

Authorised push payment scams: Outcome of consultation on the development of a contingent reimbursement model

February 2018



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1 Executive summary

- 1.1** Authorised push payment (APP) scams – where people are tricked into sending money to a fraudster – are a crime that can have a devastating effect on the victims. They are the second biggest type of payment fraud reported by UK Finance, in terms of both the number of scams and the total value involved (behind card fraud). We are driving the way forward to make a positive difference for consumers and protect them from APP scams. We want to make it harder for criminals to perpetrate these scams in the first place and, if they do occur, we want to improve the victim's experience: we believe a contingent reimbursement model (CRM) is the most effective way to do this. We have consulted on this and set out the next steps in this document.
- 1.2** In November 2017, we published a report on the work that we and industry are doing to develop and progress a range of initiatives that should help prevent APP scams, and improve the response when they do happen. We believed that more could be done in the area of reimbursement, and in our report we supported the introduction of a CRM. This sets out the circumstances when payment service providers (PSPs) would be responsible for reimbursing APP scam victims who have acted appropriately. A CRM should establish better incentives for PSPs to use the measures being developed that help prevent and respond to APP scams, and for consumers to remain vigilant. We launched a consultation on whether a CRM should be introduced and the high-level principles we considered an effective model should meet.
- 1.3** Our consultation closed in January 2018. We received responses from 21 organisations (which included the major UK retail banks, Which? and UK Finance), one Parliamentarian and ten private individuals. Consumer groups and many of the industry players were supportive or conditionally supportive of the introduction of a CRM for victims of APP scams. We received a range of views from different stakeholders on the key elements of the model and how it should function.
- 1.4** Taking account of responses, we consider that an industry code, developed collaboratively by industry and consumer group representatives, that sets out the CRM's rules is the most effective way to promote the interests of users of payment system services and reduce the consumer harm that APP scams can cause.
- 1.5** We are bringing the right people together to establish a dedicated steering group to develop the code. The steering group will have an equal balance of representatives from key stakeholder groups, particularly consumer representatives and PSPs. We will drive the steering group forward and provide oversight and support, and other relevant regulatory and governmental bodies will also be involved as observers. The steering group will be responsible for reaching consensus between members on a set of key issues, and formalising the CRM into a set of rules that will form an industry code for reimbursement of APP scam victims.
- 1.6** We have established a set of core principles for the code that we expect the steering group's proposals should be consistent with. These are principles that we consider underpin an effective CRM that should better protect consumers from harm. Amongst others, these include principles to provide the right incentives for those parties who can best reduce the occurrence of APP scams and respond to them, to deliver consistent outcomes for parties with the same circumstances, and to be based on measures that are likely to be effective at preventing and responding to APP scams.

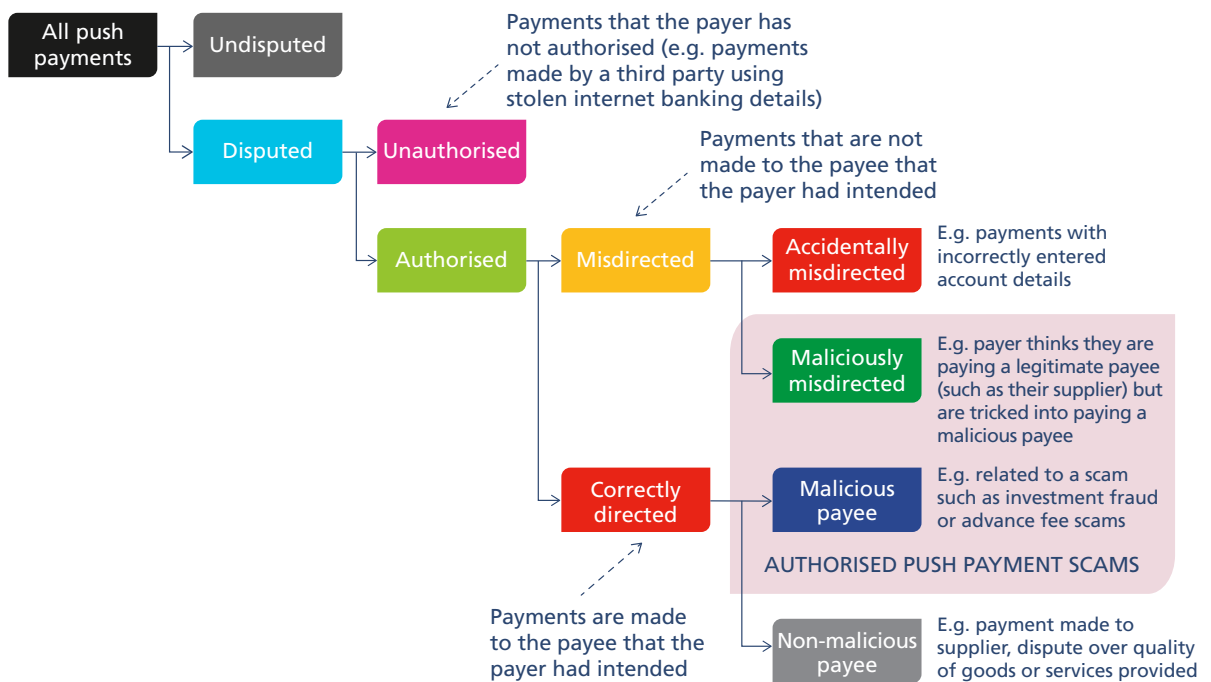
- 1.7** We have set out an ambitious timeline for the steering group. We want it to produce an interim code by September 2018 that the Financial Ombudsman Service can start taking into account as a relevant consideration when determining consumer complaints about APP scams. The steering group – following a final round of consultation – should have the final code in place in early 2019. This timeline recognises the need to address the significant harm being caused by APP scams as soon as possible, alongside the importance of developing an effective model that does not result in any foreseeable unintended consequences for users of push payments.
- 1.8** We have appointed an independent chair for the steering group, who will be directly accountable to us. We expect the steering group to be formed quickly and work to begin in March 2018. We expect the steering group to publish a summary, after each meeting, of the discussions held so that other stakeholders can be informed of its progress. We will monitor the work of the steering group for sufficient progress on a suitable industry code, and would look to take any necessary steps to ensure consumers’ interests are protected.

2 Introduction

What are APP scams?

- 2.1 Authorised push payments (APPs) are made when people tell their bank to make a payment from their account to another account. Scams involving APPs (APP scams) occur when consumers are tricked into authorising a transfer of money to an account that they believe belongs to a legitimate payee – but is in fact controlled by a scammer. Payments related to APP scams can be made over the phone, online, or in person, and most are completed instantly.
- 2.2 Figure 1 outlines the different categories of push payments and highlights which ones are related to APP scams.

Figure 1: Categories of push payments



Background to our work on APP scams

- 2.3** In 2015 we set up the Payments Strategy Forum (the Forum) in order to promote collaborative innovation in the interests of payment system users. Through its work, the Forum identified a number of user detriments. Some of these were that end users (such as consumers) wanted greater assurance that their payments would not be lost or re-directed, and that all users wanted greater trust in, and a more coherent approach to, tackling financial crime across payment systems.¹ To address these detriments, the Forum outlined several initiatives such as Confirmation of Payee, transaction data analytics and the sharing of financial crime data and information between payment service providers (PSPs).
- 2.4** In September 2016, we received a super-complaint from the consumer body Which? about protecting consumers from harm caused by APP scams. Which? raised concerns that there is not enough protection for victims. After receiving the super-complaint, we investigated the problem of APP scams to better understand the issue and Which?'s concerns. In December 2016 we published our response to the super-complaint, setting out our main findings and next steps.²
- 2.5** To address the issues we identified, we announced a programme of work that would be undertaken by us and the payments industry (as then represented by Financial Fraud Action UK, which has since become part of UK Finance). The Financial Conduct Authority (FCA) also agreed to do work in this area. The overall work programme included:
- With our oversight, the industry (as represented by UK Finance) agreed to do work that would increase understanding of the scale of APP scams and improve how PSPs work together to respond to them. We identified three specific areas for industry to work on:
 - Develop, collect and publish robust APP scam statistics, to address the lack of clear data on the scale and scope of the problem.
 - Develop a common approach or best practice standards that sending and receiving PSPs should follow when responding to APP scams.
 - Liaising with the Information Commissioner's Office (ICO) as appropriate, to develop a common understanding of what information can be shared under the current law, and the key legal barriers to sharing further relevant information.
 - We committed to considering the potential for the operators of the CHAPS and Faster Payments Scheme (FPS) payment systems to play an expanded role in helping to minimise the consumer harm caused by APP scams.
 - The FCA took the following actions:
 - Work with PSPs to tackle concerns around both sending and receiving PSPs in relation to APP scams.
 - Examine evidence received in relation to the super-complaint to address any firm-specific issues directly.
 - If, following the above steps, there are unresolved sector-wide issues, the FCA will initiate further work.

