UK Finance response to Payment Systems Regulator Call for Views on Authorised Push Payment (APP) Scams

Date: 9th December 2022

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

Sent to: appscams@psr.org.uk

UK Finance is the collective voice for the banking and finance industry.

Representing around 300 firms across the industry, we act to enhance competitiveness, support customers, and facilitate innovation.

If you have any questions relating to this response, please contact:
Christine.Farrow@ukfinance.org.uk

Introduction
Fraud is now the most prevalent crime in England and Wales, accounting for 41% of all crimes in the year to June 2022. More than £609.8 million was stolen through fraud and scams in the first half of 2022, with authorised push payment (APP) fraud losses comprising £249.1 million of the total. UK Finance therefore welcomes the Payment Service Regulator's (PSR) call for views on APP fraud.

However, UK Finance and its members feel strongly that while a necessary step, a reimbursement model alone will not slow the UK's growing epidemic of scams, nor prevent the non-financial impacts on customers and industry. Consumers are better protected when they are educated, responsible and alert to the threat and its consequences. Knowing that they will almost certainly be reimbursed – no matter their actions – removes the incentive for customers to take sensible steps to reduce their risk of being defrauded.

Moreover, we believe that the plans will encourage more complicit fraud and exacerbate the problem as fraudsters capitalise on the opportunity of near-100% reimbursement.

We strongly believe that there is much more that could be done to prevent fraud, including:

- Allowing firms to slow a small number of high value payments where fraud is suspected
- Allowing firms to trace funds after the first payment and legally enable repatriation of funds through the chain of subsequent payments. Effectively treating funds as proceeds of crime
- Enable data sharing across sectors to sectors to identify scammers and mules
- Bring all fraud-enabling sectors, including social media giants and the telecommunications sector, into the solution
- Increased law enforcement capacity and capabilities to capture and stop criminals

We are concerned that, if implemented as outlined, this model will have unintended consequences, negatively impacting most consumers, with the costs of reimbursement inevitably passed on through increased friction in payment journeys, reduced choice, and increased costs for payment services. This risk of pass through was clearly recognised by the FCA during a consultation on FSCS, another industry-funded customer protection scheme, with respondents invited to comment on the 'ability of firms to "pass through" costs to customers'[1]. The reimbursement of fraud victims will ultimately be financed by other customers and this model increases the burden on them.

The model, as proposed, would see uncapped liabilities for clearing banks which will threaten the sustainability of the indirect access provider banking market. If not carefully considered and delivered in an effective way, we may see many small and innovative PSPs lose access to payments services altogether. There will be a significant impact on the potential growth of open banking payments, as well as the development and adoption of account-to-account retail transactions, curtailing the opportunity for innovation in this market.

Generally, we do not see a way that the proposed approach can work without having an impact on competition and innovation.

The PSR's proposal for reimbursement places all liability – and therefore effectively responsibility – for fraud and scams onto PSPs. However, there is a much wider ecosystem of firms whose platforms and infrastructure are used by criminals to target and socially engineer victims. The PSR's proposals do not consider the liability of the technology sector controls and the sector' role in fraud enablement.

UK Finance data shows that 70% of reported APP scams originate through an online platform[2]. 96% of investment scams and romance scams originate online and that figure rises to 98% of all purchase scams. A means to ensure financial accountability on the part of platforms, internet service providers and telecommunications sectors is needed to create aligned incentives and shared accountability for fraud prevention and reduction.

The current legal timeframe for processing outbound payments – a day plus one after initiation of a payment – does not enable appropriate time for PSPs to engage with vulnerable customers to seek to dissuade them from making payments. This issue must be resolved.

In addition, there is currently no clear legislative framework to enable freezing and repatriation of funds to victims of fraud. The Payment Services Regulations 2017 do not expressly provide a means for Firm A to repatriate funds to Firm B to reimburse a victim. PSPs have been proceeding at legal risk in doing so and there is considerable inconsistency in approach and outcome as well as delays in reimbursement for victims.

What we propose:

A clear definition of a scam payment supported by detailed scam specific guidance to ensure consistent views across PSPs, the regulator, and the FOS. The definition must:

- Be clear where a scam originates. The consultation uses the phrase 'APP scams happen when fraudsters trick someone into sending a payment to a bank account controlled by the fraudster'. The definition should be positioned directly around this point, limiting a scam payment specifically to one generation i.e., the singular payment which places the scam funds into the control of the criminal.
- Show how to distinguish between a private civil dispute and a purchase scam, or a poor investment and an investment scam. Otherwise, there is considerable risk that the

[1] Compensation framework review, DP21/5, FCA (Link)

[2] https://www.ukfinance.org.uk/press/press-releases/over-two-thirds-of-all-app-scams-start-online-new-uk-finance-analysis

reimbursement framework would lead to the financial industry underwriting consumer purchases and high-risk investments and would fuel disputes between PSPs and the Ombudsman.

- Clearly define which scenarios are in scope. For example, payments to Ponzi schemes and pyramid schemes should be out of scope where it is made clear to the person at the outset that the basis of joining the scheme and ultimately making money is through the recruitment of others. In such a scenario, there is no dishonesty, it falls outside of section 2 of the Fraud Act 2006 and anyone who joins on the back of this does so at their own risk.

Development of a simple Consumer Contributary Negligence exemption. Gross negligence should not be the only exception for reimbursement. This sets the bar too high and risks moral hazard across customers. Our recommendation is that the consumer negligence determination be based on simple principles which are easily communicated and can evolve over time. If a customer's negligence facilitates the successful completion of the scam payment, the customer reimbursement would be proportionally reduced. The cost of the remaining reimbursement would then be shared 50:50 by the sending and receiving PSPs. This will still achieve the PSR's aims of incentivising PSP investment in scam prevention and markedly increase the level of reimbursement for customers.

The inclusion of an industry-wide upper and lower threshold. UK Finance and its members strongly advocate the inclusion of an upper limit. We see this as an essential tool to limit the emergence of moral hazard. While there is some divergence of views around the inclusion of a lower threshold, there is agreement that, were one to be included, it should be consistent across PSPs. The level should be determined through the analysis of industry data.

Development of a practical timeline for reimbursement. Our members cannot support the 48 hour reimbursement timeline proposed. Until there is evidence that the new reimbursement model can overcome several of the current operational challenges, we would recommend maintaining the existing 15 / 35 day timeline of the CRM Code, for a period following implementation. There will be a significant increase in number of PSPs who will be engaging in this reimbursement approach who have no experience in operating within an APP liability framework. The timelines may in the long term be shortened where there is evidence that they are achievable.

Implementation through PSR Directions of all PSPs to adhere to the mandatory reimbursement rule meaning consistency and clarity across all participants. A direction means the reimbursement rule can be implemented within an expedited timeframe. Scheme rules could be used in parallel to set minimum standards for participation. These may then evolve over time with the changing fraud landscape and the introduction of new prevention measures.

In the long term, we strongly believe **the reimbursement rule for authorised fraud must be placed on the same legislative footing as unauthorised within the PSRs 2017**. This will mitigate the risk of the authorised fraud threat migrating to other payments schemes. UK Finance and its members propose working with HMT and regulators to agree changes to PSRs 2017 to include a specific and detailed definition of an authorised payment scam, clarity regarding scope and the obligations and liability framework. It will be necessary to make clear in legislation who has responsibility for the monitoring and enforcement aspects of the reimbursement framework. We strongly believe that these roles should fall to the regulator, leveraging enforcement capability already available to them.

We strongly advocate the PSR continuing to work with UK Finance, its members, and HM Treasury to develop an alternative model to ensure that the ultimate model strikes a better balance between consumer protection and the commercial viability and competitiveness of the sector.

We believe the following needs to take place before we can support implementation of a reimbursement framework:

An end-to-end strategy for tackling scams at source is developed. While we recognise that the PSR's remit only applies to PSPs, we would strongly encourage them to urgently come together with their counterparts in HM Treasury, the Home Office, the Department for Digital, Culture, Media and Sport, the Financial Conduct Authority, Ofcom and others, to devise and implement a comprehensive strategy for tackling scams that includes requirements for all relevant actors and which apportions liability fairly.

The Online Safety Bill is passed. The Bill will deliver urgently-needed protection to shield consumers from becoming victims of fraud and prevent criminals from attaining stolen funds then used to perpetrate further criminality. Whilst the Bill is designed as a standalone measure, additional complementary work through the Online Advertising Programme will be needed to examine the role of the entire ecosystem in relation to fraud as well as other harms caused by online advertising.

Legislation is passed to provide private sector information-sharing powers with the non-AML regulated sectors. We suggest these powers should be limited in application to the scope of entities regulated by OFCOM. This data sharing capability is critical to enable the financial services sector to work directly with these sectors to inform threat assessments and proactive fraud prevention activity.

Amendments are made to Regulations 86 and 89 of the Payment Services Regulations 2017 to allow the adoption of a risk-based approach to payments to enable enhanced scrutiny of high-risk payments across the faster payments scheme allowing time for PSPs to engage with vulnerable customers to dissuade them from making payments.

A statutory framework to prescribe minimum standards and processes to govern investigation, response, and repatriation of funds to victims has been created. Providing PSPs with the comfort to repatriate where funds have been frozen within beneficiary accounts.

Question 1: Do you have views on the impact of our proposals on consumers?

UK Finance and our members are supportive of the PSR's ambition to ensure victims of APP scams receive a consistent approach to reimbursement regardless of who they hold their account with. We support the PSR's proposal for reimbursement to be fairly shared between sending and receiving PSPs, but we remain of the opinion that it is important for consumers to take appropriate measures to protect themselves and for consumers' actions to be considered within the reimbursement model. We understand the PSR's desire to drive the incentives for financial services firms to invest in scam prevention, however we strongly believe that the proposals outlined by the PSR may have unintended and negative impacts on consumers – both directly, in terms of their payment experience and indirectly, through the impacts on the financial services ecosystem.

