



28 February 2019

# APP Scams Steering Group

FEEDBACK ON RESPONSES TO  
CONSULTATION PAPER

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# 1. Overview

## Background

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- 1.1. Authorised push payment (APP) fraud – where people are tricked into sending money to a fraudster – is a crime that can have devastating effects on victims. According to statistics published by UK Finance, consumer losses on APP scams in the first half of 2018 totalled £92.9 million across 31,510 cases. The amount of money returned to consumers was £15.4 million (or 16.5% of the total value), which is made up of partial or total recovery of the funds as well as goodwill payments made by firms in some cases.
- 1.2. In September 2016, the consumer body Which? submitted a super-complaint to the Payment Systems Regulator (PSR) about APP scams, raising its concerns that victims do not have enough protection. The PSR investigated the issue and the concerns raised, and in December 2016 found that more needed to be done to tackle APP scams. The PSR and industry undertook further work, and in November 2017, the PSR published the findings and outcome of this work. This included a consultation on the introduction of a Contingent Reimbursement Model (CRM). The model sets out the circumstances in which payment service providers (firms) would be responsible for reimbursing APP scam victims who have acted appropriately. In February 2018, after taking the consultation responses into account, the PSR considered a CRM – formalised into a voluntary industry code of good practice – is an effective way to reduce the occurrence of APP scams and the devastating harm they cause consumers.
- 1.3. In March 2018, the Authorised Push Payments Steering Group ('the Steering Group') was established, made up of an equal balance of industry (payment service providers) and consumer representatives, to develop a proposal for a CRM and formalise it into a voluntary industry code. Key regulatory and government bodies are observers on the group.
- 1.4. On 28 September 2018, the Steering Group published the draft Contingent Reimbursement Model code ('the Code') for public consultation so that the Steering Group could consider wider stakeholder views before finalising the code.

## The final Code

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- 1.5. The consultation closed on 15 November 2018. Fifty-three responses were received from a range of respondents including banks and building societies, consumer groups, trade associations, other businesses, and members of the public.
- 1.6. Taking into account the feedback received and the further work undertaken, the Steering Group concludes that it is appropriate for the industry good practice Code to be finalised and introduced on 28 May 2019. The Code is published alongside this document.
- 1.7. The Steering Group has concluded that where customers of PSPs who have signed up to the Code meet their requisite level of care, they will be reimbursed. This includes in the scenario where both the consumer and PSPs involved in the transaction have met their expected level of care (the 'no blame' scenario).
- 1.8. The precise long-term funding arrangements for no blame reimbursement are in the process of being agreed. The PSPs, supported by the PSR, have therefore committed to work together to introduce a longer-term funding mechanism for January 2020. In the period from implementation until 31 December 2019, a number of PSPs have committed to fund an initial contribution in order for customers in the no blame scenario to be reimbursed from the time the Code becomes effective until the end of the year when the long-term funding mechanism should be in place.

- 1.9. The Steering Group has identified an appropriate body, the Lending Standards Board (LSB) to take the governance function forward. A Memorandum of Understanding will be agreed between the Steering Group and the LSB, that sets out the framework for how the two entities will work together over the next few months to agree the detail of the governance framework, and the handover to LSB to take full ownership of the operation and governance of the Code.
- 1.10. This paper summarises the feedback to the consultation, and gives the Steering Group's response, including how the feedback has affected the ongoing work of the Steering Group since September 2018, the resolution of the outstanding issues, and market developments.

## Principles of the Code

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- 1.11. Having considered all the consultation feedback, as well as the advice of the various working groups set up by the Steering Group, the Code has been agreed, and when it comes into force on 28 May 2019, it will deliver the following principles for firms that have signed up to the Code and their customers:
- Where a customer that has fallen victim to an APP scam did what was expected of them under the Code, then that customer will be reimbursed.
  - Where a firm has failed to meet the standards required of it under the Code for a payment journey resulting in an APP scam, and that customer should be reimbursed, that firm will meet all, or share the cost of, the reimbursement.
  - Where both sending and receiving firms in a payment journey have met the standards expected of them, and the customer also did everything that could be expected of them, then the customer will be reimbursed, with the cost of the reimbursement being met through the no-blame funding solution.
  - Where a customer is assessed as being vulnerable to APP scams under the Code, that is, that it would not have been reasonable to expect that particular customer to have protected themselves against the particular scam, at the time they fell victim to it, to the extent of the loss they suffered, then that customer will be reimbursed.
  - Where a customer disagrees with a decision not to reimburse them, that customer will be able to challenge their firm's decision by referring their case to the Financial Ombudsman Service.
  - Nothing in the Code prevents, or is intended to prevent, firms making *ex gratia*, or 'goodwill', payments to a customer who is a victim of APP fraud, notwithstanding any assessment they have made under the Code.

## Next Steps

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- 1.12. The Code will be issued by the LSB, and will come into force, on 28 May 2019. In the meantime, the Code will be distributed to PSPs by their relevant trade bodies, such as UK Finance, the Electronic Money Association, and the Building Societies Association, to allow firms to work as swiftly as practicable to implement the Code ready for it coming into force. Subsequently, it is anticipated that the Financial Ombudsman Service will consider taking the code into account as a relevant consideration when handling complaints against firms arising from APP fraud, taking the particular circumstances of each complaint into consideration.
- 1.13. In the time leading up to 28 May, the Steering Group and LSB will work with PSPs to ensure that as many firms as possible are in a position to adopt the Code and put it into practice on the day the Code goes live. This time will also allow firms and consumer groups alike to publicise the principles of the Code so that consumers will know what to expect when the Code goes live. The Steering Group and LSB will work with stakeholders to ensure that communications are consistent and clear.

- 1.14. The LSB will be working with the Steering Group to develop further a Practitioner Guide, not only to set out helpful evidential guidance, but also guidance on how firms can approach compliance with the Code generally. This Practitioner Guide is expected to be published by the LSB alongside the Code on 28 May.
- 1.15. As mentioned above, the Steering Group will continue to work alongside the LSB to develop and implement the governance of the Code. Following 28 May, the Steering Group will continue to exist to act as expert advisers to the LSB, in particular in relation to reviewing and amending the provisions of the Code.

## 2. Summary of Consultation Feedback and the Steering Group's Response

### Introduction

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- 2.1. The Steering Group asked for general feedback on the draft code and set out a number of consultation questions on specific elements in relation to the draft code and the outstanding issues that still required further work.
- 2.2. This section sets out the feedback on the Code by theme. For each theme, a summary of the feedback received is presented. This is followed by the Steering Group's response and any changes made. The Steering Group's response also notes any further considerations in light of work undertaken since the consultation (including by the various working groups) and other developments.
- 2.3. The themes include:
  - Proceeding with the Code
  - Payment initiation service providers and the Code
  - Reimbursement where all parties met their level of care (the 'no blame' scenario)
  - Reimbursement where none of the parties met their level of care ('shared blame' scenario)
  - Governance of the Code
  - Evidential approach to firms' assessment for reimbursement decisions
  - Existing provisions in the Code
  - New provisions in the Code
  - Apportionment of reimbursement cost between firms
  - Mechanism for handling disputes between firms
  - Suggested tools and measures for APP scam prevention
  - Implementation of the code

### Proceeding with the Code

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#### Support for the CRM Code

##### *Consultation feedback*

- 2.4. All the consultation responses supported steps to reduce the occurrence of APP scams and the impact these have on victims. There was broad support for the principle or intent of the draft Code from a wide range of stakeholders, which included both Payment Service Providers (PSPs) and consumer groups. The feedback did raise a range of concerns about the provisions of the code and the outstanding issues, which are set out in the relevant sections below.
- 2.5. In contrast, two respondents did not support the Code as they believed there are fundamental issues with the Code, namely that it is too general or does not go far enough, and that a different approach is needed.

