Consultation on general directions on implementing Confirmation of Payee

Response from the BSA

Restricted
02 January 2019

Set out below is the response from the Building Societies Association to the above consultation.

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 4 credit unions. Building societies have total assets of over £400 billion and, together with their subsidiaries, hold residential mortgages of over £315 billion, 23% of the total outstanding in the UK. They hold almost £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

The BSA and BSA members support the Payment Services Regulator's (PSR's) overarching objectives in respect of reducing levels of authorised push payment (APP) fraud and the harm it causes.

Summary

The BSA and BSA members support the objectives of Confirmation of Payee (CoP). We also support the need for a clear timetable for introduction of CoP in order to give certainty to firms and reassurance to consumers.

We understand the technical logic of splitting CoP into two phases – though lower APP fraud protection for some consumers will have to be addressed in consumer messaging at launch of Phase 1.

However, we do not believe the timetable for Phase 1 proposed in this consultation to be realistic:

- **We need urgent clarification as to whether CHAPs and FFP transfers to and from savings accounts with an addressable sort code are to be included in Phase 1 or Phase 2. This will have a significant effect on some of our members' ability to meet any proposed timetable.**
- Firms, outsourcers and the PSR itself anyway have a great deal to complete for the build phase of CoP1 to be ready by 1 April 2019.
- Pay UK has already raised concerns about Open Banking's and its own capacity on on-board all phase 1 firms by 1 April.
- There are no visible plans for testing CoP between firms – essential if the requirement that all Phase 1 PSP must be capable of receiving and responding to CoP requests from other PSPs.
- There are potential competition issues if smaller firms are disproportionately impacted by the intensive development requirements – particularly if they are pushed out of the market for outsourced CoP services and specialist technical resource.
- There appears to be no central coordination of crucial aspects of delivery such as testing, communications or consumer education.
- The timetable appears not to have taken account of concurrent activity required by other regulators – again this is particularly relevant to smaller firms.

While the BSA is a relative newcomer to CoP, from our perspective the PSR's proposed timetable doesn't allow enough time for the above to be done properly and therefore carries significant risk. We would recommend the following next steps:

- The PSR reviews all of the above - including liaison with the other financial services regulators on their plans for 2019 - so that an informed decision on an alternative timetable can be made.
- Options might include sub-phasing delivery of Phase 1 with those firms who are most ready to deliver CoP going first.
- CoP should be formally set up as an industry delivery programme led by a suitable body from the payments sector with accountability for co-ordinating the industry's approach to build, testing and launch (as Pay UK did for the design solution) and delivering Phase 1 to whatever timetable is set - and then to design and deliver Phase 2 of CoP.

The position of building societies

Building societies who offer current accounts are well-advanced in their CoP Phase 1 preparations – though they still see considerable risk in the PSR's proposed timetable.

Building societies who offer CHAPs and FFP transfers to and from savings accounts with an addressable sort code are currently unable to move forward as Pay UK has not been able to confirm whether these accounts are in scope for Phase 1 or Phase 2 of COP. Pay UK's latest opinion as of December 2018 was that these accounts were "possibly in scope" for Phase 1.

This places CoP provision for millions of savings accounts at building societies, banks, credit unions and other providers in limbo – which is unacceptable at this late stage. Could the Payment Services Regulator arrange for clarification to be provided as a matter of urgency?

The majority of smaller building societies will fall into Phase 2 as providers of "transactions to or from a Head Office Collection Account (HOCA) and then associated with a roll number or other identifier" through offering CHAPS payments to and from savings accounts via the CHAPs facilities of a sponsoring bank. Plans for supporting Phase 2 firms and consumers to mitigate the lower level of protection against APP fraud that they will receive need to be incorporated into the launch of Phase 1.

We continue to be concerned that though the decision as to the scope of Phase 1 and 2 was made by Pay UK and the Payments Forum "with industry participation" neither body consulted with representatives from building societies or others outside of the clearing banks at the time. There has been a similar lack of wider industry consultation during the development of the draft CRM code.

We want to make sure that lessons are learned for the delivery of CoP phase 1 and development of CoP Phase 2. The BSA and our members will commit to working closely with Pay UK and others – if asked - to deliver an appropriate way forward.

Our comments on individual consultation questions:

Do you agree with the deadlines for the introduction of CoP? If you do not agree, please set out why you consider different dates would be more appropriate and your view of the impact that would have on the costs and benefits of CoP. If the dates are not considered achievable, please give reasons and alternative dates that you consider achievable and the reasons why.

