach their victims around how to handle such enquiries though the warnings/enquiries themselves will typically make reference to such tactics. We believe that to demonstrate the required level of care the victim should be required to respond to any such enquiry from the PSP truthfully.

- Similarly, PSPs often include more generic warning messages on forms, in colleague scripts and on online banking screens. Provided these were made visible to the consumer during the payment initiation process and were easily readable we believe there should be an onus on the customer to read and understand them.
- Consumers should not be deemed to have met the required level of care if any passwords, security codes or PIN numbers are disclosed to the fraudster (though we would note that such cases do not immediately meet the definition of APP fraud).
- Whether the customer has been a victim of APP fraud in the past and whether they have evidently failed to act on any advice and guidance provided by the bank or PSPs afterwards.

Regarding customer vulnerability, we absolutely believe that the overall scheme should take this into account. However, in our experience there are important nuances which must be considered in order to not introduce additional risk. Specifically, vulnerability should be considered in the context of whether the sending PSP met the required level of care (i.e. whether they took reasonable steps to respond to any known customer vulnerability and whether these had a direct impact on the fraud being successful) and not when simply considering if the victim was vulnerable.

This will avoid emboldening scammers to specifically target vulnerable consumers (which would be entirely contrary to the objective of the scheme) and would instead put the onus on banks to respond appropriately.

Whilst not directly related to this specific question, we would note that the following should be considered in the standards for PSPs.

For the sending PSP, their conduct should be assessed in light of whether any actions had a direct consequence on the fraud being successful and include:

- Whether they took reasonable steps to respond to and make reasonable adjustments for any customer vulnerability;
- Whether they adhered to the industry best practice standards for responding to APP fraud;
- Whether they took steps to alert their customers generally to the risk of scams;
- Whether they utilise specialist software to detect unusual transactions and whether alerts arising from this were handled correctly.

For the receiving PSP, again, their conduct should be assessed in light of whether any actions had a direct consequence on the fraud being successful and include:

- Whether the account in question was opened using “know your customer” processes in line with industry standards (namely, the Joint Money Laundering Steering Group Guidance notes”);
- Whether they adhered to the industry best practice standards for responding to APP fraud;
- Whether they responded (within a given and reasonable specified timeframe) to any credible intelligence that should have put them on notice that an account was being used in relation to fraud.

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

Lloyds Banking Group agrees with the PSR that, to be effective in reducing consumer harm, a contingent reimbursement model must capture a significant majority of, if not all, PSPs that provide push payment services for consumers. This will ensure more consumers are protected.

Therefore, we believe that the scheme would be most effective if it was mandatory for PSPs rather than as a purely voluntary scheme. As a side benefit, this would enhance the public confidence in the scheme.

However, implementing a mandatory scheme in a short time scale would be extremely challenging. Another complicating factor is that the standards placed on PSPs would most likely include whether or not they adhered to the new industry Best Practice Standards. This is a voluntary set of standards and so it could perhaps be inconsistent for a separate mandatory scheme to enforce them.

Therefore, in terms of implementing the scheme it may be preferred for it to be voluntary in the first instance.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

Lloyds Banking Group is broadly in agreement with the views expressed in the PSR report around scope. Namely:

- That it should be focussed on personal customers;
- That it could also be targeted at small business customers on the basis that they typically display similar behaviour to consumers.
- That the geographic scope of the scheme should be focussed on payments between UK payment accounts only. For the sake of clarity, we would go further and specify that the scheme relates to Sterling payments only.
- That the payment system involved is not relevant (although the scheme should clearly only apply for push payment transactions).
- For the sake of an effective implementation, it should be limited to the first recipient bank only (for the purposes of reimbursement – notwithstanding the fact that repatriation should consider any onward transmission).

- That a timescale for raising claims should be limited – not least because in our experience victims become aware of the scam very quickly (unlike, say, identity theft or account takeover fraud which can sometimes take longer to come to light).
- That there is no obligation for retroactive reimbursement on the basis that PSPs cannot retroactively implement the standards of the model.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

Please see question 6.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

On the basis that we are in favour of the establishment of the scheme, we would welcome any opportunity for it to be operational as soon as possible. That said, a full implementation by September 2018 would be extremely challenging. There are a number of options to work around this.

We would recommend a phased approach to implementing the contingent reimbursement model.

- In the first phase, PSPs would work together to document the required levels of care on both the victim and the PSPs involved. This could then be launched as an industry-wide code of practice (involving participating PSPs) in relatively short timeframe and most likely by September 2018. Under this phase:
 - PSPs would decide on cases independently. In line with the agreed Best Practice Standards this would most likely be led by the bank of the victim on the basis that Principle 1 states that “the victim bank will take ownership of the claim from start to finish regardless of fraud or scam type”. Their conduct in doing so would fall under the remit of FCA supervision.
 - There would be no independent arbiter or additional means of dispute resolution above and beyond those that already exist. Consumers could still make a complaint to their own bank and could escalate that complaint to the FOS if it was not resolved to their satisfaction. In deciding on the case the FOS could have regard to the documented requisite level of care but would most likely use their existing approach.
 - No allowance would be made for the “no blame” scenario. Recourse in such cases could only come from a consumer taking the case to dispute resolution.
 - The Financial Conduct Authority, in line with the status quo, would supervise the conduct of banks in this regard.
- In the second phase an independent arbiter could be established who could:
 - Amend, as they saw fit, the required levels of care;
 - Either directly supervise individual banks’ operation of the scheme (and individual decisions) or assess all cases raised by consumers;
 - Consider, as required, “no blame” scenario cases including operating any central funding pot.

We do not consider it realistic to be able to implement this second phase in advance of September 2018.

As above, it is our view that significant benefits could arise from the first phase alone. Implementing the second phase would create significant additional cost and complexity which may not be in line with the benefits that would be achieved.

There would be a number of disadvantages to this design. For example, it could be perceived to be biased by both victims of APP fraud and by the public generally. Also, the scheme could provide an inbuilt bias for the victim PSP to pass the obligation for reimbursement to the beneficiary PSP. We would also need to change procedures to enable permission from the victim for their data to be passed between certain PSPs in order for their case to be assessed.

However, we believe these risks could be mitigated in full.

- Very generally, FCA supervision would provide an incentive for PSPs to operate the scheme in line with its design and treat consumers (and other PSPs) fairly.
- As a result of the MI enhancements which will be delivered by the industry from January 2018 the operation of this scheme would be transparent.
- If required, a professional services firm could be employed (at a cost to PSPs) to independently test the effectiveness of the operation of the scheme.
- By designing an appropriate right of audit for the recipient bank regarding the decision reached by the paying bank.

If a separate independent arbiter were established then consideration would need to be given to the role of the FOS and whether victims would have any incremental benefit from raising a case to them if they were unhappy with the outcome.

In advance of any launch, we would recommend a high profile publicity drive be undertaken in order to raise awareness of the scheme and how it works (including the requisite level of care for consumers and PSPs).

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Please see above response to question 13



Payment Systems Regulator
25 The North Colonnade
Canary Wharf
London
E14 5HS

Our Ref: MM22726

6 December 2017

Dear Sir/Madam,

I am writing order to submit my concerns about Authorised Push Payment (APP) scams to the Payment Systems Regulator's (PSR) current consultation on this issue.

Our banking system works on the basis of trust. Trust that we can confidently deposit, withdraw and move money between accounts, which can only be opened by people who can prove who they are. Money Laundering Regulations mean that financial institutions like banks commit a serious crime if they allow an account to be opened without satisfactory evidence of both the identity of an applicant and their home address.

Over the past two years I have become abundantly aware of the opaque way in which this legal framework currently operates and the lack of accountability when things go wrong. As a result I called a debate in the House of Commons on 5 December to call for a review of how money laundering regulations operate and for clarity as to who holds banks to account for the way these important regulations work in practice.

One of my constituents, who rightly wants to protect his privacy, came to me 2 years ago after he lodged a payment of £13 500 into a Lloyds Bank account for services which he subsequently didn't receive. He reported the crime to the Police and was staggered when it was revealed that the account had been opened fraudulently by an individual using a provisional driving licence and an address that the Police quickly established was fake. With little information to go on the Police could not identify any viable suspects to pursue and the case was closed.

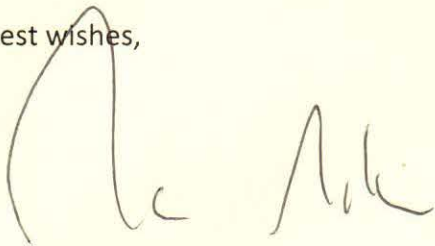
This case deserves more careful analysis. If Lloyds had done their job properly and obtained the account applicants true identity, then the Police could have been able to pursue a criminal conviction. Lloyds is also presumably at risk of having breached the Money Laundering Regulations for not establishing the true identity of their account holder; a criminal offence with up to 2 years in prison and a hefty fine. Insufficient evidence has meant that the Police do not appear to be in a position to bring a prosecution either way.

There are a bewildering array of organisations with the responsibility of making our banking system safe, yet over the past 2 years none have wanted to act to bring to justice the perpetrators of this fraud or indeed investigate Lloyds Bank's compliance with Money Laundering Regulations. The Financial Conduct Authority doesn't review or advise on individual cases. The Financial Ombudsman can only consider what the Bank did with regard to the payment made, they cannot consider how the account was opened or the process the bank followed when it was opened. Action Fraud don't themselves investigate crime but send details onto the relevant Police Force who in this case cannot pursue lines of inquiry because of the inadequate information collected by the Bank in the first place.

The PSR has already stated that bank fraud is a significant and growing problem but previously did not support calls from consumer organisations like WHICH to make banks responsible for reimbursing fraud victims as credit card companies are required to do by law. Perhaps if Banks were responsible for all crimes committed as a result of fraudulent accounts being opened then they would be more careful about who they allowed to become their customers.

Banking is a vital part of the UK economy and we have to be confident that it is fit for purpose. If Money Laundering Regulations were better monitored and Banks were made responsible for compensating individuals who have lost financially as a result of accounts being used fraudulently we might see a better focus on driving down this area of crime and more confidence in our Banks.

With best wishes,

A handwritten signature in dark ink, appearing to be 'A. Nick' or similar, written in a cursive style.

Payment Systems Regulator
APP scams project team
25 The North Colonnade
Canary Wharf
London E14 5HS

BY E-MAIL – app-scam-pso-project@psr.org.uk

Dear Sir / Madam,

12 January 2017

Authorised push payment scams – report and consultation CP17/2

Please find attached Nationwide's response to the Payment Systems Regulator's report and consultation on authorised push payment scams.

Thank you for the opportunity to contribute towards this consultation on this important and growing issue. Nationwide welcomes the work undertaken to date to mitigate the risk of APP scams, particularly the UK Finance Best Practice Standards, the Banking Protocol and the Take Five to Stop Fraud Campaign.

In assessing the next steps in tackling APP scams, we must consider that this is a complex field, with at least three key parties, the sending and receiving PSPs and their customers, all having a role to play in reducing APP scams. The foundation for action and response needs to include clear standards, expectations and responsibilities for each party.

With effective industry and regulatory collaboration to drive these actions we can further support consumers in fulfilling one of the principles of good regulation, to 'take responsibility for their decisions'. In doing so we may avoid adverse outcomes that could arise from a model that reimburses in all circumstances.

We would see these solutions as being multi-dimensional, taking the form of a range of measures across prevention, repatriation and (where appropriate) reimbursement:

1. **Prevention:** Nationwide believes that prevention is by far the most important area in reducing APP scams. Continuing co-ordinated customer awareness and education activity, improving detection of mule accounts and pressing forward with the Payment Strategy Forum initiatives, now with UK Finance and the New Payment Systems Operator, are important prevention measures. We would particularly encourage the accelerated development of Confirmation of Payee and identification of more innovative cross-party initiatives such as the Banking Protocol, thereby using fresh approaches to make it more difficult for scammers. As we've stated in earlier interactions with the PSR on this topic, we also see value in focusing strongly on the receiving side, supporting the collective efforts to tackle money mule accounts and reviewing where compliant intervention in the customer journey may be appropriate by way of account level restrictions or transactional friction.

2. **Repatriation:** For those unfortunate enough to encounter an APP scam, we believe their experience on reporting these could be further improved, through the extension of the UK Finance Best Practice Standards to include the standardisation of processes surrounding the repatriation of funds to victims – to enable more and faster repatriation. We recognise there are challenges to achieving this and are supportive of the work currently being led by the Joint Fraud Task Force on the Recovery of Funds, which we stand ready to aid as it develops.
3. **Reimbursement:** We agree that a fair, clear, limited and agreed reimbursement model should be introduced and believe that the next step should be for the industry to begin work to develop this. Ultimately, this model should be fair for all parties; proportionate in the allocation of liability in the event of a reimbursement and by design capable of self-calibration to channel incentives to the appropriate parties. However, we feel the exposure to reimbursement should not be unlimited and there should be circumstances, including scenarios of ‘no blame’ where reimbursement should not happen.

Therefore, we would request that a more focused set of standards be introduced than those discussed in the consultation. We would encourage standards to be clear, practically and economically effective and well-defined such that a lapse in complying with those standards can be said to have a direct link to the loss suffered by the customer through the APP scam. If the standards are too wide-ranging or vague it will make the assessment of liability in each case more difficult, costly and time consuming and prone to disputes. The practical and economic effectiveness of these standards should be evaluated before the question of liability is agreed under the model.

We believe a more measured approach will enable development of an effective model considering:

- a. Any potential impact on the operation, acceptance and offering of Faster Payments and CHAPS.
- b. The need for effective PSP standards which ensure an appropriate degree of connection between any lapse in standards and the transactional loss.
- c. The necessity for clear, evidenced and balanced payer standards and customer awareness of these.
- d. Possible regulatory changes necessary to enable some UK Finance and PSF solutions.
- e. Delivery of effective industry governance and arbitration processes.

As a mutual organisation, owned and run for the benefit of all our members, some of whom do not bank with us, the optimal balance of cost, service and protection underpinning payments is important in delivering our cornerstone ambition to sustain outstanding service and look after members and their money. Therefore, the model should not place undue indirect cost pressure on our wider membership.

Going forward, we believe that with the right industry focus across the three dimensions of prevention, repatriation and reimbursement, the outcome for all parties will be stronger, enduring and proportionate as we develop and deploy a range of measures that incentivise all parties to come together for mutual good.

We would welcome the opportunity to discuss with the PSR ways in which the objectives of customer protection and incentivisation of both PSPs and consumers to prevent APP scams could be achieved. In the interim, please contact us should you have any questions regarding our response.

Yours faithfully,

John Hutton
Director of Payments
Nationwide Building Society

1. **Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.**

- 1.1. As discussed in the Consultation, much has been achieved over the last year to help those experiencing APP scams. Amongst this, Nationwide welcomes the development of the Best Practice Standards. Through these we, and the other participating PSPs, will help customers receive a consistent and improved experience through the increased clarity on each PSP's expected response.
- 1.2. Going forward, we continue to believe this experience could be further improved through standardisation of processes surrounding the repatriation of funds to victims. We recognise there are challenges to achieving this and are supportive of the work currently being led by the Joint Fraud Task Force on the Recovery of Funds, which we stand ready to aid as it develops.

2. **Should a contingent reimbursement model be introduced? Please provide reasons.**

- 2.1. We recognise that there is a detriment within the market in respect of APP scams and more can be done by paying and receiving PSPs, industry, ISPs, consumers and wider stakeholders to minimise this. We also agree that establishing industry standards, mechanisms and services, such those discussed in Chapter 4 of the Consultation, will help. We consider actions to prevent APP scams to be particularly important and would encourage more, such as the Banking Protocol.
- 2.2. Having said this, **yes, we agree that a fair, clear, limited and agreed reimbursement model should be introduced and believe that the next step should be for the industry to begin work to develop this. However, we feel the exposure to reimbursement should not be unlimited and there will be circumstances, including scenarios of 'no blame', where reimbursement should not happen.**
- 2.3. One of the FCA's principles for good regulation is that 'consumers should take responsibility for their decisions'. While we recognise this principle will need to be carefully considered in the development of the contingent reimbursement model, to offer blanket reimbursements in the case of APP scams would risk driving adverse outcomes to the payment propositions and customers' use of these and risk encouraging an increased level of APP scams. Therefore, it is essential that the incentives within this model are appropriately balanced.
- 2.4. Key to a successful model will be clear and transparent rules which complement those within the Payment Services Regulations, and apply fairly to PSPs and consumers. The Consultation proposes a wide set of standards on which liability would be determined under the model. **We would request that a more focused set of standards be introduced, for which a lapse could be directly linked to the loss sustained from the APP scam. We believe that the practical and economic effectiveness of these standards should be evaluated before the imposition of liability is agreed under the model.**
- 2.5. We would welcome the opportunity to discuss with the PSR ways in which the objectives of customer protection and incentivisation of both PSPs and consumers to prevent APP scams could be achieved. However, we believe a more measured approach will enable us to develop an effective model considering the following:
 - 2.5.1. Any potential impacts on the operation, acceptance and offering of Faster Payments and CHAPS: Paragraph 5.30 of the Consultation states that the liability models of other payment systems (such as cards or Bacs) give consumers "confidence and trust in those services, by reimbursing them when they fall victim to fraud that they could not reasonably prevent." However, it should be noted that there are relevant and distinct factors which should be considered about these established liability models, in addition to those listed in 5.29 of the Consultation, when developing a new one:
 - 2.5.1.1. The rules which operate for cards schemes and Bacs Direct Debits have taken many years to evolve. VISA as a comparison offers far more granularity, and therefore certainty, on the rules applicable to the assessment of liability than those currently proposed under the contingent reimbursement model.

- 2.5.1.2. Both the card schemes and Bacs operate particular commercial 'four party models' in that payees will usually be corporate with a higher form of due diligence, including credit risk checks, conducted on them by their sponsor or acquirer banks. These will be in addition to account opening procedures.
- 2.5.1.3. To accept these payment types, payees will have signed a contract and made commitments to reimburse their paying customers in certain situations.
- 2.5.1.4. These payment services have established disputes processes and systems, evolved over time, to span the many permutations of exception through error or fraud in the end to end transaction.
- 2.5.1.5. If the payment can be demonstrated as valid, the payee can reclaim the funds – through established processes.
- 2.5.1.6. It is not necessarily the case that the customer will receive back their funds if they have authorised a transaction.
- 2.5.1.7. The average transaction value is much lower than in the case of Faster Payment and CHAPS.

In contrast, both Faster Payments and CHAPS today are accessible to customers with an account offering these services and available funds in the case of the payer. While we agree there needs to be an incentive to improve the prevention of APP scams, in making the PSPs liable for APP scam losses, this could expose PSPs to potentially large financial losses and have implications for the payment types. There is the possibility that customers would face restrictions when making and receiving payments, transaction limits for Faster Payments and CHAPS could become lower and the acceptance bases shrunk so that these are only available to certain 'registered' payees.

As a mutual organisation, owned and run for the benefit of all our members the optimal balance of service and protection underpinning payments is important to us in delivering our cornerstone ambition to sustain outstanding service. Therefore, understanding and avoiding the risk of restrictions which could impact customer propositions and service is important in the development of a model. We would also refer you to our cover letter on this point.

- 2.5.2. New entrants' appetite to participate in CHAPS and Faster Payments: This may be impacted if they are held liable for what could be large transaction values or need to comply with onerous and costly measures to demonstrate adequate care. A single contingent reimbursement model standard may not be appropriate for these new entrants; conversely their absence from the model could make them and their customers more prone to fraud.
- 2.5.3. The need for effective PSP standards which ensure an appropriate degree of connection between the lapse and the transactional loss: Key to a successful model will be clear and transparent rules on the standards to be demonstrated by PSPs. The measures or 'standards' proposed for inclusion in the contingent reimbursement model are significantly wider than those initially proposed in the original FFA work quoted in the Consultation paper. The measures suggested in Chapter 4 range from the developed to the conceptual, from those which could have a direct link to a loss to the more abstract and for some PSPs the complexity and economic cost of implementing could be considerable. We would encourage standards to be clear, practically and economically effective such that a lapse in complying to those standards can be said to have an actual or assumed link to the loss suffered by the customer through the APP scam. If the standards are too wide-ranging or are vague it will make the assessment of liability in each case more difficult, costly and time consuming and prone to disputes. There is a need for any model to recognise the requirement for a causal link between the lapse on the part of the PSP(s) and the loss.
- 2.5.4. The need for clear, evidenced and balanced payer standards and customer awareness of these: Requirements must be clearly specified and be capable of being evidenced. We welcome the

PSR's recognition that customers should remain incentivised to maintain an appropriate level of care. However, the two examples quoted in paragraph 6.37 of the Consultation, both rely on PSP intervention and entail the customer ignoring this intervention. To maintain the desired customer incentive, we believe that any contingent reimbursement model must require a higher level of care by customers than the 'gross negligence' standard relevant to unauthorised transaction claims. A 'reasonableness' test should be considered, which requires customers to take a reasonable level of care to protect themselves from APP scams outside of PSP intervention in the transaction, whilst also allowing the PSP to accommodate relevant subjective characteristics (such as customer vulnerability) in the assessment of the level of care exhibited by the customer.

- 2.5.5. The need to consider the contingent model within the wider context of law and regulation supporting transactions: For example, the requirement to honour a customer's payment instruction or to open a 'basic' bank account (Regulation 22 of the Payment Account Regulations). The model should be informed by other PSP responsibilities and not impose liabilities which would run contrary to these.
- 2.5.6. The need to effect possible regulatory changes to enable some UK Finance and PSF solutions: This applies particularly to Transaction Data Analytics and Financial Crime Data Sharing. A PSP should not, in our view, be held liable for losses which they are not able to prevent through the unavailability of these solutions prior to their implementation.
- 2.5.7. The need for agreement on where any model would be applicable: We believe that if a customer's funds have been recovered, or are available for recovery, there should be no need to investigate a claim under the contingent reimbursement model. This would avoid duplication between the repatriation and reimbursement models and increase the incentive for PSPs to act swiftly to repatriate funds where possible.
- 2.5.8. PSP and delivery body's costs and capacity: As discussed in our response to Questions 6 & 7 below.

3. Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

- 3.1. **Subject to careful consideration in the definition of supporting customer requirements and PSP standards as discussed above, we broadly agree with the principles set out in respect of the model.**
- 3.2. We agree that the first test should be whether the consumer has met the requisite level of care, for two reasons. Firstly, this aligns with the liability model set out within the PSRs. Regulation 67 sets out when a payment transaction is regarded as authorised - it says that a payment transaction is to be treated as authorised when the payer has given its consent to the execution of the payment transaction. Push payments, by their very nature, require the payer's, authorisation to be executed by the PSP.
- 3.3. Secondly, as noted within the PSR's response to the Which? super-complaint, it is important to ensure that consumers are aware they should exercise a reasonable standard of care and vigilance when initiating a payment transaction.
- 3.4. It therefore makes sense for the consumer not to be reimbursed where they have not met the requisite standard of care, irrespective of the assessment of the PSP standards - although (as mentioned in paragraph 6.14 of the Consultation), PSPs should remain free to offer 'goodwill' payments where appropriate.
- 3.5. We also agree that PSPs should have an incentive to help protect consumers from APP scams. We would like to work with industry to define agreed standards - including the PSR as it develops its thinking on this.
- 3.6. Any agreed standard must be fair and proportionate for both the payers and PSPs.
- 3.7. Although the 'no blame' scenario is dealt with separately, what does not appear to be clear, on a principle level, is which PSP is responsible for reimbursement where **both** the payer's and payee's PSP

have failed to meet the required standards – or how liability would be determined between the two PSPs. The answer to this may depend on the exact nature of the required standards which are yet to be explored in detail.

4. In your view, what are the relative advantages and disadvantages of each alternative outcome for a ‘no blame’ situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

- 4.1. Focus on consumer protection. The obvious advantage here is that the victim receives reimbursement. This aligns with them having exercised the requisite level of care. The obvious disadvantage, as noted in paragraph 6.10 of the Consultation, is that it could weaken the incentives on PSPs as they are in effect penalised, despite having also met the required standards. This approach could potentially act as a disincentive to investment and innovation in fighting financial crime for some PSPs.
- 4.2. This outcome would also represent a general shift of responsibility away from consumer care and towards PSPs, which we do not believe is the intention of the model. This is because individual PSPs would be responsible for reimbursement even when all parties have acted appropriately. We are not convinced the message this sends to consumers represents the spirit and intention of the work conducted by the PSR. There is also a risk that this could generate an industry of fake scam claims.
- 4.3. We discuss in paragraph 2.5.1 above, the potential impacts which a poorly designed model could have on the transaction values and acceptance of Faster Payments and CHAPS. If a customer were guaranteed reimbursement in a ‘no blame’ scenario, some PSPs may decide to limit receipt of high value transactions to a narrow range of accounts.
- 4.4. We can understand the driver for a penalty for an organisation which consistently fails its customers experiencing APP scams to improve its practices (as suggested in paragraph 6.12 of the Consultation) **but are not supportive of a central fund.** The workability of this, including the sufficiency of the pot to meet the value of applicable reimbursement claims at any one time, the fall-back options if it were insufficient to do so and any resulting disincentive to joining the market or impact on Faster Payments or CHAPS provision and customer ability to make or receive payments need to be carefully considered.
- 4.5. Focus on incentives. The obvious disadvantage here is that the consumer bears the loss. However, we believe that this is a justifiable outcome in view of our comments above and we do not perceive the potential for differing treatment of individual customers (as noted in the last sentence of the second bullet of 6.10 of the Consultation) as a disadvantage, provided the underlying reasons for this are both transparent and clear to the customer.
- 4.6. The main advantage of this approach is that it encourages all parties to act responsibly, with care and to meet their required standards. As we understand it, this is one of the principal objectives of the contingent model. This outcome prevents PSPs from being held liable when they meet the required standards, drives appropriate incentives to fight crime at all stages in the payment lifecycle, avoids unintended consequences and more closely aligns to the liability position set out under the PSRs.
- 4.7. We would, reiterate our point in 2.3 above that one of the FCA’s principles for good regulation is that ‘consumers should take responsibility for their decisions’. To offer blanket reimbursements in the case of APP scams would risk driving adverse outcomes to the payment propositions and customers’ use of these.
- 4.8. Ultimately, our view is whilst there would inevitably be unfortunate situations where the absence of blame leads to no reimbursement (unless the funds can be repatriated or the PSP decides to offer a goodwill gesture), **the ‘focus on incentives’ scenario is most appropriate to encourage responsible behaviour on all parties and strikes the most appropriate balance between the incentives on PSPs and customers.** We recognise the importance of appropriate communication of the model here, however.
- 4.9. The Joint Fraud Taskforce development of a repatriation scheme aims to improve the repatriation of funds to victims - including in a ‘no blame’ situation. We would support this where funds are recovered.

5. Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons

- 5.1. We discuss this in paragraph 2.5.3 above. To reiterate, the standards proposed in the Consultation document are considerably wider than those initially suggested by FFA UK. Nationwide is active and supportive of the work being led by UK Finance and that borne of the Payments Strategy Forum, and recognises the positive difference these can make throughout the potential scam journey. Nonetheless, **we also think there is a need to link the standards in any contingent reimbursement model as directly as possible to the APP transaction / loss in issue, as well as ensuring that these standards are clear and economically and practically effective.**
- 5.2. Focusing initially on an agreed, legally enabled specific set of standards – encompassing appropriate prevention, response and reimbursement activities - would be strong starting point rather than a very wide set of industry deliverables.
- 5.3. Additionally, some of the solutions proposed as being included in the contingent reimbursement model are at conceptual levels and a long way from final solutions, some need legislative changes and currently the cost, operational impact and effectiveness of these are unknown. This includes the Financial Crime Data and Information Sharing and Transaction Data Analytics solutions. **We believe the industry would need to understand more about these and other solutions (including legal and regulatory compliance, cost and final design of solutions) before being able to commit to incorporate them within a contingent reimbursement model.**

6. If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

- 6.1. We do not consider there is a simple solution to this. The NPSO has a very full change agenda for 2018 and only has two of the potential measures (Confirmation of Payee and Transaction Data Analysis) in its portfolio. Unlike FFA UK within UK Finance, financial crime would not be its traditional focal area of expertise. However, UK Finance also has a very full workload for 2018 and as a trade association may not be perceived as delivering the correct level of impartiality.
- 6.2. We do feel strongly however, that industry and financial crime expertise should combine in development of the contingent reimbursement model.
- 6.3. On balance, **the model could be designed by UK Finance, working in partnership with the NPSO and possibly implemented by the NPSO within a governance structure that enables integrity of operation as well as capacity and capability.** For the reasons listed in our responses to Questions, 2, 7 and 13, both should be given additional time in which to do this.
- 6.4. Whichever organisation designs and implements any contingent reimbursement model, it will need to have the capacity, funding and expertise to do so - including working through the considerations in our response to Question 2 and the barriers listed in our response to Question 7.

7. In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

- 7.1. We discussed in our response to Question 2 some considerations in establishing a contingent payment model – we would repeat these in this answer. We would also highlight the following barriers to adoption of the model as proposed:
- 7.2. Capacity & Resourcing: While it has already been mentioned, albeit briefly, it is worth emphasising how saturated most PSPs' payments change agenda is likely to be. There have been a variety of significant regulatory developments, including (but not limited to) the revised Payment Services Directive (PSD2),

Open Banking and Wire Transfer Regulations 2, which have been or will be delivered within the next six months. Some of these, Open Banking for example, will include significant day-2 deliverables for PSPs to implement. We urge the PSR to remain cognisant of these significant pieces of change when considering their timelines for implementation and agree that a phased approach is very likely to be necessary given the status of some of the solutions and PSPs' transformation agenda over the next two years.