¹ Payments Strategy Forum, *A Payments Strategy for the 21st Century* (November 2016): <https://consultation.paymentsforum.uk/final-strategy>

² Which? *authorised push payment super-complaint: our response* (December 2016): www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016

- 2.6** In November 2017 we published an update on this work.³ We found that the industry (now represented by UK Finance) had made good progress on the three areas of work it took on:
- The first set of APP scams statistics was published in November 2017.
 - The Best Practice Standards for responding to APP scams, which incorporate the work on improved information sharing, are now being implemented by retail bank-members of UK Finance.
- 2.7** We highlighted that there were a number of further industry initiatives underway that, taken together, should help to prevent scams in the first instance, ensure PSPs respond faster when they do happen, and help in recovering the victim's money. These initiatives include Confirmation of Payee, sharing financial crime data and information, transaction data analytics, and other initiatives recommended by the Forum.
- 2.8** We also found that the industry initiatives underway would bring practices broadly into line with those we saw in other payment systems, countries and sectors. We did find, however, that more could be done in the area of reimbursement of APP scam victims, particularly as a way of further incentivising PSPs to act in customers' best interests.

Our consultation on development of a contingent reimbursement model

- 2.9** As a result, we supported the introduction of a contingent reimbursement model (CRM) for victims of APP scams, developed by industry with our oversight. We proposed it should be in place by the end of September 2018. We issued a consultation on the introduction of a CRM as part of our November update.
- 2.10** We explained that a CRM is a process that sets out the circumstances when victims of APP scams would get their money back, and whether it would come from their PSP (the sending PSP) or the PSP that received the money on behalf of a fraudster (the receiving PSP). Reimbursement would depend on whether the PSPs had met the expected standard of care, and whether the victim had taken a requisite level of care.
- 2.11** In the consultation we asked for feedback on whether such a CRM should be introduced and, if so, how the CRM should be further developed, implemented and administered. We also asked whether the best practice standards developed by UK Finance would be effective in improving the way PSPs responded to APP scams.

Outcome of our consultation and next steps

- 2.12** This rest of this document is structured as follows:
- **Chapter 3** summarises the submissions we received to our consultation and our response, with regards to the CRM and the industry best practice standards.
 - **Chapter 4** outlines the next steps for the development of a CRM.
- 2.13** This document also contains a glossary and two annexes. The first annex is a list of respondents to our consultation. The second annex is a list of the consultation questions.

³ *Authorised push payment scams – PSR-led work: Report and consultation* (November 2017): www.psr.org.uk/psr-publications/consultations/APP-scams-report-and-consultation-Nov-2017

3 Summary of consultation submissions and our response

Introduction

- 3.1** We received a total of 32 submissions to our consultation.⁴ 21 respondents were organisations, including 11 PSPs, three consumer groups representatives and seven others. One response was from a Parliamentarian, and ten responses were from private individuals. Annex 1 provides a list of the respondents. We have published public versions of the consultation responses.⁵
- 3.2** In this chapter, we summarise the main points raised in the submissions and then provide our response on the two consultation topics:
- The potential introduction of a voluntary contingent reimbursement model (CRM) (Questions 2 to 14 of our consultation).
 - The effectiveness of UK Finance's Best Practice Standards for responding to APP scams (Question 1 of our consultation).
- 3.3** Annex 2 provides a list of the consultation questions.

Consultation on a contingent reimbursement model (CRM)

- 3.4** This section summarises the submissions and our response to cover each of the main themes in the consultation on a CRM:
- The introduction of a CRM and potential barriers (Questions 2 and 7)
 - Development and governance of a CRM (Question 6)
 - Principles and scenario outcomes of a CRM (Questions 3 and 4)
 - The requisite level of care consumers should take (Questions 3, 8 and 9)
 - Measures that should be included in the standard of care expected by PSPs (Question 5)
 - Coverage and adoption of a CRM (Question 10)
 - Scope of a CRM (Question 11)
 - Resolving disputes (Question 12)
 - Timeframe and approach for implementation of a CRM (Questions 13 and 14)

⁴ *Authorised push payment scams – PSR led work: Report and consultation* (November 2017); www.psr.org.uk/psr-publications/consultations/APP-scams-report-and-consultation-Nov-2017

⁵ www.psr.org.uk/responses-APP-scams-CRM

Introduction of a CRM and potential barriers

- 3.5** In our consultation, we asked stakeholders whether a CRM for victims of APP scams should be introduced, and what their reasons were for their positions. We considered there was merit in industry introducing an effective CRM as it would give both PSPs and consumers the incentive to help prevent APP scams, and to respond to them effectively when they occur.
- 3.6** We also asked stakeholders whether there were any barriers to adopting a CRM. We did not consider that the timing of the implementation of APP scam preventative and response measures, which the standards of a CRM would link to, would be a barrier. This is because these measures could be included into the CRM as they are developed and implemented. We also thought that potential barriers to the recovery of funds (where the proceeds of APP scams are given back to the victims) should not prevent the adoption of a CRM in some form as reimbursement need not depend on recovery of funds.

Summary of submissions

- 3.7** Stakeholders had a range of views on the introduction of a CRM. Overall, the majority of respondents were supportive or conditionally supportive. Three PSPs were unsupportive of the idea.
- 3.8** UK Finance and five PSPs highlighted concerns about the potential adverse impacts of a CRM. These included:
- an increase in overall fraud by removing incentives for consumers to take care and incentivising more fraudsters to carry out APP scams
 - endangering the irrevocability of push payments or breaching payment mandates
 - slower payments, fewer payment services being offered or an adverse impact on financial inclusion
- 3.9** Four respondents suggested alternative proposals to a CRM. These included:
- PSPs offering additional protection for certain payments (similar to Royal Mail's post options)
 - introducing additional friction for certain payments (such as higher-value payments), slowing these payments down
 - developing greater consistency in goodwill payments across the industry
- 3.10** Some raised potential barriers to a CRM:
- nine respondents (including PSPs and consumer groups) noted the need for an assessment of the costs, benefits and impact of the CRM, and any relevant measures, before it is introduced
 - UK Finance and five major PSPs said the industry should focus on developing measures to help prevent APP scams before, or at least in conjunction with, development of a CRM, and one suggested that introducing a CRM risked diverting attention away from these other initiatives, which could be counter-productive
 - six (including several PSPs) said that the potential legal and regulatory issues around preventing and responding to APP scams, such as information sharing, freezing accounts and the recovery of funds should be addressed first

Our response

- 3.11** Taking account of the submissions we received, we consider that proceeding with the development of a CRM is the most effective and appropriate way to prevent and reduce the significant harm that APP scams cause to consumers, and to maintain confidence in UK interbank push payment services.

- 3.12** This is because an effective and well-designed CRM should incentivise the parties involved to take action to prevent and respond to APP scams where they are best placed to do so. PSPs should be incentivised to implement and use measures that effectively prevent and assist with the response to APP scams, and consumers should be incentivised to remain vigilant. This should help minimise the number of APP scams as more is done to stop them happening in the first place. When scams do happen, reimbursing the victims – where they could not have reasonably prevented the APP scams but a PSP could have – reduces the consumer harm. Furthermore, an effective CRM should help minimise the total system cost associated with APP scams by reducing the number of APP scams occurring in a cost effective way.
- 3.13** We consider there is sufficient support from stakeholders for the effective development of a CRM, with significant oversight from the PSR (see paragraph 3.29). We therefore consider that it is appropriate to proceed with the detailed design phase to develop an industry code setting out the rules for a CRM, including consumers' requisite level of care and the standard of care expected of PSPs. For the remainder of this document, we refer to an industry code (the code) where we discuss the operationalisation of the CRM.
- 3.14** As set out below, we consider the potential adverse impacts highlighted by stakeholders should not arise, or be material, if a CRM is effectively designed.
- 3.15** Firstly, as noted in paragraph 3.12, an effective CRM should minimise the number of APP scams occurring in the first place, as PSPs and consumers are incentivised to prevent these where they are best placed to do so.
- 3.16** Secondly, we consider that a well-designed CRM would mitigate the risks of payments becoming significantly slower, fewer services being offered, or push payment mandates being compromised. If the implementation of a CRM results in PSPs choosing to apply additional checks on payments using modern technologies, payments should slow by only a fraction – which should not be detrimental to the user experience. We noted in our consultation that card payment systems carry out additional checks, and they do this within a few seconds.⁶
- 3.17** We also do not consider that the alternatives proposed by some respondents would effectively incentivise PSPs to adequately invest in, adhere to, and update over time the practices that help prevent and respond to APP scams. As we noted in our consultation, PSPs – particularly where they are the receiving PSP – have weaker incentives to invest in processes to prevent and respond to APP scams.⁷ We still consider that a CRM is the most effective way to incentivise PSPs and consumers to reduce the occurrence and harm caused by APP scams. We consider it important that the CRM does not restrict the commercial development of additional consumer protections (see paragraph 3.66).