##### *The Steering Group's Response*

- 2.6. The Which? super complaint and the statistics on APP scams indicates a clear need to reduce the occurrence of APP scams and lessen the impact these crimes have on consumers, microenterprises and small charities. The Steering Group concludes that the CRM Code should achieve this.

- 2.7. In line with the widespread support for the Code, and based on consideration of the other concerns raised in consultation response, the Steering Group concludes it is appropriate for an industry good practice Code to be introduced.

## Unintended consequences of the Code

### *Feedback summary*

- 2.8. When responding to Q20, Q21, and Q22 in the consultation, a number of stakeholders responded about possible unintended consequences of the Code. These covered the following:
- (i) Some PSPs and other respondents noted that the Code may cause payments to be slowed down or that some legitimate payments may be rejected, with potentially serious consequences (for example, a house purchase may fall through). In contrast, consumer advocates noted that additional frictions such as slower payments (such as delaying payments or freezing funds to investigate) might be a positive change and welcomed by consumers, particularly for large-value payments.
  - (ii) Some noted the potential risk that PSPs withdraw offering financial services to customers at higher risk of being involved in APP scams, such as the refusal to open accounts for vulnerable customers. However, Age UK and Age Cymru considered this to be an unlikely risk because of the universality of the need to access payments and that in not servicing certain customer groups, those PSPs risk breaching equalities legislation.
  - (iii) Some noted that PSPs may direct their customers to use alternative payments channels which offer other types of protection (e.g. credit cards).
  - (iv) Several PSPs noted that if customers' expected level of care is too low or customers are compensated in 'shared blame' scenarios, customers might take less care against APP scams and fraudsters might increase their activity in this area as they know victims should be reimbursed. However, the FCA Consumer Panel noted that risk compensation theory, and cases that they have seen, suggest customers would not take less care when given more protection.

### *The Steering Group's Response*

- 2.9. The Steering Group has considered carefully the potential unintended consequences of the Code and has been mindful of these in developing it. In relation to the risk of poorer, or withdrawal of, services, the Steering Group notes that it is the responsibility of PSPs to decide how to strike an appropriate balance between managing the risks of financial crime and preventing APP scam against their responsibility to provide access to financial services. The Steering Group also recognises that the standards for firms and consumer requisite level of care will be considered too high by some groups, and too low by others, and concludes the provisions in the final code reflect an appropriate compromise.
- 2.10. Overall, the Steering Group concludes that these unintended consequences have been appropriately managed in the design of the Code. There is a risk that these unintended consequences may occur, therefore it is important that the Code, its impact, and APP scam cases are reviewed regularly to mitigate these risks. Furthermore, the Steering Group concludes that the benefits from introducing the Code and reducing the occurrence of APP scams considerably outweigh the risk of unintended consequences arising, and it is appropriate for the Code to be introduced.

## Issues for smaller banks and building societies and non-bank PSPs

### *Feedback summary*

- 2.11. PSPs and their trade associations were concerned about the impact the code, as set out in the draft version, would have on smaller PSPs such as building societies, non-bank PSPs and, to a lesser extent, challenger PSPs.
- 2.12. In particular, they were concerned that the Code could distort competition in retail banking market: disproportionately increasing barriers to entry and the burden of compliance for smaller, innovative firms. They said there was a risk that the implementation of the code, as set out in the draft, could have a disproportionately higher impact on the costs of smaller firms, who would either be unable to compete with larger firms with more diverse sources of income, or be the subject of multiple reimbursement claims which they cannot meet and may result in these smaller firms failing or being unable to compete effectively for customers. Some submissions, however – including one from a PSP – noted that provision of fraud prevention services by third party vendors could help mitigate the cost impact on smaller firms.
- 2.13. Another issue for smaller PSPs raised was that smaller building societies and non-bank PSPs would have difficulty meeting some of the standards for firms – in particular, expectations of firms in handling customers that are vulnerable to APP scams, and the implementation of Confirmation of Payee and the Best Practice Standards for responding to APP scams. These are discussed below, at paragraph 2.87 onwards.

### *The Steering Group's Response*

- 2.14. The Steering Group has designed the standards for firms to reflect good industry practice that should be expected of all sizes of firm and by different types of business model so that customers are better protected from APP scams and have confidence in using payments. The Practitioner Guide will be drafted with those concerns of smaller firms in mind and will acknowledge the different business models used. Therefore, while the Steering Group acknowledges that different firms may face different challenges in implementing the Code, it should be possible for all firms to sign up to the Code, and to compete with each other in terms of the protection they provide customers. Healthy competition is driven by ensuring consumers can shop around for payment services, and feel protected when using them.
- 2.15. It is recognised that some firms may not wish to implement the Code. The Code is, after all, voluntary. By maintaining a voluntary basis for the Code, the Steering Group concludes that any competition concerns are dealt with adequately.

## The voluntary nature of the code

### *Consultation feedback*

- 2.16. A number of PSPs and some other businesses believed that the code should be mandatory for all PSPs to follow, rather than a voluntary Code. Some of these said the government should legislate to bring this about, either directly or by giving regulators the necessary powers.
- 2.17. Respondents noted that legal or regulatory backing for the Code would provide more certainty and consistency of outcomes for all involved as all PSPs would need to follow it. Some also said it could help avoid some unintended consequences of Code, such as the Code having an anti-competitive impact. However, it was also pointed out that the Code being voluntary will help, in the interim, mitigate some of the risks around competition impacts.
- 2.18. Many respondents discussed the possibility that firms might not sign up to the code as one of the main reasons for a regulatory or legal approach to the Code.

- 2.19. Some also said that, given the likelihood that the FOS will use the code to guide its decision-making, the code will drive the approach of firms, so it would be desirable to provide more certainty through regulation.

*The Steering Group's Response*

- 2.20. The Steering Group recognises the preference of many consultees for a regulatory basis for the Code. However, the PSR has consulted on a voluntary approach. The Steering Group still takes the view that issuing a voluntary Code now is the better option, given the huge amount achieved to date on reaching consensus on the principles of the Code, and the inevitable delays that would be involved in putting the Code on a regulatory basis. However, the Steering Group expects that the voluntary nature of the Code will be reviewed in the longer term.

Legal concerns about implementing the Code

*Consultation feedback*

- 2.21. A number of PSPs and trade bodies indicated there may be legal issues around data sharing and the repatriation of funds that might impede the implementation of the code.
- 2.22. Other potential issues that were raised some PSPs include:
- (i) No statutory basis to delay a payment under the Payment Services Regulations 2017 (PSD2).
  - (ii) No statutory basis to freeze funds, or tensions between the Code expectations for freezing funds and requirements under the Proceeds of Crime Act (POCA).
  - (iii) No statutory basis to repatriate funds to a victim of an APP scam.
  - (iv) The code may create conflicts and overlaps with the FCA Handbook oversight, in particular Systems and Controls and the Senior Managers Regime, which the FOS will be adjudicating on when hearing APP scam complaints.
  - (v) PSPs do not have any statutory investigative powers to determine the nature or merit of a customers' claim.

*The Steering Group's Response*

- 2.23. The Code has been designed to complement existing legal and regulatory requirements on firms, and does not contradict these. The Code expects firms to take action within the existing legislative and regulatory framework to suspend or freeze payments based on their risk assessment managing the risks of financial crime against their obligations under requirements PSD2 and POCA.
- 2.24. The Steering Group recognises there are legal difficulties associated with the repatriation of funds to victims where firms have been able to freeze payments in time – these matters are being discussed in the Joint Fraud Taskforce. However, reimbursement under the Code is not dependent on repatriation, therefore those matters should not prevent the Code from being introduced.
- 2.25. Concerns about the FOS adjudicating on the performance of a receiving firm that is under FCA oversight were raised in the FCA's consultation on extending the FOS's jurisdiction for hearing APP scam complaints to receiving PSPs. In its policy statement, the FCA noted that "the [FOS] is required in all its casework to consider relevant laws and regulations (among other things)" and that it already

considers “consumer complaints about firms’ actions when opening accounts, where ‘know your customers’ and anti-money laundering regulations could be relevant.”<sup>1</sup>

- 2.26. Finally, the Steering Group recognises that, while firms do not have any statutory power, firms already deal with customer complaints on fraud cases which involves determining whether to uphold a customer’s claim. Therefore, firms should be capable of determining whether to reimburse an APP scam victim.