- 7.3. Alignment: This work and its timelines must be aligned with wider financial crime and APP initiatives to maximise effectiveness and investment. To not do so risks confusion and suboptimal use of scarce resources.
 - 7.4. Need for regulatory change to deliver some of these solutions as outlined above.
 - 7.5. Need to demonstrate cost benefit evaluation of some of the solutions: Nationwide would encourage the development and sharing of an economic model to understand the cost/benefit analysis of developing some of the solutions and implementing these into the (as to be defined) standards.
 - 7.6. Cultural / awareness / understanding: Consideration will need to be given to:
 - 7.6.1. Customers' willingness to share additional information, if asked, at the point of instructing a payment, on which a PSP can demonstrate they have taken the requisite level of care.
 - 7.6.2. Customers' awareness of the consequences of their actions in demonstrating that they have taken care.
 - 7.7. Lack of a common understanding / misconceptions on scams and types: To effectively tackle scams there is a need for stakeholders – including government, regulators, media and consumer groups - to develop a common understanding of scams and scam types to enable effective communication and solution development.
 - 7.8. Lack of resolution mechanism: There is no resolution mechanism which can be easily extended towards this work and the equivalent in card schemes is far more granular and vast in scale being housed in the central payment system operator and disbursed across the industry. Therefore, the economics of a contingent reimbursement model need to be assessed for cost effectiveness. Similarly, we also consider that a minimum limit on claims under the model should be considered and, if appropriate, established to ensure resources are appropriately allocated and prioritised. An analogous minimum value limit is applicable to Section 75 claims. For APP claims under the proposed model we think it would be sensible for any value limit to be based upon the transaction value less any funds available for repatriation.
 - 7.9. Practical barriers: These include how will a PSP and payer demonstrate an appropriate level of care at an ATM or telephone self-service?
 - 7.10. Clarity: There is a need to clearly set out the required levels of behaviour for PSPs and customers, in addition to the issues we raised in our response in Question 2. These will need to be thought through for different scam scenarios. Some behaviour may be more appropriate in certain instances than others.
 - 7.11. Appropriate scoping: As discussed in our response to Question 11 below.
 - 7.12. Completeness: It is also worth noting other payments methods can be used to bypass controls such as the Post Office, cash and cheques.
8. **Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?**
- 8.1. Nationwide shared these processes, including those on which Nationwide would assess a customer's vulnerability, with the PSR in November 2016. We believe this information addresses this question but we would be happy to answer any questions you have on the material provided.

- 8.2. As a general point, it is worth noting though that there will be scenarios in which a scam takes place but Nationwide did not know of the vulnerability because we weren't told and could not have reasonably known.
- 8.3. We would also refer you to the UK Finance response to this question and we support the cross-industry focus on Victims and Susceptibility referred to by UK Finance.

9. Are there any factors that should be considered when defining the requisite level of care victims should meet?

- 9.1. Key to the success of the contingent reimbursement model would be how a customer can demonstrate they have met the requisite level of care and have acted responsibly. We agree with the principle that the requisite level of care should be high enough to ensure consumers act responsibly and are careful of scams (as outlined at paragraph 2.5.4 above), but should not be disproportionately difficult for them to achieve.
- 9.2. Factors which should be considered when defining the requisite level of case victims should meet include:
 - 9.2.1. Reasonableness: Has the customer taken reasonable care to avoid becoming a scam victim beyond disregarding PSP intervention in the transaction? We recognise that the required standard on customers would need to be both general and adaptable to reflect the wide variety of circumstances and factual scenarios that may arise in APP scam cases. However, the model should also entail certain defined and minimum standards on customers (in the same way it proposes the same for PSPs).
 - 9.2.2. Clarity: Again, standards must be very clear to both the customer and PSPs – both in terms of the communication, awareness and understanding and the evidence the customer has taken the requisite level of care.
 - 9.2.3. Behaviour: That customers can demonstrate certain principles in the execution of their payments. For example, openness and honesty with a PSP.
 - 9.2.4. Channel: And the application and usage of measures such as controls available to these channels in this context e.g. in branch or online.
 - 9.2.5. Customer vulnerability: Where the consumer is identified as vulnerable, the requisite level of care needs to reflect the impact of their vulnerability in their ability to exercise reasonable care in the transaction. Wider regulatory and industry work could inform this consideration.
 - 9.2.6. Frequency with which a customer has been scammed: As part of the assessment of the consumer's level of care, we believe that the PSP should be able to take account of the similarity of the present scam to a past scam the consumer may have been subject to (alongside other relevant factors) to the extent this suggests a failure to exercise reasonable care.
 - 9.2.7. Customer journey: How to ensure Faster Payments and CHAPS payments continue to work well for all users but deter scammers.
- 9.3. Potential standards or principles could be:
 - 9.3.1. That the payer must confirm that they have checked the payee's identity through Confirmation of Payee, when setting up a new payee.
 - 9.3.2. That they are open and honest about the purpose of a payment when asked by the PSP at the point of instruction.
 - 9.3.3. That claims are raised within a reasonable (and fixed) timescale without inordinate delay that could compromise the prospect of repatriation.

- 9.3.4. That they take responsible action when warned, either verbally or otherwise or having received proactive guidance from their PSP on specific scam activity prior to instructing the payment. For example, if when using Confirmation of Payee, they receive an indication that this is not the correct payee they take reasonable action on this information. Similarly, if warned by a PSP that a payment is likely to be a scam (or that a feature of the transaction is indicative of a scam) they take reasonable precautions based on this warning.
- 9.3.5. That a payer acknowledges they have read and accepted advice given to them to avoid scams. Tailored advice could be provided where the transaction purpose is known.
- 9.4. Furthermore, we would reiterate our views that a PSP should not be held liable for a scam they could not have prevented and that payers must retain an appropriate level of incentive to take an appropriate level of care.
- 10. Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.**
- 10.1. **For the contingent reimbursement model to achieve the desired level protection for consumers, we believe that all PSPs, including new PSPs, would need to participate.** As noted in your Consultation, the risk to an individual PSP of becoming more susceptible to fraud (and reputational risk that may arise from that) could provide sufficient incentive to join.
- 10.2. For the reasons discussed our response to Questions 2 and 7 above, we believe that more needs to be understood about the measures and their economic impact and their connection to APP scam losses before a decision could be made on mandating this.
- 10.3. It is also unclear, what the implications of TPPs' role in a payment journey would be to a liability model. When a payment is initiated by a third party, an ASPSP will have a less contextual knowledge of the payment than they have today and potentially less customer interaction. What roles and responsibilities would a TPP be expected to meet under the contingent reimbursement model as a PSP? For example, consumer messaging and advice?
- 11. What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider**
- 11.1. **We broadly agree with the proposed scope as discussed in paragraphs 6.39 – 6.49 of the Consultation.**
- 11.2. Although, international payments are important in authorised push payment scams we do recognise that SWIFT transactions would present a challenge given the cross-border settlement and complexity around investigation, recovery, liability etc.
- 11.3. In addition to the specified scope we:
- 11.3.1. Propose claims which relate to merchant disputes, such as non-delivery, be excluded.
- 11.3.2. Reiterate that there should be no reimbursement if funds can be repatriated.
- 11.3.3. Propose that a minimum limit on claim value be explored.

12. In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

- 12.1. We would encourage the recent learnings gained in setting up customer protection, liabilities and disputes resolution processes be taken from the establishment of the Image Clearing System into this piece of work.
- 12.2. Similarly, learnings from the Visa, MasterCard and Bacs dispute resolution mechanisms would be valuable.
- 12.3. **An independent arbiter could be established (or an existing one asked to sit) to consider individual cases and circumstances.** However, the costs for such an arbitration scheme relative to its benefits would need to be carefully considered. The principles to be applied by the arbitrator would, we suggest also need to be carefully defined (and, in our view, limited to applying the evidence available in a particular APP case to the principles prescribed by the reimbursement model, unlike the wider ‘fair and reasonable’ remit granted to FOS). Likewise, the interrelationship between the arbitration scheme and the FOS complaints scheme would need to be considered – a simple route of escalation from the arbitration scheme to FOS, and the potential scope for overturn, would risk creating both duplication and consumer confusion as to the role of the arbitrator. Similarly, it would be preferable from the perspective of certainty for the arbitrator’s rulings to have legal and/or binding effect to minimise the scope for litigation following that ruling.
- 12.4. **The NPSO could play a role in developing the dispute resolution mechanism and overseeing this as part of the processes for the centralised clearing and settlement layer in the New Payments Architecture push payment only model.** However, as we said in our response above a reasonable timeframe should be put in place for this to be aligned to the work of the Joint Fraud Task Force.

13. Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

- 13.1. **Considering the complexities and suggestions outlined above, we do not agree that a contingent reimbursement model should be introduced by September 2018.** Again, we would suggest the definition, by industry, of an agreed specific set of requirements which have no barriers to implementation, and have proven economic and scam prevention business cases. The scale of change and appropriate implementation date of a contingent reimbursement model should be determined as part of this work.
- 13.2. Our other reasons for proposing a longer introduction period are:
 - 13.2.1. Many of the industry actions described in Section 4 of the Consultation will not be in place by September 2018. Some are still conceptual and a long way from a working solution. We believe this model should be aligned to wider APP developments and could only be introduced as measures which would address specific detriments become available.
 - 13.2.2. Legislative change is necessary to effect some of the solutions.
 - 13.2.3. The agenda for change of PSP and potential implementation bodies is full.
 - 13.2.4. The timing, perhaps, aligns with Phase 1 of the Best Practice Standards but the requirements in these are all on the side of the PSPs and the definition of the customer’s requirement have yet to take place.
 - 13.2.5. The 9-month timetable for change and consumer education is too short in our view.
 - 13.2.6. The reasons mentioned in our responses to Questions 2 and 7.
- 13.3. We would encourage that the industry begins work on the contingent reimbursement model.

14. Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain

- 14.1. As the payments landscape continues to evolve through developments such as Open Banking, the measures necessary to tackle APP scams will also change. **This will be an ongoing process and we would suggest that any contingent reimbursement model be developed using a phased approach.**
- 14.2. As discussed in the Consultation, tackling financial crime requires a multi-faceted and layered approach. Where interlinked measures prevent a scam, use of a co-ordinated, phased approach could enable consideration of which detriments would be prevented by which solution or group of solutions to enable a fair approach to be considered in the transfer of any liability.
- 14.3. Some of the industry actions described in Question 5 and Section 4 of the Consultation will not be in place by September 2018 and their effectiveness is interlinked. Asking payers or PSPs to assume liability for fraud types in advance of relevant preventative measures would seem against the spirit of the model.
- 14.4. Again, we would encourage the development of a fair and equitable, clear, practically and economically effective set of standards to help victims of APP scams.

**AUTHORISED PUSH PAYMENT SCAMS REPORT AND CONSULTATION
PINSENT MASONS LLP RESPONSE**

We set out below our views on a number of the consultation questions. We have not responded to all of the questions and in doing so, have liaised with the Payment Systems Regulator ("PSR") who have confirmed that this focused approach is acceptable.

We are also planning to carry out a survey of our clients on their experience of APP scams and, when available, will share our findings with the PSR as appropriate.

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way Payment System Providers ("PSPs") respond to reported Authorised Push Payment ("APP") scams? Please provide reasons.

We set out our comments below on some specific Best Practice Standards ("BPS") and the potential they have to improve the way PSPs respond to reported APP scams:

(1) Banks will have 24/7 dedicated staff trained in scam management to deal with and process APP scam complaints

Introducing 24/7 dedicated staff trained in scam management to banks will be of benefit to consumers and smaller businesses who fall victim to APP scams but have limited resources to take independent action to recover monies lost. According to statistics collected by UK Finance during the period January to June 2017, consumers make up the vast majority of the victims of successful APP scams (88%) and, although the average loss incurred by a business is more substantial (£21,477, compared to £3,027 for consumers)¹, a c.£3,000 loss to an individual is likely to be of great significance to that individual. A c.£20,000 loss may also be very significant to a small business.

Pinsent Masons' Civil Fraud and Asset Recovery Team has advised clients who have fallen victim to APP scams and other cybercrimes. Typically the clients seeking our advice in this field are larger businesses, for whom timely recovery of the monies lost is a priority. Para 3.28 of the *Which? push payments super-complaint: PSR response* report, states that its estimates of APP scams are in the region of 47,000 cases of authorised fraud reported to police in 2015. In our experience, before our clients consult with us they will have either reported the crime to Action Fraud (the UK's national reporting centre for fraud and cybercrime) – but often have heard nothing further in response other than an email acknowledging the client's report - or to the police, who similarly fail to provide information to the victim as to what action (if any) they are taking or when they will determine if they are going to take any action. In both these scenarios, where agencies / law enforcement fail to

¹ <https://www.ukfinance.org.uk/authorised-transfer-scams-data-h12017/>

adequately engage with the victim, it is not because of lack of skills, drive or ability on behalf of those establishments – it is a matter of being overwhelmed with the number of reports and having inadequate resources to properly action them. Unfortunately the current trajectory suggests that law enforcement will never be able to cope with the number of reports they receive. This is also not aided by the continual government cut backs in funding.

The number of APP scams in the period January to June 2017 alone is said to be 19,370 cases², and we note the recently-expressed concerns of Which?³ that "open banking" may lead to an increase in the number of APP scams. In light of this, we consider that, if BPS (1) was extended to apply to larger businesses / higher value APP scams, victims may encounter the same issues they face with Action Fraud and the police, owing to similar restraints arising from the sheer number of cases these organisations have to deal with simultaneously. For the reasons set out above, it is likely that larger businesses would still turn to their civil fraud lawyers, rather than utilise the services of bank staff trained in scam management (or Action Fraud or the police), particularly if the PSR informed large businesses of the civil recovery route (possibly under an obligation on the part of the PSR to do so). This would also be the case where larger businesses have a legal panel or individually appointed law firm dedicated to extending a full-service offering to the business, and responding to an APP scam falls within that service.

It is worth noting that there is no obligation to report a crime to the police unless that fraud has arisen in a regulated sector (i.e. financial services). The police actively encourage reporting crimes and according to their website, the failure to report a crime will result in no investigation and very little chance that the offender will be caught or brought to justice. However with prosecution being a slow and cumbersome process which fails to prioritise the recovery of losses for victims of fraud, it is easy to see why many victims choose not to go to the police in the first instance.

(2) The beneficiary bank will conduct an investigation, recover funds where possible and appropriate, and return funds to the victim if it can

The status quo (whether that be reporting a scam to Action Fraud or to the police) fails adequately to place recovery of the victim's assets at its core. The UK Finance statistics show that victims were only reimbursed less than a quarter of losses in the period of January to June 2017⁴. It is therefore imperative that the victim is informed of the option of civil recovery at the beginning of an investigation involving an APP scam. With civil recovery, the victim is able to take control of the investigation and focus on asset recovery through disclosure orders, search and seizure orders and freezing orders. Such orders require no input from the police or other government agencies and can be obtained within hours (if necessary) of the fraud happening.

² As above.

³ In its January 2018 report "Open banking: sharing your financial data"

⁴ PSR Report and Consultation, Authorised Push Payment Scams, para. 3.9

There is a great deal of control available to a victim bringing a civil claim and generally, the victim will retain complete control over the proceedings and can make decisions over whether / how to continue the proceedings. Yet, despite the flexibility afforded to the victim through civil recovery, a key obstacle in place is the victim's ability to access the information linked to the fraud in the first place (in the context of APP scams, likely to be the account details of the fraudster and the ability to follow the monies through other bank accounts). Our experience is that this information is currently very difficult to obtain and any delay in obtaining the information increases the chances of the monies being dissipated or put further out of reach. To solve this problem we believe that greater information sharing should be encouraged in the context of APP scams, and the information pertaining to the fraud (subject to data sharing constraints that may need to be addressed) should be shared with the victim to assist the victim to bring a civil claim. Information sharing between banks and victims can be agreed on specific individual transactions or possibly in the contractual terms agreed between all consumers (to capture fraudsters who set up bank accounts) and their bank during the account opening process.

As set out above, law enforcement agencies are over-stretched and crimes are not being investigated. In light of this the PSR should consider creating a "central database" for APP scams where victims have the option of consenting to have the details of their fraud published in the database⁵. This could follow the model of the National Fraud Database, which is used to share data on thousands of confirmed fraud cases, and is reported to prevent over £1 billion in fraud losses every year⁶.

Further, financial institutions and larger businesses need to be educated on the benefits of pursuing civil recovery and should be provided with compulsory training (by civil recovery lawyers) on the use of civil recovery methods and the benefits of considering these at the beginning of an investigation to maximise recovery of monies. It is worth noting that the ability of a financial institution to pursue civil recovery will depend on whether it has "standing" - i.e. the right to bring the action. Without more, this may be problematic in relation to APP scams where the victim has suffered the loss. A solution might be to provide for the financial institution to be subrogated immediately to the rights of the victim, in order that it may pursue that victim's rights of recovery against third parties.

(7) The banks will also collaborate more widely with each other on information to support investigations and protect victims

In our experience, information-sharing and resource collaboration is often effective and should be encouraged. As it stands, there is insufficient data-sharing in the financial services sector. APP scams are relatively new and wider collaboration in the industry will ensure that PSPs learn from each others' experiences. Constraints on data sharing should be addressed contractually in account

⁵ It should be made clear that creating a central database would not mean identifying the details of the victims themselves. The information provided would be limited to the details of the fraud (with victims' details anonymised).

⁶ <https://www.cifas.org.uk/services/national-fraud-database>

opening and sign-off procedures to allow information sharing. As set out above, we believe that a "central database" for APP scams (with victims' details anonymised) should be created to increase intelligence sharing with financial institutions. The information provided to the PSR should be collated into a report by the PSR and published every six months for ease of review and analysis by the sector.

As well as data being shared between banks and with regulators, victims themselves (whether consumers or businesses) should have access to data about frauds or suspected frauds, so that they can (if desired) take swift and effective civil action to locate and recover their assets.

Furthermore, the Government should work on ways to foster broader information sharing regarding APP scams, perhaps in an aggregated anonymised way. For example, under the GDPR and NIS Directive, information about incidents must be notified to the Information Commissioner and designated competent authorities respectively, but there is no legal requirement for any authorities to share such information more broadly. This would help educate and motivate others to protect themselves better against APP scam incidents.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

The clear intention of the PSR report is that banks should take improved steps to reduce the incidence of APP scams and should shoulder more of the loss when such scams occur.

Broadly speaking, we consider that the proposal for a contingent reimbursement model represents one approach to addressing the problem of APP scams and their impact on victims. However, we do not consider that banks should necessarily shoulder all of the financial burden, once eligibility criteria have been satisfied, in the way a contingent reimbursement model might envisage. Consideration should be given to imposing a limit on the amount which might be recovered by way of the model, for example 75% of the transaction amount and/or an overall financial cap on recovery.

This could be combined with other methods by which customers (whether consumers or businesses) might obtain protection over and above that offered by the contingent reimbursement model. For example, customers could be given the option, at the point of authorising a transfer of funds, of purchasing enhanced protection for that transfer, such as in the form of insurance cover. This would have the additional benefit that insurers and reinsurers would impose their own criteria for recovery, thereby further incentivising prudent behaviour. An example of a model whereby additional protection for certain transactions may be purchased by consumers is that found in the postal system. Royal Mail uses a tiered system of compensation (available subject to certain criteria and exclusions) based on the type of postage chosen and paid for. For example, for "retail" customers (broadly speaking, those not using accounts, which are subject to separate terms), if an item sent using standard first or

second class post is lost, compensation is limited to the lower of the market value of the item or £20; if the Royal Mail Signed For service is used, this £20 limit is increased to £50; and if the Royal Mail Special Delivery Guaranteed by 9am/1pm service is chosen (which Royal Mail makes clear is the appropriate method for valuables) compensation for the lost item is based on the customer's actual loss (the market value of the item), subject to a cap of the level of compensation chosen and paid for by the customer (the standard compensation limit is £750 but there is an option to increase this to up to £2,500), with tiered consequential loss cover of up to £10,000 also available for purchase for an additional sum under this service.

Further, sight should not be lost of the importance of recovery of the lost assets. As part of this, it should be kept in mind that larger (and arguably more sophisticated) businesses can be the victim of APP scams (which may be worth substantial sums) too. Pinsent Masons' Civil Fraud and Asset Recovery Team is at the forefront of current themes in the fraud legal market and we have advised clients in relation to APP scams such as the hacking of email addresses to send fraudulent invoices. Our clients' priorities in these situations are frequently (a) to retrieve the monies lost, and (b) to investigate how the loss has occurred and improve risk management processes in response in order to prevent further losses occurring. These are likely to remain important objectives for victims, particularly since it is unlikely that the contingent reimbursement model will provide a complete answer for them, for example due to its voluntary nature (and there being no indication of what uptake from the sector will be) and to the extent that its scope and the available reimbursement levels are limited.

In our view, victims could be greatly assisted in taking such investigative and recovery action swiftly and effectively by two enhancements. Firstly, as noted above, we consider that there should be greater, faster sharing of information about frauds with victims, to avoid the need for (for example) court orders to be obtained to ascertain from banks the location of funds (which take time to obtain). The law needs to keep pace better with the ever-increasing speed with which monies can be transferred as a result of new systems and technologies. Safeguards would of course have to be put in place around the use of the data thereby obtained; for example, recipients of data would have to be under an obligation not to use it for any other purpose than investigating the fraud. Secondly, although scams are reported to police it is unlikely, given the pressures on police time, that substantial resources will be devoted to the criminal investigation of the matter and recovering funds. Businesses should therefore be advised accordingly at an early stage so that they may consider alternative options. This concern about the strained resources of law enforcement is likely to become even more acute given that APP scams are the second biggest type of payment fraud now reported by UK Finance⁷.

Therefore, while the contingent reimbursement model represents one approach to addressing the evidence that the status quo is failing consumers and small businesses who fall victim to APP scams,

⁷ PSR Report and Consultation, Authorised Push Payment Scams, para. 1.2

the PSR also needs to consider other approaches, and what is the correct approach to higher value and more complex APP scams. In addition to the points made above, it is our view that compulsory training on the use of civil recovery methods and the benefits of considering these at the beginning of an investigation to maximise recovery of monies must be provided to the PSR and PSPs. Pinsent Masons' Civil Fraud and Asset Recovery Team would be willing to (confidentially) discuss with the PSR its experience of dealing with APP scams, the recovery of assets and the enhanced compensation/insurance suggestion.

Further comments on the proposed contingent reimbursement model

If a contingent reimbursement model were to be introduced, a number of practical challenges arising from the proposed model would need to be considered.

Firstly, the variety of organisations involved in the contingent reimbursement model process may cause difficulties for efficient recovery by victims. According to para. 6.27, the contingent reimbursement model will be administered by either UK Finance, the New Payment System Operator or the Joint Fraud Taskforce with the PSR proposing to work with the industry organisation chosen to establish a working group for the design and implementation of the model. The selected organisation chosen by the PSR will be tasked with investigating the facts behind the APP scam, apportioning blame between the victim and the PSP, defining whether the victim or the PSP has met the requisite standard of care and then ultimately deciding whether the victim is eligible for compensation. Taking into account the number of APP scams in the period of January to June 2017 alone (19,370 cases)⁸ and the potential for this to increase, we believe that investigating and compiling the necessary information for each APP scam will be a significant and time-consuming exercise to undertake, resulting in a delay and repatriation or compensation for the victim (if any is awarded) occurring significantly after the scam has taken place. To ensure timely investigation of the facts, we suggest that the chosen industry organisation and all other relevant departments should be required to report to a single designated department, ensuring a central point for the collation of data on all APP scam related matters. Further, we suggest that specific timeframes and concise deadlines should be imposed on the appropriate agency to ensure that reimbursement is dealt with as soon as possible after the APP scams have occurred. It goes without saying that the organisation involved in administering the contingent reimbursement model should be provided with mandatory training in this field. Further, once an organisation has been appointed, consideration should also be given to appointing a specific department within the selected organisation to work solely on APP scam related matters.

Secondly, the PSR Report and Consultation does not specify what amount will be awarded to a victim of an APP scam. As noted above, in our view consideration should be given to identifying a cap or

⁸ As above.

limit on recovery for the victim (for example, 75% of the transaction amount), especially if an enhanced compensation/insurance type system was in place as set out in question 2 above.

Further, the contingent reimbursement model requires the victim to reach a requisite standard of care before reimbursement is awarded and we set out at question 8 below our proposals on the requisite standard. Careful consideration needs to be given in this regard to ensure that victims have enough of an incentive to engage with the contingent reimbursement model. As set out above, Pinsent Masons' Civil Fraud and Asset Recovery Team has advised companies who have fallen victim to APP scams and other cybercrime frauds. More often than not, our clients are deterred from reporting the crime to the police, which detracts from the urgency of getting the money back fast, as their focus is on pursuing the perpetrator of the fraud. If too high a standard is set, businesses may feel they have little incentive to seek reimbursement through the contingent reimbursement model (in that they might invest considerable time providing the relevant documents / liaising with the relevant organisation responsible for administering the model, in return for little or no reimbursement if the hurdle is set too high). Instead, they may choose to focus all their efforts on civil recovery methods which provide the victim with greater control of the fraud in general: victims can develop an understanding of what happened, can implement risk management measures for the future, and hopefully recover the monies. In contrast, civil recovery may be less appealing for consumers, who realistically have no other option but to engage with the reimbursement model to pursue for recovery of their funds (given the associated costs of instructing lawyers and Court fees).

Addressing these concerns should catalyse a more efficient and successful approach to the use and enforcement of the contingent reimbursement model.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

Please see our comments in response to Question 2 above, and the further points made below.

We agree in principle that the level of care should be high enough that consumers have an incentive to be careful of scams, but should not be unreasonable for them to meet. If an unattainable standard is set, victims may be deterred from engaging with the contingent reimbursement model, particularly given the investment of time and resources in providing the relevant information to the organisation administering the contingent reimbursement model which will be required of victims.

The organisation responsible for producing the standards which PSPs are expected to meet must document and provide guidance on these standards in detail. In any event, we consider that PSPs should be provided with mandatory training in this field and that in general more funding, training and enhanced resourcing on APP scams is necessary - these frauds are relatively new, with many unaware that they even exist.

It goes without saying that in both scenarios where it is decided that either the victim or the PSP has not met the requisite standard of care, the relevant organisation involved with administering the contingent reimbursement model should provide full reasoning as to why a certain decision was made.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

As a commercial law firm, we do not reimburse victims of APP scams. However, as we set out above, it should be noted that APP scams also affect businesses and not just consumers: we have acted for corporate clients who have been victims of APP scams such as invoice hijacking.

We agree that reimbursement under a contingent reimbursement model should not depend on recovery (para. 6.13). In our experience, if victims of fraud do not seek immediate advice from technical and legal experts and/or have a robust action plan in place in advance of incidents occurring, it can be very difficult to recover payments. Also the resulting liabilities can be expensive for a business to resolve. Accordingly, it cannot be expected that an individual has the resources to support the recovery of stolen monies and so recovery should not be a dependent factor when deciding upon reimbursement. As noted above, a victim (particularly business victims) may, of course, also choose to pursue civil recovery instead / in addition.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Focus on the actions of the victim

The definition of the requisite level of care that the victim should meet should focus on the actions of the victim, as opposed to the actions of the other parties involved.

The two examples given at para. 6.37 of factors that could be included in the definition of eligibility are as follows:

- *Whether the victim's PSP had warned the victim about the transaction, for example through a phone call.*
- *Whether Confirmation of Payee (once implemented) had informed the victim that the recipient of funds did not match the name the victim had entered...*

We consider that the wording of these examples should be amended, when they are put into final form, to focus more clearly on the actions or omissions of the victim, rather than those of other parties. Accordingly, the two examples above would become:

- *The victim failed to heed a warning [from the PSP regarding the transaction/the Confirmation of Payee] and proceeded with the payment.*

This wording places the emphasis on the victim's actions when considering whether they have met the requisite level of care.

Indeed, as a more general point, PSPs should consider the use of risk warnings to customers about the risks inherent in push payments, perhaps requiring customers to tick a box to indicate that they understand those risks before proceeding (which may in turn prompt the purchase of any 'enhanced protection' service along the lines we envisage above at question 2). We are aware that some banks are already taking measures aimed at reducing instances of fraud such as regularly educating customers, particularly vulnerable ones, on the risks.

Subjective vs objective approach

A primary consideration is whether the test for the requisite level of care is subjective or objective. That is to say, is a common requisite level of care expected of all victims, or are victims' particular circumstances to be taken into account?

An objective approach would give more incentive for victims to take precautions and arguably be simpler to apply when making reimbursement decisions but would potentially leave more vulnerable members of the public open to scams without a chance of being reimbursed.

However, given the sheer variety of payment scams, it would be difficult to apply a common standard of care across all payment scams as some are much more sophisticated than others. On that basis, a fair test should balance subjective and objective elements. For example:

"On the balance of probabilities, in all the circumstances did the victim take reasonable care when making the payment?"

Relevant Factors

The following are relevant factors to take into account when considering whether the victim met the requisite (e.g. a reasonable) level of care:

- Did the victim take heed of warnings from the PSP, Confirmation of Payee or other third parties which stated that the payment was risky?
- Did the victim ignore any common indications that a fraud might occur, for example:
 - payment requests to individuals outside of the UK;
 - payment requests in unsolicited spam emails / text messages from senders with no prior contact with the victim;
 - the fraudster, when using a particular platform, suggests operating outside the standard practice of that platform (for example, requesting payment for an AirBnB booking or an eBay transaction by bank transfer and not via the website or Paypal respectively);
 - desperate or urgent requests for money from unknown persons;
 - emails from “HMRC” or other public organisations requesting payments that the victim was not expecting / failing to check own records of such payments;
- Did the victim take any steps to verify the payee’s identity and/or account details (for example, in invoicing fraud cases we have dealt with, a phone call to verify the payment details (or change in payment details) would have prevented the fraud).

The victim's history of previous scams and consideration of whether it has been a target of a number of similar scams may also be a relevant factor to assess whether the victim has met the requisite level of care.

In summary, the three key factors should be: did the victim (i) heed warnings (ii) ignore clear signs of fraud, and/or (iii) take steps to verify the payee?

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12 January 2018

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RBS response to the PSR Report and Consultation CP 17/2 - Authorised Push Payment (APP) Scams

January 2018

Introduction

We are pleased that the PSR has acknowledged the progress made by the industry in developing best practice standards for APP scams, gathering and reporting data on the scale of the issue and exploring the barriers to sharing data. We recognise that this represents the beginning of what will be continuing work not only by banks, but by a wide range of stakeholders to ensure effective consumer education, scam prevention and funds recovery.

RBS is committed to the development of better protection for our customers and other banks' customers from financial crime, returning funds to customers who are the victims of scams, where we can do so legally and limiting the value of funds which end up as criminal proceeds.

The bank actively supports FFA UK / UK Finance and has played a lead role in designing the industry's Best Practice Standards for handling APP scams from both an operational and legal perspective. We have also been actively involved in the assessment and remedies to data sharing barriers and fully supported FFA UK with data reporting requirements. We are also committed to supporting future industry initiatives, including Confirmation of Payee, Payments Transaction Data Analytics and Funds Repatriation.

RBS is heavily engaged in and supportive of the efforts by the Joint Fraud Taskforce and UK Finance to lobby for legal change to introduce measures which would improve data sharing where appropriate and allow recovered funds to be returned to victims more readily.

We recognise that more needs to be done, not just by banks but collectively by many parties directly involved including law enforcement, retailers, Internet Service Providers (ISPs) etc. Organised crime gangs are increasingly sophisticated and operate across international boundaries and law enforcement abilities to disrupt, deter and detain their activities are limited. Developments such as the New Economic Crime Agency are welcomed.

