

Specific Direction 19 imposing certain responsibilities on the Faster Payments Operator in respect of the Faster Payments Scheme APP scam reimbursement rules

Specific Direction 19 (July 2024)
(APP scams Faster Payments
Operator monitoring)

July 2024

Specific Direction 19 (July 2024): APP scams Faster Payments Operator monitoring

1 Recitals

Whereas:

- 1.1** Authorised push payment (APP) scams happen when a person uses a fraudulent or dishonest course of conduct to manipulate, deceive or persuade someone into sending money to an account outside of their control.
- 1.2** The Financial Services and Markets Act 2023 (FSMA 2023) places a statutory obligation on the Payment Systems Regulator (PSR) to introduce a reimbursement requirement for APP scam payments made using the Faster Payments Scheme by the end of February 2024.
- 1.3** The PSR has decided to implement a policy that requires APP scam victims to be reimbursed by the sending payment service provider (PSP). This is known as the FPS reimbursement requirement.
- 1.4** The PSR has decided to implement this policy by requiring the operator of the Faster Payments Scheme to put the FPS reimbursement requirement into the Faster Payments Scheme rules. The resulting rules will be known as the FPS reimbursement rules.
- 1.5** The PSR has also decided to direct participants in the Faster Payments Scheme to comply with the FPS reimbursement rules. This is to ensure that these rules apply to both members and non-members of the Faster Payments Scheme. This places all participants on an equal footing as far as possible, and ensures their consumers are treated the same whether or not their PSP is a member.
- 1.6** The PSR issued the original version of Specific Direction 19 on 19 December 2023. Following consultation, this version of Specific Direction 19 (July 2024) revokes and replaces that version, in order to make the amendments set out in PSR Policy Statement CP24/3: The FPS APP scams reimbursement requirement: compliance and monitoring. These amendments relate to the Faster Payments Operator's compliance monitoring regime and the use which it may make of information obtained as part of its compliance monitoring. The amendments also require the Faster Payments Operator to make arrangements for the registration of directed PSPs and to inform directed PSPs and the PSR of unavailability of its reimbursement claims management system.

- 1.7** This Specific Direction 19 (July 2024) is an amended and consolidated version of the original Specific Direction 19. The Schedule of Key Changes to this specific direction sets out the deletions, insertions and amendments to the provisions and definitions. For transparency the PSR has also published a comparite alongside this consolidated direction.

2 Powers exercised and purpose

- 2.1** The Faster Payments Scheme is designated by the Treasury as a regulated payment system under section 43 of Financial Services (Banking Reform) Act 2013 (FSBRA) for the purposes of Part 5 of FSBRA.
- 2.2** The PSR gives this specific direction in accordance with section 54(1) and (2) of FSBRA. In accordance with section 54(3)(c), this direction applies to a specified person.
- 2.3** Pay.UK is a payment system operator with responsibility for managing and operating the Faster Payments Scheme. This direction refers to the operator of the Faster Payments Scheme as the 'Faster Payments Operator'.
- 2.4** In making its decision to use its section 54 powers, the PSR had regard to section 62 of FSBRA (Duty to consider exercise of powers under the Competition Act 1998).
- 2.5** The PSR gives this specific direction in order to require the Faster Payments Operator to develop and implement an effective regime to monitor PSPs' compliance with the FPS reimbursement rules.
- 2.6** The PSR also gives this amended and consolidated specific direction for the reasons and purpose set out in its policy statement PS24/3, The Faster Payments APP scams reimbursement requirement: compliance and monitoring (July 2024).