## Payment initiation service providers and the Code

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### *Feedback summary*

- 2.27. PSPs and their trade bodies said that the draft code only deals with sending and receiving banks and does not clarify whether, and if so how, it applies to Payment Initiation Service Providers (PISPs) – a new category of industry players that will be entering the market with Open Banking and PSD2 – which is a more complex value chain. The EMA noted that the draft code would need to be adapted if it was to apply to PISPs given they do not provide traditional banking services like larger PSPs.

### *The Steering Group’s Response*

- 2.28. The Steering Group has been working with the Open Banking Implementation Entity (OBIE) to develop a practical and coordinated approach to how the Code will apply to PISP-initiated payments and what would be expected of PISPs to help prevent APP scams. Although authorisations of these providers are currently increasing, they are not yet operating in the market through Open Banking. The approach will continue to be developed in coordination with the OBIE and LSB.

## Reimbursement where all parties met their level of care (the ‘no blame’ scenario)

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### *Feedback summary*

- 2.29. In the feedback on Q8, all respondents agreed that it would be desirable to reimburse all customers that meet their requisite level of care. However, most PSPs that responded said that, until there is an acceptable source of funding, always reimbursing a customer where all parties have met their standard of care (‘no blame’ scenario) will not be a viable option.
- 2.30. Respondents’ views regarding the reimbursement of customers in the no blame scenario diverged on many key issues. While most respondents agreed that the sending firm should administer any reimbursement (Q9), several PSPs said the sending firm should not be directly liable for this cost if they had met their standard of care. One industry body said it could not agree to this proposition until there was more clarity over the control of the process for being able to claim money back to cover the cost of a reimbursement administered by the sending firm.
- 2.31. Q10 asked for feedback on the different options for funding the no blame reimbursement outlined in paragraph 4.6. of the consultation paper. All of the funding options received support from at least one respondent, yet none received approval from the majority of respondents.
- 2.32. PSPs and their trade bodies stated that the PSPs should not bear the cost of reimbursement in a no-blame scenario, noting that a PSP who has met its standard of care should not be responsible for reimbursement – to do otherwise would create unlimited exposure for PSPs, increase first party fraud risk and disincentivise firms and customers alike.

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<sup>1</sup> FCA PS18/22 *Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service* (December 2018), page 11: <https://www.fca.org.uk/publications/policy-statements/ps18-22-authorised-push-payment-fraud-extending-jurisdiction-financial-ombudsman-service>

- 2.33. However, industry respondents did not fully reject a joint funding option such as a central pot. Other stakeholders agreed with this, pointing out that holding PSPs liable although they met their standards of care will raise the barriers to entry and drive smaller players out of the market.
- 2.34. Other organisations encouraged at least partial funding by the industry, on the basis that there must be incentives in place to keep industry players focussed on improving the working of payments systems in order to reduce fraud.
- 2.35. Many industry respondents supported the use of dormant funds or redirected funding from regulatory fines, or wanted to explore the possibility of making criminal monies that have been frozen or restrained available to victims and to focus on repatriation initiatives.
- 2.36. Several PSPs stated that any funding options should involve all players in the APP scams ecosystem, including infrastructure providers like social media platforms and internet service providers, and other entities exploited by fraudsters to obtain confidential information to make their scams more plausible. It was noted that it would be difficult to define and agree such a wide-ranging funding solution in time for the launch of the code in early 2019.
- 2.37. Consumer groups, as well as other respondents, rejected any customer-funded options such as a transaction charge. Similarly, insurance policies were opposed by the majority, due to the disincentives likely to be caused to the industry, and the risk of pushing customers into using cheaper, less-regulated, higher risk money transfer methods. Two responses demanded a retrospective reimbursement of customers that were scammed before the code became effective.
- 2.38. One respondent said that the proposed funding options would not reduce the losses or the number of frauds but would only spread the cost across innocent parties. It further claimed that the options will increase costs, stifle innovation, encourage fraudsters and decrease competition.

#### *The Steering Group's Response*

- 2.39. The Steering Group established a working group, tasked with identifying, evaluating and recommending possible sources of funding for reimbursement where a victim of an APP scam has met the requisite level of care, and so should be reimbursed, but where neither the sending or receiving PSP has breached any standards.
- 2.40. This working group was co-chaired by a PSP and consumer group representative. Members consisted of representatives from different types of PSPs (including some not represented on the Steering Group), consumer representatives and regulatory and government bodies that are observers on the Steering Group.
- 2.41. As part of its work, the working group considered feedback from the consultation responses on this issue.
- 2.42. The working group estimated that the size of the 'pot' required to cover the no-blame scenario in the first year of the Code's operation would be a maximum of about £40million. A wide range of potential funding sources were considered, including those suggested by consultees.
- 2.43. The working group ruled out options that would involve customers paying directly and entirely for cover, that would only provide coverage for those paying in some way, and that involved PSPs bearing the entirety of the cost for cover.
- 2.44. Some options were also ruled out on the basis of being impractical to achieve on a reasonable timescale. However, some options, such as using suspect funds that have been blocked by banks, may be considered further.
- 2.45. Following the work of the Steering Group, a long-term funding mechanism has been identified. However, the precise long-term funding arrangements for no blame reimbursement are in the process of being agreed. In the period from implementation until 31 December 2019, a number of PSPs have committed to fund an initial contribution in order for customers in the no blame scenario

to be reimbursed from the time the Code becomes effective until the end of the year when a long-term funding mechanism should be in place. The Steering Group has therefore concluded that in the cases where both the consumer and PSPs involved in a transaction have met their expected level of care (the so-called 'no blame' scenario), the consumer will be reimbursed.

## Reimbursement where none of the parties met their level of care ('shared blame' scenario)

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### *Feedback summary*

- 2.46. There were contrasting views on whether a consumer should expect to be reimbursed in the scenario where both the consumer and one or both firms did not meet their level of care (Q3).
- 2.47. All industry respondents said that customers in this scenario should not be entitled to a reimbursement of the entire value lost. Two respondents suggested customers are reimbursed on an apportioned basis. Some PSPs suggested that PSPs could choose to make a goodwill payment to the victim and/or contribute to a central fund instead.
- 2.48. In contrast, many of the other organisations and consumers said that the consumer requisite level of care – provisions R2(1)(a) and (b) – should not apply when the PSPs did not meet their level of care. One respondent said that consumers should still be reimbursed if the firm did not meet their standard of care, otherwise the firm may know the customer did not act appropriate and is free to make a cost-based decision not to apply further fraud prevention measures. Some suggested reimbursement based on the level of seriousness of the PSP's failings.

### *The Steering Group's Response*

- 2.49. The Steering Group has given very careful consideration to arguments on both sides of the shared blame scenario. Achieving consensus in relation to outcomes in this scenario has proven very difficult. Consumer representatives have been keen that customers who have not met the requisite level of care, but one or both of the firms have also not met their standards, should be reimbursed either wholly or partially, while PSPs have pointed out the importance of incentivising customers to remain vigilant and protect themselves when making payments.
- 2.50. In the time leading up to the Code coming into force on 28 May, the Steering Group will continue to work to resolve the outcome for the shared blame scenario. In doing so, the original principles of the Steering Group, set out in its Terms of Reference<sup>2</sup> will be borne in mind.
- 2.51. The Steering Group recognises that firms may wish to make good will payments to customers in the shared blame scenario. Nothing in the Code prevents firms doing this.