RBS invests £15-20M per annum in fraud prevention and detection solutions and delivers extensive multi channel education and awareness campaigns to our customers.

RBS welcomes the opportunity to be fully involved and comment on the PSR's Consultation Paper specifically the proposal for a Contingent Reimbursement model.

- 1) In your view, will the best practice standards (BPS) developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Prior to the implementation of the BPS, banks' did not adhere to a common set of standards, resulting in customers experiencing inconsistent responses and advice in relation to their enquiries. The BPS will be most effective in improving victims' experience after being scammed or losing money, by consistent and wide ranging adoption of these common standards. They will ensure consistency of response, offering the customer one point of contact (their bank) handling their claim from end to end. The BPS also set clear standards of investigation required into victims' claims and the activities of beneficiary accounts possibly being operated as money mule accounts. Indicative response times will be finalised and monitored against Service Level Agreements by UK Finance and participant banks. The standards require a consistent gathering of information, where both victim and beneficiary banks will document a clear audit trail of decisions made. These are all significant improvements to existing practices.

Improved inter-bank communication will allow banks to identify and freeze funds quicker, preventing funds reaching the criminals. Banks will also be able to assess more readily whether there are funds available for repatriation, where there are legal grounds to do so.

The BPS focuses on the management of APP scam claims, following the identification of victims; and will support the provision of a more comprehensive intelligence picture to law enforcement, through our statutory obligations to identify and report financial crime.

The effectiveness of the BPS is however currently constrained by the applicable legal framework. Changes to law, which would allow banks, law enforcement and other agencies such as Trading Standards, to more readily share information on victims and suspected fraudsters as well as supporting banks repatriate funds to victims, would in our opinion make the BPS more effective.

The BPS are currently designed to deal with scam cases where funds move to the 'first generation' beneficiary only. It is often the case that the funds have been transferred from the first generation beneficiary account, to the second, third etc., before the victim has reported the scam to their bank. This rapid onward movement of money hampers recovery efforts by banks.

The industry Money Mule Data Analytics solution that is being progressed with VocaLink and 10 other participant banks, will give industry an insight into where the funds are transferred to and potentially increase the chances of freezing funds and returning funds to victims within the current legal framework. As the PSR will appreciate, the further the funds have been moved away from the victim, the harder it becomes to establish the rightful owner of the funds. There is also the increased risk that funds will be withdrawn in cash, used to buy high value goods, loaded to pre-paid cards etc. A more robust legal framework is therefore required to enable banks to determine ownership of funds in support of repatriation to victims.

Subject to the success of the VocaLink Project, banks that have not signed up to participate in the project may be targeted by money mules. We would therefore encourage wide participation across the industry.

RBS has played a key role in the development of the BPS, both from an operational and legal perspective and is fully committed to the implementation timescale, i.e. introducing the notification process and standards by 1st January 2018 and providing a 24/7 response by 30th September 2018.

2) Should a contingent reimbursement model be introduced? Please provide reasons.

RBS accepts that the industry needs to do more to optimise the return of funds to victims of APP scams but we do not consider that the outlined contingent reimbursement model described in the Consultation Paper is the right model, nor that it should be introduced at this time for the reasons set out below and elsewhere in our response. We believe that rather than seek to introduce a form of reimbursement model at present, more work is needed in the following areas.

(1) Improve prevention and detection of APP scams at industry and bank level;

- (2) Maximise opportunities and mechanisms to recover funds for victims within the current legislative and regulatory framework;
- (3) Establish a supportive legal framework to allow repatriation of funds to victims;
- (4) Embedding of the BPS by the industry; and
- (5) Continued education of customers on how to protect themselves.

All of these are significant strands of work which will contribute to better prevention and recovery and will lead to clearer standards to which Banks and Payment Service Providers (PSPs) can adhere. In addition, it will raise customer awareness of how they are protected and what they need to do to self-protect.

Diverting industry effort and attention from these important work streams to develop a Contingent Reimbursement Model (CRM) could be counter-productive at this stage in the APP scam prevention lifecycle, and could lead to a less effective approach to recovery and return of funds.

The CRM could have the potential, unless very carefully defined, to reduce some consumers' attitude towards their own responsibilities to take care. We continue to see customers as the "first line of defence" as it is they that take the decision to make the payment on information provided to them, which a bank does not have sight of.

It is quite possible that the CRM as described could have the opposite desired effect and result in an increase in criminals targeting consumers and as a consequence in victims. It is vital that nothing is done in this consultation phase which causes consumers to perceive that they have a greater level of recompense from APP scams.

We are committed to the direction being set by the Joint Fraud Task Force (JFT) (see Note¹) and we fully support the JFT's holistic approach to protecting consumers and tackling crime. We would be concerned if momentum is lost by diverting attention from these initiatives.

We are also committed to initiatives which will increase the return of money to APP scam victims and believe that a strategic roadmap is necessary that takes into account initiatives already in train and prioritises them for delivery and outcomes accordingly.

In the event that a more standard and clearly defined CRM is agreed for adoption which does not conflict with banks' legal and regulatory obligations, we would make the following additional points;

- The design of any reimbursement model should be industry led and recognise the industry's ability and capacity to deliver it. It must take into account the various positive initiatives already in development, as highlighted in the PSR's report, and recognise and, where necessary address, the legal barriers to funds repatriation and data sharing
- Before agreeing that such a model is introduced, we believe there needs to be careful consideration to ensure that any model is capable of progressive introduction and

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652547/JFT_Delivery_Framework.pdf

improvement and recognises that, as was highlighted in the PSR's initial response to the Which? Super Complaint report, that there is no 'silver bullet'.

- As previously stated industry has made good progress in the past year in customer education and awareness, developing and introducing the new BPS and reporting of MI. Other developments, such as those proposed by the Payments Strategy Forum i.e. confirmation of payee (CoP) and transaction data analytics will not be capable of supporting such a model until they are implemented. The complexities involved in these and other initiatives at individual bank and at integrated industry level should not be underestimated
- The proposed timescale for industry introduction of a 'light' reimbursement model by end September 2018, risks not being considered appropriate or proportionate. We would counsel that industry be given time to consider, in conjunction with the PSR as observer, both the 'what and when' of any new reimbursement model. The PSR may wish to contribute to key criteria that such a model should incorporate after it has considered the principles.
- The development of PSR's proposal could divert resource from essential collective prevention and education activity. Based on implementation of other strategic initiatives, we are of the view that the development of the CRM will take considerable time, effort and cost to develop and subsequently operate and monitor.
- It is essential that any programme to develop a model is considered and well planned. It must be right first time to promote confidence with consumers.

To conclude, we consider that industry's approach to reimbursement should form part of the JFT and UK Finance programmes of work and be taken forward at an appropriate stage as part of a set of holistic activity across a range of initiatives. We would anticipate that the PSR would want to engage with both the JFT and UK Finance to ensure agreement on an appropriate scheduling and potentially timing of developments.

3) Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

We offer the following comments in respect of the high level principles of the contingent reimbursement model as described and the incentives for consumers and PSPs to prevent APP scams.

We agree that all of the victim's bank, the beneficiary's bank and the victims themselves need to play a part in APP scam prevention and recovery.

Our leadership and engagement in industry groups, our support for initiatives such as the BPS and the launch of the British Standards Institute Public Access Statement - Protecting Customers from financial harm as a result of Fraud or Financial Crime – Code of Practice, show clearly our motivation and commitment to protecting our customers from falling victim to scams and doing all we can to recover funds on their behalf. We also fully recognise the need to

proactively identify, report, exit relationships and close accounts which may have been used to receive the proceeds of scams.

We believe continued activity is required to ensure consumers understand why they need to take care, and recognise the actions they can personally take to avoid being scammed. This is essential for any fair reimbursement model to be effective.

Principles and criteria for any reimbursement model will require very careful consideration to minimise any moral hazard risk². In developing principles, standards and criteria which are reasonable and workable, we consider it would be helpful for the industry to work together with the FOS or another independent body to agree what these should be.

We also consider that the principles and standards should have broader consideration and take into account the role of law enforcement and other sectors' responsibilities in protecting consumers from APP scams, e.g. Internet Service Providers (ISPs), Telcos and third parties who hold customers' financial information.

4) In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

Before addressing PSR's question, we put forward that there is a strong argument that there is no such thing as a "no blame" scenario, i.e. in very straightforward terms all APP scam arise because a consumer is duped into authorising and instructing their bank to make a payment. This view is reflected in our wider comments on the proposed model. We recognise however that scams can be sophisticated and convincing and that customer vulnerability can be a significant and complex contributing factor, which we discuss in our response to Q8.

We offer the following comments on the relative advantages and disadvantages of the two potential outcomes i.e. Focus on Consumer Protection and Focus on Incentives.

We consider that an advantage of the "Consumer Protection" option is the potential increase in consumer confidence of the likelihood of a refund in a scam scenario. However, offsetting this in our view is that, if consumers are to meet certain 'standards', how many will actually benefit from the protection. Without confidence in an outcome, the reimbursement model would potentially be seen as failing. Additionally, to achieve a significant reduction in scams, PSPs and customers need to work together – awareness of this need is growing through industry and PSP communications. We do not believe that the PSR's proposed model "consumer protection" option is the best way of achieving or incentivising this, unless perhaps there is some contribution made to a protection fund by a group of stakeholders broader than just payment providers. Any reimbursement model should balance the roles and responsibilities of both the PSP and customer, ensuring they both play a part in helping to prevent APP scams.

Not specifically an advantage or disadvantage, but a further area for consideration, will be to consider the specific needs/impacts for small business customers, their business controls and the role of their employees. Relevant trade associations may be able to assist.

² <https://economictimes.indiatimes.com/definition/moral-hazard>

In addition, there is currently no clear definition or parameters for what constitutes a reasonable level of care in an APP scam scenario. The changes coming through the advent of Open Banking will also need to be discussed and considered by the industry, with input from the FOS and with oversight from the PSR, as appropriate. This supports our view that the model as described is not currently the right option to progress, but must be seen as part of the bigger programme of activity.

We believe there are a number of possible disadvantages that might arise if PSPs always have to refund in a “no blame” situation, these include (1) there may be less of an incentive for some PSPs to resource and carefully apply the agreed standards following an APP scam, which could result in poorer customer experiences; (2) less of an incentive for some PSPs to invest in and develop scam/fraud prevention systems (3) PSP’s customers may have less incentive to act with reasonable care and there could be an increase in customers being complicit in APP scams; (4) fraudsters may target smaller and less well-equipped PSPs, which could create unfair liability for a counterparty PSP.

A further potential disadvantage is that any central reserve proposed by the PSR, to fund reimbursement, where losses cannot be recovered, will need to be funded. It is not possible to estimate what the amount required to fund such a model might need to be at this stage, or indeed what is an appropriate way to fund it. PSR’s proposal appears to envisage it as a cost of doing business, perhaps part of a product cost. We do not expect that the industry will want to pass the costs of such a model on to consumers, but this may be necessary if for example it was introduced hastily and before other initiatives had time to be developed. Indeed exploitation of a reimbursement model might see higher overall charges for customers in banking costs, rather as has been seen in the insurance industry for exploitation of e.g. motor/holiday insurance claims.

Our experience of developing the credit payment recovery procedures for authorised misdirected payments showed how complex legal issues are and how careful industry has to be in developing clear, standard procedures which customers can understand and industry operate efficiently. We anticipate that PSR’s proposals could be difficult to shape into agreed industry standards, given the softer aspects of ‘proof’ that would be needed to evidence ‘no blame’ situations.

We agree that an effective arbitration model would be required and this would again need prescriptive and transparent boundaries that an arbitrator could apply and mediate on consistently. Careful consideration would need to be given to what organisation might act as arbitrator, given that this seems a less usual model on which to arbitrate, and best practice reviewed in other sectors in potential similar scenarios. We agree with PSR that for consistency, it should be one organisation that provides arbitration services and ideally one that provides this as part of a competitive service across a range of comparable functions and thus able to support industry’s development of such a model.

- 5) Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards

of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Our view is that currently the BPS are the only obvious standards that could be adopted as “the initial standards” for a Contingent Reimbursement model, but standards would continue to be raised to protect consumers. When new technology is introduced e.g. confirmation of payee, we would expect that could be added as a new standard in due course. For now we support measures underway or planned for development. We acknowledge these initiatives (outlined below) are the appropriate initiatives to better protect consumers, reducing harm caused by APP scams.

- **Consumer Education & Awareness** – will help potential victims spot and avoid scams and prevent financial loss
- **Guidelines for identity verification, authentication and risk assessment** – will provide a consistent approach to verifying customers, meaning it will be harder for criminals to set up accounts to be used for scams
- **Trusted ‘Know Your Customer’ (KYC) data sharing** – should improve efficiency, allowing banks’ to share information and quickly and easily spot scammers to prevent accounts being opened to be used for scams
- **Confirmation of Payee** – to reduce scams where payments are sent to accounts that are not in the name of the intended payee as customers will be able to verify they are paying the person they intended
- **Best Practice Standards (BPS) for responding to APP scam claims; information sharing and financial crime data** – will allow banks’ to work together and respond faster and more effectively to scam claims. Enhanced data sharing will make it harder for scammers to open or take over accounts. The ability to share exit intelligence for confirmed fraud to strengthen industry on-boarding processes and prevent organised criminals going round the banks if exited for financial crime due to law enforcement restraints
- **Transaction data analytics and data sharing**– improves ability to investigate suspected mule accounts and spot potentially fraudulent payments
- **APP scam statistics** – provides more accurate and comprehensive statistics at industry level showing scale of issue and will help combat scams
- **Recovery of victims’ funds** – scam funds will be traced quicker and easier, supporting return of funds to victims where this is legally permitted

The majority of these initiatives focus on preventing APP scams from happening in the first place. This has to be the best strategy to protect customers and to limit funds reaching criminals. There is not one solution to solve the issue, but these measures should have a high impact in prevention of scams. However, significant progress will only be made if Banks, Law enforcement, Telcos and other stakeholders work effectively together and share responsibility with customers.

- 6) If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

If a CRM is developed, our view is that UK Finance should lead on its design and implementation. UK Finance has the expertise and existing frameworks to engage stakeholders across all banks with proven track record and awareness of the broader financial crime agenda. We would however envisage independent contributions to the design, e.g. FOS, Age UK/MIND, and potentially small business trade associations.

Where any activity needs to be adopted as payment scheme rules, NPSO will be required to administer PSP adherence to them, potentially reporting adherence to UK Finance.

7) In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

The PSR indicates that implementation of any model would be linked to other industry / regulatory developments. The PSR is aware that RBS agrees with this from our earlier responses.

Examples might include legal and regulatory issues relating e.g. to data sharing issues, Proceeds of Crime Act, including the lack of legal protection for Banks against breach of mandate claims where any standards require Banks to stop payments or freeze accounts.

We acknowledge the comments outlined in the PSR report about the funds repatriation issue and the timing of implementation of a CRM. We would also argue that is unreasonable for banks to have to reimburse money, when the related funds could be 'frozen' somewhere in the banking system, and not capable of being repatriated because of the lack of legal framework. We consider this reinforces the case for prioritisation of Funds Repatriation, with any CRM introduction aligning with Funds Repatriation developments. We would be concerned if momentum is lost on that engagement by directing attention and resources elsewhere.

We note that the PSR envisages that any CRM could be incremental in its development and role out. This would need to be carefully considered to ensure no confusion for customers and also PSPs. Any model will need to be carefully designed and implemented, which should include a reasonable transitional period of monitoring and adjustment. Resourcing the model is an important issue, particularly given the breadth of the PSP market and the likelihood of disputes arising from the model. As it is possible that costs associated with the adoption of a CRM will be passed onto customers, particularly if the funds repatriation issue is ultimately dealt with separately. This will need to be factored into planning and reinforces how important it is to get this right first time for customers.

8) Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

RBS investigates and assesses APP scams on a case by case basis through our specialist scam teams. If our customer has suffered a loss because of a breakdown in bank process we will refund the customer. If a customer exhibits indicators of vulnerability we will consider the

situation on a case by case basis and as appropriate make a gesture of goodwill reimbursement. We believe this is proportionate action and are pleased that the FOS has in the main supported our actions when our customer has referred to them. We recognise that codifying judgement and outcomes where vulnerability is a factor would be extremely complex hence the “case by case” approach is in our view wholly appropriate.

RBS will endeavour to recover funds on our customer’s behalf and reapply any recoveries to our customers’ accounts. We have also taken direct action to identify accounts which may have been opened or bought / sold to act as “mules” and exited these relationships and closed bank accounts, reporting to authorities as required.

We offer further comments for consideration in respect of vulnerable customers. Vulnerability must be considered, not simply in respect of the scams identified by Which? but in relation to all aspects of service provision.

We define vulnerability over 16 situations, grouped under 3 headings - Accessibility, Cognitive and Life Changing which meet the Vulnerable Consumer definition defined in section 4 of the Equality Act 2010. Our customers in these situations may experience varying degrees of vulnerability and an individual’s vulnerability can change over time. Codifying a ‘set of standards’ that can be applied to a wide range of complex situations will require careful consideration.

Vulnerability is not always easy to identify, as customers (such as those with bipolar disorder) can move in and out of vulnerability. As their bank we can be unaware that someone, who due to personal circumstances, is indeed vulnerable and therefore susceptible to detriment. Often it will not be until after a scam has come to light that it becomes clearer that a customer is considered or could be considered vulnerable. That said, not all consumers who are targeted or who fall victim are vulnerable and criminals focus their efforts on activities which will net them the greatest financial rewards in those that have large credit balances and assets. It is where these efforts and a vulnerable situation align, that greatest harm occurs.

In terms of which groups are more affected by push payment scams we would note that in general age can be a factor but again not always.

To facilitate additional care for customers deemed vulnerable and mitigate against potential impacts or disadvantage we accept that few customers will actively make us aware that they have a vulnerability or indeed may be unaware themselves, and therefore we aim to be proactive including –

- **Sponsored the development of British Standards Institute Public Access Statement 17271** – which provides industry guidance on how to protect customers from Financial Crime and Financial Abuse. This standard has been adopted by the Joint Fraud task Force and was launched at the NatWest Fraud Summit on 14 November by the Security Minister – Ben Wallace
- **Staff** – staff being aware of the range of situations which may cause a customer to become or be vulnerable and be able to detect when supporting a customer. We train frontline staff to identify indicators of potential harm such as unusual debit transactions or POA abuse. Staff will ‘spot and escalate’ where they have a concern. Escalation

could be to a Community Protection Manager (see below) or the Police via the Banking Protocol

- **Community Protection Managers** – a specific team established to support the needs of customers deemed vulnerable or where it has become clear that a customer has become the victim of financial harm. This team will support on a case by case basis, understanding each customer specific needs and work together with external agencies as appropriate to safeguard a customers funds
- **Systems** – using systems to proactively identify customers that may fall victim to a push payment scam. Our online channel will display a prompt/warning message to customers about how they can stay safe from vishing/scams.

9) Are there any factors that should be considered when defining the requisite level of care victims should meet?

We do not consider that customer standards should be measured reactively against the Banks' conduct. In order to incentivise behavioural change and assist with investigations, which will reduce the likelihood of APP scams, customers need to be held to a robust but fair standard up until the time that they have notified the Bank of the scam.

Reasonable care could be the reference point when deciding whether a customer has met the appropriate level of care; however the concept of reasonable care as applicable to APP scams will need to be considered and developed appropriately to allow consistent application. An independent organisation should ultimately be responsible for assessing customer's actions against that standard.

10) Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

We agree that for any contingent reimbursement model to be effective it would need to be mandatory for the significant majority of PSPs. We consider that all PSPs would need to be consulted on the design, delivery and implementation of whatever reimbursement model is agreed for it to be effective, and it would need to be mandatory for those PSPs that participate directly and indirectly in the impacted push payment schemes. It may also be appropriate, depending on the procedures to be adopted, to be incorporated into the rules /procedures of those schemes.

If it remains a 'voluntary' industry code, there will be a need to widen out engagement early on to ensure agreement to and adoption of the procedural model. Customers may select their bank with reference to whether they comply with the code (to improve their chances of being reimbursed in the event that they fall victim to a scam).

11) What are your views on the scope we have outlined in the model? Please describe any other factors you think we should consider.

We agree with the scope outlined in the consultation paper, i.e. personal customers and micro enterprises.

- 12)** In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

There is no obvious current organisation to rule on disputes between victim bank and beneficiary bank. This would need to be created and funded with appropriate governance and skilled expert dispute resolvers.

Should a dispute arise between Banks/PSPs and customers we would envisage that these cases could be ruled on by FOS.

- 13)** Do you agree that a contingent reimbursement model. If introduced, should be in place by the end of Sept 2018? Please explain.

As set out in our response to Q2 we consider that initiatives and work streams emanating from the Payments Strategy Forum and already progressing through the JFT and UK Finance will all help to protect customers. In our opinion finding legal remedies to repatriate funds and limit the extent of funds reaching criminals must be prioritised. If a contingent reimbursement model is determined to be of greater priority, we do not believe full implementation, nor model design by September 2018 is realistic and may be challenging as banks also embed the best practice standards on a 24/7 basis. There may be opportunity for phased implementation in line with an agreed overarching strategic roadmap.

- 14)** Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain?

If a CRM was introduced, we consider a phased approach aligned to the delivery of planned industry initiatives and essential developments on funds repatriation (as explained earlier in the report) are appropriate. The implications of a phased approach for reimbursement require careful consideration, to allow fair treatment of victims and protection to banks from retrospective claims.

**Santander UK response to the
PSR's Consultation on the development of a contingent reimbursement model
(the "Consultation")
January 2018**

General comments

1. Santander UK plc ("Santander") welcomes the opportunity to engage with and inform the approach of the Payment Systems Regulator ("PSR") in developing a contingent reimbursement model to tackle authorised push payment ("APP") scams.
2. Since the PSR published its response to the Which? super complaint in December 2016, it embarked on a change programme to bring about greater understanding of this type of fraud and measures to reduce APP scams.
3. More recently Santander participated in the PSR's Call for Input on the role of payment system operators in preventing and responding to APP scams published in May 2017. We remain supportive of changes to industry infrastructure where this reduces consumer harm in an effective and proportionate way.
4. In taking fraud seriously, Santander committed to supporting a range of measures which are effective in reducing harm to consumers from APP scams including:
 - a. We are rigorous in looking for opportunities to improve our systems and controls to help prevent cases of fraud and scams, investing considerable resource to help identify and stop potential fraudulent transactions, including having a range of security measures to help us do this;
 - b. Educating our customers and other consumers e.g. through our recent media campaigns, particularly given the risk of social engineering activity. We run an ongoing customer education campaign and offer tips and advice on our online security centre and via streamlined communications.
5. The complexity of regulatory change which the financial sector is undergoing needs to be taken into account when considering implementing further material changes to payment methodologies. To introduce a contingent reimbursement model by September 2018 against such a congested regulatory agenda may create ambiguity, uncertainties and inefficiencies later down the line. Open Banking, as an example, has demonstrated that it takes time to develop a sound model and as a community we need time to assess the impacts of the changes this, and PSD2, will bring to the functioning of the payments systems, including taking account of the role, responsibilities and practices of the new universe of third-party payment providers ("TPPs"). As such we believe it would be more prudent to take some further time to reflect on these changes to ensure we have covered all aspects, and deliver any change in a controlled manner.
6. While fraud has always existed, new technology and the faster payments regime has expedited the transfer of funds from one account to another, a technological advancement which fraudsters are exploiting. Therefore, we believe it is important to

see better coordination and cooperation between financial institutions, regulators, law enforcement agencies and government to act collectively to tackle the growing issue.

Santander response to the Consultation

Q.1 In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

7. We consider the Best Practice Standards (BPS) developed by UK Finance will be effective in improving the way PSPs respond to reported APP scams. The BPS are designed to manage the process of reporting and recovery to help improve outcomes (post-fraud event) for victims. As such, PSPs including Santander have worked with UK Finance to establish solutions in terms of inter-bank contact and processing of claims. If clearly and uniformly implemented, we believe the BPS should lead to more fraud victims making a recovery and more value in absolute terms being recovered than is presently the case.
8. However, there is merit in greater focus on proactive fraud prevention and detection alongside discussion about reactive cure. There needs to be greater discussion (facilitated by the Joint Fraud Taskforce and regulators) about industry-wide standards and measures which are effective in reducing the number of customers who fall victim to fraud, with focus on on-line and mobile banking fraud. Such standards and measures will hopefully serve to limit the distress which inevitably follows fraud (whether or not any recovery is achieved) and are as desirable as measures designed to improve fraud recoveries. Accordingly there is scope for further initiatives designed to promote greater fraud awareness and provide education equipping customers to better protect themselves. In addition to this, greater friction should be built into the payment system itself (particularly for larger payments) to mitigate the risk of social engineering and other causes of authorised and unauthorised payment fraud resulting in life changing events for amounts that never need to be sent as faster payments. This could include initiatives such as confirmation of payee and generally challenging customers on the purpose of payments and to consider the risks in making such payments as well as introducing a delay for settling retail payments above a threshold level. There is merit in discussing the length of delay where higher value payments are being made. Depending on the value, this could be from 2 hours. In high value cases, to give the customer, PSP and the broader sector the opportunity to interrogate effectively the authenticity of these payments to reduce consumer harm, it could be extended up to, but not exceeding 24 hours.
9. Allied to the BPS, Santander remains committed to the ongoing development and implementation of tools (such as confirmation of payee, mule account tracing and fund repatriation) designed to improve and assist fraud prevention and detection.

Q.2 Should a contingent reimbursement model be introduced? Please provide reasons.

10. Santander does not discount the possibility of a contingent reimbursement model and will be happy to play a role in a wider discussion about its introduction. Any model will require due consideration and the importance of establishing a legal and regulatory foundation for any model should not be understated or overlooked. It will also need to

take account of the complex web of relationships and protagonists that Open Banking and PSD2 will introduce into the payments systems. However, the introduction of a contingent reimbursement model is unlikely to resolve or prevent the issue of APP scams in itself.

11. If the question was more broadly framed along the lines how can the industry best help reduce the impact of APP fraud on consumers, we would suggest a modified approach (see 8 above). We would propose a more holistic review of the key facets of fraud focusing on mobile and on-line fraud. One option is to enhance consumer protection and fraud prevention through inclusion of additional checks and balances, friction and thresholds into the payments cycle. There is a tension between customer experience and the speed with which payments are delivered (which many customers enjoy) and fraud prevention checks. In our view, there is scope to allow customers to elect to reduce payment speed to allow institutions more time to complete enhanced fraud prevention checks prior to payment delivery. Additionally above certain value retail payments should be subject to mandatory reductions in payment speeds. For life changing amounts there has to be the correct balance of experience versus risk. In sequence, industry discussions in relation to improvements should be allowed to run their course together with continued investment in consumer education and before concluding investment in a new contingent reimbursement model (and designing that model) is the right answer. Greater investment in fraud prevention to help the fight against fraud is inherently desirable and needs full consideration before designing at speed a new scheme which diverts focus away from prevention, carries costs including the funding of a central pot to pay reimbursements, carries potential unintended consequences including moral hazard if consumers are driven to be less engaged in fraud risk. Ongoing work that should be continued includes the implementation and operationalization of the BPS, confirmation of payee, tracing of mule accounts and the repatriation of monies.
12. If it is decided to proceed with a contingent reimbursement model at speed and notwithstanding our concerns above, we believe that such a model should be anchored in law and regulation. Without properly considered rules, principles, agreement on the applicable evidential burden inclusive of all payment providers and an impact assessment, there is a risk to the effectiveness of the proposed solution. For example, there may be issues with uniform implementation. More generally there is a risk that a well-intentioned and potentially eye catching proposal does little to address fraud risk at a holistic level or worse still if moral hazard comes into play, results in one problem simply being replaced with another potentially greater problem.
13. The financial values at play in this area are significant, and the models in other jurisdictions (as highlighted in the PSR's November report) need to be properly considered. Any liability for authorised payments is at odds with the Payment Services Regulation and therefore the models in play in other EU countries. We cannot easily model or predict wider risks around how such changes could impact commercial risk appetite in the payments industry (particularly so near to the implementation of Open Banking, PSD2 and the introduction of TPPs) and the attractiveness of UK PLC. Some form of impact assessment may be required before any contingent reimbursement model is introduced.

14. It is relevant almost all PSP's have deployed technology to enable robust 'authentication' processes, which are intended to drive down the volume and values involved with 'unauthorised fraud'. It is arguable that an unintended consequence of this is that criminals have altered their behaviour and we have seen the rise in social engineering and 'authorised' payment fraud, and we therefore reiterate the importance of also focusing on education, controls and consumer responsibility to help to mitigate this risk.
15. We would also stress that 'APP' fraud is a wide ranging fraud type, from the simplest deception scam or online marketplace scam to the most sophisticated investment fraud. The wide- ranging nature of APP fraud will need to be considered in discussions around any contingent reimbursement model and the rules governing it.
16. It is also worth noting that the changes required in forthcoming regulation, including requiring banks to open connections to make payments by TPPs could significantly change the ability for any bank to engage with the customer at the point of the payment, or to assess their intent or where they acquired the destination account information.

Q.3 Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

17. The concept of a contingent reimbursement model requires further detailed discussion across the industry and we reiterate the concerns above. We consider that in any contingent reimbursement model there is a need for standards, definitions and principles supported by the legal and regulatory regime to manage the risks around any fraud or risk type, and 'authorised push-payment frauds' are no different. However, at a high level, there is a significant variety of fraud methodologies, and continued improvement is required to manage and mitigate these risks. If it is concluded that some form of contingent reimbursement model is desirable, we believe it should be considered as a component of a package of measures. However, as per our response to question 2, any such model would require proper consideration and rules governing it would need to be sufficiently detailed so that all participants in it (including consumers) understand the behaviours expected of them.

Q.4 In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

18. It is difficult to respond to this question when the concept of a contingent reimbursement model is at such an embryonic stage and it is not clear what rules may be adopted. If rules governing the proposed contingent reimbursement model are clearly set out, 'no blame' situations will hopefully be avoided or at least few and far between. The general legal principle that liability should attach to a party that has made some form of breach or error should be observed.
19. If there are genuine no fault loss scenario considerations and both parties have acted in accordance with the mandate on the account, then it does not seem equitable that the PSP should simply be held liable for the customer loss on the basis that financially it may

be better placed to absorb that loss. This would not be a fair outcome for other bank customers or shareholders generally.

20. In a 'no blame' scenario and given the payment instruction stems from the consumer, it seems reasonable to expect that any loss lies with the consumer.