Direction

NOW the PSR gives the following specific direction to the Faster Payments Operator:

3 Overall specific responsibilities of the Faster Payments Operator

- 3.1** Under Specific Requirement 1 (July 2024), the Faster Payments Operator must develop, adopt, amend, and implement certain rules forming the FPS reimbursement rules. This specific direction gives it additional responsibilities related to the FPS reimbursement rules.
- 3.2** In particular, the Faster Payments Operator must:
- a. develop and implement arrangements to monitor directed PSPs' compliance with the FPS reimbursement rules effectively
 - b. monitor the nature, extent and effectiveness of directed PSPs' compliance with the FPS reimbursement rules
 - c. take steps to improve directed PSPs' compliance where it has the power to do so
 - d. gather data and information from directed PSPs to monitor compliance
 - e. report to the PSR on the nature, extent and effectiveness of directed PSPs' compliance with the FPS reimbursement rules, supported by the data it has gathered from the PSPs
- 3.3** The Faster Payments Operator must meet the requirements set out in sections 4 to 8 of this specific direction, and follow any relevant guidance that the PSR issues.
- 3.4** The Faster Payments Operator's obligations under this direction are without prejudice to other obligations the PSR has imposed or will impose on the Faster Payments Operator through any other directions or requirements it issues.
- 3.5** This direction should be read alongside, and interpreted consistently with, any other relevant directions or requirements issued under sections 54 or 55 of FSBRA.

4 Compliance monitoring

- 4.1** The Faster Payments Operator must prepare proposals (the 'compliance monitoring proposals') for an effective regime to monitor directed PSPs' compliance with the FPS reimbursement rules, whether they are members or non-members of the Faster Payments Scheme.
- 4.2** An effective regime means that the Faster Payments Operator must, on an ongoing basis:
- a. monitor how, and how far, directed PSPs comply with the FPS reimbursement rules
 - b. have effective arrangements to check and verify that directed PSPs are consistently complying with the FPS reimbursement rules
 - c. have an effective way to identify actual or potential non-compliance
 - d. address any breaches of the FPS reimbursement rules appropriately, in line with its compliance management procedures
 - e. provide the PSR with relevant data and information to inform the PSR's approach to compliance monitoring
- 4.3** The Faster Payments Operator must give Faster Payments Scheme participants, whether they are members or not of the Faster Payments Scheme, reasonable opportunities to make representations to it about its compliance monitoring proposals. The Faster Payments Operator must consider these representations, and take them into account.
- 4.4** The Faster Payments Operator must submit its final compliance monitoring proposals for the PSR to approve by **5 April 2024**. The Faster Payments Operator must have considered representations submitted to it before this date.
- 4.5** The Faster Payments Operator must formally publish its approved compliance monitoring regime by **7 June 2024**.
- 4.6** The compliance monitoring regime must come into force on **7 October 2024**.
- 4.7** The Faster Payments Operator may propose changes to the compliance monitoring regime at any time but may not make any changes until such times as the PSR has approved those changes in writing, approval for which will not be unreasonably withheld.

5 Data and information collection

5.1 The Faster Payments Operator's compliance monitoring proposals must include details of:

1. the data it will collect and review from PSPs
2. how it will collect this data, including whether it will use a template or an automated process
3. how frequently it will collect data
4. how it proposes to analyse the data it collects
5. how it will use this data to monitor and assess PSPs' compliance with the FPS reimbursement rules
6. how it will share this data with the PSR

5.2 The Faster Payments Operator's proposals must include industry guidance to PSPs, which will include definitions of the data it will collect.

5.3 The Faster Payments Operator must collect this data from all directed PSPs, whether they are members or non-members of the Faster Payments Scheme.

5.4 By 31 July 2024 the Faster Payments Operator must include provision in the Faster Payments Scheme rules for the method by which sending PSPs must report information to the Faster Payments Operator as required under sections 8 and 9 of Specific Direction 20 (July 2024) and the PSR's compliance data reporting standards.

