Chartered Trading Standards Institute (CTSI) response to PSR consultation: Proposed reduction in PSP liability for APP fraud losses.

Response sent to – appscams@psr.org.uk

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by the expertise of CTSI members.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection.

At CTSI, and through the Trading Standards profession, we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices. We provide information, guidance and develop evidence-based policies and campaigns to support local and national stakeholders including central and devolved governments. CTSI also provides the secretariat to the All-Party Parliamentary Group on Consumer Protection and campaigns on range of topics including product safety issues. CTSI is responsible for business advice and education in the area of Trading Standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI is also contracted to support the Approved Codes Scheme which was established to give consumers greater confidence when they buy from members of the approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's Approved Code.

CTSI run training and development events for both the Trading Standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

Supporting information:

The below response to the consultation has been complied by Dr Tim Day Chartered Trading Standards Institute's Lead Officer for Doorstep Crime, Scams and Consumer Vulnerability.

I am a Lead Officer for the Chartered Trading Standards Institute in the areas of Doorstep Crime, Scams and Consumer Vulnerability, a Chartered Trading Standards Practitioner and a practicing Senior Trading Standards Officer who has specialised in fraud investigation for over 15 years. I hold a Professional Doctorate in Criminal Justice Studies from the University of Portsmouth's Institute for Criminals Justice Studies, awarded for my research into white collar crime, fraud and doorstep criminality and have published peer reviewed articles and book chapters in the area of fraud, the response it receives and the harm it causes.

I am somewhat concerned at the proposal to reduce PSP liability for APP fraud losses, as well as the late proposal, and the limited it leaves for the consultation response.

The proposal to reduce PSP liability to £85,000 will be confusing for consumers, many of whom won't know they have the additional option of a complaint to the Ombudsman beyond the proposed £85,000 limit, reducing protection as a result.

Even those that are aware of the Ombudsman route may not have the energy or strength to pursue it, following the trauma of the fraud victimisation. Those that do will experience further secondary victimisation/re-victimisation in having to re-live the traumatic experience a further time in order to claim via the Ombudsman.

It also seems clear that, provided customers have been neither grossly negligent nor complicit in an APP fraud beyond the proposed new limit (in which case the PSP wouldn't be liable for reimbursement anyway), that the PSP will be found against by the Ombudsman in the vast majority of cases in question. PSPs are legally required to identify and stop financial crime, quite apart from the soon-to-be-imposed APP rules; therefore if they fail to identify or halt the APP fraud, it stands to reason they've either failed to follow their procedures or their procedures and controls aren't sufficiently robust. Requiring the victim to jump through the hoop of the additional claim to the Ombudsman to be reimbursed substantial losses therefore seems cruel and unnecessary and will only result in substantial delays to proper reimbursement for those that are able to go through the process, and some victims losing out due to attrition, meaning PSPs thereby avoiding liability for reimbursement that would otherwise be required.

There is also an additional concern that emerges with the proposed lower limit and the advice that the Ombudsman can still rule in matters that exceed it. Namely, the current situation in which there is a PSP refusing to engage or reimburse even where ruled by the Ombudsman to do so. What then for the fraud victim in such cases? After suffering the trauma of being defrauded, secondary victimisation as a result of the re-living the ordeal through the reimbursement request, tertiary victimisation as a result of repeating the process for the Ombudsman claim… only to be denied reimbursement despite being awarded it by the Ombudsman. The level of impact this would have on the victim, and the damage it would do to the regulation regime as a whole, is seismic. And what if other PSPs decide to follow suit? The proposed change therefore risks the entire landscape before it is even implemented.

Restricting liability of PSPs also seems entirely at odds with the aim of raising industry standards, particularly where there is scant evidence provided by PSPs and the FS sector for needing to do so. And for all the concern raised by the FS industry about the ability to pay for this (seemingly without evidence); who is better placed to absorb the cost, an individual or a financial institution? The sums being mentioned are life-altering for individuals and given the trauma and wider impact of fraud, which is sufficiently severe to have been known to have been listed as both a contributory factor and or cause of death by coroners (Steele et al., 2001), cause PTSD (Whitty & Buchanan, 2016), and result in victims likening the experience of having been defrauded as akin to rape (Whitty & Buchanan, 2016; Deem, 2000), it must surely be the institution – in a thriving FS/Fintech sector – that is better able to absorb the cost of liability. Moreover, due to liability being split between the sending and receiving PSPs, for most situations there will be at least two PSPs with the opportunity to identify and halt the fraud.

Institutions are better placed to identify and stop fraud, with their professional teams dedicated to doing so, with detailed knowledge of fraud typologies than are individuals, all the more so given we know that many frauds involve grooming and coercive controlling behaviours that those who are subject to will find it hard to identify and protect themselves from (Carter, 2021, 2023). It seems highly unusual/strange etc. that despite there being an agreed liability from the PSP, the financial cost of liability upon them in the most egregious breaches (in which there are generally more opportunities to identify and intervene) will be restricted. The regulatory framework already requires KYC & AML measures in place from to counter financial crime and has done for many years, there is therefore no real or substantial additional 'burden' in protecting their customers from fraud, only an additional liability if/where that obligation isn't met. And the industry has had years to prepare for it. If there are PSPs that are still failing in their obligations in the most acute of incidents, then it seems the additional liability is therefore well warranted and will hopefully provide additional motivation to improve.

The summary provided by the PSR also indicates that a small number of PSPs are responsible for the highest number frauds within the relevant value, with a fraud rate of some 20 times that of the largest PSPs. It appears therefore that the majority of the industry is already near to having in place sufficient controls such that APP can be detected and, if not eliminated, at least vastly reduced. It is therefore the performance of the small number of PSPs that do not that is in urgent need of improvement if crime prevention and victim protection are the aims, yet the new limit hugely disincentivises this and moves more towards 'regulating the already compliant' whilst skirting the regulation of one of the areas where it is most needed.

References:

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Please note: CTSI also supports the response submitted by the National Trading Standards Scams Team

FOR FURTHER INFORMATION

CTSI is happy to work with PSR and contribute to work in this area in order to protect the interests of consumers.

Please contact Kerry Nicol, External Affairs Manager at CTSI for further information (kerryn@tsi.org.uk or 07496 254 934)