Q.5 Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

21. We believe that current industry initiatives such as confirmation of payee could inform the standards of the proposed contingent reimbursement model. However, the design of the proposed contingent reimbursement model needs to be further advanced before we can respond more substantively on this question. Please see our above comments on the need for a legal and regulatory framework.
22. In our industry role as members of both the FFAUK, the Joint Fraud Taskforce, we are fully supportive of the UK Finance and Forum activity and of driving the legal changes required to enable better cooperation across industry. We subscribe to the view that the use of consortium data could greatly enhance the overall industry's capability to tackle many different forms of fraud and financial crime. Better analysis and sharing of data across the industry will assist the industry and law enforcement to identify and tackle APP scams more effectively. Other examples of the work being done at this 'joint' level would include potential infrastructure changes to validate payees (referenced by Which? as a significant issue), to trace funds and identify mule 'rings' and the complimentary work being undertaken by the Joint Money Laundering Intelligence Taskforce.
23. As set above, finding a single set of controls or standards will be increasingly difficult given the emerging and nascent payment channels and mechanisms (Open Banking and the use of TPPs being of particular note). The potential risk of fraud migrating to smaller providers and new market entrants to the detriment of consumers also needs to be considered as part of a holistic package of measures.

Q6. If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

24. The proposed model will involve a significant amount of administration, legal assessment and adjudication to ensure impartiality is maintained. As such, an independent regulated body may be better placed to design and implement the model alongside PSP participation. It could sit with the New Payment System Operator to apply formal standards and rule monitoring to ensure compliance. We would support a centralised approach in any proposed design, bolstered by input from relevant regulators (namely the PSR and the FCA), trade bodies and consultation with the industry. Current examples of centralised models (for example card payment schemes) operate cohesively within their own ecosystems, and as such we believe any approach that seeks to provide an appropriate and effective solution would be inherently centralised. A centrally managed service would be operationally able to provide added benefits, such as real time fraud reporting, and allowing the collation of detailed fraud metrics via an impartial (to the PSP) third party. This would also ensure that all PSP's

who are able to accept or send payments are part of the model, as with other payment schemes. The Financial Ombudsman Scheme could provide another independent means of adjudication.

25. Although we note the PSR's suggestion that this should be a voluntary model operated by the PSPs, that operation will need to be supervised to maintain impartiality and consistency (particularly given it is designed to allocate liability at either end of the payment cycle). Therefore it is likely to require appropriate involvement from the PSR itself.

Q.7 In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

26. Please refer to question 2 regarding the need for a material change in any liability model to be anchored in law and regulation.
27. It is difficult to comment on further potential barriers until such time as a more detailed model had been put forward.

Q.8 Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Q.9 Are there any factors that should be considered when defining the requisite level of care victims should meet?

28. We would suggest there needs to be clear definitions and principles for determining responsible action as well as examples given for guidance, as it is not currently clear what constitutes unacceptable consumer behaviour. For example, should a consumer who has paid for a car online that they have never seen be held liable for the payment? Similarly would a customer who has paid for goods on an unsecure website (that is without the padlock symbol) be liable for such a payment? There would need to be clear and practical guidance on how to 'test' the new liability model, and agreement on a process for maintenance of rules to keep them fair and understood by all members of the scheme. This would be an ongoing process given the ever-changing payment landscape in terms of participants and technology. Similarly a robust framework for monitoring the unintentional customer impact of the new scheme would need to be implemented.

Q.10 Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

29. We refer back to our response to question 2. In short, we believe that for a model to be effective it needs to be uniformly and widely accepted across the payment industry by all PSPs. If it was not applied to all PSPs, its effectiveness would be significantly undermined.

Q.11 What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

30. We refer back to our response to question 2. The strategic priority of dealing with APP fraud should be on prevention rather than on a contingent reimbursement model. Any model should be limited to retail customers.
31. In the event discussions around a contingent reimbursement model proceed, it is our view that the relevant industry experts and legal representatives (a panel made up of those close to the management of victims of APP fraud and mules) should be asked to create a clear and more defined contingent reimbursement model for discussion. This should draw out and specify what could be seen as the basic assessments of the 'requisite level of care' for both consumers and PSPs and detailing what sort of controls PSPs could deploy.
32. We believe the PSR should facilitate this with the relevant trade bodies, regulators and industry experts.
33. We would also anticipate that calls to enhance the controls/ build more friction into the payment process will gather momentum (as seen in some other jurisdictions as an element of their layered control model) and would appreciate a contextual view from regulators on this approach.

Q.12. In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

34. As per our response to Question 6 we believe that a central approach is required. The process will involve a significant amount of administration, legal assessment and adjudication would need to be carefully considered, to ensure impartiality is maintained. The dispute resolution mechanism and oversight should be considered as part of the wider design. It seems appropriate for a regulator to have some oversight of the operation of any model.

Q.13 Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

35. For the reasons at our response to question 2, we do not believe this is a reasonable or proportionate timeframe for a development with potentially wide ranging consequences. To contextualise, what is proposed is the construction of control, liability and repatriation model in a few months, which it took schemes such as Visa and MasterCard many decades to develop.

36. Aside from regulatory principles, rules and standards, PSPs will need time to adapt existing policies, systems and procedures to reflect new requirements.

Q.14 Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

37. Should any model be implemented, we would agree that impact assessment including realistic timing and the potential for a layered or phased implementation schedule requires careful consideration. In our experience, fraud management and implementation of related policy and processes tends to require a layered approach, and as such, the time it would take to implement any inter-bank industry model should not be underestimated.

Santander UK Plc

12 January 2018

[ENDS]

Introduction

We welcome the opportunity to respond to this consultation on authorised push payment scams. TransferWise is a new kind of financial company for people and businesses that travel, live and work internationally. It's the fairest, easiest way to manage your money across borders. With a simple money transfer platform and virtual accounts, it makes managing your money quick, easy and painless.

Co-founded by Taavet Hinrikus and Kristo Käärmann, TransferWise launched in 2011. It is one of the world's most successful fintech startups having raised \$397m in funding from investors such as IVP, Old Mutual, Andreessen Horowitz, Sir Richard Branson, Valar Ventures and Max Levchin of PayPal. Two million people use TransferWise to transfer over £1.5 billion every month, saving themselves over £2 million every day.

Q1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

The standards developed by UK Finance only cover the appropriate action to be taken by the sender and recipient's current account provider in the payment chain, and not the actions expected by other providers in the chain. If the customer elects to pay for a service via a sending Payment Service Provider (PSP) like TransferWise, the PSP will have greater visibility over the subsequent flow of funds than the sender's current account provider.

A certain level of communication standards and response timings should therefore be expected between the PSPs and the account providers. The sending PSP is motivated to resolve any complaint that may arise in a timely and satisfactory manner, as they are the provider visible to the consumer. In the past TransferWise has found it difficult to quickly obtain a satisfactory response from some traditional providers (across the EU). There is no standardised procedure, meaning PSPs are often redirected around different departments, and instructed to provide the information on the recipient's claim in a variety of different formats slowing the process significantly. It is crucial that PSPs also benefit from standardised response timings and proportionate levels of information from the recipient bank as an account provider would, in order to offer UK consumers the same consistent standard of care should they fall victim to a scam.

If these standards are used as part of the reimbursement model, they must be subject to consultation with the wider industry. Given that UK Finance is primarily incumbent led, any standards that would apply to different business models, small PSPs and non-members should be developed in conjunction with these providers. Cross-industry collaboration and input from all parties in the chain will benefit both the account providers (typically banks) and PSPs, as well as provide a better experience for victims regardless of which channel they use to trigger a payment.

The standards must also remain technology neutral. The decision on how, and via what channel, a consumer has to be contacted is a commercial one and industry should be allowed the flexibility to adopt methods of customer communication that work for their consumers.

Q2: Should a contingent reimbursement model be introduced? Please provide reasons.

TransferWise welcomes the introduction of a contingent reimbursement model, in the case of PSPs not meeting reasonable standards for consumer protection. Right now, many firms may not be taking the appropriate levels of care to ensure that scammers are not facilitated by banks and PSPs, and we are heartened to see the PSR taking steps to protect vulnerable consumers.

The reimbursement model must hinge around the following conditions to ensure that domestic payment providers can continue to offer a low cost (and in many cases free) service for their customers as a whole: a distinction must be made between scenarios where a PSP has introduced the pre-established and proportionate controls to ensure they are not facilitating scams, and where they have not; the complexity of the payment chain and individual providers visibility over it; the need for an independent body to judge the validity of a claim.

The model would require an individual firm to defend its controls to a third party, meaning an independent body would need to take on the judgement. Clearly defined standards, developed as a result of industry consultation and in keeping with the risk based approach of similar legislation, would need to be established, in order for PSPs to clearly understand the appropriate levels of consumer protection. It would be a huge competitive advantage to allow industry, or trade bodies, to judge whether an individual firm has adequately implemented the required standards. The chargeback arbitration model may be a relevant comparison, though consideration must be given to the hefty financial burden it places on PSPs - particularly smaller PSPs. Similar reimbursement or arbitration schemes have been difficult to adequately fund in the past, and we would suggest that industry contribution should be tiered, to facilitate participation by smaller firms and maximise the consumer protection regardless of what channel is used to transfer funds.

It has also taken these schemes years to implement clear and effective standards for PSPs. We would urge the PSR only to launch the reimbursement model once clear standards have been consulted on and set, or else risk penalising the domestic payments ecosystem in the UK - including payments fintechs, small PIs and EMIs as well as challenger banks.

The reimbursement model will be costly for domestic payment firms. This will have a subsequent effect on competition, particularly if a no blame reimbursement model was implemented. Firms like TransferWise, who charge the lowest amount possible for their service, and are constantly striving to reduce that cost (ie firms with lean business models) or smaller innovative providers may not be able to compensate consumers if a no blame model was introduced. They will be forced to either raise prices for all domestic transfers (presuming they cannot cross subsidise and absorb the cost into another product vertical) or to accept the competitive disadvantage of offering transfers without the consumer protection.

The increased cost can't be reflected in the cost of making a credit transfer (vs card payment), as under the Payment Services Regulations (PSRs 2017), providers can not charge more for a particular payment instrument in the UK. Firms with lean business models may be forced to raise the cost of domestic transfers as a whole - depending on which reimbursement model is introduced - rather than pricing bank transfers to reflect the additional risk. This will mean consumers who use a less risky payment instrument, or transfer to a less risky merchant, will subsidise other customers who elected to take that risk.

The eventual model must aim to provide the greatest level of consumer protection possible, regardless of what channel a customer uses to transfer funds and without reducing competition in the domestic payments market. If a no blame scenario were to be introduced, many domestic PSPs may struggle to reconcile the costs.

Moreover, liability for reimbursement must take into consideration the providers visibility over the payment chain. Non-bank EMIs and PSPs operating in the UK will have less visibility over the entire chain than established banks, particularly in the case of payments institutions, without a licence to hold customer funds. These models typically require payments firms to onboard and KYC check the payer - not the recipient. As in these cases, the customer is the consumer sending money, not an account holding recipient. As a result there is a limit to how much information a sending PSP can access on the recipient. These scams may be facilitated by the firm - by processing the payment at the sender's request - but at no point will they have the power to stop the fraud beyond implementing proportionate controls based on established typologies of APP scams. EMIs and non-banks will also have limited visibility in comparison to incumbents, who may often be in the position of having both the sender and recipient as customers. The controls expected from the sending and receiving PSPs should reflect the different visibility, as well as the eventual liability for compensation.

Without the above conditions, a contingent reimbursement model is not viable and would penalise the diversity of the UK payments sector, driving up costs for consumers and reducing competition. More appropriate interventions should be considered, to ensure greater consumer protection without penalising the payments ecosystem. The private sector could be incentivised to implement better controls through the introduction of a review by the relevant regulator, triggered either as a result of a spike of customers falling prey to such scams or if they suspect an issue, just as the competent authority may check for adequate AML controls. Firms may already have controls in place to monitor for such scams including the monitoring of certain payment purposes, suspicious or unusual transfer flows and risk profiles on certain demographics of consumers or jurisdictions. These existing controls could be informed by typologies published by the regulator or industry groups, covering factors such as at risk customer profiles, transaction patterns etc. Firms could be fined in the case of inadequate controls, creating appropriate financial incentives. There would also be an opportunity for these funds to be ring fenced and allocated to vulnerable consumers who have fallen prey to these scams, or for greater consumer education.

As noted by the PSR, the reimbursement model cannot happen without a behaviour change campaign aimed at consumers. Consumers must be empowered to better assess the risk of using a bank transfer

as a payment method. A campaign for greater consumer education would allow individuals to better assess the risk, and take responsibility for the outcome. Right now, it is clear that the issues are not well understood. Consumers are already incentivised to conduct a reasonable level of research on the merchant, but still choose to make payments off-platform (for example, paying directly into the 'homeowners' bank account for use of a holiday villa in exchange for a discount), despite some platforms' warnings.

Moreover, some online platforms offer protection for consumers who pay a merchant via bank transfer through their platform, should the goods or services fail to be delivered. Arguably this could be expanded. There is a commercial incentive for platforms to offer this protection as a trust point for consumers, and a clear consumer choice as a result: "Stay on the platform and be protected, or leave and take an understood risk". The platform could better assess the legitimacy of any business they offer than the sending PSP, or often the bank providing the recipient account.

TransferWise's further concerns regarding a potential reimbursement requirement when the provider has met the required standards are laid out in response to question 4.

Q3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons

The high level principles offered by the PSR do not cover the scenarios in which there are other PSPs in the payment chain. In the case of a customer triggering an authorised push payment via a non-bank PSP (i.e. TransferWise), two separate transfers occur: from the customer's payment account, to the PSP's payment account and then onto the recipient bank. In this case the payment account provider has no visibility as to the eventual recipient of the authorised transfer. The customer has interacted with the third party payment service provider (they have logged in to the provider, inputted the transaction details). In this scenario, the sending PSP's bank can not be held liable as it is not a personal account. The PSR may decide to focus their attention solely on transfers made from bank account to bank account, excluding complex payment chains. However, we would suggest that this move may actually disadvantage PSPs processing domestic payment transactions in the UK as the reimbursement model will become a trust point with consumers. For example, the Financial Services Compensation Scheme has become a guarantee in the UK, to such an extent consumers require an explanation from providers who are not required offer it ¹(but instead safeguard clients money, as in the case of E-Money Institutions). The model should account for all payment scenarios.

TransferWise is in agreement with the introduction of a reimbursement model, as long as reimbursement is only required when the PSP has failed to implement proportionate protections. The standards that PSPs must meet should be subject to lengthy public consultation, and be in keeping with the risk based approach established in similar legislation. The proposed standards discussed in Q5 are potentially reasonable controls for PSPs, to ensure consumer protection, provided they are subject to

¹ Many EMIs have included a question on FCSC in their FAQs on their website due to consumer interest (<https://transferwise.com/help/article/2897714/borderless-account/is-my-money-covered-by-a-financial-protection-scheme>)

public consultation. The controls devised must take into account the product offered by the company, and should be in keeping with the risk based approach of similar legislation. As stated previously, there needs to be a third party arbitration body set up in order to evaluate whether these processes are adequate.

TransferWise supports the introduction of reasonable levels of customer due diligence in order for consumers to qualify for reimbursement. Simple, practical controls would allow consumers to make an informed decision about their transfer and assume the risk if they chose to proceed. We would also suggest that consumers who chose to conduct a transfer directly to a merchant not via an online platform - despite warnings from that platform - should not be reimbursed.

We do not agree with the proposed control of the victim's PSP calling the customer about an individual transaction. The sending PSP must not be required to assume responsibility for the way a legitimate individual elects to transfer their funds. More targeted advice is both invasive for the consumer, unrealistic for big payments firms (due to the volume processed per day) and a barrier to entry for smaller firms (who simply cannot absorb the financial burden of individually assessing a payment transaction). PSPs' efforts should be supported with a behaviour change campaign supported by the Government for public benefit. It is not down to a sending PSP to provide guidance to individual consumers on how or where they may send their own money, but to process the payment. Other avenues, such as offering guidance on an FAQ page, monitoring for suspicious transaction patterns and alerting the affected consumers via email or in their account, may be more proportionate and less invasive for customers.

There is also a risk of such due diligence penalising the most vulnerable or financial excluded consumers, who do not understand the levels of due diligence they need to have met in order to qualify. We would suggest that any victim due diligence, like the standards for PSPs, need to be clearly defined and easily measurable. We would also highlight the need for extensive consumer education by the Government or regulator, to accompany industry efforts, to try and ensure awareness by vulnerable consumers.

Q4: : In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

TransferWise believes that a no blame compensation model would be so expensive for PSPs to introduce, it may force smaller PSPs, and those with lean business models, to introduce higher charges for domestic transfers. This would have a detrimental effect on competition; pricing out of the market businesses who are unable to absorb the cost via cross subsidisation (i.e. non-banks who are unable to absorb the costs in different product verticals), and form a barrier to entry for innovative firms who would be unable to compete on price.

The increased cost can not even be reflected in the cost of the payment instrument by providers in the UK. Providers can no longer surcharge for a payment instrument used in the UK under the PSRs² As a result, firms with lean business models like TransferWise will be forced to raise the cost of domestic transfers as a whole - rather than pricing bank transfers to reflect the additional risk should the no blame reimbursement model be introduced. This will result in consumers who use a less risky payment instrument, or transfer to a less risky merchant, subsidising other customers who elected to take that risk.

Assuming that customers, except for the vulnerable, would be able to state they did the satisfactory levels of due diligence - firms would be required to compensate for the majority of cases. Reimbursement in a no blame scenario further removes consumer incentive to actually conduct the due diligence, as they are not risking losing the funds provided they can state they conducted due diligence.

We would also suggest that the no blame compensation scenario would allow the model to be abused by scammers. A scammer could claim goods or services were not provided by a sole trader or individual they paid in full, when in fact they have sent the sum to an associate's bank account. The recipient can then withdraw the funds - leaving the consumer capable of claiming the transferred amount back in full.

Q5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons

TransferWise agrees with the PSR that the different measures may be effective in helping to crack down on APP scams, and we encourage the implementation of clear practical controls for PSPs who have opted into the model.

However, as we have outlined previously, UK Finance is unrepresentative and its membership is skewed towards industry incumbents. These privately developed industry standards may be used to inform, or be incorporated into the final model. However, the final standards must be subject to wider industry consultation, if they are to be the required standards that PSPs should meet under the contingent reimbursement model (regardless of whether the reimbursement model is mandatory or not). To ensure the final model is technology neutral, future proof and appropriate for smaller players to manage, it should be developed by a neutral third party body (we would suggest a regulator, or a body similar to the Joint Fraud Taskforce). The standards should be subject to a public consultation process with industry and consumer protection groups, to ensure the final model is reflective of the industry as a whole, and consumer concerns. UK Finance also has a responsibility to represent all players in the sector while developing these standards, not simply their members who traditionally are skewed towards incumbents, or large multinationals.

² Payment Services Regulations 2017, Explanatory Memorandum
(http://www.legislation.gov.uk/uksi/2017/752/pdfs/uksiem_20170752_en.pdf)

It is likely that any reimbursement model, mandatory or otherwise, will be a trust point with UK consumers, making it a competitive necessity for firms, particularly challenger banks and payments firms, to opt in. For example, the Financial Services Compensation Scheme has become a guarantee in the UK, to such an extent consumers require an explanation from providers who are not required offer it (but instead safeguard clients' money, as in the case of E-Money Institutions). All measures that will be proposed as the required standards for PSPs in the reimbursement model must be subject to wider consultation. To not do so would constitute a heavy competitive advantage for UK Finance membership over the sector as a whole.

However, in terms of the Best Practice Guidelines for Verifying Consumer Identity, we would suggest that any guidelines developed by UK Finance should be required to be technology neutral and avoid prescriptive standards to adhere to the precedent of allowing UK firms to form their own risk based approach to threats. As highlighted above, any guidelines developed by the group without appropriate consultation with wider industry, that are then incorporated into the reimbursement model, would entrench a competitive advantage.

The option of KYC data sharing is a welcome concept. We would suggest the proposals are in too early stages to justify the inclusion into the reimbursement model. We also note that the current proposals only take into account information sharing between incumbents. Given the ever greater proportion of market share owned by non banks and PSPs, these providers hold customer information that is integral to the efficacy of the project. It is necessary to include them in the proposals.

We do not think that Confirmation of Payee is a proportionate measure to introduce. If the measure were implemented, we estimate that around 30% of TransferWise payments (both pay-ins and pay-outs) would be disrupted. There are too many variations on a name - apostrophes, accented letters, capitalisation, abbreviations and even the order of the surname and given names. If it were possible to reveal the name of the account holder whose account details they had inputted to the sender in order to allow them to continue or cancel a transaction, the measure may be more proportionate. We do not see this as possible, due to privacy protections. As it stands the proposal would cause unnecessary disruption to the consumer experience, especially when you consider the proportion of transactions with mismatched account details and name as a result of typical human error vs as a result of a scam.

In terms of best practice standards in the event a consumer is scammed developed by UK Finance, we have outlined our main concerns in Q1.

Q6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

We would suggest an independent third party, either the PSR or the Joint Fraud Taskforce. As repeatedly laid out above, any model that is developed must be done so as a result of extensive stakeholder consultation, taking into account the views of wider industry beyond the membership, including consumer advocacy groups, and non-bank PSPs.

The landscape of UK domestic payments has evolved beyond simply banks, and is not fully represented by any of the organisations suggested by the PSR. At the very least, consultation should be required by these organisations, as they have a responsibility to represent the views of the wider industry. Given the number of domestic payments processed by non-bank PSPs or challenger banks, ignoring their input and variant would delay the implementation of a comprehensive reimbursement model for consumers - regardless of which PSP they chose to transfer funds with. So far, we have seen little consultation with the wider industry.

Ultimately, PSPs will have a strong market incentive to implement the scheme, should its existence become a well known trust point for consumers - like the deposit security scheme (FCSC). We would strongly object to any membership based industry/trade body, as it would be a competitive advantage.

Q7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

N/A

Q8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

N/A

Q9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Victim due diligence is a theoretically reasonable check, and we do support the inclusion of it in the model. However, we would state that as with any other scheme, it will be hard to prove that the victim acted in the responsible manner in which they claim. It is not practical to expect firms to be able to conclusively prove a consumer acted in the correct way.

This approach also risks penalising the most marginalised members of society. The financially savvy, or scammers, will be knowledgeable enough to know the standards they should have met – and claim they did so, truthfully or not. The most vulnerable will be less familiar with their protections, and as such these are the people who will be penalised as a result of these requisite levels of care. Any standards should include a comprehensive consumer awareness campaign targeted at the financially excluded or more vulnerable demographics.

Q10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

TransferWise does not support a mandatory reimbursement model. Ultimately, PSPs will have a strong market incentive to implement the scheme, should its existence become a well known trust point for consumers - like the deposit guarantee scheme (FCSC).

The scheme will be expensive for non-bank PSPs than traditional banks, particularly payment firms or smaller EMIs. These firms will be paying out without the ability to reduce the cost of this expense by improving their own systems, unless the no blame compensation model is rejected and the industry costs to pay for the third party necessary to judge consumer claims for reimbursement are tiered (allowing smaller firms to pay less). The scheme may therefore be a barrier to entry, an immovable cost they can not mitigate.

Q11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

No further comment.

Q12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

We would object to any of the options provided by the PSR. It would be anti-competitive to allow any membership based industry body to resolve disputes concerning the wider industry, including UK Finance. As previously mentioned, limiting the reimbursement model to only members of the trade body would further create competitive advantage for traditional business models as it is logical the model will become the trust point for consumers - meaning all PSPs (not just banks, but PIs and EMIs) will need to adhere to its rules. We would suggest the PSR take on the role, or an independent arbitrator needs to be established.

Q13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain

TransferWise would emphasise the need for proper consultation and stakeholder working groups. If a model developed with wider industry can be achieved by that deadline, we agree with the September 2018.

It will also take significant time for an appropriate arbitration body to be established. In order to ensure consumer trust in the new process, we would urge the PSR to launch only once the processes have been clearly defined, and the relevant infrastructure (arbitration processes for each case, PSP standards widely understood). While we have no objection to the September deadline in theory, we would weigh up the cost of launching a rushed or incomplete system which may not effectively mitigate against consumer loss.

Q14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

No further comment.



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Hannah Nixon
Managing Director
Payments Systems Regulator
25 The North Colonnade
Canary Wharf
London, E14 5HS
12 January 2018

Dear Hannah,

PSR Consultation CP17/2 – Contingent Reimbursement Model for Authorised Push Payment Scams

UK Finance welcomes the opportunity to respond to the Payment Systems Regulator (PSR) consultation 'Authorised push payment scams CP17/2' published on 7th November 2017. UK Finance and its members were very glad to see the PSR acknowledgement of the extensive work that the industry is doing to prevent and respond to fraud, and to authorised push payment (APP) scams in particular, and we would welcome the opportunity to support the development of the PSR's thinking on what more can be done.

UK Finance represents nearly 300 of the leading firms providing finance, banking, markets and payments-related services in or from the UK. UK Finance was created by combining most of the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Our members are large and small, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. Our members' customers are individuals, corporates, charities, clubs, associations and government bodies, served domestically and cross-border. These customers access a wide range of financial and advisory products and services, essential to their day-to-day activities. The interests of our members' customers are at the heart of our work.

We welcome the clear and evident commitment of the PSR to preventing fraud and protecting the consumer, and agree that there is more to be done to help victims of APP scams recover their money. The industry supports the PSR's desire to incentivise both payment providers and consumers to help prevent APP scams and to respond to them effectively when they occur. UK Finance would welcome the opportunity to support the development of the PSR's thinking on holistic and balanced approaches to the recovery of victims' funds.

UK Finance strongly encourages the PSR to align its proposals with wider Home Office Joint Fraud Taskforce (JFT) work and the Government's new economic crime structures. The industry is committed to working with Government, regulators and law enforcement to develop effective public-private partnerships and support a more holistic and balanced approach that benefits the customer at the same time as deterring and disrupting crime.

This partnership approach includes work with the JFT to consider regulatory and legal changes required to develop more effective counter-fraud procedures, and to ensure that other APP initiatives agreed in response to the Which? super complaint are effective and are delivered as quickly as possible. UK Finance would welcome the PSR's support in this regulatory and legal work. The PSR's sponsored survey of international comparators underlines the importance of regulatory and legal change to unlock new and more effective approaches, noting that the two other countries that have introduced a scheme for resolving APP fraud established their scheme framework through specific legislation. UK Finance are studying these comparator regimes and would be happy to assist the PSR in considering their practical operation and any implications for the PSR's proposals.

The partnership approach to economic crime also includes work to improve the law enforcement response to volume fraud and take funds off criminals. As noted in the PSR report, the industry is supporting JFT work on the recovery of victims' funds, including the development of a funds repatriation scheme through innovative technological initiatives and consideration of necessary legal changes. We consider that improving the ability of banks to track, freeze and return victims' funds will have positive impacts both in terms of customer impact and in terms of tackling the most prevalent fraudsters.

UK Finance strongly encourage the PSR to develop its proposals in this context of this extensive work already underway. We consider that the development of more holistic and balanced proposals is required to mitigate the risk of unintended consequences for customers, such as increased costs of making payments, new hurdles and inconvenience, additional delays in payments and reduced market provision for certain segments of the market. In part, this risk is due to wider drivers of fraud.

Under current legislation it is easier to open a bank account and to transfer money at speed than ever before and, while these features are rightly welcomed by legitimate customers, they are also exploited by criminals. The PSR's proposals raise questions of how and when payment providers can delay a payment being sent or received. We therefore think it would be helpful if industry could work with the PSR, other regulators and Government to examine this issue, including a discussion of how and if the approach to payment processing could be flexed to allow more time for scrutinising higher-risk payments. This discussion should include consideration of what legal changes are required to enable faster information sharing.

UK Finance also consider that the PSR's proposed timeframe needs to take account of the fact that other APP initiatives and wider JFT work are being progressed at the same time and, as noted in the PSR report, are estimated to deliver progressively to 2021. The timeframe for implementation will need to reflect the scale and reach of any

model of contingent liability, and we consider that more time will be needed if the PSR seeks a model covering customers of all types of payment provider and that sits with a body seen to be credible and independent.

We would be happy to meet and discuss these points if that would support your consideration. The attached annex provides further detail on some of these points, in terms of our response to the specific consultation questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Jones', with a stylized flourish at the end.

Stephen Jones
Chief Executive

Annex – UK Finance response to PSR CP17/2 consultation questions

Question 1 - In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

1. We welcome the PSR's acknowledgement of the extensive work that the industry is doing to prevent and respond to fraud, and to APP fraud in particular. The financial sector invests hundreds of millions fighting fraud and tackling scams, stopping more than £6 in every £10 of attempted fraud each year. It also runs the Take Five to Stop Fraud awareness campaign to help people protect themselves and fully sponsors a specialist police unit to target those behind these crimes.
2. We consider that the best practice standards being developed and implemented by UK Finance and our retail banking members will improve the way that adhering payment providers respond to APP scams, resulting in a better customer journey, reduced harm and supporting more effective disruption of crime.
3. However, we agree that there is more to be done. Criminals have become ever more sophisticated in their methods. We need to be ambitious in sharing more information and intelligence with law enforcement and across financial institutions to spot fraudsters, identify potential victims and to help trace, freeze and repatriate stolen funds. To do this we have to tackle the drivers of fraud, including through a more holistic approach that benefits the customer at the same time as deterring and disrupting crime.
4. UK Finance has identified that there are several regulatory and legal changes that could support more effective detection, prevention and response to fraud. The Payment Account Directive and Faster Payments scheme mean that it is far easier to open a bank account and to transfer money at speed than ever before. However, whilst these features are rightly welcomed by legitimate customers, criminals exploit them too as they place limits on the opportunities for banks to intervene at account opening and at payment stages, as do current information sharing provisions. We want to work with Government and regulators to get the balance right between openness and speed, stopping criminals and ultimately make it clear for customers if and when they can expect a refund if they have authorised a transfer.
5. We are working with the JFT to consider these regulatory and legal barriers and would welcome the PSR's support in this work. Without changes to existing regulatory and legal barriers, industry will not be able to develop new counter-fraud procedures and the other APP initiatives agreed in response to the Which? super complaint will be less effective and could take longer to deliver. Similar constraints could apply to JFT work to develop a funds repatriation scheme.

Question 2 - Should a contingent reimbursement model be introduced? Please provide reasons.

6. UK Finance agrees that there is more to be done to help victims of APP scams recover their money. The industry supports the PSR's desire to incentivise both payment providers and consumers to help prevent APP scams and to respond to them effectively when they occur, and UK Finance would welcome the opportunity to support the development of the PSR's thinking on holistic and balanced approaches to the recovery of victims' funds.

