

Consultation paper

Authorised push payment scams

The consumer standard
of caution

August 2023

We welcome your views on this consultation. If you would like to provide comments, please send these to us by **5pm on 12 September 2023**.

You can email your comments to **appscams@psr.org.uk** or write to us at:

APP Scams
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential. We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website: **www.psr.org.uk/app-fraud-consumer-standard-of-caution-consultation-paper/**

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1 Executive summary

1.1 On 7 June 2023, we published our final policy statement, PS23/3: *Fighting authorised push payment fraud: a new reimbursement requirement*. Within that policy statement, we introduced a general requirement: that sending payment service providers (PSPs) should reimburse their consumers who had executed an authorised push payment (APP) subsequent to fraud or dishonesty. We also stated that there would be two exceptions to this general reimbursement obligation:

- Where the consumer seeking reimbursement has acted fraudulently ('first-party fraud').
- Where the consumer has acted with gross negligence (the 'consumer standard of caution').

We also explained that the consumer standard of caution would not apply to consumers who are identified as being vulnerable to a particular APP scam. We committed, in response to feedback received as part of our previous consultation, to producing guidance on the consumer standard of caution.

1.2 We have since held a series of engagement sessions with industry trade bodies, PSPs, consumer groups and other interested parties on our approach to producing guidance on the consumer standard of caution. Those sessions aimed to gather provisional views from stakeholders, to test our preliminary reasoning, and to help inform the options presented during this consultation.

1.3 In this consultation paper, we are asking for views on the policy approach we propose to take to the consumer standard of caution and the draft guidance we intend to produce alongside that policy. This consultation builds on our policy statement published in June, as well as on our further work and stakeholder engagement since then.

Our high-level proposal

1.4 We propose that consumers should be expected to meet an express standard of care when executing authorised push payments. That standard should consist of three elements:

- a requirement to have regard to warnings
- a prompt notification requirement
- an information sharing requirement

1.5 Where a consumer has not, through gross negligence, met one or more of these standards, their PSP is not required to reimburse a consumer who has fallen victim to an APP scam. Our draft policy is included at Annex 1 of this paper, while the draft guidance we propose to issue is included at Annex 2.

1.6 This consultation paper seeks the following:

- Views on our approach to the consumer standard of caution.
- Any suggestions for additional standards of care that consumers might be expected to meet in relation to APPs.
- Views on our proposed policy document (Annex 1) and the accompanying draft guidance (Annex 2).

2 Introduction

On 7 June 2023, we published our policy statement, *Fighting authorised push payment fraud: a new reimbursement requirement*. Within that statement, we introduced a general requirement for sending PSPs to reimburse their consumers who had fallen victim to an APP scam.

We also stated that there would be two exceptions to this general reimbursement obligation:

- Where the consumer seeking reimbursement has acted fraudulently ('first-party fraud').
- Where the consumer has acted with gross negligence (the 'consumer standard of caution').

Within our policy statement, we explained that the consumer standard of caution would not apply to consumers who are identified as being vulnerable to a particular APP scam. We also committed to producing guidance on the consumer standard of caution and to consulting on a draft of that guidance.

This consultation sets out that we will publish both a policy document on the consumer standard of caution and a guidance document. It includes drafts of both documents and seeks views on our approach.

Background

- 2.1** Following consultation, on 7 June 2023, we published our final policy paper, PS23/3: *Fighting authorised push payment fraud: a new reimbursement requirement*. In this, we responded to feedback received as part of our previous consultation and committed to producing guidance on the consumer standard of caution.
- 2.2** We followed this with a series of engagement sessions with industry trade bodies, PSPs, consumer groups and other interested parties. We explained our provisional approach to producing relevant guidance. We gathered views from stakeholders to test our reasoning and help to inform the options presented during this consultation. In this paper, we are asking for views on our proposed policy approach to the consumer standard of caution.
- 2.3** In our Policy Statement, we set out both our assessment of the costs and benefits, and the equalities implications, of our overall reimbursement policy.¹ The proposals in this document form part of our work in implementing that policy. As such, our assessment of both the equalities implications and the costs and benefits of the policy is not changed by the proposed guidance set out in this consultation.

¹ PS23/3: *Fighting authorised push payment fraud: A new reimbursement requirement*, (June 2023), [Annex 1](#) and [Annex 4](#).