6 Permitted use of compliance information

- 6.1** For the purposes of this direction, FPS reimbursement information is any information which the Faster Payments Operator has access to as a result of Section 8 (except for paragraphs 8.1 and 8.2) and/or Section 9 of Specific Direction 20 (July 2024) and/or the PSR's compliance data reporting standards.
- 6.2** For the purposes of this direction, confidential information is FPS reimbursement information, which:
- a. relates to the business or affairs of any person, and
 - b. is not in the public domain, and
 - c. is not in the form of a summary or collection of information that is framed in such a way that it is not possible to ascertain from it information relating to any particular person
- 6.3** The Faster Payments Operator may not:
- a. use FPS reimbursement information for any purpose other than undertaking its responsibilities under this specific direction
 - b. disclose confidential information other than to the PSR, subject to paragraph 6.4
- 6.4** Paragraph 6.3 of this direction does not prevent confidential information being disclosed to the PSR either informally or as a result of a regulatory requirement, or being disclosed to another party in fulfilment of:
- a. a statutory obligation that takes precedence
 - b. an obligation to disclose to another regulator
 - c. a court order
- 6.5** Where possible and practicable, prior to disclosing confidential information under paragraphs 6.3 and 6.4 the Faster Payments Operator must give the person to whom the confidential information relates reasonable notice of the intention to disclose the confidential information together with the reasons, and then must afford an opportunity for that person to disclose the confidential information. Where the confidential information relates to more than one person, the Faster Payments Operator must give each person notice and the opportunity to disclose the information which relates to them.
- 6.6** The Faster Payments Operator may set a timeframe within which the person to whom the confidential information relates must either disclose or decide not to disclose confidential information under paragraph 6.5. This timeframe must be reasonable, taking into account the specific circumstances.

- 6.7** Where the person to whom the confidential information relates does not respond to the opportunity given to it by the Faster Payments Operator under paragraph 6.5 within the timeframe set under paragraph 6.6, the Faster Payments Operator may disclose the confidential information and must notify the person that they have done so and of the reasons for doing so without delay.

7 Registration

- 7.1** The Faster Payments Operator must make arrangements to ensure that all directed PSPs are able to register with the Faster Payments Operator as required by paragraphs 8.1 to 8.3 of Specific Direction 20.
- 7.2** The Faster Payments Operator must comply with paragraph 7.1 as soon as practicable and in any event by 31 July 2024 at the latest.

8 The reimbursement claim management system (RCMS)

- 8.1** In the event that the RCMS is unavailable for at least the specified period, the Faster Payments Operator must promptly:
- a. notify all directed PSPs and the PSR that the RCMS is unavailable, and
 - b. notify all directed PSPs and the PSR when the RCMS is available again
- 8.2** The 'specified period' referred to in paragraph 8.1 shall be set by the Faster Payments Operator.

9 Revocation of original Specific Direction 19

- 9.1** The PSR's original Specific Direction 19, given on 19 December 2023, is revoked immediately on the coming into force of this specific direction. It is replaced by this Specific Direction 19 (July 2024), which is a consolidated text including original provisions and amendments as set out in the Schedule of Key Changes.

10 Commencement and duration

- 10.1** This specific direction, consolidating changes made to the original Specific Direction 19 and set out in the Schedule of Key Changes, comes into force on 12 July 2024.
- 10.2** Those provisions contained in the original Specific Direction 19 which came into force on 19 December 2023 and were not amended or revoked by this consolidated Specific Direction 19 (July 2024) continue in force until such time as they are varied or revoked.

- 10.3** This specific direction shall continue in force until such time as it is varied or revoked by the PSR.

11 Citation

- 11.1** This specific direction may be cited as Specific Direction 19 (July 2024) (APP scams Faster Payments Operator monitoring).

12 Interpretation

- 12.1** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 12.2** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 12.3** References to any statute or statutory provisions shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 12.4** The following definitions apply in this specific direction:

- **APP scam (authorised push payment scam)** means where a person uses a fraudulent or dishonest act or course of conduct to manipulate, deceive or persuade a consumer into transferring funds from the consumer's relevant account to a relevant account not controlled by the consumer, where:
 - the recipient is not who the consumer intended to pay, or
 - the payment is not for the purpose the consumer intended

For the avoidance of doubt, if the consumer is party to the fraud or dishonesty, this is not an APP scam for the purpose of the FPS reimbursement requirement or the FPS reimbursement rules.

- **Authorisation**, for the purpose of this direction, in the context of a payment means that the payer has given their explicit consent to:
 - the execution of the payment transaction, or
 - the execution of a series of payment transactions of which that payment transaction forms part
- **Compliance data reporting standards** means the document produced and published by the PSR, as may be amended from time to time, which, sets requirements for the specific information which PSPs must collate, retain and provide to the Faster

Payments operator pursuant to obligations imposed by Specific Direction 20 and to enable it to fulfil its requirements under this specific direction.