7. It is important that any changes in incentives are properly balanced. As noted by the PSR response to the Which? super complaint, there is a need to avoid creating adverse incentives that could result in an increase in APP scams, such as through increasing first-party fraud, emboldening existing scammers and prompting new scammers to enter the market. There is also a need, as noted by the PSR, to recognise how changes in liability can drive changes in payment provider behaviour that impact on consumers. We consider that the PSR's proposals as currently developed risk adverse impacts on customers such as increased costs of making payments, new hurdles and inconvenience, additional delays in payments and reduced market provision for certain segments of the market.
8. As noted in the FFA UK response to your call for evidence, the industry is supporting Joint Fraud Taskforce (JFT) work on repatriation of victim funds including innovative technological initiatives and consideration of necessary legal changes. The objective of this work is to enable stolen money to be tracked across payment systems, frozen and then returned to the victim of the crime. UK Finance strongly encourages the PSR to develop its proposals in the context of this JFT work, to support a more holistic approach that benefits the customer at the same time as deterring and disrupting crime.
9. In terms of customer benefit, alignment with work on repatriation will help ensure that customers still benefit in 'no blame' situations where payment providers and victims have each met the required standards of care. In terms of tackling fraudsters, the development of a contingent repatriation scheme will support other JFT work to respond to APP scams, such as improving the identification and disruption of networks of money mule accounts and the organised criminal gangs that run them.
10. UK Finance considers that it will take time to develop any holistic and balanced model of contingent liability, to ensure that full consideration is given to potential risks and issues, particularly the risk of unintended consequences on customers. In this context we consider that the PSR's proposed timeframe of September 2018 is ambitious and will inevitably constrain what can be achieved without risk of adverse impacts. We identify and discuss some of these potential risks and issues in response to the questions below. UK Finance would welcome the opportunity to support the PSR's consideration of these potential risks and issues.

Question 3 - Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

11. The industry supports the PSR's desire to incentivise both payment providers and consumers to help prevent APP scams and to respond to them effectively when they occur. However, UK Finance strongly encourages the PSR to develop its proposals in the context of JFT work on repatriation of victims' funds, including the development of innovative technological initiatives and consideration of necessary legal changes, to support a more holistic approach that benefits the customer at the same time as deterring and disrupting crime.
12. We note that the high-level principles aim to give all parties involved the incentive to help prevent and respond to APP scams, where they are best placed to do so, but does not consider the role of companies outside the payments industry. As noted in the PSR response to the Which? super complaint, there are a wide range of parties in addition to payment providers that have a role in preventing APP scams, including for example

companies whose legitimate products or technologies are used by scammers to enable APP scams (such as online trading platforms and companies in other sectors subject to breaches of customer data).

13. UK Finance considers that the high-level principles should be developed to consider how to address these wider drivers of fraud. We also consider that it is inequitable to hold payment providers effectively liable for failings in other sectors, particularly as payment providers are not best placed to prevent and respond to these failings.

Question 4 - In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

14. It is important that any changes in incentives are properly balanced. As noted by the PSR, there is a need to recognise how changes in liability can drive changes in payment provider behaviour that impact on consumers, such as through increased costs of making payments, new hurdles and inconvenience, additional delays to payments and reduced market provision for certain segments of the market.
15. UK Finance considers that an outcome that requires refunds where banks had made best efforts to prevent APP scams does not incentivise investment and innovation in counter-fraud. We also consider that it is inequitable to hold payment providers that have met the required standards liable for APP scams driven by failings in other sectors (as noted in response to question 3).
16. The PSR consultation refers to a potential central fund for reimbursing victims in 'no-blame' scenarios. As noted in UK Finance evidence to the Public Accounts Committee inquiry into 'The Growing Threat of Online Fraud' our members have previously estimated that £130m of accounts have been blocked by banks due to indications that these funds may be related to crime. It is important to recognise that this value estimate may not be accurate, refers to a stock built up over decades and includes funds associated with other crimes than fraud. UK Finance is working with Government and the JFT on how to address the significant legal and practical difficulties in unlocking these blocked accounts and in determining how to distribute the funds between claimants.
17. UK Finance considers that the PSR should develop its proposals for a 'no blame' situation in alignment with JFT work on repatriation of victim funds including innovative technological initiatives and consideration of necessary legal changes. This work aims to improve the repatriation of victim funds including where both payment provider and consumer met defined standards, resulting in customers still benefiting in 'no blame' situations.

Question 5 - Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

18. UK Finance considers that the definition and development of required standards of care will be critical to the development of any holistic and balanced model of contingent liability. We would welcome the opportunity to support the development of this aspect of the PSR's thinking on the recovery of victims' funds, and have set out initial thoughts below on some potential issues that should be addressed.

19. Firstly, basing any new contingent liability model on measures being developed by industry will impact on the timeframe for implementation of the PSR's proposals. It will inevitably take time to define, develop and implement innovative technological approaches, as noted in the PSR report. We are developing new approaches to help identify money mules accounts and trace the movement of potentially stolen funds across the UK retail banking system. This work is at an early stage of proof of concept testing but we hope to develop a workable approach over the next two to three years, in line with the delivery of a transaction data analytics solution and the necessary regulatory and legal changes. Industry are also supporting work towards a confirmation of payee solution, that will be taken forwards by the New Payment Systems Operator (NPSO) to be implemented in 2021 as part of the New Payments Architecture.
20. Secondly, the measures being developed are dependent on supportive regulatory and legal conditions (as discussed in our response to question 1). Industry are working with the JFT to consider regulatory and legal changes required to ensure that the measures being developed are effective and are delivered as quickly as possible. We would welcome the PSR's support in this work.
21. Thirdly, these measures are currently being developed by banks operating in the retail sector and further time would be required to consider what standards would be appropriate for other parts of the payments industry (as discussed in response to question 10 below).

Question 6 - If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

22. We consider that administration and dispute arbitration are matters for the PSR, the Financial Ombudsman Service or some other suitable body. It is important that any contingent liability model is supported by a public perception of impartiality.
23. UK Finance cannot take ownership, and operate, any scheme. As a representative organisation we can only undertake tasks when commissioned and resourced by members to do so.

Question 7 - In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

24. We consider that the PSR's proposals as currently developed risk adverse impacts on customers, by creating incentives for payment providers to increase their scrutiny and interference with the vast majority of genuine transactions and accounts. This would impact on customers by increasing the costs of making payments, introducing additional hurdles and inconvenience at account opening and payment initiation, adding delays to real time payments and reducing market provision for certain segments of the market. We consider that such impacts would be unintended consequences that would constrain the adoption of the PSR's proposals, and strongly encourage the PSR to develop more holistic and balanced proposals to mitigate this risk.

25. The PSR proposals discuss the option of using its statutory powers to require payment providers to comply with prescribed processes if a voluntary scheme is not delivered in a timely manner, but do not consider whether a lack of formal regulatory and/or legal underpinning might pose a barrier to the development of any contingent liability model. Possible barriers might include a lack of measures to ensure consistent industry practice, or a lack of legal protection from the threat of private litigation against payment providers that interfere with customer mandates.
26. This is in contrast to the PSR's sponsored survey of international comparators, which notes that the two other countries that have introduced a scheme for resolving APP fraud established their scheme framework through specific legislation. UK Finance are studying these comparator regimes and we would be happy to assist the PSR in considering their practical operation and any implications for the PSR's proposals.
27. The PSR proposals do not consider how a lack of necessary regulatory and legal change would delay or prevent the development of more effective measures to prevent and respond to APP scams (as discussed in response to question 1). As part of the JFT development of a funds repatriation scheme we have raised the issue of constraints from current legal barriers and are considering necessary regulatory and legal changes.
28. The PSR proposals also do not consider how to support preventive efforts beyond the payments industry (as discussed in our response to question 3).

Question 8 - Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

29. The industry is supporting the JFT workstream on Victims & Susceptibility, with the objective to deliver a strategic action plan to improve our response for victims of fraud and individuals who are more susceptible to fraud.
30. A number of our members also operate policies for ex gratia refunds of victims of APP scams, determined on a case-by-case basis and within the context of current legal and regulatory barriers.
31. We note the PSR's important focus on vulnerable circumstances for customers. The financial services industry recognises that vulnerability can be fluid, temporary and highly specific to an individual's circumstances. Such circumstances may or may not be relevant to someone having fallen victim of APP scam or to their potential susceptibility to such a scam.
32. Therefore, while we would agree that vulnerability may be a contributing factor to defining what is or what would have been an expected requisite level of care for a specific individual, in certain circumstances, or at certain points in time, in order to avoid an APP scam, we would also highlight key challenges in implementing a fair and objective vulnerability measure as part of any contingent liability model:
- There is currently no statutory definition of 'vulnerability' in relation to financial fraud.

- It is important to recognise that different public-sector organisations use different definitions of ‘vulnerability’ for different purposes. These also differ from the FCA’s high level definition applicable to the financial services.
 - The FCA has set out its expectations of financial services firms in relation to consumer vulnerability in its 2017 Mission Statement. The FCA’s 2017 Financial Lives Survey indicates that 50% of UK consumers are ‘potentially vulnerable’; however, they are not necessarily deemed to be ‘potentially vulnerable’ to fraud.
 - Anything beyond a high-level definition of consumer vulnerability (for example ‘potential victim of fraud’ or ‘potential victim of APP scam’) is not necessarily desirable as would restrict industry focus and efforts to specific demographics only (e.g. characteristics already protected under the Equality Act); nor is it in line with the FCA’s approach.
 - The FCA is also currently consulting on its Approach to Consumers which explicitly links the definition of consumer vulnerability to situations which are “readily identifiable”. Linking the definition to situations that are not readily identifiable would have a huge operational and wider service infrastructure impact, potentially generating unreasonable obligations for industry and even potential for consumer detriment.
33. The financial services industry has made great progress in identifying and supporting customers in vulnerable circumstances including front line empathetic response, specialist help available and standardising tools used to help manage customer disclosures (e.g. protocols for frontline staff such as TEXAS to assist staff in dealing with conversations around vulnerability). UK Finance and its predecessor bodies have also been working with members to implement the Vulnerability Taskforce recommendations for industry alignment in areas such as bereavement, third party access and financial abuse – the latter conceived in a broader sense than system detectable fraud, e.g. in cases where fraud and financial abuse are linked to domestic abuse.
34. However, the highly individual nature of vulnerable circumstances does not naturally conclude in the same product, service or system adjustment. Similarly, when a vulnerability is readily identified, firms will seek to understand from the customer what kind of support they might need and if appropriate signpost to additional information or help available elsewhere. We do not consider that any and all vulnerable circumstances necessarily cause someone to be more susceptible to an APP scam or even fraud more widely.
35. Therefore, any contingent liability model aiming to capture vulnerability should consider what specific circumstances cause someone to afford lower levels of care and as a result be more susceptible to an APP scam, whether these are permanent or temporary, the extent to which the circumstances would be readily identifiable by a financial institution and what other action the institution could have been expected to take (if not already covered by the other proposed parameters of the model).
36. UK Finance considers that there is a risk that rushing to define customer requisite levels of care and/or customer susceptibility to fraud could lead to negative unintended consequences. If any consideration were to be made, we would recommend an aligned approach with that of the JFT and the FCA, including the FCA’s 2015 Occasional Paper ‘Consumer Vulnerability’ and subsequent publications such as the Financial Services Vulnerability Taskforce Report ‘Improving Outcomes for Customers in Vulnerable Circumstances’.

37. Given the broader public policy issues involved, we would also anticipate that the PSR consults on any such proposals with all relevant stakeholders.

Question 9 - Are there any factors that should be considered when defining the requisite level of care victims should meet?

38. UK Finance consider that the definition and development of required standards of care will be critical to the development of any holistic and balanced model of contingent liability. We would welcome the opportunity to support the development of this aspect of the PSR's thinking on the recovery of victims' funds.
39. We consider that the required standards of care for victims should support the wider JFT work, for example by helping to differentiate fraudulent claimants (first party fraud) from genuine victims, supporting consistent public awareness messaging such as Take Five and enabling a faster response to APP scams. The success of the Banking Protocol in supporting criminal investigations and convictions demonstrates how crime prevention partnerships can enable a faster and more effective law enforcement response.
40. We consider that the PSR should develop its proposals in alignment with other initiatives, such as confirmation of payee and what steps customers should take before authorising high value payments. We also consider that the PSR should develop its proposals in alignment with the JFT workstreams on the recovery of victims' funds and on Victims & Susceptibility (as noted in response to question 8).

Question 10 - Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

41. UK Finance members include a wide range of payment providers but our work developing measures against APP scams and the wider JFT response to fraud is currently delivered with members in the retail banking sector. Further time would be required to consider what standards would be appropriate for other parts of the payments industry, given the increasing diversity of payment providers, including smaller providers, new entrants and those being brought into regulation for the first time under the revised Payment Services Directive (PSD2); e.g. payment initiation and account information service providers (PISPs and AISPs).
42. UK Finance would welcome the opportunity to support PSR consideration of issues such as alignment with Open Banking and costs for smaller payment providers, and how to manage risks arising from wider or narrower adoption of any new contingent liability model. On the one hand, if non-retail banking payment providers were required to meet inappropriate standards this could impact on competition and innovation. On the other hand, if new consumer protections and best practice standards were only required for certain business models this could lead fraudsters to target those types of payment provider and their customers. It may be possible to manage this issue through a phased approach to introducing required standards, but we do not support the phased introduction of isolated standards as this would raise additional risks and issues that require further consideration (as noted below in response to question 14).

43. On the issue of whether it would be necessary to require payment providers to comply with prescribed processes, we note that the PSR's sponsored survey of international comparators notes that the two other countries that have introduced a scheme for resolving APP fraud established their scheme framework through specific legislation. UK Finance are studying these comparator regimes and we would be happy to assist the PSR in considering their practical operation and any implications for the PSR's proposals.

Question 11 - What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

44. UK Finance notes that the PSR proposals do not consider the role of companies outside the payments industry, and we consider that it is inequitable to hold payment providers effectively liable for failings in other sectors (as discussed in our response to question 3).
45. We note that the PSR proposals envisage individual retail customers being eligible under their proposed model of contingent liability. UK Finance support this aspect of the PSR's thinking on the recovery of victims' funds, as we consider that extending this scope to include corporate customers would raise additional issues that require further consideration and could delay the development of the PSR's proposals, such as a different customer experience.
46. We note that the PSR proposals do not envisage retrospective reimbursement under their proposed model, as payment providers cannot retrospectively implement or adhere to standards that are not yet in place. UK Finance support this aspect of the PSR's thinking on the recovery of victims' funds, for the reasons set out in the PSR proposals.
47. We also note that the PSR proposals do not discuss cheque payments, which may be subject to APP scams. UK Finance considers that extending the scope of any contingent liability model to include cheque payments would also require further consideration.

Question 12 - In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

48. We consider that administration and dispute arbitration are matters for the PSR, the Financial Ombudsman Service or some other suitable body. It is important that any contingent liability model is supported by a public perception of impartiality.
49. UK Finance cannot take ownership, and operate, any scheme. As a representative organisation we can only undertake tasks when commissioned and resourced by members to do so.

Question 13 - Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

50. UK Finance considers that it will take time to develop any holistic and balanced model of contingent liability, to ensure that full consideration is given to potential risks and issues, including adverse impacts on customers. As noted in the PSR report, the JFT is taking a phased approach in order to deliver the necessary legal and regulatory changes, defined standards for both payment providers and customers, and operational infrastructure including a transaction data analytics solution.
51. In this context we consider that the PSR's proposed timeframe of September 2018 is ambitious and will inevitably constrain what can be achieved without risk of adverse impacts, including on customers. In particular, we consider that the PSR's proposed timeframe of September 2018 does not provide for any of the regulatory and legal changes required to develop more effective counter-fraud procedures and ensure that the other APP initiatives agreed in response to the Which? super complaint are effective and delivered as quickly as possible.
52. We also consider that the PSR should manage the risk that rushed implementation of fundamental changes in liability would impact on banks' commercial risk appetite and the attractiveness of the UK as a global financial centre, such as through creating a perception that payment providers in the UK were subject to different rules from payment providers in the EU.

Question 14 - Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

53. It is important to recognise that effective prevention of fraud requires a layered approach, as this may constrain the scope for a phased or transition approach to required standards of care. Many counter-fraud procedures are interdependent, such as through improved identification of anomalies supporting improved customer warnings and monitoring.
54. We do not support phasing the introduction of isolated standards, as this could introduce new problems of uncoordinated initiatives and ineffective procedures.
55. We do not support a transition approach, as we consider that an outcome that requires refunds where banks had made best efforts to prevent APP scams does not incentivise investment and innovation in counter-fraud. We also consider that it is inequitable to hold payment providers that have met the required standards liable for APP scams driven by failings in other sectors (as noted in response to questions 3 and 4).
56. UK Finance therefore consider that, in order to avoid coordination problems and achieve the best customer outcomes, the PSR should prioritise alignment with the JFT work on repatriation of victim funds, including innovative technological initiatives and consideration of necessary legal changes.

Virgin Money Holdings (UK) plc

1 Eagle Place
London
SW1Y 6AFvirginmoney.comPayment Systems Regulator
APP scams project team
25 The North Colonnade
Canary Wharf
London E14 5HS12th January 2018

Dear Sir/Madam,

Virgin Money response to the PSR consultation – APP scams report and consultation

Virgin Money welcomes the opportunity to respond to the Payment Systems Regulator ("PSR") consultation *APP scams report and consultation*. Such scams have increased in frequency in recent years and has impacted a growing number of consumers. We therefore welcome the leadership that the PSR has shown on this issue as well as the pragmatic approach you have adopted to addressing this issue.

We agree with the PSR that a "contingent reimbursement model" should be considered to further protect consumers from harm and ensure that Payment Services Providers ("PSPs") are taking reasonable steps in order to protect consumers. This, combined with some of the initiatives proposed by the Payment Strategy Forum – in particular request to pay and confirmation of payee should act together to reduce both the likelihood of falling victim to, and the impact of push payment scams to both consumers and businesses.

As noted in our previous consultation response, however, there is significant complexity associated with establishing a contingent reimbursement model, especially with respect to some key themes:

- **Guidelines** – In order to ensure that compensation is provided in the correct circumstances, the "best practise" guidelines need to be established and agreed for both customers and PSPs (both sending and receiving) so that both parties are clear around their responsibilities
- **Governance** – A clear process of governance needs to be established so that guidelines can be maintained, best practise shared and appeals to outcomes (which could be between customers and PSPs or between sending and receiving PSPs) can be discussed and agreed.
- **Consistency** – Rules need to be applied consistently between PSPs. If contingent reimbursement is only adopted by a subset of UK PSPs then there is a risk that those more consumer focussed PSPs bear a disproportionate cost and consumers will

receive an inconsistent experience in this respect. Although this could be considered a competitive point it is likely that consumers will not be aware of their own bank's different policies until they are a victim of fraud.

We have provided further detail in our full consultation response which is attached below.

We would be delighted to meet to discuss our comments further.

Yours faithfully,



Mark Parker
Chief Operating Officer
Virgin Money

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Virgin Money believes that the best practise standards developed by UK Finance will be effective in improving the response of PSPs (including Virgin Money) to APP scams. In particular, the suggestion that support is provided 24/7 (which is in line with when the fraud could occur on digital channels) should provide a more rapid response to customers and could prevent further loss of funds from accounts. We also believe that the increased reporting requirements will allow the industry to better understand push payment scams and take further action to minimise impacts.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons

[Redacted]

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

We agree with the high level principles outlined in the consultation. We believe, however, that without understanding the detail – especially with regard to the reasonable steps that customers and both sending and receiving PSPs need to take, it is difficult to formulate a definitive view of how the principles could be applied and therefore the efficacy of the whole model. We would suggest further work to understand all of the permutations based on existing fraud scenarios would help to drive out some of this detail and we would be happy to help to define the scenarios.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

[Redacted]

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

It is difficult to provide an exhaustive list as each situation will be assessed on a case by case basis as circumstances vary. Some examples would be:

- Was the customer grossly negligent in any way when requesting/making the payment?
- How has the customer protected their security and login credentials?
- If asked, did the customer state that they had not been asked, pressured or influenced in anyway when making the payment request?
- What investigation or due diligence did the customer take with the other party ahead of sending the payment to the destination involved?

In addition, we consider any customer vulnerability definitions that may have clouded the customer's ability to identify the scam they have fallen victim to as well as taking account of the context of our actions during the course of the interactions with the customer (for example if the customer presented at a VM store with a third party who could have been coercing the customer and VM did not act).

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

As noted in previous responses, Virgin Money is concerned about consistency of application of any contingent reimbursement model to ensure that customers receive a consistent service and the costs associated with the model are borne by all PSPs in the marketplace. We would therefore recommend that the model should be mandatory but work would need to take place to ensure that if PSPs were not members of industry bodies which could facilitate the operation of the model (such as UK Finance or CIFAS) there was still a mechanism for consistent operation of the model.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

We have nothing further to add to the scope outlined.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

Based on the high level model defined, there could be two different types of dispute that could take place – between the sending and receiving PSPs (where it is believed that a PSP did not follow best practise) or between the PSP and the customer. There are therefore two different approaches that may be required.

For PSP->PSP disputes:-

There is an existing indemnity process which is followed by PSPs using a sharepoint system operated by UK Finance for other fraud related claims. This process allows exchanges of documentation and ultimately agreement between

institutions and refunds of money where applicable. There is also a fax based process for institutions that have lower volumes of use (including Virgin Money)

We would recommend that this existing process and operator is used as a template for the design of the new dispute resolution mechanism, accepting some of the previous points above around smaller institutions and ensuring that the system is accessible to all PSPs regardless of size or fraud exposure.

For PSP->Customer disputes:-

Virgin Money believes that as with other customer disputes, the existing PSP customer complaint process should be invoked with the customer's existing rights to ask FOS for an adjudication also in place in case of further disagreement between the customer and the PSP. It may therefore be necessary to engage FOS during the model design process to ensure that they are aligned with this process.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain

We agree that the model should be implemented by September 2018 – there may, however, be significant complexity associated with designing the model once the detailed work commences and we would therefore encourage a flexible approach to the date to avoid implementing an incomplete/substandard model which could be detrimental for both consumers and PSPs.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Virgin Money would support a "big bang" approach to the introduction of a model to ensure consistency of experience for customers and potentially unfair businesses practises between different PSPs. We would suggest that this question is considered as part of the model design as there may be good reasons identified for a different approach once the detail of the model and its operation is understood.

VISA

Response to the Payments Systems Regulator's consultation on authorised push payment scams

1 EXECUTIVE SUMMARY

- 1.1 Visa welcomes the opportunity to provide comments in relation to the 'Authorised push payment scams' (APP scams) report and consultation published by the Payments Systems Regulator (PSR).¹
- 1.2 Competition has been intensifying in payment systems around the world as industry participants deliver new solutions that leverage technology advances to respond to evolving customer and merchant expectations.
- 1.3 The *Which?* super-complaint and corresponding work led by the PSR have challenged whether there are adequate customer protections against APP scams and more generally within the UK's interbank payment system. We welcome the consultation by the PSR on the proposed 'contingent reimbursement model' for UK interbank payments that would enable victims of APP scams to seek reimbursement from payment services providers.
- 1.4 We recognise that customers making payments over UK interbank systems may not be afforded satisfactory levels of protection at present. Yet it is important that developments in the UK's interbank payment system, and the opportunities and challenges tied to potential policy responses to these scams, are considered in the context of the competitive global market.
- 1.5 At Visa our goal is to be the best way to pay and be paid for everyone. We do this by connecting the world through the most innovative, reliable and secure digital payments network that enables individuals, businesses and economies to thrive. Our layered approach to security and strong customer protections have helped build and maintain trust in the Visa system over many years and have been a key driver for issuers to choose Visa historically. These factors will also be important to customers and merchants as they are presented with ever greater and more direct choice going forward.
- 1.6 Our enhanced Visa Direct service offers greater choice in push payments by allowing customers to make and receive person-to-person (P2P) payments over the Visa network quickly, conveniently and securely. In contrast to interbank payments, our customers benefit from a layered approach to risk management through system level controls that aim to minimise the need for recourse. [X]

¹ PSR, Report and Consultation: Authorised push payment scams: PSR-led work to mitigate the impact of scams, including a consultation on a contingent reimbursement model, CP17/2, November 2017.

- 1.7 We understand that the PSR may be concerned about issues that may arise as the UK interbank payment system transitions to a more competitive market with enhanced security and protections. However, global payment networks are at a different stage of maturity in terms of competition and security and we therefore agree that the proposed interventions should be focused solely on UK interbank payments.
- 1.8 We also believe that payment system operators are best placed to determine the customer protections for their services given their understanding of customer preferences and risk, and also their knowledge of and experience in operating those systems. Having the same entity both set protections and subsequently enforce them strengthens those protections. This also provides the necessary flexibility for operators to review and adapt controls in line with new or emerging risks.
- 1.9 Therefore, if the PSR considers it appropriate to implement a contingent reimbursement model for UK interbank payments, it should also commit to a specific timetable for reviewing its intervention as the market evolves towards more effective competition that will deliver enhanced security and protections for customers. Failure to do so could risk distorting the market over the longer term.
- 1.10 The remainder of this response offers background on the competitive landscape in global payments and detail on Visa Direct, and suggests a way forward. **Appendix 1** provides a summary of our recent response to proposals on data sharing put forward by the Payments Strategy Forum (Forum) in its 'Blueprint for the Future of UK Payments' that the PSR refers to in its consultation.

2 COMPETITION IN PAYMENTS

- 2.1 Competition has been intensifying in payment systems around the world as customers and merchants have come to expect ever greater simplicity, security, and control from their payments. Increasingly diverse payment services providers from across the ecosystem are continually innovating to meet these evolving expectations.
- 2.2 The competitive market for card payments has produced significant investment and innovation in new services that have enhanced security and protections for customers. Visa has invested significantly in developing solutions that provide increased control and convenience to customers while improving security.² Equally, we have also made a major contribution to the development of global, open industry standards, such as the EMV chip standard. We consider that innovations such as these, which have been delivered through a competitive market and without regulatory intervention, have been a key reason for customers and merchants to continue to choose cards as a payment method and for issuers to choose Visa.

² For example, Visa Transaction Controls allow customers to block or create alerts for selected types of transactions (such as cross-border or e-commerce transactions), while solutions such as 'Verified by Visa' enhance the security of Visa transactions more generally.

- 2.3 Looking ahead, a more competitive market is likely to bring customers additional choice for faster and more secure P2P payments. Our Visa Direct service expands the available options for push payments, allowing customers to make P2P payments over the Visa network quickly, conveniently and securely. The uptake of new services will encourage payment system operators to compete increasingly on the basis of their overall customer offering (including security and customer protections) to attract customers.

3 VISA DIRECT OFFERS CUSTOMERS DIRECT CHOICE

A new way to send and receive P2P payments

- 3.1 Visa Direct offers enhanced choice to customers looking to make and receive P2P payments. In contrast to interbank payments, the service is provided in partnership with carefully selected Visa Direct merchants, such as Facebook, who offer customers a new way to send and receive payments, for example via platforms such as Facebook Messenger. **Appendix 2** contains step-by-step illustrations of how customers can pay using this platform.
- 3.2 In the Visa Direct model, merchants initiate payments on behalf of customers on customers' request and all payments are processed by Visa quickly, conveniently and securely. [X]
- [X]
- 3.3 [X]
- [X]
- 3.4 Visa Direct can be used by individuals to make P2P payments, and also by companies and public institutions for disbursements (e.g., insurance or benefit pay-outs).³ Payments can be sent to eligible Visa debit, credit or pre-paid cards domestically or cross-border in accordance with the rules of the merchant's programme.

Visa Direct controls and protections

- 3.5 Customers who send money using Visa Direct can expect fast, convenient, and secure payments that benefit from a layered approach to managing risk through our system level controls. This seeks to identify the source of fraudulent or malicious activity and prevent issues before they arise.
- 3.6 All issuers, acquirers and Visa Direct programmes are vetted and approved by Visa before being granted access to Visa's network. Acquirers must perform due diligence on merchants and ensure

³ In the case of disbursements, merchants make a payment from their own funding source to the recipient.

that merchants comply with local laws and regulations, while issuers have an obligation to undertake 'Know Your Customer' (KYC) checks on customers.

3.7 [REDACTED]

3.8 [REDACTED]⁴ [REDACTED].⁵ [REDACTED]

3.9 [REDACTED]⁶ [REDACTED]

3.10 The overall aim of this layered approach is to minimise risks associated with Visa Direct payments and prevent opportunities for malicious interception and fraud, thereby lessening the need for recourse. In exceptional situations, for example when an error has occurred, customers have the opportunity to seek to reverse a transaction.

3.11 So far, we have observed [REDACTED] in relation to Visa Direct since its launch in the US in 2015. Organisations such as Facebook, PayPal, and Square are already approved to offer personal payments in the US and Facebook launched P2P payments in the UK in November 2017. [REDACTED]

3.12 As a global payment network Visa is responsive to customer needs, risks and changes to its competitive environment. Preserving the security and trust that customers have in Visa is fundamental to our business model across payment types. We review and enhance our rules, controls and protections for our products on a regular basis. As with any new product, we closely monitor payments made using Visa Direct and proactively update our controls as needed to protect the integrity of the Visa payment system.

4 THE WAY FORWARD

4.1 The *Which?* super-complaint and corresponding work led by the PSR have challenged whether there are adequate customer protections against scams and more generally for the UK's interbank payment system. We recognise that customers making payments over UK interbank systems may not be afforded satisfactory levels of protection at present, and that this entails a greater reliance on recourse.

4.2 We understand that the PSR may be concerned about issues that may arise as the UK's interbank payment system transitions to a more competitive market that provides enhanced security and protections for customers. However, global payment networks are at a different stage of maturity in terms of competition and security and we therefore agree that interventions should be focused solely on UK interbank payments.

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

- 4.3 We also highlight that financial crime risks, and fraud detection measures differ significantly across payment systems. It is our firm view that payment system operators are best placed to determine the customer protections for their services given their understanding of customer preferences and risks, and also their knowledge of and experience in operating those systems. Customer protections are strengthened by having the same entity set protections and subsequently enforce them, and system operators are best placed to monitor payments and update controls in response to market developments and new or emerging risks.
- 4.4 Therefore, if the PSR considers it appropriate to implement a contingent reimbursement model for UK interbank payments, it should also commit to a specific timetable for reviewing its intervention as the market evolves towards more effective competition that will deliver enhanced security and protections to customers. Failure to do this could risk distorting the market over the longer term.