Reduced consumer caution and an increase in APP scams

Some of our members have strong concerns that a mandatory reimbursement rule which does not have sufficient level of consumer caution included may reduce consumer incentives to take appropriate measures to protect themselves against APP scams. This will, in turn, make consumers more vulnerable to APP scams, and mean increased funds flow into the criminal economy, which will galvanise the focus of criminals on this type of fraud.

UK Finance has one member PSP which has operated a similar reimbursement model for over three years and does not believe that this has created moral hazard across its customer base. However, other members have called out significant concerns about the risk of an increase in moral hazard, noting an unvalidated assumption by the PSR that the experience of that PSP can be extrapolated for the whole industry without moral hazard emerging. This is a sentiment supported by the House of Lords report (Page 162, paragraph 57) which states, 'While we recognise the case for mandatory reimbursement of victims of APP fraud, we are concerned that a blanket reimbursement policy may lead to increased levels of moral hazard and fraud, and the perception that it is a 'victimless crime'. In some cases, it may even lead directly to new avenues for APP-reimbursement frauds.'

Before finalising the reimbursement approach, we urge the PSR to conduct detailed analysis on the potential unintended consequence of moral hazard across differing customer demographics and scam types. We would also recommend that the PSR review the approach to reimbursement being considered by regulators in other countries, which have explicitly considered moral hazard in the design of their systems.

Policy documents released by the Monetary Authority of Singapore suggest that consumers must contribute to losses they incur to create incentives for them to be vigilant against fraud. Evidence shows that moral hazard implications are being considered during the framework drafting: although the authority expects financial institutions to treat their customers fairly and bear an appropriate proportion of losses arising from scams, it made clear that care must be taken to ensure that compensation paid to customers does not weaken their incentives to be vigilant.

Whilst in the EU, following a period of consultation, in October 2022, the EU adopted the finalised '*Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro*', whose Impact Assessment provides interesting indications of options rejected for the time being. One of which was a proposal which would give consumers the right to ask for a refund under certain circumstances, which included where that individual could satisfy that a payment was authorised under fraudulent circumstances. This request would need to be submitted within a certain timeframe and would require the payer to evidence that its intention was to send the payment to a different payee.

This option was not factored into the final proposal based on several considerations, the most relevant of which being moral hazard concerns. The document expressly provides that "more lenient refund conditions may give rise to greater moral hazard in the form of unfounded refund claims". The EC expects that a mandatory reimbursement regime would amount to increased fraud rates (as victims who currently do not report would feel encouraged to seek reimbursement) and ongoing compliance costs, particularly if the moral hazard factor is not effectively contained.

Reduced incentives for action by other sectors

The payment from victim to fraudster sits at the end of the scam journey, which is the last opportunity to identify and defend against a scammer. Most scams are perpetrated through criminals exploiting vulnerabilities in other sectors, such as the online platforms (e.g., social media, online sales, dating websites etc) and telecommunications sectors, to target, engage and scam victims. It is therefore critical that all sectors across this 'scams ecosystem' take the action necessary to prevent criminals targeting their infrastructure. The banking and finance sector has been at the forefront of cross-sector collaboration and data sharing in the recent years, and we have seen several successes where Financial Services intelligence and data can mitigate the attacks. We are concerned that the PSR's proposals to introduce PSP mandatory reimbursement spanning all scam types, will ease the mounting pressure in this space for other sectors to act appropriately to mitigate risk and subsequent consumer harm, ultimately leaving consumers vulnerable.

Increased friction in payment journeys

If the reimbursement model is implemented, as outlined, it is almost inevitable that wide reaching, irreversible, changes will be applied to offset the potential increased moral hazard - impacting how consumers make payments through the Faster Payments Scheme.

In recent years industry has been striving to achieve the right balance in applying friction, through the introduction of dynamic warnings and the implementation of Confirmation of Payee, whilst still maintaining a simple, streamlined customer experience. With the proposed move to a two party liability model, almost entirely removing consumer responsibility, industry will introduce additional friction into certain payment journeys across the FPS rails. This friction will be designed to reduce moral hazard through incentivising the consumer to exert effort by increasing the perceived cost of fraud on them. Whilst the PSR acknowledge this within the consultation, their expectation is that friction only impact a small proportion of payments, believing that liability imposed by the reimbursement model will encourage firms to introduce back-end solutions to mitigate the APP risk. In contrast, industry– particularly those firms that already have sophisticated fraud detection capabilities - recognise that the most effective way to mitigate APP scams before they enter the payment system, is to add friction at the front end through the collection of information on the payment and conversations with the customer. This may mean that ultimately the existing instruction to make a payment may move towards an application for payment handling, supported by customer evidence. This will negatively impact genuine payments and customers and therefore growth of the economy,

Industry will require guidance for situations where the PSP and the consumer reach an impasse over the legitimacy of the payment. PSPs recognise the benefit of maintaining a relationship with their customer where they have identified the potential risk of susceptibility to scams. The increased liability risk to PSPs however may incentivise PSPs to take an earlier decision to provide notice to close in situations where they are unable to 'break the spell'. This will be to the detriment of the customer. The new PSP will not have access to the customers payment history or knowledge of the previous PSP scam concerns. This may leave the customer at greater risk of being scammed again.

We must also recognise the risk that additional friction may make payment journeys more challenging for some consumers, creating the unintended consequence of pushing consumers towards more traditional payment methods such as cash and cheques, neither of which are within scope of reimbursement models and which, in the case of cash brings with it unique personal security risks.

We have outlined in detail the inevitable need for additional friction across FPS payments if the PSR move forward with their current proposals. For consumers accustomed to operating in a seamless payment environment, this may create irritation and potentially levels of stress. As such these changes must be communicated by a centrally coordinated HMT / Regulator led public announcement campaign, highlighting the reasons why additional questions will be asked and, in some circumstances, evidence required when making payments.

Emergence of a claim management market

The PSR proposals are also likely to encourage a growth in claim management companies taking on APP scam cases for customers, taking fees of circa 25-50% from victims for successful reimbursements. This market is already emerging in response to the CRM Code. Noting the deductions made, this would result in a worse outcome for victims of APP scams compared with the position today.

Migration of scam payments to other payment channels

There is a risk that authorised payment scams might migrate to other payment channels. For example, the PSR note this risk, specifically referencing card payments, but observing that 'Card systems have existing consumer protections in place'. Many issuers have reported an increase in authorised card scam payments in recent years. In October, UK Finance, working with issuers, conducted a pilot MI collation exercise which has supported members' anecdotal claims that this is a potential industry threat.

However, the precise scale of the issue is at present unclear and as a result there is some divergence in views. Issuers have indicated that they would benefit from further clarification and guidance around the reporting of this type of fraud. The Card schemes are working collaboratively with UK Finance and its members to develop additional guidance to help close the current gap.

The risk of migration is of course not just limited to card payment systems, but the current proposal to address authorised fraud in one system will encourage criminals to alter their approach, instead directing consumers towards other payment channels. Therefore, it will be important to keep this monitored and UK Finance will continue working with members to better understand the issue.

Impact on Service

In the future, repeat victims of scams, may find it harder to access normal retail banking products. The PSR note that PSPs should treat current and prospective customers according to their obligations in the Equality Act 2010, however on the basis that PSPs may restrict access to full payment services, on a case by case basis, to protect individual consumer this can be evidenced as "objectively justified".

Our members also suggest there is a risk that the proposals will result in negative impacts on the market for banking and payment services in terms of pricing, investment in innovation or market choice as firms respond to the proposals to limit risk and cover costs, which in turn will impact on the services for consumers. PSPs may seek to recover the costs of mandatory reimbursement by increasing the charges levied to businesses for Faster Payments, or even to consider introduction of consumer charges for Faster Payments. The introduction of a mandatory reimbursement model in addition to Confirmation of Payee will bring significant costs for PSPs. Small PSPs or those with an international footprint may deem the UK market too expensive to remain a viable proposition. If the PSR pursue their preferred option for ensuring in-direct PSP participation, we would also expect to see a decline in innovative products and services as Direct FPS participants seek to limit their risk exposure, declining to offer payment services to PSPs who may, initially at least, carry more risk.

We recognise the PSR's intentions in proposing a 48hr timeframe from claim to reimbursement is to reduce the period of uncertainty for consumers. However, we strongly suggest that this may not always be in the customer's best interest, potentially adding additional pressure to consumers who are already feeling vulnerable following the occurrence of the fraud / social engineering. The speed of the proposed reimbursement may also leave consumers at risk of further attempted exploitation if the criminal is still in contact.

The suggested lower threshold for eligibility will significantly reduce the incentive for consumers to report low value frauds to their PSP. This will limit the opportunity for PSPs to provide early education, potentially leaving consumers exposed to further exploitation.

The potential for PSPs to set their own thresholds, excesses, and time limits, will be confusing for consumers, even more so if they hold payment accounts across multiple PSPs. This is exacerbated further if, as part of the scam, the consumer has made payments across multiple PSPs and potentially payment schemes, with differing protections offered across schemes.

Question 2: Do you have views on the impact of our proposals on PSPs?

UK Finance and its members agree with the PSR's view that the mandatory reimbursement proposals, as outlined, will increase the cost of APP scam reimbursement for most PSPs.

We clearly articulated throughout our response to CP 21 – 10 the need for receiving PSPs to play a greater role in the reimbursement of scam victims, which we believe will incentivise them to play a stronger role in prevention. We are therefore supportive of the PSR's proposal that the cost of reimbursement should be shared with receiving PSPs.

However, as with our previous consultation responses, we remain of the opinion that the proposal to incorporate the obligation to reimburse into scheme rules is neither an effective nor proportionate way to achieve a reduction in the volume and occurrence of APP scams. We recognise and support the PSR's position that reimbursement is an important component in addressing the APP scam problem but believe strongly that it is required as part of a wider approach covering education, legislative change, tech development and effective engagement and collaboration of the wider ecosystem.