We strongly agree with the need for a co-ordinated timetable for delivery of CoP to give clarity to firms and reassurance to consumers. However, the consultation's proposed timetable for PSPs using FPS and CHAPS (set out below) is heavy with risk.

- By 1 April 2019: A PSP must be capable of receiving and responding to CoP requests from other PSPs.
- By 1 July 2019 A PSP must send CoP requests and present responses to their customers.

Pay UK have informed us that CoP Phase 1 will require 300 PSPs to prepare to build, test and launch COP infrastructure based on a design released in October 2018.

- Pay UK tell us that they engaged with "around 200 PSPs" in the design stage – which presumably means that 33% of the PSPs that need to be ready to build to this design have not been party to the design phase of CoP and have a significant amount of work to catch up on by 1 April 2019.
- In December 2018, Pay UK were unable to confirm whether savings accounts with an accessible sort code are within scope of Phase 1 or Phase 2 (see above).

To meet the proposed deadline of 1 April 2019, 300 PSPs will have had to have built and tested their CoP infrastructure, including requirements to participate in Open Banking and register with Pay UK.

- Pay UK have expressed concerns about the ability of Open Banking to handle the required volume of new participants.
- Pay UK themselves are unsure of their own capacity to on-board the required number of PSPs within a short timescale.
- Where firms are using / considering an outsourcing arrangement as the delivery option for CoP infrastructure, all firms in this situation will have needed to complete supplier due diligence on their chosen outsourcer – and probably at least on other – before they select their partner and build their CoP infrastructure.
- Time pressure will also create competition issues where larger firms can use their size to gain priority access to outsourcers and specialist contractor / consultant resource whereas smaller firms are likely to struggle for access.
- CoP testing will need to be a standardised approach so the all parties can test interfaces with other firms on an equal basis and have time to iron out any problems encountered. Testing is usually against a centrally developed test script for consistency of approach.
- We presume that, as regulator, the PSR will also want to have completed risk assessments on concentration risk associated with a small number of outsource providers providing CoP services to PSPs and on operational resilience impact tolerances etc. for CoP as a whole.

To meet the next proposed deadline of 1 July 2019, participating PSPs will needed to have completed integration testing of COP infrastructure, have completed development, build and testing of CoP at consumer-facing channels and prepared industry-wide usage instructions and communications messages for consumers – including an explanation of lower APP fraud protection for Phase 2 customers.

- We can't see any plans for delivering co-ordinated pre-launch requirements for CoP, either at individual firm or industry level, in this consultation or anywhere else.

In addition, pressures on firms' development resource and management time from other sources must be factored in. The regulatory world will not stand still and regulators' requirements on Open Banking, vulnerability, operational resilience etc. plus preparing for the other aspects of implementation of the CRM code will all have to be managed and resourced at the same time as CoP, plus ongoing upgrade and maintenance of systems & processes. This particularly affects smaller PSPs who do have the depth of resource to take on significant additional development without corresponding opportunity cost elsewhere.

While the BSA is a relative newcomer to CoP, from our perspective the PSR's proposed timetable doesn't allow enough time for the above to be done properly and therefore carries significant risk. This is best summarised by feedback from a building society currently engaged on Phase 1 CoP preparations:

"We are in agreement with the idea of CoP and its aims however April 2019 is a really struggle for us given the work required for PSD2. PSD2 relies on some of our key third party suppliers for delivery of the SCA and open baking work, some of which would also be required to deliver CoP and to add these requirements into the already tight schedule feels unachievable. The costs of delivery are understandable and can be factored into our 2019 plans but it is this reliance on our third parties that is our key concern."

In terms of suggesting an alternative timetable, the BSA doesn't have the information needed as to how long above preparations will take firms, outsourcers, Pay UK, the APP Scams Steering Group and other stakeholders to deliver CoP alongside normal business and other regulatory policy implementation so cannot provide a definitive alternative.

We strongly suggest that, as a next step to this consultation, the PSR reviews all of the above - including liaison with the other financial services regulators on their plans for 2019 - so that an informed decision on an alternative timetable can be made. Options might include sub-phasing delivery of Phase 1 with those firms who are most ready to deliver CoP going first.