5 APPENDIX 1: INITIATIVES FOR DATA SHARING

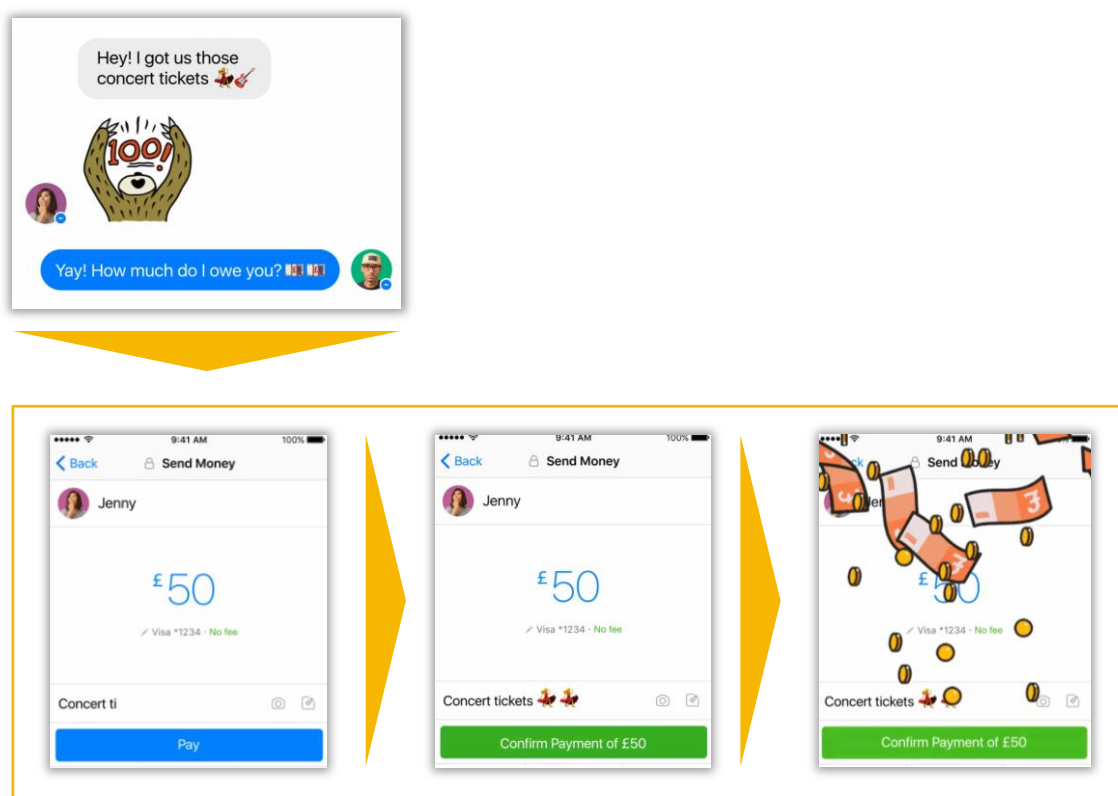
- 5.1 We note that the PSR's consultation refers to proposals for transaction data sharing and analytics put forward by the Forum in its 'Blueprint for the Future of UK Payments' that were developed in response to detriments identified in relation to UK interbank systems.⁷
- 5.2 As noted in our response to the Forum's consultation on the 'Blueprint', the Forum's proposals should be focused on addressing the detriments identified in relation to UK interbank systems, and should not be extended to global payment networks such as cards.
- 5.3 Although we would consider supporting data sharing for specific purposes, we consider that the data sharing proposals as set out by the Forum are not sufficiently clearly defined. Significant further work is required to assess the risks associated with the proposals and how these would be mitigated, for example in relation to data access. Any data sharing would need to align with other legislation, such as General Data Protection Regulations (GDPR), and an assessment of the benefits of the proposed data sharing initiatives beyond the work that is already carried out by UK Finance is also required.
- 5.4 Preserving the security and trust that customers have in Visa is fundamental to our business. We would be concerned about sharing data on the basis of the Forum's proposals as presented in the 'Blueprint' as we do not believe that the proposals constitute a deliverable or robust solution in their current form.

⁷ Forum, Blueprint for the Future of UK Payments: A Consultation Paper, July 2017 – and subsequent documents published by the Forum in December 2017.

6 APPENDIX 2: MAKING PAYMENTS USING FACEBOOK MESSENGER

- 6.1 As shown online,⁸ customers can send money using Facebook Messenger (supported by Visa Direct) quickly, conveniently and securely.
- 6.2 Customers can pay their Facebook friends by starting a message and tapping '+'. They need to set up a payment account the first time they pay, then enter the amount they want to send and tap 'Pay' as illustrated in **Figure 3** below.
- 6.3 To receive money customers simply open the message thread and tap 'Add Card' to set up a payment account the first time they use the service.

Figure 3: Sending money using Facebook Messenger – example screenshots



⁸ <https://newsroom.fb.com/news/2017/11/send-money-to-friends-in-messenger-now-in-euros-and-british-pounds/>.

APP Scams Project

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25 The North Colonnade
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12 January 2018

Dear Project Team

Authorised Push Payments Scams - response to consultation

Executive summary

1. Vocalink welcomes the opportunity to respond to the PSR's consultation on authorised push payment (APP) scams and in particular its proposed fund reimbursement model. APP scams are a significant and costly blight. In summary our key comments are:
 - Accurate and reliable confirmation of payee solution(s) with low false positives are crucial to the success of the PSR's proposed model.
 - Confirmation of payee solutions should be brought to the market as soon as possible – delays are costly to customers and PSPs. As the PSR notes UK Finance has estimated that over £100 million was lost to APP scams in the first six months of 2017.
 - We understand the PSR's focus on funds reimbursement. However, a greater reduction in the harm to customers and banks can be achieved through funds repatriation. In designing the funds reimbursement model, the PSR should ensure that PSPs are both able and incentivised to repatriate funds. Successful repatriation of victim funds will enable PSPs to recoup monies they have paid out in reimbursements according to the rules and disincentives future scams.
 - The success of the reimbursement model will depend on an effective and efficient dispute resolution process.

Introduction

2. Which? has raised, and the PSR has taken forward, the important issues of APP scams. We agree with the PSR that APP scams are a crime which can have a devastating effect on the victims and agree that the PSR work should seek to make a positive difference, leading to better protection from scams and better support for victims.

Please note: Your telephone calls may be recorded for security or monitoring purposes

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3. We agree with the PSR that there is no single solution to stopping or mitigating the effects of APP scams and that a multifaceted approach which employs multiple solutions is most likely to succeed. Furthermore, a market-based approach, once given impetus from the PSR, will enable innovative solutions to continually develop to meet customers' needs.
4. We are working with regulators, financial services organisations and other stakeholders to develop a suite of new and innovative products to benefit consumers, businesses and the wider economy. Of specific relevance to the PSR's APP scams work are confirmation of payee, funds repatriation and dispute resolution.

Contingent reimbursement model

5. We welcome the contingent reimbursement model because it seeks to prevent and respond to scams. We consider that reimbursement on its own does not stop scams, but importantly it provides the requirements and incentive on banks to procure solutions which can prevent scams and respond to scams, as well as giving the public a clear view on how the industry is protecting them from scams and misdirected payments.
6. There are many elements to the reimbursement model, all of which are necessary for the model to be successful.
 - The rules. We consider that this is not a matter for Vocalink and therefore make no comment other than that the rules should enable the effective and efficient operation of the model.
 - Confirmation of payee. This is a key piece of the solution as it enables security at the front end of a payment to indicate to customers that they may be a target of a scam or mistakenly misdirecting a payment.
 - System based approach, including dispute resolution between PSPs. When disputes arise due to scams, misdirected payments or for other reasons, the technological backbone, to enable rapid resolution of such disputes, is crucial as it ensures all parties can communicate effectively to help resolve the issue in the best interest of the consumer.
 - Funds repatriation – this can play a part in recovering the proceeds of crime back to their original victims. Since reimbursement rules likely mean that a customer will be made whole before this happens, this can be an effective way for PSPs to recover some of the funds they reimburse. Furthermore, repatriations of funds will disincentivise future scams.
7. We now comment on the latter three elements.

Confirmation of payee

8. Of all the elements, the model's success will heavily depend on a robust confirmation of solution(s). This element of the model alerts the PSP and its

customers to the possibility of scams and, acting on this information, the PSP can stop scams. In the PSR's proposed model it is this element which defines the requisite level of care and therefore governs whether or not the PSP is required to reimburse the customer – in effect it decides with whom financial liability rests. Weak solutions in the market will undermine consumer benefit in a variety of ways, including:

- Different customer experiences across PSPs – weak solutions will return different results to strong solutions and will confuse and erode confidence of all consumers. Consumer confidence in the system could be easily lost and, once lost, difficult to regain.
 - Less interest from, and incentives on, PSPs to resolve the scams and misdirected payments. PSPs may treat this as a tick box exercise when coupled with a centralised funding model for reimbursements.
 - Increased customer liability – weak solutions will remove the PSPs' liability obligations. If a solution regularly delivers false negatives or false positives, customers may make an incorrect decision leading to liability being transferred to them. Indeed the PSR should avoid incentivising PSPs to implement solutions which return an unwarranted number of false positives (ie suggest that the probability of a scam is much higher than it really is).
9. For these reasons we consider that there is an important role of an independent body, such as the PSR or UK Finance, to define the standards required of the confirmation of payee solutions to ensure the integrity of the reimbursement model.
10. Vocalink has developed a confirmation of payee solution. Our solution is grounded in deep data analytics rather than a simple proxy or look-up service. Data analysis enables a more customer friendly and robust approach to confirmation of payee as it caters for the numerous scenarios where a customer's registered name is different from the ways in which the customer typically is paid or referred.
11. [X]

System based approach

12. The current approach to APP scams tends to be ad-hoc and not systematic – it is often based on email communication. This approach leads to consumer confusion because a non-standard approach to reimbursement rules means some PSPs are more likely to reimburse than others. The absence of a common tool to discuss disputes and reimbursement introduces the possibility of delayed action and mistakes from parties having to manually create cases. We consider that a systematic approach with an established process, rules and toolset will help to mitigate these risks and ultimately a better experience for the consumer.

13. As reimbursement claims may be disputed, the system should also include a dispute resolution process which walks the parties through an established workflow in order to resolve the dispute and reimburse the consumer. We consider that there is much that could be learned from card scheme dispute resolution systems and approaches and would welcome the opportunity to discuss.

Funds repatriation

14. There is an important difference between reimbursement and repatriation – and we consider that reimbursement is only half of the picture. The reimbursement rules are key to ensuring the consumer is kept whole in a timely manner, however the repatriation of funds will allow PSPs to recover monies after that reimbursement has occurred.
15. Merely reimbursing the victims of scams does not reduce the economic harm of scams – it just means that the PSPs bear the costs.¹ To reduce harm, the PSR should seek to introduce a model which repatriates funds away from the illicit accounts. This will both reduce the economic harm of the scam and disincentivise future scams. We consider that funds repatriation is in the interest of service users and therefore consistent with the requirement that the PSR must, so far as is reasonably possible, act in a way which advances one or more of its payment systems objectives: and in particular to promote the needs of service users. We therefore consider that:
- It is important that the model provides the incentive on the PSPs to repatriate funds. We consider that an approach in which PSPs contribute to a central fund from which the reimbursements are paid may not incentivise the PSPs to work together in order to repatriate funds. (An effective central fund model requires the PSPs to, in some way, benefit from repatriating funds.)
 - Successfully freezing and repatriating funds will act to disincentivise scams in the first place.
 - Currently, it is very difficult to repatriate frozen funds due to the legal complexity of the end-to-end process (including the lack of bilateral indemnity provision from ‘frozen’ bank to victim’s bank). The lack of an automated solution means it is a resource intensive task, for not just the ‘frozen’ bank and the victim’s bank, but also for the ‘middle’ banks in a long mule network that do not benefit from the that particular repatriation.
16. Repatriation itself is a process that will also require rules to ensure uniformity including how it interacts with funds reimbursement. [X]

¹ Indeed, economic theory would suggest it is possible that some of these costs will be passed back to all customers through the pricing of banking services.

17. In the case of a centralised funding model for reimbursements, having a robust repatriation tool may incentivise PSPs to repatriate funds in situations where the PSP is not at a loss as they would be recovering portions of the funds they pay into the central fund. For example:

- if the victim did not take the requisite level of care; or
- the no-blame scenario where the reimbursement came from a central fund.

The role of the PSR

18. Consistent with promoting competition, promoting innovation and promoting the needs of service users, the PSR has an important role to play.

- Avoid creating uncertainty. We have found that without careful consideration of on-going market developments regulatory intervention can stifle innovation. [X]
- Creating incentives on market participants to reduce harm – the overall message coming from the PSR should be for participants to, at all times, strive to innovate in order to reduce harm to the public and businesses. By having an overarching message of this manner, the market can look at solutions to achieve these goals and use the message to create impetus for their business case internally.

19. We believe it is imperative to have the ability to get (tactical) solutions up and running as soon as possible, as these are the solutions which can have the biggest effect in the near term, while longer term strategic solutions are developed. The PSR notes UK Finance's estimation that in the first six months of 2017, there were over 19,000 APP scam cases with just over £100 million lost.² Furthermore, tactical solutions also allow the market to learn, in an agile manner, from early solutions by quickly assessing what works best. In general, fast solution implementation has the benefits of:

- reducing consumer harm as soon as possible, and
- enabling second generation products to learn from the first generation products.

We would welcome the opportunity to discuss our response further if you so wished.

Yours faithfully

Rob Cowle

Head of Economic Regulation

² <https://www.ukfinance.org.uk/authorised-transfer-scams-data-h12017/>



Which?, 2 Marylebone Road, London, NW1 4DF

Date: 12 January 2018

Response by: Which?

Consultation response

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About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.7 million members and supporters. We operate as an a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to tackle consumer detriment by making individuals as powerful as the organisations they have to deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

Summary

- The Payment Systems Regulator (PSR) should progress the introduction of the contingent reimbursement model as soon as possible to give victims of authorised push payment (APP) scams a way to get their money back.
- This must provide an effective way for consumers to be reimbursed, and must cover all applicable payment service providers (PSPs).
- To ensure that banks are always incentivised to take all appropriate steps to prevent APP fraud, the first test for reimbursement should always be that when one or both PSPs involved in a transaction fail to meet the requisite standards, consumers should be reimbursed.
- The second test should be whether the consumer has met the requisite standard, and the consumer should be reimbursed in any case where they have met the 'requisite level of care', including in a 'no-blame' scenario.
- More detailed work is needed to determine the requisite level of care a consumer should take and the standards that PSPs are expected to meet, and this should be done with input from consumer representatives among other stakeholders.
- In order for consumers to have confidence in the scheme, Which? believes that it must be overseen by an independent body, such as the New Payment System Operator

Which? is a consumer champion
We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.**
Our services and products put consumers' needs first to bring them better value.

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(NPSO), and at the very least the longer-term objective should be for the NPSO to take responsibility for managing the contingent reimbursement model.

Introduction

1. Which? welcomes the opportunity to respond to the PSR consultation on a contingent reimbursement scheme, which would in certain circumstances give consumers a right to reimbursement. Figures released by the PSR alongside the consultation confirm our analysis that APP scams are a major issue in the UK, with up to £200m lost every year¹.
2. At present, whether a consumer is reimbursed after a scam is dependent on the goodwill of their PSP, or the success of attempts at repatriation. However, as UK Finance's figures show, only about 20% of consumer losses to APP scams are currently refunded².
3. The current system leaves consumers facing losses of potentially life-changing amounts of money to fraudsters whose methods are constantly evolving. At the heart of all APP scams are the relevant payment systems, for example, the Faster Payments scheme. We therefore welcome the work that the PSR and industry have done since our super-complaint in September 2016 to improve the detection, prevention, and response to scams, including the PSR's proposed contingent reimbursement model.
4. Nevertheless, much will depend on the detail of the model's operation and whether it in practice provides victims of scams with a way to get their money back and/or help avoid scams in the first place. At present, there is not sufficient detail about the model for us to assess whether the proposed model will work as well as is necessary to protect consumers. We have comment on the proposal below, and look forward to working closely with the PSR and industry stakeholders to ensure that the model develops in a way that enables it to live up to its potential to both reimburse consumers and incentivise industry to continue to innovate to detect and prevent scams.

Principles of the scheme

5. Which? agrees that PSPs and consumers both have important roles to play in preventing successful APP scams. Moreover, it is essential that the contingent reimbursement model operates in a way that ensures PSPs have strong incentives to detect and prevent scams. Clearly, no model should reward first-party fraud (namely, where consumers are themselves the perpetrator of attempted fraud), and nor would it be a good outcome for consumers to be reckless in transferring money in the knowledge they had recourse to the model if something went wrong.
6. However, it is important that any such model provides consumers with an effective route to reimbursement in the event of a scam, and does not place unrealistic expectations on victims that they must meet to be eligible to make a claim. Getting the balance right between the two principles in practice is therefore vital for the model to reduce the harm suffered by consumers from these scams.

¹ <https://www.ukfinance.org.uk/authorised-transfer-scams-data-h12017/>

² Ibid

The requisite standard of care for consumers

7. To meet its aim of ensuring that consumers take actions to prevent scams, the PSR proposes that a 'requisite level of care' should be introduced that consumers should meet. Not meeting this level could affect the eligibility of a consumer to receive reimbursement through the contingent reimbursement model. However, significant caution needs to be taken when considering the level of care that is expected of consumers. For other types of payments, such as unauthorised transactions, this is comparatively straightforward, as negligence can be identified by specific actions the consumer takes that increases the risk of an unauthorised transaction being made (e.g. keeping their PIN together with a card). The difficulty with APP scams is that the consumer has authorised the payment, either without knowing the true recipient (in the case of a malicious misdirection scam) or without realising that the entire transaction is fraudulent (in the case of a malicious payee scam), so it is harder to identify specific actions that the consumer 'should' have taken.
8. If a level of care is required from consumers that, in practice, few consumers achieve, the model will have failed because consumers will rarely be reimbursed for their losses – a situation little better than now. It is also important to consider the potential consequences of introducing a 'trigger' standard that consumers should meet. The consultation suggests that one element of a definition of eligibility for a consumer to make a claim under the model could be whether the victim's PSP had warned the victim about the transaction, such as by a phone call. This suggestion provides a good example of the complexity and detailed thinking needed before placing particular requirements on consumers.
9. Firstly, we understand that where PSPs currently warn consumers about payments, a high proportion of these are 'false positives' – that is, the warning is being made about a payment that turns out not to be fraudulent. This brings two risks:
 - Consumers may routinely ignore such warnings if their experience is that they are often made for legitimate payments.
 - PSPs may face an incentive to overuse such warnings and this in turn may exacerbate the risk of consumers learning to ignore them.
10. In either case, this may inadvertently leave many consumers ineligible for the model because the definition of 'requisite level of care' has produced unintended consequences.
11. Additionally, scammers may be able to 'coach' a consumer into ignoring the warning, so this could make consumers ineligible for the model due to the plausibility of the scammer rather than an error on the part of the consumer.
12. There are also some consumers who it may be unreasonable to expect to meet particular standards of care due to the circumstances that they find themselves in. For example, the FCA has defined a vulnerable consumer as "someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."³ In relation to scams, this suggests that a vulnerable consumer is one who may find it difficult to identify a scam, and/or to take a 'requisite level of care' when dealing with a scammer.

³ <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf>

13. The recently-published BSI code of practice on protecting consumers from financial harm provides a range of circumstances when a customer could be considered to be more susceptible to scams or financial abuse, including having been a previous victim, having a sudden change in financial circumstances, or debt⁴. One possibility would be for 'requisite care' not to apply to customers known to a PSP to be vulnerable under these definitions, as well as raising the bar for the standards PSPs should reach when dealing with them (for example, providing an option for the customer to nominate an additional signatory).
14. Therefore, while we recognise the intention of defining a requisite level of care consumers should take, much further work is needed on what should make a consumer eligible or ineligible for the model, as well as how claims brought by consumers in vulnerable circumstances should be treated. Clearly the effectiveness of additional measures for consumers in vulnerable circumstances is constricted by PSPs knowing that their customer may be vulnerable, so it is important that PSPs do all they can to identify potentially vulnerable consumers (this could be through common agreement, and potentially a 'self-declaration' of vulnerability in some cases).
15. In any case, if a consumer is taking an action that leads to them 'voiding' their ability to use a contingent reimbursement model, this should wherever possible be clearly communicated at the point they take the action. Consumers can only be expected to meet requisite standards of care if they know what those standards are, and the potential consequences of not meeting them.

Standards that PSPs should meet

16. The UK Finance best practice standards set out a range of measures PSPs should take to make it easy for a consumer to report a scam, to make the investigation process as stress-free as possible for the consumer, and to ensure that the investigation runs smoothly and has the best possible chance of recovering the money lost. These measures include guidelines for identity verification, authentication and risk assessment, sharing of Know Your Customer data, the introduction of Confirmation of Payee, sharing of information and data about APP scams and financial crime, and the best practice standards for responding to reports of scams.
17. We agree that the measures being developed by industry should form part of the required standards of the contingent reimbursement model that PSPs should meet, to incentivise PSPs to continue to meet those standards.
18. However, other requirements should be considered. For example, in a recent case a consumer was left with a loss of nearly £9,000 after a scammer was able to open an account using fake documents⁵. It is not clear whether this sort of case would be covered by the proposed model if the standards were limited to the industry measures, but we would expect a case such as this to lead to the consumer being reimbursed.

⁴ Table 1, p19, PAS 17271:2017 Protecting customers from financial harm as a result of fraud or financial abuse – code of practice, BSI

⁵ <http://www.telegraph.co.uk/personal-banking/savings/nationwide-gave-criminal-fake-account-refused-refund-8700/>



19. It is also important that PSPs face incentives to go beyond the standards, and to adapt their scam detection and prevention efforts as scammers adapt their own methods. There is a risk that the standards become a tick-box compliance exercise, and do not keep pace with scammers' practices, leaving consumers with in practice as little protection as today.
20. The organisation designing the model should also consider how PSPs could be incentivised to adopt confirmation of payee before the introduction of the New Payments Architecture once the the industry collaborative rules and requirements are finalised, as this could have a significant impact on malicious misdirection scams.
21. We would expect the body designing and implementing the contingent reimbursement scheme to conduct further work on the detail of the model, in collaboration with stakeholders including PSPs, the PSR, Which? and others. The body designing the scheme should provide indicative scenarios of cases that would or would not be likely to lead to a victim being reimbursed, to enable us and other interested parties (including the PSR) to assess the more detailed proposal for the scheme and make suggestions for amendments where necessary.

Scheme governance and coverage

22. The PSR suggests a contingent reimbursement model could be implemented by a range of bodies, including the Joint Fraud Taskforce, UK Finance, and the NPSO. It states its preference is UK Finance. We favour the NPSO, as its interests should be strongly aligned with developing the contingent reimbursement model. We oppose UK Finance's role, given the inevitable conflicts of interest among its membership with the objectives of the model.
23. We understand the challenges faced by NPSO in the short-term and that it will not have capacity to establish the rules of a contingent reimbursement model. However, whoever is charged with developing the scheme must take fully into account the views of consumer representatives and other bodies, and these bodies must be meaningfully consulted throughout the process of the scheme's development. This involvement should be facilitated and overseen by the PSR to ensure that the scheme is not overly influenced by industry representations.
24. If the NPSO lacks the capacity to implement the scheme at first, this should be done by an independent body. It is not appropriate for UK Finance to operate the scheme given the potential conflicts of interests between consumers and its members. In the longer run, the NPSO is the appropriate body to take over the management of the scheme rules. The ownership and governance of a contingent reimbursement model is a critical factor in making the scheme effective. We have wider concerns about the governance of interbank payment schemes, which are reflected in the fact that an initiative similar to the contingent reimbursement model outlined in this consultation does not already exist. This suggests a lack of commerciality in the scheme's operation and is in contrast to card schemes, where a comparable scheme (chargeback) has existed and operated well for some time.
25. Ownership of the model by the NPSO has several advantages. Firstly, the NPSO has the incentives to run a scheme well. It should be independent of PSPs, as required by the Bank of England's governance code of practice, and so should not face disincentives to



implement and operate a scheme that balances the sometimes competing interests of consumers and PSPs. It should also be seen to be independent by consumers, which is likely to be important in driving trust in the scheme.

26. Secondly, an important role of a contingent reimbursement model is to build justified trust in the payment system. As the operator of the Faster Payments Service (FPS), the NPSO has a clear interest in building consumer confidence in this particular payment method, in a way that other organisations may not if they also represent parties with an interest in other forms of payment. Enhanced protections help to engender trust in payment methods; for example, Action Fraud recommends that consumers booking online pay using a card where possible, to reduce the risk of holiday letting fraud⁶. If consumers absorb this message and trust in APPs reduces as a result, there is a clear risk that consumers stop using this payment method – or use it less than they would have were protections available – as our super-complaint highlighted⁷. Furthermore, the contingent reimbursement model should be explicitly linked to a given payment method, for example, by designating it the 'Faster Payments Guarantee' (like the Direct Debit Guarantee). This will help develop such consumer trust in using APPs, as well as helping consumers understand the requisite standard of care that they must take. More broadly, in order for the scheme to be successful consumers need to be aware it exists and understand what it does. The current description is not accessible to the lay-person and therefore effective communication must be a central part of the design process.
27. Additionally, giving the NPSO responsibility for designing and implementing the model can enable it to make membership of the scheme a condition of using its services. Again, this is in line with arrangements in the card payments market. A contingent reimbursement model should cover all PSPs providing push payment services. A successful scam could be due to a fault from either the sending or receiving PSP, and so if either PSP were not covered, a consumer could find themselves without recourse to the model even where the fault lay clearly with a PSP. This would be no better than the current inadequate situation for those consumers. Whether the model needs to be mandatory for PSPs depends on whether this level of coverage can be achieved voluntarily.
28. Whichever organisation designs and implements a model, it should also involve other interested parties, including the PSR and Which?. The PSR should also monitor the model's operation and its effectiveness in reimbursing victims of scams. If, for example, a high proportion of claims made to the model were rejected, this would indicate that there may be a problem with the way the model has been implemented. Ultimately if the governance concerns we have regarding interbank payment systems are resolved then we would expect less need for oversight of the scheme in due course.
29. The PSR also sets out its proposed scope for the model:
 - It would cover CHAPS, Faster Payments, and 'on-us' payments
 - It would apply to both consumer and small business accounts

⁶ https://www.actionfraud.police.uk/sites/default/files/3395%20Holiday%20Fraud_v4.pdf

⁷ <https://www.which.co.uk/policy/consumers/347/consumer-safeguards-in-the-market-for-push-payments-which-super-complaint>



- It would apply to the first transaction in a chain (i.e. the payment made by a consumer to a fraudster, not subsequent movements of that money)
- It would cover transactions between UK payment accounts
- There may be a time limit for bringing a claim

30. We broadly agree with the PSR's proposed scope for the model, with the following caveats.
31. We assume that the question of scope relating to scammers using multiple receiving accounts in a chain affects how disputes between PSPs would be dealt with, and would not affect a consumer's eligibility to use the model.
32. We recognise the added complexity that scams involving payments made to non-UK accounts bring. There may however be some standards that are unaffected by the jurisdiction of the receiving PSP - such as how a sending PSP treats the victim after the scam, or whether the PSP identified the consumer's transaction as out of the ordinary (and therefore potentially a scam). Where possible these should be incorporated into the contingent reimbursement model, to incentivise PSPs to take appropriate action regardless of where the receiving account is located, and when making an APP to an overseas account consumers should be told of the constraint on potential reimbursement. The PSR and industry should continue to explore ways to include payments made to or from overseas accounts into a model in the future.
33. We agree that a time period for making a complaint about a scam is likely to be appropriate.
34. The PSR should clarify that in a situation where the consumer has been partially refunded by repatriation of funds, they would still be able to bring a complaint to the contingent reimbursement model for any remaining amount.
35. The interaction of contingent reimbursement with open banking also needs consideration, and whether the model should cover third-party providers (TPPs) as well as PSPs. However this would depend on whether there are particular circumstances in which third-party providers could be best-placed to have stopped a fraud from occurring rather than a PSP. If there are, appropriate standards – that may be specific to TPPs – should be introduced to drive good practice in those areas where third-party providers may be able to prevent a fraud from successfully being committed.
36. Extending the scope of the model could also represent a barrier to entry for third-party providers, which currently are required to hold relatively low amounts of capital - so this would need to be increased for them to be able to reimburse consumers for what could be amounts of money that exceed their current capital requirements. This would need to be considered alongside standards that TPPs should meet.
37. The PSR should also consider how the model could be extended in future if scammers move from APP scams to another payment method, and how elements of protection (in particular Confirmation of Payee) could be extended to other payment types, such as Direct Debit fraud where a 'Confirmation of Payer' initiative could bring benefits to consumers and businesses that lose out.

How the model should operate

38. The PSR proposes that the model could work by firstly checking whether a consumer has met the requisite standard of care (and if they have not, they would not be reimbursed); then checking whether either or both of the PSPs have met the standards (and if one or more has not, the consumer would be reimbursed). It also asks for views on how a 'no-blame' scenario should be handled, where despite the efforts of consumers and PSPs, none of whom were at fault, a scam was successfully committed.
39. We disagree with the PSR's proposal above for how the model might work. The model should operate in a way that incentivises PSPs to detect and prevent scams and does not reward careless consumers, as well as reimbursing victims. The best way to do this is to firstly check whether the PSPs have met the standards, and only consider the consumers' actions if both PSPs have acted appropriately.
40. Figure 1 sets out how different combinations of 'fault' would impact the outcome of a claim under our preferred operation of the model.

Fig 1: W? proposal for outcomes

Consumer	PSPs	Outcome
Did not meet requisite level of care	Did not meet agreed standards	Consumer is reimbursed by PSP(s) at fault
Met requisite level of care	Met agreed standards	Consumer is reimbursed e.g. by central fund
Met requisite level of care	Did not meet agreed standards	Consumer is reimbursed by PSP(s) at fault
Did not meet requisite level of care	Met agreed standards	Consumer is not reimbursed

41. Consumers would still face an incentive to meet a requisite level of care, since if they did not then they may find themselves without reimbursement (depending on the PSPs' actions). PSPs would face strong incentives to meet the agreed standards, since if they did not then they would have to reimburse the consumer.
42. This means that in a 'no-blame' scenario, the consumer would be refunded. In this situation, reimbursing the victim has several clear advantages over the victim bearing the loss.
43. Firstly, reimbursing the victim means that lessons learnt from the scam are likely to benefit a greater number of consumers. If a consumer falls victim to a scam, they may take even greater precaution in future. However, this will only benefit them – and if they are never targeted by a scammer again, that benefit may never materialise. In contrast, if a PSP has met the required standards but still faces a loss, they may take further measures in future to prevent those losses, which could benefit a far greater number of consumers. Any given PSP is certain to be affected by scams in the future, whether by a scammer holding an account with them or a criminal scamming their customer, so this (greater) benefit is also guaranteed to materialise.