As such, we question why the PSR is continuing to pursue delivery of the reimbursement model via FPS scheme rules, specifically considering the limitations, as outlined by the PSR concerning the incapability of Pay.UK to apply rules to on-us payments, indirect participants, and the limited ability to enforce these rules.

The proposals if delivered as outlined in full, create uncapped liabilities for clearing banks which may have unintended consequences for the sustainability of the indirect access provider banking market. If not carefully considered and delivered in an effective way, we may see many small and innovative PSPs lose access to payments services altogether. The PSR's preferred approach of reimbursement rules applying to all payments, creates an unnecessary complexity in interposing clearing banks between the ASPSPs that manage payment end user accounts, giving rise to disputes between clearing banks and clearing customers, as well as between the sending and receiving PSPs.

Generally, we do not see a way that the proposed approach can work without having an impact on competition and innovation. There is tangible evidence of firms moving away from the market following the introduction of cheque imaging. The introduction of a mandatory reimbursement model, in addition to industry wide CoP may see some small firms decide that the costs of operating within the UK Market are too high to be viable and international firms may choose to close their UK accounts.

It is important to highlight the implications the PSR's proposals for APP reimbursement may have on the development and adoption of Account to Account (A2A) Retail Transactions if this payment model where to be adopted by industry. The PSR believe that A2A payments will increase choice for merchants and consumers and give an additional option for both POS and e-commerce transactions, however if the proposals for APP reimbursement were to set the benchmark for A2A this could significantly damage this proposed new payment option. A 'reimburse first, investigate later' model applied to A2A payments may mean that PSPs build such a robust and defensive economic model around them that they are unlikely to be economically appealing to merchants. Added friction in Faster Payments would also reduce their ability to compete effectively with other forms of retail transactions. PSPs may be disincentivised to onboard certain merchants, those from perceived higher risk sectors for example. And we may see a significantly increased in the number of consumers who feel that any 'change of heart' on a transaction, or slight grievance with a product, can be pursued as a reimbursement from their PSP in the first instance.

The PSR propose the inclusion of PISP initiated payments within scope of the FPS rule, although there was no detail provided in the consultation paper on how this might work in practice. There are limitations on what PSPs might do to mitigate fraud risk in a PISP initiated payment, owing to rules on the CMA9 requiring frictionless transaction. There is no indication within the consultation that PISPs will be included within the liability model. If it is proposed that sending and receiving PSPs continue to share the burden of liability, some UK Finance members argue that the restrictions within the OBIE Customer Experience Guidelines must be lifted, as well as placing requirements on PISPs to share payment information with the ASPSP that is relevant for fraud detection, including payment purpose. However, UK Finance PISP members have expressed concerns that removing such restrictions would reduce the overall Open Banking payment proposition and customer experience.

Central to the PSR's proposals is the exception for gross negligence. No clear definition of gross negligence has ever been found that is suitable to be applied to fraud cases, especially those linked to digital or modern payment systems. Without clear and precise guidance, for each specific scam type, there will be disparity in interpretation across PSPs which may ultimately, with receiving PSP liability based on the sending PSP victim assessment, result in conflict between PSPs and an increase in consumer complaints. In addition, there is the risk that we see repetition of the failures of the Code, where there was huge disparity across PSPs and the Financial Ombudsman Service (FOS) both in interpretation and case outcome. This ultimately damaged the credibility of the Code across consumers.

The PSR proposal that PSPs may only deny reimbursement where a consumer has been grossly negligent or there is evidence of first party fraud brings significant risks for PSPs. In H1 of 2022, 56% of all scams were purchase scams, of which 90% of these were under £1000. Low value purchase scam payments are extremely difficult for PSPs to detect and prevent because they are not easily differentiated from other low-value payments. Once identified it is then often challenging to determine if they fall within the scope of a scam or a dispute, as there is often very limited evidence available. On the other end of the scale, only 5% of all scams were investment scams, but these made up a significant 25% of the value. Whilst generally more likely to be detected by transaction monitoring tools, investment scams pose their own challenges, as once a risk is identified, it can be difficult to deter customers from making what they believe is a sound investment using warnings alone. The inherent delay in a consumer recognising that they have been the victim of an investment scam also hampers PSPs ability to freeze and repatriate funds to the victim, which can be further complicated by assessing whether the claim is an investment scam or a poor return on a failed investment. Without the right framework in place there is considerable risk that the proposed rule change would lead to the financial industry underwriting online purchases and high-risk investments conducted with little or no care taken by the consumer. Additionally, the PSR proposals, in placing reimbursement entirely on the shoulders of PSPs, removes all responsibility from online auction sites and social media platforms to create additional controls to prevent low-value scams and high value fraudulent investments. It is only through greater scrutiny of online sellers that these scams can be prevented.

PSPs must be provided with the necessary tools to enable them to achieve good customer outcomes. If relevant amendments to legislation are not agreed, where potential risk is identified, PSPs will face a "liability dilemma", make the payment and risk liability or decline the payment and risk legal action by their customer for breach of mandate.

The loss of life savings can have a significant emotional and financial impact on customers. As such, protecting against this risk should be a higher priority to the regulator than allowing customers to have immediate access to funds or to have those funds transferred in all circumstances. Whilst we accept that the instances where thorough extended investigation might be necessary are small, the key point is that the impact on customers where APP fraud does arise can be life-changing. In short, the risk of an APP scam occurring is low probability but high impact, and a proportionate solution which enables PSPs to hold payments where risk is identified would appear to be the right approach to achieve good outcomes for customers versus the relatively limited downside of delaying certain payments

The PSRs 2017 require firms to comply with the payment execution timescales. Whilst PSPs can intervene, warn, and advise customers where it is believed they may be being scammed, PSPs currently have no regulatory comfort to hold the payments past D+1 or to stop the execution of that payment unless instructed by the customer to do so. We ask for changes to Reg 86 to enable PSPs to pause the execution of a payment past D+1 where there is a high risk of fraud. We have a similar situation for receiving PSPs. Many PSPs have implemented inbound transactional monitoring and are actively, successfully freezing funds as they are received. However, this approach is inconsistent, and some PSPs question the legality of the process when considered against the requirements within Regulation 89 of the PSRs 2017. Where PSPs identify funds, they suspect may be the proceeds of a scam, we ask for changes to Reg 89 to allow the payment to be paused and assessed, on the balance of probabilities, suspicions of fraud and seek return of any of the customer's funds that have been able to be frozen, alongside protections for the receiving PSP to freeze and release funds back to the account of a sending PSP following an assessment of fraud.

Changes to the PSRs 2017 to enable PSPs to take the necessary actions to intervene were they have reasonable suspicion of fraud, supported by industry agreed wording for PSP T&Cs to mitigate the risk of a consumers taking legal action against PSPs on the grounds of unfair terms where a payment is delayed, must be delivered prior to or at the very least, in parallel to the proposed reimbursement model.

Where consumers are resistant to fraud warnings and wider engagement both from PSPs and Law Enforcement, and continue to engage in scam activity, PSPs recognise the importance of maintaining the PSP and customer relationship, limiting the risk of continued victimisation if they provide notice to close their account and the customer moved to an alternative account provider. Under the current regime, there is no industry guidance or standard of care for PSPs to follow when responding to a customer who is "under the spell" of a scam. The increased liability risk to PSPs may incentivise PSPs to take an earlier decision to provide notice to close in such situations. To counteract this risk, we ask the PSR to work collaboratively with UK Finance and its members to develop a standard of care for victims of scams who are "under the spell". We propose that this would necessitate engagement with victim care charities, Law Enforcement and Social Services. The standard should provide PSPs with a clear indication of when the customers care should be handed over to an external agency.

Finally, we cannot ignore the operational and administrative costs which will accompany the introduction of this model. It is not clear what the costs may be for PSPs in supporting the central administration regime, but these are likely to be significant. In addition, the costs and resources required to operationalise this model within PSPs are likely to create disproportionate burden on smaller firms who have no previous experience of a centrally managed reimbursement model. This must be considered when determining the timeline for implementation.

Question 3: Do you have views on the scope we propose for our requirements on reimbursement?

It is essential that the 'scope' of PSPs, sending and receiving accounts and the specific payments which fall within bounds of the reimbursement rule are clearly defined and not open to interpretation. The scope must be robust and clearly defined with key examples detailed within supporting guidance. Lack of specification will lead to inconsistent interpretation across PSPs, the regulator and the FOS and ultimately deliver inconsistent customer outcomes.

The consultation is clear that the scope of the proposed reimbursement model covers all payers who are:

- consumers
- micro-enterprises who employ fewer that ten persons and who's annual turnover and / or annual balance sheet total does not exceed €2 million and
- charities with annual income of less than €1 million and is a charity as defined in relevant legislation in the UK
- included in measure three is Faster Payments only, with on-us payments proposed to be voluntary. We discourage this voluntary approach and instead ask that the PSR be clear in their requirement and mandate the inclusion of on-us payments for all PSPs. Without specific direction, the reporting across firms will be inconsistent.

The PSR clearly articulate their expectation that PSPs reimburse on-us payments in the same way as payments made via the Faster Payment Scheme but note that their powers do not extend to regulating payments which fall outside of designated financial services. Irrelevant of this we discourage the voluntary approach proposed and ask that the PSR be clear in their requirement, mandating the inclusion of on-us payments for all firms, mirroring the approach taken with Confirmation of Payee. Without specific direction there is the risk that adoption across firms will be inconsistent.

Payee account scope must be clarified by the PSR. In the introduction to the consultation, the phrase "APP scams happen when fraudsters trick someone into sending a payment to a bank account controlled by the fraudster" is used. Our view is that the rules should be positioned directly around this point, limiting the rules specifically to one generation of payment, i.e., the singular payment which placed the scam funds into the control of the criminal.

It is essential that the reimbursement framework be applied to all PSPs who hold the account of customers receiving payments via the Faster Payment Scheme. For regulated financial institutions holding payment accounts, their inclusion seems clear, however this is less clear when we move into the realm of Foreign Exchange and Crypto Exchange firms where funds are layered through wallets or paid into unregulated firms.

