the payments association

connecting the future

Faster Payments APP scams: changing the maximum level of reimbursement

CP24/11

PSR
September 2024

Response from
The Payments Association
September 2024

Introduction

The Payments Association welcomes the opportunity to contribute to the PSR Consultation Paper "*Faster Payments APP scams: changing the maximum level of reimbursement*".

The community's response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Director of Policy & Government Relations and Robert Courtneidge, Advisor to the Board. We would also like to express our thanks to the PSR for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK's payments industry continues to be progressive, world-leading, and secure, and effective at serving the needs of everyone who pays and gets paid.

Tony Craddock
Director General
The Payments Association

Members' "responses to the questions" set out in the consultation:

The section numbering below corresponds to the numbering of the 'questions for respondents' in this paper.

1. **What are your views on the proposal to change the maximum level of reimbursement from the outset of the policy, to set it to the FSCS limit, which is currently £85,000?**

Most of our PSP members[1] still argue that setting the reimbursement limit at £85,000 is too high and may lead to those unintended consequences that we previously expressed, namely:

- **First party fraud**
- **Moral hazard**
- **Overall increase in fraudulent activities because the rewards are high for the fraudsters**
- **More PSPs leaving the UK market**
- **More investors leaving the UK market**
- **Detrimental impact to customer proposition due to higher cost to serve**

Additionally, it should be noted that using the limit based on the FSCS is flawed as it is an account-based limit, not a transaction-based limit. The FSCS limit was set to protect consumers in the event of large firms being unable to repay their depositors as, unlike funds held in cash (backed by the Bank of England), commercial bank money has no intrinsic protection.

We continue to advocate for the lower limit of £30,000 which we believe is more appropriate because it strikes a better balance between consumer protection and financial firm responsibilities. A limit of £30,000 is based on Section 75 of the Consumer Credit Act 1974 which requires a credit card issuer to step in where a merchant fails to provide goods or services purchased by consumers using a credit instrument. This is a good example of a transaction-based protection and has been in place for over fifty years without any major challenges to the functioning of the industry. Indeed, the card schemes have built up a well thought out dispute resolution mechanism called "chargebacks" and we would advocate a similar solution should be created for Faster Payments.

We also observe that the average level of fraud, as available data shows, is around £12,000 for businesses and less than £2,000 for individuals. Hence if we consider the median household income in the UK being £32,400 and the mean average amount of money held in a UK savings account is £17,365, we can assume that a limit above £30,000 for mandatory reimbursement will be of no additional benefit for the most vulnerable consumers who we are trying to protect.

Furthermore, we want to reiterate that we have never opposed the principle of reimbursement but have always and will always stress that mandatory reimbursement in 5 days (up to a maximum of 35 days by using "stop the clock") does not give adequate time for cases to be properly determined. Without an appropriate dispute resolution system like the chargeback system for credit cards, there is not enough time to enable PSPs to properly review the case. This is why we urge that any cases over our proposed threshold of £30,000 are properly investigated, require a crime number, police report and are exempt from the 5 day (max 35 day) timeline proposed by the current mandatory reimbursement rules.

[1] Our response does not reflect the views of major card schemes and high street bank members.

Indeed, FOS figures for 2023-24 show that in cases of claims relating to banking and payments only 44% were upheld,[2] which is a clear indication that many cases are not valid. If we allow a mandatory system that does not give enough time for proper investigation, we will run the risk of erroneous compensation payments. This is a gift to fraudsters and will contribute to significantly increase fraud rather than reducing it and could erode trust in our financial system.

To reduce the moral hazard associated with the level of reimbursement proposed by the PSR, [all of] our members agree that revisions to the Customer Standard of Caution need to be made. At the very least, these should include basic principles of how consumers should protect themselves by:

- Having regard to tailored, specific and interactive warnings before a proposed authorised push payment has been executed, where the specific advice if followed would materially improve the consumer's ability to identify and mitigate the scam risk.
- Conducting a basic check before initiating a payment. This may be as simple as checking online reviews or calling an independently sourced number.
- Being honest in all interactions with a PSP, where deliberate dishonesty by a customer would divert the PSP from providing adequate warnings. If implemented, we would expect all PSPs to apply exceptions in cases where victims have acted out of fear or had their vulnerabilities exploited by criminals.

Finally, in order to minimize any detrimental effects from the implementation of the rules, we urge the PSR to ensure that a proper review of the impact of these measures is undertaken at 6 months from the implementation date rather than 12 months as currently proposed.