## Governance of the Code

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### *Feedback summary*

- 2.52. There were a range of views given on which body would be appropriate to govern the code (Q15). Several industry and consumer advocate stakeholders were in favour of Pay.UK (the operator of FPS) which align with how the charge back process is governed in the cards' schemes.
- 2.53. There was also PSP and consumer group supported the Lending Standards Board (LSB). Other bodies mentioned in the responses were the PSR (supported by several respondents), the FCA, and the Financial Ombudsman Service. Some respondents said specifically that the Steering Group should not

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<sup>2</sup> <https://appcrmmsteeringgroup.uk/wp-content/uploads/2018/04/ToR-for-Endorsement-at-27-April-meeting.pdf>

govern the code. A number of respondents suggested that more than one body should be involved to ensure the code is effectively governed: for example, Pay.UK might work with the Lending Standards Board using their different expertise.

- 2.54. Some responses also raised the possibility of a central 'clearing house' to administer data exchange between sending and receiving banks, and potentially to operate any funds and reimbursement mechanisms. It was suggested that Pay.UK could fulfil this role. It was also suggested the central technical infrastructure of FPS could be used to help with monitoring, reporting and evolution of the code.
- 2.55. In terms of how changes to the code are made (Q16), most respondents were concerned about the process for making changes to the code, a number of stakeholders said that any major changes to the code should require consultation of stakeholders. Stakeholders were not as concerned about the timing for when changes to the code are made. Some respondents would like 6-monthly or quarterly reviews while the code beds down, rather than the suggestions of a review after one year then every three years after in the consultation paper.
- 2.56. For measuring the effectiveness of the code (Q23), respondents provided a range of possible indicators that could be used, including:
- The volume and value of APP scams.
  - Reimbursement rates (industry-wide and per firm).
  - Increases in the cost of payment systems.
  - A competitiveness index for UK payment systems.
  - Identification of sending firms not doing enough to educate customers/evidence that customers know the protective measures they have to take.
  - Identification of receiving firms who are consistently identified in reports of APP scams.
  - Feedback and anonymised case summaries.
  - The number of cases going to the FOS.

#### *The Steering Group's Response*

- 2.57. The Steering Group carefully considered the various options for the body to govern the Code.
- 2.58. The PSR continues to consider that it is not appropriate for it to govern the Code, as does the FCA. It is also not appropriate for the FOS to govern the code as this is not within its statutory remit, and because it will be the independent party determining consumer complaints against PSPs in relation to APP scams. The Steering Group also agrees that it should not govern the Code in the longer term as there are bodies that are better placed to do this.
- 2.59. The Steering Group considered Pay.UK, given its knowledge and understanding of the FPS payment system, Confirmation of Payee and some other fraud prevention solutions. However, during discussions it became clear that Pay.UK would not have the resources necessary to take on the governing function within an appropriate timeframe.
- 2.60. The LSB has emerged as being most suitable governing body, in terms of expertise, experience and capabilities in governing industry codes and taking on the function of governing the CRM code. The LSB has agreed with the Steering Group to take on the role and to issue the Code. A Memorandum of Understanding will be agreed between the Steering Group and the LSB, setting out how the two entities will work together over the next few months to develop and finalise the governance arrangements in order to bring about an effective handover and implementation of the Code.

## Evidential approach to firms' assessment for reimbursement decisions

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### *Feedback summary*

- 2.61. Most respondents agreed with the issues the evidential approach working group was going to consider (Q12). A number of suggestions were made about other issues to be considered by the working group (Q13) including:
- What happens when it is not possible to ascertain whether firms and customers have met the standards of care, due to e.g. missing evidence that cannot be supplied.
  - The introduction of a limitation period for reimbursement.
  - A standardised form of data exchange.
  - Best practice with firms not signed up to the code.
  - Consideration of different evidential standards for firms without access to APP Fraud prevention infrastructure.
  - An agreed, objective definition of vulnerability.
  - Whether previous evidence or intelligence that an individual has been suspected of making fraudulent claims can be considered in the decision process.
  - How to consider evidential standards when multi-party PSPs are involved in each transaction.
  - Requirement of recipient banks to prove circumstances in which the fraudster account was opened.
- 2.62. Suggestions on how customers can demonstrate they have met the expectations and followed the standards of the code (Q11) included: the provision of evidence of how victims were contacted by the fraudster; information on their vulnerability status; provide details on any checks they did on the payee; demonstrate that they contacted their bank as soon as possible. Some suggested PSPs should provide records and audit trails and potentially start recording the effective warnings they issue.
- 2.63. A number of respondents saw merit in having greater industry standardisation in some areas, such as using commonly-defined industry-wide wording for Effective Warnings. Some suggested a centralised industry platform for monitoring, reporting and evaluation in relation to the Code. One suggested a central party to process reimbursement claims.
- 2.64. Some industry respondents said that firms should be able to complete their internal reviews before a case is passed on to the FOS. Some PSPs and other organisations suggested having an independent party assess whether firms meet their standard of care.
- 2.65. One respondent pointed out the potential for commercially sensitive information regarding banks' systems might potentially have to be revealed during the process of providing evidence.

### *The Steering Group's Response*

- 2.66. The Evidential Approach Working Group, co-chaired by industry and consumer representatives, was set up to define, agree and articulate a set of evidential approaches that will support the final Code.
- 2.67. This has been done by working through the text of the code, holding workshops consisting of representatives from industry and consumer groups, to identify what sources and types of evidence are likely to be available in order to establish matters set out in the code provisions.
- 2.68. As mentioned above, the results of this work will be published as a Practitioner Guide alongside the Code. The LSB will be developing this in coordination with the Steering Group. The Practitioner Guide will set out good practice and bad practice which will ultimately assist PSPs and consumers groups

with an evidential approach to assess standards and levels of care, including in relation to the Code's approach to vulnerability.

- 2.69. In developing the provisions on Effective Warnings, the Steering Group did consider whether to mandate particular wording for warnings that all firms should use.
- 2.70. Although standardised warnings would give firms clarity and certainty as to what they should be communicating to customers, the risk that the warnings would disappear into the background and become 'wallpaper' unheeded by customers, is too great. Similarly, APP scams are changing in their modus operandi all the time, as is the use of anti-fraud technology by firms. Firms need to be able to have flexibility to develop their warnings to keep pace with fraud, and be able continually to improve their effectiveness. Having considered these matters and the feedback from the consultation, the Steering Group has decided to keep the original approach.
- 2.71. As to a centralised platform, the Steering Group acknowledges the benefits that this would bring. However, to try to achieve this before publication of the final Code would cause excessive and unwarranted delay. Instead, the potential for developing this in the future will be monitored by the governing body.

## Provisions in the Code

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### Overarching and general provisions

#### *Feedback summary*

- 2.72. None of the respondents raised concerns about the overarching provisions in the code. Furthermore, many respondents referred to these provisions to support their arguments. On the general provisions, one PSP said the code should make reimbursement contingent on providing general education to customers, particularly about mule accounts, while a PSP trade body said this should not be done because it would be difficult for PSPs to determine how compliance would be met.

#### *The Steering Group's Response.*

- 2.73. The Steering Group considers that the overarching provisions and the general provisions remain appropriate. Only one respondent suggested that reimbursement should be contingent on general education. While general education and the other general provisions are very important in reducing APP scams and firms are expected to support these, the Steering Group agrees that reimbursement should not be contingent on compliance with them.