The use of Crypto and Foreign Exchange firms to launder the proceeds of scams is a consistent challenge for industry, and with the use of holding accounts across these business models, there is often differing interpretations between PSPs, the regulator, and the FOS as to what point in the payment chain, the scam has occurred. It will be essential that this is clearly defined within the reimbursement rules.

In September 2021, UK Finance with its members developed a set of industry principles to help define the origination of a scam.

These principles are outlined below:

- If the account at the crypto / foreign exchange was opened in the consumer's name, without the consumer being aware and the consumer is subsequently socially engineered into moving funds into the holding account, at which point the criminal has control, this will be classified as one generation payment as in scope for the victim PSP to assess. For the avoidance of doubt if a consumer was intending to invest in the commodity being offered through the exchange/account then we would consider the customer to have had awareness and this exception would not apply.

- If the account at the crypto / foreign exchange was opened by the consumer, either independently or via an instructed third party and was done so either through their own decision or under the direction of the criminal and the consumer then knowingly transferred funds into their wallet before creating an onward payment to a wallet under the control of the criminal, then this will be out of scope for the victims PSP to assess as this involves multiple transactions and the consumer's first payment was to an account held in their name. PSPs should direct the consumer to contact the crypto exchange at which they hold the wallet.

- If the account at the crypto / foreign exchange was opened by the consumer, either independently or via an instructed third party and was done so through their own decision or under the direction of the criminal, and the consumer knowingly transferred funds into the wallet, where they reasonably were aware that another party had access, or where they subsequently provided their credentials to a third party, any subsequent payments made out of that account either authorised or unauthorised will be out of the scope for the victims PSP to assess and will be the responsibility of the crypto exchange firm to resolve.

For the avoidance of doubt, as well as sharing security credentials with a third party, allowing a third party to set up the account on their behalf or providing remote access during the process will be considered sufficient to confirm the customer was reasonably aware that a third party had access. The customer choosing not to attempt to access the wallet directly, either before or after the transaction should not negate this point.

For unregulated firms who are the recipient of first-generation scam funds, we encourage the PSR to consider a rule which ensures the regulated entity who own the client relationship be mandated to pass any losses onto that client, should they be found to exist – i.e., levy a charge against that client equal to their loss, minus any repatriation.

Crucially, the PSR must provide a clear definition, supported by guidance of what constitutes an APP scam.

The PSR are clear that mandatory reimbursement would not apply to private civil disputes, however without clear definition and guidance on how firms are required to identify a poor investment, a purchase dispute or other civil dispute, there is considerable risk that the proposed rule change would lead to extended closure times for customer claims, disputes between PSPs, and the financial industry underwriting consumer purchases and high-risk investments.

Mindful of this risk and of the high proportion of purchase scams which originate due to enablers outside of the financial industry, it is the preferred option of a proportion of the UK Finance membership that this scam type be excluded from scope of the proposed mandatory reimbursement model. Purchase scams are fundamentally different to any other scam type. They rarely involve any element of social engineering and in most cases will not have the lasting emotional and financial impact of other scams. Instead, members recommend that an alternative separate reimbursement process should be developed recognising these fundamental differences, with specific SLA's and detailed documentation providing PSPs with clear guidance to ensure consistency in interpretation between a purchase scam and a civil dispute. UK Finance propose working with the PSR and its membership to develop this alternative model.

We recognise that this will not be an appealing proposal and therefore urge the PSR, if purchase scams in scope, to ensure the necessary guidance be provided to PSPs to mitigate the inconsistencies which will occur when investigating these cases both across PSPs and the FOS.

Equally, greater clarity is required when considering the scope of an investment scam. Firms should not be required to provide reimbursement for investments made to unregulated firms or where the consumer had prior awareness of the high risks.

In the circumstances around the formation and operation of 'pyramid schemes', advice was sought from experts and professionals from several different fields – Gambling Commission, Trading Standards, City of London Crime Academy, Crime registrar and Corporation of London Solicitors. They summarised that these schemes are a specific offence under Section 43 Gambling Act (Chain Gift scheme). The offence is committed by a person who 'invites another to join a scheme or knowingly participates in the promotion, administration, or management of such a scheme.

The operation of 'Chain Gift Schemes' is a specific crime. In its defined form there would be no dishonesty element as these schemes are run on an invitation basis and entry is by paying a joining fee, the fee is then recouped by recruiting others to join, it is on this basis a gamble on the part of the participant that they will recover their original outlay and even make a profit. It is not an offence for persons to join the scheme, but it is for that person to invite others to join.

Taking the above into account, if it is made clear to the person at the outset that the basis of joining the scheme and ultimately making money is through the recruitment of others then there is no dishonesty and therefore falls outside of Sec2 Fraud Act 2006 and anyone who joins on the back of this does so at their own risk.

The PSR note that it is their expectation that payments initiated by Payment Initiation Service Providers (PISPs) are in scope for the new reimbursement model. However, no further detail is provided on how this might work in practice. For instance, it is unclear from the consultation how the role of PISPs will be considered within the proposed 50:50 liability model to ensure that all PSPs within the payment chain are accountable for fraud prevention and are liable for their share when a scam takes place. As demonstrated by the Enhanced Fraud Data Proof of Concept developed and coordinated by UK Finance with its members, an important part of scam detection and prevention is based on the Sending PSP knowing information about the payment (including the payment purpose), so that they can provide effective and timely scam warnings to the customer, to try to 'break the spell'. Transaction Risk Indicators do exist within Open Banking, but with no mandate for PISPs to supply the data and a lack of detailed guidance, the necessary data is generally not available for the ASPSP to effectively detect fraud risk. The CMA9 are further hampered in this space through the restrictions imposed through the Customer Experience Guidelines, which limit the level of friction allowed within an Open Banking transaction, removing the ability of these PSPs to overlay effective fraud warnings and Confirmation of Payee checks.

However, it is important to recognise that there are several different payment propositions offered by PISPs in the market, and that these propositions present significantly different levels of risk for APP fraud. One of the more common PISP propositions is known as "Merchant Initiation via PISP", where a PISP has an underlying contract with a merchant and a PIS payment option is made available by the merchant to customers. The OBIE recently evaluated different PISP propositions for risk of APP fraud and concluded that “Merchant Initiation via PISP” payments were of “exceptionally low” risk. This is due to several factors including pre-population of payee account details and PISP due diligence on merchants. Further, the OBIE argued that introducing confirmation of payee or additional warning screens to these payments would introduce “inappropriate and unnecessary friction”, “additional unnecessary cost and effort” and risked “degradation of overall effectiveness of warning interventions”. Any extension of scope of the PSR’s proposals to PISP payments, and associated treatment by ASPSPs, needs to be risk-based and take account of the different types of PISP propositions and associated risk of APP scams.

To consider PISP payments in scope of the proposed reimbursement model, these issues will need careful addressing, to ensure that Open Banking payments do not become a target for fraudsters, who seek to avoid the controls and warnings that are otherwise in place in FPS payments made through ASPSPs’ direct channels, whilst not disproportionately hampering PISP payments from being able to develop further, and to support PSR’s other policy objective of greater competition for retail transactions from account-to-account payments.

This would include mandating PISPs to share the necessary data with ASPSPs so they can effectively detect and prevent a scam, updating the Customer Experience Guidelines to allow ASPSPs to put in place effective and timely scam warnings into the customer payment journey, where appropriate, and incentivising PISPs to put in place necessary fraud prevention, by sharing the ‘Sending PSP’ liability for reimbursement in a defined set of circumstances where this would be appropriate, as in effect both the PISP and the ASPSP share the role of ‘Sending PSP’. All participants in the Open Banking payment chain needs to be appropriately incentivised and accountable to detect and prevent fraud and scams, and therefore the model needs to be set up appropriately to ensure this is the case.

Finally, we encourage the PSR to drive a consistency in approach to data sharing across firms for all fraud cases, including those which fall outside the scope of the reimbursement model. For example, where a corporate firm is the victim of a scam, whilst there is no basis for the recipient PSP to support reimbursement, there will be benefit in notifying the recipient PSP for investigation and potential closure of the mule account.

Question 4: Do you have comments on our proposals:

- **that there should be a consumer caution exception to mandatory reimbursement**

UK Finance and its members support the proposal that there should be a consumer caution exception to mandatory reimbursement. We strongly believe that consumer caution plays a vital role in countering fraud risk. This stance has been echoed by the PSR in its previous consultation, in November 2021, the PSR stated that “we agree that consumers need to exercise caution.” It is disappointing therefore to see the PSR propose such a low level for consumer caution in the form of gross negligence.

The PSR acknowledges that there is a potential risk that consumers will take less care if they are more confident of receiving reimbursement. We urge the PSR to explore the level of consumer caution required to sufficiently counteract this risk. PSPs will need to be able to operationalise case decision processes around liability and caution, so anything created should be clear, fair, and supported by well-defined guidance to enable consistency in interpretation across PSPs.

• to use gross negligence as the consumer caution exception

No clear definition of gross negligence has ever been found that is suitable to be applied to fraud cases, especially those linked to digital or modern payment systems. However, the general understanding and use of the term is in situations where severe and reckless disregard has been taken in response to a clear risk. It is of our opinion that this sets the bar too high and rather than the PSR's proposals driving a reduction in APP scams, they may instead create moral hazard, enabling consumers to take risks which would previously have been out of character, and hence could lead to the opposite outcome to that which PSR intends – i.e., an increase in APP scam volumes.

We recognise that the PSR has chosen this term to intentionally create a model which will see most victims of APP scams reimbursed, but we cannot accept an approach where consumers are not required to take some responsibility, through exerting a level of caution, when making payments.

Instead, we suggest that the consumers behaviour must form part of the assessment when reviewing the claim. The general principle behind any mitigation of moral hazard is to provide incentives to the consumer that align with the appropriate effort in reducing fraud: to give benefits to the consumer when effort is exerted, and to raise costs to the consumer when effort is not exerted[3].