2.4 The rest of this consultation paper is set out as follows:

- **Chapter 3** outlines our proposed approach to the consumer standard of caution.
- **Chapter 4** outlines how we propose to implement the consumer standard of caution and our plans to review its operation once it is implemented.
- **Chapter 5** sets out the next steps, including how to respond to this consultation, our timetable, and a list of the consultation questions.
- **Annex 1** provides a draft of our policy document setting out the consumer standard of caution.
- **Annex 2** provides a draft of our guidance on how PSPs should approach assessments under the consumer standard of caution.

3 Outline of our proposals

We propose that consumers should be subject to an express standard of care in relation to authorised push payments. The standard should consist of three elements:

- a requirement to have regard to warnings, where those warnings are consumer, scam and transaction-specific
- a prompt notification requirement
- an information sharing requirement

Where a consumer, through gross negligence, has not met one or more of these standards, we propose that their PSP is not required to offer reimbursement for an authorised push payment executed subsequent to fraud or dishonesty. The gross negligence exception to the reimbursement requirement is a high standard. Where suspected, the burden of proof shall rest on the PSP to demonstrate that a consumer has, through gross negligence, not met the standard of care. As we set out in our policy statement, the exception does not apply to vulnerable consumers. This chapter should be read alongside Annex 1 and Annex 2, which set out the draft text of the policy and guidance we are consulting on.

- 3.1** Our June policy statement outlined that there would be two exceptions to the reimbursement obligation that we would be placing on PSPs. One exception is where it can be shown that the consumer has acted with gross negligence. We called this ‘the consumer standard of caution’. The concept of negligence implies a breach of a standard of care. Therefore, we propose to specify the standard of care that PSPs can expect of their consumers when the latter are sending APPs.

The standard of care

- 3.2** We propose that the standard of care that PSPs can expect of their consumers in relation to APPs shall include:
- **A requirement to have regard to warnings:** Consumers should have regard to **specific, directed** warnings raised by their PSP. These must occur before an authorised push payment is executed and make clear that the intended recipient of the payment is likely to be a fraudster.
 - **A prompt reporting requirement:** Consumers who learn or suspect that they have fallen victim to an APP scam should report the matter promptly to their PSP. In any event, they should report it no more than 13 months after the last relevant fraudulent payment was authorised.
 - **An information sharing requirement:** Consumers should respond to any reasonable and proportionate requests for information made by their PSP. This is to help them assess a reimbursement claim and whether the consumer is vulnerable, taking account of our ‘stop the clock’ rules.

3.3 Subject to consultation, we propose that these three requirements should be the totality of the standard of care that consumers can be expected to meet. PSPs should not, through their existing contractual terms and conditions with their consumers, introduce any additional standards that have the object or effect of altering the consumer's access to reimbursement. Nor should PSPs introduce any terms or conditions that have the effect of altering or qualifying the three requirements listed above.

3.4 Where a PSP can demonstrate that a consumer has, through gross negligence, not met one or more of the three requirements, the PSP is not obliged to reimburse the consumer. The onus will be on the PSP to demonstrate that the consumer has acted with gross negligence. The burden of proof will be one of the balance of probabilities. PSPs should not introduce, in their contractual arrangements with consumers, any terms and conditions that shift this burden of proof onto the consumer, nor require the consumer to disprove that they were grossly negligent.

3.5 Each reimbursement claim will need to be assessed on its merits to determine whether the consumer is eligible for reimbursement or has breached the consumer standard of caution. We interpret 'gross negligence' to be a higher standard than the standard of negligence under common law. The consumer needs to have shown a very significant degree of carelessness.

Question 1: Do you agree that the PSR should specify the standard of care that PSPs can reasonably expect of consumers? Please provide reasons for your answer.

Question 2: Do you agree that the standards of care specified by the PSR should be exhaustive, and that PSPs should not be able to introduce additional standards through their contractual relations with consumers? Please provide reasons for your answer.

Question 3: Do you agree that the burden of proof should fall on the PSP to demonstrate that a consumer – through gross negligence – has failed to meet one or more of the standards at paragraph 3.2? Please provide reasons for your answer.

Question 4: Do you agree that PSPs should not be able to introduce, through their contractual relations with consumers, terms or conditions that shift the burden of proof onto consumers, or seek to reduce the burden on providers? Please provide reasons for your answer.