⁶ *Authorised push payment scams – PSR led work: Report and consultation* (November 2017), paragraphs 5.24 to 5.33: www.psr.org.uk/psr-publications/consultations/APP-scams-report-and-consultation-Nov-2017

⁷ *Ibid* paragraphs 5.40 to 5.44

3.18 We do not consider that the issues raised as barriers in responses to the consultation should prevent proceeding with the development of an industry code (which will set out the CRM) for the following reasons:

- As noted in paragraph 3.12, an effective CRM should minimise the total system cost associated with APP scams. We recognise that the costs associated with developing and governing the industry code could ultimately be passed on to consumers. We agree that it is good practice to do an assessment of costs and benefits of the CRM and the relevant measures before it is implemented, but that this should not stop the detailed design phase going ahead. As it is good practice, we expect that the group developing the industry code should **have regard to** considerations of the costs, benefits and impact of its proposals.
- We still consider that there is no need to wait until all the measures are available before developing the industry code. It should be initially based on those measures that are available for implementation this year (for example, the Best Practice Standards and Confirmation of Payee). Other measures can be incorporated into the industry code over time as they become available (see paragraphs 3.63 to 3.65). This is in line with our expectation that the industry code should evolve over time, as the ways of effectively combatting APP scams evolve.
- We do not consider the potential legal barriers to information sharing, freezing accounts and funds recovery are a barrier to developing an industry code. We still consider that reimbursement should not be dependent on recovery of the funds because this may not always be possible. Furthermore, we consider that this should provide strong incentives for effective funds recovery.

3.19 We recognise that more effective funds recovery should both help prevent some scams from completing successfully and, if they do complete, would likely result in more consumers getting their money back. We recognise that industry considers it needs more clarity on whether there are any legal barriers to the prevention and response to APP scams, including the recovery of funds, what the implications of any such barriers are and how any such barriers can be addressed. We therefore expect the group developing the industry code to establish a satellite group that will focus on these issues in parallel with the development of the industry code. We consider that this satellite group should consist of relevant industry participants, and regulatory and government bodies as appropriate (such as the PSR, the FCA, the Treasury, the Home Office, and law enforcement agencies). We understand that some work is being done on certain aspects of these issues, and we expect the satellite group's work agenda to take account of the progress of this work to avoid duplication.

Development and governance of a CRM

3.20 We asked stakeholders for their views on which organisation should design and implement the CRM. We had proposed that UK Finance should lead this work, and we would work with it to establish a working group to develop the CRM and include in the development process any stakeholders who would need to participate in the CRM or who would be materially affected by the CRM. We proposed to actively monitor UK Finance's work on this.

Summary of submissions

3.21 Respondents expressed a range of views on which body should lead this work, with several saying that the role of design and implementation should be done by different parties. Around half of the respondents (including UK Finance and several PSPs) supported UK Finance leading the work on designing the CRM. Some smaller PSPs and consumer groups raised concerns about UK Finance's potential bias against smaller non-member PSPs and consumers. One PSP and one consumer group said the PSR should design the CRM, and one consumer group said it should be the NPSO. Three stakeholders encouraged a more holistic view of the work to address APP scams with other work in this area such as the Joint Fraud Taskforce's work.

3.22 Respondents' views on which body should administer the CRM ranged between UK Finance, the NPSO, the PSR and other bodies. UK Finance said it should not administer the CRM as it is a trade body and could not take ownership of or operate any such scheme. One consumer group and another stakeholder also said it would not be appropriate for UK Finance to administer the model due to conflicts of interest with its members.

Our response

3.23 Taking account of the consultation responses, we consider that the development of an industry code (which will set out the CRM) should be undertaken through a collaborative process, bringing together industry and consumer representatives with oversight and support from us in order to drive the steering group forward.

3.24 We consider that it is appropriate for us to work with these stakeholders to establish a dedicated working group – which we refer to hereafter as the 'steering group' – to develop the industry code. We expect this steering group to have an equal balance of representatives from the key stakeholder groups affected by the industry code – this should include PSPs as well as consumer representatives. We expect the PSP representatives on the steering group to include, at a minimum, UK Finance and a PSP that is not a member of UK Finance. Consumer representatives could include organisations such as Which?, Age UK, Toynebee Hall and independent consumer representatives.

3.25 This balanced representation should help ensure that the industry code is developed in the interests of users of payment system services. It will also enable each of these groups to contribute to the design in a timely and efficient manner. Furthermore, industry has the expertise and capabilities to do this work, and consumer representative groups have a good understanding of consumers' concerns. This is evident in their respective comments and suggestions that they raised in their consultation submissions.

3.26 We consider that UK Finance is best placed to fulfil the role of the steering group's secretariat. This is because it has access to the relevant technical resource and the capabilities to provide secretariat duties. We also expect UK Finance to provide the resources necessary for the effective operation of the secretariat of the steering group. UK Finance has committed to taking on this role.

3.27 To address concerns raised in responses, we also consider the steering group should have a Chair who is independent of payments industry interests. We have appointed Ruth Evans as the Chair and she will be directly accountable to us, to avoid a perception of bias. The steering group, with an independent Chair, needs to be established as soon as possible to ensure the timely delivery of an effective industry code. Ruth Evans has proven herself as a credible independent chair of the Forum and is capable of driving the delivery of outcomes to challenging timeframes. She also has a track record representing the consumer and public interest.⁸

3.28 The Chair will be responsible for appointing the steering group members, in consultation with us. We expect the steering group members to be appointed, and early work to begin, in March 2018.

3.29 We will provide oversight and support to the steering group, with particular regard to promoting the interests of users of payment system services – we will not be a member of the steering group. Other government and regulatory bodies – such as the FCA, the Treasury, the Home Office and law enforcement agencies – will also be invited to attend as observers and may, as appropriate, provide relevant input into discussions. This should enable timely input on the design and help ensure alignment with developments in other fraud-related areas (such as the work of the Joint Fraud Taskforce).

⁸ A full biography can be found in the Notes to the Editors section of our press release on the announcement of the Forum Chair: www.psr.org.uk/psr-publications/news-announcements/ruth-evans-appointed-forum-chair

- 3.30** Given the range of feedback on the ongoing maintenance of an industry code, we consider that the steering group is best placed to consider this. We expect the steering group to propose an appropriate governance arrangement, for monitoring the implementation of the industry code and for maintaining it, which meets the core principles. We do not consider that it is appropriate for us to manage the industry code. We also note that the NPSO may have limited capacity in the medium term to take on this role.
- 3.31** Given the complexity of the steering group's work, and to ensure timely progress, we have set a milestone that it must agree a proposal for the governance arrangements by the end of August 2018. We discuss the delivery timeframe and milestones in paragraphs 3.99 to 3.104.

Principles and scenario outcomes of a CRM

- 3.32** We asked stakeholders for their views on the high-level principles for a CRM and the potential scenario outcomes that we considered an effective CRM should have.
- 3.33** In our consultation, we set out the following high-level principles for a CRM:
- All parties involved (PSPs and consumers) should have an incentive to help prevent and respond to APP scams where they are best placed to do so.
 - Reimbursement should not depend on the recovery of the victim's money.
 - The CRM should not prevent PSPs choosing to give goodwill payments to victims.
 - The CRM should use effective processes that help protect consumers against APP scams, in particular those measures being developed by industry that we had identified in our consultation – we discuss stakeholders' views and our response on this in paragraphs 3.60 to 3.68.
 - The CRM should take into account regulatory developments, such as new categories of industry players as a result of Open Banking and the second EU Payment Services Directive (PSD2). We discuss stakeholders' views on this in paragraphs 3.69 to 3.78.
- 3.34** We also set out the following scenario outcomes for an effective CRM:
- **Victim took the requisite level of care and one or more PSPs are at fault:** We said that the PSP(s) at fault should reimburse the victim.
 - **No-blame scenario (neither the victim nor the PSPs are at fault):** We asked for views on two alternative approaches:
 - Focus on consumer protection: Where the victim is reimbursed, either by the PSPs directly involved, or from a central fund.
 - Focus on incentives: Where the victim is not reimbursed and bears the loss.
 - **Shared-blame scenario (victim did not take the requisite level of care and one or more are at fault):** We said that the victim is not reimbursed. We also said it might be appropriate that the PSP(s) are penalised to maintain their incentives and that such funds could potentially be put into a central fund.
 - **Victim did not take the requisite level of care and the PSPs are not at fault:** We said that the victim is not reimbursed and PSPs are not penalised.

