Legal & Regulatory Working Group

Competition Law Notice

Meeting participants are reminded that this meeting must adhere to competition law rules and as such no confidential or commercially sensitive information must be shared directly or indirectly between competitors.

Please do not share any confidential or commercially sensitive information and please do not ask questions that could lead to other participants to sharing confidential or commercially sensitive information about their organisation.

A written agenda has been circulated in advance and all discussion must keep to the agenda.

Please read our **Competition Law Guidelines** for further information:

Competition Law Guidelines - Payments Innovation Forum

Agenda – 17 November 2023

1. Upcoming Safeguarding Consultation Paper
2. PSR APP scams performance report – October 2023
3. FCA multi-firm review of anti-fraud controls and complaint handling
4. Consumer Duty
5. Economic Crime and Corporate Transparency Act 2023
6. FAFT ‘grey list’ updates
7. A.O.B.

1. Upcoming Safeguarding Consultation Paper

Upcoming Safeguarding Consultation Paper

- **Background**
  - → In July 2023, the government reaffirmed the UK’s move towards a ‘Smarter Regulatory Framework’ . i.e., a post-Brexit re-write of the rules involving a programme of secondary legislation to replace retained EU financial services law
  - → The FCA is committed to consulting on changes to the safeguarding regime that will **better suit the current payments and e-money sector**
  - → As the proposals are further refined, the FCA expects to publish the consultation in **early 2024**
  - → The FCA will provide us with an overview of the proposals **before publication**

Upcoming Safeguarding Consultation Paper

- **Discussion points to identify concerns/priority areas for change**

  1. What method do you use to meet the safeguarding obligations under the EMRs/PSRs, e.g., designated account, insurance guarantee, invested in low-risk assets
  2. Reconciliations: What are discrepancies (shortfall or surplus balance) typically attributed to? e.g., receiving/issuing funds in multiple currencies, fluctuating value of assets etc. How is this managed?
  3. Do the safeguarding rules adequately accommodate the various safeguarding methods, or is there a need for more guidance? e.g., to assist with managing shortfalls/surplus balances or to practically manage assets
  4. Designated safeguarding accounts:
     i. How many different banks do you work with to hold designated safeguarding accounts?
     ii. Why do firms use accounts other than designated safeguarding accounts to receive funds?
     iii. What would be the consequences if firms were required to place funds in a designated safeguarding account upon receipt (as opposed to within D+1 currently)?

Upcoming Safeguarding Consultation Paper

- **Discussion points to identify concerns/priority areas for change**

5. De-risking:

    i. What evidence is there that this continues to place firms at risk?

    ii. How exposed do members feel?

    iii. Does your account provider adequately understand the services that you provide and is there something the FCA could do to assist in any way, e.g., provide guidance to the account providers?

6. Are there any particular aspects of the current safeguarding rules and guidance that cause concern and/or need more clarity?

2. PSR APP scams performance report

Supporting documents:

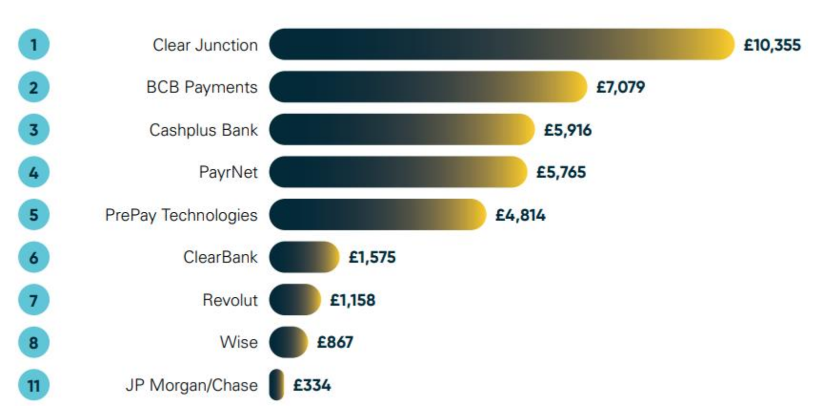
APP fraud performance data | Payment Systems Regulator (psr.org.uk)

