

Guidance

Authorised push
payment fraud
reimbursement

The Consumer Standard of
Caution Exception Guidance

December 2023

1 Consumer Standard of Caution Exception Guidance

1.1 On 7 June 2023, we published our final policy statement, *PS23/3: Fighting authorised push payment fraud: a new reimbursement requirement*. Within that policy statement, we introduced a general requirement that sending payment service providers (PSPs) should reimburse their consumers who had executed an authorised push payment (APP) subsequent to fraud or dishonesty. We also stated that there would be two exceptions to this general reimbursement obligation:

- Where the consumer seeking reimbursement has acted fraudulently
- Where the consumer has acted with gross negligence

We explained that the consumer standard of caution would not apply to consumers who are identified as being vulnerable to a particular APP scam.¹

1.2 The concept of negligence implies a breach of a standard of care. In our publication, *The consumer standard of caution exception* (December 2023), we have specified the standard of care that PSPs can expect of their consumers when the latter are sending a payment. Alongside that publication we are issuing this guidance under section 96 of the Financial Services (Banking Reform) Act 2013 to assist PSPs in operationalising our policy goals, and to set out how they should comply with their legal obligations.

1.3 The standard of care that PSPs can expect of their consumers when the latter are sending authorised push payments includes:

- **The requirement to have regard to interventions:** Consumers should have regard to specific, directed interventions made either by their sending PSP, or by a competent national authority. That intervention must offer a clear assessment of the probability that an intended payment is an APP scam payment.
- **The prompt reporting requirement:** Consumers should, upon learning or suspecting that they have fallen victim to an APP scam, report the matter promptly to their PSP and, in any event, not more than 13 months after the last relevant payment was authorised.
- **The information sharing requirement:** Consumers should respond to any reasonable and proportionate requests for information made by their PSP to help them assess a reimbursement claim. This includes requests under our 'stop the clock' rules.
- **The police reporting requirement:** Consumers should, after making a reimbursement claim, and upon request by their PSP, consent to the PSP reporting to the police on the consumer's behalf or request the consumer report directly the details of an APP scam to a competent national authority.

¹ PS23/3: Fighting authorised push payment fraud: a new reimbursement requirement
<https://www.psr.org.uk/publications/policy-statements/ps23-3-fighting-authorised-push-payment-fraud-a-new-reimbursement-requirement/> Chapter 2, Paragraph 2.12

- 1.4** These four requirements are the totality of the standard of care that all consumers, other than those identified as vulnerable, can be expected to meet. PSPs should not place, through their contractual terms and conditions with their consumers, any additional standards on the consumer beyond those listed above. Nor should they introduce any terms or conditions that have the effect of altering or qualifying the four requirements listed above.
- 1.5** Where a PSP can demonstrate that a consumer who has not been classed as vulnerable has, through gross negligence, not met one or more of these four requirements, the PSP is not obliged to reimburse the consumer.
- 1.6** The burden of proof falls exclusively upon the PSP to demonstrate that a consumer has acted with gross negligence. PSPs should not introduce, in their contractual agreements with their consumers, any terms and conditions that have the effect of shifting this burden of proof onto the consumer, or of requiring the consumer to disprove that they were grossly negligent.
- 1.7** Each reimbursement claim made by a consumer will need to be assessed on its individual merits to ascertain whether the consumer is eligible for reimbursement or has acted with gross negligence in not meeting the consumer standard of care. We interpret 'gross negligence' to be a higher standard than the standard of negligence under common law. The consumer needs to have shown a 'significant degree of carelessness.'

The requirement to have regard to interventions

- 1.8** PSPs can expect their consumers to have regard to specific, directed interventions raised either by their sending PSP, or by a competent national authority. Those interventions must clearly convey the PSP's, or competent national authority's, assessment of the probability that an intended payment is an APP scam payment. Only in circumstances where the PSP can demonstrate that a consumer who has not been classed as vulnerable has, as a result of gross negligence, not had regard to such interventions can a reimbursement claim be refused.
- 1.9** It will be up to payment firms to consider the approach they might take in creating tailored, specific interventions and to develop their own operational approaches and identify best practice.
- 1.10** Any intervention for the purpose of this exception should be bespoke. They must be consumer, scam, and transaction specific. They should not consist of 'boilerplate' written warnings. Providers should not refuse reimbursement claims on the basis that a consumer received vague, non-specific written warnings, or warnings that routinely accompany most or all transactions of a similar type. Where a PSP does choose to intervene with a written warning, this must be actively brought to the attention of the consumer. PSPs should not rely upon the availability of passive warnings, such as on public websites.
- 1.11** Although consumers should have regard to adequately constructed interventions, PSPs will need to demonstrate that the nature of intervention they have made in the consumer payment journey, whether before or after the consumer has issued a payment instruction, is bespoke to the specific payment that individual consumer is seeking to execute.