The requirement to have regard to warnings

3.6 We propose that consumers can be expected to have regard to tailored, specific warnings raised by their PSP. These would occur before an authorised push payment is executed, and where those warnings show that the intended recipient of the payment is likely to be a fraudster. A reimbursement claim can only be refused where the PSP can demonstrate that the consumer, through gross negligence, has not had regard to such warnings.

- 3.7** We do not propose to be prescriptive on the approach that PSPs should take in creating tailored, specific warnings. It will be up to providers to develop their own operational approaches and identify effective best practice. The warnings should be consumer, scam and transaction-specific. They ought not to consist of 'boilerplate' warnings. PSPs would not be able to legitimately refuse reimbursement claims based on vague, non-specific warnings, or warnings that routinely accompany most or all transactions of a similar type.
- 3.8** While we propose that consumers should have regard to adequately constructed warnings, a consumer proceeding with a transaction despite these warnings should not automatically be deemed to have been grossly negligent. The degree of negligence that may be deemed to rest with the consumer should consider, among other factors:
- the nature of the warnings provided by their PSP
 - the complexity of the scam to which the consumer has been subject
 - any claims history from the consumer suggesting a propensity to fall for similar types of scams
 - whether the PSP can reasonably be expected to have paused or otherwise prevented an authorised push payment from being executed
- 3.9** PSPs should consider that, where a consumer is subject to repeated APP scams of a similar kind, this may be indicative of vulnerability. Providers should take care to ensure they do not mistakenly categorise vulnerability as gross negligence in such circumstances.

Question 5: Do you agree that consumers should be expected to have regard to tailored, specific warnings raised by their PSP before a proposed authorised push payment has been executed, where those warnings make clear that the intended recipient of the payment is likely to be a fraudster? Please provide reasons for your answer.

Question 6: Do you have any other comments on the requirement to have regard to warnings, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?

The prompt reporting requirement

- 3.10** We propose that consumers can be expected to promptly notify their PSP on learning of, or suspecting, an APP scam. This can avoid situations in which a consumer experiences an initial scam and delays notifying their PSP, before going on to fall victim to subsequent scams. The PSP could then reasonably argue that the later scams might have been averted, had the consumer promptly reported the initial scam. It will also help PSPs swiftly identify and close receiving accounts under the control of a fraudster and act more quickly in seeking to repatriate funds.
- 3.11** Only when a consumer has, with gross negligence, not promptly notified their PSP will the PSP be able to refuse a reimbursement request. What constitutes a prompt notification will depend on the circumstances of each individual case.

- 3.12** PSPs should provide accessible, non-discriminatory means for consumers to notify them of suspected APP scams. They should not rely upon any delay introduced or caused by their own reporting systems when assessing whether a consumer has notified them promptly.
- 3.13** When assessing whether a consumer has promptly reported a suspected APP scam, we propose that PSPs should make reasonable allowances for consumers who have taken time to report a suspected scam to the police before notifying the provider.

Question 7: Do you agree that consumers should be subject to a standard to promptly notify their PSP when they suspect they have, or may have, fallen victim to an APP scam? Please provide reasons for your answer.

Question 8: Do you have any other comments on the prompt notification requirement, taking into account the draft policy document in Annex 1 and the draft guidance in Annex 2?

The information sharing requirement

- 3.14** Consumers should be expected to respond to reasonable and proportionate requests for information made by their PSP to assess a claim for reimbursement. These include requests made under the 'stop the clock' provisions of our June policy statement. Only in circumstances where a consumer has, through gross negligence, not responded or adequately responded to such requests may a PSP refuse a reimbursement claim.
- 3.15** PSPs would need to provide an adequate opportunity for consumers to supply sufficient information to fully assess a reimbursement claim when that claim is initiated. Additional information requests by the PSP, made after a reimbursement claim has been initiated, would be by exception. Such requests would need to be strictly limited to essential information needed for the PSP to establish either whether the consumer has been subjected to an APP scam, or for the purposes permitted under our 'stop the clock' provisions. All such requests would need to be proportionate to the value and complexity of the claim, and the claims history of the consumer.
- 3.16** PSPs would not be able to use information requests to deter or frustrate reimbursement claims. Nor would they be able to embark upon speculative requests for information.
- 3.17** PSPs would need to consider whether an inability or unwillingness to respond, or respond adequately, to an information request may be indicative of a consumer's vulnerability. They should take care to ensure that they do not mistakenly categorise vulnerability as gross negligence in such circumstances.
- 3.18** In our engagement sessions conducted prior to this consultation document, several PSPs argued that any disclosure requirements should be strict ones. They also argued that providers should be able to refuse a reimbursement claim whenever a consumer does not respond, or provides inadequate responses, to an information request, rather than when the consumer has been grossly negligent in not responding or sending inadequate responses.