PSR APP scams performance report – Oct 23

- The PSR's 2022 data shows how well the UK's 14 largest banking groups and nine other smaller firms (identified as being in the top 20 highest receivers of fraud) have performed with:
  1) Reimbursement of victims
  2) Level of APP fraud sent
  3) Level of APP fraud received
- **Key takeaways:**
  - → Inconsistent outcomes for customers who report APP fraud to their PSP, e.g., automatic reimbursement, partial reimbursement, which has been driven by differences in membership of the Contingent Reimbursement Model. The PSR expects this variation to reduce with the introduction of the reimbursement measures.
  - → Receiving fraud data shows a high degree of variation and highlights weak controls that fraudsters have exploited. **Newer and smaller PSPs typically have disproportionately higher rates of fraud** than larger, more established firms.
  - → Firms have begun to address gaps in controls, but **more needs to be done.**

PSR APP scams performance report – Oct 23

- **Metric C: Value of APP fraud received per £ million transactions – non-directed PSPs**
  - → Data shows which payment firms received the highest value of APP fraud in 2022, e.g., for every £1 million received into customer accounts at Clear Junction, £10,335 of it was APP fraud, and for every £1 million received into customer accounts at PayrNet, £5,765 of it was APP fraud.
  - → Firms such as PayrNet and ClearBank provide payment accounts to customers but do not manage the customer relationship. As these firms retain the regulatory responsibility, the PSR expects firms to ensure their outsourced partners manage the risks of onboarding new customers, conducting identity checks and monitoring transactions effectively.



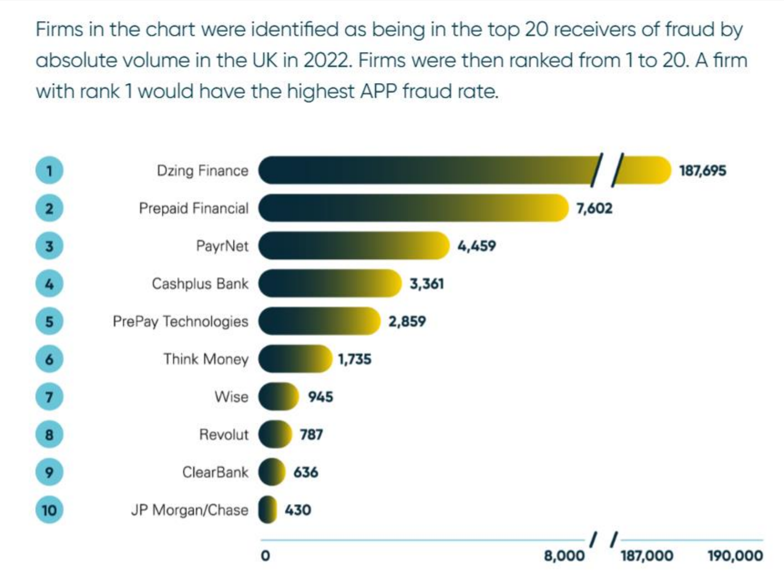
% share across all firms (value)	APP fraud	Faster Payments
Directed	63%	85%
Non-directed	37%	15%

https://www.psr.org.uk/information-for-consumers/app-fraud-performance-data/

PSR APP scams performance report – Oct 23

- **Metric C: Volume of APP fraud received per million transactions – non-directed PSPs**

  → PSR data shows which payment firms received the highest number of APP fraud payments per million transactions, e.g., for every 1 million transactions received by consumers at Think Money, 1,735 of those transactions were APP fraud payments.



https://www.psr.org.uk/information-for-consumers/app-fraud-performance-data/

PSR APP scams performance report – Oct 23

- **Technical notes**
  - → While there are discrepancies in the data between sending and receiving PSPs, the PSR has looked at the materiality and found that it was such that it didn't change the rankings in any case.
  - → **Metric C:**
    - While the PSR would expect consistency between the volume and value of APP scams sent (Metric B) and the volume and value of APP scams received (Metric C), this is not always the case, with some firms unable to identify the receiving firm in some cases.
    - The PSR expects the consistency between these metrics to improve, as firms improve the way the capture data on APP scams for future cycles.
    - Consumer Faster Payments values and volumes were used to calculate the fraud rates in Metric C. The PSR has made adjustments to the data in the case of some PSPs where this data was inconsistently reported by sending banks, especially where indirect PSPs were the receiving firms.
    - The PSR has subtracted any money recovered and returned to victims when calculating the receiving PSP's APP fraud value rates for Metric C.