- **Compliance monitoring proposals** means the proposals prepared by the Faster Payments operator pursuant to this direction, describing the regime it plans to use to monitor PSPs' compliance with the FPS reimbursement rules, whether they are members or non-members of the Faster Payments Scheme.
- **Confidential information** means FPS reimbursement information, which:
 - relates to the business or affairs of any person, and
 - is not in the public domain, and
 - is not in the form of a summary or collection of information that is framed in such a way that it is not possible to ascertain from it information relating to any particular business or person
- **Consumer**, for the purposes of this direction, refers to service users of PSPs. These are individuals, microenterprises (an enterprise that employs fewer than ten persons and that has either an annual turnover or annual balance sheet total that does not exceed €2 million) and charities (a body whose annual income is less than £1 million per year and is a charity as defined by the Charities Act 2011, Charities and Trustees Investment (Scotland) Act 2005 or the Charities Act (Northern Ireland) 2008).
- **Directed PSP** means a PSP participating in the Faster Payments Scheme to which Specific Direction 20 (Faster Payments APP scams reimbursement requirement) applies.
- **Faster Payments Scheme** or **FPS** means the Faster Payments Scheme as a regulated payment system designated by Order from the Treasury on 1 April 2015.
- **FPS APP scam payment**, for the purposes of this direction, means an APP, authorised by a victim as part of an APP scam, that has all the following features:
 1. It is executed through the Faster Payments Scheme.
 2. It is authorised by a PSP's consumer.
 3. It is executed by that PSP in the UK.
 4. The payment is received in a relevant account in the UK that is not controlled by the consumer.
 5. The payment is not to the recipient the consumer intended or is not for the purpose the consumer intended.
- **FPS reimbursement directory** means the list of directed PSPs and their contact details which the Faster Payments operator maintains for the purposes of managing FPS APP scam claims.

- **FPS reimbursement information** means any information which the Faster Payments operator has access to as a result of Section 8, Section 9 of Specific Direction 20 and/or the PSR's compliance data reporting standards.
- **FPS reimbursement requirement** means the obligation conferred on directed PSPs under paragraph 3.1 of Specific Direction 20 (Faster Payments APP scams reimbursement requirement).
- **FPS reimbursement rules** means any rules created as a result of Specific Requirement 1 (Faster Payments APP scam reimbursement rules) imposed on the Faster Payments operator to create and implement rules on PSPs reimbursing their consumers when they fall victim to APP scams.
- **Faster Payments Scheme rules** means all rules created by the Faster Payments operator which relate to and/or govern the access to and/or participation in the Faster Payments Scheme by PSPs (whether members or non-members).
- **Information** for the purposes of this direction includes any information or data which may be required by either the PSR for the purposes of monitoring compliance with specific direction 20 or any other relevant regulatory requirement or by the Faster Payments operator in connection with its responsibilities under this specific direction.
- **Member of the Faster Payments Scheme** means a directly connected settling or directly connected non-settling participant.
- **Operator** has the same meaning as under section 42(3) of FSBRA in relation to the Faster Payments Scheme. The term Faster Payments operator is to be understood accordingly.
- **Participant** has the same meaning as under section of 42(2) of FSBRA.
- **Payment system** has the same meaning as under section 41(1) of FSBRA.
- **Payment Systems Regulator (PSR)** is the body corporate established under section 40 of FSBRA.
- **Payment service provider (PSP)** has the same meaning as under section 42(5) of FSBRA.
- **Register** means providing the information specified by the Faster Payments Operator in the Faster Payments rules as required by paragraphs 8.1 and 8.2 of Specific Direction 20 (July 2024), which may be used to support the creation and maintenance of the FPS reimbursement directory.
- **Reimbursement claims management system (RCMS)** means the claims management, communication and information reporting IT system which will be provided by the Faster Payments operator for FPS participants to use to communicate, manage claims and report information for FPS APP scam claims.