Summary of submissions

- 3.35** Just under half of the respondents agreed or broadly agreed with our high-level principles. Several respondents' views were neutral or mixed. Two respondents, one of whom did not support the introduction of a CRM, disagreed with the principles. Four respondents said it was difficult to provide views at this stage as there was a lack of detail on the proposals.

- 3.36** Two PSPs said that reimbursement should only apply when the victim's funds could not be recovered from the accounts used by the scammer. In contrast, two consumer groups said that reimbursement should be done first, which will give PSPs an incentive to recover the funds. Another respondent thought PSPs should have a right to any funds recovered if they had paid out reimbursement related to that scam.
- 3.37** Regarding the scenario outcomes, none of the respondents raised concerns about the outcome that a victim is reimbursed if it took the requisite level of care and one or more of the PSPs are at fault. However, two PSPs noted that there was no clarity on the allocation of responsibility between the PSPs if more than one is at fault ('inter-PSP blame').
- 3.38** There were strong opposing views on the no-blame outcome. Consumer groups said consumers should be reimbursed to protect them and ensure the same outcome for all consumers that take the requisite level of care. UK Finance and most PSP respondents supported not reimbursing in 'no blame' situations. Reasons given included that it could result in consumers taking less care when making payments, reduce PSP incentives to adopt the CRM or invest in innovative counter-fraud measures, or cause them to slow down payments to allow for additional checks. Three respondents suggested a 50/50 outcome where the consumer and PSP(s) share in the loss.
- 3.39** Two consumer groups felt we did not clarify the outcome for the shared-blame scenario. They said that the PSPs should first assess whether they are at fault and, if so, should reimburse the victim, regardless of whether the victim took the requisite level of care. This would maintain the incentive on PSPs to stop scams. Two PSPs said that the victim should be assessed first. One of these added that the receiving PSP should only assess its fault after the sending PSP.
- 3.40** Several respondents noted the importance of developing the principles of a CRM in an open, transparent and consultative fashion, and that the rules, level of consumer care and PSPs' standard of care should be published.

Our response

- 3.41** We consider that the steering group should have a set of core principles that its proposals for the industry code (which sets out the CRM rules) should be consistent with. These core principles are the key characteristics that we consider should underpin an effective CRM and should promote the interests of users of payment system services and reduce consumer harm (these are set out in paragraph 4.15). These are in line with the high-level principles we proposed in our consultation, but reflect some additions in the light of consultation responses and our further consideration of this issue.
- 3.42** We still consider that, to effectively address APP scams, the underlying **core principle** should be to incentivise all parties to take action to help prevent and respond to scams where they are best placed to do so (see paragraph 3.12).
- 3.43** We also agree with stakeholders that different consumers (and PSPs) should not face a different outcome if they acted in the same way other than in potential special circumstances (for example, where one consumer is a vulnerable consumer and one is not – see paragraph 3.57). We therefore consider an additional **core principle** should be the consistency of outcomes for parties with the same circumstances.
- 3.44** As noted in paragraph 3.18, we expect that reimbursement should not be dependent on the recovery of funds, particularly given the uncertainties around whether and when any funds can be recovered. This will also incentivise the effective recovery of funds. We have retained this as a **core principle**. We consider that it is reasonable that the PSPs that paid out reimbursement for a scam should be entitled to any funds related to that scam that are subsequently recovered.

- 3.45** No stakeholders commented on the principle that PSPs should not be prevented from choosing to give goodwill payments to victims – for example, where the victim did not meet the expected level of care. We still consider this is a **core principle** as it is important to allow PSPs to do this – for example, to improve its reputation or demonstrate good customer service.
- 3.46** We have set out these four core principles, along with two others, that the steering group’s proposals for the industry code should be consistent with (see paragraph 4.15).
- 3.47** It is also important that the rules in the industry code should be as simple as possible to be effective and ensure the consumer experience is straightforward and easy to understand. We therefore consider that, in addition the core principles, the steering group should **have regard to** simplicity and **have regard to** transparency when designing the industry code.
- 3.48** Regarding the scenario outcomes, there is consensus that, where the victim had taken the requisite level of care and one or more of the PSPs did not meet the standard of care expected of them, those PSPs should reimburse the victim. This is in line with the core principle to maintain incentives on the parties involved (see paragraph 3.42). Also in line with this principle, we consider that victims should not be reimbursed if they have not taken the requisite level of care, as this could weaken their incentives to identify and avoid potential scams.
- 3.49** Also in line with the core principle for maintaining incentives, we consider it is important to maintain incentives for PSPs to prevent and respond to APP scams, even when they don’t have to reimburse the victim. It may be appropriate that in the scenario where the victim did not take the requisite level of care and one or more PSPs are at fault, those PSPs should incur the same cost as if they were to reimburse the victim. These funds should not necessarily go to the victim, as discussed in paragraph 3.48, but could be paid into a central fund. We expect the steering group to agree what happens to these funds. This would also ensure that all parties assess whether they met the expected level of care. While this may create some administrative burden for PSPs, it should ensure they have a strong incentive to adhere to the standard of care expected of them.
- 3.50** We recognise that certain key aspects of the scenario outcomes are complex and require more consideration. In particular, the outcomes in the no-blame and shared-blame scenarios, and how fault or reimbursement is allocated between PSPs in the event that more than one PSP is at fault (where there is ‘inter-PSP blame’). We have set these out as part of the key issues to be resolved by the steering group (see paragraph 4.19). We consider the steering group, with its range of representation, is best placed to agree proposals for these issues. We expect the steering group’s proposals for these aspects should be consistent with our core principles. We recognise that some of the core principles may be perceived to be in conflict in certain scenarios; therefore, the steering group should agree proposals that, in their judgement, achieve the core principles we set out to the greatest extent possible. The steering group should justify where they had to give some core principles precedence over others.
- 3.51** Given the complexity of these key aspects and certain strong opposing views, we have also set out a timeline and milestones for resolving these, and other key issues (see paragraph 4.23). We expect the steering group to agree the outcomes in the no-blame, shared-blame and inter-PSP blame scenarios by the end of April 2018.
- 3.52** We will monitor the work of the steering group for sufficient progress on a suitable industry code, and would look to take any necessary steps to ensure consumers’ interests are protected, including considering using our statutory powers.

The requisite level of care consumers should take

- 3.53** We asked for stakeholders' views on the factors that should be considered when defining the requisite level of care that consumers should take in order to be eligible for reimbursement. We also asked relevant stakeholders how their organisations currently decide whether to reimburse a victim of an APP scam. We said that the requisite level of care should be high enough that consumers have an incentive to be careful about scams, but should not be unreasonable for them to meet. We also noted that consumer vulnerability may play a role in defining the requisite level of care.

Summary of submissions

- 3.54** Stakeholders had a range of views on which factors should be considered. Five respondents noted the requisite level of care will be complex to define. Nine stakeholders noted that consumer vulnerability needs to be taken into consideration. Four respondents suggested that the vulnerability considerations in the British Standards Institute's code of practice on protecting consumers from financial harm could be used.⁹ Six stakeholders identified vulnerability characteristics that should be taken into account including age, disability (mental and physical), and isolation. UK Finance suggested using a high-level definition of vulnerability to avoid focusing on specific demographics only.
- 3.55** Some PSPs said the decision to reimburse should assess what steps the consumer takes before making a payment, such as who had access to the victim's computer, whether and how the victim checked the account details, or whether education training was used. Others suggested having regard to warnings given by PSPs, the use of Confirmation of Payee, and whether the victim had been scammed in the past. Three stakeholders suggested that user-case scenarios should be used to help define the level of care.
- 3.56** Several stakeholders explained how their organisation decides whether to reimburse the victim. Several PSPs said they decide on a case-by-case basis. Some PSPs said they had special teams that handle scams. Some PSPs said they consider their own conduct and whether internal processes were followed.