44. Secondly, reimbursing the victim provides PSPs with the incentive to reduce the number of scams that adhering to the required standards does not prevent. This is particularly important given that any contingent reimbursement model would need to adapt to changes in the way APP scams operate, as the PSR recognises [6.25]. This is one such way the model could be incentivised to adapt to future developments in APP scams that are not caught by the model's standards, as well as avoiding the risk of the standards becoming a 'tick-box' exercise.
45. The consultation suggests that reimbursing the victim in a no blame scenario 'could weaken PSPs' incentives to prevent and respond to APP scams because they would have to contribute to a central fund or bear the cost of reimbursement even in instances where they have met the required standards' [6.10]. However, it is not clear why this would be the case. If the *only* method of reimbursement was from a central fund, this could weaken individual PSPs' incentives to prevent APP scams as they would not bear the full cost of their failure to meet the standards. But PSPs will face incentives to prevent those costs that fall significantly on them. So if a PSP reimbursed consumers where they had not met the required standards, we would expect them to face incentives to meet those standards regardless of whether any 'no blame' reimbursements were made by individual PSPs or from a central fund.
46. Finally, we expect PSPs will meet the required standards once they are set, and that consumers will take reasonable levels of care to avoid scams. This would mean that 'no blame' scenarios would be the most common type of case faced by the contingent reimbursement model. Failing to reimburse the consumer in these cases would, therefore, severely limit the impact a model would have on victims of scams.
47. Another scenario that the PSR does not consider explicitly in this consultation is a 'both to blame' scenario. Figure 3 appears to suggest that the victim taking the requisite level of care should be the first 'hurdle' for a successful claim, and only after this do PSPs' actions become relevant. That is, in a case where the victim did not take a requisite level of care, the PSPs have no obligation to reimburse the consumer, even if they also did not meet the agreed standards. A more effective way of incentivising PSPs to meet the standards would be to reverse these stages: if PSPs do not meet the required standards, the consumer would be reimbursed regardless of their actions (except in a case of first-party fraud).
48. The consultation recognises the importance of incentivising PSPs to meet the standards regardless of the consumer's action, and suggests a fine may be an appropriate way to achieve this [6.12]. However, given the difficulty of identifying a requisite level of care, and the fact that had the PSPs met the standards the consumer may not have lost any money in spite of their actions, reimbursing a consumer is a fairer outcome than a fine.
49. In a 'no blame' scenario the reimbursement could either be made by the PSPs involved in the transaction, or by a central fund. We would expect this to drive industry-wide improvement in tackling scams in order to limit the funds that are needed to reimburse consumers in a no blame scenario.



Disputes

50. In a contingent reimbursement model there are likely to be disputes about whether the consumer or banks did meet the standards of care required, and how the value of any reimbursement to consumers should be split between PSPs when both are at fault. The PSR suggests that this dispute resolution could be done by UK Finance, NPSO, or an independent third party, and does not state a preference.
51. If, as we propose, the NPSO is the organisation that eventually manages the rules of the contingent reimbursement scheme, it seems appropriate for NPSO to take decisions about who should oversee the dispute resolution mechanism. This could be directly operated by NPSO, or contracted out to an independent third party arbitrator. There may however need to be an interim solution given the NPSO's short-term workload.
52. The NPSO is a body that neither has nor represents those with a direct financial interest in the outcome of a dispute. Therefore we expect it would come to fair judgements on the merits of individual cases. There should also be an appeals mechanism in the scheme.
53. The PSR should consider how the contingent reimbursement model and its dispute resolution mechanism can avoid overlap with existing redress arrangements in the financial services sector, in particular with the Financial Ombudsman Service (FOS), and avoid creating confusion for consumers who have been the victim of scams.

This could work by the contingent reimbursement model being the 'first port of call' for victims of scams. If the claim is rejected by the model, the consumer could then escalate it to FOS, which would consider a range of factors including whether the sending PSP had met established industry standards (which themselves would be informed by the industry standards that are being developed), providing a backstop that consumers could rely on. There may also be merit in extending FOS' remit to enable it to consider the fault of a receiving PSP when an APP fraud has been committed, given that in many scams the party at fault will be the recipient bank, rather than the sending bank.

54. Consumers should also be able to take a claim to FOS if there were aggravating factors that merit redress beyond the reimbursement of funds such as poor communication from their PSP.
55. We have no comments on how the PSP-PSP dispute resolution mechanism should work. However, this mechanism should not slow the release of funds to a victim of a scam, where there is no dispute that industry should in some way reimburse the consumer.

Timetable for implementation

56. The PSR proposes to aim for a September 2018 start for the model. We agree that the model should be introduced as soon as possible, and that September 2018 is an ambitious but appropriate timetable. The scale of the problem identified in UK Finance's figures supports an early introduction of the model. With consumers on average losing over £8m a month, and the majority of this not being reimbursed, the sooner action can be taken the better.



57. The PSR proposes two options for implementing a contingent reimbursement model, given the length of time before some of the industry standards will be brought in:

- A 'phased' model, where PSPs would face gradually greater requirements as additional standards are brought in
- A 'transitional' model, where at first only consumer behaviour would be used to determine eligibility for reimbursement

58. We support a phased model. Our view set out in this consultation is that the consumer should be reimbursed unless they have not met the requisite level of care *and* both sending and receiving PSPs have met the agreed standards. This would be easiest to implement using a phased approach, which could follow the same principle and simply add to the standards PSPs are expected to meet as new ones are introduced.

59. It would, however, mean that during the period of 'phasing in', some consumers (those who have not met requisite levels of care) would be less protected than under the 'full' model, because it would be easier for PSPs to meet the more limited standards during the phasing in period. It is therefore essential that if this approach is taken the timetable for the additional standards are not allowed to slip.

60. A transitional approach would enable consumers who had met the requisite level of care to always be reimbursed (as with the phased approach). However, this presumably means that those consumers who had not met that level of care would not be protected, regardless of the PSPs' actions. This provides less protection for a group of consumers: those who have not met the standards of care, but where the PSPs also did little to protect them.

61. Our preference here is dependent on the model working as we propose above; if it operates differently, our preference for a phased or transition approach may differ.

Vanessa Furey, Senior and International Campaigner Which?, 2 Marylebone Road,
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Annex 1: Answers to specific questions

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

The UK Finance best practice standards set out a range of measures banks should take to make it easy for a consumer to report a scam, to make the investigation process as stress-free as possible for the consumer, and to ensure that the investigation runs smoothly and has the best possible chance of recovering the money lost.

We welcome these standards as a positive step – in particular the commitment to 24/7 dedicated scam support and the move to victims only having to deal with their bank throughout the investigation process. This should make the period after reporting a scam easier for consumers, who are likely to already be in considerable distress at the prospect of losing a potentially life-changing sum of money.

If PSPs sign up to and meet these standards, the way they respond to reported APP scams should improve and be consistent between providers.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

The PSR proposes a mechanism by which, in certain situations, a consumer could be entitled to be reimbursed for money lost to a scam. We strongly support the introduction of such a model. The figures published by UK Finance alongside this consultation confirm our analysis of APP scams as a significant issue affecting UK consumers, with up to £200m lost a year.

While we recognise and welcome the work underway that should reduce the incidence of APP fraud, including the introduction of Confirmation of Payee and improved data-sharing between PSPs, there will always be instances where such scams are successful. Victims of these scams can lose life-changing amounts of money, so it is right that they have a route to claim reimbursement that is reliant on more than the goodwill of their PSP, or the effectiveness of attempts at repatriation of funds.

However, the effectiveness of a contingent reimbursement model, both in returning money to consumers and incentivising PSPs to take further steps to prevent APP scams from occurring in the first place, depends very heavily on the detail of how the model operates. Important issues include:

- the standards consumers and PSPs are expected to meet,
- the circumstances in which a consumer can expect to be reimbursed and
- which PSPs would contribute to the reimbursement and when

Clearly, a contingent reimbursement model that did not offer an effective route for consumers to be reimbursed, or did not incentivise PSPs to go beyond 'tick-box' compliance with the standards to prevent scams, would not be good for consumers. We are keen to ensure that the contingent reimbursement model is introduced in a way that genuinely leads to good outcomes for consumers, and look forward to engaging on these issues as the model is developed.



Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

The PSR suggests two high-level principles, which are essentially that PSPs and consumers should be incentivised to do what they can to prevent scams from occurring in the first place. We agree that both industry and consumers have degrees of responsibility for preventing successful APP scams. It is essential that the contingent reimbursement model operates in a way that ensures banks are incentivised to detect and prevent scams. And clearly, no model should reward first-party fraud, and nor would it be a good outcome for consumers to be reckless in transferring money in the knowledge they had recourse to the model if something went wrong.

However, we are keen to ensure that any such model provides consumers with an effective route to reimbursement in the event of a scam, and does not place unrealistic expectations on victims that they must meet to be eligible to make a claim. Getting the balance right between the two principles is therefore vital for the model to reduce the harm suffered by consumers from these scams.

The PSR suggests that the model could work by firstly checking whether a consumer has met the requisite standard of care (and if they have not, they would not be reimbursed); then checking whether either or both of the PSPs have met the standards (and if one or more has not, the consumer would be reimbursed). It also asks for views on how a 'no-blame' scenario should be handled, where despite the efforts of consumer and PSPs, none of whom were at fault, a scam was successfully committed.

We disagree with the PSR's suggestion of how the model might work. The model should operate in a way that incentivises PSPs to detect and prevent scams and does not reward careless consumers, as well as reimbursing victims. The best way to do this is to firstly check whether the PSPs have met the standards, and only consider the consumers' actions if both PSPs have acted appropriately.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

A 'no blame' scenario is one in which the consumer has met the requisite level of care and both PSPs involved in the transaction met the standards required of them, but an APP scam was nonetheless executed.

In this situation, reimbursing the victim has several clear advantages over the victim bearing the loss.

Firstly, reimbursing the victim means that lessons learnt from the scam are likely to benefit a greater number of consumers. If a consumer falls victim to a scam, they may take even greater precaution in future. However, this will only benefit them – and if they are never targeted by a scammer again, that benefit may never materialise. In contrast, if a PSP has met the required standards but still faces a loss, they may take further measures in future to prevent those losses, which could benefit a far greater number of consumers. Any given PSP is certain to be



affected by scams, whether by a scammer holding an account with them or a criminal scamming their customer, so this (greater) benefit is also guaranteed to materialise.

Secondly, reimbursing the victim provides PSPs with the incentive to reduce the number of scams that adhering to the required standards does not prevent. This is particularly important given that any contingent reimbursement model would need to adapt to changes in the way APP scams operate, as the PSR recognises [6.25]. This is one such way the model could be incentivised to adapt to future developments in APP scams that are not caught by the model's standards, as well as avoiding the risk of the standards becoming a 'tick-box' exercise.

The consultation suggests that reimbursing the victim in a no blame scenario 'could weaken PSPs' incentives to prevent and respond to APP scams because they would have to contribute to a central fund or bear the cost of reimbursement even in instances where they have met the required standards' [6.10]. However, it is not clear why this would be the case. If the *only* method of reimbursement was from a central fund, this could weaken individual PSPs' incentives to prevent APP scams as they would not bear the full cost of their failure to meet the standards. But PSPs will face incentives to prevent those costs that fall significantly on them. So if a PSP reimbursed consumers where they had not met the required standards, we would expect them to face incentives to meet those standards regardless of whether any 'no blame' reimbursements were made by individual PSPs or from a central fund.

Finally, we expect PSPs will meet the required standards once they are set, and that consumers will take reasonable levels of care to avoid scams. This would mean that 'no blame' scenarios would be the most common type of case faced by the contingent reimbursement model. Failing to reimburse the consumer in would, therefore, severely limit the impact a model would have on victims of scams.

Another scenario that is not considered explicitly in this consultation is a 'both to blame' scenario. Figure 3 appears to suggest that the victim taking the requisite level of care should be the first 'hurdle' for a successful claim, and only after this do PSPs' actions become relevant. That is, in a case where the victim did not take a requisite level of care, the PSPs have no obligation to reimburse the consumer, even if they also did not meet the agreed standards. A more effective way of incentivising PSPs to meet the standards would be to reverse these stages: if PSPs do not meet the required standards, the consumer would be reimbursed regardless of their actions (except in a case of first-party fraud).

Figure 1 sets out how different combinations of 'fault' would impact the outcome of a claim under our preferred operation of the model.

Fig 1: W? proposal for outcomes

Consumer	PSPs	Outcome
Did not meet requisite level of care	Did not meet agreed standards	Consumer is reimbursed by PSP(s) at fault
Met requisite level of care	Met agreed standards	Consumer is reimbursed e.g. by central fund
Met requisite level of care	Did not meet agreed standards	Consumer is reimbursed by PSP(s) at fault
Did not meet requisite level of care	Met agreed standards	Consumer is not reimbursed



Consumers would still face an incentive to meet a requisite level of care, as if they did not they may find themselves without reimbursement (depending on the PSPs' actions). PSPs would face strong incentives to meet the agreed standards as if they did not they would have to reimburse the consumer.

The consultation recognises the importance of incentivising PSPs to meet the standards regardless of the consumer's action, and suggests a fine may be an appropriate way to achieve this [6.12]. However, given the difficulty of identifying a requisite level of care, and the fact that had the PSPs met the standards the consumer may not have lost any money, reimbursing a consumer is a fairer outcome.

In a 'no blame' scenario the reimbursement could either be made by the PSPs involved in the transaction, or by a central fund. We would expect this to drive industry-wide improvement in tackling scams in order to limit the funds that are needed to reimburse consumers in a no blame scenario.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

The measures being developed by industry include guidelines for identity verification, authentication and risk assessment, sharing of Know Your Customer data, the introduction of Confirmation of Payee, sharing of information and data about APP scams and financial crime, and the best practice standards for responding to reports of scams that is covered in question 1.

We agree that these measures being developed by industry should form part of the required standards of the contingent reimbursement model that PSPs should meet. This would incentivise PSPs to continue to meet those standards.

The organisation designing the model should also consider how PSPs could be incentivised to adopt confirmation of payee before the introduction of the New Payments Architecture once the industry collaborative rules and requirements are finalised, as this could have a significant impact on malicious misdirection scams.

However, other requirements should be considered. For example, in a recent case a consumer was left with a loss of nearly £9,000 after a scammer was able to open an account using fake documents⁸. It is not clear whether this sort of case would be covered by the proposed model, but we would expect a case such as this to lead to the consumer being reimbursed.

We would expect the body designing and implementing the contingent reimbursement scheme to conduct further work on the detail of the model, in collaboration with stakeholders including PSPs, the PSR, Which? and others.

⁸ <http://www.telegraph.co.uk/personal-banking/savings/nationwide-gave-criminal-fake-account-refused-refund-8700/>



The organisation designing the scheme should provide indicative scenarios of cases that would or would not be likely to lead to a victim being reimbursed, to enable us and other interested parties (including the PSR) to assess the more detailed proposal for the scheme and make suggestions for amendments where necessary.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

The PSR suggests a contingent reimbursement model could be implemented by a range of bodies, including the Joint Fraud Taskforce, UK Finance, and the NPSO. It states its preference is UK Finance.

We understand the challenges faced by the NPSO in the short-term and that it will not have capacity to establish the rules of a contingent reimbursement model. However, whoever is charged with developing the scheme must take fully into account the views of consumer representatives and other bodies, and these bodies must be meaningfully consulted throughout the process of the scheme's development. This involvement should be facilitated and overseen by the PSR to ensure that the scheme is not overly influenced by industry representations. If the NPSO lacks the capacity to implement the scheme at first, this should be done by an independent body. It is not appropriate for UK Finance to operate the scheme given the potential conflicts of interests between consumers and its members.

In the longer run, the NPSO is the appropriate body to take over the management of the scheme rules. The ownership and governance of a contingent reimbursement model is a critical factor in making the scheme effective. We have wider concerns about the governance of interbank payment schemes, which are reflected in the fact that an initiative similar to the contingent reimbursement model outlined in this consultation does not already exist. This suggests a lack of commerciality in the scheme's operation and is in contrast to card schemes, where a comparable scheme (chargeback) has existed and operated well for some time. UK Finance is not an appropriate body to implement a contingent reimbursement scheme, not least because it does not represent all PSPs.

Eventual ownership of the model by the NPSO has several advantages. Firstly, the NPSO is independent of PSPs and so will not face disincentives to implement and operate a scheme that balances the sometimes competing interests of consumers and PSPs. It will also be seen to be independent by consumers, which is likely to be important in driving consumer trust in the scheme.

Secondly, an important role of a contingent reimbursement scheme is to build justified trust in the payment system. As the operator of FPS and CHAPS, the NPSO has a clear interest in building consumer confidence in these particular payment methods, in a way that other organisations may not if they also represent parties with an interest in other forms of payment. Enhanced protections help to engender trust in payment methods; for example, Action Fraud recommends that consumers booking online pay using card where possible, to reduce the risk of holiday letting fraud. If consumers absorb this message and trust in APPs reduces as a result, there is a clear risk that consumers stop using this payment method – or use it less than they would have were protections available – as our super-complaint highlighted.



Additionally, giving the NPSO responsibility for designing and implementing the model can enable it to make membership of the scheme a condition of using its services. Again, this is in line with arrangements in the card payments market - and as we argue in response to question 10 for the scheme to be effective all payment providers should be part of it.

We do not consider that the NPSO's workload is a sufficient reason to rule out it designing and implementing a contingent reimbursement model.

Whichever organisation designs and implements a model, it should also involve other interested parties, including the PSR and Which?. The PSR should also monitor the model's operation and its effectiveness in reimbursing victims of scams. If, for example, a high proportion of claims made to the model were rejected, this would indicate that there may be a problem with the way the model has been implemented.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

We are not aware of any barriers.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Not applicable to Which?.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

The PSR suggests that a definition of eligibility for a consumer to make a claim could include:

- Whether the victim's PSP had warned the victim about the transaction, for example through a phone call.
- Whether Confirmation of Payee (once implemented) had informed the victim that the recipient of funds did not match the name the victim had entered.

Defining the requisite level of care a victim should meet in order to be eligible for the model is not an easy task. For other types of payments, such as unauthorised transactions, this is comparatively straightforward, as negligence can be identified by specific actions the consumer takes that increases the risk of an unauthorised transaction being made (e.g. keeping their PIN together with a card). The difficulty with APP scams is that the consumer has authorised the payment, either without knowing the true recipient (in the case of a malicious misdirection scam) or without realising that the entire transaction is fraudulent (in the case of a malicious payee scam), so it is harder to identify specific actions that the consumer 'should' have taken.

Once confirmation of payee is introduced to the payments system it seems reasonable to make eligibility for the model contingent on the consumer having accurately entered the recipient's name, or not having progressed the payment when informed that the actual recipient did not match the name entered. Clearly, if confirmation of payee had informed the consumer that the recipient of funds *did* match the name the consumer had entered (as may be the case in malicious payee scams), this should not affect the consumer's eligibility for reimbursement.



Any model should be careful when assuming consumers can be expected to take particular actions, and should consider the potential impact of eligibility criteria on industry and consumers. For example, defining eligibility as whether a consumer had received a warning from their PSP and gone ahead with a payment anyway (as raised in the consultation as a potential criterion for eligibility) is likely to raise a number of problems.

Firstly, we understand that where PSPs currently warn consumers about payments, a high proportion of these are 'false positives' – that is, the warning is being made about a payment that turns out not to be fraudulent. This brings two risks:

- Consumers may routinely ignore such warnings if their experience is that they are often made for legitimate payments
- PSPs may face an incentive to overuse such warnings and this in turn may exacerbate the risk of consumers learning to ignore them

In either case, this may inadvertently leave many consumers ineligible for the model because the definition of 'requisite level of care' has produced unintended consequences.

Additionally, scammers may be able to 'coach' a consumer into ignoring the warning, so this could make consumers ineligible for the model due to the plausibility of the scammer rather than an error on the part of the consumer.

There are also some consumers who it may be unreasonable to expect to meet particular standards of care due to circumstances they find themselves in. The FCA has defined a vulnerable consumer as "someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."⁹ In relation to scams, this suggests that a vulnerable consumer is one who may find it difficult to identify a scam, and/or to take 'requisite level of care' when dealing with a scammer.

The recently-published BSI code of practice provides a range of circumstances when a customer could be considered to be more susceptible to scams or financial abuse, including having been a previous victim, having a sudden change in financial circumstances, or debt¹⁰. One possibility would be for 'requisite care' not to apply to customers known to a PSP to be vulnerable under these definitions, as well as raising the bar for the standards PSPs should reach when dealing with them (for example, providing an option for the customer to nominate an additional signatory). Clearly the effectiveness of additional measures for consumers in vulnerable circumstances is reliant on PSPs knowing that their customer may be vulnerable and that additional measures may be appropriate, so it is important that PSPs do all they can to identify potentially vulnerable consumers (this could be through common agreement, and potentially a 'self-declaration' of vulnerability in some cases).

Therefore, while we recognise the intention of defining a requisite level of care consumers should take, we would welcome further thinking on what should make a consumer eligible or

⁹ <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf>

¹⁰ Table 1, p19, PAS 17271:2017 Protecting customers from financial harm as a result of fraud or financial abuse – code of practice, BSI



ineligible for the model, as well as how claims brought by consumers in vulnerable circumstances should be treated.

In any case, if a consumer is taking an action that leads to them 'voiding' their ability to use a contingent reimbursement model, this should wherever possible be clearly communicated at the point they take the action. Consumers can only be expected to meet requisite standards of care if they know what those standards are, and the potential consequences.

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

A contingent reimbursement scheme should cover all PSPs providing push payment services. A successful scam could be due to a fault from either the sending or receiving PSP, and so if either PSP was not covered, a consumer could find themselves without recourse to the model even where the fault lay clearly with a PSP. This is no better than the current situation for those consumers.

Whether the model needs to be mandatory for PSPs depends on whether this level of coverage can be achieved voluntarily.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

The PSR also sets out its proposed scope for the model:

- It would cover CHAPS, Faster Payments, and 'on-us' payments
- It would apply to both consumer and small business accounts
- It would apply to the first transaction in a chain (i.e. the payment made by a consumer to a fraudster, not subsequent movements of that money)
- It would cover transactions between UK payment accounts
- There may be a time limit for bringing a claim

We broadly agree with the PSR's proposed scope for the model, with the following caveats.

We assume that the question of scope relating to scammers using multiple receiving accounts in a chain affects how disputes between PSPs would be dealt with, and would not affect a consumer's eligibility to use the model.

We recognise the added complexity that scams involving payments made to non-UK accounts bring. There may however be some standards that are unaffected by the jurisdiction of the receiving PSP - such as how a sending PSP treats the victim after the scam or whether the PSP identified the consumer's transaction as out of the ordinary (and therefore potentially a scam). Where possible these should be incorporated into the contingent reimbursement model, to incentivise PSPs to take appropriate action regardless of where the receiving account is located, and when making an APP to an overseas account consumers should be told of the constraint on potential reimbursement.



The PSR and industry should continue to explore ways to include payments made to or from overseas accounts into a model in the future.

The PSR should specify that in a situation where the consumer has been partially refunded by repatriation of funds, they would still be able to bring a complaint to the contingent reimbursement model for any remaining amount.

We agree that a time period for making a complaint about a scam is likely to be appropriate.

The PSR should also consider how the model could be extended in future if scammers move from APP scams to another payment method, and how elements of protection (in particular Confirmation of Payee) could be extended to other payment types, such as Direct Debit fraud where a 'Confirmation of Payer' initiative could bring benefits to consumers and businesses that lose out.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

In a contingent reimbursement model there are likely to be disputes about whether the consumer or banks did meet the standards of care required, and how the value of any reimbursement to consumers should be split between PSPs when both are at fault. The PSR suggests that this dispute resolution could be done by UK Finance, the NPSO, or an independent third party, and does not state a preference.

If, as we propose, the NPSO is the organisation that eventually manages the rules of the contingent reimbursement scheme, it seems appropriate for the NPSO to take decisions about who should oversee the dispute resolution mechanism. This could be directly operated by the NPSO, or contracted out to an independent third party arbitrator. There may however need to be an interim solution given the NPSO's short-term workload.

The NPSO is a body that neither has nor represents those with a direct financial interest in the outcome of a dispute. Therefore we expect it would come to fair judgements on the merits of individual cases. There should also be an appeals mechanism in the scheme.

The PSR should consider how the contingent reimbursement model and its dispute resolution mechanism can avoid overlap with existing redress arrangements in the financial services sector, in particular with the FOS, and avoid creating confusion for consumers who have been the victim of scams.

If, as we propose, the NPSO is the organisation that delivers the contingent reimbursement scheme, it seems appropriate for the NPSO to take decisions about who should oversee the dispute resolution mechanism. This could be directly operated by the NPSO, or contracted out to an independent third party arbitrator.

Consumers should still be able to take a claim to the FOS if there were aggravating factors that merit redress beyond the reimbursement of funds such as poor communication or treatment.



We have no comments on how the PSP-PSP dispute resolution mechanism should work. However, this mechanism should not slow the release of funds to a victim of a scam, where there is no dispute that industry should in some way reimburse the consumer.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

We agree. The scale of the problem identified in UK Finance's figures supports an early introduction of the model. With consumers on average losing over £8m a month, and the majority of this not being reimbursed, the sooner action can be taken the better.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

The PSR proposes two options for implementing a contingent reimbursement model, given the length of time before some of the industry standards will be brought in:

- A 'phased' model, where PSPs would face gradually greater requirements as additional standards are brought in
- A 'transitional' model, where at first only consumer behaviour would be used to determine eligibility for reimbursement

We support a phased model. Our view is that the consumer should be reimbursed unless they have not met the requisite level of care *and* both sending and receiving PSPs have met the agreed standards. This would be easiest to implement using a phased approach, which could follow the same principle and simply add to the standards PSPs are expected to meet as new ones are introduced.

It would, however, mean that during the period of 'phasing in', some consumers (those who have not met requisite levels of care) would be less protected than under the 'full' model, because it would be easier for PSPs to meet the more limited standards during the phasing in period. It is therefore essential that if this approach is taken the timetable for the additional standards are not allowed to slip.

A transitional approach would also enable consumers who had met the requisite level of care to always be reimbursed (as with the phased approach). However, this presumably means that those consumers who had not met that level of care would not be protected, regardless of the PSPs' actions. This provides less protection for a group of consumers: those who have not met the standards of care, but where the PSPs also did little to protect them.

Our preference here is dependent on the model working as we propose above; if it operates differently, our preference for a phased or transition approach may differ.

Part B

Responses from members of the public

Names of individuals and organisations have been redacted from those submissions related to reported instances of authorised push payment scams. Information that may indirectly identify the parties involved has also been redacted. Redactions are marked with a [§]. Unless included in this document, attachments referenced in submissions have not been published.

Member of public 1

Hi, I've recently been the victim of a internet scam case. I'm emailing you as my MP tells me you are putting together a case for additional protection for authorised push button scams & if customers of such scams should be reimbursed for such transfers.

- My email was hacked into and I was tricked into transferring £12,540.
- I was expecting an invoice and so when the payment details arrived it all made sense but in fact my account was being monitored and they had waited for the right opportunity to defraud me.
- [X] customer service has been awful and they have offered me no refund or even seem to care that there accounts are being used by criminals.
- My bank [X] offer no protection for internet transactions. [X] however do cover their own customers
- The banks doors are being left wide open for fraudsters to steal our money and nothing is being done about it, why are we being offered no protection for internet transactions?
- My MP has written to the [X] and [X] bank as have I attached those letter and also there response .
- The name on the account did not match the name on my money transfer but of course this is irrelevant. I think its fundamentally wrong that a transfer of £12,540 made out to [X] doesn't ring alarm bells when the account name doesn't match and then the account is allowed to be cleared within hours.
- [X] do not follow up the criminals and nor do the banks follow the trail, meaning criminals are not being held responsible & allowed to walk off with my hard earned money. If the banks allow this to happen then surely they are responsible?
- My case was highlighted on [X].

Thanks

Member of public 2

I have read your document on APP scams and the possible introduction of reimbursement to customers. I was scammed in July/August 2017 and was basically hung out to dry by my bank even though I had contacted their banking department to stop a payment before proceeding to make another payment to a different account. Not once did they say to be "hang on a minute that sounds like a scam when I said the bank account for the first payment has been closed". They did not check either account/sort code to check the banks were correct. In fact the first payment went to a completely different bank to the one I was stating. It would be good for the payment system to put on the bank name as well as the account name so the bank could somehow check the sort code does actually belong to the bank.

Will the reimbursement scheme be backdated for those of us who have been scammed already.

Member of public 3

I am willing to contribute my experience of an APP scam.

The bank is happy to disclaim any responsibility for such a scam even though it knew how it was done in advance. They told me when I reported it.

When I asked why they hadn't advised customers, the response was 'we can't advise on every scam'. This was a very fundamental scam that they eventually advised customers about six weeks later.

Even though I broke none of their rules, they won't refund me as I made the transfer.

Also, I can get no reply from the bank the money was transferred to nor will the Financial Ombudsman help as they will only intervene with one's own bank. This bank has held an account run by thieves, but there is no way short of expensive legal means to get action.

Member of public 4

Part 1

We are responding to your request for comments relating to APP fraud;

<https://www.psr.org.uk/psr-publications/consultations/APP-scams-report-and-consultation-Nov-2017>

We are highlighting very serious concerns about two PSP's, [X] and [X]. We understand that [X] has not formally reported this [X] to [X] and that [X] has profited from this fraud by receiving a percentage of the sale, via the Interchange fee. [X] profit from APP fraud by virtue of their vast financial relationship with [X], and charging us a fee for the APP fraud transaction.

We attach documents as follows;

1) The [X] advertisement featuring the business credentials of the reputable [X]. The host, now known to be the [X], confirmed that [X] were funding the build of our apartment. The [X] used [X] to hide the payee and APP fraud to help us transfer the first stage payment. The [X] generated profits for both banks and for himself, via the commission payment described in the attached [X].

2) We reported the fraud to [X] as soon as we discovered it but [X] did not take the complaint seriously; a position continuing to this day. The [X] response is attached; a signed letter from a [X] stating that they allowed a [X] to trade in this way and our contact with the [X] established that this practice is illegal.

3) A letter from an SRA-regulated legal firm stating that there is no company called [X].

3) We attach a 2012 [X] letter, stating that the bank will co-operate with any authorised third party investigation. The attached [X] clearly states the fraud concerns, [X] must start to take APP fraud more seriously even if a conflict of interest is present in their relationship with [X].

We very much hope that this can open up a new line of linked [X] fraud investigation with [X] and [X]. We are in a position to escalate this case to the office of our MP and will await your advice in this regard.

Part 2

The [X] and [X] accounts relating to this [X] are my ([X]) personal accounts. It would be appropriate for your formal submission to relate only to myself from this point onwards. Please be aware that the fraud and the associated threats have been made against my whole family.