- **Specified period** means the period to be set by the Faster Payments operator under paragraph 7.4 of this direction, following which the Faster Payments operator must promptly notify directed PSPs of the unavailability of the RCMS under paragraph 7.2.
- **Service user** means a person who uses a service provided by a payment system and is not a participant in that payment system.
- **Victim** means a consumer who has made one or more FPS APP scam payments.
- **Vulnerable consumer** has the same meaning as when the term is used by the FCA in its *Guidance for firms on the fair treatment of vulnerable customers*¹, namely that a vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care.

Made on 12 July 2024

David Geale

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¹ www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers

Schedule of Key Changes

- New recitals 1.6 and 1.7 inserted
- New paragraph 2.6 inserted
- Paragraph 4.7 deleted: *The Faster Payments Scheme operator may propose changes to the regime once it is in force. It must submit any proposals to the PSR for approval.*
- New paragraph 4.7 inserted: *The Faster Payments Operator may propose changes to the compliance monitoring regime at any time but may not make any changes until such times as the PSR has approved those changes in writing, approval for which will not be unreasonably withheld.*
- New paragraph 5.4 inserted: *By 31 July 2024 the Faster Payments Operator must include provision in the Faster Payments Scheme rules for the method by which sending PSPs must report information to the Faster Payments Operator as required under sections 8 and 9 of Specific Direction 20 (July 2024) and the PSR's compliance data reporting standards.*
- New Section 6 inserted
- New Section 7 inserted
- New Section 8 inserted
- New Section 9 inserted
- Original Section 6 now Section 10
- Section 10 amended as follows:
 - Original paragraph 6.1 (now paragraph 10.1) deleted: *This specific direction comes into force on 19 December 2023*
 - New paragraph 10.1 inserted: *This specific direction, consolidating changes made to the original Specific Direction 19 and set out in the Schedule of Key Changes, comes into force on 12 July 2024.*
 - New paragraph 10.2 inserted: *Those provisions contained in the original Specific Direction 19 which came into force on 19 December 2023 and were not amended or revoked by this consolidated Specific Direction 19 (July 2024) continue in force until such time as they are varied or revoked.*
 - Original paragraph 6.2 now paragraph 10.3
- Citation amended to Specific Direction 20 (July 2024): APP Scams Faster Payments Operator Monitoring

- New definitions inserted:
 - **Compliance data reporting standards** means the document produced and published by the PSR, as may be amended from time to time, which, sets requirements for the specific information which PSPs must collate, retain and provide to the Faster Payments operator pursuant to obligations imposed by Specific Direction 20 and to enable it to fulfil its requirements under this specific direction.
 - **Confidential information** means FPS reimbursement information, which:
 - relates to the business or affairs of any person, and
 - is not in the public domain, and
 - is not in the form of a summary or collection of information that is framed in such a way that it is not possible to ascertain from it information relating to any particular business or person
 - **FPS reimbursement directory** means the list of directed PSPs and their contact details which the Faster Payments operator maintains for the purposes of managing FPS APP scam claims.
 - **FPS reimbursement information** means any information which the Faster Payments operator has access to as a result of Section 8, Section 9 of Specific Direction 20 and/or the PSR’s compliance data reporting standards.
 - **Faster Payments Scheme rules** means all rules created by the Faster Payments operator which relate to and/or govern the access to and/or participation in the Faster Payments Scheme by PSPs (whether members or non-members).
 - **Information** for the purposes of this direction includes any information or data which may be required by either the PSR for the purposes of monitoring compliance with specific direction 20 or any other relevant regulatory requirement or by the Faster Payments operator in connection with its responsibilities under this specific direction
 - **Register** means providing the information specified by the Faster Payments Operator in the Faster Payments rules, which may be used to support the creation and maintenance of the FPS reimbursement directory.
 - **Reimbursement claims management system (RCMS)** means the claims management, communication and information reporting IT system which will be provided by the Faster Payments operator for FPS participants to use to communicate, manage claims and report information for FPS APP scam claims.
 - **Specified period** means the period to be set by the Faster Payments operator under paragraph 7.4 of this direction, following which the Faster Payments operator must promptly notify directed PSPs of the unavailability of the RCMS under paragraph 7.2.

Status of requirements

Requirements give rise to binding obligations. Breaching a requirement is a compliance failure which makes a party liable to regulatory sanction.

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