### Scope of the code

#### *Feedback summary*

- 2.74. Several consumer groups and other respondents questioned the exclusion of larger SMEs from the code - only consumers, micro-enterprises with less than 10 employees, and charities are covered, in line with the Payments Services Regulations 2017. They stated that SMEs that are slightly bigger than micro-enterprises (fewer than 10 employees) should benefit from the protection of the code, and that this would align with FOS jurisdiction which will be expanded to cover SMEs meeting the relevant criteria, namely annual turnover less than £6.5m, annual balance sheet total of less than £5m, and a staff headcount of less than 50.
- 2.75. Another issue raised is the lack of applicability of the code to international payments.
- 2.76. Several organisations – including the National Trading Standards and City of London Police – voiced their criticism of the use of the word 'scam' and said it should be labelled 'fraud' to underline its criminal nature and to avoid potential euphemism.

*The Steering Group's Response.*

- 2.77. The Steering Group recognises the impact of APP scams on SMEs that are larger than micro-enterprises, and that APP scams involving international payments is a growing problem. However, developing a code that covers larger SMEs and international payments would add significant complexity to this work. This was also noted by the PSR in its policy papers of November 2017<sup>3</sup> and February 2018<sup>4</sup>. The Steering Group concludes that the scope remains appropriate for the purposes of this code at this time. The Steering Group expects the LSB to keep the scope of the Code under review.
- 2.78. The Steering Group recognises the devastating impact APP scams can have on victims and the criminal nature of this type of fraud. The Steering Group uses 'scam' because it is the most colloquial and recognisable term, and considers it is appropriate to continue to do so.

Standards for firms

*Feedback summary*

- 2.79. In general, respondents were broadly supportive the standards for firms (Q1). One consumer group said that the standards for firms should be higher, but that those in the draft code were fine as a starting point. Several PSPs and consumer groups stressed the importance of ensuring the receiving firm has strong incentives to actively detect and prevent mule accounts in the system that are used to perpetrate APP scams.
- 2.80. Some industry stakeholders said the provisions for firms needed greater clarity (including on standards for evidence), with one noting that less subjective wording should be used. Some industry stakeholders said there should be greater clarity and detail of the standards and what compliance looks like, and to use less subjective language.
- 2.81. Many respondents supported the inclusion of Confirmation of Payee ('CoP') in the standards for firms. However, several PSPs and consumer groups noted that this solution was still very much in development, and will take time to become stable in its use after implementation. They said CoP should not come into force in the code until it is stable. The Building Societies Association (BSA), EMA and UK Finance noted that there is not currently access to CoP specifications for many small PSPs, and therefore they could not meet this standard if it was to come into force anytime soon. Two respondents said that CoP would be a costly tool for smaller PSPs, and could risk legitimate payments being interrupted.
- 2.82. The BSA and EMA also raised concerns that their members currently do not have access to the UK Finance's online portal which is used to submit reports of APP scams as part of the Best Practice Standards, and therefore they are unable to meet that standard.
- 2.83. UK Finance suggested that the code should reflect differences in firm sizes and business models and the corresponding need to calibrate measures by size and type of firm.
- 2.84. Some respondents noted that if firms are expected to follow the BSI PAS 17271 that provides guidance on vulnerable customers – referred to in provision SF1(4)(c) – it should be publicly available to firms and consumers.

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<sup>3</sup> [https://www.psr.org.uk/sites/default/files/media/PDF/PSR-APP-Scams-report-consultation\\_1.pdf](https://www.psr.org.uk/sites/default/files/media/PDF/PSR-APP-Scams-report-consultation_1.pdf)

<sup>4</sup> [https://www.psr.org.uk/sites/default/files/media/PDF/Outcome\\_of\\_CRM\\_Consultation\\_Feb\\_2018.pdf](https://www.psr.org.uk/sites/default/files/media/PDF/Outcome_of_CRM_Consultation_Feb_2018.pdf)

- 2.85. The EMA raised concerns about specific provisions which would be difficult for non-bank PSPs to meet:
- (i) The requirement for sending firms to identify customers that run a higher risk of being associated with an APP scam [SF1(1)] and to tailor warnings to the customer type [SF1(2)(e)] is difficult. Non-bank PSPs invest in transaction-based analytics but often hold limited information in relation to the customer.
  - (ii) SF2(1)(b) expects firms to use industry fraud databases for shared intelligence to screen for potential mule accounts, but not available or complex for non-bank PSPs to join.
  - (iii) The EMA also raised concerns about the standards for firms that relate to the treatment of customers that are vulnerable to APP scams. These are discussed in detail in paragraph 2.125 onwards.
- 2.86. Many consumer advocates said that firms should be expected to have a general option for customers to defer payments – either above a certain threshold or as an option customers can choose. A few also called for a transaction value limit on FPS payments. In addition, several submissions from consumer groups, trade bodies and non-PSPs underlined the need for industry consistency with respect to best practices and communication with the customer as well as consumer education campaigns.

*The Steering Group's Response*

- 2.87. In developing the draft code, the Steering Group considered using prescriptive standards for firms. However, the Steering Group was concerned this would create 'tick box' compliance and standards that would require continuous amendments to stay relevant in the rapidly-changing financial services technology environment.
- 2.88. Furthermore, the Practitioner Guide will provide firms with more clarity and information about what could be considered good practice and bad practice in relation to the standards for firms, and complements the principles which reflect a range of approaches taken by different PSPs. Therefore, the Steering Group concludes that the principles-based approach adopted for the draft code remains appropriate.
- 2.89. The Steering Group considers that CoP is an important element of the Code. However, it recognises that the CoP solution is still being developed and the PSR is still consulting on giving directions to PSPs to implement CoP<sup>5</sup>. It also recognises that some PSPs (particularly those in Phase 2 of CoP development) will need more time to implement CoP. The Steering Group also recognises that CoP must be working in a stable and predictable manner before it comes into force in the Code. The Steering Group therefore considers that the provisions relating to CoP for the sending and receiving firms (SF1(3) and SF2(2)) and the consumer requisite level of care (R2(1)(b)) will stay in the Code, but not be switched on until the LSB has determined that CoP is sufficiently developed. The Steering Group will be continuing to work in its advisory capacity with LSB to identify the appropriate criteria for triggering the coming into force of the CoP provisions and any phasing that might be required for smaller PSPs.
- 2.90. However, the Steering Group considers that SF2(2)(a) which states firms should not use CoP to limit their potential liability for reimbursement should be deleted. This is based on consultation responses and further discussions in the EAWG which indicated that the provision was unclear and confusing. The Steering Group notes that the Overarching Principles (OP) of the Code expect firms to minimise

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<sup>5</sup> PSR *Consultation on general directions for the implementation of Confirmation of Payee* (November 2018): <https://www.psr.org.uk/psr-publications/consultations/cp-18-4-consultation-general-directions-implementing-cop>

disruption to legitimate payments and the industry rules and standards for CoP do not allow the misuse of CoP. The Steering Group considers this includes firms excessively disrupting payments with negative CoP responses to avoid having to reimburse victims of APP scams.

- 2.91. The Steering Group understands that UK Finance is making the necessary changes to its portal to allow access for non-UK Finance member firms. The Code has also been amended to clarify that BSI PAS 17271 is an example of relevant industry guidance on vulnerability.
- 2.92. In terms of concerns raised about smaller firms not having information available to identify higher risk or vulnerable customers, the Steering Group is of the view that the standards are appropriate for firms currently operating in the market at this time. The Practitioner Guide will help set out examples for smaller firms in this area. As noted in paragraph 2.28, the Steering Group has established a workstream to consider how the code would apply to PISP-initiated payments and what would be expected of PISPs to help prevent APP scams, over which specific concerns have been raised.
- 2.93. The Steering Group recognises that it is important to give customers the option of deferring a payment or to place a limit on their permitted transaction value, but that this should not be linked to whether a firm should have to reimburse a customer. The Steering Group expects firms to be mindful of how consumers may interpret communications, and that any customer communication should be clear and consistent.
- 2.94. Overall, as noted above, the Steering Group concludes that the standards for firms reflect an appropriate compromise between industry and consumer groups. The standards for firms aim to incentivise firms – both sending and receiving firms – to do more to prevent APP scams from occurring, including identifying mule accounts. The Steering Group recognises the standards should be reviewed and refined over time, and will ensure this is part of the governance of the code.
- 2.95. Therefore, having carefully considered the consultation feedback, the Steering Group concludes that, with the amendments explained above, the standards for firms are appropriate.