Following this theory our recommendation is that, unlike the complex model which exists within the Contingent Reimbursement Model Code, based around the consumers reasonable basis for belief, which lacks specificity and is open to interpretation, the consumer negligence determination be based on simple principles which are easily communicated to consumers, and which can evolve over time. These may be as modest as, did the consumer conduct any basic checks prior to making the payment, did they proceed despite a Confirmation of Payee mismatch, did they ignore a directly relevant warning or recommendation from the PSP or did they provide misleading information when questioned at the point of making the payment.

Where there is the presence of sufficiently sophisticated social engineering or vulnerability, it may not be reasonable to expect the consumer to have recognised the risk and protected themselves. In these circumstances the consumer should be reimbursed.

Recognising that no scam type is the same, case studies must be used within both communications with consumers and within the industry guidance that supports the reimbursement model.

The inclusion of a basic contributary negligence model will reduce the risk of moral hazard whilst still achieving the PSR's objective of incentivising firms to continue to develop innovative fraud prevention tools and to increase the level of consumer reimbursement. A more balanced liability framework, recognising consumer contributary negligence will also positively influence the level of friction introduced across FPS payments.

• not to provide additional guidance on gross negligence

Whether it be gross negligence or consumer contributary negligence, if this is the key factor to be assessed as part of the operational process to work an APP Claim, a definition must be provided. The definition must be supported by guidance, illustrated by case studies, for each specific scam type. We would suggest that the indicators of negligence would also vary dependent of payment value and customer type, therefore this should also be addressed within the guidance.

---

[3] [Winter, *Optimal insurance under moral hazard*, Handbook of Insurance]

Without precise guidance, for each specific scam type, there will be disparity in interpretation across PSPs which ultimately, with receiving PSP liability based on the sending PSP victim assessment, may result in disputes between firms.

Furthermore, public confidence in the Contingent Reimbursement Model Code diminished rapidly as FOS decisions set customer liability expectations far removed from those of PSPs. The PSR must learn from this previous mistake and provide clear and detailed guidance or risk creating a model which will quickly lack consumer confidence.

UK Finance and its members would be happy to support the PSR in the development of any guidance associated with the final reimbursement model.

Question 5: Do you have comments on our proposal to require reimbursement of vulnerable consumers even if they acted with gross negligence?

We support this approach, contingent on recognition within the agreed vulnerability definition that in the context of an APP scam, evidence of a vulnerable situation, in isolation, may not necessarily increase the likelihood of, or result in the customer falling victim to an APP scam. For example, the fact that a customer is suffering with a physical health condition, may not make the customer vulnerable to an APP scam. However, where there is evidence to suggest that the nature and extent of the customer's vulnerability is such that it would not have been reasonable for the customer to have protected themselves from falling victim to a scam, PSPs should be required to reimburse.

PSPs will still conduct a full investigation, even where vulnerability is identified early in the claim process, as this provides the PSP the opportunity to support and educate their vulnerable customer, to try to prevent them from becoming a repeat victim.

Question 6: Do you have comments on our proposal to use the FCA's definition of a vulnerable customer?

The FCA definition of a vulnerable customer lacks the specificity required in the sphere of APP scams. The definition assumes that vulnerability makes the consumer especially susceptible to harm. However, vulnerability can be a fluctuating state, and the impact may vary in degrees of permanence and presentation. Factors such as life events, physical health, cognitive conditions including, mental health, literacy and numeracy and caring responsibilities can put anyone in a vulnerable situation.

As outlined in our response to question 5, in the context of an APP scam, evidence of a vulnerable situation may not necessarily increase the likelihood of or result in the customer falling victim to an APP scam, equally a consumer may in normal circumstances not be deemed as vulnerable, but the timing and nature of the scam makes them vulnerable. We therefore recommend continuing with the existing definition of vulnerability as outlined within the CRM Code.

Question 7: Do you have comments on our proposals that:

- **sending PSPs should be allowed to apply a modest fixed 'excess' to reimbursement**
- **any 'excess' should be set at no more than £35**
- **PSPs should be able to exempt vulnerable consumers from any 'excess' they apply?**

We recognise the PSR's intention in suggesting this 'excess' to reimbursement but a significant proportion of our members strongly believe this proposal should be removed from the final reimbursement model.

The ability for PSPs to set their own excess of up to but no more than £35 would create a confusing landscape for consumers who may hold accounts with multiple PSPs across which the thresholds differ. Furthermore, this would create operational complexities with the receiving PSP having no alternative but to accept the excess value set by the sending PSP, which may differ from their own accepted level. Both points apply equally to question 8 and 9.

We have already articulated within this response our belief that consumers take greater care when a payment is of a higher value. We believe that setting such a low excess will not incentivise consumers, who believe that they are making a genuine transaction or where a consumer is tempted by potential 'too good to be true' products or investments, to take greater caution. Instead, we refer to our previous points around consumer contributary negligence as we believe that this is the only option which will reduce the impact of moral hazard.

Furthermore, the PSR should note the learnings from the existence of excess values within other payment models. As outlined by the PSR, section 77 of the PSRs 2017 allows PSPs to require that a payer is liable up to £35 for losses incurred in respect of unauthorised transactions. This excess is only used in exceptionally rare circumstances, with most firms citing it as uneconomical to do so both from an operational impact perspective but also due to the level of customer complaints this generated on its introduction.

One member has proposed that an alternative for consideration may be the introduction of a percentage excess, i.e., a percentage of the total scam claim. Noting that as the value of the potential fraud gets larger, the relative value of the proposed £35 excess becomes increasingly small – meaning that only limited risk is transferred to the consumer and moral hazard is less effectively mitigated, a percentage of the total scam may therefore maintain consumer awareness.

Question 8. Do you have comments on our proposals that:

- **sending PSPs should be allowed to set a minimum claim threshold**
- **any threshold should be set at no more than £100**
- **PSPs should be able to exempt vulnerable consumers from any threshold they set?**

There are mixed views amongst our membership on whether a minimum threshold should be part of the proposed mandatory reimbursement model, or not.

Some PSPs have suggested that the £100 threshold risks deterring customers from reporting scams, meaning the Receiving PSP will not be notified of a potential mule account that may be being used for other scams, or be used subsequently for a further higher value scam. Furthermore, ensuring the customer reports the scam means that the PSP can identify any underlying vulnerability and take the appropriate steps to limit further victimisation.

Other PSPs regard the minimum threshold as a crucial element to driving consumer caution, particularly in relation to lower value purchase scams, noting that mule accounts usually build credibility with legitimate activity on an account rather than low value scams. They also regard the minimum threshold as crucial to support the operation of claims and maintain focus on those claims that will be more material in impact.

Clearly, if the PSR dismiss the inclusion of a consumer contributory negligence exemption, a minimum claim threshold will be key to ensure that consumers continue to take care when making payments. We would suggest that £100 may not be significant enough a sum to disincentivise buyer seller disputes and promote ‘buyer beware’ for purchase scams. The level at which the threshold would be set therefore requires further thought and economic analysis.

Due in part to the varying business models of the PSPs who submitted data, there is significant variation in the kind of APP scams cases they see within these value bands. High-street PSPs are more likely to have higher volumes of low-value scams reported to them, whereas other PSPs see a much lower volume of these types of frauds. We will continue to collate this data from our remaining members outside of the consultation period. Updated figures will be supplied to the PSR when available.

If a minimum threshold is designed into the reimbursement model, it must be consistent across all PSPs, providing a clear, easily communicated model for consumers. Industry agrees that vulnerable consumers, where the vulnerability may have impacted their ability to protect themselves from the specific scam, must be exempt from any threshold set.

Question 9. Do you have comments on our proposal not to have a maximum threshold?

We strongly disagree with the PSR’s proposal to not have a maximum threshold. The PSR state that the rationale for proposing no maximum threshold on claims is that “PSPs should have the strongest safeguards in place for the largest payments” and that, “in practice, most PSPs’ Faster Payments transaction limits are very well below £1 million.”. When outlining the PSR’s proposal for the minimum threshold, the PSR make clear that the minimum threshold “would apply only if an APP scam had a total value (including all payments made as part of the scam) greater than the level of the minimum threshold”. We would thus expect the PSR to consider the upper threshold in the same way and recognise that scam cases regularly consist of multiple payments, often executed over an extended period. It is not unusual to see scams which start as small regular payments between accounts, establishing what appears to be a known, trusted beneficiary relationship, which over time increase in value so that when the scam is identified significant sums have been paid away.

The lack of an upper threshold will bring unlimited risk for PSPs and may see smaller PSPs, who will be less able to manage this risk, responding by lowering transaction limits on specific payments.

We would also highlight the existence of a compensation limit for cases raised through the FOS and upper thresholds across other consumer protection schemes. We cannot emphasis enough the importance of an upper threshold as a control for maintaining consumer caution. A maximum threshold may incentivise the consumer to reduce the payment size that is put at risk of fraud. Whilst for larger transactions, the maximum threshold would transfer risk back to the consumer, in term incentivising the consumer to exert a level of effort to protect their funds.

However, customers with higher value claims should not be disadvantaged by this limit, therefore we propose that to evaluate the more complex, high-value cases there should be an extraordinary process which should be developed through industry working groups to ensure consistency for consumers.

Question 10. Do you have comments on our proposals that:

- **sending PSPs should be allowed to set a time-limit for claims for mandatory reimbursement**

- **any time-limit should be set at no less than 13 months?**

We agree with the need to set a time-limit for claims but emphasise again the importance of setting an industry wide time-limit. Allowing firms to set their own will result in inconsistent messaging and confusion for consumers. This will also create operational complexities with receiving firms responding to claims across differing timelines.

