

## **Terms of Reference: APP scams steering group**

**FOR ENDORSEMENT 27 April 2018**

### **Preamble**

1. This steering group has been established in response to the PSR's Outcome of consultation on the development of a contingent reimbursement model.<sup>1</sup> The steering group needs to achieve those objectives set out in Chapter 4 of the PSR's Outcome of consultation.
2. Authorised push payment (APP) scams - where people are tricked into sending money to a fraudster - are a crime which can have a devastating effect on the victims which are users of payment system services. New statistics published by UK Finance show that in 2017 there were close to 44,000 victims of APP scams involving a total amount of over £236 million.
3. More needs to be done to reduce the impact of APP scams on consumers. In particular, by increasing the incentives for payment service providers (PSPs) to invest in and maintain practices that help prevent and respond to APP scams, and to reimburse victims where those victims could not have reasonably prevented the scam but the PSPs could have. Developing a contingent reimbursement model (CRM) is the most effective way to achieve this and would promote the interests of users of payment system services.<sup>2</sup>
4. The PSR, working with industry and consumer representatives, has established the APP scams steering group (the steering group) which will lead the design of a CRM through a collaborative process. This will include both reaching consensus between steering group members on the key issues for the CRM, and formalising the CRM into a set of rules that will form an industry code (the code) for reimbursement of APP scam victims.

### **Objectives**

5. The overall objectives of the steering group will be to:
  - i. Reach a consensus on the key issues of the CRM. A wide range of positions were presented on certain specific issues in our recent consultation.
  - ii. Formalise the agreed position on these issues into a set of rules, which will form an interim industry code (the code) for the reimbursement of APP scam victims.
  - iii. The steering group will issue the interim code for public consultation by the end of September 2018.
  - iv. After consulting publicly on the interim code, the steering group will make any necessary amendments and issue the final code in early 2019.

### **Scope of the industry code**

6. In terms of the scope of the industry code:

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<sup>1</sup> <https://www.psr.org.uk/psr-publications/policy-statements/Outcome-of-CRM-consultation>

<sup>2</sup> The main aim of the CRM is to incentivise the use of measures that help minimise the number of APP scams occurring. It is intended as a backstop to help incentivise all parties to take action to prevent and respond to APP scams where they are best placed to. The CRM is part of a wider suite of initiatives needed to prevent APP scams in the long term.

- Eligibility for reimbursement under the code will be limited to consumers, small charities and micro-enterprises.<sup>3</sup>
- The code will only cover push payments between GBP-denominated UK-domiciled payment accounts. However, the code should not prevent payments with an international dimension potentially being included in the future.
- The code will cover APP scams relating to:
  - push payments executed across CHAPS and Faster Payments; and
  - 'on-us' book transfers where both the sending and receiving accounts are held with the same PSP, and the payment would otherwise have been executed across CHAPS or Faster Payments
- The code will only cover PSPs involved in the initial payment related to an APP scam, meaning the transaction from the victim to the scammer's first account (i.e. PSPs whose accounts are utilised in the onward transmission of scammed funds are out of scope of the code).<sup>4</sup>
- The code will only apply to APP scams occurring after its implementation.<sup>5</sup>

## **A. Constitution of the steering group**

### **The steering group Chair**

7. The steering group will have a Chair who is independent of payments industry interests. The Chair has been appointed by and is directly accountable to the PSR.
8. The Chair is responsible for leadership of the steering group and ensuring its effectiveness in all aspects of its role.
9. The Chair is responsible for providing updates to the PSR as required from time to time.

### **The steering group**

10. The steering group, a focused group of senior members, will facilitate collaborative discussions, reach consensus on the key issues of the CRM, and formalise these into a set of rules that will form an industry code for the reimbursement of APP scam victims. It will have a small number of members in senior positions, with the ability to shape and make decisions on policy areas within their organisations and/ or their sector more broadly.
11. The steering group will contain an equal number of representatives of PSPs and consumers – those key stakeholder groups that will be impacted by the introduction of the code.

### **Membership and appointments**

12. The PSR has appointed the Chair for an initial term of ten months.
13. The Chair, in consultation with the PSR, will appoint the steering group members.
14. Members will be appointed for an initial term of nine months. The Chair, in consultation with the PSR, may review the steering group's membership from time to time.

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<sup>3</sup> Where consumers, charities and micro-enterprises are as defined under the Payment Services Regulations 2017.

<sup>4</sup> The transaction from the victim to the scammer's first account could include multiple first accounts.