- 3.19** We envisage two scenarios in which a consumer might understandably not comply, or fully comply, with an information request by a PSP. The first is where the PSP either seeks information that, judged objectively, is not necessary to evaluate the claim, or where the information sought is disproportionate to the value or complexity of the claim. Consumers should not be expected to comply with such requests.
- 3.20** The second is where a PSP makes an information request that is proportionate but results in the consumer providing no, or an inadequate, response. The consumer may have complicated, circumstantial reasons for not wishing to make disclosure. We do not consider that reluctance or unwillingness by a consumer to respond to information requests would, of itself, necessarily constitute valid grounds for refusing a reimbursement claim. Nor would it automatically equate to gross negligence.
- 3.21** We accept that there would be some operational challenges for PSPs in implementing this proposal. The absence, or inadequacy, of evidence provided by a consumer could result in PSPs needing to undertake evaluative assessments based on limited information. This could result in incorrect decisions on reimbursement. However, consumers are not the only source of information, and information can also be gathered by PSPs from both the payment information associated with a particular transaction, and from the receiving PSP.²

Question 9: Do you agree that consumers should be subject to a standard to respond to reasonable and proportionate information requests from their PSP, where those requests are necessary to establish whether the consumer is the victim of an APP scam, or where they are necessary under our 'stop the clock' policy? Please provide reasons for your answer.

Question 10: Do you have any other comments on the information sharing requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?

Question 11: Do you have any additional feedback on the draft policy document at Annex 1 or the draft guidance at Annex 2?

Other standards of care we considered

- 3.22** As part of our engagement sessions, we considered introducing a standard requiring the consumer to have regard to any relevant terms and conditions of use issued by their PSP in relation to their payment account. This was considered on the basis that a similar standard exists under the Payment Services Regulations 2017 in relation to unauthorised fraud. However, during our engagement sessions, there was little positive evidence of any need for an equivalent term for authorised payments.

² A consumer who is, through lack of sufficient supporting evidence, wrongly refused reimbursement has a right to appeal to the Financial Ombudsman Service.

3.23 One provider suggested that there might be a need to expect consumers not to provide any third party with remote access to their payment account, and that such a requirement might be placed in the contract between a provider and a consumer. After consideration, we concluded that a consumer's delegation of access to a fraudster was likely a feature of at least some APP scams. Moreover, the effect of prohibiting such behaviour would exclude from the scope of our reimbursement policy a consumer who might otherwise have qualified.

3.24 We also considered whether to introduce a positive standard for consumers to report a suspected scam to the police, as a precondition of seeking reimbursement from their PSP. While we have not included this in our proposed standard of care, we may consider doing so in the future and would welcome any evidence on the advantages and disadvantages of such an approach. Though we do not presently propose a formal requirement, we expect PSPs to encourage consumers to report APP scams to the police. Police reporting will be a critical step to the identification and successful prosecution of fraudsters.

Question 12: Do you have any additional suggestions for inclusion in the standard of care that PSPs can expect of consumers in relation to authorised push payments?

Question 13: Do you agree that a standard to report a suspected APP scam to the police should not be included at this stage? Please provide reasons for your answer.

4 Implementation and monitoring

- 4.1** We will publish our final policy on the consumer standard of caution by the end of 2023. The draft of that policy is at Annex 1. This will complement our wider APP reimbursement requirement set out in our June policy statement. The consumer standard of caution will go live alongside the rest of our reimbursement policy.
- 4.2** We will publish alongside our policy on the consumer standard of caution our guidance on its implementation, a draft of which is at Annex 2.

Monitoring the effectiveness of the consumer standard of caution

- 4.3** We will monitor the effectiveness of the new reimbursement requirement by assessing information that Pay.UK will gather from PSPs. We will also assess the data we gather on how Pay.UK itself is monitoring compliance with our reimbursement policy overall.
- 4.4** We will assess overall reimbursement rates, paying particular attention to refusals where the sending PSP claims that the consumer has not met the standard of caution. We will also pay close attention to the speed of reimbursement and whether excessive delays are being introduced by investigations under the 'stop the clock' provisions of our policy.