Our response

- 3.57** We consider that the steering group, with a broad range of stakeholder representatives, should agree a proposal for the requisite level of care for consumers as part of the detailed design phase for an industry code (which will set out the CRM). The requisite level of care should balance the considerations of incentivising consumers with the need for reasonable expectations. We agree with stakeholders that the consumer requisite level of care should take into account consumer vulnerability (such as age and disability).
- 3.58** As noted in our consultation paper, we expect the steering group to take the views provided in submissions to our consultation into account. User case scenarios may also be useful in defining the level of care.
- 3.59** We recognise that this work is complex and that it is an integral part of developing an effective industry code. We have set a milestone for completing this work by the end of June 2018. (The full timeline and milestones for resolving this and other key issues are summarised in Table 1 in paragraph 4.23).

⁹ British Standards Institute *PAS 17271: 2017 Protecting customers from financial harm as a result of fraud or financial abuse – Code of practice*

Measures that should be included in the standard of care expected from PSPs

3.60 We asked stakeholders if they agree that the measures being developed by industry (specifically UK Finance and the Payments Strategy Forum) that we identified should be included in the PSPs' standard of care in the CRM. We also said the CRM would need to continually evolve to adapt to changes in the ways APP scams occur, wider industry developments, and the emergence of new approaches to preventing APP scams.

3.61 The industry measures we identified were¹⁰:

- consumer education and awareness
- the collection and publication of APP scam statistics
- best practice standards for reporting APP scams (which includes UK Finance's work on information sharing in response to APP scams)
- confirmation of payee
- transaction data analytics solution
- financial crime data and information sharing
- guidelines for identity verification
- trusted Know Your Customer (KYC) data sharing.

Summary of submissions

3.62 Respondents had a range of views on incorporating these measures, with no clear consensus on which ones should be included or excluded. Two respondents noted that some of the measures were in very early stages of development, so it is difficult to comment on whether they would be appropriate. Two PSPs said that only measures with a proven impact on reducing consumer harm should be included. One PSP said the requirements of the CRM should be narrower than what we proposed, to minimise complexity and ensure they are linked directly to the transaction or scam in question. Some stakeholders noted that other measures could be incorporated, such as online consumer awareness training and the Banking Protocol. Two PSPs said the CRM's design should not stifle innovation in preventative measures.

Our response

3.63 We still consider that the measures we identified are appropriate to include in the standard of care that PSPs should meet in the industry code. To be effective, the standards should incentivise PSPs to implement and use measures that are likely to be effective in preventing and responding to APP scams. There is no evidence at this stage that the measures we proposed in our consultation would not be effective. Therefore, we consider it appropriate that the industry code leverages these measures and incentivise the use of them by including them in the standards of care expected of PSPs. The steering group should leverage those industry measures that are available at the time (for example, the Best Practice Standards for responding to APP scams). The other measures should be leveraged as they are developed.

3.64 We also still consider that, to continue to protect consumers, an industry code should evolve to adapt to changes in the way APP scams are perpetrated, and developments in the approaches to prevent them.

3.65 Taking these considerations into account, we therefore set a **core principle** to leverage existing and future initiatives that are likely to be effective in preventing and responding to APP scams, including those measures we identify in paragraph 3.61.

¹⁰ For details about these measures, see *Authorised push payment scams – PSR led work: Report and consultation* (November 2017), paragraph 4.9: www.psr.org.uk/psr-publications/consultations/APP-scams-report-and-consultation-Nov-2017

- 3.66** We agree with stakeholders that an industry code should not restrict the development of other measures or innovations that help protect consumers against APP scams and the harm they cause. We consider that the industry code should set out the minimum level of care that PSPs should take to protect consumers. It is important that participants, or other parties, should be able to develop and offer products to consumers that provide additional protection. We therefore set a **core principle** that the industry code should not restrict the commercial development of additional consumer protections.
- 3.67** The steering group's agreed proposals for the industry code should be consistent with these and the other core principles. As with the other key issues that the steering group needs to resolve, we have set a milestone to agree the PSPs' standard of care by the end of June 2018 (see table in paragraph 4.23).
- 3.68** In terms of future-proofing the industry code, the steering group's proposal for the governance arrangement to implement and maintain the industry code should include arrangements for how future measures will be included in an efficient and timely manner, and how it will ensure any changes are clearly understood by consumers (see paragraph 3.30).

Coverage and adoption of a CRM

- 3.69** We said in our consultation paper that a significant majority of, if not all, PSPs that provide push payment services to consumers need to adopt a CRM for it to be effective. We asked if stakeholders agreed, and whether a CRM needed to be made mandatory to achieve this.

Summary of submissions

- 3.70** Respondents said that all PSPs should participate in the CRM for it to be effective. UK Finance and six PSPs said the CRM should apply to indirect PSPs and new entrants with Open Banking (for example, payment initiation service providers). Three of these said that the CRM should extend to cover third party organisations – such as social media, telecoms and internet providers – as they also have a responsibility and role to play in protecting consumers from scams.
- 3.71** Nine stakeholders (including PSPs and consumer groups) said the CRM should be mandatory, or made mandatory if PSPs do not adopt it voluntarily. One small PSP said it should not be mandatory because of the cost for smaller PSPs. Two stakeholders noted that legislation was used to introduce fund recovery schemes in other countries.

Our response

- 3.72** Based on the consultation responses, we consider that an industry code should be adopted by all PSPs. This is because we agree that there may not be effective consumer protection if some PSPs do not adopt the industry code. Also, fraudsters may target customers of those PSPs that don't adopt the protective measures that underpin the standard of care set out in the code.
- 3.73** In line with this, we also consider that the industry code should apply to indirect PSPs and those PSPs entering the market as a result of Open Banking where these PSPs have control over preventing and responding to APP scams.
- 3.74** Overall, we consider it important that all the PSPs with an element of control in preventing and responding to APP scams are incentivised to do so. We have therefore retained this as a **core principle**.
- 3.75** The governance arrangements that the steering group agrees should also include arrangements for how the industry code will be adopted by all PSPs within scope (see paragraph 3.29).

- 3.76** We do not think it is appropriate at this stage to extend the industry code to other parties who are not PSPs. This will add significant complexity to designing the industry code. Where PSPs have contractual relationships with third parties, they should be able to pass on risks to those parties. In developing the industry code, the steering group may identify user cases where other third parties might have a role in preventing APP scams. The steering group could log these cases for further consideration.
- 3.77** We do not consider it necessary at this stage to take regulatory action to ensure PSPs adopt the industry code. This is because the industry code that the steering group delivers should represent agreed industry best practice, which can be taken into account as a relevant consideration by the Financial Ombudsman Service (FOS) in determining consumer complaints relating to APP scams (see paragraph 3.101). Therefore, if a consumer makes a complaint that a PSP did not meet the standard of care, we anticipate that the FOS will take into account whether PSPs have adhered to the industry code. We have set as an additional **core principle** that the industry code should be capable of becoming part of the relevant considerations that the FOS takes into account in determining complaints about APP scams.
- 3.78** We will monitor the adoption of the industry code which should be done in a timely manner. If necessary, we would look to take any necessary steps to ensure consumers' interests are protected.

Scope of a CRM

- 3.79** We asked stakeholders for their views on the scope we outlined for the CRM. We proposed that the scope should:
- cover payments made from consumer accounts as defined under PSD2 (and would include micro-enterprises¹¹)
 - cover payments between UK payment accounts
 - not be specific to any payment system
 - only cover the first transaction, meaning the transaction from the victim to the scammer's first account
 - only cover scams that occur after the CRM is introduced (reimbursement is not retroactive)

Summary of submissions

- 3.80** Almost all the respondents agreed with the various elements we proposed for the scope of the CRM. Two consumer groups, a non-PSP business and two individuals said the CRM should cover scams involving international payments to protect those victims. A non-PSP business said the CRM should cover some larger organisations such as charities. Visa noted that the CRM should not apply to the global card systems, including Visa Direct (its push payment service) as the card systems are at a different stage of maturity in terms of competition and security and protection.

¹¹ We used the term 'small businesses' in the consultation.

Our response

- 3.81** We consider the scope we proposed remains appropriate at this time for the industry code.
- 3.82** We note that many of the rights and obligations in relation to the provision of payment services set out in the Payment Services Regulations 2017 (which implement PSD2 in the UK) must apply¹² to consumers, micro-enterprises and small charities.¹³ We consider it is appropriate to align the eligibility for reimbursement under the CRM to this definition – that is, only victims of APP scams that are consumers, micro-enterprises and small charities (as defined in PSRs 2017) could seek reimbursement under the CRM.
- 3.83** We recognise that scams involving international payments can cause harm to consumers. However, expanding the scope of the industry code to capture these would add significant complexity, and make it harder to get the CRM in place in a timely manner. We expect, however, that the design should not preclude the inclusion of APP scams involving push payments with an international dimension at some stage in the future.
- 3.84** We do not consider that the industry code should apply to push payments made over card systems at this stage. To clarify, the industry code should cover push payments made by consumers through interbank payment systems. By this we mean it should cover:
- push payments executed across CHAPS, Faster Payments¹⁴
 - ‘on-us’ book transfers where both the sending and receiving accounts are held with the same PSP, and the payment would otherwise have been executed across CHAPS or Faster Payments
- 3.85** We set out the scope for the industry code in further detail in paragraph 4.17.