The standard for firms to consider whether compliance would have help prevent APP scam

#### *Feedback summary*

- 2.96. Q2 in the consultation asked whether the provision that firms can consider whether compliance would have helped prevent the APP scam may result in unintended consequences. Several industry respondents did not consider that there were any risks of unintended consequences. However, various consumer groups and other organisations considered there was a potential risk that this may enable firms to avoid reimbursing eligible victims, calling for strong auditing systems and/or independent reviews to mitigate the risk and a general requirement to always assess both the customer's and the PSP's standard of care to prevent such consequences.

#### *The Steering Group's Response*

- 2.97. Part of the governing body's remit will be to carry out audits and reviews of firms' behaviour with respect to the Code. This means there will be independent checks on how firms go about assessing their compliance with the standards. The precise approach to this element of the governance function will developed in conjunction with the LSB.

Consumer requisite level of care and reimbursement

#### *Feedback summary*

- 2.98. A large majority of respondents agreed with the steps customers should take to protect themselves that were set out in the draft code (Q4). Industry respondents wanted higher standards set for customers that encourage a more proactive involvement of customers in taking preventative steps. In contrast, some consumer groups said the threshold should just be gross negligence.

- 2.99. Consumer groups raised concerns about the lack of clarity on what ‘reasonable steps’ would be expected of customers to verify that a payee is genuine [R2(1)(d)].
- 2.100. A number of respondents (including both PSP and consumer groups) said that a clearer definition of the terms “gross negligence” and “reckless sharing” was needed.
- 2.101. Many respondents said that customers need to understand and be adequately informed about the exact steps they must take to meet their level of care. They called for banks to organise education campaigns and to employ consistent language across the industry to inform customers and prevent misunderstandings.

*The Steering Group’s Response*

- 2.102. Based on the concerns raised in consultation responses and further discussions in the EAWG, the Steering Group have made several amendments to the requisite level of care provisions (R2) to provide more clarity.
- 2.103. Regarding provision R2(1)(g) of the draft code, the Steering Group recognises the concern for further clarity in the concept of gross negligence. However, this is a legal concept, in use by the courts, about which the courts give guidance. In the consultation paper, at 3.62, the guidance used by the FCA was cited. Therefore, the Steering Group does not consider it appropriate to further define this term. However, the Steering Group recognise that the other provisions in the consumer requisite level of care (set out in R2(1) (a) to (f) in the draft code) should not be taken to define gross negligence, and have clarified this in the provision on gross negligence in the Code.
- 2.104. R2(1)(c) in the draft code, regarding recklessly sharing credentials, has been removed. For more clarity, a note has been added to the definition of Authorised Push Payments Scams (at DS1(2)(a)) to make clear that the Code covers authorised payments where a customer has shared their log in details or access to their banking apps or online platform for the purposes of authorising that payment. It remains the case that where details have been shared, but payments made as a result that were not consented to, will be unauthorised payments, dealt with under the framework set out in the Payment Services Regulations 2017.
- 2.105. R2(1)(d) in the draft code has been redrafted to make clear that where a customer did not have a reasonable basis for believing that the payment they were making was to the right person, or to a legitimate person or business for legitimate purposes, then the customer cannot expect to be reimbursed. When considering what amounts to a reasonable basis for belief, firms should bear in mind the sophistication and complexity of the scam their customer fell victim to, and the customer’s characteristics at the time the payment was made.
- 2.106. The Steering Group notes that it was very difficult to find a compromise on this provision. Consumer representatives on the Steering Group felt very strongly about not including this provision, on the basis that consumers cannot be expected to know what to do unless they have been properly warned, and have proposed deleting the clause entirely. Equally, the PSP representatives did not want to exclude their ability to refuse reimbursement where someone had not taken any sensible care at all, and have proposed retaining the most recent language.
- 2.107. The Steering Group fully recognises the importance of ensuring that there is clarity and consistency in the way this provision is applied, for both consumers and firms, and that it is applied fairly. To help with this, the Steering Group has agreed five steps for further action to be taken.
- 2.108. **Step 1: Consumer education and awareness campaigns.** The PSPs and consumer groups represented on the Steering Group have committed to work together to carry out a meaningful and sustained consumer-facing campaign on the steps customers should take to protect themselves. There are two parts to this.

*Consumer protection and scams education*

- 2.109. The challenges involved in reaching a position on the steps a consumer can reasonably be expected to take to protect themselves from APP scams have highlighted the need for industry, consumer groups and other key stakeholders to work together to agree and disseminate messaging. The Steering Group recognises that there is a need for a consensus on what customers should do in order to identify a suspicious payment request. This builds on the important and continuing work of the Take Five Campaign. In order for these messages to be effective they will need to be:
- consistent across the industry;
  - straightforward and actionable by customers;
  - well-known by customers.

2.110. This therefore requires a two-step process of (i) developing a consensus on the steps customers should take; and (ii) developing a strategy to share these messages.

2.111. Whilst the Steering Group recognises the challenges of developing consistent messaging in the context of scams and the risks that scammers themselves will seek to subvert the campaign, the group remains firmly of the view that by working together there is scope to significantly improve customers' abilities to protect themselves and firms on the steering group have therefore committed to a sustained and meaningful campaign, with the support of consumer groups.

#### *Consumer awareness of the Code*

2.112. The Steering Group also recognises that there has been a great deal of public interest in the development of the Code and it is important that customers understand what it means for them. The Steering Group hopes that the Code will increase the confidence of customers of member firms by assuring them that the firm is putting in place additional steps to protect them from falling victim to a scam and will reimburse them where they could not have protected themselves. Experience of other codes suggests that relatively few customers will read the Code itself, and that most customers require much simpler messaging than that likely to be covered by the Practitioner Guide (see below). Consumers are also likely to rely heavily on advice from their own firms and from consumer and other organisations they trust.

- 2.113. Therefore, during the period between 28 February and implementation of the Code, the PSPs and consumer groups represented on Steering Group, supported by the LSB, will work to develop:
- a simple guide aimed directly at customers of member firms telling them about their rights under the code, when they should not expect to be reimbursed and the process they should expect if they do fall victim to a scam; and
  - a slightly more detailed guide or FAQ pack for consumer organisations to help them disseminate consistent messages to their advisers and audiences.

This should also assist firms in explaining the Code to their own customers.

2.114. **Step 2: Practitioner Guide.** The Practitioner Guide will include explanatory and illustrative material to support the provision, including examples to show factors which might indicate a customer did not have a reasonable basis for belief in accordance with the provision. The LSB will work with the Steering Group to develop this.

2.115. **Step 3: Early thematic review.** The LSB will carry out an early thematic review of this provision as a first priority in its role as governing body. The review will check how the provision is being understood by PSP staff tasked with implementing it, and to review the consistency of approach across PSPs. The LSB will work with interested bodies including consumer groups at scoping and reporting stages. This would also support the further development of 'what good looks like' in the Practitioner Guide.

2.116. **Step 4: The Financial Ombudsman.** The Financial Ombudsman Service is required to decide complaints on the basis of what it thinks is fair and reasonable in all the circumstances, taking into

account relevant: law, regulator's rules and guidance and industry codes, and what it considers to be good industry practice.