Post-implementation review

- 4.5** We will publish a comprehensive post-implementation review of our reimbursement requirement within two years of its coming into effect. This review will include consideration of the effectiveness of the consumer standard of caution against our objectives.
- 4.6** The PSR's goal is for Pay.UK to maintain, refine, monitor and enforce compliance with a comprehensive scheme for Faster Payments. This system successfully addresses the fraud risks involved. We will continue to work with Pay.UK to understand how we can achieve this goal. Where necessary, we will consult on any changes to Pay.UK's role and implement those changes through appropriate legal instruments.
- 4.7** We will review the progress of wider action to fight fraud. This will include our own efforts, including publishing a balanced scorecard of APP scam data, increasing intelligence sharing across the payments ecosystem and spending on Confirmation of Payee.

5 Next steps

How to respond

- 5.1** We are asking for feedback on the issues set out in this consultation by 5pm on **12 September 2023**. We continue to welcome feedback from all stakeholders and interested parties, not only those entities that we regulate.
- 5.2** You can provide feedback by emailing us at **appscams@psr.org.uk**. We would be grateful if you could provide your response in a Microsoft Word document format, or similar format, rather than as a PDF.
- 5.3** We will make all non-confidential responses available for public inspection. If your submission includes confidential information, please also provide a non-confidential version that is suitable for publication.
- 5.4** After the consultation closes, we will take account of all the feedback we receive before publishing our final policy position on the consumer standard of caution later in 2023. We will also, alongside that policy position, publish guidance on the consumer standard of caution.

Timetable

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| Q3 2023 | <ul style="list-style-type: none"> • The PSR will consider responses to this consultation in developing its policy decisions on the consumer standard of caution as well as the accompanying guidance. |
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| Q4 2023 | <ul style="list-style-type: none"> • The PSR will publish its final policy position on the consumer standard of caution. • The PSR will publish its final guidance document on the consumer standard of caution. |
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List of questions

- Question 1 :** **Do you agree that the PSR should specify the standard of care that PSPs can reasonably expect of consumers? Please provide reasons for your answer.**
- Question 2 :** **Do you agree that the standards of care specified by the PSR should be exhaustive, and that PSPs should not be able to introduce additional standards through their contractual relations with consumers? Please provide reasons for your answer.**
- Question 3:** **Do you agree that the burden of proof should fall on the PSP to demonstrate that a consumer – through gross negligence – has failed to meet one or more of the standards at paragraph 3.2? Please provide reasons for your answer.**

- Question 4:** Do you agree that PSPs should not be able to introduce, through their contractual relations with consumers, terms or conditions that shift the burden of proof onto consumers, or seek to reduce the burden on providers? Please provide reasons for your answer.
- Question 5:** Do you agree that consumers should be expected to have regard to tailored, specific warnings raised by their PSP before a proposed authorised push payment has been executed, where those warnings make clear that the intended recipient of the payment is likely to be a fraudster? Please provide reasons for your answer.
- Question 6:** Do you have any other comments on the requirement to have regard to warnings, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?
- Question 7:** Do you agree that consumers should be subject to a standard to promptly notify their PSP when they suspect they have, or may have, fallen victim to an APP scam? Please provide reasons for your answer.
- Question 8:** Do you have any other comments on the prompt notification requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?
- Question 9:** Do you agree that consumers should be subject to a standard to respond to reasonable and proportionate information requests from their PSP, where those requests are necessary to establish whether the consumer is the victim of an APP scam, or where they are necessary under our 'stop the clock' policy? Please provide reasons for your answer.
- Question 10:** Do you have any other comments on the information sharing requirement, taking into account the draft policy document at Annex 1 and the draft guidance at Annex 2?
- Question 11:** Do you have any additional feedback on the draft policy document at Annex 1 or the draft guidance at Annex 2?
- Question 12:** Do you have any additional suggestions for inclusion in the standard of care that PSPs can expect of consumers in relation to authorised push payments?
- Question 13:** Do you agree that a standard to report a suspected APP scam to the police should not be included at this stage? Please provide reasons for your answer.

