

Sent by email

Caroline Abrahams, Charity Director, Age UK  
Louise Baxter, Head of National Trading Standards  
Rachel Almeida, Assistant Director, Victim Support  
Rocio Concha, Director of Advocacy, Which?

11 October 2023

Dear Caroline, Louise, Rachel and Rocio

Thank you for your letter of 11 October regarding our APP scams reimbursement plans.

As you will know, we have been working on delivering significant improvements for victims of APP scams. The outcome of this work will see greater protections and more reimbursement than under the current, voluntary Contingent Reimbursement Model scheme by putting reimbursement on a mandatory footing across all payment service providers (PSP) and ensuring there is a consistent, minimum level of protection available to everyone.

There are still details on which we are considering responses to our consultations, or consulting on, but I have responded to your specific points.

### **The consumer standard of caution**

The overriding standard that firms will need to apply is whether a customer acted with gross negligence. This is a very high bar, and we expect that the vast majority of cases will be reimbursed on this basis. It is a higher bar than exists in the CRM code today.

In our guidance consultation we have also *narrowed* the circumstances where the gross negligence test can be applied to only three specific areas:

- 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.

**It will not be sufficient for a customer to have merely failed to meet one of these requirements, a PSP will need to prove that a customer acted grossly negligent in failing to meet these requirements.** We consider there will be very limited circumstances when this will be the case. This is a significantly higher bar than the reasonable basis for belief set out in the CRM Code. It will not be sufficient or acceptable for a PSP to reject a claim on the basis that a customer ignored a generic warning at the point of making the payment as we do not consider that this will meet the bar for gross negligence. I would also like to stress the burden of proof falls exclusively on the PSP to demonstrate that a consumer has acted with gross negligence.

It will also not be possible to find a customer grossly negligent for actions outside of these three areas. For example rejecting a case on the basis that a customer did not check companies house would not be captured.

We have consulted on these requirements which represent the totality of the standard of care that consumers can be expected to meet and will finalise our position in December. We welcome your views.

### **Effective warnings**

As set out above, we have been clear that warnings should be consumer, scam, and transaction specific and should not be generic warnings. We have also stipulated that PSPs 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. Moreover, while consumers should have carefully considered all warnings prior to confirming any transaction, if they choose to go ahead despite these warnings, they should not automatically be deemed to have been grossly negligent and a PSP will be required to prove this.

It is also important to state here that we want payment firms to take responsibility for protecting their customers at the point a payment is made. In doing so, we expect the new reimbursement requirement to lead firms to innovate and develop effective, data-driven interventions to change customer behaviour. Our consultation does not shift away from this position – a high standard of customer caution will incentivise greater steps from PSPs to drive more targeted and risk-based interventions, and the industry's work on enhanced fraud data sharing will support this.

### **Moral hazard and a claim excess**

Our policy is a world first and there are no other comparative protections that exist for victims of APP fraud. In our policy statement, we accepted that moral hazard is a valid risk that should be managed. We have introduced policies to encourage customer caution and consider that a claim excess is an appropriate mechanism to manage the risk of moral hazard alongside the many actions PSPs can take to prevent APP fraud. We continue to recognise the risks that you raise in your letter around a fixed excess, in particular the issues around consumer reporting of APP fraud and the prevention of lower value scams by PSPs. We are actively considering the risks and impacts of the options we consulted on and will set out our final position in December.



But we have also been clear that any position we take at this stage will be monitored and reviewed (along with the effectiveness of our policy and the impact of an excess on consumers). If we can see evidence that changes need to be made, then we will look at what further action we might take. We will set out our final position on this in the coming weeks.

### **Implementation date**

Like you, we want these protections and requirements to be in place as soon as they can practicably be implemented. With that in mind, we have consulted on possible implementation dates that will achieve our aims. However, while aspiring to be swift in getting these requirements in place, we must also weigh this up against the practicalities for industry to implement the required technical and operational changes necessary. This is a significant change, and we want to ensure that the requirements are introduced effectively to ensure consistent customer outcomes across industry. We are consulting on the appropriate go-live date, balancing these considerations.

I'm grateful for your continued engagement on this very important issue and I know that our teams have collectively been working closely together.

As ever, I would be happy to meet with you all to discuss any of these issues.

Yours sincerely

A handwritten signature in blue ink that reads 'Chris Hemsley'.

Chris Hemsley  
Managing Director