- 2.117. The Financial Ombudsman Service has indicated to the Steering Group that, in complaints where the Code is a relevant consideration, when taking the Code into account as part of its fair and reasonable assessment of a complaint, it will consider whether or not a consumer made the payment without a reasonable basis for believing the matters set out in R2(1)(c) (i)-(iii).
- 2.118. The Financial Ombudsman Service has also indicated that it may have regard to the explanatory text contained in the Steering Group's consultation response document and any other publicly available Steering Group or LSB guidance on the Code, when considering how the Code applies to the circumstances of an individual complaint.
- 2.119. The Financial Ombudsman Service has long experience of resolving disputes that centre on tests of what is 'reasonable' in the particular circumstances of an individual case.
- 2.120. **Step 5: Amend the Code.** The above four steps should provide greater understanding and clarity on the application of the provision. The fifth step will involve the LSB consulting with interested bodies, including consumer groups, on the scope and necessity for amending the Code to reflect any of the early learnings and any other necessary action to ensure the provision is being applied fairly and consistently.
- 2.121. What was provision R2(1)(f) in the draft code, regarding customers not acting openly and honestly, has now been deleted. As a result, an addition has been made to the provision at R2(2) to make clear that firms should take their own behaviour into account to see if it impacted on the customer's behaviour when that customer was defrauded, and also can consider whether the customer has been dishonest or obstructive in a material way during the firm's assessment of whether to make a reimbursement.
- 2.122. The Steering Group also notes that the Practitioner Guide will provide more detail to firms and consumer groups about the expectations of customers in relation to the Code. It also recognises the importance of effective communication on the Code and the expectations on consumers. The Practitioner Guide will include guidance to help firms in their assessments where there may be difficulties arising from an assessment of reasonable belief crossing over into an assessment of vulnerability.
- 2.123. In addition to the commitment noted above, firms signing up to the code will be expected to pursue education initiatives to inform their customers about steps they need to take to protect themselves, as set out in the general provisions.
- 2.124. Overall, taking into account consultation responses and the work of the EAWG, the Steering Group considers that, with the amendments and commitments explained above, the consumer requisite level of care as set out in the Code is the best compromise that can be reached at this stage, while recognising the views of different Steering Group members. As noted above, the Code and its provisions reflect an appropriate compromise on the expectations of firms and customers, and that these provisions will be kept under review and refined over time.

## Vulnerability

### *Feedback summary*

- 2.125. Consumer advocates generally supported Code's approach to customers vulnerable to APP scams (Q5). However, one consumer group said that the Code should assume everyone is vulnerable to APP scams because they are e.g. problems at work could distract a person.
- 2.126. The response from the industry was varied. Some larger PSPs supported an approach that assesses vulnerability on a case-by-case basis. However, industry was concerned that there needed to be

more clarity on how to implement the approach: how to define vulnerability to an APP scam and how to evidence it, and how to identify customers vulnerable to APP scams before the scam occurs. They said without this, it would place a strict liability on firms to reimburse any customer claiming to be vulnerable.

- 2.127. The EMA raised concerns that non-bank PSPs would have difficulty in meeting the provision related to vulnerability. As non-bank PSPs often hold limited customer data, it was difficult for them to identify customers at risk unless the customer self-declared that they were vulnerable. Further to this, because the requirement to reimburse customers considered vulnerable to APP scams applies regardless of anything the firm did to prevent the APP scams, firms are obliged to take on risks which they have limited ability to manage or mitigate. The EMA suggested that where firms had met the standards and could not reasonably have identified the victim's vulnerability before the fraud took place, reimbursement costs could be met through the 'no blame' solution.
- 2.128. Some criticised the definition of vulnerability on the basis that it should not be subject to the type of fraud perpetrated, and should be product-specific as well as user-specific. Additionally, concerns were raised about potential unintended consequences for vulnerable customers, in particular around data confidentiality when assessing individual claims where vulnerability is in issue. One respondent questioned whether firms are the appropriate entities to assess customer vulnerability, which could lead to arbitrary and inconsistent judgements, and the use of invasive techniques to assess vulnerability.

#### *The Steering Group's Response*

- 2.129. The approach to customers 'vulnerable to APP scams' was carefully considered by the Steering Group. The intent of SF1(4) is to incentivise firms to put added protections in place for customers it identifies as being of higher risk to APP scams before a scam occurs. It is separate, although related, to R2(3). If an APP scam does occur, given firms may not be aware of certain customer vulnerabilities, it is important that a firm's assessment of vulnerability to APP scams is done on a case-by-case basis and takes into account all relevant factors. A firm may choose not to reimburse a customer if it concludes that that customer was not vulnerable to APP scams. Such a customer would be able to look to the FOS in order to challenge such a conclusion.
- 2.130. The approach in the Code complements and builds on industry guidance on vulnerable customers more generally. The Practitioner Guide will set out more detail about how firms should to assess vulnerability to APP scams and what evidence could be provided.
- 2.131. The Steering Group recognises that there will be challenges for some firms in implementing these measures. However, the Practitioner Guide will be designed to assist such firms. Moreover, the governing body will be able to issue more guidance if it needs to do so as the Code becomes more embedded in the industry, and when the FOS starts making decisions setting out its interpretations of the Code.
- 2.132. In addition, it must be emphasised that this approach to reimbursement decisions for vulnerable customers is designed to work on a case-by-case basis.
- 2.133. Finally, the Steering Group has concluded that, in relation to vulnerable customers, where a firm reimbursing such a customer is at fault itself, then it will bear the cost of that reimbursement, but where a vulnerable customer is reimbursed and the firm has not been at fault, the firm can recover the cost of the reimbursement, if it wishes, from the no-blame account

#### Notifying customers of the reimbursement decision

##### *Feedback summary*

- 2.134. The majority of respondents agreed with the timeframe for notifying customers on the reimbursement decision set out in the draft code (Q6). One respondent said the timeframe should

align with the Best Practice Standards (20 working days). Several respondents called for a definition of what constitutes 'exceptional circumstances' that permits firms to notify customers within 35 business days.

- 2.135. Several consumer groups raised concerns that consumers' reports of APP scam to a firm should immediately be treated as a complaint. They also said customers that are not happy with their reimbursement decision should be able to go to immediately to FOS.
- 2.136. Some issues were raised regarding consumer disputes, including that there should be a clear and simple way for consumers to register a complaint; customers should only be required to send one joint complaint rather than separate ones to the sending and receiving bank.
- 2.137. Some respondents mentioned the cost of arbitration to consumers - collective action could be allowed so costs and expertise can be shared over multiple claimants, given the legal costs involved in going to court can potentially eliminate this option for many customers

#### *The Steering Group's Response*

- 2.138. The Steering Group notes that in December 2018 the FCA published final rules extending the complaints regime to receiving firms in relation to complaints about APP fraud<sup>6</sup>. The Steering Group considered carefully whether and how the Code should be amended to ensure consumers are able to access FOS in the best way.
- 2.139. The timeframe as set out in the consultation will continue to be used – it is appropriate because it aligns exactly with the PSRs timeframe, and aligns closely with the timeframes used already under the Best Practice Standards.
- 2.140. The Steering Group concludes that a definition of 'exceptional circumstances' is unnecessary as the provision is designed to align with the Payment Services Regulations 2017, regulation 101, with which the industry is already familiar.
- 2.141. There has been further work done, taking into account responses, in relation to how customer complaints and access to the FOS can work in the context of the Code. This has resulted in further provisions being added into R4 to clarify that firms should notify customers of their right to complain. Additionally, firms will be expected to bring about a resolution for a customer who is dissatisfied with a negative reimbursement decision, either by resolving it in an expedited manner under their own complaints scheme, or by providing the necessary consent to allow the customer to refer their case to the FOS.
- 2.142. These provisions also clarify how the customer's firm should forward complaints to the receiving firms. This aligns with the FCA's statement about that rule change that customers need only make one complaint when the substance of the complaint covers both sending and receiving firms, that the complaint forwarding rules apply in the usual way, and that firms should look to make a joint single response to the customer.
- 2.143. The Steering Group recognises that eligible customer's access to FOS to dispute a reimbursement decision is an existing right, and consumers do not incur a cost for this service.

