



Electronic Money Association

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APP Scams Team
Payment Systems Regulator
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19 October 2023

Dear APP Scams team,

Re: PSR CP23/10 on Specific Direction on Faster Payments participants Implementing the reimbursement requirement

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. They also include a large number of smaller Payment Service Providers. A list of current EMA members is provided at the end of this document.

We welcome the opportunity to respond to the PSR's CP on the Specific Direction on Faster Payments participants Implementing the reimbursement requirement, as it will impact a large number of PSPs, including several EMA members.

I would be grateful for your consideration of our concerns.

Yours sincerely

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

Summary

The EMA has followed and engaged in industry developments with respect to APP scams from the outset in September 2016 when Which? submitted their super-complaint to the PSR.

We have:

- participated in the PSR's APP Scams Contingent Reimbursement Model Steering Group and contributing to the development of the CRM Code;
- responded to the LSB Call for Input on the CRM Code (June 2021)
- responded to the LSB CRM Code Consultation (October 2020)
- responded to the Pay.UK Consultation on an FPS Levy (October 2019)
- responded to the PSR's CP 17/2 on PSR-led work to mitigate the impact of scams, including a consultation on a contingent reimbursement model
- responded to the PSR's CP 21/3 Authorised push payment scams – call for views
- held a conference call with PSR representatives to discuss the PSR's proposals as set out in CP 21/3 Authorised push payment scams – call for views
- responded to the PSR's CP 21/10 Authorised push payment (APP) scams
- held a conference call with PSR representatives and EMA members to discuss the PSR's proposals as set out in CP22/4 Authorised push payment scams: requiring reimbursement
- responded to CP 22/4 Authorised push payment scams: requiring reimbursement
- responded to CP 23/4: APP fraud reimbursement requirement – draft legal instruments
- responded to CP/6 APP fraud: Excess and maximum reimbursement level for FPS and CHAPS
- responded to CP 23/7 APP fraud: The consumer standard of caution

In all of these interactions, we have put forward principled arguments and reasoning in relation to levying liability on PSPs for loss arising from APP scams and related issues.

To date, the PSR has not been able to refute our arguments nor have they substantively addressed our arguments.

To reiterate:

- We, PSPs, are not insurers of last resort.
- There is no basis for requiring PSPs to reimburse customers for all types of APP fraud. The PSR's reimbursement policies are inconsistent with principles of English law and goes beyond the legislative intent of section 72 of the Financial Services and Markets Act 2023.
- The PSR has provided no evidence that their reimbursement policies will not increase fraud in the UK. In the PSR's stakeholder session on reimbursement held Friday 7 July 2023, **the PSR expressly stated they had not carried out any testing with respect to these policies prior to implementation and do not have any primary data to rely on as to indicate that their reimbursement policy will**

function as intended. The PSR acknowledged that any data that industry could provide would be helpful and that they otherwise rely on data from UK Finance. As a competition regulator, we would expect the PSR to, at least, obtain some data and test their policies to see if they will function as intended before imposing them on the industry.

- The PSR's reimbursement policies are unreasonable, not commercially feasible and, generally speaking, not welcome by industry.

Questions

Question 1: Does the change to a specific direction provide more clarity on scope whilst still achieving the policy objectives?

No. It does not provide any further clarity. Clarification issues we identify as follows:

- **Definition of payment service provider**

Under the draft direction, Payment service provider or PSP has the same meaning as under section 42(5) of the Financial Services (Banking Reform) Act 2013 ("FSBRA").

Section 42(5) of FSBRA defines 'payment service provider' as a '*PSP in relation to a payment system means any person who provides services to persons who are not participants in the system for the purpose of enabling the transfer of funds using the payment system*'.

The direction should define payment service provider with reference to the Payment Services Regulations 2017 and not FSBRA. This has been the understanding throughout this entire process and is more appropriate from a drafting perspective.

- **The definition of an APP scam**

Paragraph 3.6 of CP23/10 specifically states that '*The definition for APP scam payment remains the same.*'

Without further clarification this definition exposes industry to the risk of misinterpretation, potentially unintentionally bringing payments elsewhere within the payment chain within scope of reimbursement, i.e., the payment from a victim to a person whom they know for example a friend or family member.

As demonstrated through the recent PSR measure 1 exercise, we may also see firms inaccurately assessing all 'me to me' payments as out of scope with firms misinterpreting 'to a payment account not controlled by the consumer' as automatically excluding accounts in the customer's name.

For this reason, we request that the definition used throughout the legal instruments and for any future supporting guidance accurately defines the in-scope payment as '*the Faster*

Payment to an account in the UK controlled by a criminal actor, where the customer has been deceived into granting that authorisation as part of an APP scam'. This must be supported by detailed guidance, to provide clarity to support industry consistency in the assessment of the term 'control' in the context of an APP payment. We would also welcome clear examples and scenarios of APP fraud that go beyond the meaning of the term 'control', in particular on civil disputes.