Resolving disputes

- 3.86** We asked stakeholders for their views on how the dispute resolution mechanism should work and which organisation should oversee it. We noted that a CRM will need a dispute resolution mechanism to address disagreements about outcomes of a case and that the group designing the model would need to consider how this would relate to consumers’ rights to complain to the FOS.

Summary of submissions

- 3.87** In submissions, most respondents did not distinguish between the handling of consumer-PSP disputes and PSP-PSP disputes.
- 3.88** Eight respondents, including UK Finance, said it would not be appropriate for UK Finance to handle disputes, because of the potential perception of bias against consumers or PSPs that are not UK Finance members. Two respondents supported UK Finance taking this role.
- 3.89** Eight respondents supported an independent arbitrator handling disputes. Some of these said the NPSO should ultimately oversee the arbitration process and the arbitrator. Three other PSPs said the NPSO would not initially have the capacity, doesn’t have the relevant expertise, or could also potentially be biased against consumers. Four respondents said disputes should be handled by the body that manages the rules for the CRM, which some noted would allow for better consumer protection.

¹² See PSRs 2017, regulation 63(5)(a).

¹³ The PSRs 2017 definition of charity includes a requirement that it has annual income of less than £1 million – see PSRs 2017, regulation 2.

¹⁴ As noted previously, Bacs Direct Credit is a type of push payment. However, these days these payments are almost exclusively initiated by business and governments, rather than consumers. See Annex 2 of our consultation.

- 3.90** One PSP noted that the Open Banking proposals include a provision for an independent dispute resolution service and suggested the two processes could be merged.
- 3.91** Two respondents said the PSR should handle disputes.
- 3.92** Where respondents were explicit about handling consumer-PSP disputes, six (including UK Finance, several PSPs and a consumer group) said that the FOS should handle consumer-PSP disputes. Another consumer group and a stakeholder said that consumers should not be precluded from complaining to FOS.

Our response

- 3.93** We do not consider that a separate dispute resolution body or mechanism other than the FOS is needed to handle consumer-PSP disputes under the industry code. This is because the FOS has jurisdiction over disputes between consumers and financial businesses, including about APP scams. It already handles these types of disputes, and therefore has the experience and capabilities for this role. Establishing another body to handle disputes with respect to the application of the industry code would be likely to duplicate costs and confuse consumers. We also note that the Open Banking dispute process (the Dispute Management System¹⁵) is designed to complement the FOS's role.
- 3.94** We consider that industry is best placed to agree the PSP-PSP dispute mechanism. This could align with the PSP-PSP dispute process used under Open Banking. We do not have any strong views on which body should handle disputes between PSPs. However, we do not think it is appropriate for us to handle these disputes, and we acknowledge those concerns about UK Finance taking on this role. We also recognise that the NPSO may have limited capacity to take on this role in the medium term.

Timeframe and approach for implementation of a CRM

- 3.95** We asked stakeholders whether they agreed with our proposed timeframe for the introduction of the first iteration of the CRM implemented by the end of September 2018, and whether a phased or transitional approach for implementation should be used.
- 3.96** We noted that implementation could be phased or transitional:
- Under a phased approach, the industry code would incrementally incorporate additional scam prevention and response measures as they are developed (that is, the PSPs' standard of care would evolve over time).
 - Under the transitional approach, PSPs would initially reimburse an eligible victim, regardless of how the PSPs acted. Then, as the measures are developed, the level of care PSPs should take to avoid reimbursement is linked to these.

Summary of submissions

- 3.97** Stakeholders had a range of views on the implementation timeframe. Consumer groups and one other stakeholder were supportive. However, the majority of the other stakeholders did not support the proposed timeframe, or they expressed concerns. They said it was insufficient time to develop all the aspects of the CRM (the rules, PSPs' requirements, consumer requisite level of care, etc.) and for PSPs to update their processes.
- 3.98** Regarding implementation, most stakeholders supported a phased approach. However, UK Finance raised concerns that the continuous change associated with a phased approach could confuse the parties involved. There was little support for a transitional approach. UK Finance and some PSPs said a transitional approach would set the precedent that PSPs should reimburse victims when the PSPs are not at fault, akin to the no-blame scenario.

¹⁵ www.openbanking.org.uk/dispute-management-system/

Our response

- 3.99** We consider it important to introduce the industry code (which will set out the CRM) as soon as practically possible to protect consumers. However, we recognise there is a significant amount of work to be done to develop it. There are also real risks of a poorly implemented code creating unintended consequences that may adversely affect both consumers and PSPs.
- 3.100** We also recognise that the steering group may need to consult on the more complex aspects of the industry code – such as the no-blame outcome, the consumers' requisite level of care and PSPs' standard of care – before finalising it. There would not be time to develop a finalised industry code, and then consult on this, before the end of September 2018.
- 3.101** To recognise these considerations, we therefore expect the steering group to deliver an interim industry code by the end of September 2018. Given the broad industry and consumer representation on the steering group, the industry code should reflect the agreed best practice for how PSPs and consumers should conduct themselves in helping to prevent and respond to APP scams and reduce the harm they can cause. This should be capable of becoming part of the relevant considerations that the FOS can subsequently start taking into account when determining consumer complaints about APP scams.
- 3.102** At the end of September 2018, the steering group should then publicly consult on the interim code, so it can refine it. We expect the final industry code to be in place in early 2019.
- 3.103** To ensure the work of the steering group progresses in a timely manner, we have set out a timeline with milestones for resolving the key issues we identified and for delivering the industry code (see Table 1 in paragraph 4.23). We expect the steering group to publish a summary, after each meeting, of the discussions held so that other stakeholders can be informed of its progress.
- 3.104** Based on the consultation responses and our further consideration, we consider that a phased implementation is appropriate. To remain effective, the industry code should evolve to incorporate new or enhanced measures as they are developed, including those we have identified that will be delivered over the next three years. We expect the steering group to propose a governance arrangement for maintaining the industry code and that this will also include arrangements for updates to the industry code to be efficiently implemented in a timely manner and how it will be adopted by all PSPs within scope.

Summary on introducing a CRM

- 3.105** In summary, we consider that proceeding with a collaborative process to develop a contingent reimbursement model – which will set out the CRM's rules – for preventing and reducing the consumer harm caused by APP scams. We set out in Chapter 4 the next steps for how we expect to bring together industry and consumer group representatives to develop an effective industry code. This includes the structure and objectives of the steering group, the core principles that the steering group's proposals should be consistent with, and a high-level timeline and milestones for the key issues the steering group should resolve.

UK Finance's Best Practice Standards for responding to APP scams

3.106 In our consultation, we also asked for stakeholders' views on whether the Best Practice Standards for responding to APP scams developed by UK Finance would be effective in addressing the issues we had identified¹⁶ and improve the way PSPs respond to reported APP scams. We said we would consider these to determine if any changes or enhancements to the Best Practice Standards should be made.

Summary of submissions

3.107 All except one of the respondents said the Best Practice Standards would be effective. One stakeholder did not support the Best Practice Standards. It said they might have an anti-competitive impact on PSPs that are not members of UK Finance because these PSPs were not involved in developing them.

3.108 Four respondents said that some factors might limit the effectiveness of the Best Practice Standards. These factors included the fact that they target only PSPs that offer current accounts, and the potential legal issues around information sharing for the recovery of funds.

Our response

3.109 We do not consider it necessary to make changes to the Best Practice Standards at this time. As we noted in our consultation paper, we will monitor how these standards work in practice and, if appropriate, may look for changes and enhancements to ensure these standards are effective. This would include monitoring for any unintended consequences such as adverse effects on PSPs' competitiveness.

3.110 We also consider that the factors that respondents highlighted as potentially limiting the effectiveness of the standards should be addressed by other developments. Firstly, as noted in paragraphs 3.60 to 3.68, we expect the steering group developing the industry code to incorporate the Best Practice Standards into the standard of care that all PSPs in scope should meet. Secondly, we are working with industry to clarify any potential legal barriers to the recovery of funds (see paragraph 3.19).