2. **What are your views on the impacts (including costs, benefits, and risks) of operationalising an initial maximum limit of £85,000 from 7 October 2024? For example, we'd welcome views on:**

   a. **the prudential impact on PSPs**

Smaller firms might still face significant financial and operational burdens due to the high reimbursement limit of £85,000. Firms may need to hold larger reserves to cover potential fraud compensation and this might not be sustainable for smaller players in the market. There is also concern over whether firms will have the necessary time to prepare, and some of our members still advocate for a delayed implementation date until May 2025 to allow for better adaptation.

Regarding claims that the reduction will result in a surge to FOS, data does not support this conclusion as FOS claims overall are expected to reduce dramatically:

- FOS says that around 50% of all claims today[3] are from customers of non-CRM Code firms (e.g. a population that is not being fully or at all reimbursed).

- Therefore FOS claims should drop, not increase, when mandatory reimbursement rules come into effect, with the ratio of FOS claims-to-APP claims for non CRM Code firms falling significantly to (or near) the current ratio applicable to CRM Code firms.

[2] Fraud and scam complaints hit highest ever level, FOS website, 4 September 2024
[3] ibid

- The PSR says in its consultation that only 411 claims were for values over £85k – that is only around 2.5% of the annual FOS APP claims based on the current quarterly figures.
- Therefore, even if all claims over £85k go to FOS, it seems likely that these claims will be netted out given the likelihood of more significant falls in the volume of non CRM Code firm FOS claim.

It should be noted that FOS liability extends to both sending and receiving PSPs. The FCA Handbook in DISP 2.7.6(2B) states that FOS can (and does today) apportion APP liability to receiving firms. The scope is intentionally set widely to capture any firm "involved in the transfer of funds".

b. any implications arising from any planned or already completed consumer communications activities, that would result from a change in the maximum level of reimbursement

Using the FSCS reimbursement limit could lead to confusion among consumers, because this is based on the amount of deposit that is protected rather than a transaction amount – an unrelated scheme. Our members emphasised that clear and consistent messaging is essential to avoid confusion between the two regimes. If not communicated properly, consumers might have incorrect expectations about which scheme provides protection in cases of fraud, potentially leading to increased complaints and disputes.

Members have noted that there are consultations already underway to increase FSCS to £100k. We believe that the PSR should not adopt a direct movement principle to tie reimbursement requirements to the current or future level of FSCS limits.

c. the impact that you consider our proposed approach would have on firms' incentives to put in place effective fraud prevention measures.

The lack of provision to involve social media companies in the reimbursement scheme does not reflect all sectors involved in a fraudulent transaction and leaves the payments industry to solely bear the reimbursement costs. We contest the assumption that the industry has not done enough to protect consumers, and do not agree that being responsible for reimbursement will result in payment firms being able to prevent all fraud. Fraud should be resolved at source, and this requires the involvement and consequent responsibilities by those firms that allow the scams to take place on their online platforms and telecoms channels, enabling less vigilant consumers to fall into the fraudsters' traps.

3. **Do you agree with or otherwise have views on our proportionality assessment and our cost benefit analysis? Do you have any further evidence to provide that is relevant to this analysis?**

We disagree with the figures provided that highlight the impact of a £30,000 threshold compared to £85,000 and £415,000 based on value alone. We believe that what matters the most is the volume of cases that are covered, with the few higher value cases escalated to FOS. Lowering the threshold to £30,000 still covers more than 95% of the volume of cases and would result in cases for more than £30,000 (less than 5%) to be properly investigated in a FOS claim.

4. **Please provide your views on the Bank's proposed approach to change the maximum level of reimbursement for CHAPS to align with our proposal for Faster Payments (which is to set it to the FSCS limit, currently £85,000).**

Our members agree that reimbursement limits for CHAPS transactions should align with those for Faster Payments. However, the £85,000 limit remains too high for either system. Reducing the limit to £30,000 for both Faster Payments and CHAPS transactions would provide greater protection for firms, reduce the risk of fraudulent claims, and promote more responsible behaviours among consumers. Additionally, we also recommend that fraud claims above £30,000 should require a mandatory police report to deter fraudulent claims, a policy which would apply equally to both payment schemes.

About The Payments Association

The Payments Association is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

Contact malik.smith@thepaymentsassociation.org for assistance.