<sup>5</sup> The code will not apply to any APP scams related transactions, which occurred before its implementation date.

15. Members who are no longer able to participate in the steering group's discussions may be replaced for the remainder of their term at the discretion of the Chair, with the agreement of the PSR.
16. The Chair, in consultation with the PSR, may also consider and decide on applications for membership received on an ad hoc basis and may admit an additional member(s) where the views of a relevant category of participant or stakeholder are not properly reflected in discussions of the existing membership. The appointment of any additional members appointed to the steering group will be in line with paragraph 11, i.e. to maintain equal balance of PSP and consumer representative members.
17. The PSR may terminate the steering group if it considers the group is not working effectively or is not expected to meet its objectives.

## **B. Steering group activities and deliverables**

### **Key issues for the steering group to resolve and timeframe**

18. To achieve its objectives, the steering group members must endeavour to achieve consensus on the following key issues and develop proposals to the following timeline:

Date	Milestone
End April	<p>Steering group agrees on appropriate outcomes for the circumstances where:</p> <p>The victim and relevant PSPs have all met the standards of care expected of them under the code (the 'no-blame' situation)</p> <p>The victim and one or more of the relevant PSPs have failed to meet the standards of care expected of them under the code (the 'shared-blame' situation)</p> <p>The victim has met the requisite level of care and one or more of the relevant PSPs have failed to meet the standards of care expected of them (the 'inter-PSP' blame situation)</p> <p>In circumstances where the victim took the level of care and one or more PSPs are at fault, the PSP(s) at fault must reimburse the victim, as noted in the PSR's Outcome of consultation.<sup>6</sup></p>
End June	<p>Steering group agrees on:</p> <ol style="list-style-type: none"> <li data-bbox="565 758 1367 842">i. The definition of the requisite level of care a victim of an APP scam must have met to be eligible for reimbursement, including how such conduct can be verified in practice.</li> <li data-bbox="565 856 1367 955">ii. An appropriate set of standards of care that PSPs would need to meet under the code, including leveraging those measures identified by the PSR.<sup>7</sup></li> </ol>
End August	<p>Steering group agrees on an appropriate governance arrangement for monitoring implementation, maintaining and refining the code post finalisation. This will include arrangements for all PSPs to adopt the code and arrangements for how to leverage future measures for preventing and responding to APP scams.</p>
End August	<p>Steering group agrees on draft of the interim code</p>
End September	<p>Steering group issues interim code for public consultation</p>
Early 2019	<p>Post-consultation amendments made and final code issued</p>

### Core principles for the code

19. To achieve its objectives, the steering group must agree proposals on the key issues above that ensure that the code optimises the following core principles.
20. The core principles are:
  - i. **Incentives for those with the ability to effectively prevent APP scams and reduce their impact:** The code must be designed so that those parties with the ability to effectively influence APP scam prevention and response at different stages of the payment journey are incentivised to do so. Ultimately, the incentives generated by the code should reduce the number of APP scams that would otherwise occur.
  - ii. **Consistency of outcomes:** The code should deliver consistent outcomes for parties<sup>8</sup> with the same circumstances. For example, an inconsistent outcome would

<sup>6</sup> PSR *Outcome of consultation* (Feb 2018) paragraph 4.19(1)

<sup>7</sup> Ibid paragraph 3.61.

<sup>8</sup> Both consumers and PSPs

be where there were two victims of separate scams that shared the same characteristics, one was reimbursed and one was not. Consistency of outcomes does not mean that reimbursement for each of the victims should necessarily come from the same source of funds.