Annex 1

Draft policy on the consumer standard of caution

- 1.1** The Payment Systems Regulator (PSR), under Section 55 of the Financial Services (Banking Reform) Act 2013, and through Specific Requirement [X] (Faster Payments APP scam reimbursement rules) (hereafter, 'the specific requirement'), has put in place obligations on the operator of Faster Payments to change the Faster Payments rules in the ways set out in the specific requirement.
- 1.2** All references in the specific requirement to the 'consumer standard of caution' and 'consumer standard of caution exception' are references to the definitions of those terms within this document.
- 1.3** The following terms in this document have the meaning defined in Section 8.4 of the specific requirement: authorised push payment; APP scam; APP scam payment; consumer; payment service provider; sending PSP; and reimbursable APP scam payment.

The consumer standard of caution

- 1.4** The consumer standard of caution is that a sending PSP, in assessing whether an APP scam payment gives rise to a reimbursable APP scam payment, may expect that the customer:
- Should, upon learning or suspecting that they have fallen victim to an APP scam, report the matter promptly to their sending PSP and, in any event, not more than 13 months after the date on which the last relevant APP scam payment was executed.
 - Should respond to any reasonable and proportionate requests for information made by their sending PSP for any of the purposes set out in Section 3.7 of the specific requirement.
 - Should have regard to specific, directed warnings raised by their sending PSP before an APP is executed, where those warnings make clear that the intended payment is likely to be an APP scam payment.

The consumer standard of caution exception

- 1.5** The consumer standard of caution exception is where a sending PSP can demonstrate that a consumer who has executed an APP scam payment has, as a result of gross negligence, not complied with one or more of the standards set out at paragraph 1.4 (the consumer standard of caution).
- 1.6** A sending PSP, in seeking to demonstrate that a customer falls within paragraph 1.5 of this document, must have regard to any guidance published by the PSR on the consumer standard of caution.

Annex 2

Draft guidance on the consumer standard of caution

- 2.1** In our June policy statement, we outlined that there would be two exceptions to the generalised reimbursement obligation we would be placing on PSPs. One of those exceptions is where it can be shown that the consumer has acted with gross negligence, which we called 'the consumer standard of caution'. This will help encourage consumers to exercise care before issuing authorised push payments.
- 2.2** The concept of negligence implies a breach of a standard of care. In our policy document *The consumer standard of caution*, we specified the standard of care that PSPs can expect of their consumers when the latter are sending APPs.
- 2.3** The standard of care that PSPs can expect of their consumers when the latter are sending authorised push payments includes:
- **The requirement to have regard to warnings:** Consumers should have regard to specific, directed warnings raised by their PSP before an APP is executed. Those warnings should make clear that the intended recipient of the payment is likely to be a fraudster.
 - **The prompt reporting requirement:** Consumers should, upon learning or suspecting that they have fallen victim to an APP scam, report the matter promptly to their PSP and, in any event, not more than 13 months after the last relevant payment was authorised.
 - **The information sharing requirement:** Consumers should respond to any reasonable and proportionate requests for information made by their PSP to help them assess a reimbursement claim. This includes requests under our 'stop the clock' rules.
- 2.4** These three requirements are the totality of the standard of care that consumers can be expected to meet. PSPs should not place, through their contractual terms and conditions with their consumers, any additional standards on the consumer beyond those listed above. Nor should they introduce any terms or conditions that have the effect of altering or qualifying the three requirements listed above.
- 2.5** Where a PSP can demonstrate that a consumer, through gross negligence, has not met one or more of these three requirements, the PSP is not obliged to reimburse the consumer.
- 2.6** The burden of proof falls exclusively upon the PSP to demonstrate that a consumer has acted with gross negligence. PSPs may not introduce, in their contractual agreements with their consumers, any terms and conditions that have the effect of shifting this burden of proof onto the consumer, or of requiring the consumer to disprove that they were grossly negligent.

2.7 Each reimbursement claim made by a consumer will need to be assessed on its individual merits to ascertain whether the consumer is eligible for reimbursement, or has acted with gross negligence in not meeting the consumer standard of care. We interpret ‘gross negligence’ to be a higher standard than the standard of negligence under common law. The consumer needs to have shown a significant degree of carelessness.