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<sup>6</sup> See footnote 1, page 10

## New provisions in the Code

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Allocation of reimbursement cost between two firms that have both failed to meet their standards

### *Feedback summary*

- 2.144. There was broad support for a 50:50 apportionment that was consulted on (Q17). One large PSP suggested that sending firms are generally better placed to prevent frauds so the apportionment should be 75:25. Similarly, some respondents suggested apportionment based on the relative seriousness of breaches of the code.
- 2.145. Two challenger banks were concerned that a 50:50 split may have a disproportionate effect on smaller firms relative to larger firms.
- 2.146. Many industry respondents questioned how the allocation of reimbursement costs between firms will be handled if one of the parties is not a signatory to the code, or if a Payment Initiation Service Provider (PISP) initiated the payment.

### *The Steering Group's Response*

- 2.147. After careful consideration of the responses, and further work undertaken by the working groups, the Steering Group has concluded that the 50:50 split will be used in the final Code. This provides simplicity and certainty for firms, and avoids difficulties in trying to formulate degrees of blame when firms have breached the standards.

Mechanism for handling disputes between firms

### *Feedback summary*

- 2.148. Respondents were broadly in favour of adopting the ADR principles as adopted by Open Banking in section 7 of its Dispute Management System Code of Best Practice (Q18). Some noted that the principles have not been reviewed and tested yet. One also mentioned that the principles were not suited to different scam types.
- 2.149. Regarding the issues and risks that should be considered when designing a dispute mechanism (Q19), respondents mentioned:
- The timeliness of the decision.
  - Firms might refer cases which could reasonably have been resolved without a dispute mechanism.
  - The choice of the adjudication body - some respondents suggested to choose an independent body.
  - The costs of arbitration might be more difficult for smaller firms to meet

### *The Steering Group's Response*

- 2.150. Having taken account of the responses and the further work of the RPFWG, the Steering Group concludes that it is appropriate to follow the framework of the ADR principles as adopted by Open Banking. These will be incorporated into the Code as new provisions that firms should follow when disputes between them arise. These provisions steer firms to try to resolve any disputes without needing to resort to formal procedures. If agreement can't be made, in order to keep costs down, paper-based adjudication should be considered as a first option rather than immediately proceeding to full arbitration. This aims to make sure smaller firms are not disadvantaged in a dispute resolution situation.

2.151. A suggested timescale is also set out for firms to get the resolution process up and running.

## Suggested tools and measures for APP scam prevention

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### *Feedback summary*

2.152. Generally, most respondents saw merit in the measures and tools provided in the Annex to the code (Q7). However, several noted that the Annex wasn't clear as to tools already existing and those which were in development. Similarly, not all tools apply to all channels or prove equally useful for different types of firm. Respondents suggested several additional consumer education and awareness measures.

### *The Steering Group's Response*

2.153. In developing the Practitioner Guide, it became clear that the Annex would be better placed within this document instead of with the Code itself. Therefore, the Annex with additional material and clarifications will now appear as part of the Practitioner Guide, along with a Glossary of terms. The measures and tools have been updated to reflect developments in those initiatives since the consultation. The intent is to keep both the Annex and Glossary as up-to-date as possible. Precisely how this will be done, and how often, will be taken forward with the governing body.

## Implementation of the code

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### *Feedback summary*

2.154. Many respondents had concerns over the timing of implementation. Some raised this as a competition issue, saying that the timing is too restrictive, and that this gives the banks on the Steering Group an advantage. But a more widespread concern is whether implementation in early 2019 is realistic – the Steering Group should not underestimate the challenges and the time required for firms to implement these standards given the changes IT, processes and systems required to support the aims of the code.

2.155. While the time to fully implement the code and the time to draw up a 'clear implementation timetable' are different, a number of respondents recommend a phased approach to implementation, including an industry plan to co-ordinate roll-out, taking into account different firms may take different lengths of time to be compliant, and the need to calibrate measures by size and type of firm.

### *The Steering Group's Response*

2.156. The Steering Group expects there to be increasingly wide PSP engagement with the code over 2019/20 with a phased approach to implementing it that is governed by the operational availability of its constituent parts. Some elements of the code will require firms to make changes to their systems and processes.

2.157. PSPs represented on the Steering Group have begun implementing the standards and have individually committed to following the standards from the implementation of the Code on 28 May.

2.158. As set out above, in the time leading up to 28 May, firms will have access to the wording of the Code, and will be able to build on their current work to bring about implementation of the Code. However, the Steering Group recognises that some PSPs will be able to move more quickly than others in bringing about their implementation plans. The Steering Group and the LSB will continue to work with PSPs to ensure as many as possible can give effect to the Code on its publication.

### 3. List of non-confidential respondents.

Action Scam (Buster Jack)	Handelsbanken
Age Cymru	HSBC bank
Age UK	HSBC UK bank
Atom bank	Lloyds Banking Group
Barclays	Lyddon Consulting
British Retail Consortium	Members of public 2-19
Building Societies Association	Moneysavingexpert
City of London Corporation Trading Standards and Chartered Trading Standards Institute	Nationwide Building Society
City of London Police	NTS Scams Team
Consumer Council	RBS
Daily Mail	Santander
Dr Steven Murdoch	Sunday Times
Dudley Trading Standards	Telegraph Money
EMA	Transferwise
Financial Services Consumer Panel	Transpact
Fraud Advisory Panel	UK Finance
	Victim Support
	Which?

## 4. Draft code consultation questions

### **Questions set out in the text**

- Q1 Do you agree with the standards set out in the Standards for Firms
- Q2 We welcome views on whether the provision that firms can consider whether compliance would have helped prevent the APP scam may result in unintended consequences - for example, whether this may enable firms to avoid reimbursing eligible victims
- Q3 We welcome views on how these provisions (R2(1)(a) and (b)) might apply in a scenario where none of the parties have met their levels of care.
- Q4. Do you agree with the steps customers should take to protect themselves?
- Q5 Do you agree with the suggested approach to customers vulnerable to APP scams? In particular, might there be unintended consequences to the approach? Are there sufficient incentives for firms to provide extra protections?
- Q6 Do you agree with the timeframe for notifying customers on the reimbursement decision?
- Q7 Please provide feedback on the measures and tools in the Annex to the code, and whether there any other measures or tools that should be included?
- Q8 Do you agree that all customers meeting their requisite level of care should be reimbursed, regardless of the actions of the firms involved?
- Q9 Do you agree that the sending firm should administer any such reimbursement, but should not be directly liable for the cost of the refund if it has met its own standard of care?
- Q10 What is your view on the merits of the funding options outlined in paragraph 4.6? What other funding options might the working group consider?
- Q11 How can firms and customers both demonstrate they have met the expectations and followed the standards in the code?
- Q12 Do you agree with the issues the evidential approach working group will consider?
- Q13 Do you recommend any other issues are considered by the evidential approach working group which are not set out above?
- Q14 How should vulnerability be evidenced in the APP scam assessment balancing customer privacy and care with the intent of evidential standards?
- Q15 Please provide views on which body would be appropriate to govern the code.
- Q16 Do you have any feedback on how changes to the code should be made?
- Q17 Is a simple 50:50 apportionment for shared blame between firms appropriate? If not, what is a sensible alternative?
- Q18 Would the ADR principles as adopted by Open Banking in section 7 of its Dispute Management System Code of Best Practice be an appropriate arbitration process for the code?
- Q19 What issues or risks do we need to consider when designing a dispute mechanism?

### **Additional Questions**

- Q20 What positive and/or negative impacts do you foresee for victims of APP scams as a result of the implementation of the code? How might the negative impacts be addressed?
- Q21 What would be the positive and/or negative impact on firms (or other parties) as a result of the implementation of the code? How might the negative impacts be addressed?
- Q22 Are there any unintended consequences of the code, particularly those which may impact on consumers, which we should be aware of?
- Q23 How should the effectiveness of the code be measured?