¹⁶ We concluded in our response to the Which? super complaint that PSPs need to improve how they work together in responding to reports of APP scams from customers. See *Which? authorised push payment super-complaint: our response* (December 2016): www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016

4 Next steps in developing a contingent reimbursement model

- 4.1** Following consideration of the consultation responses we received (as summarised in Chapter 3), we consider that there is sufficient support from across the industry and consumer representatives for the development of a contingent reimbursement model (CRM) to be undertaken through a collaborative process, with oversight and support from the PSR. We continue to consider that proceeding with the development of a CRM would promote the interests of users of payment system services.
- 4.2** To achieve this we will work with key stakeholders to establish a dedicated steering group, which will lead the design of the CRM. This will include both reaching consensus between steering group members on the key issues for the CRM, and formalising the CRM into a set of rules that will form an industry code (the code) for reimbursement of APP scam victims.
- 4.3** In this chapter, we set out:
- what the steering group's overall objectives will be
 - what the steering group's structure will be, including our position and role
 - a set of core principles that the steering group's proposals for the code should be consistent with
 - the scope of the push payments that the code should cover
 - the key issues that we consider most important for the steering group to focus on
 - a high-level timeline for the steering group's work – we will look for a more detailed work programme to be agreed once the steering group has been established

Objectives of the steering group

- 4.4** The overall objectives of the steering group will be to:
1. Reach a consensus on the key issues of the CRM. A wide range of positions were presented on certain specific issues in our recent consultation.
 2. Formalise the agreed position on these issues into a set of rules, which will form an interim industry code (the code) for the reimbursement of APP scam victims. We expect that a final code will be issued after a final round of consultation and amendment.
- 4.5** The steering group will aim to issue the interim code issued for public consultation by the end of September 2018. At this time, we anticipate that the interim code will become part of the relevant considerations that the Financial Ombudsman Service (FOS) takes into account in determining consumer complaints about APP scams. (The code will not affect consumers' statutory rights to raise complaints with the FOS – see Chapter 3 for further discussion on the interaction of the reimbursement mechanism with the FOS complaint procedure).
- 4.6** After consulting publicly on the interim code, the steering group will make final amendments and issue the final code in early 2019.

Structure of the steering group

- 4.7** The steering group should be made up of a small number of senior individuals from different stakeholder groups. Each representative must have the ability to shape and make decisions on relevant policy areas within their organisations and/or their sector more broadly.
- 4.8** The steering group should contain a balance of representatives from all key stakeholder groups that will be impacted by the introduction of the code. The group should not be disproportionately influenced or dominated by any one stakeholder group (or subset of participants).
- 4.9** The key affected groups are consumers (as potential victims of APP scams and the ultimate beneficiaries of the code) and PSPs (who will commit to implementing and adhering to the code). The group will also include relevant government and regulatory bodies as observers. The PSR will oversee and support the steering group; it will not be a member of the steering group.
- 4.10** We want the steering group to contain an **equal** number of representatives of PSPs and consumers. Specifically:
- UK Finance should be one of the representatives, as it has relevant expertise in addressing financial crime and can represent the interests of the payments sector more broadly (as discussed below, we also see an important role for UK Finance in resourcing and supporting the work of the steering group).
 - At least one of the PSP representatives should come from outside UK Finance's membership base.
 - We anticipate that the consumer representatives may include Which?, Age UK, Toynbee Hall and/or independent consumer representatives.
- 4.11** The steering group will include observers from the PSR and the FCA, and, as appropriate, from other governmental and regulatory bodies (such as the Treasury, the Home Office and law enforcement agencies) who may, where appropriate, provide relevant input into discussions.
- 4.12** The steering group will also have a Chair who will be independent of payments industry interests. We have appointed Ruth Evans as the Chair and she will be directly accountable to us. The Chair will agree and appoint the members of the steering group in consultation with us.
- 4.13** The steering group will be supported by a secretariat. We consider that UK Finance is best placed to fulfil this role, given their access to experienced resource. UK Finance will contribute the necessary resource for the effective operation of the secretariat of the steering group. In addition to providing technical input, UK Finance will provide operational and administrative support to the steering group. Once appointed, we will work with the Chair and UK Finance to agree the specifics of what the secretariat will provide.

Core principles

- 4.14** Following consideration of the consultation responses we received (as summarised in Chapter 3), we have established a set of core principles. These are the key characteristics that we consider should underpin an effective CRM that will promote the interests of users of payment system services and reduce consumer harm. The steering group should agree proposals that ensure that the code optimises these core principles and should justify any proposed trade-offs between the principles to us.

4.15 The core principles are:

1. **Incentives for those with the ability to effectively prevent APP scams and reduce their impact:** The code should be designed so that those parties with the ability to effectively influence APP scam prevention and response at different stages of the payment journey are incentivised to do so. Ultimately, the incentives generated by the code should reduce the number of APP scams that would otherwise occur.
2. **Consistency of outcomes:** The code should deliver consistent outcomes for parties with the same circumstances. For example, we would be concerned if, where there were two victims of separate scams that shared the same characteristics, one was reimbursed and one was not. However, this does not mean that reimbursement for each of the victims should necessarily come from the same source of funds.
3. **Leverage existing and future initiatives that are likely to be effective at preventing and helping respond to APP scams:** As highlighted in our previous consultation, there are a range of measures aimed at assisting APP scam prevention and response, which have been recently deployed or are currently under development. This includes the Best Practice Standards, Confirmation of Payee, and transaction data analytics. The code should leverage these and future measures, and incentivise their use and development by including them in the standards of care that PSPs should meet.
4. **Adoption by all PSPs that have an element of control over preventing and responding to APP scams:** PSPs that have an element of control over payments within scope of the code (discussed below), should adhere to it.
5. **No contingency on the recovery of funds:** The implementation of the code should not be contingent on the recovery of funds in specific cases.
6. **No adverse impact on PSP ability to make goodwill payments:** The code should not displace or constrain the ability of PSPs to make goodwill payments to victims of APP scams in situations they deem it appropriate to do so.
7. **No adverse impact on commercial development of further protections:** The code should set out the minimum level of care that PSPs must take to protect consumers from harm caused by APP scams. It should not restrict the ability of individual PSPs, or other parties, to develop and offer products to consumers that provide additional protection.
8. **Capability for becoming part of the relevant considerations that the FOS takes into account:** The code should be developed in such a way that it is capable of becoming part of the relevant considerations that FOS can take into account when determining outcomes of a consumer complaint about APP scams.

4.16 We also expect the steering group to have regard to:

- **Simplicity:** The rules adopted should be as simple as possible to be effective, for both PSPs and potential code beneficiaries. The experience for victims seeking reimbursement should be simple and easy to understand.
- **Transparency:** The code should be developed, implemented and operated in an open and transparent manner (to the extent that privacy and security considerations permit).
- **Costs, benefits and impact:** The rules and standards in the code should be justifiable – both individually and as a whole – on the basis of their costs and benefits, in particular their impact on the harm caused by APP scams.

The scope of the industry code

4.17 Following consideration of the consultation responses we received (as summarised in Chapter 3), in terms of scope of the code, we are of the view that, at this stage:

- Eligibility for reimbursement under the code should be limited to consumers, small charities and micro-enterprises.¹⁷
- The code should only cover push payments between GBP-denominated UK-domiciled payment accounts. However, the code should not prevent payments with an international dimension potentially being included in the future.
- The code should cover APP scams relating to:
 - push payments executed across CHAPS, Faster Payments
 - ‘on-us’ book transfers where both the sending and receiving accounts are held with the same PSP, and the payment would otherwise have been executed across CHAPS or Faster Payments
- The code should only cover PSPs involved in the initial payment related to an APP scam, meaning the transaction from the victim to the scammer’s first account (i.e. PSPs whose accounts are utilised in the onward transmission of scammed funds are out of scope of the code).
- The code would only apply to APP scams occurring after its implementation.

Key issues for the steering group to resolve

4.18 As we set out in our summary of consultation responses, we received contrasting views on a number of the fundamental underlying considerations for the CRM. Our decision that a steering group be set up reflects our view that a collective, coordinated and cooperative approach is the best way forward to agree proposals on these points.

4.19 The most important issues we expect the steering group to achieve consensus on are:

1. The appropriate outcomes in circumstances where:
 - a. The victim and relevant PSPs have all met the standards of care expected of them under the code (the ‘no-blame’ situation)
 - b. The victim and one or more of the relevant PSPs have all failed to meet the standards of care expected of them under the code (the ‘shared-blame’ situation)
 - c. The victim has met the requisite the level of care and one or more of the relevant PSPs have failed to meet the standards of care expected of them (the ‘inter-PSP’ blame situation)

There was general consensus between respondents that the consumer should be reimbursed in the situation where (i) the consumer has taken the requisite level of care, but has fallen victim to an APP scam, and (ii) where those PSPs handling the underlying payment have failed to act in accordance with the standards of care expected of them.