The requirement to have regard to warnings

2.8 PSPs can expect their customers to have regard to tailored, specific warnings raised by the provider before an authorised push payment is executed, where those warnings make clear that the intended recipient of the payment is likely to be a fraudster. Only in circumstances where the PSP can demonstrate that the customer has, as a result of gross negligence, not had regard to such warnings can a reimbursement claim be refused.

2.9 We do not wish to be prescriptive as to the approach PSPs might take in creating tailored, specific warnings. It will be up to providers to develop their own operational approaches and identify best practice. The warnings should be consumer, scam, and transaction specific. They should not consist of ‘boilerplate’ warnings. Providers should not refuse reimbursement claims on the basis that they have issued vague, non-specific warnings, or warnings that routinely accompany most or all transactions of a similar type.

2.10 Although consumers should have regard to adequately constructed warnings, a consumer proceeding with a transaction despite these warnings should not automatically be deemed to have been grossly negligent. The degree of negligence that may be deemed to rest with the consumer should consider, in addition to any other relevant factors:

- the specificity and nature of the warnings provided by their sending PSP
- the complexity of the scam to which the consumer has become victim
- any claims history from the consumer suggesting a propensity to fall for similar types of scams
- whether the PSP can reasonably be expected to have paused or otherwise prevented an APP from being executed

2.11 PSPs should consider that, where a consumer falls subject to repeated APP scams of a similar kind, this may be indicative of vulnerability on the part of the consumer. Providers should take care to ensure that they do not mistakenly categorise vulnerability as gross negligence in such circumstances.

The prompt reporting requirement

2.12 Consumers who learn or suspect that they have fallen victim to an APP scam can be expected to promptly notify this to their PSP.

2.13 Only in circumstances where a customer, as a result of gross negligence, does not promptly notify their PSP will the latter be able to refuse a reimbursement request. What constitutes a prompt notification will depend upon the circumstances of each individual case.

2.14 PSPs should provide accessible, non-discriminatory means for consumers to notify them of suspected or actual APP scams.

- 2.15** When assessing whether a consumer has notified them promptly, PSPs should not rely upon any delay in notification from a consumer that has been caused by the provider's own reporting systems.
- 2.16** In assessing whether a consumer has promptly reported a suspected scam, PSPs should make reasonable allowances for consumers who have taken time to make a report to the police before notifying their provider.

The information sharing requirement

- 2.17** PSPs can expect their consumers to respond to any reasonable and proportionate requests for information from the provider that are needed to assess a claim for reimbursement. This includes requests made under the 'stop the clock' provisions of our June policy statement. Only in circumstances where a customer has, as a result of gross negligence, not responded, or responded adequately, to such requests may a PSP refuse a reimbursement claim.
- 2.18** PSPs should ensure that there is adequate opportunity for consumers to supply sufficient information to fully assess a reimbursement claim at the point that claim is initiated. Additional information requests by the PSP, made after the point at which a reimbursement claim has been initiated, should be by exception. Such requests would need to be strictly limited to essential information needed for the PSP to establish either whether the consumer has been subjected to an APP scam, or for the purposes permitted under our 'stop the clock' provisions. All such requests should be proportionate to the value and complexity of a claim, taking into account any claims history of the consumer.
- 2.19** PSPs should not use information requests to deter or frustrate reimbursement claims. They should not embark upon speculative requests for information.
- 2.20** We envisage two scenarios in which a consumer might understandably not comply, or fully comply, with an information request by a PSP. The first is where the PSP either seeks information that, judged objectively, is not necessary to evaluate the claim, or where the information sought is disproportionate to the value or complexity of the claim. Consumers should not be expected to comply with such requests.
- 2.21** The second is where a PSP makes an information request which is proportionate, but where there are emotional, psychological or other complexities which result in the customer providing no, or inadequate, disclosure in response. In such a scenario, the customer may have complicated, circumstantial reasons for not wishing to make some disclosures to their PSP. We do not consider that reluctance or unwillingness by a customer to respond to information requests would, in and of itself, necessarily constitute valid grounds for refusing a reimbursement claim. Nor would it automatically equate to gross negligence.
- 2.22** PSPs should consider that, where a consumer is unable or unwilling to respond, or adequately respond, to an information request by their provider, this may be indicative of vulnerability. Providers should take care to ensure that they do not mistakenly categorise vulnerability as gross negligence in such circumstances.

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12 Endeavour Square

London E20 1JN

Telephone: 0300 456 3677

Website: www.psr.org.uk

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