I, [X], consent to your full disclosure of any information relating to this [X] / [X] / [X]. I do not consider any information to be confidential or commercially sensitive given that my submission relates to a formal fraud investigation by a UK financial regulator.

I attach further documents as follows;

1) The [X] Statement showing the [X]. The [X] obtained this payment by fraudulent misrepresentation whilst hosting an overseas property event of a fake subsidiary of a sound-alike reputable [X].

2) The [X] letter of 07_01_2016 that shows no concern about a [X] fronting a fake company. We would like the PSR to request [X] discloses all the transactions of [X].

3) When we pointed out the facts, [X] appointed External Counsel as shown in their letter of 19_01_2016.

4) [X] have yet to explain how a [X] can front a fake company, we have received much correspondence similar to the letter dated 10_10_2017.

5) The situation with [X] is extremely concerning. We would like the PSR to ask [X] if they were involved in the transfer of millions of pounds to the [X]; the very persons that [X] holds to account. We attach a letter from [X] and

we would like the PSR to contact [X] and request her comments relating to the attached [X] letter, specifically if [X] were made of the fraud concerns, and the potential scale of them, as [X] acquired [X] and their associated potential liability.

6) Please could you ask [X] to contact [X] and ask him to provide a response to my question on this link;

[X]

We urge [X] and [X] to cooperate with the PSR investigation in order to identify exactly which body should be responsible for refunding which [X]. We find it shameful that [X] did not disclose to the PSR their [X] and their APP fraud concerns associated with it. The [X]; this is independently acknowledged APP fraud from which the [X] obtained a commission payment by fraudulent misrepresentation.

We very much look forward to helping you to compile a full report, you have my total cooperation. [X].

Member of public 5

First of all I apologise if I have not answered this consultation correctly. I found it complicated and not easy to find the information. There is a lot of associated reading material to refer to.

Also, I am probably biased in that I have recently been the victim of a vicious APP fraud and am obviously coming to this from my own experience. However, I would say that I was not at all aware of the scale and enormity of this fraud until it happened to me and I had to try to get my stolen money back. I would say this is true of most of the public who use Internet Banking and its associated systems. Then, I became aware of the shortcomings of the system both from the banking perspective and how this type of fraud can be perpetrated. It is frightening.

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Yes. It seems that at the moment there is no mechanism for PSPs to adopt so any 'best practice' has to be an advantage. (Not sure if I've answered this correctly)

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes. It would focus the attention of ALL parties - victims, PSO's PSP's - to the outcomes of fraud to consider the implications.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

Yes. I'm not sure about this as I don't know what the high-level principles are.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

The disadvantage of the victims ALWAYS being reimbursed by the PSPs is that the victims might not take the care needed to make sure no fraud is being committed.

Where possible there should be proof that the victims (payee) was not at fault. In fact in cases where the victim has been scammed because of fraudulent third party activity (hacked emails) then that should be taken into consideration. In that case, the PSP should reimburse the victim (payee) and then recover the funds from the scammed source under duty of care.

If the victim always bears the loss, it will make the public less likely to use APP and revert to more costly and time consuming methods of paying bills, such as cheques.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Yes. As there currently are no measures in place then anything concrete is welcome. Sorry if this not what you are looking for.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

Don't really know. If there is an organisation set up at the moment (FSA,/The Forum/UK Finance/PSR) that can cover the brief then why set up another body? Costly and pointless.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

No.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Not relevant to me. I'm a victim not an organisation. But I do agree that an assessment of vulnerability should be a consideration. Also, the lengths that a victim has gone to (even though the scam still occurs) to try to confirm the authenticity of the payment as opposed to being negligent.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Yes, such as checking to the best of their ability the validity of the information they are acting on. Having said that, some victims are more vulnerable than others (age, ignorance of systems, fear) and so this should be taken into consideration.

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs.

Yes, they should ALL adopt the model otherwise it would be pointless. Customers would not want to be involved with an organisation that did not adopt it. So there should be an advice PROMINENTLY shown in T&Cs/advertising/promotion material that says whether or not a financial institution is signed up to it. It should be mandatory.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

I can't actually find the scope for the model??????? It doesn't seem to be headed or paragraphed anywhere. So, no comment.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes, it should be in place as soon as possible as it has been shown that this devastating type of fraud is widespread and common. If the model also incorporates a 'verification of payee' aspect, I would think that the level of this type of fraud will be drastically reduced and should be brought in tomorrow.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

No, don't see the point really. If there is going to be one then implement it.

I hope this is of help.

Member of public 6

History of Authorised Push Payment Scam 2016-17

I became a victim of a scam by [X] between October 2016 and August 2017 resulting in the sale of some of my stocks and funds, and transfer of [X] with the intention of repurchasing stocks in the same companies. I was furnished with listings showing the stocks allegedly purchased in my name, and the further intention of having [X] trade in those stocks on my behalf to further enhance the value of the holdings.

At the start of these transfers [X] did not appear on the FCA's 'black list'. I failed to check this regularly and, too late, found out that they had been so listed. [X] have failed to return either the money or the stocks 'registered' in my name.

Complaints and Reports of this Fraud have been lodged with

SFO FCA Action Fraud (NFRC)

And the Banks who were either sending or receiving PSPs (or Both)

[X]

As well as the Account holders who facilitated this Fraud

[X]

I thus have a great interest in your consultation paper,

I note that under para 6.49 there may be no retroactive re-imbursement before the CRM is introduced. Considering the history of your own responses to the Which Super-Complaint I consider this very punitive and possibly unwise as well as being unfair. The general culture in the banking industry appears to be that of blame being Nimby-ish and denial of any responsibility.

Given the sums involved most of the transactions I arranged in good faith were requested in branch for convenience, and given the sums involved and the higher certainty of instant delivery, these were processed via CHAPS. Therefore, in my opinion, both CHAPS and Faster Payments (given their real time nature) and the branch channel (given that is favoured by the elderly and other vulnerable groups who are disproportionately impacted by this type of financial crime) *must* be included within the scope of the PSR proposals.

It is unclear to me whether authorising and processing transactions as per the above makes victims more or less susceptible to fraud vs alternative methods. In this case the human interaction and additional work involved didn't help prevent the fraud occurring, which is a concern.

Further, the lack of transparency shown by some institutions as part of their fraud investigation and complaint handling is deeply disappointing. The UK Finance guidelines may help here, but as they don't appear to be available to the general public at this point, it's difficult to assess.

Where the same institution has enabled the scam both through weak controls in the sending retail bank but also in the receiving corporate bank (where the same institutions operate accounts on behalf of what now appear to be money transfer businesses), as a retail customer it has been very hard for the institution to recognise its responsibilities on the corporate side and to include it as part of a retail customer's complaint and investigation. For the same reasons, the PSR regulation should in my opinion, apply to any regulated business that handles client money.

The lack of any account name verification of the receiving entity when organising payment is, to a lay person, baffling. Why is it that when a payment is arranged, before the payment is authorised, the receiving institution does not validate that the name of the recipient matches (within an acceptable degree of certainty to allow for first names vs initials etc.) the expectations of the sender?

With regards to money transfer businesses who, given their international reach, must be a favoured route for fraudsters to spirit away ill-gotten funds - why are enhanced controls and processes not in place to confirm (a) the

identity of the entity opening an account (b) the provenance and purpose of funds received? In my personal experience, given the sums involved, it seems odd that more checks weren't performed or questions asked.

What is the linkage between an FCA investment scam warning alerting the industry to a potential problem, and how this percolates throughout the rest of the industry that are also regulated by the FCA? If financial institutions are required to screen customers at account opening to confirm they are not politically exposed persons or on international sanctions lists, how is it that domestic transactions for firms where concerns have been registered and reported are continually processed by regulated firms in receipt of such warnings? Why at the point of arranging payments are checks not made on the name of the beneficiary against such FCA watch lists?

When it comes to the proposed guidelines drafted by UK Finance, these must become a mandatory, non-contingent requirement, as opposed to the opposite. If all institutions don't abide by the same rules, I would anticipate fraudsters to simply exploit the weaknesses in the system enshrined in those institutions that don't abide by industry best practice. Further, if financial institutions remain empowered to define what and who is eligible for compensation, due to the information asymmetry and liability shift involved, victims will nearly always be on the losing side.

With regards to setting up a CRM, in the interests of fairness, the industry must meet its historic obligations for failing in its duty of care to customers who remain to this day uncompensated victims of investment scams and fraud due to systemic industry failings. If the PSR decides against this course, and the CRM only applies as of a certain date, the PSR must be explicit in its definition of a given date for eligibility - is this the date of the relevant APP transactions, the reporting of the fraud, or the conclusion of a complaint, whether that handled by a bank, referred to the FOS or challenged in the courts? In my example, the scam was only identified almost 1 year after the first APP transaction, and the investigation is now over 2 months old without a clear end in sight. As such it is unlikely that the scam of which I am a victim was included in the UK finance 2017 H1 statistics. As a personal customer my losses alone represent c2% of the industry disclosed figures. This suggests to me that either my case is exceptional, the statistical definition is too narrow, or the industry is under reporting the true extent of this issue.

With particular reference to the questions in the consultation:

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

Yes, it will improve response, but must have agreed common interpretation/understanding across all PSPs (Dealing with 4 different PSPs with no common system has been a pain!)

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

Yes, A CRM should be effective until customer education and sending/receiving PSPs have more robust methods of challenging and identifying mule accounts.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

Agree with high-level principles. Customers need better education to improve scam recognition. Past PSP culture is of denied responsibility.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

The action of both PSPs (singly and together), and the customer need to be considered by a fully independent adjudicator. (the customer may not have much faith in the impartiality of PSP internal investigations!)

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

Agreed – PSPs must be coerced into a standard operation if possible

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

UK Finance appears to be best placed

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

As an engineer and pilot I do not feel qualified to answer this, however an industry solution must apply industry-wide.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

N/A – Private individual

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

Elderly and other Vulnerable Groups

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

Yes definitely Mandatory

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

A clear definition required on start time of scam in relation to when it is reported, as well as a clear cut off for the reporting after the scam is discovered.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

Yes – the sooner the better since the problem of scamming is growing!

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

Depends on the ability of the Organisation heading up the CRM to implement it quickly by September 2016. If not able, then phase it in a.s.a.p.

Further Question

Para 3.12 mentions the APP Claim Reporting Standards, with the footnote below 8 The summary of the best practice standards – the APP Claim Report Standards – can be found in Notes to the Editor 3 in UK Finance’s press release:

www.ukfinance.org.uk/authorised-transfer-scams-data-h12017

Where can the General Public obtain a copy of the full Best Practice Standards as opposed to the summary mentioned above?

Member of public 7

Please see my attached comments on your consultation, which are in part based on experience of a scam in May 2017 affecting a small local charity that I help to manage.

My main concerns are as follows. First, the coverage of your new policy following the consultation should include micro enterprises as well as personal customers, in particular small charities like the one with which I am involved. Coverage should be similar to the Financial Ombudsman. Second, the proposed remedy – a voluntary contingent reimbursement model – does not provide the banks with the right incentives to reduce the incidence and damage resulting from scams and does not deal with the scam reimbursement issue properly and effectively.

Instead I propose a shared liability model described in more detail below.

Comments on consultation

Some would argue that the banks are hardening their attitude to scams, refusing to accept responsibility at all, and forcing affected parties to appeal to the Financial Ombudsman - where the prospect of a successful appeal is very limited. This is certainly our experience with [X].

In public [X] claim they are concerned for the interests of customers – their current advertising campaign has a strapline [X] and recently they have taken to [X]. As a regulator you should be aware that there is a massive gap between the public relations propaganda and actual practice on the ground.

My proposal

I propose a shared liability model in which liability is shared in fixed proportions between the victim and the bank. Initially the proportions might be set at 50:50 but could be altered at a later stage in favour of the bank if they put effective systems in place, or in favour of the victim if progress does not take place. The test of effective progress should depend on sensible measures of performance relating to the number of scams and the resulting damage.

Contingent reimbursement is simply unworkable. Most scams will be partly the result of failure by victims to understand the complexities of modern banking. This does not take away the responsibility of the banks to look after their customers, who are often surprised when they discover that the liability rules are not the same as for credit card payments.

Contingent reimbursement simply gives the banks an incentive to hire more lawyers and fight more cases. My proposed approach would instead give banks an incentive to improve their systems – in our case 5 exceptional payments were made to fraudsters within 15 minutes without the bank querying these, and the fraudsters were able to change transaction limits without delay or challenge.

It is important to recognise that the victim is a vulnerable person requiring care and protection. Adding demands that victims need to provide evidence that they took “appropriate care” could be very damaging to them and should be avoided. Your paragraph 6.38 raises the question of whether “care” could vary with vulnerability but the right thing to do is not to expose victims to the challenge of proving a case at all.

It is disappointing that you propose voluntary arrangements eg in paras 6.39 and 6.40. You as a regulator need to take a firm grip on what is now a fast growing and major type of modern crime – without this the banks will not make adequate progress.

Also your proposals for dispute resolution in paras 6.50 to 6.55 appear both inadequate and bureaucratic. A compulsory scheme perhaps with the Financial Ombudsman involved would seem the appropriate appeal route.

Member of public 8

Please see the attached email which I have sent to The Times and which lays out the steps which UK banks should URGENTLY adopt to avoid the Authorised Push Payment scams discussed in your report dated 7.11.17.

UK exporters are especially vulnerable to this type of scam since most of our exports are paid for by SWIFT and email communications are susceptible to hacking. Most of these frauds will inevitably go unreported since the victims are, by definition, overseas customers paying UK exporters' invoices.

Our banking standards in this respect fall short of those in many of our export markets.

The issue was brought to your attention on 23.09.16 in the form of a Super Complaint from Which?

Please let us spend less energy trying to measure the extent of this fraud and instead take these obvious steps to make it impossible to operate. Your proposed implementation by September 2018 is too late.

Member of public 9

Part 1

My eldest son [X] was scammed out of £14,000 in July 2016 which went out of his [X] bank account via [X] to pay for betting he had not authorized himself to [X]. [X] closed his account which he had had since being a schoolboy with no explanation and was in my own opinion treated absolutely terribly. Unknown to us and I have never heard of it previously that his bank card was open so to speak where a pin number is not required on transactions. We spoke to [X] on day of theft and it was stated that they had not received any requests or indeed that amount of money had not been used for betting purposes by them. We do not know where that money has gone and never have we received explanations from [X], [X] or [X] to explain who placed those bets although on paper it looks like my son authorised them but he did not and in one day alone £6000 was taken in £1000 bets. We first reported the theft to the police but we have not heard anything at all concerning the matter and from what I read it will be unlikely we will.

Part 2

What I would like to see not knowing if it answers your question is for my son to get the money he lost back and it would be my greatest wish for that to happen. Having previously stated that money taken was not used for gambling purposes but no one is willing to investigate where that money went to or by whom. When his bank account was emptied it was also taken into overdraft which we his parents paid because [X] bank was going to charge him interest on it although he had never had a overdraft in his life and only ever had one bank account and that was with them. One of the things that really taught me a lesson in this truly heartbreaking episode was how ruthless a bank can be with little understanding of the trauma that comes with it not just for the individual involved but their family also.

Response to consultation on authorised push payment scams

Dr Steven Murdoch, University College London

Throughout the responses to the consultation, I will refer to three principles which are necessary for the managing incentives within a model for assigning liability for adverse events, such as push payment fraud. These principles are selected such that liability is assigned fairly, and that the party in a position to reduce the risk of future adverse events is incentivised to do so.

1) Avoiding conflict of interests through independence

When a process deals with assignment of liability between members of a group (internal assignment of liability), it is acceptable that the process is developed, maintained and monitored by that group or an organisation that the group appoints. However, when the process may assign liability to a party outside this group (external assignment of liability), then the development, maintenance and monitoring of the process must be handled by an independent party which has the responsibility to represent the interests of all parties to which liability may be assigned, and has the resources and expertise to effectively discharge this responsibility. Otherwise, it is likely that the organisation controlling the liability assignment processes will dump risk on parties less able to mitigate said risks, and hence reducing the incentive to prevent future adverse events.

2) Transparency and accountability

No liability-assignment process is perfect, nor can it be ensured it is followed perfectly. Therefore detailed records should be created of who made what actions while following the process, when, for what reason, and with which result. These records should be retained for an appropriate period and made available to any relevant party, in particular individuals or institutions who may have the liability assigned to them. This principle is necessary to allow effective monitoring, and to facilitate the resolution of disputes through external arbitration, or in the courts.

3) System-operator responsibility

The organisation which operates a system should accept responsibility when there is an adverse event that results from the use of that system. As stated in the Royal Society report on cybersecurity¹:

“To improve security, responsibilities should be assigned to parties that could effectively discharge them, and could afford to do so. Consumers typically have the least capacity to mitigate risks, while service providers can improve security through system design and implementation, and by taking careful account of real-world use of

1 Progress and research in cybersecurity Supporting a resilient and trustworthy system for the UK, Royal Society, July 2016. <https://royalsociety.org/~media/policy/projects/cybersecurity-research/cybersecurity-research-report.pdf>

their products. In most cases this means liability regimes should protect consumers, and prevent system operators from shifting liability to individuals where it is not reasonable to do so."

Question 1: In your view, will the best practice standards developed by UK Finance be effective in improving the way PSPs respond to reported APP scams? Please provide reasons.

The best practice standards will likely improve the current handling of push payment fraud complaints, and to the extent that these standards deal with internal assignment of liability between the organisation who UK Finance represent (the PSPs), I think it is appropriate that UK Finance develop, maintain and monitor these processes, with regulatory oversight to manage systemic risk and social costs resulting from fraud.

However, when standards affect liability outside the group of PSPs and so potentially assigning liability to PSP customers (as proposed in the contingent liability model) UK Finance should not be responsible for the development, maintenance and monitoring of the standards. The role of UK Finance is to act representative of the finance, banking, markets and payments-related services, as publicly stated and demonstrated by the organisations represented on its board (18 are from industry and only 1 represents the interests of customers). Therefore, while UK Finance should contribute the views of their member organisations, following the principle of avoiding conflicts of interests, the organisation responsible for the standards which PSPs must follow should be independent and have the responsibility to represent both customers and PSPs, and have the ability the ability to effectively discharge this responsibility.

Question 2: Should a contingent reimbursement model be introduced? Please provide reasons.

A contingent reimbursement model does not follow the principle of system-operator responsibility, and therefore creates an opportunity for PSPs to unfairly dump liability onto customers and so reduce the incentive of PSPs to prevent fraud. The contingent reimbursement model therefore creates an necessity for strict oversight to mitigate this risk (such as creating an independent organisation to manage standards for PSPs, discussed in the answer to Q1). Were liability assigned to the system-operators, a more light-touch regulatory approach could be adopted while still ensuring that customers are protected and system-operators are incentivised to reduce fraud.

However, should a contingent reimbursement model be adopted (as the consultation indicates to be the preference of the PSR), there are ways by which the risk of liability dumping can be partially mitigated (at the cost of requiring much greater external scrutiny), as will be discussed in answers to other questions.

Question 3: Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.

As mentioned in Q2, there are significant risks to customers of a contingent reimbursement model. However on the assumption that this is the model to be adopted I discuss appropriate criteria for setting PSP standards and customers requisite level of care in the answers to Q5 and Q9 respectively.

Question 4: In your view, what are the relative advantages and disadvantages of each alternative outcome for a 'no blame' situation (the victim is reimbursed by PSPs, or the victim bears the loss)? Please provide reasons.

Following the principle of system-provider responsibility, I consider that in the "no-blame" situation, the customer should not be held liable. In the no-blame scenario, fraud has occurred despite all parties acting properly, and therefore implies that the system is insecure. The system-operator should accept responsibility for the failure, and if the level of "no-blame" fraud exceeds levels the operator considers acceptable, the system should be improved.

If the customer were held liable in the "no-blame" situation then the system-operator would have no incentive to address vulnerabilities in the system which could allow fraud to occur in this scenario.

Furthermore, when PSPs are held liable, they have the ability to accurately estimate the risk to their business and obtain insurance or opt-to self insure, spreading risk over their customers. Customers, in contrast, have little awareness of risk and do not have effective access to insurance, and so while only a small proportion of customers are affected by push payment fraud, the impact on their lives can be devastating.

Question 5: Do you agree that the measures being developed by industry (specifically UK Finance and the Forum) should be included as the required standards of the contingent reimbursement model that PSPs should meet? Please explain your reasons.

For the same reasons noted in the answer to Q1, required standards that affect liability assignment should be developed, maintained and monitored by an independent party set up, and able to, represent the interests of both customers and the payments industry. As such, organisations such as UK Finance and the Payments Strategy Forum should be able to contribute to these standards but customers must be strongly represented in order for the contingent reimbursement model to achieve its goals of protecting consumer rights and providing incentive for system improvements.

The measures developed by industry so far go some way towards preventing push payment fraud, but do not go far enough. The results of research on payments fraud at University College London and elsewhere show further opportunities for which PSPs should improve before being able to assign residual risks to customers:

1) Clear description of fraud liability and revocability of different payment options

Customers have several payment options available to them, but for PSPs encourage ones which are cheaper to carry out (e.g. Faster Payment Service – FPS) over more

expensive ones (e.g. cheques), despite the likelihood of fraud and liability that results being significantly different. For example, as the consultation document notes, payee name is not verified for FPS, and thus is more vulnerable to maliciously misdirected payment fraud. In contrast, it is the responsibility of the beneficiary's bank² to verify the name on crossed cheques. To give customers the ability to effectively control their risk, payment systems with less effective fraud prevention should not be promoted over payment systems which from the customers' perspective may be safer, and customers should be clearly informed of the liability-assignment arrangements for each payment method they have available.

Similarly, push payment fraud is made easier as a result of FPS transactions being immediately irrevocable³, even though it is not clear that this property is always desired by customers. In contrast, cheque payments may be revoked up to 6 working days after deposit. The payment industry could make available an alternative to FPS where funds would appear in payers account immediately, but like cheques, remain revocable for some period in cases of push payment fraud. In many cases where FPS is used, the payer and payee have an ongoing business relationship and so the risk of the payee fraudulently revoking the transaction is limited, but it would make push payment fraud much more difficult to conduct. An irrevocable payment system like CHAPS could be made available, provided payers are made aware of the risk.

2) Improved transaction authorisation, that leads to appropriate mental models

The payments which are the subject of this consultation are termed "authorised" because the payer has provided security credentials which his or her bank consider sufficient. However this is not actual authorisation by the ordinary definition of the word (where it refers to the state of mind of the payer i.e. that they have given their consent), because in the case of a maliciously misdirected payment the payer did not actually consent that the payee receive these funds. The customer might have authorised a payment to someone they know, or authorised a transfer to the payers own account, but because he or she did not have a sufficiently accurate mental model of how the PSP's system works, the security credential the payer's bank received are sufficient to cause a fraudulent payment.

Initial results from our ongoing research on this topic have shown that small changes in the transaction authorisation process can significantly affect the mental model of payers understanding of the payment process, and consequently what steps the customer will take to avoid fraud. In some cases we have examined, the customers act in such a way that they would be able to detect fraud. With other PSP's system, customers naturally are led to have an incorrect understanding of the process, and hence vulnerable to fraud even if they are taking what they consider to be requisite care. PSPs should only be able to disclaim liability if they can empirically demonstrate that their transaction authorisation system will lead customers to act in a way that would allow them to readily prevent fraudulent transactions.

2 Bills of Exchange Act, 1882

3 Ross Anderson, Closing the Phishing Hole – Fraud, Risk and Nonbanks. At Nonbanks in the Payment System, May 2007. <https://www.cl.cam.ac.uk/~rja14/Papers/nonbanks.pdf>

3) *Assessing compliance to required standards*

Whether a PSP complies with required standards should be assessed by an independent party, and following the principle of transparency, this assessment report should be made available to customers and be sufficiently detailed for them to be able to appoint an expert to repeat the assessment. The assessment should be performed according to the best-practices for evaluating security techniques⁴, to ensure that the results of experiments are a valid representation of customers actual behaviour. The criteria for a sufficiently secure system should be that all customers, taking ordinary care and in a realistic context, should have a proper understanding of the consequences of their actions and be able to reliably detect and prevent frauds.

Question 6: If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.

Existing organisations and processes within the payments industry that I am aware of are responsible for allocating liability between member organisations, whereas a contingent reimbursement model is significantly different in that the outcome of the process may be that the customer is held liable. For this reason I expect it will be necessary that a new organisation, independent from the payment industry, will need to be created to manage the process.

Question 7: In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.

The Payment Services Regulations allows the Financial Ombudsman Service (FOS) to act as an alternative dispute resolution service, presumably including over the use of a contingent reimbursement model. However, in cases where the FOS is not able to resolve a dispute to all parties' satisfaction, the dispute will need to be referred to the court system. The court system also serves a critical role as a check-and-balance to the fairly opaque and unaccountable ombudsman process. Furthermore, courts have powers which are unavailable to the FOS, such as to make and enforce orders for the disclosure of evidence, set precedent, and appoint independent experts.

However, the high costs and "loser-pays" model of the UK courts creates a significant problem of access to justice. Push payment scams commonly exceed the limit for the small claims court and therefore a customer pursuing a case in the courts is at risk of being required to pay the legal costs of their bank, likely a five-figure sum that few could afford. For all but the richest customers, this situation effectively eliminates the option of escalation to the court system.

The Civi Justice Council found that this situation particularly affects customers⁵

4 Krol et al. Towards robust experimental design for user studies in security and privacy. LASER 2016 <https://www.usenix.org/system/files/conference/laser2016/laser2016-paper-krol.pdf>

5 Civil Justice Council. Improving Access to Justice through Collective Actions. November 2008. <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/CJC+-papers/CJC+Improving+Access+to+Justice+through+Collective+Actions.pdf>

"Existing procedure does not provide sufficient or effective access to justice for a wide range of citizens, particularly but not exclusively consumers, small businesses, employees wishing to bring collective or multi-party claims. ... There is overwhelming evidence that meritorious claims, which could be brought are currently not being pursued."

The Financial Services Bill 2009 incorporated provisions to allow collective proceedings regarding financial products, in order to spread the risk of legal costs over multiple members of a class. However the Financial Services Act 2010, as passed, had this provision removed.

In contrast, many other countries either have each litigant pay their legal costs in normal circumstances, or at least cap the customer's cost to a level they can afford. Therefore, while other countries may have a default assignment of liability for push payment scams to the payer, similar to the UK, they have better access to justice and therefore have a more effective means to challenge this decision. While the PSR cannot change this situation by itself, any contingent reimbursement model will effectively be the final decision for the vast majority of customers, and so should replicate the features of the court system that are needed to fairly resolve cases.

Question 8: Please explain, if relevant, how your organisation currently decides whether to reimburse a victim of an APP scam. Does this include an assessment of vulnerability?

Not applicable.

Question 9: Are there any factors that should be considered when defining the requisite level of care victims should meet?

As discussed in the answer to Q4, the system-operator is in the best position to influence customer behaviour in order to reduce risk of fraud. Therefore the minimum level of requisite care should be anything other than gross negligence, as with the Payment Services Directive 1 and 2. When assessing whether a customer has been grossly negligent, the actions of a customer should be examined to see if they fall far short of what a reasonable person would do in a comparable situation, taking into account pressures that customers are subject to, and what practices have been encouraged, or at least tolerated by, the PSP involved in the fraud and other PSPs which the customer deals with. Our research has found that security instructions described in terms and conditions (T&C) of PSPs are inconsistent, confusing⁶ and far exceed what customers do in practice and what they can achieve with realistic effort⁷. Therefore gross negligence should not be defined in terms of non-compliance to T&C.

6 Becker et al. International Comparison of Bank Fraud Reimbursement: Customer Perceptions and Contractual Term. Workshop on the Economics of Information Security (WEIS), June 2016. <http://sec.cs.ucl.ac.uk/users/smurdoch/papers/weis16fraudreimbursement.pdf>

7 Murdoch et al. Are Payment Card Contracts Unfair? Financial Cryptography 2016. <http://sec.cs.ucl.ac.uk/users/smurdoch/papers/fc16cardcontracts.pdf>

Where compliance with PSP provided customer education forms a part of the assessment of requisite level of care, PSPs should provide empirical evidence that the information provided to their customers regarding secure behaviour, as well as the means of communicating this information, are easy to understand, easy to remember, consistent across all means of communication and consistent with the design of other technologies associated with this bank and that of other banks common in the region. Following the principle of transparency, this evidence should be provided to customers so that they can examine and challenge whether the PSP have discharged their duty adequately.

Question 10: Do you think it is necessary for a significant majority of, if not all, PSPs that provide push payment services to consumers to adopt the contingent reimbursement model for it to be effective? If yes, please explain if you think the model would need to be mandatory for PSPs

Competition within the retail banking industry has not been particularly effective at improving quality of service, as shown by the low rate at which customers move banks. For example, the Competition and Markets Authority found⁸ that over half of customers had been with their current account provider for more than ten years, concluding that "we have therefore found that competition in [personal current account] markets is not working well."

The UK banks have also generally made a policy decision to not compete on security and so here especially, competitive pressures have not been effective at reducing risk to customers. While the retail banking market investigation of the Competition and Markets Authority have recently enacted some measures to improve competition (e.g. Open Banking), these have not yet had a significant effect. For this reason I would consider it appropriate that any reimbursement model be mandatory.

Question 11: What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.

As a result of initiatives like the IBAN and SEPA, the distinction between domestic and international transfers are increasingly indistinguishable to customers, and therefore it seems inappropriate to assign risk of push payment fraud to customers in the case of overseas accounts. If the system design for international payments is not secure enough to effectively recover funds, then system operators should be given the incentive to resolve this deficiency.

Question 12: In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.

I am not aware of an existing organisation who could oversee this dispute resolution

⁸ Competition and Markets Authority. Retail banking market investigation (final report). August 2016. <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/re-tail-banking-market-investigation-full-final-report.pdf>

mechanism and because of the risk of liability dumping, procedures must be set up to ensure transparency and independence of the organisation responsible for making decisions. As such, the body responsible should be independent of the banking industry and be provided with sufficient independent technical and legal resources to fairly resolve disputes.

Question 13: Do you agree with our view that a contingent reimbursement model, if introduced, should be in place by the end of September 2018? Please explain.

As a result of the work by the PSR, we know the substantial financial and human cost that push payment fraud imposes on individuals and society. Therefore mitigations, such as the contingent reimbursement model should be introduced as a matter of urgency.

Question 14: Should a phased or transition approach be used to implement a contingent reimbursement model? Please explain.

As noted in the answer to Q13, the sooner mitigations are introduced, the better it will be for customers and the greater will the incentive be on PSPs to reduce the risk of fraud. The precise timing of the introduction of mitigation should be considered by an independent body taking into account the views of the payments industry and representatives of customers.