PSR APP scams performance report – Oct 23

- **PSR's 'multi-pronged approach' to tackling APP fraud across payment systems**
    - → Firms' performance will be monitored. The PSR will work with the FCA to address poor performance through targeted action plans to drive better outcomes for consumers.
    - → New reimbursement measures in 2024
    - → Enhancing information sharing – the PSR has tasked industry with improving intelligence-sharing between PSPs. The PSR expects PSPs to implement the capability for intelligence sharing in Q1 2024.
    - → Confirmation of Payee (CoP) – In Oct 22, the PSR expanded the requirement to implement the name checking service to c.400 additional firms. **By October 2024, nearly all consumer payments will be covered by COP**.
    - → The PSR will give Pay.UK a stronger role to lead the development of protections for payment system users.
    - → Origination of APP scams data – the PSR will consider how they can collect data which shows where APP fraud originates, and for this data to raise awareness of e.g. social media platforms and telecoms firms that are at most risk of being targeted by fraudsters.

3. FCA multi-firm review of anti-fraud controls and complaint handling

Supporting documents:

Anti-fraud controls and complaint handling in firms (with a focus on APP Fraud) | FCA

Firms should strengthen anti-fraud systems and must treat victims of fraud better, review finds | FCA

FCA multi-firm review of anti-fraud controls and complaint handling

- The FCA has published the key findings of their review of firms' fraud controls and complaint handling, involving a high-level evaluation how firms approach fraud risk management, with a focus on APP fraud
- The FCA chose a risk-based sample of firms to review, including firms of different types, size and risk profile.
- **Key findings:**
  - Firms can do more to strengthen their fraud detection/prevention systems
  - In many firms, there is not enough focus on delivering good outcomes for consumers
  - Some firms could do more to improve the support they offer to victims of fraud
  - **Firms taking too long to respond to complaints**, and customers receiving decision letters that were sometimes unclear, confusing, or included unhelpful and, on occasion, accusatory language
  - Firms **not fully considering the characteristics of vulnerability** when making decisions about fraud claims and complaints.

4. Consumer Duty

Consumer Duty

- **FCA Consumer Duty webinar**
  - → The FCA is hosting a webinar on **6 December** from 10:00-11:30 to help firms understand the FCA's expectations now the Duty is in force.
  - → The webinar will focus on areas including sector specific areas of focus, examples of good practice, and next steps for firms. **Firms can submit questions when they register.** The FCA will also take questions during the live event.
    - Consumer Duty: The next steps - FCA Webinars

Consumer Duty – Next Steps for Firms

- Firms need to make sure they are learning and improving continuously and be able to evidence this in their **annual board report**.
  - → At least once year, firms' boards or equivalent must review and approve an assessment of whether the firms is delivering good outcomes for customers
  - → This assessment should include the results of a firms' monitoring on whether their products and services are delivering expected outcomes, and any evidence of poor outcomes – and before signing it off, your board needs to agree actions needed to address any identified risks or poor customer outcomes and agree whether any changes to your firms' future business strategy are needed.
- **Firms with closed products and services** should check they are on track to meet the 31 July 2024 deadline
  - → There will be some differences in how some elements of the Duty will apply, e.g., the FCA doesn't expect firms to consider the target market and distribution strategy for products that are no longer on sale. However, firms will still be expected to consider if closed products and services could lead to foreseeable harm or frustrate customers pursuing their financial objectives.
- '**Not a once and done'** – the FCA has again reinforced that the Consumer Duty is not something you can cross off from your to-do list and move on. It needs to become part of who you are as a firm, your culture, and how you do business, running across the whole organisation from the Board to front-line delivery, from product design to communications and customer support.
- **The FCA's supervisory and enforcement approach** will be proportionate to the harm, or risk of harm, to consumers. Where the FCA discovers problems, they will prioritise the most serious breaches and act swiftly and assertively. The FCA will take robust action, such as interventions or disciplinary sanctions.