We agree that 13 months is an acceptable time limit. Having analysed industry data, the number of claims raised outside of this timeline are minimal. Where claims are raised outside of the industry time-limit firms should have the flexibility to choose to take the claim forward where there is indication of vulnerability or the decision not to investigate may have a detrimental effect on the consumer. In these cases, sending PSPs should notify the receiving PSP to enable full investigation of the claim and assessment of the receiving account, however any reimbursement will be funded as a gesture of goodwill by the sending PSP.

Question 11. Do you have comments on our proposals that:

- **the sending PSP is responsible for reimbursing the consumer**

- **reimbursement should be as soon as possible, and no later than 48 hours after a claim is made, unless the PSP can evidence suspicions of first party fraud or gross negligence?**

We agree that, as the sending firm holds the relationship with the customer, it is a better customer experience for all engagement, including reimbursement to occur via the sending PSP. This process already exists across CRM Firms and works well.

UK Finance and its members, however, cannot support the proposal that reimbursement should be as soon as possible, and no later than 48 hours after a claim is made. We agree that where it is in the consumers benefit to do so, reimbursement should be made within the shortest timeframe possible.

We recognise that the PSR's intention in suggesting this timeline may have been to achieve consistency for consumer claims across fraud types, bringing authorised push payment fraud reimbursement in line with unauthorised fraud, but the fraud types are fundamentally different. For unauthorised transactions, sending PSPs can, generally, quickly determine if the transaction in question was made by their customer or an unnamed third party. In the case of authorised push payments scams, the investigation is far more complex. The underlying question being if the intent of the recipient account holder was to deliberately deceive.

The initial hurdle to overcome in the investigation is obtaining the relevant information from the victim. This is an emotionally stressful time for consumers, and it is often the case that they will not remember the full facts of the scam on their first engagement with the PSP. Complying with a 48hr window may therefore create additional emotional distress, not lead to the right outcome for consumers and will be a poor customer experience. PSPs may also experience challenges engaging either the sending or receiving account holder, the PSR have not clarified if, where firms are waiting for customer evidence, the clock will stop?

Once the information has been obtained, sending PSPs must engage with the receiving PSP to clarify the validity of the consumers claim. If the recipient PSP is not available 24 / 7, where the case is more complex, or the recipient account demonstrates no risk indicators the investigation may take an extended time frame to complete.

From a consumer perspective, setting unrealistic expectations will create additional emotional distress. This will also create additional operational overheads as PSPs are required to engage with consumers more frequently to update of the status of the claim and any reason for delay past the initial 48hours. We worry that in circumstances where the criminal is still in contact with the victim such rapid reimbursement may not always be in the victim's best interest.

We have concerns that, if the timeline for investigation was shortened so significantly, incorrect decisions could be made regarding the recipient account resulting in funds being frozen and consumer accounts being exited incorrectly for mule activity. This will generate an increase in complaints and will be emotionally stressful for consumers incorrectly labelled as a money mule.

The PSR's proposal does not clarify whether the 48 hours includes bank holidays and weekends, or how the timeline would work in the scenario that one or both PSPs do not operate a 24 /7 service. There is the risk that PSPs may see a spike in claims, both genuine and potentially fraudulent, outside of 9 – 5 hours, when specialist fraud professionals are less able to be available to make informed decisions.

Recognising the challenges faced by firms in assessing APP scams, and the unintended consequences for consumers if the timeline were to be reduced, we would recommend maintaining the existing 15 / 35 day timeline of the CRM Code, for a period following implementation. If the new reimbursement model can resolve several of the current operational challenges, through delivery of a clear definition on scope and simplified consumer contributary negligence, the current timelines may in the long term be shortened. But we must be mindful of the significant increase in number of PSPs who will be engaging in this reimbursement approach who are not CRM participants and therefore have no experience in operating within an APP liability framework. It would be reckless to shorten existing timelines at a time when the number of cases being shared for reimbursement will increase significantly.

It is important to highlight the need for exceptions to be built into the reimbursement timeline. Complex cases, which may be subject to law enforcement and or FCA investigation, which involve the layered and cycled movement of funds across multiple firms, including unregulated entities cannot be resolved within a set timeframe. There must also be exceptions for occasions where the consumer has not provided sufficient evidence to the PSP to enable the investigation to move forward.

Finally, we must raise the risk that the speed of reimbursement may lead to an increase in first party fraud claims. In the space of APP scams such claims are difficult to determine, we may therefore see criminals profiting from the reimbursement model.

Question 12. What standard of evidence for gross negligence or first party fraud would be sufficient to enable a PSP to take more time to investigate, and how long should the PSP have to investigate in those circumstances?

Gross negligence is used as an exemption from reimbursement for unauthorised fraud, with a 48 hour PSP time frame. In an unauthorised transaction, gross negligence is typically linked to the customer having been careless with their security credentials, an action which is possible for a PSP to identify and evidence. However, under a 'gross negligence' test for an APP scam, a PSP would need to show that the customer recognised the risk and disregarded it. This is very difficult for a PSP to evidence, even if it suspects this to be the case. Likewise, the PSP will need a period – and cooperation from the customer – to ask questions and collate evidence to determine any indication of gross negligence. Often it is the absence of evidence that can indicate risk. Lack of cooperation on the part of the customer may be seen as a red flag that warrants further investigation, but this may not be enough to determine gross negligence or first party fraud.

As outlined in our response to the previous question, UK Finance and its members cannot support a 48 hour timeline for reimbursement. We have articulated why, even with a streamlined assessment process, an average APP claim investigation will take more than 48hours. We have also articulated our reasons for why the current CRM timeline should be maintained, for the short term at least.

There must also be adequate time built into the model to enable relevant evidence to be collected from the Receiving PSP. SLAs would need to be included to ensure receiving PSPs provide the evidence in sufficient time.

Finally, any standards of evidence needed will need to be adapted per scam type and customer type – given nuances across each of these.

Question 13. Do you have comments on our proposal for a 50:50 default allocation of reimbursement costs between sending and receiving PSPs?

UK Finance strongly believe that an equal balance of responsibility between sending and receiving PSP for victim reimbursement, will drive improved behaviours and investment in appropriate detection tools across receiving PSPs. We strongly support this element of the PSR's proposals.

At its inception the CRM Code was, in principle, designed to distribute potential liability equally across both sending and receiving PSP and consumer. In practice the requirements on PSPs were weighted far more towards sending PSP liability, with receiving PSPs on average accepting liability in only 2% of claims.

UK Finance and its members are therefore supportive of the 50:50 default allocation of reimbursement costs between sending and receiving firms as a foundation for the reimbursement model.

One alternative to this approach would be to include PISPs within the liability model. As outlined earlier in this response, payments through Open Banking involve multiple players within one payment journey with the PISP and ASPSP effectively sharing the role of sending PSP. To incentivize PISPs to ensure that they have in place necessary fraud prevention tools, an alternative model may place a percentage of liability on the PISP in a defined set of circumstances where this would be appropriate. The correct level of PISP liability percentage would need to be developed through industry engagement. UK Finance would be happy to support these discussions.

Alongside the reimbursement model, as outlined previously within this response, it will be essential that the PSR provide clear definition on scope and a simplified consumer contributary negligence model. This will ensure a clear understanding across PSPs of where claims are in scope, enable sending PSPs to efficiently direct the consumers claim, and allow receiving PSPs to have greater trust in the sending PSPs assessment of the claim.

The PSR must mandate strict timelines for the reimbursement of receiving PSP liability funds to the sending PSP. It should not be an acceptable position for sending PSPs to have the additional burden of chasing for the reimbursement of funds.

Question 14. Do you have views on our proposal that PSPs are able to choose to depart from the 50:50 default allocation by negotiation, mediation or dispute resolution based on a designated set of more tailored allocation criteria?

Most UK Finance members do not support this proposal and instead advocate the development of a fair and balanced mandatory reimbursement model.

Members recognise the PSR's intentions when making this proposal but have concerns that this would be a costly exercise both in terms of central administration of the scheme and operational burden across PSPs. There is the risk that, if not developed alongside a strict set of criteria this process would result in a backlog of claims with PSP resource allocated to claim evidence rather than more meaningful prevention roles.

Members also have concerns that this may erode the collaborative relationship which exists across the UK fraud prevention community.

If PSPs do wish to dispute their liability allocation, members propose that, as is the current standard within the CRM Code, PSPs can choose to engage the services of an external Dispute Resolution company.

One member does however suggest that as a minimum, there should be analysis of the outcomes in the early months of the new reimbursement model to gauge whether 50:50 is more or less optimal or whether there are fundamental issues that might support the case for a dispute process and associated 'allocation criteria'.

Question 15. Do you have views on how scheme rules could implement our proposed 50:50 default allocation to multi-generational scams?

UK Finance and its members are clear that we do not support the inclusion of multi-generation scams within the scope of this reimbursement model. We outline in detail in our response to question 3 our view that the rules should be positioned directly around the premise of 'a payment to a bank account controlled by the fraudster', limiting the rules specifically to one generation payment, i.e., the singular payment which places the scam funds into the control of the criminal.

Consideration has been given to various models which may allow the operationalisation of a multi-generation liability model, however within the current legislative framework there is neither the ability to share the necessary data concerning multiple victims and beneficiaries across PSPs for end to end analysis of the case nor is there a framework for repatriation of funds across multiple payment generations where funds are frozen in an account further along that the first generation beneficiary.

Question 16. Do you have comments on our proposal for a 50:50 default allocation of repatriated funds between sending and receiving PSPs?

Generally, industry agree that allocation of repatriated funds should mirror the default allocation for reimbursement.

However, an alternative option has been raised by one of our members. The PSP suggests that receiving PSPs should retain the full value of any repatriated funds, up to the value of the PSPs 50% liability share. Where more than 50% of the scam value is recovered, the excess should then be returned to the sending PSP. The member believes that this alternative approach will incentivise receiving PSPs to amplify investment in inbound profiling tools and dedicate resources to develop alerts, therefore achieving the PSR's objective of reducing the value of fraudulent funds being paid to criminal gangs. The member makes the case that, where repatriation of funds takes place, within the current regulatory framework, receiving PSPs are operating at risk.
To be clear, this is the proposal of one member PSP. The thoughts of the UK Finance wider membership, in response to this proposal have not been collated. As such, industry engagement would be required following closure of the consultation period, if the PSR chose to investigate this suggestion further.