- iii. **Leverage existing and future initiatives that are likely to be effective at preventing and helping respond to APP scams:** There are a range of measures highlighted by the PSR that are aimed at assisting APP scam prevention and response, which have been recently deployed or are currently under development. This includes the Best Practice Standards, Confirmation of Payee, and transaction data analytics. The code must leverage these and future measures, and incentivise their use and development by including them in the standards of care that PSPs should meet.<sup>9</sup>
  - iv. **Adoption by all PSPs that have an element of control over preventing and responding to APP scams:** PSPs that have an element of control over payments within scope of the code, must adhere to it.
  - v. **No contingency on the recovery of funds:** The implementation of the code must not be contingent on the recovery of funds in specific cases.
  - vi. **No adverse impact on PSP ability to make goodwill payments:** The code must not displace or constrain the ability of PSPs to make goodwill payments to victims of APP scams in situations they deem it appropriate to do so.
  - vii. **No adverse impact on commercial development of further protections:** The code must set out the minimum level of care that PSPs must take to protect consumers from harm caused by APP scams. It must not restrict the ability of individual PSPs, or other parties, to develop and offer products to consumers that provide additional protection.
  - viii. **Capability for becoming part of the relevant considerations that the FOS takes into account:** The code must be developed in such a way that it is capable of becoming part of the relevant considerations that FOS can take into account when determining outcomes of a consumer complaint about APP scams.
21. The steering group must justify any proposed trade-offs between these core principles to the PSR.
  22. In developing the code, the steering group must also have regard to the following operating principles:
    - **Simplicity:** The rules adopted should be as simple as possible to be effective, for both PSPs and potential code beneficiaries. The experience for victims seeking reimbursement should be simple and easy to understand.
    - **Transparency:** The code should be developed, implemented and operated in an open and transparent manner (to the extent that privacy and security considerations permit).
    - **Timeliness:** The rules adopted should support timely reimbursement and expedited communication between PSPs and consumers.
    - **Fairness:** The code should be developed, implemented and operated in a fair and publicly defensible manner.

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<sup>9</sup> The code is part of a wider suite of measures that need to be implemented to prevent scams in the long term. The code is intended as a backstop to incentivise all parties to take action to prevent and respond to APP scams where they are best placed to, which includes implementing and using such measures.

- **Costs, benefits and impact:** The rules and standards in the code should be justifiable – both individually and as a whole – on the basis of their costs and benefits, in particular their impact on the harm caused by APP scams.

### **C. Functioning of the steering group**

23. It is expected that appointed members will be present at all meetings of the steering group. Alternates may be permitted if agreed in advance with the Chair.
24. The Chair will endeavour to achieve consensus between steering group members on key issues and proposals under discussion. Dissenting opinions will be reflected in the minutes of the meeting.
25. Progress towards reaching consensus will be supported by evaluating options using robust evidence and consistency with the core principles.
26. The steering group has no powers to direct its members, or the wider sector to undertake any action.

#### **The role of the PSR and other authorities**

27. The PSR will attend all steering group meetings and will oversee and support the steering group, in particular the Chair where guidance is required in relation to its objectives. The PSR will not be a member of the steering group.
28. The Financial Conduct Authority (FCA) and, as appropriate, other government and regulatory bodies (such as the Treasury, Home Office and law enforcement) will be observers of the steering group and may provide relevant input into discussions.
29. The Chair may invite other Authorities to attend steering group meetings where appropriate to provide relevant input into discussions.

#### **Meetings**

30. It is expected that the steering group will have around one meeting a month. Additional steering group meetings may take place if members believe these are required in order to achieve their objectives.
31. The secretariat will prepare a summary of the discussions held at the meeting that are suitable for publication to be approved by the steering group within two weeks after each meeting. These summaries will be published on UK Finance's website.

#### **Secretariat**

32. The Chair will be supported by a secretariat provided by UK Finance.
33. The secretariat will be responsible for supporting the steering group, its meetings and relevant papers for the meetings. All steering group-related communications between Members outside of meetings will be exchanged through the secretariat.
34. Staff providing secretariat support will report to the Chair in the performance of their duties.

#### **Agenda**

35. The agenda and meeting papers will be circulated in advance of steering group meetings. The agenda will follow the timeline for deliverables outlined in paragraph 18.

### **Working groups**

36. The steering group will establish a specialist satellite group to clarify whether there are any legal barriers to the prevention and response to APP scams, including the recovery of funds, the implications of any barriers, and how any barriers can be addressed.
37. The steering group Chair will appoint the satellite group chair. The satellite group chair will appoint, in consultation with the steering group chair, the members of the satellite group. The group will consist of relevant industry participants, and regulatory and government bodies such as the PSR, the FCA, the Treasury, the Home Office and law enforcement. The satellite group chair will set the terms of reference and will report any relevant information back to the steering group.
38. The steering group may establish other working groups for a limited period of time to engage in more detail or undertake more analysis on one or more of the key issues that the steering group needs to resolve.

### **Information sharing**

39. Steering group members should not share steering group papers beyond their constituencies and public comment on steering group discussions should be limited to the published summary of meetings
40. The steering group may need to share sensitive information from time to time, sometimes between competitors in various parts of the payments industry.
41. The responsibility for ensuring the lawfulness of any exchange of sensitive information between competitors rests solely with the undertakings concerned and their representatives. The secretariat will issue guidance to the steering group on such exchanges for competition law purposes.