5. Economic Crime and Corporate Transparency Act

Supporting documents:

Economic Crime and Corporate Transparency Act 2023 - Parliamentary Bills - UK Parliament

Economic Crime and Corporate Transparency Act 2023

The Economic Crime and Corporate Transparency Act 2023 received Royal Assent on 26 October 2023. It introduces major reforms to tackle economic crime and improve transparency over corporate entities. Reforms include:

- **Companies House**
  - → Companies house will have new powers including the ability to query and reject filings, require all information to be submitted electronically, remove information from the register more swiftly, and proactively share data with regulators and public authorities.
  - → The reforms introduce **mandatory identity verification for all new and existing directors**, Persons with Significant Control, and anyone who files information with Companies House. Directors and PSCs who do not verify their identity will commit a criminal offence, and/or incur a penalty. Directors will be banned from acting as a director unless their identity has been verified.
  - → There is a requirement to ensure that a company's registered office is an "appropriate address" and all companies must have a registered email address.
  - → The requirement for companies to keep their own register of directors has been abolished – the public will instead rely on filings at Companies House which will become the single, verified source of information.
  - → The circumstances in which the use of a company name can be prohibited has been expanded, to include e.g. names that could be used to facilitate crime.

Economic Crime and Corporate Transparency Act 2023

- **Strengthening anti-money laundering powers**
  - → The reforms will enable businesses, in certain situations, to share information more easily for the purposes of preventing, investigating or detecting economic crime by disapplying civil liability breaches of confidentiality for firms who share information to combat economic crime.
  - → The Act will enable proactive intelligence gathering by law enforcement and strengthen the National Crime Agency's FIU's ability to obtain information from businesses relating to money laundering and terrorist financing by removing the requirement for a pre-existing SAR to have been submitted before an Information Order can be made.
  - → The reforms will also focus private sector and law enforcement resources on high value activity, reducing the reporting burden on businesses and enabling greater prioritisation of law enforcement resource by expanding the types of case in which businesses can deal with clients' property without having to first submit a Defence Against Money Laundering (DAML) SAR.
- **Cryptoassets**
  - → The Act principally amends criminal confiscation powers in Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (POCA) and civil recovery powers in part 5 of POCA to enable enforcement agencies to more effectively tackle criminal use of cryptoassets.

Economic Crime and Corporate Transparency Act 2023

- **New criminal offence of “failure to prevent fraud” (FTPF Offence)**
  - → Companies will be liable for failing to stop employees, or others acting on behalf of the company, committing fraud for the benefit of the company or its customers. It only applies to large organisations who meet two of the following criteria:
    - More than 250 employees
    - More than £36 million turnover
    - More than £18 million total assets
  - → Smaller organisations will have to consider reinforcing their anti-fraud procedures given that they may be the ‘associated person’ of a large organisation, i.e., the large organisation will require them to have reasonable procedures in place to prevent fraud.
- **The reforms will not take effect immediately**, and some of the measures in the Act will need processes to be developed and secondary legislation before they can come into force.
- There is no clear indication of when the FTPF offence will come into force but expected to be during 2024. The government will need to publish guidance, i.e., on what constitutes ‘reasonable procedures’
- Some measures can be brought into force sooner, including the power for Companies House to query or reject filings, require a registered email address, and revisions to the company names regime

6. FATF ‘grey list’ updates

Supporting documents:

Jurisdictions under Increased Monitoring - 27 October 2023 (fatf-gafi.org)

FATF ‘grey list’ updates

- **The Financial Action Taskforce has published its latest update on Jurisdictions under Increased Monitoring**
  - → Jurisdictions under increased monitoring are actively working with FAFT to address deficiencies in their AML/CTF regimes. When FATF places a jurisdiction under increased monitoring, it means the country has committed to swiftly resolve these deficiencies within an agreed timeframe.
  - → **Bulgaria** has been added to FAFT’s grey list.
  - → **Albania**, the **Cayman Islands**, **Jordan** and **Panama** are no longer subject to increased monitoring and have been removed from the grey list.
  - → In October 2023, FATF made the initial determination that **Gibraltar** had substantially completed its action plan and warrants an on-site assessment to verify implementation of AML/CFT reforms has begun and is being sustained

Any questions?

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