Where a consumer has not been found to be eligible for reimbursement, any repatriated funds should be returned in full to the consumer.

Question 17. Do you have views on the scope we propose for rules on allocating the costs of mandatory reimbursement?

We fully support the proposal that the rules on allocation of costs of mandatory reimbursement should apply to all directly connected PSP participants sending and receiving payments over Faster Payments as well as PSPs indirectly sending and receiving payments.

It is essential that the PSR establish clear mechanisms to ensure that all participants within the payment landscape are incentivised to develop effective fraud controls, inclusive of PISPs and unregulated firms such as crypto exchange firms.

If these firms are excluded from the reimbursement model, the risk to PSPs of payments being made across Open Banking and to unregulated firms will be elevated. Firms will take a much firmer risk approach which will impact the growth of Open Banking as well as the development and adoption of account-to-account retail transactions, restricting the opportunity for innovation in this market. Consumers making payments to crypto exchange firms will encounter significant challenge. We are already seeing PSPs introducing strict controls in this space, including daily payment limits and full blocks on payments to individual firms, these controls will continue and potentially escalate if unregulated firms are not bought into the reimbursement model.

It is essential, when operationalising the reimbursement model that it is done so unilaterally across all PSPs, and not via a phased approach.

Question 18. Do you have views on our long-term vision, and our rationale for the PSO being the rule-setter responsible for mitigating fraud?

The PSR state 'it is the PSO that has the operational oversight, the expertise on system rules and what works in practice, and the ability to coordinate across participants, which are needed. Scheme rules can be managed and refined more efficiently and quickly than regulatory instruments.'

Whilst we agree that Pay.UK have a significant role to play in the management of fraud risk across the FPS scheme, we do not believe that they are the appropriate body to fulfil the role as set out by the PSR.

UK Finance and a significant proportion of its members instead propose that the PSR place Directions on all FPS participating PSPs to adhere to the mandatory reimbursement rule. This would allow for a consistent and clear reimbursement framework to be applied across the industry, to all participants, mitigating the many challenges the PSR has noted which would exist if they were to require Pay.UK to implement. Our view is that a direction is the more appropriate vehicle, allowing for the reimbursement framework to be implemented within an expedited timeframe. We would suggest that scheme rules be used in parallel to set minimum standards for participation to the scheme. These may then evolve over time with the changing fraud landscape and the introduction of new prevention measures. Scheme rules may include but not be limited to onboarding requirements, the provision of effective warnings, data sharing and performance reporting to name a few. The provisions within the rules must be high level enough to cover all business models with more specific detail, for individual business models and fraud types within separate guidance.

In the long term, and as stated in UK Finance's previous consultation responses on APP scams, we strongly believe the reimbursement framework for authorised fraud must be placed on the same legislative footing as unauthorised within the PSRs 2017. This will help to mitigate the risk, highlighted earlier in this response, of the authorised fraud threat migrating to other payments schemes where no appropriate minimum standards are already in place, whilst providing consistency for consumers. Whilst directions are in place, UK Finance and its members would propose to work with HMT and regulators to agree changes to PSRs 2017 to include a specific and detailed definition of an authorised payment scam, clarity regarding scope and the obligations and liability framework. Alongside the liability framework, it will be necessary to make clear in legislation who has responsibility for the monitoring and enforcement aspects of the reimbursement framework, we strongly believe that these roles should fall to the regulator, leveraging enforcement capability already available to them.

The Financial Service and Markets Bill provides a significant opportunity to move forward, in ways that were not possible without the prospect of legislative change. The Bill as drafted states that "the Payment Systems Regulator must prepare and publish a draft of a relevant requirement for reimbursement in such qualifying cases of payment order as the Regulator considers should be eligible for reimbursement. The Payment Systems Regulator must impose a relevant requirement, in whatever way and to whatever extent it considers appropriate, for reimbursement to be made in qualifying cases of payment orders." A 'relevant requirement' means a requirement imposed by or under section 54 or 55 of the Financial Services (Banking Reform) Act 2013 (or by or under a combination of those sections). Section 54 relates to Directions, and Section 55 relates to System Rules.

The PSR's proposal currently chooses implementation via System Rules, which presents several significant challenges:

- Pay.UK do not have the necessary powers to enact a scheme change without significant support from their participants, as well as the regulator – if mandatory reimbursement is to be brought in quickly, it will require detailed Directions from the regulator on PSPs and Pay.UK unless the proposals have widespread support.
- Legal limitations will make it difficult for Pay.UK to implement changes designed to manage and mitigate operational risks which occur at the payment service provider or consumer level. This points to a need for PSR to define the reimbursement framework, not Pay.UK
- We question, as outlined within the PSR consultation, the powers, and options available to Pay.UK to ensure compliance with the suggested scheme rules. Existing enforcement, to delist a Direct Participant from FPS, does not seem appropriate for this issue.
- Also, as the PSR notes, whilst Pay.UK has very limited rulemaking and enforcement powers over the direct participants' relationship with consumers, it has none over the indirect participants. This would require a workaround that would carry significant complexity across industry. The PSR outline that the preferred approach would be to apply rules to indirect participants, by applying rules to all payments. However, this would likely mean:

- If the indirect participant did not meet the requirements of the FPS Rules, it is the direct participant (the IAP) which would be in breach, not the indirect participant, despite the lack of fault by the direct participant.
- Potentially the direct participant (the IAP) could have to cover the 50:50 split and recover this from the indirect participant, which would create significant credit risk in the process.
- The consequence of this would be significant for a direct participant IAP. It would create barriers to direct participants providing services to indirect participants and may lead to existing indirect access providers withdrawing from the market or further limiting their risk appetite in a market which does not have a surfeit of indirect access providers.
- Pay.UK cannot impose rules on direct or indirect participants to ensure the regulated entity who own the client relationship with unregulated firms be mandated to pass any losses onto that client, should they be found to exist – i.e., levy a charge against that client.

It is unclear to us why the PSR has chosen the route of implementing the mandatory reimbursement model via System Rules. We urge the PSR to reconsider and to instead implement via Directions, followed by long term legislative change. This methodology would overcome a significant number of the issues which would be a by-product of the PSR's proposed approach. This would eliminate the need for a short and long term approach, which is operationally inefficient for PSPs. Ultimately this will also enable Pay.UK to focus on delivering the NPA programme and working with UK Finance to deliver the Enhanced Fraud Data initiative which has the potential to significantly reduce the APP threat across the UK.

Question 19. Do you have comments on the minimum initial set of Faster Payments scheme rules needed to implement our mandatory reimbursement proposals?

The PSR sets out that as a minimum they expect Pay.UK to implement into Faster Payment Scheme rules the following:

- when a consumer must be reimbursed by its sending PSP
- a default 50:50 allocation of reimbursement costs (and of any repatriated funds) between the sending and receiving PSP, and any arrangements needed to enable sending and receiving PSPs to transfer funds between them
- designated arrangements to enable PSPs to choose to depart from default allocation by negotiation, mediation or dispute resolution based on more tailored allocation criteria (implementation of this is discussed further in the next section)

We have clearly articulated throughout this response that we do not support the delivery of these industry requirements via FPS rules and instead advocate the use of directions on all PSPs, followed by long term legislative change, supported by FPS scheme rules.

We propose the development of a basic consumer contributory negligence model, based on simple principles, and supported by a clear definition of an APP scam to determine scope. Both the contributary negligence model and the definition of an APP scam should be locked into legislation.

We support 50:50 reimbursement as a starting position but suggest further thought regarding the potential inclusion of PISPs where they are present in the creation of the payment.

The Best Practice Standards (BPS) platform, developed and overseen by UK Finance, is well positioned to act as the mechanism for PSPs to share information, in real-time, from the point of the

PSP becoming aware of the scam, through to repatriation and the allocation of funds across firms. The BPS platform already has participation of PSPs which hold approximately 90% of UK retail payment accounts. Whilst we acknowledge that the system will need some enhancements, this will be significantly faster to deliver and more cost effective, both for Pay.UK and BPS participating firms, than the PSR requiring Pay.UK to develop a new system for this purpose.

Question 20. Do you have views on how we should exercise our powers under FSBRA to implement our requirements?

As outlined, we strongly believe that the only effective method to implement a mandatory reimbursement model in the short run, is through PSR directions on all FPS participating PSPs, including PISPs. This should be inclusive of a rule which brings unregulated firms who are the recipient of first generation scam funds into scope for reimbursement. We have outlined our desire to see the PSR consider a rule which ensures the regulated entity who own the client relationship be mandated to pass any losses onto that client, should they be found to exist – i.e., levy a charge against that client equal to their loss, minus any repatriation. In the long run we wish to work with HMT and regulators to agree changes to PSRs 2017. This will mitigate the risk, highlighted earlier in this response, of the fraud threat migrating to other payments schemes.

We also propose that, separate to the reimbursement framework, the PSR use their powers under FSBRA to direct all payment schemes, to develop minimum standards, where appropriate and where they are not already present, for participation to the payment scheme. These would evolve over time with the changing fraud landscape and the introduction of new prevention initiatives. These may include but not be limited to, the provision of effective warnings, data sharing and performance reporting to name a few. The provisions within the rules must be high level enough to cover all business models with more specific detail, for individual business models and fraud types within separate guidance.

The direction must cover all payment schemes, where appropriate and where no such standards currently exist. This will ensure consistency in outcome for victims of authorised scams, irrelevant of payment method, and limit the migration of scam risk to other schemes who may not yet be fully prepared to respond to the increased threat.

Question 21. Do you have views on how we propose that allocation criteria and dispute resolution arrangements are developed and implemented?

