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# Consultation

## APP Scams Steering Group: Draft Contingent Reimbursement Model Code

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purposes or where the prior consent of Age UK has been obtained for influencing or developing policy and practice.

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- R2(1)(d) should be removed or amended so that it is clear that it only applies to purchase fraud. It should be further amended so that the exact steps a customer is expected to take are spelt out.
- We fully support the approach taken to describing and protecting vulnerable customers.
- It is essential that customers who have met their level of care are reimbursed.
- APP fraud must always involve either failures in account opening or mis-use of existing accounts in such a way that can never be the fault of the victim. It is therefore completely unacceptable that customers who have met the relevant level of care

to do and see more good practice develop, especially as regards the receiving Firm. We return to this in the questions on governance.

The adequacy of the standard for firms will hinge on decisions around re-imbusement in a no blame/no blame scenario. If a consumer is reimbursed through Firm contributions in this situation then the exact standards on Firms are less critical for consumers – as Firms should in any case be incentivised to take steps to reduce APP fraud. If, however, consumers who have met their requisite level of care can still be left unprotected or are expected to fund no blame cases then it would be necessary to look at the standards for firms much more carefully.

**Sending Firm – specific comments**

**SF1(1) (a)** – It is unclear how good these analytics need to be. Also, how will it be determined whether it is ‘appropriate’ to incorporate the use of fraud data and typologies? As the Code is used more, detail on the standard of this analytics should be developed. It would be helpful for the Code to provide some signal to make clear that these should be of a high standard.

**SF1(2)** – This should apply ‘Where Firms identify, *or ought reasonably have identified*, APP fraud risk....’. The current provision could inadvertently incentivise Firms NOT to identify an APP fraud risk. If this provision is not changed then it is even more important that SF1(1)(a) is clarified.

**SF1(2)(b)** - Should be amended to read ‘where the Firm identifies, *or ought reasonably*

verify contact details elsewhere before contacting them, and to neve

## Receiving Firm

Our response to this section depends on what is considered 'reasonable', as most of the steps required for the receiving Firm are qualified in this way. It is difficult for us to comment on this without a much greater understanding of how it is possible for a fraudster to gain access to the banking system.

However, we note that SF2 largely reflects existing law and regulation. As we assume that Firms are largely complying with these longstanding requirements and yet fraudsters still gain access to the banking system there is clearly more that needs to be done by receiving Firms to reduce fraud. Indeed, we are aware that there is a significant range of good practice within the industry that is not included in SF2.

Given that the receiving account is the lifeblood of APP fraud and that its existence must always involve either failures in account opening or mis-use of existing accounts in such a way that can never be the fault of the victim we see a strong argument to raise expectations of Firms in this area. We suggest that if it is not possible for SF2 to be significantly improved prior to publication of the final code then this should be a priority area for review by the governance body.

**SF2(3)** – Same comments as for SF1(1)(a) and (b).

**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.**

Whilst we understand the desire for a provision along these lines in order to assist in apportioning responsibility between Firms we are concerned that there may be some unintended consequences from the current position and wording of the provision.

*“The assessment of whether a Firm has met a standard or not should involve consideration of whether compliance*

they have taken the steps set out in the standard, not on the basis of hypothetical assumptions. This may be important in terms of governance and reporting and will also be important in terms of communication to customers.

We assume that, unless the case is taken to the Financial Ombudsman Service (**FOS**), the organisation making the assessment will be the Firm itself. This poses clear potential problems. If a Firm determines that it did not fully comply with the Code but that the non-compliance was not material then it should inform the customer of this decision, not that 'the Firm has met the required standard'.

The provision is very wide and yet the circumstances in which non-compliance of part of the standard could be immaterial to the success of the fraud seem limited. this provision should therefore be more narrowly drawn and clearer about the harm it is seeking to prevent.

**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?**

We are confused by this question as the provisions seem to operate by assuming that the Sending Firm has met its level of care. If it has not, then on our reading of the Code R2(1)(a) and (b) would not be relevant.

We would be concerned if this question implied a different interpretation of the Code. If there is an intention to include additional requirements on Customers who have not received Effective Warnings/received a clear negative Confirmation of Payee result



experience. Older people can suffer severe, in some cases life-changing, financial and health impacts. There are cases of people losing their life savings, which they may not have time to rebuild if they have retired from work. Some people lose their home or go bankrupt as a result. Older people's physical health can deteriorate quickly after being a victim of crime, and they can suffer severe psychological health impacts such as stress and depression. They may also lose their independence as a result.

Even a Customer who would not usually be considered vulnerable may well fall for an APP fraud where sophisticated grooming or other well-



**R2(1)(d)** needs to be removed or clarified



Customers should not be expected to directly pay for the cost of reimbursement. This would seriously limit the incentives on firms to reduce fraud. Reasons for this include:

- Firms are better placed than customers to spot and stop fraud and also to absorb the losses (e.g. through insurance)
- Ultimately the Firms are, by way of business, providing customers with an infrastructure which is fundamentally, if understandably in some cases, insecure
- The payments landscape is increasingly driving customers towards faster payments, increasing the likelihood that customers will be at risk of APP fraud

Customers receive protection in the card and direct debit space without additional cost direct to themselves and it would make no sense for them to have to pay when using faster payments. Whilst we understand that organisations other than payment firms have an impact on APP fraud we do not accept that this is a reason to leave customers unprotected or ultimately make customers pay.

**Q11 How can firms and customers both demonstrate they have met the expectations and followed the standards in the code?**

Customers should be expected to cooperate with a Firm's enquiries to establish whether they are entitled to reimbursement but we note that the code currently places the requirement to demonstrate evidence on the Firm. We fully agree with this approach.



and ultimately requiring Firms to leave the Code if they have signed but not complied. Consumers should be able to choose to bank with Firms who have signed up to the Code and this advantage will be limited without effective governance.

**Q16 Do you have any feedback on how changes to the code should be made?**

We strongly agree with the suggestion that there should be a full review after a year and also that changes should be permitted on an ad hoc basis.

**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?**

The impacts of fraud can be shattering. Some older people lose their life savings, which they worked decades for and which were meant to provide for their retirement. Even relatively small losses can be devastating to the victim. In our polling, around 1 in 8 of those who lost money (13%) lost more than £1,000, while a quarter (23%) lost less than £100. In the case of older people in vulnerable circumstances, the impacts can go beyond money, affecting their physical and mental health too. This can even mean that someone who was living at home independently is no longer able to. On top of the personal harm caused, this increases demand on under-pressure public services like the NHS and ssur.2 (y)-0.5 (,

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