2. Defining the requisite level of care a victim of an APP scam must have met to be eligible for reimbursement, including how it can practically be verified.
3. An appropriate set of standards of care that PSPs would need to meet under the code, including leveraging those measures set out in paragraph 3.61.
4. An appropriate governance arrangement for monitoring implementation and maintaining the code post finalisation. This should include arrangements for all PSPs to adopt the code and arrangements for how to leverage future measures for preventing and responding to APP scams.

¹⁷ Where consumers, charities and micro-enterprises are as defined under the Payment Services Regulations 2017. The definition of charity includes a requirement that it has annual income of less than £1 million.

4.20 The work on the PSPs' standards of care should include identifying any barriers to the inclusion of standards in the code. We recognise that industry considers that clarity is needed on whether there are any legal barriers to the prevention and response to APP scams, including the recovery of funds, what the implications of any such barriers are and how any such barriers can be addressed. The steering group should establish a specialist satellite working group to progress these issues effectively, working with other regulatory bodies and government departments where appropriate, while taking account of work being done in this area. We will discuss the establishment of this satellite group as a matter of priority with the main steering group. (See paragraph 3.19 for further discussion.)

Timeline for the steering group

4.21 Given the significant harm caused by APP scams, it is important that the code is introduced as soon as practically possible. However, balanced against this we recognise there are real risks of a poorly implemented code creating unintended consequences that may adversely affect both consumers and PSPs.

4.22 In Table 1 we set out a high-level timeline that we believe reflects a practical balancing of these considerations. We will expect the steering group to agree a more detailed work programme once it has been established. We expect the steering group to publish a summary, after each meeting, of the discussions held so that other stakeholders can be informed of its progress.

4.23 Through our involvement in the steering group we will closely monitor progress against this timeline for sufficient progress on a suitable industry code. We would look to take any necessary steps to ensure consumers' interests are protected.

Table 1: Timeline for the steering group

Date	Milestone
March 2018	Steering group members appointed and early work to begin
End April	Steering group agrees on appropriate outcomes for no-blame, shared-blame and inter-PSP blame situations
End June	Steering group agrees on: <ul style="list-style-type: none"> • requisite level of care to be taken by consumers • appropriate standard of care expected from PSPs
End August	Steering group agrees on appropriate governance arrangement for maintaining the code
End August	Steering group agrees on draft of the interim code
End September	Steering group issues interim code for public consultation
Early 2019	Post-consultation amendments made and final code issued

Glossary

Term or acronym	Description
authorised push payment (APP) scam	Scams in which people are tricked into sending money to a fraudster by making a payment from their bank account to another bank account.
Bacs	The regulated payment system which processes payments through two principal electronic payment schemes: Direct Debit and Bacs Direct Credit. The payment system is operated by Bacs Payment Schemes Limited (BPSL).
CHAPS	CHAPS (Clearing House Automated Payment System) is the UK's real-time, high-value sterling regulated payment system, where payments are settled over the Bank of England's Real time Gross Settlement (RTGS) system.
FCA	Financial Conduct Authority
Financial Fraud Action UK (FFA UK)	Financial Fraud Action UK (FFA UK) is the body responsible for leading the collective fight against financial fraud on behalf of the UK payments industry. Its membership includes the major banks, credit, debit and charge card issuers, and card payment acquirers in the UK. In July 2017, FFA UK became a constituent part of UK Finance, the new trade association representing the UK financial services industry.
Financial Ombudsman Service (FOS)	The Financial Ombudsman Service is an alternative dispute resolution service. It was set up by Parliament to resolve individual complaints between financial businesses and their customers. It can look into problems involving most types of money matters – from payday loans to pensions, pet insurance to PPI. If it decides someone has been treated unfairly, it has legal powers to put things right.
FPS (Faster Payments Scheme)	The regulated payment system that provides near real-time payments as well as Standing Orders. It is operated by Faster Payments Scheme Limited (FPSL).
FSBRA	Financial Services (Banking Reform) Act 2013.
industry code (the code)	The industry code (the code) will set out the rules that formalise the CRM for the reimbursement of the APP scam victims.
Joint Fraud Taskforce	The Joint Fraud Taskforce is made up of key representatives from government, law enforcement and the banking sector and has been set up to tackle fraud.
know your customer (KYC)	Know your customer (KYC) is the process of a business, identifying and verifying the identity of its clients.
malicious payee	A type of APP scam. A payer may pay funds to a correctly identified payee for what they believe are legitimate purposes but then fall victim to a scam (for example, the payee may abscond with the funds without providing the promised goods or services).

Term or acronym	Description
maliciously misdirected payment	A type of APP scam. In this instance, a payer intends to pay a legitimate payee but, as the result of a scam, instead pays a malicious third party due to the actions of that third party.
New Payment System Operator (NPSO)	The NPSO will consolidate Bacs Payment Schemes Ltd, , the Cheque and Credit Clearing Company and Faster Payment Payments Scheme Ltd. The NPSO will also introduce the new payments architecture (NPA).
'on-us' payment	Payments where the payee's PSP/payer's PSPs are the same entity.
payee	A person who is the intended recipient of transferred funds.
payer	A person who holds a payment account and allows instructions to be given to transfer funds from that payment account, or who gives instructions to transfer funds.
payment service provider (PSP)	A PSP, in relation to a payment system, means any person who provides services to consumers or businesses who are not participants in the system, for the purposes of enabling the transfer of funds using that payment system. This includes direct PSPs and indirect PSPs. Banks are one type of PSP.
Payment Systems Regulator (PSR)	The Payment Systems Regulator Limited, the body corporate established by the FCA under section 40(1) of FSBRA.
Payments Strategy Forum (the Forum)	The Payments Strategy Forum was announced by the PSR in its Policy Statement published in March 2015. The Forum is an industry-wide group consisting of representatives from consumer organisations and PSPs. It is leading on a process that identifies, prioritises and develops strategic, collaborative initiatives that promote innovation for the benefit of those who use payment systems. More information on the Forum may be found on www.paymentsforum.uk .
pull payments	Pull payments are payments where the person who is due to receive the money instructs their bank to collect money from the payer's bank.
push payments	Push payments are payments where a customer instructs their bank to transfer money from their account to someone else's account.
receiving PSP	The PSP that holds the payment account that receives money paid as part of an APP scam and which is under the control of a fraudster.
second EU Payment Services Directive (PSD2)	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, published in the Official Journal of the EU on 23 December 2015.
sending PSP	The PSP that holds the payment account of the victim of an APP scam.
steering group	A group that will be made up of representatives from key stakeholders that is responsible for trying to reach consensus on a set of key outstanding issues on the CRM, and formalising the CRM into a set of rules that will form an industry code for reimbursement of APP scam victims.

Term or acronym	Description
UK Finance	The trade association for the UK banking and financial services sector that represents around 300 firms providing finance, banking, markets and payment-related services.

Annex 1

Respondents to our consultation

We received responses from the following:

Payment service providers	Al Rayan Bank Barclays Clydesdale Bank HSBC Lloyds Banking Group Nationwide RBS Santander TransferWise Transpact Virgin Money
Trade Bodies	UK Finance
Consumer representative groups	Age UK FCA Consumer Panel Which?
Infrastructure providers	Vocalink
Payment system operators	Visa Europe
Parliamentarians	Maria Miller
Other	Fraud Advisory Panel National Trading Standards Non-PSP business (Anonymous) Pinsent Masons
Private individuals	(x10)

Annex 2

Consultation questions

In our November consultation we asked for responses to the following questions:

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.
2	Should a contingent reimbursement model be introduced? Please provide reasons.
3	Do you agree with our high-level principles for a contingent reimbursement model? Please provide reasons.
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.
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.
6	If a contingent reimbursement model is introduced, which organisation should design and implement it? Please provide reasons.
7	In your view, are there any barriers to the adoption of a contingent reimbursement model which we have not considered? Please provide reasons.
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?
9	Are there any factors that should be considered when defining the level of care victims should meet?
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.
11	What are your views on the scope we have outlined for the model? Please describe any other factors you think we should consider.
12	In your view, how should the dispute resolution mechanism work and which organisation should oversee this? Please provide reasons.
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.
14	Should a phased or transitional approach be used to implement a contingent reimbursement model? Please explain.