UK Finance has a proven track record in supporting industry in the development and implementation of industry policy. The development of an allocation criteria within a mandatory reimbursement model is a complex and potentially provocative issue. The various options will require careful consideration including analysis of the costs and benefit both to industry and consumers.

UK Finance are well placed to work with our members in supporting the PSR and the payment schemes with the development of a suitable allocation criteria which supports the PSR's objectives of increasing consumer reimbursement, incentivising all industry participants to continue to invest in APP scam prevention tools and consumer education whilst also maintaining consumer awareness when making payments.

We have already outlined proposals within this response centred around the inclusion of PISPs within the reimbursement model and the development of a simple consumer contributary negligence assessment. We would be keen to support the PSR and industry in considering these, and any other options, in more detail.

We do not support the proposal that a dispute resolution process be developed and instead advocate that time be invested in the development of a fair and balanced mandatory reimbursement model. On the rare occasion that firms may want to dispute the allocation of a claim, they may choose to do so through the appointment of an independent dispute resolution firm.

22. Do you have comments on our preferred short-term implementation approach of requiring Pay.UK to implement an effective compliance monitoring regime, including a reporting requirement on PSPs?

23. Do you have views on the costs and benefits of Pay.UK implementing a real time compliance monitoring system and when it could be introduced?

UK Finance and its members consider The Best Practice Standards (BPS) platform well positioned to act as the mechanism for PSPs to share information, in real-time, from the point of the PSP becoming aware of the scam, through to repatriation and the allocation of funds across PSPs. The BPS platform already has participation of PSPs which hold approximately 90% of UK retail payment accounts.

UK Finance and its members have invested heavily, both through allocation of time and funds, in the development and implementation of the BPS platform. Participating PSPs have developed advanced technology within their own business, both in the capacity of sending and receiving PSP, to enable real-time or near to real-time interaction with the platform to expedite the sharing of data to capitalize on the potential to freeze funds remaining with the beneficiary account.

There are no barriers to non-UK Finance members accessing and utilising the platform.

Further development will be required to bring the platform functionality in line with the ultimate PSR vision, however, we would reason that development of a platform already approved for use by a significant number of PSP information security and data privacy officers will be simpler, more cost effective and timely to implement than the alternative of requiring Pay.UK to design and implement a new compliance monitoring regime.

The existing BPS platform can be further enhanced to deliver additional benefits:

- real time availability of compliance management information – the system already contains a comprehensive set of management information reports. These could be developed further to enable both PSPs and the body overseeing compliance to access reports specific to their role.
- real time accountancy functionality – the current standard across PSPs is to finalise and submit the allocation of funds between PSPs on a case by case basis. There are currently only 10 PSPs voluntarily participating in the CRM Code and a total of 35 using the BPS platform. With the number of PSPs participating in a mandatory reimbursement model set to increase exponentially, the ability to continue to reconcile on a case by case basis will become untenable. To limit the operational impact on PSP and to ensure that funds are submitted to sending PSPs within agreed SLAs we would suggest the development of accountancy functionality to provide a balance of funds to be returned to individual PSPs at an agreed frequency. Reports would highlight any occurrences of SLAs not being met.

The PSR's vision for development of a short-term compliance regime centred around the requirement for PSPs to report regularly to Pay.UK is neither proportionate nor effective. The PSR have not outlined the specifics of the reporting they propose but we would anticipate the level of detail required, and the ability to report only on the payments within scope, will require development of new functionality which will be both a costly and time-consuming process. To introduce this as a short term requirement is not proportionate and we would argue that submission of this data to Pay.UK, who have no enforcement capability would be a futile exercise.

If the PSR introduce a short term compliance monitoring regime, we would reason that any such reports should be submitted directly to the PSR. We would however seek clarity from the PSR as to how they would use this data in engaging with and incentivising the worst performing PSPs to improve.

Question 24. Do you have views on the best option for short-term enforcement arrangements?

The fraud landscape as it stands is a disparate model of administration, compliance, and enforcement across a wide range of bodies. These include the Lending Standards Board (LSB), PSR, FCA and the various payment scheme operators. In our previous consultation response, we encouraged the PSR to take a more holistic view and to consider legislation which would be applicable to all PSPs and which, importantly, would be enforced by one central body.

Our view in this regard has not altered. We continue to believe that fundamental to the industry's ability to succeed in tackling authorised payment fraud is the establishment of one central body to ensure consistency in response to the authorised payment fraud risk across PSPs and payment schemes.

The PSR state that 'If the PSR were to initially implement the reimbursement requirements on PSPs through a direction, with Pay.UK operationalising those requirements, enforcement of those requirements would also fall to PSR. We would use our usual enforcement processes and principles in deciding when to act, and what action to take.' The PSR note that this is not their preferred option. We would argue that this should be the <u>only</u> option for enforcement of this process which will ensure consistency across all PSPs

Question 25. Do you have views on the best way to apply the rules on reimbursement to indirect participants?

Question 26. If it was necessary for us to give a direction, what are your views on whether we should direct indirect PSPs or IAPs?

Both questions have been answered in full within our response to question 18.

Question 27. Do you have comments on our cost benefit analysis at Annex 2 or any additional evidence relevant to the analysis?

We agree with the PSR's assessment that the level of reimbursement will increase, creating additional cost for PSPs and benefit for victims of scams. However, we have fundamental concerns with the PSR's assessment of the wider costs and benefits of the proposed approach to mandatory reimbursement and would suggest that further, evidence based analysis is required.

The PSR briefly touch on the risk of moral hazard, listing the risk of this occurring as low. However, economic theory indicates that moral hazard is highest when consumers are fully reimbursed against fraud. The more risk that is transferred to consumers, the more effort they will make to reduce the likelihood of fraud. Unless it is effectively mitigated, moral hazard will therefore increase the level of fraud, which increases PSP' costs. As outlined within this response, we would expect this to be at least partially passed-through to consumers in the form of higher prices, increased friction in payments and reductions in competition and innovation. This is potentially most clearly evidenced in the health and motor insurance market where numerous large scale experiments have been conducted to test the theory.

The Seguro Popular Experiment in Mexico[4] (2004) provides the most direct evidence on consumers reducing risk-mitigating effort because of obtaining insurance coverage. The author, using data from the Seguro Popular Experiment, which randomly assigned the participants with a catastrophic health insurance, finds evidence that insured individuals had a lower demand for self-protection in the form of preventative care, e.g., reduced take-up of flu shots and mammograms, in response to greater insurance coverage. This indicates the presence of moral hazard, as consumers that were insured appeared to take less care in preventing an adverse outcome.

As previously suggested within this response, we respectfully request that the PSR conduct a more complete economic assessment, potentially including quantitative analysis of similar reimbursement schemes, and the experience of the health and motor insurance markets, before moving forward with a reimbursement framework, if it is to be based on a gross negligence exception alone.

The PSR suggest that greater investment by PSPs in prevention tools will fundamentally reduce the volume of APP scams, but make no reference to the platforms, internet service providers and telecommunications sectors, who bring risk into the system. Without greater collaboration and investment by them, consumers will still face the embarrassment and emotional impact of social engineering.

The PSR propose that their policy will lead to PSPs more effectively pursuing funds that are lost, possibly following the trail of funds through multiple accounts and PSPs, then recovering these to reduce PSPs own cost in reimbursing victims. This statement does not acknowledge the lack of a clear legislative framework to enable PSPs to freeze and repatriate funds to victims of fraud. The current framework which supports PSP repatriation for APP scams is governed by an industry developed voluntary APP Best Practice Standards (BPS) which only covers first generation payments. The PSRs 2017 does not expressly provide a means for Firm A to repatriate funds to Firm B to reimburse a victim. BPS participating firms have been proceeding at legal risk in doing so and the status quo enables considerable inconsistency in approach and outcome. To enable an increase in funds repatriation, the government must first implement a statutory framework to prescribe minimum standards and processes to govern investigation, response, and repatriation of funds to victims and make changes to the PSRs 2017 to enable PSPs to hold payments where they identify a level of suspicion.

More widely, the cost benefit analysis makes no reference to significant market risks including the potential impact on competition and innovation and ultimately consumer choice outlined in detail within this response, and whilst the PSR note the potential migration of fraud risk to other payment methods and prudential implications for some PSPs, they have not sought to quantify the potential costs.

Question 28. Do you have any other comments on the proposals in this consultation?

We have fundamental concerns that the timelines proposed for implementation of a mandatory reimbursement model to span all PSPs are unrealistic.

The development of a mandatory reimbursement model is a complex and potentially provocative issue. Detailed cost / benefit analysis will need to be conducted to ensure that any significant costs

[4] Spenkuch, 2012, Journal of Health Economics (Link)

either to industry or consumers are recognised and are acceptable relative to the benefits the reimbursement model will deliver.

It cannot be underestimated how long it will take to develop detailed guidance to support the liability framework and definition of an authorised scam. And then subsequently for PSPs, a significant proportion of which will have no prior knowledge of operationalising a liability framework, to implement processes and procedures across the firm.

The availability of a secure mechanism to enable the exchange of claim data, to allocate reimbursement and to facilitate large scale reconciliation of accounts will be essential to the success of the reimbursement model. We have outlined our proposal that the BPS platform may be best placed to support this data exchange. However, development of the necessary enhancements cannot be scoped until the PSR finalise in full the scope and reimbursement framework. Furthermore, we cannot emphasise enough the significant undertaking it will be to onboard all remaining direct and indirect FPS participants. Providing PSP access to the platform requires acceptance of the UK Finance data sharing agreements and often involves detailed information security assessments.

UK Finance and its members feel that it is essential that all elements of the model are developed in full and implemented across all PSPs. We do not support the suggestion of short term solutions forming part of the initial implementation. It is critical that this is not delivered in phases across PSPs.

Finally, we ask the PSR to be mindful of the other significant developments PSPs are supporting, including wider implementation of CoP, development of the EFD solution and execution of Consumer Duty.