We also note that the definitions of "APP" and "APP Scam" do not refer to exceptions referred to in the PSR Policy Statement, notably civil disputes, international payments, although we note there is reference to certain unlawful purposes.

Question 2: Do you agree that PSPs that are exempt from the liability requirements for fraudulent unauthorised payments under the PSRs 2017 should also be excluded from the scope of our direction requiring reimbursement?

The proposal here is to exclude all firms who fall into the categories of either a Credit Union, Municipal Bank or The National Savings Bank from the reimbursement requirement.

The PSR does not appear to have provided a justification for this decision.

Credit Unions, Municipal Banks and The National Savings Bank are subject to a limited profit margin. If this is the rationale upon which the PSR have chosen to exclude these types of firms from scope, then it follows this rationale that electronic money institutions should also be excluded from scope.

Electronic money institutions are limited in the ways in which they may make profit. For example, an electronic money institution may not earn interest on customer funds. Similarly, redemption fees must proportionate and commensurate with the costs actually incurred by the electronic money issuer.

On this basis, electronic money institutions should also be excluded from scope of the reimbursement requirement.

Question 3: Does the scope of the direction give effect to its intention as outlined in the policy statement?

No. The PSR does not know what effect this policy will have on the payments industry.

The PSR has provided no evidence that their reimbursement policies will not increase fraud in the UK. In the PSR's stakeholder session on reimbursement held Friday 7 July 2023, **the PSR expressly stated they had not carried out any testing with respect to these policies prior to implementation and do not have any primary data to rely on as to indicate that their reimbursement policy will function as intended.** The PSR acknowledged that any data that industry could provide would be helpful and that they otherwise rely on data from UK Finance. As a competition regulator, we would expect the

PSR to, at least, obtain some data and test their policies to see if they will function as intended before imposing them on the industry.

Question 4: Do you agree with the move to an ongoing obligation placed on indirect access providers to provide us with a list of any indirect PSP customers they provide access to annually?

No comment.

Question 5: Do you agree with our proposed timeline for implementation, our assessment of key dependencies, and the feasibility of a go-live date of 7 October 2024?

The “go live” date of 7 October 2024 is still unreasonably soon.

It is not reasonable to move from consultation phase to full implementation and rules in effect phase within only 12 months.

We support a “go live” date of 12 months from the date that the final rules are handed down.

The PSR is only now consulting on key details that will inform PSPs’ reimbursement policy. On 15 August 2023, the PSR published two consultations CP 23/6 on excess and maximum reimbursement and CP 23/7 on the consumer standard of caution. Stakeholders were given a truncated timeline to respond in less than a month by 12 September 2023.

This timeframe is so short such that the PSR is arguably not fulfilling their statutory duty to consult pursuant to section 103 of the Financial Services (Banking Reform) Act 2013.

That outcome of that consultation will inform what internal measures etc. a PSP would have to put in place in order to implement the reimbursement requirement. The PSP will have to recalibrate various systems, put in place new policies and procedures, deploy training etc. in order to implement the PSR’s new rules.

As stated in all of our previous responses, the PSR have not considered how their policies will affect smaller PSPs. Whilst banks may have asserted that they would be ready for a “go live” date of 7 October 2024, this is because those banks have significant resources that allowed them to join the LSB Contingent Reimbursement Model Code (“CRM Code”) and already have policies and procedures in place to reimburse customers. This is not the case with smaller PSPs. It is not commercially feasible for a smaller PSP to join the CRM Code; that is why most smaller PSPs have signed up to the CRM Code and do not have existing policies and procedures in place to reimburse customers.

It is not feasible for a PSP to implement these rules within the business when the PSR will only be publishing key details of those rules in late 2023. For example, PSPs will now need to deploy additional engineering efforts to send ‘tailored and specific warnings’ to a

customer.¹ A PSP will now have to put in place policies and procedures to investigate and establish whether a claimant promptly reported a fraud² or where the customer has otherwise acted with gross negligence.

It is not feasible or otherwise reasonable to expect PSPs to do this in the period of time between the final rules being published (later 2023) and 7 October 2024 (i.e. less than 12 months).

It is also unreasonable to expect the industry to be able to develop a technical solution that will allow for the sharing of significant volumes of data between multiple PSPs safely, securely and reliably, within the proposed timescales, and in such a way that all in-scope PSPs will be able to develop the required technology to connect. This will be particularly challenging given the lack of detailed information regarding a dispute resolution framework or process, which is an essential component to ensure that the reimbursement requirement can operate in practice.

The “go live” date should therefore be no earlier than 12 months from the date all of the relevant PSR policy decisions are finalised. 12 months to implement these complex and subjective rules within our business is reasonable.

¹ CP 23/7: APP fraud: The consumer standard of caution; paragraph 3.6

² CP 23/7: APP fraud: The consumer standard of caution; paragraph 3.10

Members of the EMA, as of October 2023

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