

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

Specific Direction 19
(APP scams Faster Payments Scheme
operator monitoring)

December 2023

Specific Direction 19: APP scams Faster Payments Scheme 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.

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 Scheme 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 to require the Faster Payments Scheme operator to develop and implement an effective regime to monitor PSPs' compliance with the FPS reimbursement rules.

Direction

NOW the PSR gives the following specific direction to the Faster Payments Scheme operator:

3 Overall specific responsibilities of the Faster Payments Scheme operator

- 3.1** Under Specific Requirement 1, the Faster Payments Scheme 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 Scheme 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 Scheme operator must meet the requirements set out in sections 4 and 5 of this specific direction, and follow any relevant guidance that the PSR issues.
- 3.4** The Faster Payments Scheme operator's obligations under this direction are without prejudice to other obligations the PSR has imposed or will impose on the Faster Payments Scheme 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 Scheme 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 Scheme 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 Scheme 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 Scheme operator must consider these representations, and take them into account.
- 4.4** The Faster Payments Scheme operator must submit its final compliance monitoring proposals for the PSR to approve by **5 April 2024**. The Faster Payments Scheme operator must have considered representations submitted to it before this date.
- 4.5** The Faster Payments Scheme 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 Scheme operator may propose changes to the regime once it is in force. It must submit any proposals to the PSR for approval.

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 Payment 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.

6 Commencement and duration

- 6.1** This specific direction comes into force on 19 December 2023.
- 6.2** This specific direction shall continue in force until such time as it is varied or revoked by the PSR.

7 Citation

- 7.1** This specific direction may be cited as Specific Direction 19 (APP scams Faster Payments operator monitoring).

8 Interpretation

- 8.1** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 8.2** 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.
- 8.3** 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.
- 8.4** 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 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.
- **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 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 Scheme operator to create and implement rules on PSPs reimbursing their consumers when they fall victim to APP scams.
- **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.
- **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 19 December 2023

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

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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