Is giving directions under section 54 of FSBRA to PSPs requiring them to introduce CoP the right approach to securing our objectives, in particular to reduce significantly losses and harm from APP scams and accidentally mis directed payments as soon as possible?

Are there other approaches that would lead to the same outcomes that we should consider, and, if so, what are they?

Direction from the PSR by itself is not the right approach to deliver Cop effectively to consumers and needs to be combined with creation of a CoP implementation programme to provide central c-ordination of the build, test and launch phases. Otherwise, it runs the risk of not achieving the PSR's objectives on reducing APP fraud within the UK.

As pointed out above, the PSR is not the only regulator operating in financial services who has powers to direct firms to particular courses of action and firms already know that both the PRA and FCA have extensive plans for regulatory initiatives in 2019. If regulators do no co-ordinate their requirements, firms, particularly smaller firms, will struggle with implementation – with a knock on effect on costs, resources and focus on providing day to day services to customers.

Also, given the size and complexity of CoP and its key role in supporting the CRM Code, we would have expected there to be some element of central programme management to co-ordinate design, build, test and launch across a large range of firms of different sizes and to take overall accountability for delivery of both CoP and implementation of the Code.

This lack of central co-ordination is evident in the variable on-boarding of firms at design stage and the obvious lack of co-ordination with the APP Scams Steering Group over the CRM Code. If this state of affairs continues into testing and launch - where central co-ordination is key to successful delivery and a consistent outcome for consumers - the risk of the PSR not securing its objectives becomes much greater.

We would strongly recommend that CoP is formally set up as an industry delivery programme led by a suitable body from the payments sector with accountability for co-ordinating the industry's approach to build, testing and launch (as Pay UK did for the design solution) and delivering Phase 1 to whatever timetable is set - and then to design and deliver Phase 2.

Do you have any other comments on the issues raised above?

We are also conscious of the potential knock-on impact on phase 2 if there are significant delivery problems for Phase 1. The phased approach already means that most building societies will not be able to offer CoP facilities to their customers (see below) which therefore makes both firm and customer exposed to higher levels of APP fraud. This will be longer and more risky if Phase 1 is not successfully delivered.

Assuming directions in respect of FPS and CHAPS are given, are there any types of PSP that should not be given the directions? What is the basis for your view, particularly having regard to the likelihood of achieving the benefits of CoP?

This consultation confirms that some PSPs and their customers will not be offered the benefits of CoP in Phase 1 leaving their customers less protected against APP fraud than customers of phase 1 firms. In particular "transactions to or from a Head Office Collection Account (HOCA) and then associated with a roll number or other identifier" will cover most building societies offering CHAPS payments to and from savings accounts via the CHAPs facilities of a sponsoring bank.

We understand the technical logic of postponing solution design for this until (a yet to be confirmed) Phase 2 of CoP but there will be implications. We expect that Phase 2 firms and their customers will be particularly targeted for APP fraud and the laundering of proceeds for fraud because of this decision.

Plans for supporting Phase 2 firms and consumers to mitigate the lower level of protection against APP fraud that the will receive need to be incorporated into the launch of phase 1.

Should the same PSPs be subject to a requirement to respond to a CoP request as those that are required to send a request?

Yes.

Do you think that we should consider giving directions in relation both to FPS and CHAPS transactions? If you believe that we should consider giving directions in relation to only one of these payment systems, or more than FPS and CHAPS, please set out why. Are there any other issues that we should consider when deciding which payment systems should be in scope?

Yes. Direction should cover both FPS and CHAPS payments.

Should the directions apply to all payment channels that an FPS or CHAPS payment can be initiated from?

Yes – though where a request for a CHAPS or FPS transfer is made at a branch counter firms should continue to use the Banking Protocol when they have suspicions that a customer is being targeted for fraud.

Should a CoP request only apply when a new payment mandate is being set up or changed?

This would appear sensible as a start point but policy must be flexible to allow CoP to react to fraudsters who will look for ways to use CoP to their advantage.

Should any directions cover the sending of money from both individual and business accounts?

Building societies are restricted in the types of account they can provide for non-individuals.

From the consumer's perspective, it would be better for both individual and business accounts to be covered as long as there is sufficient capacity within CoP to do so. Individual and business accounts are both targeted for APP fraud.

Should the directions separate out responding to CoP requests from being able to send CoP requests? Should directions cover both sending and responding?

Direction should cover both sending and receiving.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £400 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.