- 1.12** Having regard to interventions implies the consumer has taken account of the intervention and factored in its relevance, and/or weight, before making a decision.
- 1.13** Where a consumer chooses to proceed with a transaction after an intervention by their PSP, and that transaction turns out to be a scam, the consumer should not *automatically* be deemed to have been grossly negligent. Any assessment of the degree of negligence that may be deemed to rest with the consumer should include consideration of all relevant factors including the following:
- the specificity and nature of the intervention made by their sending PSP
 - the degree of certainty any intervention, whether written or otherwise, conveys that a prospective transaction is an APP scam
 - the complexity of the scam to which the consumer has become victim, including whether the victim has been subject to any degree of social engineering, or was otherwise in thrall of a scammer
 - any claims history from the consumer suggesting a propensity to fall repeatedly for similar types of scams
- 1.14** PSPs should consider that, where a consumer falls subject to repeated APP scams of a similar kind, this may be indicative of vulnerability. PSPs should take care to ensure that they do not mistakenly categorise vulnerability as gross negligence in such circumstances.
- 1.15** The PSP should also consider whether they should have paused or otherwise prevented a payment from being executed. Where a PSP personally engages with a consumer to help assess the trustworthiness of a prospective payment, this does not mean the PSP is able to transfer responsibility for assessing transaction risk entirely onto the consumer.
- 1.16** Regulation 82 of the Payment Services Regulation 2017 also gives PSPs the ability to refuse to execute a payment transaction where it would be unlawful, provided that a PSP's framework contract allows for this. We note that it is common practice for PSPs to refuse transactions on this basis.

The prompt reporting requirement

- 1.17** Consumers who learn or suspect that they have fallen victim to an APP scam can be expected to promptly notify this to their PSP. This is to support repatriation efforts and to take swift action on the recipient account.
- 1.18** The PSP can only refuse a reimbursement request where the consumer, as a result of gross negligence does not promptly notify the PSP. This requirement does not apply to consumers who are identified as vulnerable. What constitutes a prompt notification will depend upon the circumstances of each individual case, including the point at which the consumer became aware that they were a victim of an APP scam. Where PSPs suspect that a consumer has not reported promptly, they should take steps to understand the circumstances, including whether there were other reasons for the delay. For example, where a delay to reporting arises because the consumer reported directly to the police does not equate to gross negligence.
- 1.19** PSPs should provide accessible, non-discriminatory means for consumers to notify them of suspected or actual APP scams.

- 1.20** When assessing whether a consumer has notified them promptly, PSPs should not rely on any delay in notification from a consumer that has been caused by the PSP's own reporting systems.

The information sharing requirement

- 1.21** PSPs can expect their consumers to respond to any reasonable and proportionate requests for information from the provider that are needed to assess a claim for reimbursement. This includes requests made under the 'stop the clock' provisions of our June policy statement. Only in circumstances where a consumer (who has not been classed as vulnerable) has, as a result of gross negligence, not responded, or not responded adequately, to such requests may a PSP refuse a reimbursement claim.
- 1.22** PSPs should ensure that there is adequate opportunity for consumers to supply sufficient information to fully assess a reimbursement claim at the point their claim is initiated.
- 1.23** Any information requests would need to be strictly limited to essential information needed for the PSP to establish either whether the consumer has been subjected to an APP scam, or for the purposes permitted under our 'stop the clock' provisions. All such requests should be proportionate to the value and complexity of a claim, taking into account any claims history of the consumer.
- 1.24** PSPs should not use information requests to deter or frustrate reimbursement claims. They should not embark upon speculative requests for information.
- 1.25** Where a PSP either seeks information that, judged objectively, is not necessary to evaluate the claim, or where the information sought is disproportionate to the value or complexity of the claim, consumers would not be expected to comply with such requests.
- 1.26** A PSP may make an information request which is proportionate, but where there are emotional, psychological or other complexities which result in the consumer providing no, or inadequate, disclosure in response. In such a scenario, the consumer may have complicated, circumstantial reasons for not wishing to make some disclosures to their PSP. In such circumstances, we do not consider that reluctance or unwillingness by a consumer to respond to information requests would, in and of itself, necessarily constitute valid grounds for refusing a reimbursement claim. Nor would it automatically equate to gross negligence. PSPs should respond to consumers in a sympathetic way and take time to listen, to encourage consumers to report and provide information that will support the PSP's assessment of their claim.
- 1.27** PSPs should consider that, where a consumer is unable or unwilling to respond, or adequately respond, to an information request by their provider, this may be indicative of vulnerability. Providers should take care to ensure that they do not mistakenly categorise vulnerability as gross negligence in such circumstances.
- 1.28** A consumer who chooses to rely upon a third-party claims management company to initiate, and manage, a reimbursement claim can be expected to meet the same disclosure obligations as a consumer who raises a claim directly with their PSP.
- 1.29** PSPs should not impose unreasonably short time frames for consumers to comply with information sharing requests.

The Police Reporting Requirement

- 1.30** After a consumer has submitted a reimbursement claim, the consumer's PSP may seek the consumer's agreement for them to report the details of an APP scam directly to a competent national authority.² Reporting to a competent national authority should be expected and a refusal to consent can be a barrier to reimbursement.
- 1.31** We recognise that there may be circumstances in which consumers may be reluctant to give their PSP consent to report to a competent national authority. In such circumstances, we would expect PSPs to work with consumers to encourage them to consent.
- 1.32** Where the consumer continues to refuse, the PSP should not automatically consider this gross negligence. PSPs must consider the circumstances surrounding the consumer's refusal and their claim, including whether the consumer is vulnerable. There may also be other factors that may influence the consumer's ability to report, including fear, for example, where the consumer has been subject to a particularly sophisticated scam and, or where the consumer was subject to manipulation.
- 1.33** Where there is no evidence of vulnerability and the consumer refuses to consent to their PSP reporting the scam to a competent national authority, then the PSP can take this into consideration when deciding whether the consumer should be reimbursed. This includes considering whether the consumer is being deliberately obstructive and the specific circumstances of the scam.

² Alternatively, the consumer may have already reported to competent national authority in advance of reporting the APP scam to the PSP. Or a PSP may request the consumer to report the competent national authority directly.

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